

**Transcription ICANN62 Panama
GNSO: NCSG – Policy Committee Meeting
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<http://gns0.icann.org/en/group-activities/calendar>

Rafik Dammak: We have first an announcement since we have video crew here. Jim, please go ahead.

Jim Trengrove: Thank you, Rafik. My name is Jim Trengrove and I am the former senior director of communications here at ICANN several years ago. They asked me to come back and I appreciated the invitation from the Non-commercial stakeholders group to work on the project, a video of the history project. So we're responsible for the cameras, and the interruptions, and the lights that you see here. So thank you for bearing with us and I appreciate your patience.

We'll be around all week shooting little bits and pieces of things happening and doing some sit down interviews with folks as well. And we may ambush some of you in the halls as well to grab some comments. So I just wanted to let you know why we're here and feel free at any time to come and speak with us if you've got some ideas on what you'd like to see.

This will be a nice produced video package that will take into account what's happening now and take into account what happened 20 years ago to get this started, and all the fun that's evolved since then.

So thanks so much.

Rafik Dammak: Thank you, Jim, and we are going to make this meeting for history. Okay. So just to check if the recording has started, and I would ask everyone to join Adobe Connect maybe to make it more easier to manage the queue. Okay. Yes, Renata?

Renata Aquino Ribeiro: Hi, Renata for the record. I'd like to thank Jim for also NCC policy course and let you know too that NCUC has now a photographer. So maybe you can use some of those materials.

Caleb, our volunteer member, is here doing lots of amazing photographs and that would be great material to use. We'll be tweeting them on NCUC Twitter and anyone else who would like to contribute, please do. Thank you.

Rafik Dammak: Thanks. Then we will start this policy committee meeting. So as a reminder, the policy committee meeting is an opportunity for the policy committee and all NCSG members to discuss about the policy issue that they will - that will be covered during this policy forum or ICANN meeting.

And this policy forum is quite particular because the focus will be really about one topic, which is about the work that need to be done in respect to the temporary specification for compliance with GDPR. And so for us as NCSG and as a part of the GNSO, we have to work on initiating the expedited policy development process in response to this temporary specification.

And so today, we will try to have a common understanding about this issue and to prepare for the whole meeting. There are several sessions. There are

cross-community sessions. There are some GNSO sessions that we have to cover and to participate and intervene.

So the focus today, as you can see on the agenda, is really about that topic. We will try to cover somehow the public meeting agenda if time permits. But because how the hot topics or topics of interest for this policy forum is really about the EPDP. So we will try to cover that and to have some kind of - not going to say a strategy but to have kind of an action plan among NCSG and how we can deal with this issue.

Okay. So as you can see on the agenda, as usual, we try to cover the Council public meeting agenda. But I'm thinking that for those who had the chance to read or go through the policy - the council meeting agenda, most of the topics (unintelligible) are not controversial from our perspective.

And I think we will vote yes or just going to get some updates, some information, so we can focus really on the main part of that agenda is to initiate the EPDP.

But before that, today, tomorrow, and the day after, we will have several sessions for the expedited policy development drafting team that it's going two tasks (unintelligible) to develop the charter for the EPDP team and the initiation request.

So that will start first in the GNSO working session today at 12:00 and I ask everyone to attend that session. So you can listen what's going on but I really ask everyone to make effort to come to the high interest topic at 5:00 p.m. Because what will happen there, there will be lead for each topic for the EPDP.

For example, like the scope, working methods, deliverable, and so on. And the idea is to get input from the community. And this is the opportunity for us, for example, to share our thoughts with regard to the access model should be

or not in this EPDP. That's the time really to say that because I can tell you that the GAC and other members from the community are going to come to the mic and they say that the access model should be covered by the EPDP. So we have to be focused on that matter.

Tomorrow, the drafting team will have the working session from 9:00 to 3:00 trying to shape the charter with the hopes that we can get something to be voted for the Council meeting on Wednesday. It's a really short time so we have to participate effectively between the councilors and also members of the NCSG (unintelligible) session.

So I'm sorry it was quite long introduction but I wanted really to set the scene here what we are trying to achieve for the coming days. So any question or comment? Yes, Kathy.

Kathy Kleiman: Rafik, Kathy. Could I just understand - could you say what you said about the EPDP and the access frameworks again?

Rafik Dammak: Okay. So currently, we have the drafting team that is formed by the councilor and we have different groups, different parts of the charter. One of them is the scope, the scoping. I think this is the main really concern for us what will be covered by the EPDP.

My understanding from also the communication from the GAC is we are quite - they have to issue for the GAC. They want to participate in this EPDP but they are not happy with what this proposed composition, that's just like one member from advisory committee. They want, like, five. We know that that's not going to go well because we are trying to have a small sized team and that's one suggestion to have three representative by stakeholder group.

The other thing is that they want to bring the access and accreditation issue, and I think they want to - that should be covered. I expect them. And also, the BC and IPC probably they want that we cover. Because we hear that

from their councilor in the council call, they want that to be covered and in the EPDP. Yes?

Kathy Kleiman: Kathy again. So at some point for those of us who have been following other PDPs, you're going to explain to us maybe what's happening with the current EPDP. I'll be looking for the link to where it's drafted in Google and why, why the access framework not accredited - why the access framework wouldn't be part of the current EPDP. And what happens then? Are we going to have another parallel EPDP, which scares me even more. So again, for those of us who aren't living and breathing this every day, could you tell us big picture.

Rafik Dammak: Okay, for the scope I think it's still unclear because, right, I know the contracted party, they did an analysis of the temporary spec and they will share their findings, their analysis of the temporary spec, what should be covered.

We know that (unintelligible) think other councilor can confirm that. They were clear that the access should be covered on this EPDP. That's their point, while the contracted parties are not thrilled that we have this EPDP. And I think it's also the same position from NCSG. We cannot put so many issues for this team that's supposed to deliver something within five months.

Kathy Kleiman: But if the access framework isn't part of the EPDP, and again, I know I'm going down - what's the EPDP about?

Rafik Dammak: Okay, the EPDP is about to come up with a consensus policy that we replace the temporary spec or to confirm it.

Milton Mueller: So what Kathy is asking is what are the key issues that will be resolved in the temp spec if access is not one of them? What are you - the temporary spec is about what Whois data is, non-public and what is public, right. So is there any chance of that being changed?

Rafik Dammak: Okay. So I mean, we will put in the scope that we have to cover that - those items. Because for example, for the access (unintelligible) is telling it's not even temporary spec. It's an annex. It's not in temporary spec.

So that's why the issue, if you read the annex, the Board is saying it doesn't mean that it has to be covered now but maybe later. So this is my understanding, the temporary spec we are not talking about the access.

(Unintelligible) maybe asking here, Kathy, were you saying that we can cover the access in just short time? I mean the thinking is that maybe we know that we need to cover it, but not in the parallel process but something later on.

Kathy Kleiman: So I think Milton and Farzi in the internet governance project really blazed the path forward on this very recently. So if you haven't read what they posted two days ago, Milton, go to internetgovernance.org, right. There's really good stuff there. I think there are now two postings on it.

So there's an access framework. Some people call it the access model. I'm going to call it the access framework because it's really a framework for access and that's what we're talking about here.

My sense is, now, I don't have the temporary spec open in front of me, but I studied it. The temporary spec talks about data. It talks about legitimate purposes. We're going to be there until the end of time if you want consensus on that.

Really, the question is access, what's the access framework for the data. That's where the - no accreditation. Accreditation is all the way at the bottom of this framework, kind of who gets proper credentials. But it's really the access to the data. If we want to argue about what that data is, we'll be here forever and who gets it.

Rafik Dammak: The EPDP is really a response to the temporary spec. If we don't have the access why you think we should cover it in this EPDP. Maybe don't want to elaborate more and give time to Stephanie, maybe she want to comment here.

Stephanie Perrin: Stephanie Perrin for the record. I think I'm what I'm expressing here are basically my personal views on this matter. As everybody knows, I put forward this proposal for developing standards for third party access to data. And while the GDPR is not particularly clear about this whole third party access to data, let me be clear. ICANN's responsibilities with respect to GDPR compliance and the terms of the RAA is and should be restricted to the registrars. The registrars and I'm a little concerned about Becky's indication in our previous panel that ICANN had a responsibility to provide policy for access to Whois data.

That would be the argument the governments and the GAC had been making for decades. And I don't think it actually should be true under the GDPR. I don't think it was true under the '95 directive and I think we have quite a little history of the DPA saying that's not the case.

They have said explicitly, I believe it was in the (unintelligible) letter to ICANN, but I can give you the references, that ICANN was not set up as a repository for access to data for law enforcement.

So that kind of undercuts any attempts of the GAC to dictate that ICANN should set the rules for this. And so there are a number of different endeavors going on about how to get around that, such as the public interest being now defined as security, stability, law enforcement access.

Don't get me wrong. I'm not trying to protect criminals here but there's a due process issue in all of this and conflating the civil remedies and the - the civil procedure and the criminal procedure under one unified access, I think this

just continues all of this conflation where the private actors are hiding behind the petticoats of the government.

So all this to say that I think we should very clearly push back about having third party access included in the temp spec. The temp spec is about what registrars have to collect and what they have to display, and not about how they determined who should arrive at their gate and give access - and be given access. Is that clear?

Milton Mueller: Yes, thank you, Stephanie. I think that does clarify it. The idea is that under the temporary spec, the amount of Whois data that's being displayed publicly and indiscriminately is not bad from our point of view, right. So we want the temp spec to fundamentally go through and protect that accomplishment. And then if we throw the access model into there, we're concerned about coming up with a hasty model basically based on what the IPC or the ICANN has proposed because the other issues would be too contentious.

Now, the problem with the current strategy that we're sort of agreed on, which is to keep the access issues out of the EPDP. The problem with that is ICANN has clearly signaled that they want something done by December of this year, right. And so that means that whatever this alternate process is going to be, they want it to be a very rapid one, even more rapid than the EPDP in a sense.

So we have just a very practical tactical issue in terms of what is the best way to handle that, and I don't know the answer. I would like it, however, if out of this meeting the policy committee could essentially endorse the basic elements of the access model that we propose so that we at least know what we are shooting for in terms of access.

And if you want to modify it or you have tweaks that you want to make to it, that's fine. But we need to know what we want in terms of access in addition to solving these really tactical issues. I think we need to plan both.

Rafik Dammak: Thanks, Milton. So yes, what you said, that's the point about what we need to do and the EPDP is (unintelligible) to confirm what we have and temporary spec. So it's like the purpose, the processing requirement, and so on. In terms of strategy, I think that what I sense from Becky, because I asked about the deadline. It doesn't seem that it's really (unintelligible).

So I think we can say that EPDP is just cover what we have in temporary spec about data, but we can work on the access, but not right now in the parallel with the EPDP is not going to happen.

Yes, Tatiana. And then we have Renata, and then Stephanie.

Tatiana Tropina: Thank you. Tatiana Tropina for the record. I'm just wondering in way, like Becky said that of course, the Board is not going to impose anything, but ICANN can do something in terms of compliance. And if the deadline is December where ICANN is having in mind, I'm just wondering what strategy would work better?

Are we going to comment on the model proposed and try to change this as much as possible in terms of ICANN compliance, whatever they want to have, or we are going to try to start some process within the GNSO and say, you cannot do anything because the process is already there.

Yes, we don't have access model but it's already ongoing and honestly, I don't know what will work better in this sense. Because to start something within GNSO, we have to get contracted party house on board. And I don't know if they will agree to react that quickly.

Renata Aquino Ribeiro: Hi, Renata. I'm just pulling notes from NCUC 101 with Göran Marby on the 13th of June and we discussed a lot about temporary specification and the lawsuit. And I have here a statement from Göran that

actually I would like to know how is this dialogue going on with the DPAs as well and what it can help on what we are discussing.

Göran said, "We need to get clarification from the DPAs as to what the law actually means. The DPAs have provided a lot of information but there are still areas of uncertainty, for example, accreditation. The current situation is a compliance issue, which is (unintelligible) model that proposed a tiered access model, which was accepted by the community and by the Article 29 working party.

Based on that model, the Board decided to adopt a temporary specification, which now launches the necessary GNSO policy work. Over the past several months, a lot of work has been done not just by ICANN organization, but also by and with the community. Nevertheless, the contracted parties are independent data processors to make their own decisions to comply."

Stephanie Perrin: Stephanie Perrin for the record. Would it be useful to just go over - I don't mean to attack the CEO by any means, but people in our group should be clear how crazy this idea is that you go to a member of the judiciary, because some of the data protection commissioners have the status of being members of the judiciary, not all, but many.

Many of them have binding powers. You don't go to them and say, and seek legal advice, seek interpretation of the law. That's up to you. Hire a lawyer.

So I'm deeply trouble by this, well, it's because we haven't been able to get clarity from the data commissioners. The data commissioners exist in groups that they either have formed under the directive, as an Article of the 95 directive, namely Article 29, or now it is become an EPDP under the leadership of the - that's the European Data Protection Board under the leadership of the European Data Protection Supervisors who is responsible or who are responsible for implementation of the law within the European community.

So that's the Parliament and the bureaucracy, right. That's Giovanni Buttarelli who came to our meeting in Copenhagen and his assistant, whose name I regrettably will massacre, the former Polish DPA, Wojciech, maybe, I'm sorry, he came to our meeting at RightsCon, actually, and explained some of these things.

But we can't explain it too often apparently. So, you know, this is nuts in my view and I spoke rather passionately at the last session. I think they kind of skipped it but ICANN is not acting in a way that inspires confidence in terms of its stewardship of the internet and its obligations under data protection law around the world with respect to this issue.

Because they're not following proper procedure, you know. They're not reading what has been sent to them by the various groups, including the Berlin group, which is an international group of data protection commissioners. Those documents that go through the Berlin group, including the one, the 11-pager that came in March, they go through every data protection commissioner that is a member of the international conference. So that's like 120.

So you can say that that was not adequately drafted as some of the commercial parties have, but you cannot say that it has no relevance at all to the data protection commissioners. That's just not true. So this is what I'm on about, about this multi-stakeholder process. Our leadership is taking us down a long and winding path with a bunch of stupid baby names, calzone, pizza.

We're talking about application of law and criminal procedure. When it comes to third party access for law enforcement, that's a rather serious matter. Let's not come up with another stupid name. Let's take this seriously. Let's have some professionalism here. Thank you. Sorry for the rant but I'm a bit tired of it.

Rafik Dammak: Okay. Thanks Stephanie, we'll ask them to move from Italian cuisine to another one. Okay. So I will go to Kathy, but I just wanted - we have full-time and we need to be concrete here and action oriented. So what we want to achieve in these four days with regard to EPDP and also the access. So we need to come up with kind of action plan and how we will intervene in the different session.

It's good to hear this. It's important to set and to share with everyone, but we need to be more of - I'm not going to use the magical word strategical planning, but we need to be more action oriented. Yes, Kathy?

Kathy Kleiman: Kathy. To fill in the rest of the line that Stephanie said, ICANN needs to hire a lawyer but one that knows the GDPR. We've got lots of American lawyers who don't seem to have even taken classes on the GDPR as we've noted many times.

Okay. So I'm still confused and so we've got the EPDP that's second-guessing - reviewing the temporary specification. We've got ICANN initiating a request for comments on the unified access model. We've got a temporary specification that actually does have a section called access to non-public registration data.

It's Section 4. I don't think it's (unintelligible). And right now, it says that the registrars will handle that. So it's there. So technically within scope of the temporary specification.

And we've got Keith Drazek, who I understand in Council has proposed a second possible EPDP that - and so one question for our members of Council. What are you getting from the contracted parties?

I will note many of them, not all of them, many of them are very concerned about protecting the rights of their customers, the registrants, and many of

them are in Europe and they know what the GDPR requires. So what are you hearing from the contracted party house?

How do we deal with two EPDPs? I don't think - it's hard enough to staff one and, again, back to access because it's the elephant in the room. It's the big issue right now.

Rafik Dammak: Okay, so before we go Stephanie, so I can add. So from the Council, in which we asked the contracted party, a few of them, they don't see the access as high priority. It's not high priority for them really at this level.

And so they are not looking to have it in this EPDP. And back to Keith, I think, I'm not sure if the document will be shared with everyone. But from the contracted party, they did analysis and they separated for them the access is in EPDP2, whatever it is.

So it can - this is still maybe under discussion. Can we really in parallel or just after we finish this EPDP. So that's my understanding from the contracted party. They don't want that we discuss access in this EPDP, the first one. But maybe Stephanie can add more, I'm sure.

Stephanie Perrin: Stephanie Perrin for the record. I'm a little concerned, Kathy, at the notion that Keith Drazek things we could possibly do two EPDPs at the same time because we can't. So I think we have to say hold that line. We cannot two EPDPs. I'm concerned that we have not done enough analysis of what failed with the RDS and I - the question I asked previously is a very real one. I don't know how you stop a party from ragging the puck if they are being paid to do that if that is their position, that is their stakeholder position, how do you say, well, no, you have to move off your bottom line? How actually do you do that?

We will not achieve this in the six months we've got to do it. By the time you - if you look at the schedule that Marika has proposed for this, getting down to

brass tacks, it's a pretty sharp window. It still has to clear council. It has to go to the board, all the rest of it.

We've only got six months. We haven't even got the scope nailed down. I'm not optimistic we will this week because we have this fundamental problem of is that section in or is it not. That section very clearly says that it's up to the registrars to decide.

That of course means that that section potentially is within scope to debate over that. However, I think we have to say, yes, fine, can we come up with another alternative? Can we come up with a policy that would dictate to the registrars how they would do this within the six months?

No, we've got plenty of evidence to say we can't do that, you know. We haven't even got a clear delineation of what is within the picket fence and what is outside the picket fence. And I have said this a number of times. Has anybody here tried to explain to a data commissioner what a picket fence is? It's a bit like explaining what a calzone is in terms of a model.

I mean Becky needs to come up with that clear explanation if she thinks she's got one, and she ought to know because she dreamed it up. And I believe Keith Drazek that he's tabling in the GNSO where they have identified the items that they consider within the picket fence. In my view, many of the issues that they consider within their picket fence and therefore not subject to community intervention are policy issues.

Because let's face it, in the absence of a Whois policy, the contract was the Whois policy. And there are tons of things historically that have been in there that should have been subject to community development and never were. They were imposed by the NTIA when ICANN was born.

So we have a big fight coming over that picket fence. In view, if we're not prepared to take up our cudgels and fight over what's policy within the

contract and what is policy that should be determined by the community, you know, then the model doesn't work. Thanks.

Rafik Dammak: Thanks, Stephanie. So yes, about the document shared by Keith, I think what is missing is we didn't really our own analysis. So we should not depend on what the contracted party thinks. So we need to do the same exercise.

And in terms of the timeline, I don't think we will have really the time to approve anything by Wednesday and that's why we'll probably discuss if it should be after two weeks, something.

But we have short time window to shape this call and I'm not sure we are there yet, at least from our side. Yes, Milton?

Milton Mueller: So I think this meeting needs to accomplish something and the hour is running late. Can I propose, formally move that we endorse the access model and that this could be used going forward as our position when we go into the high interest session and we discuss access with other constituencies? Can we do that or do we want to continue to not have a position on what is a proper access model?

Rafik Dammak: Thanks, Milton. So I think we first need to check that everyone is familiar with that model first and to confirm who is from the policy committees present. And I think one point, maybe you agreed before that if we take that one, we will tweak it. It's not that we are take it as a tease, but we can use it as a basis for work. So yes, we can do that. Yes, Stephanie, and we have Tatiana.

Stephanie Perrin: Stephanie Perrin. There's two concerns that I have about endorsing the access model. Number one is procedural, like who the heck is coming up with these models and what consultation are they doing. And number two, I

haven't had time to go over it and make sure that it's legal. I don't think it is and that's the...

Milton Mueller: Which model are you talking about?

Stephanie Perrin: The uniform access...

Milton Mueller: No, I'm talking about endorsing the IGP guidelines.

Stephanie Perrin: Oh, okay. You didn't make that clear.

Rafik Dammak: Let's be clear. We have that (unintelligible) proposed.

Stephanie Perrin: I have had time to go through your model and I like it. So yes, we can do that.

Rafik Dammak: Okay, that's why - you scared us when you said a (unintelligible). Okay. Yes.

Tatiana Tropina: Yes, thank you. Tatiana Tropina for the record. I would like to second what Milton said. We have roughly 47 minutes and if we want to argue about something tomorrow, we have to have some clear position and this model is clear and simple. So we can just go, Milton maybe you, point by point. It's just six points, right?

Milton Mueller: Yes.

Tatiana Tropina: Yes, just point by point and we - procedurally. Will it work, Rafik?

Rafik Dammak: Yes, but just one point. Agreeing on the access doesn't also make, I mean, make - let us have position in other issue about scoping. It's just one issue. So we need to be clear on that and that's why I ask several times, maybe

nagging, we have to be clear what we need to put in the EPDP scope, not just about access.

So I think we can maybe use analysis from the contracted party as a start but we have to do our own too, to be sure what can be put in the scope. So back to the, how you can call it, Milton, your model. So if you can give...

Milton Mueller: It's basically a set of bullet points regarding what should go into an access model. We call it a set of requirements. It's not a specific model. It's more requirements for a model.

So first point is a confederated RDAP. RDAP is a particular directory technology that they're going to be moving to anyway, but what we want to point out is that it can be confederated so that the queries, regardless of where they come from, they can go to one source. Which leads to our second point, no thick registries. What?

Rafik Dammak: Why are using the term confederated? I think usually we say federated database, confederated looks strange for me. If you have maybe more...

Milton Mueller: It's just that I live in the South now and I've been influenced by people. But let's drop that like a rock. So federated. Okay. We can change that. You would go after that, wouldn't you? So thick registries. We think thick registries are clearly over collection.

The registries don't need that data. It's not, therefore, consistent with GDPR. Despite the fact that ICANN has already made a policy requiring that, we believe that any access model should be directing. And that leads to the third point, all queries or requests for non-public Whois data should be directed to the registrar that actually administers that.

There's a number of reasons for that, but we don't have time to elaborate. But fundamentally, you want to - the party who is actually in some sense

accountable to the customer to be handling their data and that they would be more responsible to possible abuse of this data than a registry, to whom this is just a database entry.

We propose that law enforcement agencies develop their own accreditation, that, again, we're just sort of distancing the access model from the accreditation model and saying that the LEAs have to solve this on their own. In terms of the requests that can be made, we're trying to narrow it down to legitimate interests in line with ICANN's mission, which means solving a crime to tracking down a criminal using a domain, responding to threats to DNS operations, respond to attacks on the confidentiality, integrity, or availability of internet services that use the DNS as part of the attack infrastructure.

Those of you involved in information security will recognize the CIA, confidentiality, integrity, availability as mainstay definitions of information security. So no tricky definitions where you say that messages I don't like are a security issue, those kinds of things. Access restricted to individual queries. This is where we're going to run into opposition from certain other constituencies. Access must be granted on an individual query basis, based on a specific incident.

So you're not saying, I'm a good person so you just let me in and I can look at anything. You say, I have a problem with this domain because of this reason and I need to look at that data, and that's all you get when your request is granted. You get access to that domain, for that time, for that reason.

Now, we do recognize that in certain cases, secondary queries might be justifiable. So suppose that you are tracking down a criminal bot net or something and you discover certain identifying information that you think is connected to this. So you could do a bunch of secondary queries that would allow you, based on the initial query, to expand the search. But again, the details of that need to be worked out.

And then the final point is the accountability of the requester. So we try to put into place transparency and recording mechanisms that would make the requester accountable, not just the data subject, but if you are getting access to that data, you have to be transparent to a certain extent as well. So that's a very brief overview of the access model.

Rafik Dammak: Thanks, Milton. Yes, Tatiana.

Tatiana Tropina: Thank you. Tatiana Tropina for the record. Milton, something caught my eyes and put my eye on. I think it's even worse than confederated/federated about this legal definition of the crime, CIA crimes, it's confidentiality, integrity, and availability of computer data and systems because internet services from legal point of view gets you into the weeds and will probably even include content, you know, in a way, because it's very broad.

So to narrow it down, I would suggest that we will go with data and systems. We can fine tune later.

Rafik Dammak: Thanks, Milton, for going through the model. Yes, Stephanie?

Stephanie Perrin: Stephanie Perrin. I think for greater clarity, it would be really good to call this a set of requirements for access and that also, just in case we find other things that get us into some deep water. Because we really haven't had a chance to examine this. I got it, you know, an hour ago. And I think, you know, it's fine to endorse it as a set of requirements, preliminary, but it's not an access model. Okay.

Rafik Dammak: So I think what we are going to endorse, yes, just on the basis that we can use because I think we still have more work to do, to tweak, and so on. But if we have agreement about this requirement or principles, that's fine. Okay. Yes, Kathy/

Kathy Kleiman: Question to Milton and Farzi. I don't know if Farzi is online. The question we're going to be asked is intellectual property. I allege trademark infringement, I allege copyright infringement, generally civil cases. Where do you see that request coming down in our principles, in these new principles?

Milton Mueller: I think as a criminal versus civil distinction, I'm not sure that it's - for the purposes of revealing the non-public Whois data, I could possibly accept the civil infraction or whatever you call it towards, what's the legal term?

Kathy Kleiman: So in general, some kind of illegality might be where we can compromise later on. Start with crime, criminal activity, and move onto something more...

Milton Mueller: But don't tell anybody yet.

Kathy Kleiman: Okay. Don't tell anybody.

Rafik Dammak: It's recorded. Okay. So question to Milton from a remote participant. Can you explain a bit more why registry should not provide access to Whois data in this model?

Milton Mueller: Well, your typical GTLD registry essentially, all they do is maintain a unique string in their database and point to a name server. So to perform that function, they don't need any contact information from a registrant. So the purpose of the registry operations has not reason to be collecting this information. Whereas a registrar has a direct relationship with a customer and they have a reason to collect this information. So we're trying to keep it compliant with these basic data minimization procedures.

Kathy Kleiman: Kathy. Follow-up answer as well. So with the thick registries, you have this international data flow coming from the registrars. So you've got registrars all over the world sending their data to a specific place and to the registry, and many of those registries exist in countries that do not have comprehensive data protection laws and have various types of other kinds of required

access. So it creates a whole level of complication requiring all this data to go to the registries.

And maybe you don't want it to go to the United States where our law enforcement is going to have a backdoor access to it. It makes it more complicated. It's much cleaner, easier from a legal perspective for the registrars to be responsible for the data they've collected. And with ICANN going all around the world with new GTLDs, think about all that data transferring to China and how are you going to enforce the registry actually operating under GDPR.

Stephanie Perrin: Stephanie Perrin. I realize we're pressed for time but some of these policy issues on life support that are, you know, sitting around in the various rooms, certainly the thick Whois policy, registrars are saying that thing is dead. They never got decent legal advice when that procedure was going through, or policy. I think we might want to have a list of the Frankenstein body parts that are outstanding and say, okay, this is what's wrong with the Whois policy, the conflicts with law policy. This is what's wrong with the (IEG) that we put together and the new one that's coming. This is what's the thick Whois.

The whole RDAP implementation, I understand that Tucows has gone ahead and they're working full steam, but a lot of the other registrars are saying, hey, we need time to implement RDAP. So one of the I think good reasons to slow down on this other stuff is how long would it actually take to implement tiered access in an RDAP system and why should the registrars spend the money if the volume isn't there.

So there's so many things that we really, even if it's only half a page, we should comment on just to keep reminding people. Because to me, this is a way of following the train down. Not that I'm trying to drag my feet. I'm trying to point out the procedural flaws in rushing forward.

Rafik Dammak: Thanks, Stephanie. I'm not sure if it's covered but I recall that when we had the Council call with the Board and there was mentioned about the policy impacted by the temporary spec, something like that, maybe that can help us. I don't have the document in front of me but that's something we talked about that how many policies that will be impacted. And so it's something we should have in our own analysis and what we need to cover. Its' not just EPDP.

Stephanie Perrin: Exactly. And I think we really need kind of a working group to get going on some of this stuff. Because I don't know about you guys, I can't keep up and I know this stuff. So this is getting just plain ridiculous and it is not one of the procedural issues in terms of rushing forward and trying to do two EPDPs. We don't have enough resources to do that. We can't.

Rafik Dammak: Yes. So even if we initiate EPDP and appoint a representative, we have to kind of coordinate that at NCSG level, you know, not just three or two person. We do it with whole (unintelligible) so we need to do analysis, think about all this kind of dependency, or impacts, or work to be done in the future. So we need to organize ourselves and the policy committee can help on that and to get all the members who want to work on this issue.

Kathy, you raised your hand? No. Yes, Collin.

Collin Kurre: Collin Kurre for the record. Two comments. One kind of attempts to streamline and simplify and the other problematizes. So first, I was thinking maybe in the interest of moving forward, we could propose this as the NCSG access requirements. Maybe that would be something - a title that could work for people if we're bringing this to the conversation.

And then second, I wanted to point out that yesterday, we had the final meeting of the CCWG accountability, final meeting ever. And as this kind of draws to a close, the work stream 2 accountability groups and the

recommendations made by them will be approved, hopefully, imminently by the Board.

So it might be worth considering how the EPDP will play with this new level of accountability that's being imposed on the GNSO and other supporting organizations, just so that we don't continue to exist in a parallel universe even within the ICANN community.

Rafik Dammak: Thanks, Collin but even if the Board approve it, will be just recommendation and still we have the implementation phase, and if I understand that stage, SO and AC, they have to work on that part. So I don't see the GNSO work on that soon. So it's unlikely that we can include that. I understand that it's important but it's unlikely that we get that done and we include in that EPDP.

Collin Kurre: I completely understand but I just want to make sure that in the rush towards having an expedient process that we don't forget these accountability measures in works stream 1 and 2 that the community has fought so hard to agree upon and to implement.

Rafik Dammak: I think when we will work, we'll have to update all these operating procedure including the PDP manual with a different process and so it will be up to discussion for the GNSO Council. I don't know, I mean I don't think everyone - people are aware yet that it's coming. So but maybe during this meeting, as we will probably get update from Thomas Rickert, the co-chair, so we know that will be coming. But yes.

Okay. Elsa?

Elsa Saade: Just a brief question. Elsa Saade for the record and I know how much work has been put throughout the years on RDS PDP and whatnot. And I think that we shouldn't reinvent the wheel. And I'm pretty sure that there are so many discussions that happen throughout that time that we could utilize for this din, the EPDP discussion, and especially on access.

So I feel like if we actually refocus on getting together and collecting all that information that was already discussed, we wouldn't need as much time as we think. I know it's pretty tricky right now given the calzone and whatever it is, the GDPR, and the lack of time that we have. But I feel like we already have the material that we need. We just need to collect it and work it out in a way that we can use. I don't know if it makes sense. It's more of a question than a comment.

Rafik Dammak: I cannot speak about the RDS but I'm not sure that you - it did increase the level of talking about the access and all this issue in RDS. Just spent time in the requirement, no?

Stephanie Perrin: What's the question?

Elsa Saade: It's more about, like, the discussions that happen and not that we're, like, for instance, on record. More like the discussions that happen about access within the RDS PDP working group, maybe not formally but informally. I'm sure that there have been some kind of give and take, which we could utilize right now concerning access and whatnot. Does it make sense? No.

Stephanie Perrin: Stephanie Perrin. One of the problems with the RDS working group, of course, is the lack of a clear distillation of the policy decisions that we reached. We were operating with these, may I say, ridiculous doodle polls or they probably weren't doodle but they were a similar type of poll on every call and they were just general temperature taking of the feeling of the room. And I had objections, and I wanted to document the objections at each step along the way. We never did get that. I said if you're going to treat this, this way, you have to treat it like a treaty where you got derogations all the way along and NCSG would like a derogation on this. NCSG would like to point out that only one of our members - some of these doodle polls had ten people filling them out, or 18.

So once you start trying to pull things out of that process, it unravels. And so it's ground I don't necessarily want to go - to tread on although I don't mind pulling the odd one out myself and one of those is the fact that those two extra data elements that are being litigated in the court in Germany, we had more or less reached agreement that, A, they weren't reliable and B, 95% of registrars weren't bothering to fill them in.

So what the heck ICANN thinks it's going to gain from litigating on those two data points, I just don't understand. If somebody can explain that to me, I'd be grateful but we didn't get clarification from the last meeting. So I think there's lots of good work that was done there.

I just want to alert you to that caution that we're going to have to object to a lot of the conclusions that were on their way to be being pulled together in the interim report. That's my take and if anybody here who was on that group disagrees with me, I'm happy to discuss. It's just my view.

Rafik Dammak: Okay. Thanks, Stephanie. Okay. So we have Kathy and Tatiana but just before, we have less than 30 minutes. One thing we said just to make it formal is to endorse as a basis for work the set of requirement or model proposed by IGP.

The other thing may be we need also to think about is we have this session this week that we need to intervene, and participate, and to go to the mic. Because they are community input session this Monday. I'm reiterating this many times because (unintelligible) you have to do.

The councilor will participate on the drafting team but I don't think we have that much flexibility if we get different input. So it's important to voice all your concern today. Okay, Kathy and then Tatiana.

Tatiana Tropina: Tatiana Tropina for the record. I just want to bring your attention to what Farzaneh has just said, not just, a few minutes ago. She said this on the

Adobe Connect chat that we also have to - now she's just confirmed that we have to get our message clear for cross-community sessions and she's proposing the line and the messages. And if I may, I will read it loud and clear.

So first, we don't think IPC/BC accreditation model should be discussed, even discussed. Access is a policy issue. GNSO should work on it and message number three, we have guidelines for access, which is basically, what we're trying to endorse. So these three points. Because I'm not sure that we are following Adobe Connect room and I think this is very important for us. Thank you.

Rafik Dammak: I'm following but there is - you have a format to put a question or comment so I can say it. Yes, Kathy.

Kathy Kleiman: What - question for you, Rafik. What types of topics, if you could repeat again, what types of topics we should be talking about in these public sessions. And I also wanted to endorse the document because I think it gives us a set of principles for going forward.

And I want to know, Milton had to leave because he's taping and I'll be leaving shortly for this oral history taping.

Rafik Dammak: (Unintelligible) the topic, so the composition and membership for the EPDP. The EPDP team leadership and the elephant in the room is EPDP scope, the mission, purpose, objective, goals, deliverable, and timeframes.

And then EPDP decision making. I think this is important because the experience we had in RDS and other working group. EPDP status reporting. Problem issue escalation and resolution process. I think Stephanie took the lead on this one. You took the lead on this topic, the escalation, the resolution process.

And there is one missing is working method. And working method will cover, kind of, resourcing you know, what we need to do to achieve for this team.

Yes.

Stephanie Perrin: Let me just throw this out because I think it is controversial and I'm not sure how comfy I am with it. But we're getting given a bunch of sheep down a chute. I think we need some kind of independent conflict resolution folks that we choose, not ICANN staff. Love them dearly but this is really, really important that they are independent and that they sit there more or less like arbitration officers and say, okay, time out, you're not operating in good faith on this particular committee.

Because the kinds of excesses that we had in the RDS: denial of fact, refusal to accept the existence of data protection law, denial of conflation of words, insisting on definitions that were not agreed definitions, refusing to consider alternative definitions, refusal to annotate the record with protests from other types. We need - this is too big a load to put on either staff or the leadership team. We need independent folks who are basically process folks, who can say, hold it, you haven't given one millimeter person over on the left or the right. Kindly stop behaving that way and then if we need to have a huddle and bring it to some kind of resolution, we need that.

Now, that's a big budget item depending on how many meetings we have and what they have to monitor. I personally don't support the concept of having the ombudsman do this. The ombudsman - and there are various procedural reasons for not having the ombudsman perform this role. Number one, he's not an expert in conflict resolution.

Number two, that interferes with his ability to entertain complaints that come about behavior because this is a separate process. It's about procedure. As a veteran of the divorce courts, I can tell you that most western democracies use independent dispute resolution now for divorce. It works fairly well. It's like we're about to legislate it.

So that's the kind of model we're talking about. It's for the sake of the children as our adversaries on this whole thing frequently argue. Say, think of the children. Anyway, that's the proposal that I'm going to bring forward. And it does interfere with the multi-stakeholder process but I don't think we've got a choice.

Rafik Dammak: Thanks, Stephanie. We said that's why we need people to come to the mic to say that we need someone to do this, an independent person for mediation, conflict resolution, and so on. And I think the same that it was suggested that we need to ask for independent legal counsel. Those are the kinds of things you can suggest depending on which topic.

So for example, for the composition, we discussed that several times. I think we are happy with the model that our stakeholder group and up to one from each AC only I think, or including AC, yes.

For the EPDP team leadership, we had some discussion. I think that's not set yet. I don't think we need a huge leadership team. We need maybe two co-chair or chair and vice-chair. Then the scope. I think that really will take much more time because it's the most controversial part.

So yes, we have this topic we go through and then you can go and suggest. I said there was missing the working methods and this is if people depend, if you want, okay, working methods include how many calls. But do you really want to have face-to-face meeting on someone for this team.

So this is where we will wait for the community to give input. And on Tuesday, the drafting team will get that, and deliberate, and try to work on the charter from 9:00 to 3:00 p.m. I think the session will be open to observers. So observer, you can attend, but it's because just the drafting team, they have to focus on the two documents, the charter and initiation request.

Is it clear, Kathy, or?

Kathy Kleiman: Good to have the slide. Thank you. Are you on the drafting team?

Rafik Dammak: All the council are. The drafting team is the council as a whole.

Kathy Kleiman: Okay. And you said input is today at 5:00?

Rafik Dammak: Yes, it's the high interest session. So it's the only session in the - 5:00.

Kathy Kleiman: 5:00.

Rafik Dammak: But we have the council at noon. It's important. We will have a meeting with the Board and we will ask them again about the EPDP. We have some questions about the EPDP and probably about the access, this whole issue about the access.

So if you have issue I'd advise you to attend. And then we will try to work through the motion. And we will try to cover, again, this to prepare at the council level, to prepare for the session at 5:00.

Okay. Any questions or comments? Nobody in the queue. Okay. I want that we get, like, formally endorsement, formal endorsement of the model. But I'm not sure we have enough members of the policy committee. So can policy committee member, the NCSG policy committee raise your hand just to check? Stephanie, Martin, Tatiana. Okay.

Ayden Férdeline: I think we do have quorum.

Rafik Dammak: And also Farzaneh maybe. She's in the online. Okay. No, just checking. So this one only the representative from NPOC. Farrell is not here. Yes.

Ayden Férdeline: But I think we do have quorum still. I think...

Elsa Saade : Excuse me, Elsa (unintelligible) she's accounted for quorum, right?

Rafik Dammak: Yes, we have all councilor, Farzaneh, and yes, I think we have. Okay. So I mean we vote by consensus anyway, so if there is no objection, it will be fine. So if you all policy committee members agree that we endorse the set of requirement or the model from IGP as a basis, please raise your hand. Let's check if Farzaneh, she's online, if she can say that in Adobe Connect. Okay. I don't think we have any objection. Okay. So we have that endorsement that we get something done.

Okay, so we spent time about temporary spec, access model. So I want to be sure that we have kind of - you have fair understanding of what you are going to cover or if you have any questions or comments, it's a good time to do so before we will go to the other session. Yes, Kathy?

Kathy Kleiman: This is Kathy and I have to run for this oral history taping. First, important discussion. Thank you for framing it and thank you for the slides. It sounds like we're trying to say the access model, that the position that's being advocated by our councilors is that the access model, despite being part of the temporary specification, is not something we want to include within the scope of this EPDP.

I'll respect consensus if that's the consensus. It does seem to me it's where all the action is taking place, right? Okay. Thanks.

Rafik Dammak: So Kathy, we will see also how things will go when we discuss with other group today and tomorrow. If needed, maybe we'll adjust. We will see but I think for now, our position, it's too - we should not put it in the EPDP. We know that we have to work on it, but we will adjust.

Kathy Kleiman: Okay. And if we're in line with the contracted party house that sounds like a very reasonable position because we're not off on the side. We're together.

Rafik Dammak: Yes.

Kathy Kleiman: That sounds great. Thank you.

Rafik Dammak: Okay. Thanks. Okay. So that's for temporary spec and we have 15 minutes just to - the councilor to not be surprised in the Wednesday meeting. Still, we have an agenda. So just to go quickly through it, so to be sure that we know what we're going to discuss.

It's quite small. Okay. So let's go to the first agenda item. It's about we'll get a briefing from the SSAC about the use of emoji and domain names. Basically, the SSAC is asking the Board that we should not allow emoji at the second level I think. So and they issued their advice.

That's SSAC 095. So we will get an update because we had that before coming from the Board and it was not clear what we were asking exactly, what the GNSO is asking to do.

So we'll have more clarity here what we need to do as next steps. So this is just discussion. Don't think we need to have any position for now. So any question? Yes, Stephanie? No. Okay. Next, okay, oh, that's another elephant in the room. It's IGO/NGO access to corrective rights. I really advise everyone, in particular councilor to read the motion.

It's quite long. There were a part because it explained the whole kind of cycle and the timeline of this working group. Because, like, it's quite old and I think it's important for the GAC. We are quite anxious about the outcome of this. So regardless of what happened, they probably would make an advice to the Board.

But this working group has other issues, not necessarily about the content or deliverable, but what kind of dynamics they have there. Because took some

long time that there are fewer participant there and some of them are quite vocal that there was even an appeal process that it's rarely used, but we have this kind of issue. The one member, he question it, the action from the co-chair. So they had some problems for the last month.

So what we are trying to do here from the council perspective is, okay, we cannot keep this going forever and we will ask the working group to deliver its final recommendation by July. I advise that we (unintelligible) chairs for this because it's important for the council in terms of managing the PDPs. We get things done on time.

Because what happens when you have kind of some active members in working group, they can try to delay or try to push for a long-term that we don't get things done. But if we, at the council, we try to infer that you have to deliver within timeline (unintelligible). So I advise that we (unintelligible) chairs for this motion.

Okay. Any question, comment? Okay. Next, another motion. That's item 6. So this about the approval of changes made to the customer standing committee charter. I think this is quite straightforward because the council and even the NCSG comment that were submitted a few weeks ago.

We supported the changes, the amendment made to that charter. So we don't have any concern or issue and I think the vote is quite straightforward. We will vote yes for this one.

Okay. Any question, comment? I know we are close to the lunchtime and we are talking about so exciting things, so that's why nobody is asking question. But it's fine that you are counting my advice as to how to vote. Yes. Okay.

The next is a council update, a protection for certain Red Cross names and all GTLD amendment process. This is just an update but I think it's interesting to follow this one because it uses a mechanism that is really not

often used, which is the Board rejecting a recommendation coming from - approved by the Council coming from working group and because advice from the GAC. And they are asking the working group to amend the recommendation.

That doesn't really happen often but we have this case for it because this is topic that, like, for many years I recall even when I was in my first time on the council. So it's quite old, quite controversial.

But for now, it's just the working group, they spent time to finalize the list of reserved list for Red Cross national society names and so on. So this is a good case. I mean, we will get an update and in terms of planning for us, we have public comment for report coming from this working group.

So it's a good opportunity just to learn about this process in terms of procedure, but also about this issue, and to prepare for NCSG to comment on. Okay, any question, comment? Okay. So next one, and I think it's the last.

Ayden Férdeline: Two more I think.

Rafik Dammak: Yes, AOB I don't count. Okay. Next. The next is basically the placeholder for a motion to vote for the EPDP charter and the initiation request, and I think we spent time to discuss that. So we put that as placeholder with expectation if the drafting team can deliver a charter at least by Wednesday, maybe we can have the opportunity to vote.

If some group can raise concern that we are not really (unintelligible) there is procedurally possible to defer either to the next meeting, council meeting I think would be in mid-July. Or we can have an electronic vote.

So the thing is we need to get this initiated as soon as possible, so we have that short time window to get this done. So we have this placeholder, this

motion, but it will all depend on the outcomes of the discussion we will have in those three coming days. So we will see how we will vote or we will ask for deferral and so on. So at this level, I have no idea how we will - what should be the position from NCSG.

Okay. Any question, comment? Yes.

Ayden Férdeline: This is Ayden. Actually, I have sort of a procedural question for you, Rafik, and I should probably know the answer to this but I don't. But if this requires a super majority vote, is that every member of the council? Is that 75% of the council? What is that?

Rafik Dammak: I think (66%).

Ayden Férdeline: I'm not sure.

Rafik Dammak: The easiest way is to check. We usually put what is needed if it's simple majority and so on. So I need to double check but I think it's 66%. It's the two-thirds, no?

Ayden Férdeline: Okay, I was just thinking that might be something that we want to keep in mind.

Rafik Dammak: That's good. We need to double check.

Ayden Férdeline: Could be some strategic benefits.

Rafik Dammak: But it means also that's why we have to be careful is there are some groups that they are not happy or they want to push for something, probably they will ask for deferral. I don't think they will try to (unintelligible) because that will be kind of a nuclear option. But if we feel that we are not getting that done, we can ask for deferral. Sorry.

Okay. Stephanie, you have a question? Which is quite, trust me, it's quite scary from here. Silence scares me, you know. Okay. So the next in the AOB, I think there is two topic. One is just the GNSO - no, oh yes, go, go, go, go. One is the GNSO chair election timeline.

Just we will confirm that it's nothing surprising there. It's coming from the operating procedure and we are just with the exact dates depending on the annual general meeting. And I think the impact for this is on our NCSG election. We should kind of align of our election timeline with this timeline. So this is a matter for the NCSG executive committee.

The other is the call for volunteers (unintelligible) ICANN procedure handling Whois conflict with privacy law. This is topic you mentioned before. So I think the idea is to postpone the call for volunteers. Yes?

Stephanie Perrin: I think - I'm unclear on the procedure here. I know that it has to come up again at this meeting because of when Keith Drazek introduced it, but we sure as heck don't want to breathe any life into this particular puppy right now. We want to park it for another year. So procedurally, can we do that? This is what I don't understand. Did we need to raise a motion to park it for another year, and if so, I guess I missed that vote, right?

Rafik Dammak: Okay. I think it's more safe to check the motion because I think we discussed in that time already to postpone the call - the date for call for volunteers. But I guess it's always possible that we postpone, I mean, the start. It's possible but I need to double check. We just have it here just because we got this as an action item, so we can have some discussion here on how to handle it, if we think we can postpone it again or something.

Stephanie Perrin: Stephanie Perrin again. Well, it would be a really bad outcome if we had to staff this thing up at the moment because nobody that is working on the EPDP could in all good faith volunteer for this committee. And it's superfluous and I'm already sitting on the Whois review, which is in my view,

superfluous given the current frenzy. So we don't need another one, or two, or three of these. Okay.

Rafik Dammak: Okay. Point taken. And that's it for the council agenda and all motion. And we are just having two minutes left in this meeting. In 15 minute, councilors have to go to the working session for council. Yes.

Tatiana Tropina: We got an email asking us to be in the room at 12:00.

Rafik Dammak: Okay. Because it's lunch. Okay, that's it then. Sorry.

Remmy Nweke: Yes, just an observation. I thought the (unintelligible) for the presentation was very tiny. Sorry, Remmy for the record. So maybe next time, try to include the (unintelligible) for the presentation. Thank you.

Rafik Dammak: So let's adjourn the meeting for today and thanks for attending and we have to hurry for the next meeting. Okay. See you.

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