

**ICANN  
Transcription ICANN Panama City  
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Paul Diaz: Well welcome, everyone. This is Paul Diaz, Chair of the Registry Stakeholder Group. We are meeting as contracted parties and NCSG and talking about our favorite four-letter word. As you can see on the screen, I mean, it's not much of an agenda but the idea is just give – take advantage of the opportunity when we're here together face to face, sync up on where we see things standing, thoughts about next steps, perhaps we could ask any of the councilors in the room for a very quick update, unfortunately, Michele, I only see you right now but a quick update where we stand at Council level so that everybody's on the same page.

Michele Neylon: Thanks, Paul. Michele for records and transcripts and all that. So the GNSO Council has basically spent the – our entire time here in Panama talking about the EPDP and trying our best to draft the charter for that. At yesterday's Council meeting we couldn't vote to kick it off because the charter isn't finished. We're hoping to finalize the charter over the next week or so and then take it to a vote outside of the standard Council meetings.

I don't know, anything else I need to add about that? Anything super exciting, Tatiana is going to give me ugly faces. Anything you want to add, Tatiana?

Tatiana Tropina: No, I think you covered it pretty well except if we go to the details and say that we might not define the scope besides then leave it to the group and but I believe that this would be my bit of subject of this meeting anyway, so.

Michele Neylon: Yes, thanks Tatiana. Michele again for the record. I suppose the thing is if we get into too much into the detail we could be stuck in this room for the next eight hours and I don't think that's particularly helpful. So I suppose maybe throwing it back over to you, Paul, and Graeme and whoever is running things from the NCSG side, I mean, if there's something specific you have concerns about or something, I don't know, just – I don't really think there's much point in us getting into the weeds because I've spent the last I don't know how many days in the weeds and it's really tiring.

Paul Diaz: Yes, weedy. Well, Jeff, I saw your hand, let's – you broke, it.

Jeff Neuman: Thanks. Jeff Neuman for the record. Without getting into the weeds, can you just tell us like the couple areas overall that are the outstanding items that you need to work through?

Michele Neylon: Thanks, Jeff. Michele again for the record. There's a couple of areas where I think there is – we're moving towards, you know, a general joint feeling of unhappiness or whatever it is, but some of the areas where there's been a bit of contention have been around the number of members from the various stakeholder groups and ACs and SOs and there has been a little bit of a difference of opinion about what exactly should be included directly within the EPDP and what shouldn't be.

So, I mean, some of the – some of the conversations kind of were okay, you know, picket fence, all that kind of thing, but what was generally decided was to assess whether or not it was – it fell within that – that was okay, but then the – because the bigger overarching concern that some people have was around this entire concept of access, unified access or whatever the next acronym for that will be.

But if you look at the dialogue that we had between ourselves and the ICANN Board whenever that was, was that Monday, I don't know, whenever it was,

sometime – it was sometime a few days ago but it feels like it was a few weeks ago, the conversation there was that they were trying to put something together with getting some kind of community input ,etcetera, etcetera, etcetera, so that they could present this to DPAs.

Because the – one of the challenges with all of this is it doesn't matter a damn whether or not we all agree on something, if it's not legal, then it's absolutely...

((Crosstalk))

Michele Neylon: It's absolutely useless and totally pointless. So this is a kind of challenge I suppose in that under normal circumstances all we have to do is fight amongst ourselves, whereas this time we're fighting amongst ourselves plus making sure that what we're doing is legal. So I suppose if I actually unpack what I just said, that this sounds even more ridiculous because it suggests that we've all been going around the place doing all sorts of crazy things that were completely illegal for years.

Paul Diaz: Okay. Other follow ups, questions, and again this is a very loose structure so we can go in any direction we want. Maybe Rafik.

Rafik Dammak: Okay. Thanks, Paul. This is Rafik speaking. I'm not going into the details of what was discussed but I think at least I sense that between the Contracted Party House and NCSG we are in agreement about what was done in the charter. Still I think this composition, that needs tweaking, I'm not sure what's the right number. But in general we are – I think we are in agreement an that's one of – we need to highlight for this EPDP and I think it's just to maybe to move a little bit the next kind of next agenda item is really about the access model.

As we discussed with different folks before this session is that we do believe that if there is any discussion about the access model or (unintelligible) that

should be faced up, depending which the timing but we need to do work on that. And maybe Paul – I think, Paul, as we discussed maybe if you can think about that proposal we have from IGP that was also endorsed by the NCSG as a basis for discussion in our meeting here in Panama. So we think that's something as in term of maybe not a model but a set of requirement that can be used to work toward some access model. Yes.

Paul Diaz: Okay then Rafik we'll come back to the IGP model. I have a queue going. Erika, you're first. Thank you.

Erika Mann: Erika Mann, GNSO Council. I'd just like to add a point which we – I believe we are sometimes overlooking when we talk about the access model, the future access model because I believe it's maybe more complicated than we think currently, not because – because of our work and because what we can manage internally but because of the way legislature might see and might observe this model because they themselves are currently having in many parts of the world discussion about how they shape the – such kind of access models.

Not related to our debate, they haven't even at least that I'm not aware about – haven't looked into the domain sector but because of the need for law enforcement and for some other entities to access data. And they do have difficulty so just to give you one indication, and this is just about the European Union which is the currently (unintelligible), the evidence legislation, but this is just one indication. You have similar debates in many other parts of around the globe where legislatures are discussing this.

So I don't want to make it more complicated than it is, but I think it is something you want to put on your internal warning list and something you want to watch because you definitely don't want to come up with an idea and then it's in reality not working or its counter, you know, counter reacting to proposals they might debate.

And the idea that you can discuss this with data protection agencies might not work neither because, as you know, all too well from your industries, data protection agencies are looking after data protection and data privacy issues, they're not looking, you know, typically at least not what law enforcement or other entities, what kind of needs they do have. So there's different agencies then responsible for this.

Paul Diaz: Thank you, Erika, all great points. Keith.

Keith Drazek: Okay thanks, Paul. Good morning, everybody. So just to talk a little bit more about the discussions at the Council level on the access model, and sort of the phasing of the work if you will, about, you know, the temporary specification, the EPDP.

So I think where we are today, and of course the charter is not finalized, we've got work left to do on that over the next 10 days with the expectation that we will try to finalize that in the second week of July, the discussion at the Council level has focused quite a bit on you know, what the scope should be. And also Rafik mentioned sort of the composition of the group, so I think those are sort of the two big outstanding questions that need to be finalized. We made a lot of progress over the course of this week.

The scoping issue, and we're hearing of course from the GAC, you know, that they're very interested and anxious about moving forward and advancing the work on the access model, of course the Intellectual Property Constituency and the BC are very interested and anxious about making sure that the access and accreditation discussion is advanced in the near term. They clearly want this to be part of the EPDP itself.

I think we've been successful and appropriately so, over the course of the last few days in making sure that the EPDP is primarily focused on the temporary specification, which is the part of this conversation that has a deadline, a deadline of May of 2019. We either have to confirm the temporary

specification as consensus policy, reject it, or amend it by May of 2019. If we do none of that it goes away on its own. So that is the primary focus of the Council and of the GNSO to make sure that we can accomplish that.

But this discussion about the access and accreditation or Universal Access Model, Uniform Access Model, whatever we're going to call that component, is still very important. It's important to law enforcement, it's important to the governments, it's important to intellectual property and BC, essentially the users of WHOIS, whose lives have now been disrupted because of GDPR. And so I think we need to focus on that component as well.

So I think what that tees up is a conversation about is that a separate EPDP? Is it a PDP in the traditional sense? Or does it become a second phase of the EPDP that we're currently considering in this charter? So I just want to just sort of bring everybody up to speed and say, these are – this is going to be a topic of conversation over the coming week or two. And I just want to make sure that we're all sort of synced up and understanding sort of these are some of the big questions that are out there.

And then just real quickly going to Rafik's comment about the membership, or the participation, we have intentionally tried to keep this group small because it essentially has four months to get its work done for an initial report. If we're going to meet the timelines associated with public comment periods and review and a second final report going into May of 2019, you know, you back those dates up and we're looking at an initial report required in four months in Barcelona.

So we've intentionally tried to keep the group small, manageable, efficient, representative, inclusive, there's clearly interest from the GAC and possibly from other you know, ACs, ALAC, probably, SSAC has come out with its SAC101 document and so there's interest from SSAC probably on behalf of the security researchers who use Whois. So there's going to be a lot of

interest outside the traditional GNSO structure. So we're trying to come up with a composition of the group that is limited but also inclusive.

And so Rafik mentioned that we've got some concerns about that from traditional GNSO you know, sort of perspectives as it relates to balance and representation and you know, how do we make sure that it mirrors what we do as a Council in terms of the breakdown and so I'll stop there, but I just wanted to give everybody sort of a quick sort of sync up and if there's any questions I'm happy to take them. Thanks.

Paul Diaz: Yes, thank you, Keith. We do have a queue going. Stephanie and then James.

Stephanie Perrin: Thanks. Stephanie Perrin for the record. I know at the GNSO Council we're committed to making this thing work so please don't interpret my remarks as commitment to make it not work. But I think we do need to have Plans B and C just in case because there is a kind of a buzz going that oh my God, if we don't get it done it'll crash and, you know, we'll go over a cliff. Not actually true. I listened to the Tucows presentation the other day, you're going to be implementing systems that actually work and provide relief for law enforcement and the other requestors, aren't you? Stop laughing, Graeme.

So what's Plan B? I mean, if it does hit the wall, a possibility since we don't control membership, what's the next PDP that we generate to come up with a more comprehensive Whois policy? That's one of the reasons I kept arguing to keep the moribund RDS Working Group alive because there was a lot of good work and then we could just punt things into it as we realized they weren't going to come out of the first one. But I think failure to have a Plans B and C is setting us up to fail.

Paul Diaz: Okay. Provocative statements, Stephanie. I see a lot of quizzical looks. But let me keep the queue going. James, you're next.

James Bladel: So, yes, I wasn't going to comment on that but just Stephanie teed that up so nicely I think Plan B is – I'm not sure but it's certainly not a PDP because I think it would have demonstrated by that point that the community mechanisms have had four, five, six, I think it would be Plan H or I at this point to use a PDP to try and solve this. And I think that's what happens – and this wasn't the point of my getting in the queue but I think this is what happens when you try to take an organization and a process that was designed for technical coordination and try to cram a political problem through it. And I think that's what we're trying to do on some level.

But I just wanted to kind of emphasize a couple of points that Keith made, which is I agree with you that you know, we have got to keep the focus on the temp spec up or down or modified to get us off the clock. So that we avoid the doomsday scenario that the meltdown that Stephanie outlined. And I think the concern – we've been talking with – we've been listening to a lot of folks from IPC, BC, GAC, law enforcement, we've been working with them, the concern is is that well if there's a second PDP then that's just naturally going to be second fiddle.

Maybe, I don't want to assume that. I mean, all the blog posts and everything seem to indicate that that would be the main event. But maybe, you know, that it would get it. One possible approach that I pitched – and I don't know if Council's already passed the point of considering this, is that you start two efforts simultaneously, an EPDP on the temporary spec and a regular PDP on uniform access. The fact that one is not an expedited PDP means there's going to be an issues report and a public comment period that's naturally going to put it about six to eight weeks behind the other one.

So there's a commitment there to getting it done, to getting it – to making it the focus of the work. It's not going on a side rail. But it is kind of just a staggered approach so that one starts slightly before the other. And I think that will also help inform the work of that Uniform Access Model to see how

that is working out particularly if the legal developments catch up with us on the ground.

So that was – that was my original intention and I apologize for piggy backing off Stephanie's statement but I think her comment was very intriguing. Thanks. Sorry, that was James Bladel speaking for the record. I'm terrible at that.

Paul Diaz: Thanks, James. Others? Michele.

Michele Neylon: Thanks. Thanks. Michele for the record. Stephanie's points are intriguing but I think probably add more confusion than bring clarity. The reality is, if the EPDP fails due to it being overloaded with issues that are far too contentious to be resolved within it, at the end of – at 25th of May 2019 you end up with zero obligations on contracted parties to do anything. I mean, that's what it boils down to.

The access discussion needs to happen. There are ways to do that but trying to start another PDP with the kind of averages of like 18 plus months for one, and all those other things I think is highly problematic and it's – as I said already, it's not a question of whether we agree to anything or not, it's a question of whether we come up with something that is legal. And we are not data protection authorities, we do not have the expertise. ICANN definitely does not have the expertise be that ICANN the community or ICANN Org, doesn't matter, neither of them do because they've got such a fantastic track record when it comes to dealing with privacy.

So I think we need to look at this kind of access thing as being something slightly off to one side. How exactly that plays out, I think Keith did articulate that quite well yesterday during the Council meeting but I would be very cautious about pushing for a PDP specifically to do that.

Paul Diaz: Thank you, Michele. Stephanie.

Stephanie Perrin: Stephanie Perrin for the record. And I know this Council is unaccustomed to hearing blunt statements from me, but what the hell, I'm term limited out in a couple of months so as Michele pointed out to me, why not? The problem with the simultaneous EPDP or whatever it is on the access method is certainly our stakeholder group does not have the resources at the required skill level to staff that. I'm going to be as polite as I can, but you need data protection expertise on both of those because particularly the access model is a complex problem that has not been worked out at any level in the data protection community. It's still a bunch of questions; there's still a bunch of calls for comments coming out of the Article 29 Working Group, I can go on for hours.

So you won't get decent expertise and some of my colleagues around the table will be saying oh, but that's not going to give you a long term good outcome. So we need to have these things simultaneous. There are other reasons of course related to policy and implementation, why implement a machine before you've got the policy? But nobody listens. Thanks.

Paul Diaz: Okay Stephanie. Rafik.

Rafik Dammak: Okay thanks. Just don't want to spoil the party here but so I think since we are in this meeting try to have more interaction and to see if we can get something that we can get done together, so it's mostly to start with the question. I mean, we heard all this now about the EPDP, to be honest

it's kind of rehashing what we listened in the last two or three days. But so how we can move forward here, so the question for you guys from the contracted party, what can you expect from us to help you and which area that we can make progress, what kind of action that we can do together that we have to move forward like okay, for the access model, that we said we have that proposal, we discussed maybe the modality of it should be PDP or whatever, phase, or I think but how we can maybe more concretely to work

together in that area, how we can respond to all those what we heard as the concerns in particular from the GAC or law enforcement.

So I just trying here to see how we can more practically not just to stay in the level of kind of discussion.

Paul Diaz: Okay good question. Jeff, I see your hand.

Jeff Neuman: Yes thanks. Jeff Neuman for the record. One of the discussions we had in the Registrar Stakeholder Group meeting yesterday, although I wouldn't say it was unanimously agreed upon, but I'll bring it up here anyway because Elliot and I kind of were of similar thoughts that if one of the issues about composition is, you know, fear of having too many GAC reps or too many reps from the At Large or whatever it is, if that's the major sticking point, which it's not at this point, assuming we get past the scope issue, I would say that perhaps not being so concerned with the composition of the GAC or ALAC or those you know, even if it's more people, perhaps that should kind of fall away a little bit.

At the end of the day consensus is supposed to be measured by position as opposed to number of people. An so long as you know, you think it will not get too unruly, with the number of people perhaps that should not be so much of a fighting concern since we do ultimately in the end of the day do want the governments and others to participate in the PDP processes. It's certainly something we've done in Work Track 5 for the Subsequent Procedures, we have a number of GAC reps in there, and it's much better for them to be in the tent than out of the tent.

So although I know it is a sticking point, I continue to hear it, because consensus ultimately is measured in terms of position as opposed to number of people, I would advocate not being so concerned about that issue. But that's my personal view.

Paul Diaz: Okay thanks, Jeff. I see Keith and Tatiana.

Keith Drazek: Okay. Thanks, Paul. So I'll respond to Jeff first and then come back to Rafik's question about sort of looking ahead on the access piece, what can we all work on together. So Jeff, I tend to agree with what you've just said, let me just tell everybody sort of where we are currently in our thinking as it relates to the composition of the group.

I've been the one on Council sort of responsible for that segment of the charter, so right now we're anticipating a group of 36 people with three representatives each from the GNSO constituencies, so down to the constituency level, okay as opposed to stakeholder group level, so three each from the GNSO constituencies, three each from GAC, ALAC, SSAC and ccNSO, if they choose to participate and if they choose to send three people each, that's optional. It's all optional, there's no requirements, this is sort of like the target that we're looking at.

A two ICANN staff liaisons, one from Legal, one from GDD, two ICANN Board liaisons, let's see we've got the GNSO Council liaison, one, and then an independent chair, so not of the group or not coming from the 35. Okay so a total of 36. I think those numbers all add up based on what I've just described.

So I think, Jeff, what we're sort of looking at is the opportunity for parity in terms of numerical representation, and then of course we have an acknowledgement that each of those groups in addition to their three members would have three alternates each. Right, you know, in case people need to swap in and out for time zone purposes or whatever.

So but 36 people, that keeps the group manageable, particularly if we're talking about meeting face to face meetings between now and Barcelona. It keeps it cost effective in that regard. And it keeps it focused. And importantly one of the reasons – and this is a unique situation, right, normally a PDP

working group anybody can participate, there's no restrictions, there's no, you know, sort of numerical caps so this is introduced sort of a new challenge for us; we've never done an EPDP before, we've never had a temp spec before that imposes a deadline so this is uncharted waters but sort of that's just generally the thinking.

But in addition, one of the reasons this is going to be challenging and when we get to discussions of consensus, or determining or assessing levels of consensus, is that we wanted to make sure that anybody participating in this group was clearly tied to their stakeholder group or constituent part of ICANN. In other words, we can't have in this process individuals joining representing their own individual interests. This is something where we – if somebody wants to participate they need to come through one of the component parts of ICANN.

So there's accountability there, so we know that they're representing the views of the group rather than individual perspective. So that's just sort of the sense of where we're at. Let me pause there and see if there's any sort of reaction to that and then I'll come back to Rafik's question.

Paul Diaz: Just have to be very sensitive to time. I've got Tatiana and Volker in the queue, so...

((Crosstalk))

Paul Diaz: Make it quick please.

Michele Neylon: Zoe I think had something.

Paul Diaz: Yes, I know we're almost out of time so any follow-ons or, you know, maybe it's better quite honestly let's...

((Crosstalk))

Paul Diaz: Okay. And Tatiana please.

Tatiana Tropina: I actually have a follow on, one with Jeff and Keith talking about so maybe I will just follow up a bit before Keith will answer Rafik's question. I also don't see any problem with GAC or ALAC being involved except of course the manageable size of the group because we have to ensure that this is manageable. And I also think that it would be of course beneficial if they provide their view because in case that the views are different it would be the Board who will do the balancing act and see if we actually took into account ALAC, GAC views and them and accepted them or rejected them.

Where I see the problem for me, it is more you know, overarching problem of this being PDP and not cross community working group that this is a policy development process and I believe that by inclusion of GAC and ALAC we still have to preserve the borders of policy development that it is not cross community effort. And for me the problem is this one way road because we do not come to GAC and participate in their – or advice providing activities by intervening into their consensus and whatever. And I believe that in this sense why we are including other SO and AC – sorry SOs and ACs.

It's – we still have to preserve the PDP and GNSO as a home of the policy development process and not, you know, move and readjust our borders when demands are unreasonable, only to take into account reasonable demands. Thank you.

Paul Diaz: Thank you, Tatiana. Volker, you're going to get the last word.

Volker Greimann: Wow. I'm a bit worried about the time requirements of the EPDP that have been discussed so far and the constituency level representation seems to – seems to make this even worse. I heard numbers of 20-30 hours per week being required of members of that group, which is something that probably most of the contracted parties will not be able to – be able to devote to this.

Most small registrars will not have the staff or the wherewithal to send someone – set someone aside for that kind of time commitment because that's half or 2/3 – 3/4 of a working week for that person that does that work, and having constituency level representation favors the other side even more because they would have more people that they would just fan from their unlimited coffers and they would be able to produce texts and documents and research around the clock providing documentation that we wouldn't even be able to catch up with, with the limited resources that we have available.

So I would prefer if it were a stakeholder group level or representation and the time commitment would be of a variety that would be manageable by all contracted parties, not just the larger ones.

Paul Diaz: Okay thank you, Volker. I know that there are follow ups, folks, we're already over and the next group, we're cutting into their time so I'm going to have cut this off now. It's unfortunate because it was a great conversation. Maybe next time we get more but certainly the leaderships, the councilors have regular communication with each other, we'll keep the dialogue going at that level. Thank you all.

Woman: Please stop the recording.

END