
ABU DHABI – Joint Meeting ICANN Board & GNSO Contracted Party House (CPH)

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GRAEME BUNTON:

All right. Good afternoon, ladies and gentlemen. Thank you for joining us today. My name is Graeme Bunton. I'm the chair of the Registrar Stakeholder Group and this is the joint session of the contracted party house and the Board.

Paul, do you have anything to add, I think, before we get into -- into this? And I think it's that we have some questions posed by the Board for us that we can dig into, and then I think that's probably going to carry us through most of today's session.

Do we have those that we can put up on the -- on the monitor?

There's a lot there. Oh, okay.

So question number one was I think a general question from the Board on what it is that we're working on and caring about at ICANN these days. And I think the person who's going to kick that question off is Jonathan Robinson.

Wasn't it?

We got right into it, and Jonathan is unprepared. I don't think --

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JONATHAN ROBINSON: I need to re-hear the question. What was the question?

GRAEME BUNTON: Let's see if we can find that actual text.

JONATHAN ROBINSON: What -- Just repeat. I mean, I was --

GRAEME BUNTON: Sure. Sorry, Jonathan. We really didn't do a lot of intro there. There was a general -- so two questions posed by the Board, one on GDPR and one was a more general question about what it is that the contracted party house is working on and what are we caring about within ICANN. And the place we got to in our discussion previous was around some of our concerns around budgeting and looking into that as a thing that we're caring about.

JONATHAN ROBINSON: Hi, it's Jonathan Robinson for the record. Thanks.

I was expecting that. I just wasn't expecting to be item number one. And I wrote myself a couple of notes here but I can talk to it. Unless you can flip it. Is there another small detail? Just dig out from my notes for just one minute.

GRAEME BUNTON: Sure. Go ahead. I don't think we want to get into GDPR before that.

[Laughter]

UNKNOWN SPEAKER: Why not?

GRAEME BUNTON: Because I think that's going to take a little bit of time. And most of our response is not questions to the Board but, you know, playing off these particular topics. So...

JONATHAN ROBINSON: Thanks, Graeme. Sorry. You just caught me -- wrong-footed me on the timing. Anyway, so for the record, it's Jonathan Robinson.

I think what we wanted to do -- one of the things -- there were various things we were working on but one of the things we very recently agreed to work on, in fact at our meeting immediately prior to this, is to start collaborate more effectively as the registries and registrars on our work on ICANN's strategic plan and budget. I think, you know, we feel clearly and self-evidently that this is a particularly important area, and we've had -- I guess

we've had Chuck working in the past and leading the group within -- within the registries who has been very helpful and deserves recognition for that, but in his new diminished role in this, in the broader ICANN community, we need to fill that gap. And we propose to work now jointly as registries and registrars. So we'll form a group.

I think we're interested in many different aspects of the budget, including particularly at a high level the sort of allocations and starting to really look into the macro allocations within the budget. And I think some of the concerns really are over the overarching priorities and how things are allocated, and of course effective utilization of resources as you would expect.

We're aware of the recent focus on replenishing the reserve fund, and so we would like to be sure that that's being addressed within the operating budget and understand the implications for ICANN org in dealing with that. And clearly we have a strong interest in the excess application fees as well as the auction funds. And clearly there's a mechanism for dealing with the auction funds, but we will coordinate our thinking in respect to that and our work.

There were a couple of other detail points that came up in and around finance and budget, and others may want to speak to this, but in particular and with respect to this meeting, there

were some, I think, to'ing and fro'ing that went on over the Friday, and that's caused potentially a waste in resources. Either some people have stayed and others haven't and there may be resources available. So there was a real concern over the fact that we, with all the sort of pressure, perhaps even scheduling conflicts, all the kind of issues that arise at a meeting, that we have in a sense wasted resources in and around mismanaging, perhaps, how we dealt with Friday at this meeting.

And then there's a particular concern that the registrars have -- and I'm sure one or more of them may wish to speak to this over the work that's gone on to develop the naming services portal that's been presented to both the registries and the registrars, but I think -- so I understand the scheduling of that software development is that the registries will see more effective functionality -- well, actually, functionality earlier than the registrars, and the registrars have a particular concern over, a), the delay in their receipt of functionality, and perhaps this goes back a little further than simply the development of the portal.

So I'll stop there. That gives you a heads up as to where we're going. I think we plan to do some focused work around the budget and the strategic priorities, and those are some specific examples there of recent concerns.

Thanks.

GRAEME BUNTON:

Thank you, Jonathan. This is Graeme Bunton for the transcript.

Just add a little bit of context to that naming portal services piece, is that registrars have been told for about four years that we're going to have a portal to manage our relationships with ICANN and compliance. It has yet to materialize. It looks like it's 2018 and staff is telling us they don't have resources to complete this project. And so there's immense frustration amongst registrars that that has not been a priority despite us complaining pretty vigorously about this for years now. And so we end up talking about it in a board meeting.

So I'll open the floor to comments on what Jonathan was saying.

GORAN MARBY:

Jonathan, welcome. We appreciate any more comments into our budget process, especially since we have the empowered community now finally saying yes to the budget.

Just to give you a little bit of context, also what I and the Board is doing, you talked about the sort of long term, a little bit longer. And, actually, now we don't have a process for that. We have an Excel spreadsheet.

So we are doing -- I have talked to all the SOs and their leadership, and we also had a Board discussion about this that we are setting -- starting something -- it's very poetically named. We call it the long-term financial planning process. And the first stage of that is to actually create a mechanism where we can interact with the community, the Board, the organization, in such a way that we don't kill everybody, because we have a lot of Excel spreadsheets going forward. Because at the end -- and it came out of a session in Johannesburg called who sets ICANN's priorities, because for to me, that's kind of simple. It always end up with the community. And today the community have set the priorities for the five-year strategic plan. The unfortunate with that is that when it was done, it was not any money attached to it, and that's something we're trying to work out.

So I had a very good session with the Board. Of course I always have very good sessions with the Board, and I had started talking with the SO/AC leaders about it, and we are working currently on a plan of how to have a longer discussion where we sort of combine the five-year strategic plan together with the financial plan to be able to really have that priority discussion together with the community. Because in the end, it's always the community that sets it.

In all of these discussions, there's something I would like to say because it became evident when you start looking into it, most of the money we have as a yearly budget is dependent on earlier decisions. And that is something to remember in this. And I often give the examples, IANA function is \$11 million. To run three meetings per year, between 13 and \$15 million. Travel program, \$3 million.

So many of those things has been decided as a part of something we do within the community. And it's important that some of those things should be asked, discussed, and some of those things are some things that are sort of things that we have to do.

But thank you, Jonathan. First of all, thank you very much. I know Xavier smiles when he hears when more people are coming into the budget process, but I'm also looking for, again, some of the community to bring a longer plan together with priorities. And we have to create -- the thing is that we have to create the mechanics who does that in such a way that we don't add to any more processes for the community.

But thank you.

GRAEME BUNTON:

Cherine.

CHERINE CHALABY: Thank you. And I want to say a few words to -- to add to Goran's and responding to the focus you mentioned.

I think it is time, really, that the community gets more and more involved in the budget process. One of our key objective is that we all become fiscally responsible, and we need you. You have expertise, you're in the market, you know what's going on. And if you think of the budget, there are two things. There's the funding side, and then there's the cost side. And your input on both of those are essential. And what we don't want is, frankly, the process to be going on throughout the year without -- excuse me, without your involvement, and then at the end you raise concerns.

So we want to work together very closely, and, frankly, I wish every stakeholder group tell us that this is one of their focus, because that is essential as we go forward.

So thank you, and thank you, and thank you for making this one of your focus.

GRAEME BUNTON: Thank you, Cherine. Thank you, Goran.

Anyone else in the queue on this particular topic?

We can -- Great. Okay.

GDPR. What is that? So the question from the Board is what are the concerns of your group regarding GDPR and how best to mitigate? And I think I'm going to put Sebastien on the hook to get us started on GDPR and some of the concerns from the contracted party house.

SEBASTIEN DUCOS:

So Sebastien Ducos of the GeoTLD Group for the record.

So, yeah, our concern is, well, multiple levels. But I think more importantly is the fact that we've been discussing this in the community at least since Copenhagen very intensely, since before that. This is a subject that we brought to the table 18 months ago, and very visibly progress is moving very slowly and I can understand that there's a number of frustrations about it because it is moving slowly. But it doesn't mean it's not moving. It doesn't mean we're not working on it and that we're not collaborating, particularly these two groups of registry and registrars working hand in hand to try to find solutions. Because we're very concerned, obviously, and we're on the front line for it.

So concerns on it that you could help us with is to actually give us the time and the leg room to find the solutions, to propose

the solutions, and to see how we can adapt what we're doing in order to comply with GDPR.

I think that after so many months of talking about it, everybody is in agreement that there is a concern, that we need the finances, that we need to work with it. That's good. There's still no clear agreement as to what we need to do but we have a path going there and a path that we also discuss with you, the Board, either via Becky or Lousewies for the Dutch side. I hope that we inform you enough on our progress, and if we don't, please ask and we'll come and talk about it more, in more details. But in the meantime, let's not have compliance chasing us and cutting the grass under our feet. We need time to work. We need time to adapt.

We will be breaking some compliance and some rules. We will be pushing the boundaries in some of the contracts that were not designed for GDPR. We know what the issues are. We can already show you today what we risk breaking in six months. Let's work together on fixing that. I don't know that we will have fixed everything internally within this community by May. We will need to have fixed in our system most of these things by then because otherwise we run real financial risks. So, yeah. Let's work together on this.

GRAEME BUNTON: Thank you, Sebastien.

Becky.

BECKY BURR: So thank you for that.

I think what would be most productive would be to have Goran tell us -- explain sort of where the organization is, what next steps are, how we expect to proceed. And then I think there will likely be some lively discussion about it. But just for my sense, I want to say I'm feeling some real momentum here, and we should capitalize on it.

GORAN MARBY: I thought I was off the hook.

Okay. I'm not going to give the same speech. This is the fifth time. I can ask anyone in the Board actually to give this one. With feeling.

[Laughter]

I'm not a very good singer; otherwise, I can sing it.

So let's take a step back. Yes, we have been discussing this for a very short time, because the European data legislation has been there for a long time. Everything I now say is a lot of "ifs,"

because we are still in discovery phase how this legislation will potentially affect us, if it will. If.

But let's, for -- I don't know whether -- are you giving me chocolate or -- for the record, they're throwing chocolate within the Board.

So I have to put that caveat up, and the reason I'm so careful is not because there are things I don't want to disclose. It's because I don't want to end up creating problems for anyone because we are actually talking about liable to a law. And that's very important. And it's important to understand I'm not talking about the policy-making process within ICANN. The discussion between the balance of uses of WHOIS and the privacy of WHOIS belongs in the community.

So what I'm talking about are the legal implications of a law which is called GDPR, and that I think is important because the policy that has been discussed -- I understand the discussion about WHOIS has been going around for a while within the ICANN community. I heard it was 18 years.

So, first of all, we went out and recognized, and I said we think there might be a problem. And there were of course people who said we know what the problem is and we can go and fix it. But in this case where we're actually talking about liabilities according to law, we have to be more careful.

And one of the things with this law is it's not like now we're going to -- you'd run a red light and then you know what you actually broke. One of them is that you have to prepare a purpose for the usage of the data. So therefore we asked you and helped -- thank you very much for helping us with user cases.

We sent that user cases to a law firm together with questions. We needed to have the users' cases for that.

On the other side of that, we also -- because we wanted to make more and more awareness of this, we also sent that to the DPAs in Europe to get a letter to explain things.

As a small sort of sidestep of that, we didn't expect DPAs to come back with an answer because legal, it's very hard for a DPA to give an answer, especially on a law that has not totally been enacted yet. So that was the first time we asked for the community input.

A couple of weeks ago we then published the first round of answers from Hamilton. And at the same time, the GNSO has done an independent study as well. And as you know, the Dutch DPA has also issued a paper. And we had just a discussion in GAC what we would call that. I call it guidance because I have been a regulator, because it was not a decision which is a

different thing. But it doesn't matter. We are looking and analyzing that as well.

So now what we asked is for the community interaction and still on a compliance basis to have more questions which we can transfer to Hamilton for a second round of answers.

And you can see this is a potential for actually using the expertise of an external law firm to have more questions. So we expect to have those questions back.

On the timing of that, we were closer actually to close it before this meeting. But during this meeting, I have had several conversations with both contracted parties but also from the address side, so to speak, because there are -- people would like to think about the questions they raised. We know that we don't have too much time, but we also need to have good questions that we can ask.

The intention after that, one assumption is that ICANN as well is some sort of data controller. I say "assumption" because we are still in discovery phase. If that assumption is true, ICANN org also has to come up with a way of thinking how we can be compliant with the law.

One thing -- when we sort of came up -- what we then are going to do because we want to have community interaction on that as well, is the idea to present two or three different alternatives.

So let's make -- just make an assumption. And this is just an assumption. It's not exactly what we're going to do. Let's assume, for instance, that we will think that to be able to be compliant you have a two-tier model. Then you also have to think about who should access that from a two-tier model's perspective. So that could be an alternative. And now you can see my fingers in the air saying that's the potential solution.

We can, of course, have a different view on how ICANN org can be compliant as a potential data controller. We have to have the same sort of compliance according to our contracts. They have to be 100%. So, but, anyway, we were thinking of asking the community to have legal input to that as well.

After that, I have to make a decision. And that decision will be: How will I be -- if we are a data controller, how could we be compliant to the law? And that will have a direct then effect on the compliance.

But one of the things with the European law system is, of course, that the DPAs are -- individuals are independent. And until all of this has been cleared out, the only ones who can really make the first assessments about this are the DPAs. They're the ones

who's going to make the final decision. And then if they, for instance, fine any of you, you probably go to court, and this goes, too, for your instances and then it ends up in the European court. And it's not until the European court actually have said finally what they think we will know the answers to all our questions.

Don't shoot the messenger. That's the way it is.

So if there are then countries where there's a strong legal case for someone to say that we need to have an even more restricted WHOIS, we already have a policy how to handle that because the ICANN contracts never supersedes local law. I hope I got this right this time because I actually said it wrong in the previous session.

The -- and, again, I want to stress this. I have said -- I have said numerous times in many ways, we are in this together. ICANN is a large tent with many different opinions, and those opinions should be discussed and it should be happening things in that. A lot of what actually happens within the community is policy work. So to try to summarize it, the assumption right now is that today we have 100% WHOIS. The assumption is that that's going to change. The assumption is also there's zero WHOIS. That cannot happen under the current policies because it's going to

be somewhere in between. We have to work together how to find this balance.

It's not a negotiation. It's about how to be compliant with the law. We are bound by the policies set by the community. We're also bounded by the law. We have to find those mechanisms together.

There is always very easy to jump to conclusion into this. I'm not a lawyer. I have very good lawyers helping me both internally and externally. But if we jump to conclusions too early on the absolute effect, that could actually -- that could have real problems also for everybody who is in this sort of industry who are a data controller. And if you look on the CCs, look on other ones who are in that market, there are different solutions how they solve the problem.

So, then you will ask me: What's the timing of this? The reason why we don't give a timing right now is because we're actually waiting for you to help us with the legal cases. And we're receiving both sides right now, which is excellent. We have legal arguments that there's not a big problem to there's a very big problem. And that's what we're going to phrase into the Hamilton law firm.

But I also know that we cannot wait too long. This is not something I can sort of do until in May/June or something.

I also would add that I also think one of the things that we now see is that if all these assumptions are true, then the perspective that's going to happen is we cannot enforce the policies set by the community by law.

I think that it's important for the community to come back in the discussions in relationship to that.

GDPR may (indiscernible) happen in Europe. I don't take any sides. Today I got a question if I like GDPR or not. That's actually not on the table what I think. I only say this from a legal and compliance issue. That is not something I'm interested in even discussing.

Maybe over a beer sometime.

The importance is to also find a way -- the community has to find a way to have this discussion, for instance, in the RDS working group, to make sure that you can continue the policy work because make it could be seen as a problem that we can't enforce the community's policies because of law.

There are other areas in the world who's discussing the same thing. I think I covered most of it now.

Becky, have I missed -- I ask my legal --

BECKY BURR:

No. I just want to say, just make next steps concrete. The legal advice that is coming from Hamilton is coming iteratively. There's another set of questions that are going to be going up to them, and we want input from all of you on what questions you want answered in that.

Meanwhile, I think, as part of that, ICANN is going to be looking to develop a position based on legal guidance about what it could legally do under the GDPR and then share that with registries and registrars as a sort of baseline "here's what we think," you know, compliance, that if you provided this kind of information to these kinds of users for these purposes, that would have to constitute compliance, acknowledging, however, that every DPA has the prerogative to have a twist or turn. And so that's not a one-size-fits-all model because it may be that what ICANN, based on the legal advice it receives, decides it can do may not be consistent with what a data protection authority relevant to one or the other of you requires. So, we're not talking about a one size fits all.

I think this is -- we're trying to move quickly on this, not so quickly that we blow things up or cause unnecessary or premature data protection authority inquiry about existing systems.

Once -- so there's going to be some kind of an interim compliance-related solution with input from you all. There's going to be -- that cannot usurp the policy development process which will have to go on.

But I think, just to be -- so there are no -- there's no mistake here, nobody's under -- we understand this is going to change. We need to help get out ICANN's legal position here and provide that for some -- for some guidance and hopefully a model that we can use that will provide a measure of stability across the system.

Meanwhile, we're still -- the legal advice is still continuing to come in. So if you have questions that you think ought to be answered in the next Hamilton memo, we need you to get them to us.

Did I say anything wrong?

GORAN MARBY: You're very good at this actually. Are you a lawyer?

GRAEME BUNTON: Thank you, Becky. Thank you, Goran. I think this might be a good segue into Heath.

HEATH DIXON:

Heath Dixon from Amazon registrar. And I actually am a lawyer, and so I really appreciate that you are taking a very slow and methodical approach to this and asking all the possible questions.

And I especially appreciate asking outside counsel so we can blame them for the delay and blame them if anything goes wrong.

The problem is I represent a bunch of engineers back home, and I think that the issue for the contracted parties is that we all need to make our preparations, and we need to start making our changes to our systems now. And in many cases, we actually already are starting to implement those changes to make sure that we can have enough time to test them before they go live in May.

And so I am going to ask about the timing and what we can do to speed up the timing. You mentioned that you've already started considering some potential compliance approaches if you get the guidance that the law does apply to ICANN as a data controller.

Can you start sharing the details of those proposals, even if you're still considering two or three different approaches, so that we can start preparing for what we will need to do to interact with compliance? Yeah. The problem is that we've got

to start making our changes, and we can't make our changes until you make yours.

So if we don't get guidance from ICANN on what you're going to do and what you're going to require from a compliance perspective soon, then you may have time to make sure that ICANN is going to be compliant but the contracted parties won't have time to make sure that we're able to be compliant.

GORAN MARBY:

The easiest thing is to just share with us your legal analysis that you're building your solutions on right now because before you start -- I presume that anything you do right now is based on a legal analysis because you don't want to break the law. And if you can share that legal assumptions with us, that helps a lot because you can actually be the one who provides us with a potential solution based on a legal case.

I'm not a lawyer, so I'm not going to go into this. But you apparently have made a legal analysis that comes up with something that you can look through also, balancing, of course, the policies within ICANN. So you're probably -- you probably know as much as I do right now.

And I do understand the problems you have. And I think we all could agree that we collectively should have started earlier. We

should have started years ago when the discussion -- when the law was actually discussed. We didn't. I wasn't here.

So help us. That's the answer because you apparently have done the legal analysis.

BECKY BURR:

Can I -- can I just ask? I don't think that Goran is asking you to share your privileged and confidential legal analysis with ICANN.

I think that what he is asking for is input on the models that you are looking at as compliant.

What -- there are a range of models that could be compliant. What would help the community most is to get a fix on the models that appear to be things that would meet the legal requirements, could be provided as sort of relatively similar access across the ecosystem, don't require a huge amount -- or require the least amount of re-engineering, could be put in place quickly and the like. So I just want to clarify. And I'm not his lawyer also.

GORAN MARBY:

Thank you very much. Of course, Becky's right.

GRAEME BUNTON:

Heath, did you have a follow-up?

HEATH DIXON:

Sure. So, of course, I can't share our legal advice. And I think it's fair to say that there's a range of things that registrars and registries can be doing to be compliant with the law. And I think that most of us here have already made those decisions and started implementing the systems that we're going to use for compliance.

What we don't know is what ICANN is going to require and what compliance is going to do. So that's the detail that we're asking for, I think. And if I'm wrong, certainly other registries and registrars can speak up.

But what we need to know is: What is ICANN going to do? What is ICANN going to require so that we can make sure that we will be compliant.

If, as you mentioned, it's going to be a two-tier system, we need to know the details of that two-tier system.

GORAN MARBY:

Can I just say that I said specifically that I didn't say that it's going to be a two-tiered system. I said...

HEATH DIXON: I guess that's exactly the point. I don't know what it's going to be. And so that's where we're hoping to get some guidance soon, is on what ICANN is going to require so we can start building to comply with it.

GORAN MARBY: No disagreement.

GRAEME BUNTON: Thank you, Heath.

I see Jeff is the only person I have in the queue. If someone else would like in, raise your hand.

JEFF NEUMAN: Thanks. This is Jeff Neuman. I think Goran may have just answered it.

But just to reinforce the position, Goran, you say you don't control, you are waiting for the community to come to you and help you with solutions. At the end of the day, as the CEO of a staff, of an organization, compliance reports to you. So you do have control on whether you tell your compliance department, You know what? Hold off on a few months after that May date. Let's see what's going on. Do not send them a breach letter.

Let's figure out exactly how this is going. I think that's what registrars are looking for, and registries.

We're trying to act in good faith. We're trying to do what -- to act upon the advice that we're getting from legal counsel. Because this is such a new area, some legal counsel may be wrong. Some may be right. But on the assumption that we're acting in good faith, what you do control is your own staff and your own compliance department.

So what we're looking for is not what ICANN the community wants but it's what you as the CEO of your staff will instruct your compliance department to do, especially if we are acting in good faith.

If we had something in writing from you saying as long as we are acting in good faith and trying to do what we believe is right based upon a legal opinion that we've received, that we will not get a breach letter and a threat to take away our business, I think that will help us through this transition period.

GORAN MARBY: You got better than that. You got a board resolution.

JEFF NEUMAN: Sorry. Which board resolution?

GORAN MARBY: The board decided to delay the implementation of thick WHOIS for 180 days --

JEFF NEUMAN: That's only thick WHOIS for .COM and .NET and .JOBS.

GORAN MARBY: First of all, the law comes in full place May 28th.

JEFF NEUMAN: The law is in place.

GORAN MARBY: Yes, part of the law.

JEFF NEUMAN: Sanctions don't.

GORAN MARBY: I said the full law. And I described the process we're working on.

Can I give you an example? Just because I want to make sure that I don't come up with a quick answer that can actually be problematic for you.

If you come up with a quick answer, doing the balancing about the current policies -- because in your legal analysis, you, of course -- which I don't ask you to share -- you have to look at the policies that we have which are the rule sets and come up with the GDPR.

You have to look at both, of course. And when you come up with that -- and maybe -- maybe you will come up too high on a scale. Maybe our -- and I say "maybe" -- our scale will be lower.

That's the reason why I'm so careful about saying things. Because we don't know that right now.

JEFF NEUMAN: Right. But as long as -- sorry. Jeff Neuman -- we're acting in good faith.

GORAN MARBY: We are.

JEFF NEUMAN: We're trying to do what's good, what's right, then you should be constructing your compliance staff, lay off for a little bit. Let's figure this out. Let's work with that registrar. Let's not get this automated compliance noticing. If you keep doing this, we're

going to take away your registry or registrar. That's all we're asking, I think.

GORAN MARBY: We don't know where the goal posts are. We don't know where we are yet. Because we have a policy which -- we have a policy -- sorry, Becky.

BECKY BURR: I'm sorry. I think you guys are talking past each other a little bit. And I just wanted to intervene and see if I could clear it up.

I think what I'm hearing from Jeff is a request for some clarity from ICANN with respect to enforcement during this interim period between now and the time that ICANN comes out with its model. I don't think that we could possibly offer an answer to that here. But I think that it might be something that might be a reasonable discussion within ICANN.

So I just think it's a question about clarity that what's going to happen between now and May 25th as opposed to what the model is going to look like, any of those things that are not known now.

JEFF NEUMAN: Thanks, Becky. Just to add to that, it's now through the May 25th, plus a reasonable period of time for us to implement that solution. But, yeah, basically.

GRAEME BUNTON: Thank you, Jeff.

Sebastien.

SEBASTIEN DUCOS: Thank you. Just for clarity, in the rest of Europe, May 2018 is the deadline. In Holland, it's not. We have two colleagues, partners, TLDs there who have been kind enough to blow the whistle on this in a way that we finally heard it after years of ignoring this problem whose neck is on the chopping board. And these people are receiving no later than a month ago compliances notices about getting back into the fold of the ICANN rules.

I understand in the meantime this has been discussed and the foot has been lifted. But it's exactly what we're talking about.

GORAN MARBY: Yeah. The -- yeah, the -- and I'm guessing when we get -- there is a policy set how to work with -- there is a procedure how to set if you want to prove that you're not compliant with the law.

Hang on.

I -- you may agree or disagree with that.

I can't disagree with the procedure that is set, because that is set by someone else than me. And I know that we actually asked that question back to the GNSO, as you know. But it is a structure that is set. And we are following that.

I -- I'm -- I said many times I'm grateful for the answer they received from the DPA, which is very, very useful. Now we have to work through, which we, of course, we're doing with the local law to understand what it actually means because it is actually Dutch law. And it is also in accordance with today's law.

And we have to analyze that. Because, if their solution to the problem is wrong, if their solution -- their proposed solution to the problem is wrong, that could have ramifications also for them.

So in a way -- I'm trying to be cautious also for you --

Not only for myself, but also for you -- to make sure that we don't jump on something because we have a chance to get it right. We have one way to get it right but many ways to get it wrong. I'm very understanding of the time pressure. I'm very understanding of the need for developing things.

You know, if we are a data controller, we are late on the bandwagon as well. That's why I stood up in Madrid and I said I

believe that we are in this together. But I have to work through this.

And also I want to add some other thing. ICANN is a large tent with many different opinions.

And, as the CEO of this, I also have to take into account to seek legal advice from people who don't agree with your assumption. This is something I have to do.

But, in the end, which I have said before, I'm going to make a decision about how we are going to do the compliance both for ourselves but also then automatically for the contracted parties. And I think that's a good reassurance is that whatever we think we will think for you as well. So, if -- that risk we will take, sort of, is something I have to take into account as well. There has to be symmetry in that.

I would be very happy if I can now say to you exactly when things are going to happen in time. But also your colleagues have asked me to be able to provide some additional questions for their own sake.

SEBASTIEN DUCOS: If I may, in the interim is it reasonable to ask for the foot to be lifted on compliance on this very, very topic.

GORAN MARBY: I actually don't have the answer how to do that within the given policies. But I will come back to an answer to it. Is that okay?
Thank you.

GRAEME BUNTON: Thank you both for that. Michele.

MICHELE NEYLON: Thank you. Michele Neylon, for the record. I feel sorry for you, Goran. You came into this and a lot of the history had already been made. So talking to you about what happened 15, 17 years ago isn't particularly productive. The concerns for a lot of us is GDPR is coming or is going to be enforced. It's much, much broader than the simply the ICANN part.

I mean, we have to make sure that we are able to comply with GDPR, but we also have to look at other aspects of our business. In fact, pretty much every single aspect of our businesses.

And that's something that people definitely need to understand. Earlier today in this room we heard Thomas Rickert give a pretty good and scary presentation that fairly, I think, woke up a few people about some of the implications of that.

But, going back to what you're talking about now, while it's helpful, there is a paranoia and a fear that we could end up in a very messy situation where registrars and registries take actions unilaterally, or maybe some of us kind of work together while we're doing that, in order to comply as best we can with what we feel is a compliance -- you know, understanding and model of GDPR. But you do control the compliance function.

Now, how exactly you can handle that internally is something maybe you need to look into further. But it is something that you guys do control.

The conflicts with local law thing has been -- is something that is going to be discussed at the GNSO. I've no idea where that's going to end up. It's -- I think we have a table for a discussion piece at our meeting tomorrow, and then we'll probably continue on beyond that.

On the policy side itself, though, we -- this is something that's going to take a lot longer.

The RDS PDP of which I'm one of the co-chairs is not moving along at a particularly fast pace. And I would hate to even make an estimation as to when we would have a new policy from that.

So, if you're relying on that to solve the problem, which I don't think you are, you'd be waiting for another couple of years.

GORAN MARBY: Thank you. For the record, I think I have an excellent job, actually. I think I have the best job in the world.

MICHELE NEYLON: I never said that you hated your job, Goran. I was giving you my condolences with the situation you've been landed with in with respect to WHOIS.

GORAN MARBY: For me, it's not a policy decision. It is contractual compliance and a law.

How to -- how ICANN -- if we are a data controller, how we can be compliant. Because I can't take the risk of being non-compliant. On the other hand, for me the policies are always important because it sets from you with the community. We have to close that gap with the GDPR. We're doing this as fast as we can. We started too late. We all agree. I think some of you started too late as well. It has great ramifications. It has an affect on the policies set for the community. That has been going on. We have to make this right.

And the -- I would not ask you to trust me. That's not what I'm asking for. But I'm asking you for at least work together with me to do this.

I've said repeatedly that we're in this ship together. And that actually means something for me.

But also remember, which I think is important, we are part of an ecosystem. And that ecosystem is the multistakeholder model. And this multistakeholder model seems to rise now, which it often does when there's a time limit to it, to actually provide information. Over this last couple days I received several very different very important legal analysis. We're going to post them all. I think we posted some of them.

I'm just right now sitting here receiving an email from a DPA. So, we are getting that data so we can have this balance between the things that are set by the community through policies and also the GDPR.

We're not going to do this for a long time. We're going to do this as fast as we can. But I can't say when. But it's not going to be in April next year.

GRAEME BUNTON:

Thank you. This is Graeme, for the transcript.

I'll add just a piece on that. I've heard in the conversation that you're looking for more information from contracted parties on how we're approaching this problem.

And I think for many of us who have started implementation or are building or are close to completing those plans, I don't think any of us are quite in the place where we are comfortable sharing those yet. I think the space is still too unsure. Those analyses are incomplete.

There is probably some willingness to share those things as they get a little bit fully baked. But we need to be very careful about how we do that. So there's not a blanket, no, there, we won't do that. It's that we still need more time, going back to Sebastien's point, to keep baking these things before they can come back to ICANN and the Board so that they can input your processes, too.

GORAN MARBY:

Again, you can actually use us. Because we, of course, do everything 100% transparent.

Funny enough, we had a -- my legal counsel had a meeting last week where after -- we just came out with -- Hamilton came out with their paper. They actually said to us during this meeting, "How can you publish something like this that actually could mean something for you which is not positive?"

We said, "That's what we do at ICANN. We publish things even if it could be seen as negative for ourselves."

And so use that. Use -- you can use us to ask questions that may be related to some of the things you are doing. We'll be happy to provide that help. Because every question helps us have a better understanding how to work.

And also, coming back to what I originally started about, which is the user cases, the user cases -- whatever -- and you do this, of course. Because in the law you have to be able to tell why. That means that you have also done user cases because that's an important part of legal advice.

And anything you can share we will be very grateful for. I'm not asking for privileged information. The bits and pieces you think you can share, that can help us all provide better data. Thank you.

GRAEME BUNTON:

Thank you, Goran.

Do we have any other input from contracted parties we want to bring forward here to the Board around GDPR?

Owen, please.

OWEN DeLONG:

Owen DeLong, Akamai, one thing that I don't think has been covered here too well is that, in addition to WHOIS, there are a lot of other areas where GDPR affected data is collected, transferred, moved around. These include things like the escrow company that we're required to transfer data to -- currently, Iron Mountain -- the provisions for how data gets moved around if a registry or registrar ceases operations. And that has to be provided elsewhere to third parties. And the data that's submitted to ICANN. A lot of the data that's not made public is still subject to GDPR in a number of ways. And so we need to not lose sight of the fact that GDPR affects not just the data that's published publicly but also how data is transferred between parties and what data we collect even to begin with.

GORAN MARBY:

The other project we're having internally besides this is that we are going through the things we do, applications we're running, systems we're running, and setups we're running to make sure that we, as an organization, is also compliant with that. And we have several systems we have to look into.

I don't know why -- travel funding database, for instance, is one of them.

And that's why we appointed just a couple months ago a data protection officer as well whose responsibility is what we're doing internally.

KEITH DRAZEK:

Thank you, Graeme.

Keith Drazek, VeriSign, Registry Stakeholder Group.

Just want to bring this back to next steps and actions we may be able to take together.

Just so everybody knows, the registries and the registrars have a joint subgroup, contracted party house subgroup looking at this issue of GDPR and discussing ways that we can actually work together to try to come up with a proposal that we would be able to share with ICANN staff and the ICANN board.

And so I think you have a commitment from us to continue to do that, to continue to engage in that way.

We look forward to seeing what proposals you're coming up with. You know, I think, Goran, you've mentioned that you may have a list of two or three possible solutions that could be considered. So let me --

GORAN MARBY:

For the record, I didn't say that. I said potentially. Maybe.

KEITH DRAZEK: Potentially, that's fine. Potentially.

GORAN MARBY: Channeling my inner J.J.

KEITH DRAZEK: So what I'm suggesting is we look forward to your potential solutions, however many there may be; and we're working on coming up with ours. And what I was trying to suggest is that I look forward to all of us working together to compare notes, to have a working group put together, informal as it may be, to actually get looking at the substance of the solution.

Whether that's operational, you know, possible issues around waivers, you know, all of the different components that might be needed for us as mutual contracted parties -- registries, registrars, and ICANN -- to find a path forward in the nearest future. Because, if we don't do that, it's going to be one-off solutions all over the place. And I don't think anybody wants that. Thank you.

GORAN MARBY: Thank you.

We are always positive to working together in a transparent and open way.

One thing that -- one thing I think is important in this one is that -- this is a complex thing. Because you probably have other problems with GDPR and the WHOIS or opportunities, however, you want to look at them.

And one of the finer points in this one is that it's -- I've said this numerous times that, in the end, all the -- anyone that's affected by that law has to have -- they have their own responsibility to come up with something. And this is one of the things that is really, really problematic sometimes for me to sort of demonstrate is that, regardless what we say or what we say collectively, all the companies in this industry has to have an obligation to see what they think is the right method for them.

Then we have to bring that back to the compliance with us.

And we have to work with -- we will have one solution in the end where we think it's going to be compliant, wherever we are on this one.

But that's -- we all -- that's why I said when I went through this sort of scheme. If you can produce some sort of legal case that your solution, otherwise we would break international law, we

have to have a system to look into that. And that was my discussion with Michele, I presume.

It is -- it is something that we are now learning. But one more thing that I really want to say about this is that this is the first time -- my understanding, my history is 18 months. But this is the first time we really see a law that has a direct effect on our abilities to make policies.

And I think that this discussion shows that we have to find in the future not a mechanics for having those discussions and how we can deal with the legislative proposals. Because, even if this is the first time in a very tough trial, we will see more of those. Not only GDPR discussions around the world, but there are many different legislative discussions that can have an effect on the domain name world and our policies. And I hope and I know we're going to find a good way out of this. But we also have to continue to work out and to have those discussions maybe a little bit earlier next time.

GRAEME BUNTON:

Thank you, Goran.

Anyone else from around the table, from the audience? All right. Does the board have anything for us, other than those -- those two topics that they would care to hear about? Okay. Well, I

think before we wrap up, something that the contracted party house would very much like to do is thank Steve Crocker for his years of service as chair of the board. We really appreciate all of that, and thank you very much.

[Applause]

Well, ladies and gentlemen, thank you very much for coming. I give you the gift, the holy ICANN gift, of half an hour.

[Laughter]

Thank you very much for coming. Have a lovely afternoon.

[END OF TRANSCRIPTION]