
ICANN Transcription

Council Committee for Overseeing and Implementing Continuous Improvement

Wednesday, 06 July 2023 at 12:00 UTC

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TERRI AGNEW:

Good morning, good afternoon and good evening and welcome to the Council Committee for Overseeing and Implementing Continuous Improvement call taking place on Thursday, the 6th of July, 2023 at 12:00 UTC.

We have listed apologies from Thomas Rickert and Antonia Chu.

Statements of interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now. Seeing or hearing no one, if you do need assistance, please email the GNSO Secretariat.

All documentation and information can be found on the wiki space. Recordings will be posted on the public wiki space shortly after the end of the call. Please remember to state your name before speaking.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

As a reminder, those who take part in ICANN multi-stakeholder processes are to comply with the expected standards of behavior. With this, I'll turn it back over to Manju Chen. Please begin.

MANJU CHEN:

Thank you, Terri. Thank you very much. Hello, everyone. We're sorry we didn't send out the agenda for today's meeting earlier. But as you can see from the screen, it's actually pretty short. I'm going to do a welcome, which is what I'm doing now. And then after that, we will just go straight into feedback from the stakeholder groups and constituencies on the compromise proposals that we discussed during ICANN 77 in D.C.

So I guess I just finished my welcome, and I'll just start with anybody who have updates to share on whether your stakeholder groups or constituency has discussed about our compromise proposals. Sebastien, please.

SEASBTIEN DUCOS:

Yes, might as well start. In the sense that we agreed last time because the registries asked for a bit of time to offer more proposals. And I'm essentially coming back with nothing or basically the status quo. The registries are not willing to budge on this as far as they're concerned. Consistency is necessary, and there's no exception to that rule.

Now, I received a letter from Chris Disspain, who technically only—it's only his representation. But at the same time, I think that there was a lot of agreements around the room with what he was saying. And I clearly indicated that I would go with that letter back

to this group and nobody stopped me. So I guess it represents the group, even if it formally wasn't said so.

And in his view, whilst transparency is absolutely required, he wanted to sort of counter a bit the two assertions that are being made. One, that by demanding transparency, we might be limiting the number of people joining. So if people can't disclose their clients, that they can't join. And he went back to the text of it and just reminded or wanted me to remind here, the fact that we're not asking any lawyer to disclose their clients just as such. We're just asking that if a lawyer or some—I'm saying specifically lawyers, because the point is specifically about not being able to disclose clients for ethical reasons. But if somebody is not able to disclose a client, they're still able to participate in their own name or the name of their firm.

And that may sound like a bit of a loophole because you're essentially saying, well, go and represent a client, but don't say it and just say that you're talking about yourself. So there's always a possibility for those people to participate. It just they participate in their own name.

Now, at least in the way he was representing it, there's quite a difference between somebody representing an opinion that he formulates and he or she formulates in their own name, even if it might be in favor of somebody else, then not representing at all, not owning at all that view, just because we don't want to say who we're working for.

Chris was more clearly targeting the case of an inside player, an insider, somebody might be in the room already, getting

represented by a number of other people in the room. So a big player in the industry, hiring several hired guns to represent their view multiple times and vote multiple times in the room. And that was more his view of the issue.

But again, as far as he's concerned, as long as people don't say "I'm representing somebody, I'm not speaking in my own name, I'm representing somebody else, but I can't tell you what it is, who it is," as long as that person just says, these are my views and I'm representing myself, we're not impeding anybody from participate. And in that sense, he doesn't really see the problem.

I understand that there's a heavy load of semantics here, but that's essentially the position that he and the rest of the group by extension was advocating. In the case, in the very, very specific case, because it's been named, of new applicants not wanting to disclose their own name just because they're new applicants. Indeed, there could be a reason there, but it's such an edge case. In our experience over the last, whatever, 25 years of ICANN, it is an absolute edge case and we shouldn't be building policy on it. If a future applicant can't disclose the fact that they're in the room because they want to be a future applicant, then maybe they just need to be in listening mode and not participate in the debate until they're able to walk up and say, no, I'm going to apply.

So that was roughly the position of the registries. I was hopeful that we could find or offer a compromise when we spoke about it in DC. That's what I had been told that we would work on, but essentially this is not—but at the same time, I hope that offering a bit more of explanation, I'm able to offer a path to ensure that we're not kicking people out of the room and out of the debate.

We're just asking the people to speak in their own name. That's it.
Thanks.

MANJU CHEN:

Thank you. Thank you, Sebastien. I see a question from Marika in the chat. So I'm actually wondering the same. So when you say registry group, they're not willing to budge, are they fully aware of total transparency is not something we're falling back to? We're falling back to like, not transparency in a sense, like people just don't say whatever and they just put private.

SEASBTIEN DUCOS:

So I think that in the heart of heart, they'd like to go away from that and remove that possibility altogether. And just say, if you come, if you come representing a client that doesn't want to be named, then we consider that whatever you're saying is your words and you bear the responsibility of what you're saying for the future and the community. You can't hide behind a, "Oh, this is not my thoughts. It is a client's thoughts, but I can't tell you who the client is."

So it's a slightly different color to putting a, "I'm not telling you who it is and I keep on operating the way I am." It's a, if you don't want to give the ownership, the paternity of your words to a client that you can't disclose, then wear them as if they were yours. Does that make sense?

MANJU CHEN: If they're not disclosing who they're representing, they are representing themselves as far as we are concerned.

SEASBTIEN DUCOS: Exactly.

MANJU CHEN: That, well, actually that sounds like a compromise. [I don't know. What are the things ...?]

SEASBTIEN DUCOS: So it was certainly not labeled as a compromise. The registries are very keen on stating the fact that they're not compromising on this particular issue, that they regard it as important enough not to have to compromise on it. But if you want to take it as a compromise, I could understand it.

MANJU CHEN: Okay. Do you think there is somewhere, some way we can put this into text just to say, I don't know, Marika, can you help me? Is that possible we put it in text, like translating this kind of very—

SEASBTIEN DUCOS: I'm happy to work at it. So I don't want to share Chris's email to this group because it was shared with the Registries Stakeholder Group mailing list. So it's not exactly a state secret either. But he was sharing it with the registries and not the rest of the community. So let me maybe ask him. But otherwise, what I can

do is not to quote him verbatim, but quote the spirit of it. And I'm happy to do that.

MANJU CHEN:

What do others think? Do you think that'll be okay? Is that something we can be thinking of? Like adding another several sentences to the text and see how it goes? Marie, please. And Susan. Well, Marie first and then Susan.

MARIE PATTULLO:

Thanks Manju. I can't really comment until I've seen it written down. My head's going in a bit of a circle. I really appreciate what you're trying to say Seb, I'm just trying to work out how that would look in reality. Understanding that the registries aren't prepared to budge, I have to say that the BC has, to use your word, budged. We have tried to work toward compromise here.

And I was struck by your term edge case, because we've got the stats showing us that the entire use of this exemption in its glorious history has been an edge case. So it's like really, really tiny proportions of people that are using this exemption.

And I still think that where we fell last time, which is, okay, we know it's not actually a problem, but we kind of think it might be, we've got a suspicion and we don't know what's going to happen in the future, so we tightened it up by saying you have to provide more than you were providing before. And we'll keep a watch eye on this so we can even tighten it further in the future. That was taking us in a direction of restricting the edge to sort of like the cliff edge with one fingernail.

And I admit, I'm a little bit confused as to how this would work in practice, because I could then foresee, can I go to this working group for my law firm? Yes. Okay. As I'm not allowed to say who my client is because of the ethical reasons that underpin my legal or whatever it is, authority regulations, I'll just say I'm here on behalf of my law firm, which actually means you don't have to disclose your client at all, which means we're in a less transparent scenario than we are in the moment where you're at least admitting they're on behalf of somebody else. I'm sorry, this is kind of my brain working out while my mouth is saying it. So I'm sorry, that was unclear. I will stop talking and defer to Susan. Thanks, Manju.

MANJU CHEN:

Hi, Susan. I know you're next, but I think Seb has an instant response. If you don't mind, I'll put Seb first and then you.

SEASBTIEN DUCOS:

Thank you. Yeah, sorry, Susan. So by edge case, in the case of new applicants, we're meaning that... I don't know the stats of who's used that exclusion in the past, but certainly in the past, that window of new applicants was only a few months, a year at best between the moment people were ready to apply and the moment new applications were disclosed. We're talking about the behavior, and again, the behavior that the registries are a lot more worried about, even though there are new applicants within the registries or potential future applicants within the registry, but the behavior is the one of the big player having several votes around the room. So I don't mean edge case as in it's not important, but edge case

in the sense that in our calendar of operations, it's only a short timeframe there.

On the second point of transparency, the idea is that obviously if a law firm keeps on representing constant divergent points of view because they're saying, "Well, yeah, I can't tell you because you asked me not to talk about it, but I was then representing this client or I was then representing a client and now I'm representing a client that has an entirely different point of view." There's also a consistency issue, a representational issue as an individual in this community.

Again, if we ask people to speak in their own capacity, then the law firm can only—again, there's nothing against lawyers, but it's specifically because that has been used as a reason not to disclose, ethical professional reasons. But there is this idea that you can't be representing everybody at the same time.

If you do it in your own name, and we ask you to do it in your own name because you can't say who your clients might be, then you have to wear it in your own name too. Again, changing your mind and changing opinions on every topic is not going to be acceptable. I hope that makes sense.

MANJU CHEN:

It makes sense to me, but I'll let Susan speak.

SUSAN PAYNE:

Thanks. Hi, it's Susan. It doesn't make sense to me at all. I'm not going to object, I don't think, because it seems to me that this

takes us back to the status quo where someone doesn't want to disclose who they're acting for and therefore they don't.

I'm not going to object, but I fail to see how this delivers more transparency or the transparency that the registries say they want or how it addresses the concern about a big industry player having stacked the room. It doesn't address any of that. I feel like the original compromise language that the SOI working group couldn't agree on where you at least were required to disclose the nature of who you were representing and the nature of their interest, I fail to see how this is better than that. But as I say, you appear to be right back at status quo, so I'm not going to say no, but I feel like this is a really backward step.

MANJU CHEN: Yes, and do we have any other thoughts on this? Marika, please.

MARIKA KONINGS: Yeah, hi. I put some language in the chat on what this could potentially look like in the way that the text is currently worded. So I think instead of them talking about describing, I guess, the ethical obligation or the ethical obligations and high level of entity representing, it would just basically say, you know, if the answer is yes, you provide the name of the represented individual or entity. If professional ethical obligation prevents you from disclosing this information, you are assumed to participate on your own behalf or on behalf of the entity you listed as your current employer, which is a question that's asked in the general SOI. And that would basically remove, I think, all the language that talks about the

examples that we gave as well and how someone could describe at a high level if they are not able to disclose, but they can describe at a high level the type of entity they would be representing. So I think that's how this approach could potentially look like if that's something that the group would want to pursue that. And obviously, we can incorporate that in the report so the group can see the whole text together.

MANJU CHEN:

Thank you, Marika. So what I'm imagining is actually, so we keep the whole text of the whole describe the nature of whatever and then it's like, if you still don't want to disclose, then we add this text. I don't know if this is any better. Does that make sense? Like we still keep the whole exemption language. And then after the whole explanation of how you can disclose without disclosing, people still are like, no, I'm not going to disclose, then we tell them, well, then we see you as you and your employer, not as anyone else. Does that make sense? Do people feel like that's a way we can go forward? Marika, please.

MARIKA KONINGS:

Maybe just a clarification. So you would still ask them to describe, but if they don't even want to describe, then it's—if they provide a high level description, that's considered sufficient disclosure. And then they're not considered to participate on behalf of themselves or the employer. Is that what you're suggesting? Okay.

MANJU CHEN:

Desiree and then Sebastien. Desiree, please.

DESIREE MILOSHEVIC: Thank you, Manju. I'm just going back to some maybe more clarification as to what Marie also put in the chat where we have this idea of something being trackable, like you're being this mythical big player and you change your mind in every meeting. So Marie says, wouldn't you, in fact, be more likely to be solid in your line then? For me that didn't follow, but it also raised the question of how would we track if somebody keeps changing their line? I'm not saying we should. I think I'm happy with this additional question and clarification, but it is slightly confusing. So I wonder if anybody has any views about that. Thanks.

Okay, so Marie clarified. I'm sure you're not speaking to that fact that it would likely be more solid in your line. Okay, so that's the part that I found confusing in your comment, Marie. You said this is not what you meant.

SEASBTIEN DUCOS: No, sorry, Desiree, it was me saying that it wasn't what I meant. So what I meant, and I'm not going to use names, but let's imagine a big player is using himself around the table plus Joe, plus Sam, plus whatever to go and represent—Joe and Sam being hired guns.

Joe and Sam, if they don't want to disclose that they're working for a big player on that particular issue, will have to wear the comments they make, the opinions they share as their own. And when Joe and Sam, because they're hired guns, go and get hired by somebody else six months later, will find themselves in the

awkward position of having to represent the opposite potentially. That's who would be changing their views. Obviously the big player is going to keep on having the same vision that they have. That's the nature of big players.

MANJU CHEN: Yes, thank you, Seb. Thank you, Desiree. And thank you, Marika, for showing the text, how it could look like on the screen. And I guess we can all take a moment to see, to feel it now, how it feels.

SEASBTIEN DUCOS: Sorry, I just wanted to make sure that whatever we're writing in this particular issue, I want to make sure that everybody understands that I'll take it back to my group. But I'm not agreeing to anything because the issue is way too prickly for me to work with them. But I'm happy to look at it and take it back.

MANJU CHEN: Yes, I guess all of us will have to, with the new addition, take this back to our group and see how we feel about it. But I mean, we just keep lengthening the sentences. But I hope there's an end to it and we can finally reach a consensus, a compromise. But we're actually losing some very key voices today also, the registrar groups, they're not present as Antonia is taking the plane back to where she's based. Marika, please.

MARIKA KONINGS: Yeah, thanks, Manju. Maybe as well, a question of clarification, because I'm happy to kind of update the report with the language that's on the screen now. Does this also mean the language that we included on potentially excluding people from consensus call, would that go as well? Or that's an aspect that remains, that the council has the ability to basically indicate in the charter or as part of the working group deliberations, if there's a sufficient substantial number of those not disclosing, that they would not participate? Does that remain or is that something that would go with this new approach?

MANJU CHEN: Thank you, Marika. I think this is also something we'll have to take back and discuss with our group. Seb.

SEASBTIEN DUCOS: Yeah, every new wording will—[and I'll see also] with that angle. But in principle, no, that wouldn't include it in the sense that to the registries, there was a distinction without a difference. That even if you don't get to vote at the end and the rules or the borders where that would—it got a bit too difficult to understand who would make that ruling, what would be the guidelines and etc. People said not even interested in looking at those in details, particularly with the fact that most of the power is actually in the discussion. The consensus call, we rarely get in situations where we vote in and out, particularly in the policy building exercise. And so at any time people can write an argument and say that they're not part of the consensus and want to explain why and so on and so forth. The

vote, again, the distinction without a difference. I don't think that the registries were particularly interested in seeing that at all.

MANJU CHEN: Thank you, Seb. Did I understand correctly that you think it's okay to delete the language of you're not allowed to—well, you will probably not be allowed to participate in consensus call if you're not revealing who you're representing?

SEASBTIEN DUCOS: As far as the registries are concerned, yeah, I think you can.

MANJU CHEN: As long as they're in the room, they're empowered to influence whatever they want to influence. Is that correct?

SEASBTIEN DUCOS: Correct. It's voting and not voting. As long as they have a mic open and they're in the room, they have the power.

MANJU CHEN: Marika, can we still—

MARIKA KONINGS: I would leave it like this so you can actually see what would potentially be deleted. And of course, if groups don't agree that it's a good idea to delete it, I guess the group can consider whether or

not it's a good idea to move it back. This is what it could look like if we follow the registry direction on this.

MANJU CHEN:

So I guess this is what we have come to. And does anyone have any other questions, other clarifications, other suggestions to the current version on screen? I'm not seeing hands. If not, I guess this is something new again. We still have to go back to our group and discuss how we feel about this new modifications. And I guess for us, it's always kind of two weeks because for everyone, it's like work to do to kind of introduce this idea to the groups and have a full discussion after you introduce the idea.

So I guess we will schedule a meeting two weeks later. 19th of July, is everybody okay with the time? No objection. I guess this is like—Thank you, Susan. Thank you for sending feedback. Thank you in advance to your promise to do your work.

So I guess we will have a meeting two weeks later. And of course, when this email is circulated to our mailing list, I'm sure Antonia will bring it back to their groups and Thomas, too. And I am not sure what's the next item for our agenda. Next steps, probably, which is next next week, we're going to have a meeting. And after that, I don't think we have any other stuff. Does anyone have AOB? Oh, we don't even have that on our agenda. If not, thank you. Thank you very much, everyone. Marika, please.

MARIKA KONINGS:

Yeah, thanks so much. Just to mention, after the CCOICI completes this work at some point and it goes back to council for a

decision, indeed, that concludes the work of the CCOICI is part of the pilot. So then it will be basically for council. And of course, this group will be involved as well in reviewing how the kind of operational part went of this work. There were a number of, I think, other items that were originally included as a framework as potential future items for activity. So I think that is the moment where the council will basically assess how did this work, the CCOICI setup, the task forces, the topics they looked at, things that came back. Is that something your council wants to continue with? And if so, what improvements or corrections may need to be made or lessons that we've learned from this experience? So you may already start thinking about that as well as that probably be the next thing we'll ask for input on.

MANJU CHEN:

Thank you, Marika. So I guess we're all trying to be optimistic about this. If we wrap up in a month, we will start reviewing the whole CCOICI thing and see what we can improve in the future.

And if nobody has any other opinions to share, I'll give you back 30 minutes of your life on a Wednesday. For me, it's a Wednesday. I don't know for you guys. Thank you very much for coming. Thank you for bringing up new ideas. Thank you for all trying to come to a compromise. And I guess I'll see you in two weeks. Bye.

TERRI AGNEW: Thank you, everyone. I will stop the recordings and disconnect all remaining lines since the meeting has been adjourned. Take care. Stay well. Bye.

[END OF TRANSCRIPTION]