

**ICANN
Transcription ICANN Panama City
GNSO IPC Open Meeting
Tuesday, 26 June 2018 at 12:15 EST**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page <http://gns0.icann.org/en/group-activities/calendar>

Brian Winterfeldt: All right everyone we're going to go ahead and get started. Good afternoon and welcome to the IPC Open Meeting. Before we begin the meeting I want to give a special thank you to ICANN Business Engagement and particularly Chris Mondini and Rodrigo De La Parra for catering lunch for us today. It's incredibly generous of them.

Brian Winterfeldt: Thank you so much. We really appreciate the opportunities for outreach here at ICANN 62 and this is a really nice complement to our reception that we hosted last night, and so we really are grateful to be able to have engagement across the community and also with folks from the local community. So we're very appreciative.

I also want to thank Chantelle Doerksen and Tanzanica King for all their hard work in concessions to make sure the IPC had all of our meetings scheduled here in Panama. It may look seamless to everyone here, maybe it doesn't, but there's an incredible amount of work that goes on behind the scenes to make all this happen, particularly every shift in the ICANN schedule with general meetings requires sometimes lots of shifting around of our schedules. So thank you so much, Chantelle and Tanzanica. We really appreciate your help with that.

So we have a very special guest here today. We are pleased to welcome Göran Marby, the ICANN CEO. He's joined us to hear a little about IPC's

policies and goals. We also are going to invite him to give a few remarks after our introductions.

On today's agenda after comments from Göran we'll review IPC policy procedures and goals and invite comments from everyone here, both inside and outside the constituency. We'll also review IPC volunteer activities and public comment opportunities that are upcoming. We hope that allows our guests here today to get a good idea of what the IPC is all about and hopefully encourage you all to join if you're eligible.

We'd love to have more members, particularly from here in Panama but really anywhere in the world. We've had a really large success in growing IPC membership over the past six months. I think we have about 30 new applications in the queue right now and we're really excited to keep that momentum going and continuing to grow the constituency.

So I'd like to start very quickly with going around the room and for everyone to give an introduction. Please indicate if you are an IPC member or not. If you're IPC leadership, please also identify your office as well. And I guess I'll go ahead start. I'm Brian Winterfeldt, president of the IPC.

Vicky Sheckler: I'm Vicky Sheckler. I'm the vice-president of the IPC and I represent the recording industry.

Sarah Deutsch: Sarah Deutsch, ICANN board.

Mark Svancarek: Mark Svancarek from Microsoft. I'm a guest.

Luca Barbero: Luca Barbero, member of IPC.

Valeriia Filinovich: My name is Valeriia Filinovich. I'm from Ukraine and I'm going to become a part of this community. I'm a member of intellectual property in my university.

Lori Schulman: I'm Lori Schulman. I'm from the International Trademark Association and I do want to note for Chris because he's been so helpful -- Mondini -- that we did an internal outreach to 91 of our members here in Panama. We had 26 positive responses. And we've had new engagement here throughout the meeting.

Fred Felman: Fred Felman, Facebook.

Mohamed Aslam: Mohamed Aslam. I represent the Indian aspect of IPC.

Hector Ariel Manoff: Hector Ariel Manoff from Argentina (unintelligible).

Susan Payne: Susan Payne from Valideus, IPC member.

Michael Graham: And Michael Graham with Expedia, Inc., an IPC member.

Salvador Camacho: Salvador Camacho from Mexico, a recent IPC member and CEO of (Calpa Products) here in (unintelligible).

Alex Deacon: Hi. I'm Alex Deacon, now with Cole Valley Consulting but representing the Motion Picture Association of America on the IPC.

Scott Austin: Scott Austin, IPC member, VLP Law Group, Florida.

Greg Shatan: Greg Shatan from New York, New York, IPC member, Moses and Singer, LLP.

Brian King: Brian King from Mark Monitor, IPC member.

Statton Hammock: Statton Hammock from Mark Monitor.

Marc Trachtenberg: Marc Trachtenberg, Greenberg-Taurig, IPC member.

(Martin): (Martin) (unintelligible), non-IPC member.

Chris Casavale: Chris Casavle, Nelson Mullins, IPC.

John McElwaine: John McElwaine, Nelson Mullins. I'm the IPC treasurer.

Chantelle Doerksen: Chantelle Doerksen, IPC secretariat. And to my left is Chris Mondini, Vice President with Global Stakeholder Engagement.

Theresa Swinehart: Theresa Swinehart with ICANN Org.

Göran Marby: Göran Marby, ICANN Org.

Kiran Malancharuvil: Kiran Malancharuvil, IPC secretary. And before we move on I just wanted to identify our two CROPP candidates who are attending on behalf of IPC as part of our outreach and engagement. Both have done a great job, especially our local Latin American CROPP candidate. Hector did an amazing job with outreach as well. So Hector and Ashwin, if you can wave as our two CROPP candidates and attendees here.

And I also want to note that we have IPC information sheets here and it has all of the information about officers and key policy positions and priorities and goals. So if you are not an IPC member and would like to become one or interested in becoming one, please grab an information sheet. Thanks.

Brian Winterfeldt: Great. I'm wondering if we have a hand mic so we can maybe have folks on the edge introduce themselves. Oh, great. Do you want to pass that down?

Tim Chen: Tim Chen with domain tools, member of the BC.

(Kiram Belor): (Kiram Belor) with Salesforce. I'm not a member of the IPC.

Brian Winterfeldt: Yet.

(Jan Gorston): (Jan Gorston), Deloitte, not a member of the IPC but I'm the filer responsible for the trademark clearinghouse.

Rick Wilhelm: Rick Wilhelm, VeriSign.

Emma Him: Emma Him from (unintelligible).

Julissa Farah: Julissa Farah from (Ustudeo Renati) here in Panama.

Melissa del Busto: Melissa del Busto from (unintelligible).

Maria Elena Limero: (Maria Elena Limero) from Chanel.

Karin Ohlmer: Karin Ohlmer from (unintelligible).

Sheila Johnson: Sheila Johnson, ICANN Org.

Krista Papac: Krista Papac, ICANN Org.

Mary Wong: Mary Wong, ICANN Org.

Sara Bockey: Sara Bockey, GoDaddy.

Jennifer Scott: Jennifer Scott, ICANN Org.

Maguy Serad: Maguy Serad, ICANN Org.

Faisal Shah: Faisal Shah, (Apatex).

Ben Milam: Ben Milam, Appdex.

Brian Winterfeldt: Great. Welcome everyone. So good to see so many IPC members and non-members and local community folks here joining us. I think we're going to go ahead and kick off our program with giving Göran a few minutes to make some opening remarks. I'd like to note that we've invited him today to really observe but since he's here I thought we'd take the opportunity to hear a little bit from his perspective about how things are going and some of the key policies that he knows are important to the IPC.

Göran Marby: You want me to start?

Brian Winterfeldt: Please.

Göran Marby: Wow. So interested in anything about GDPR? I can leave. So the last time I had the pleasure of meeting in this surrounding we ended in a very long and fruitful discussion, and I hope we can have a more - if I may ask you very humbly to - I will share with you our narrative and our thought process of where we are. Thank you for bringing the mic up to my nose. Please take that away from the recording please.

But there's a couple of underlying assumptions that sort of creates the road we're going through and you may disagree or agree with them but if you sort of listen to what I'm trying to say then you will understand that there is a logic in everything we do. Is that okay?

And lawyers can debate endlessly if we ended up in the right or wrong place but it's sort of forms follows function in this one. So let me take a step back. So first of all I have to congratulate ourselves on the multi-stakeholder model for achieving something everybody thought was impossible. During six to eight months we actually were able to come together about the Calzone model and we actually got it checked by the DPAs, which is insane, to be honest.

Many people in this room always said to me we won't get any guidance at all from the DPAs, but we got that. I was the first to acknowledge not everybody will like that. Not everybody will agree with it, but that's what the data protection authorities in Europe said, and they have the ability to do secondary legislation that says that they are the ones who interprets the law.

The only way to do anything differently is to go through court. That's a basic assumption. We may like it or not like it. ICANN Org doesn't have a view because many of those discussions we have been trying to get as much legal guidance as possible beforehand to be able to increase the possibility for ICANN to work.

I also decided what we're going to do with this is that because ICANN Org is a joint data controller that means that I have a legal responsibility to do action, which is a little bit unusual in the policy-setting environment. So that's why we end - we took what became the Calzone model into the temp spec and that's what we imposed for the contracted parties.

So the thought is that the temp spec should be as close as possible to what the guidance received the contracted parties. And as you know, if anyone asked me are we committed to it one of the first things we did was actually to take it to German court with the intention of getting further legal clearance on some of the things we didn't really get the clearance from the DPAs when it comes to collection of data.

That if you sort of accept that as our truth, you may agree or not agree with it but it's sort of a fundamental basis of how we reacted. Unfortunately that was easy. What we've done up till now is complete child's play because what we're entering now of having any form of access model will be really complicated. I'm going to try to explain this to you, and I'm saying trying to explain this because you're all lawyers and I'm not.

So here's the problem. The law doesn't permit automatically the opportunity for a unified access model. There is an asymmetry that we are dealing with that is not taken into account in the law. So think about it. The law is really specific at the fact that they sort of believe that someone collects data for some sort of purpose and they have a purpose for using that data. That's the symmetry in the law.

That's why the data controller, the ones who contains the data are so important in this. That one we agree on. That's a fundamental understanding of how this system works. By accepting that and realizing that we are in a little bit different situation because the ones who actually collect the Whois data are doing that because there are contracts set by policies. That's the first asymmetry.

The ones who collects the data are not doing it because any other reason, for the Whois data that is, other than we mandated that through the policy set by the community. So that's the first asymmetry in this. The other asymmetry is that ICANN Org actually doesn't -- which is a legal entity now -- doesn't use the data. We have a very limited use of the data. We use it for compliance, we're using it in some special projects, but it's very limited.

So ICANN Org as an organization doesn't really do - we don't have the use of the data. That's the second asymmetry because the ones who are using the data are outside the system in the first place. That asymmetry is not foreseen in the law. So when the law talks about legal purpose and legal interest, it sort of looks upon it like you have the data, you have a legal right to collect the data, and then you need to have a right for using the data for yourself.

The third part of usage is very limited. But it also creates...

Kirin Malancharuvil: Can whoever is on remote participation, please mute your line?

Göran Marby: And I hope that I will never be on the receiving end of that voice, please. That was good.

Kirin Malancharuvil: That's my secretary voice.

Göran Marby: I'm going to be silent from now. Oh shit. So the law says in my perspective, and I think most agree, is that the one who are in charge of making sure that someone uses the data the right way is the one who actually has the data. And here you know ICANN Org doesn't have the data, which is something that I've been saying in many, many - it's not a surprise to you that the data actually - there is no Whois database. There are two and a half thousand slices of that database. All are contracted parties.

And because that they are now legally responsible for that data, it's them who are on the firing line for GDPR. We actually have been trying to, together with the European Commission, and I've said this openly, to make ICANN Org legally responsible for the handling of the data because I think we actually have a moral responsibility as an organization to be legally responsible because we are actually mandating to contracted parties to collect the data.

So far we haven't been able - no one has been able to put that in front of being legally responsible for GDPR. And that means that the notion of a unified access model which actually puts on top of all the contracted parties has to contain something that takes away some legal responsibility from them. Because what we - the temp spec is actually now, believe it or not, completely called into law.

The individual data holders are the ones who are individually responsible for making the decisions about who will get access to the data. And remember all the purposes that is defined by the law is not checked yet. So we might think and have an argument for that we have a good story to contain when it comes to getting access to the data.

But none of that is proven. Just to give you a little sense of how complicated this gets when you really drill into it, one of my favorite examples right now, and I use it all the time and therefore it becomes my favorite one, in context with the DPAs we talked about law enforcement and we actually went into this sort of thinking that law enforcement that should be able to fix only to realize not really.

For instance, it could be so, it's in - one of the things that is now being discussed that if a law enforcement in Europe asks a question to a contracted party about - makes a query about a person, if there's not due process in front of that, the contracted parties immediately have to notify the person they investigate.

The other thing is that the contracted parties, and this is what I think a couple meetings ago I started to call GDPR a virus, because one of the problems is that for instance a contracted party, so that's the law giver thing and stuff, if they give you Whois data for usage of anything else they are now responsible for your usage of it and you become now under GDPR. So if you for instance for some reason have a database right now which contains Whois records of people in Europe, you are under GDPR if you use, sell, or do anything with that data.

That's how it works. So now we are facing a small problem, or actually it's a very big problem. By the way, the only reason we've been able to get any legal guidance to create a temp spec was because of ICANN as an institution and a multi-stakeholder model. The fact that we came together with one unified voice and accepted certain conditions was the only thing that got the DPAs in Europe to take anything.

I was a regulator for seven years in Europe, a telecom regulator, but what we pulled off by having this was completely unexpected, also from the DPAs by themselves. We created a political environment where Whois became so

important that they actually came out with the advice. Most people didn't think we were going to get any advice at all.

But now we're facing with actually trying to do something that is not described in the law, and I've been sort of - we came up and said this the first time in I think it was December when we released the Calzone model, or was it January, I can't remember right now. We in that described there has to be some sort of access model.

And by the way, the reasons why we're using the word unified access model instead of accreditation is because the DPAs sort of told us that we were using the word wrongly, but it's also created a notion that what we're trying to do now is to get legal certainty that we can have a unified access model and under that different accreditation models, because it probably would be different legal purposes to getting access to different data.

For instance, Europol, who is doing a fantastic job right now, is looking into to build an accreditation for law enforcement. They are a European institution, and there's a difference between Europol and Interpol in this one. Europol is a European institution, which means I understand they are not under GDPR as a law and they exist to provide information to European law enforcement and have cooperation with international law enforcement.

So they are doing something that could fit in under a unified access model because they could be one law that makes that possible. Other purposes and other uses could be different accreditation models. You see the difference in what we're trying to do? So that's the reason why we call it unified access model.

So what we decided to do, which we said all along, is that the time for us now to enter the arena to actually get to know if we can have a unified access model as well. So as you know in a transparent way we engaged with the DPAs and started asking those questions. And they said, and they are

regulators and they can't say anything but you had to do some investigative work to understand what they said, yes but tell me - tell us then what you're actually talking about.

So what we're doing right now is, because I want to be transparent and open in what I do, with the only intent to create legal clarity about how the system will work, asking questions to the DPAs to get them to answer them so we can get the understanding that we can have a unified access model in the first place. That is harder than we did before.

Over the last couple of weeks I've entered several discussions about no, no, no we cannot do an accreditation model, and actually I have a feeling that I mentioned the last time some of you thought that we needed an accreditation to be able to get the guidance for the principle of having a tiered access model when we did, which I said no. We have to do this in steps because there are different perspectives into it. And it's fine. I don't disagree with the disagreement itself, but it's sort of we have to work the path.

People ask me what are we going to do with this information. The only thing I'm trying to do now is that when you go into PDP work, whenever it's the expedited PDP or how it's going to be handled, that the community engages in to have some sort of legal framework. Otherwise we will spend a lot of time thinking that we know.

Someone said to me we have a lot of lawyers and legal experts inside ICANN, which is probably true, but for me it's the difference between actually knowing and guessing. And we also have to respect the contracted parties' unique situation in this one because they are the ones who actually can be fined, and that is the biggest asymmetry of it all and that's why we've been asking make ICANN Org legally responsible for this. And we went down many different roads to try to do that and we haven't - still haven't figured it out.

The letters of communication that we have received from the Euro Commission have said that they are positive of engaging to try to do that. You saw a letter from the European Commission during the same time we did this temp spec. When they said in the eyes of the European Commission ICANN Org is responsible. That was not something that just happened. We asked them to do that, and very good cooperation.

In the last letter from the DPAs they also reflected on and saying for instance that if someone files against a contracted party, the independent DPA, I don't remember the wording, has to take into account the work ICANN has done, sort of congratulating all that work we've done. But now we're entering the phase, and I'm anxious to take your questions about this, where the law is not saying that you can have a unified access model that in a way takes away some of the legal restraints and things that happen through the contracted parties.

And I already received questions. Why don't ICANN has one database? Unfortunately that triggers also GDPR. It becomes like a credit card transaction where because the reasons why someone wants a domain name is because they actually go and buy one and then have send the information somewhere and they have the security shields and other things. And to give you other small things and details that we were trying to look into is that we are proposing that you build a sort of clearinghouse around this.

Then the question comes of course how are we going to handle if you send - if someone gets a token to ask a question in a database, how do we avoid GDPR, because that's actually private information that we sent from the clearinghouse to someone else. But before we even go to that details, I have one wish that I'm saying all the time.

First of all please comment on the questions that we raised in the paper we sent out. Please do that. And as I hope you recognized last time, it doesn't matter, I didn't take sides in the different discussions. I did send your

questions directly to the DPAs. They were sort of fascinated over the fact that I actually sent contradictory questions to the DPAs and they asked me what do you think?

And I said we don't think. We're just waiting for you to reply which of the alternatives are right or wrong. I think we sent (unintelligible) name four times or something and we got the same answer all the time, because you wanted us to do that.

But after that, I see a challenge for the multi-stakeholder model. We have to learn to adapt, how to work together of legal impact. Because this is the first time, but not the last time, that laws will have an effect on our ability to do policies. I will try my best to provide as much legal clearance as I can and it will be harder because the DPAs have already said to us that maybe next time they won't give us it. On the other hand, they said that six months ago again, so we will work on it.

But the reason I got it was that we were fairly unified and we had, with some small differences, a very unified voice about this. We need to figure out a way in the multi-stakeholder model, in the ICANN community to work together under the light of legislations and we have to be as unified as possible in that, because that gives us the strength of having those discussions when we really try to create something that is not in the law.

I know that not everybody are satisfied with the answers from the DPAs and therefore not with the temp spec or the current why do I as an American company have to care about something in Europe. The thing is that there's going to be more GDPR legislation coming around the world. I spent a lot of time talking to governments around the world over details on legislation. We're going to be affected by those in many, many jurisdictions, and it will also be contradictory laws, laws that say that you have to do something. We as a community have to work together on this. Now you can shoot me.

Brian Winterfeldt: Göran, thank you so much. Really appreciate the opportunity to hear from you and we really appreciate all the work you're doing on behalf to keep GDPR compliance moving forward and particularly as you know the access work to the data is so important for us to do our job, not only as intellectual property owners but also for cyber security and for law enforcement. So it's really helpful and we do want to find ways to support the work that you're doing.

We very - are very interested in learning over time how we can support your discussions with the DPAs, either directly or indirectly. Also very interested in learning how we can support having ICANN be named the data controller, allowing potentially for the org to take on some liabilities and give us potentially more options around access to data without having the contracted parties have to bear all the burden.

And I think we're also really interested - also you mentioned the case in Germany. We're really interested, you know, in how we can support that work the org is doing to push forward and hopefully get more clarity around the importance of Whois data. So we really want to thank you for that time.

I know I think in this format we agreed to not I think ask you direct questions.

Göran Marby: I'm fine. Ask me questions. It's much more fun for me.

Brian Winterfeldt: Okay I'll kick off the questions and I think Alex has a question. Is that right?

Alex Deacon: I think it's more of a comment though. This is Alex Deacon. So I think, you know, getting legal clarity is important, Göran, so I appreciate that and I support ICANN pursuing this as it ensures that there's a legal basis for things that we or I care about, which is, you know, I think mandatory unified access capabilities.

And that work needs to happen in parallel with all of the other pieces of the puzzle and the work that's happening in the community, which is the temp spec, the EPDP, whatever form, you know, future work around access will take and also importantly the work that's happening in the RDAP pilot space where they're actually testing the technologies that will implement this in the path. So I just wanted to say I think all of this has to happen, and ensuring legal certainty is an important piece of that puzzle.

Göran Marby: As noted, we have - we issued a paper last week. We wanted to have it here before we came into Panama and now we're waiting for your comments and we're starting up the dialogue again. And when it comes to me sort of telling you what to do and - I can't. I mean I'm the ICANN Org CEO and it's important I think to recognize your ability to also engage.

You know, I provided email addresses, you know, I encompassed your comments into things, but you're also, you know, you know a lot collectively what will happen with the German situation and what we're doing and so it's really you do what you think is necessary. I will not ask you to do anything because that would be out of line as the ICANN CEO, at least that's my way of looking at it.

Brian Winterfeldt: Great. Thank you so much. Any other questions for Göran? (Dean)?

Dean Marks:: Hi. Dean Marks: for the record. Göran, I just had a factual question because I was a little confused. I thought it had already been resolved both by the advice from, I'm forgetting the name of the firm, but the firm ICANN engaged and what you -- Hamilton -- and what you had heard from the DPAs that ICANN is a data controller. But I thought I heard you say that no ICANN isn't a legal data controller of the Whois data. Could you clarify that please?

Göran Marby: There are so many legal terms on this one. I can't remember if we're a joint data controller. My favorite - it's a very good question and one of my favorite ones now -- it's not a favorite, just a funny thing, it's not even funny. What am

I saying? It's interesting. Have you seen the German DPA said in article or something that they were looking into fan pages at Facebook? I don't even know what that is. Is that a picture of a fan? I don't know.

Anyway, it turns out that if you are an administrator of a Facebook fan page, you are a data controller according GDPR. And interestingly enough, Facebook is that as well. So that means that, if I understand it correctly, the logic is that that means that what they do could have an effect of that you see that Facebook breaks the law.

But there is limitations for what Facebook is responsible for. The problem is that -- the problem -- the factual basis is that we don't have the data. We don't have the data, therefore nobody goes to us and asks the questions about the data. They go to the contracted parties and the contracted parties therefore have to make, according to the law, individual decision.

What we are trying to do for the unified access model is to sort of build a system where the contracted parties legally you ask a question to a system and that system recognizes that, so you get the same kind of answer from all the contracted parties. One of the problems for this legally is that they have still have - according to the law today, they still have a responsibility, which means they have to accept this common system.

So what we try to do at the same time is to move - see how the risks actually moves to the common system and then who becomes responsible in that case. But here the law is specific. So it is more than one who has the responsibility but our responsibility is limited to the fact that we are not the one you ask for. And we cannot go - I have actually the same problem. I have a problem of in some of our projects we don't get access to the data, which we had before. I see a follow-up question there.

Dean Marks:: Thanks. I appreciate that clarification. Thank you.

Brian Winterfeldt: Susan?

Susan Payne: Thank you. Hi. It's Susan Payne. Göran, that's a really interesting way of putting it but surely you are the one who asks for the data. It's in the contracts that come from ICANN that say to the registries and registrars that they must collect the data, so surely ICANN is the one who asked for the data.

Göran Marby: I was thinking on the perspective that you asked the data. As I said, this is the asymmetry of the system. The reasons why the Whois data is collected in the first place is because it's in our contracts. But it's collected at the contracted parties. So what you do you actually go to the contracted parties and make that request. I can't - if you come to me, I can't make that request because they are legally responsible for having the data. That's the asymmetry of the system. Because - and because they have the data and that's why you talk to them and not me.

Brian Winterfeldt: Lori?

Göran Marby: Hang on. Drill down on this one. What in my assumption is wrong? Tell me because I can see on your body language.

Susan Payne: Well you do have the data.

Göran Marby: No.

Susan Payne: I mean yes you do because they gave it to you.

Göran Marby: No, I don't have the data.

Susan Payne: Because you asked them for it and it's the contract that they had to collect it and give it to you, so you have it.

Göran Marby: No, that's the point. I don't have the data.

Susan Payne: You do.

Göran Marby: No. I promise you. I don't have a database with Whois data. If you go in to our website and you see that you can do a Whois query, we are actually asking the digital databases. That is the - we don't have the data.

Brian Winterfeldt: They're not maintaining the databases I think is the distinction that he's thinking. Lori?

Lori Schulman: Thank you. Lori Schulman for the record from INTA. I'm going to shift to process because I understand that as a CEO it's very important that the process be clear and that you're able to make executive decisions as you did with the temp spec because of the liability involved to the org. So I definitely understand where you're coming from. So I have a question about the UAM and how it will relate to this EPDP.

Göran Marby: Can we stop using acronyms? UAM?

Lori Schulman: Okay. So the unified access model. That's what you call it.

Göran Marby: But not the acronym.

Lori Schulman: All right, not the acronym. The unified access model.

Göran Marby: I've decided I have those ten milliseconds to say the full name. Sorry.

Lori Schulman: All right. I will say all full names in this context. I'm Lori from the International Trademark Association.

Göran Marby: You just won over me. Okay yes. One-zero, I'm down.

Lori Schulman: But I do have a question about the process because I understand that the process is extremely important in terms of timelines, liability, and your ability to make decisions. So in terms of the discussion paper on unified or universal access model, I don't even remember the U.

Göran Marby: Unified.

Lori Schulman: Unified access model. How do you see this aligning with the actual expedited policy development process, whereas with the temporary specification you put out models, you called for community inputs, you had a lot of discussion in Puerto Rico and at the end of the day a temporary specification was issued and that's the interim policy until such time as we adopt a full policy. With the unified access model, do you envision the same process? Like do you envision a temporary specification for access until the policy development process is completed or do you see this as feeding into that policy development process?

Göran Marby: I actually don't have an answer to your question. Everybody tells me you should answer the question but I don't know because it depends on what kind of answers we get from the DPAs, if we get any. So, you know, it's - if we get a very clear answer, this is what you can do and nothing else, I think it's very important that we engage and the community engages at the next step for that.

I don't see that we have. You know, I can't make that decision. The difference is that last time I actually went out and said that I have to make a decision about, you know, the data collected, so I was open with that. Now I don't see that that automatically happens on the other side. So to answer your question, I don't have the answer.

Lori Schulman: From the perspective of - I'm going to follow up by asking then do you envision then opening up community-wide consultations as intersessional work? I'm not necessarily talking about travel. But we spent a lot of actual

discussion in Puerto Rico on the Calzone model. I'm trying to understand how that discussion is going to move forward with the unified access model or it's not. It's simply going to be a question of please give me your written thoughts.

Göran Marby: I think the Calzone model working model for getting answers from the DPAs has worked quite well. The alternative is that I actually come up with all the questions and I go, you know, to the DPAs and I ask them those questions and I can bet that you will not appreciate all the questions I ask because you want to ask some questions as well.

So I want to have your input in the questions to the DPAs so when I engage with them to have legal clearance, you have been a part of the questions I ask them. That information I see is getting feeded (sic) back into the community work. And here's what I'm trying - you know, why do I not answer your question specifically? Why don't I tell you that these are the different ways I see?

Because it's so much depending, I think, on the information that comes in. It might be - what happens for instance - I'll give you three simple alternatives. One of them is we get a yes you can do a unified access model according to those principles and now the community can easily engage in the PDP work and put that into a starting point. The other alternative is that no you won't get any, or the other alternative is that no you can't do a unified access model, the law doesn't permit it.

That could probably have a change on the current discussion about the PDP as well. The third is, which is probably the most likely, we don't get any information at all. So depending on those - I've now given you three scenarios. I can add on more scenarios. But depending on that, I think that it's - the community has to interact with itself and actually think about the different scenarios, and therefore, depending on where you want a decision

tree, you can see differences coming out. So therefore I can't answer your question. I don't have a vision of the outcome until I know the input.

Lori Schulman: Thank you.

Brian Winterfeldt: Göran, how much more time do we have left with you?

Göran Marby: I was supposed to leave five minutes ago. Hang on, I think this is important. If - still, you know, it's my narrative that I started at the beginning. There are some assumptions I'm building this on. I'll take a couple more questions.

Brian Winterfeldt: Great. Thank you. I think next we have Marc Trachtenberg.

Marc Trachtenberg: Marc Trachtenberg for the record. You said that ICANN doesn't have the data but you could have the data. I mean you have access to it and you could require the contracted parties to provide the data to you. So then you could build a database and have that information, and if ICANN wanted to be responsible it could be responsible and then everyone could go to one source, ICANN directly. You're the controller. The registries and registrars are your processors. You could require them to give you the data.

Göran Marby: First of all that's a policy decision, which the community has to make the decision on. I don't think I can make the decision to build a central database for Whois. The other thing, I don't know how many lawyers who can now immediately see some of the drawbacks for that alternative as well, because now we're actually engaging in two different laws. One of them is the GDPR.

The assumptions - we have spent some time looking into some of the drawbacks because it seems like a simple solution. We have all the data. One of them is how do you handle credit card numbers, which I think I mentioned before. We actually - the start of a transaction is that someone buys a domain name. That triggers off something, which means that, yes, that's the contracted party again.

And there's also regulation. There are more and more regulation as a new law comes, and I have to admit that GDPR is going to be looked very softly compared to some of the other laws that is now discussed in the European settings like the E-evidence and the E - help me. There's some other E. E-privacy. Thank you, Theresa. Which actually complicates what we do as well.

So the transportation of private information and personal information has an effect. To the fact that the European Court of Justice also a couple of years ago said that IP addresses could during certain circumstances be seen as private information as well. That's why we need legal certainty about all of this.

So yes, that might be an alternative if the community so thinks. It's not in my power, I think, but it also would have some legal ramifications about access to the data. And one thing it won't take away is the legal responsibility if someone gets access to the data that you are now under GDPR.

And someone has told me to repeat that a couple of times that if you downloaded the Whois database the day before the law got enacted and you're using that data for any purpose, that could be against GDPR, or if you're selling that data or doing anything with that data, you are under GDPR and therefore under the law. They have asked me to repeat that many, many times. I hope that was an answer to your question.

Marc Trachtenberg: Just for clarity, you're saying the community decides that ICANN should provide Whois information and build a database, that you'll do that? I mean I disagree. I think you could do that now. I mean you did the temporary spec, but you're saying that you will do that if the community decides.

Göran Marby: I always do what the community decides but what I'm also saying is it might not solve your problem that you're looking for.

Brian Winterfeldt: Great. Thank you. I think Dean was next.

Dean Marks: Thanks. Dean Marks for the record. I was just wondering, Göran, in terms of I understood what you were saying about trying to get some guidance from the DPAs about whether one can move forward with a uniform access model. One of the things that we've been discussing in the IPC is the principles that were set out in the uniform access model were fairly general and there's been some quite detailed community work on an access model as well. Would there be any consideration of submitting some of the detailed work that's been done by the community so far in terms of your discussions with the DPAs? Thank you.

Göran Marby: First of all we recognize the work you did. We are actually trying to solve the underlying problem, which is do we - can we have a unified access model, so before we go to that. And that's why we also open it up for you to comment to us. And as we did last time, we will submit your comments to the DPAs the same way we did last time.

But be aware, we are trying to fix the underlying problem first. And before I leave, because I actually have to leave, the board is waiting for me for some reason. They want to talk about something GDPR stuff. When I described this scenario to my fellow colleagues that I used to work with in the European setting, they sort of look at me sort of like you're an idiot.

There's no way you can pull this rabbit out of this hole again, because I actually did it once and I'm so grateful for the - there's no way I could have done it without ICANN multi-stakeholder model behind it. There was no way I could have done what we were able to do to get this done. There are - all of you are representing companies that are some I guess also internally working on GDPR issues.

And very few of you, including some of the largest companies in the world, got any legal guidance going in. But we got it. You might say you don't like it

or it was clear enough or stuff, but we actually got it and that is the strength that I want to utilize.

There is one thing that is in the law that's public interest. The problem is that we can't define public interest. It has to do by the government. But also the Article 29 group issued a guidance paper about accreditation. You read it? How many of you have read it? Lie and stretch out your hand. This is important.

They talk about potential accreditation models, which is a little bit different, but everything is different, but they have that paper and they've got ideas. Where they actually say who are the ones who can do accreditation houses on an individual basis, member states of the EU. We need, which this is the same thing that actually I can reveal to you that Europol came up with, member states of Europe now needs to engage to help to define the public interest and also work together with the DPAs and also with the European Commission to form this into something that we can use for access models, so we can be legal certainty, everybody here, about how to build it.

If we get that small thing together, this is going to be fine. So - yes. It's a fairly hard thing to do but with the strength of the - with the strength of all we can do, the fact that you can actually walk across the aisle and speak to the European Commission and then I speak to DT Connect, because they are the one who represents the whole European Commission, everybody else was special interests, and talk to them how to positively engage with them to give them support in this, you have an individual member states sitting in there who are independent and can make this decision.

With that we have a greater chance of getting a unified access model to work. We need that legal guidance. We - I need your help to - and I'm not talking about the GAC because the European member states now have a legal possibility to do things, and that's different from an opinion from the GAC.

Anyone disagrees with me wildly? Sorry about the conversation about the database but it's true.

Thank you, Brian. Thank you very much.

Brian Winterfeldt: No, Göran, we just want to thank you so much for coming here today. This has been incredibly helpful. We do appreciate all the hard work that you've do. We do congratulate you on actually getting some advice out of the DPAs, which I know took a lot of work and a lot of discussions that went on for a very long period of time before those letters materialized that were helpful.

And we do want to continue this dialogue and how we can support your work, and we note the kind of different areas that we've discussed today where we can continue hopefully supporting the work that the org is doing that's really important.

Also with regard to the discussion we had around the unified access framework elements for discussion that are out for the comment, we do see an opportunity there actually to present a lot of the work that we've done on an access model, and so we're hoping to be able to get very good comments into you that will hopefully support the discussions you're going to be having and also find a way to introduce some of the work that's already been done.

And I think our goal is to continue supporting the dialogue, and again we just really want to thank you and look for ways to continue to work together. So thank you for all your time and we know you gave us more than you were supposed to, so we're very appreciative. Thank you so much.

Göran Marby: As we always do. Thank you very much.

Brian Winterfeldt: All right well I found that incredibly helpful and I think that is going to check the box on our GDPR discussion for our meeting. We only have a few minutes left and I would like to give, especially for our guests who are here in

the room, a flavor of some of the other issues that are important to the IPC. I was hoping Susan that maybe you could give a little flavor of the RPM work and maybe the geo work that you're helping lead for the IPC to give our guests an understanding that as important as GDPR is there are other things we do care about as well.

Susan Payne: Yes this is very quick. So hi this is Susan Payne. Obviously a couple of issues, as Brian has mentioned, that the IPC is obviously interested in, very engaged in in relation to RPMs and the work on subsequent procedures or future rounds of new gTLDs. So in relation to the RPMs, we've got a sort of - an active and engaged group of volunteers who are all participating in the rights protection PDP working group.

We also sort of have, as you can imagine, we sort of regular catch-ups amongst ourselves to sort of, you know, just touch base on particular topics. At the moment that working group is looking at the uniform rapid suspension, or URS acronym, city in the rights protection group. And so we are looking in particular at we've been trying to as a group gather information and data that will help sort of inform the discussions on the policy in terms of whether the current rights protections are adequate to protect the rights of brand owners or not.

We - in subgroups we sort of ensured that we had members of the IPC who volunteered for each of the three subgroups that were looking at particular aspects of information gathering. So there was a subgroup looking at what information could be obtained from providers who - the providers who operate the URS. And we went through and agreed the rules in question and identified a number of areas where we wanted to ask questions to determine whether the providers are, you know, following the rules and process and they should be, and also whether they have any kind of pain points.

Similarly, another group was looking at practitioners who were familiar with the URS, and again that was meant to particularly be focusing on procedural

matters that they could shed light on and particularly procedural pain points, although I've no doubt that some of the mail serves have given their own views on the actual policy itself.

And finally a group looking at sort of documentary evidence and information that's available. So that's - we're mostly at the moment working on the uniform rapid suspension, or URS, as I say. But we all as a group are very aware that the URS is sort of - a sort of quicker, shorter, lighter version of the UDRP effectively because essentially the same - pretty much the same test is in place for both.

And so the discussions that we've been having in the working group in relation to the URS are very relevant to what we will be looking at when we come on to phase two, which is reviewing the UDRP. And obviously that is a really - a really key thing for brand owners. It's an extremely longstanding policy. It's been effective at keeping brand owners and domain registrants out of court, keeping registries and registrars out of court, and, you know, ensuring that disputes over the ownership of domain names can be handled relatively quickly and relatively cheaply.

So that's a key focus for us. In relation to subsequent procedures, a particular area of interest for brand owners obviously is in relation to geographic names or Work Track 5. So again we've got a sort of small but perfectly formed group of volunteers who are active in that working group. There are - for us and for IPC members and for member clients it's a very key issue because many brands have more than one meaning, so a number of brands also share a term with something which happens to be the name of a town, the name of a city, the name of a place or a river or a mountain or a lake.

And it's very important that we don't end up with a solution that gives primacy to one usage of a name over other usages without recognizing that the context of a name is a key and that, you know, and that there is nothing in

international law that will give - that gives sovereignty over these names to governments.

So that's a quick rundown. I'll take any questions if anyone's got any but I think we're quite short for time.

Brian Winterfeldt: Wonderful, Susan. Thank you so much. I really appreciate that. Any questions for Susan? I see a question in the back. Susan), do you mind coming to one of the mics at the table? I apologize. I think we had a hand mic somewhere but it's...

Susan Anthony): The question that I had when we last parted company on WT5 discussion group, I saw a statement, I don't recall from whom, that there really hadn't been much discussion in WT5 on whether the applicant guidebook 2012 remains a basis and is not open to discussion. I was very surprised by that because I thought a number of us had questioned whether the applicant guidebook remained in place or was something that we should debate.

Brian Winterfeldt: Just quickly, that was Susan Anthony) for the record.

Susan Payne: I - obviously I'm not one of the leaders of that work track so I can't necessarily answer the question but I think we are - there's a certain assumption that if there's no agreement to change things that the status quo remains.

But there is a discussion about what is the status quo since the 2007 policy recommendations were not necessarily, you know, how they were implemented in the applicant guidebook or rather how they were written down in the applicant guidebook and then in some cases how that actually worked in practice is not necessarily identical to what is in the 2007 policy. And so there is a bit of a debate I think about exactly what is the status quo.

Brian Winterfeldt: Great. Thank you so much. Any other questions for Susan? Great. Well I want to thank everyone for joining us today. A reminder that if you would like

to join the Intellectual Property Constituency we would love to have you. You can go to ipconstituency.org and there's all the information to sign up. So I encourage you to join us if you can.

Oh and apparently we have information sheets that are available at the front desk. (Susan) will tell you about our important issues and our leadership, and Susan has one last thing to talk about.

Susan Payne: Brian reminded me I should probably have mentioned that the Rights Protection Mechanisms PDP Working Group is meeting three sessions. One is tomorrow, Wednesday, and then there are two on Thursday, and all are welcome.

Brian Winterfeldt: Thank you. That's very helpful. And we should also mention that there are two GDPR sessions this afternoon, for those who can't get enough of the topic, and Göran maybe got you excited for more. There is going to be one cross-community session at 3:15 to 4:45. It's going to focus on the temporary specification and Whois policy post GDPR, and that will be followed by a second session that's going to focus on accreditation and access work. That's going to be from 5 to 6:30 today. So two things to look forward to this afternoon and hopefully many of you can join that as well.

But if you do, that also does remind me, if you are new and you're interested in kind of a list of sessions that you might be interested in, we have put together kind of a list of recommended sessions for the rest of the week and we'd be happy to share that with anyone. You can come up to myself or Kirin or anyone else in leadership and we're happy to share that with you. Again, I think we're out of time. Thank you so much for joining us today. We really appreciate it.

END