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BARCELONA – Joint Meeting ICANN Board and CSG  
Tuesday, October 23, 2018 – 13:30 to 15:00 CEST  
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MATTHEW SHEARS: Good afternoon, everyone. If you could take your seats, please. We need to get started. We've got a packed hour and a half. Thank you.

BRIAN WINTERFELDT: If I could ask folks from the CSG who are going to be asking questions to come take your seat up at the table here with us so we can get started in a moment.

MATTHEW SHEARS: Good afternoon, everybody. This is the meeting of the board with the CSG.

We have an extensive range of questions we're going to try to get through this afternoon.

The Board posed two questions to the community, one of which was the 2019 priorities. The other one was the question about how should ICANN's multistakeholder model evolve.

We had a good discussion of the second question during the GNSO council meeting over the weekend. So what we're going to do is we're going to move that question to the end of the session. And, if we manage to get through all the questions for the board, then we'll come back to that and see if there are any further contributions to it.

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We're going to have to hold off on the 2019 priorities and move straight into the questions for the board. But I've been told that we will quickly deduce what the 2019 priorities for the CSG are as we go through the session.

With that, let me turn it over to you, Brian.

BRIAN WINTERFELDT:

Thank you so much. I want to thank the Board for having us here today. My name is Brian Winterfeldt. And I'm IPC president. I'm joined by my colleagues from the business constituency and the Internet service providers and connection providers constituency.

Thank you as always for providing us with this time to dialogue with you on our priorities and concerns. We very much look forward to this time with you every ICANN meeting.

We've decided to split the session into two parts and spend the first 45 minutes totally dedicated to everyone's favorite topic, GDPR, with questions rotating by constituency in a round robin.

The second half of our time together will also feature questions rotating in a round robin, but the topics will be varied and open, although you should know there will definitely be more discussion on GDPR WHOIS issues. Each question and subsequent answers discussion will be timed. And our goal is to limit them to 45 minutes. So we want to make sure that each constituency has time to ask questions of the board and that we hopefully remain respectful of your time and don't run over.

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With that, I would like to open the session dedicated to GDPR by recognizing my colleagues from the ISPCP. Again, a reminder for everyone to please note your name and your constituency for the record before you ask your question.

WOLF-ULRICH KNOBEN: Thanks, Brian. My name is Wolf-Ulrich Knob, and I'm the chair of the ISPCP constituency. As Brian said, we have provided questions in advance. But, following recent developments and discussions we had on the matter, also I have a little bit to rephrase my question on the ISPCP.

But it's in -- it's mainly -- it's focused on the question of the -- of ICANN acting and being a data controller.

So the question is: ICANN org acknowledged in 2016 that it has a role as a data controller, but it has not firmly outlined what it believes that specific legal control is under GDPR.

Most legal studies have come to the conclusion that ICANN org, along with registries and registrars, are joint controllers for WHOIS. ICANN org is currently examining whether it can be the sole controller only for purposes of unified access.

And our constituency's interested to learn more about this idea and about the Board's new willingness to explore taking on risk. However, we also want to know more about how you see that working. How would the Board assess ICANN org becoming a sole controller just for

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the purpose of unified access and remove the contracted parties from liability entirely? That's the question. Thank you.

MATTHEW SHEARS: Thanks very much. Becky.

BECKY BURR: I want to first start out by saying ICANN has acknowledged a role as a joint controller that ICANN, in fact, entered into joint controller agreements as part of the temp spec. But ICANN does not currently process data for WHOIS purposes. One of the questions is: in order to provide a more consistent user experience, rather than having every contracted party making an independent risk assessment with respect to GDPR, which is principles-based and, therefore, not prescriptive, is whether it's possible to effectively shift liability to ICANN as the sole controller.

We don't know the answer to that question. And that is a discussion that ICANN has been having with the European data protection authorities.

It's still up to the community to come up with policy governing that, whether uniform -- unified access is desirable, the circumstances under which stakeholders would have access, third party would have access to that data, for which purposes with, what safeguards and all of that. All of that is policy dependent. And we are looking to the EPDP that is underway to establish that.

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But, in the meanwhile, we think that it is worthwhile having ICANN explore whether you actually could construct a situation where, essentially, ICANN is the controller for purposes of this unified access portal. And the registries and registrars are, essentially, processors on behalf of ICANN for that purpose.

Obviously, registries and registrars would continue to be data controllers with respect to data for their own individual uses. And, obviously, ICANN would continue to be a controller with respect to the use and data for compliance and all of those other things. But the Board has heard from ICANN about this exploration. We've also heard from various parts of the community that this is an interesting concept and may be a way to make the user experience more predictable and consistent. And -- but, of course, just goes without saying, all of this has to be consistent with GDPR. And all of it has to be subject to community developed policy.

WOLF-ULRICH KNOBEN: Thank you, Becky. Can I have just a short follow-up question on that. Thank you very much. Very helpful. From my understanding, it means where the community comes in -- and this poses just with regard to the part of the UAM, the unified access model. So that's what I understood from you?

BECKY BURR: So the EPDP is looking right now in great detail about what are the purposes for which this data can be used? And then it has to get to --

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and it's on the agenda -- the circumstances under which access is granted, to whom for what purpose, right? So you have to take the purpose. And you say, okay, here's a purpose. Whose purpose is it? That's part of the discussion. What are the circumstances under which they get access? All of that is part of the -- it's part of the EPDP right now. The exploration that ICANN is engaged in is much more a sort of can we get some legal clarity on whether or not this is possible and, if it's possible, what conditions need to be in place to make that work? And then, technically, how would that work?

So there could be a credentialing mechanism. How does that work? How do you receive a request? How do you process the request? How you'd return the information.

BRIAN WINTERFELDT: Thank you so much. I'd just like to turn it over to --

MATTHEW SHEARS: Sorry, Brian. I just need to be apologize because we have some discrepancies between the slides on the screen and the questions that are being asked. So just please bear with us.

WOLF-ULRICH KNOBEN: That's for the second part of the question. Thank you.

BRIAN WINTERFELDT: Great. Thank you, Matthew.

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I'd like to turn it over to my colleagues in the BC for the next question on GDPR WHOIS.

Thank you, Brian. Steve DelBianco. The question will be for the board and org, particularly J.J. and general counsel, is that what would need to be in the package that's presented to the Data Protection Board to maximize the potential that it could find that ICANN's vision of being sole controller in a unified access model could proceed?

The reason I ask is that a lot of the work we have to do on defining the code of conduct, accreditation, and audits, that is a lot of community work.

But the gating question is can we come up with a structure that would shift the liability just for unified access to ICANN as sole controller? So I've been asking questions today of EC members and those that have experience with the data protection authorities. And they don't think it's possible to say to them, hey, how can we do this? They think we have to say here's what we're thinking. Would it work?

So that package that has to go in has to have enough specificity, right, to clarify the way in which we would anticipate accrediting individuals and auditing their use, the way that we would use RDAP as the tool, how it would be enforced.

So I'm asking what needs to be in the package that you present? And how can we participate in this new entity, the technical study group, to feed ideas into that package? Because I think that the gating question

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of can it work is so important to effect the rest of the community's work as well as what the EPDP actually has to do in the meantime.

MATTHEW SHEARS: John, would you like to comment on this?

JOHN JEFFREY: I think it's a good question. We're going to have to get back to you with a formal answer to that. Because I think, as you well spot, there's a lot of complications to getting that correct and making sure that we provide a fulsome packet. So that will be information that we'll share about what we'll be providing and what would be required from the community as inputs to help us.

STEVE DELBIANCO: One small follow-up would be that I'm hearing from Commission members, European Commission members that the original hypothetical package is one that could include some items that are assumptions, like assuming that we have codes of conduct that are approved for users with the appropriate audit -- assuming that, can we assume that sole controller role under this scenario?

So the idea is that some of the scenario has to be fleshed out, but not all of it does.

Get to the key gating question first, and we'd like to help to put that into the technical study group.



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Did you have an answer on whether the technical study group -- how it will operate and how we might participate?

JOHN JEFFREY:

I'm sorry. I was trying to find out where to sit when you were asking the question, so I might have missed part of it. The -- so what was the question?

STEVE DELBIANCO:

Goran mentioned a natural inclination to say we need to put the best minds, both for technical and legal, to come up with this package that's presented for the sole controller opportunity. And that's sole controller only for the purposes of unified access, so we're clear.

So I'm asking what is this notion of a technical study group? Do you have any details that would allow us to be helpful?

JOHN JEFFREY:

Yes. I don't personally. We can come back and answer that when we check.

You did mention you're having conversations with European Commission members. Any information that you've gathered like that that would be useful to us, we'd ask you to share.

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STEVE DELBIANCO: So the first I just shared now was that we don't have to have all the details built in, and another is to be careful not to store the responses -  
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JOHN JEFFREY: Steve, I'm not going to be able to take these comments on the fly and fit it into our entire plan, as you can appreciate. There's more than me working on this. It's a long dialogue. We're happy to --

STEVE DELBIANCO: Send it to you, then?

JOHN JEFFREY: Please send it to the org. You can send it to Goran. You can send it to me. We'll make sure to share it with board members and others involved in the process.

MATTHEW SHEARS: Thanks, John.

JOHN JEFFREY: I'll just stay close.

STEVE DELBIANCO: I have more. But, Brian, I understand we're just going to do multiple rounds on the first 45, so I'll wait my turn on the next one.

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BRIAN WINTERFELDT: That's right. Okay. Great. Again Brian Winterfeldt for the IPC. I'm going to ask our first question.

In his response to the BC IPC letter raised steps toward accreditation and access model, Goran stated that the Board does not intend to issue another temporary specification nor to revisit any provision in the temporary specification. It will again consider whether to reaffirm the temporary specification in November next.

The urgency for an access solution, including perhaps an ICANN centralized access solution that we've already talked about today, remains critical for the BC and the IPC members and others in the community.

As we stated in yesterday's public forum, we welcome exploration of all options and seek to collaborate on a solution with the community.

We're wondering if the Board is able to direct staff to clarify the temporary specification and provide guidance on specific implementation with respect to access as we wait for the long-term solution from the EPDP and other community work, specifically regarding the form of requests and how they should be filled for compliance, consumer protection, security, and LEA interests.

CHRIS DISSPAIN: Thank you. I lost count of how many questions actually were in there.

BRIAN WINTERFELDT: A lot of statements.

CHRIS DISSPAIN:

So I'll just take a stab at a sort of general reply and see where we get to.

So, yes, we have to renew the temp spec every 90 days. No, it can't run any longer than 12 months.

The question as to whether you could amend it to add -- to add sort of implementation stuff to it is an interesting question, and I -- my gut feeling, as, A, a lawyer, and, B, someone who knows the bylaws pretty well is that it would be challenging, but that doesn't mean it's not something that we could take offline and have a look at and come back to you, but I suspect that it's such a specific thing and it's very clearly delineated in the bylaws, that it might be -- it would simply be deemed to be effectively changing the temp spec, which we can't do.

So that's my rough stab at it. Mike? And then, I think, Becky wanted to --

MIKE SILBER:

We'll need to speak to J.J. and get some additional guidance, but again, the temp spec is there as a temporary measure. I really think that we need to stop trying now to guild the lily when it has a time limit.

So I would think that the better approach is not to direct staff to do anything but for the IPC to engage with the contracted parties to see if they can agree some reasonable terms of engagement as to how queries should be addressed. Because otherwise staff are being put in the middle of a discussion which is actually better dealt with between

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yourselves and the contracted parties. And I think it's unfair to put staff in the middle and expect them to come up with a better solution than you could do by actually just engaging directly.

BRIAN WINTERFELDT: Great. Thank you very much.

We are back to the ISPCPs.

WOLF-ULRICH KNOBEN: Thank you. There is in this one not an additional specific question but coming back -- Wolf-Ulrich Knob. I'm speaking on behalf of the ISPCP. I am coming back to your explanation, Becky. And it came to my mind later on that you may have mentioned something about similar that ICANN may have already had agreements, joint controller agreements with some parties or is evaluating these things. I'm not sure about that. I wanted to ask you what is behind that.

Thank you.

JOHN JEFFREY: I'll clarify, if that's okay. So the Appendix Cs were -- during the discussions about the temporary spec were discussed as to whether those were joint controller agreements or not. I think some contracted parties were taking the theory that they were. I think others don't believe that that can be created or understood as a joint controller agreement. So I think that's what you were referring to.

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BECKY BURR: There is -- There is no question that ICANN is a controller for some purposes. The question is whether it could become the controller for purposes of this UAM.

JOHN JEFFREY: And more than that, I think the important concept is not the legal-technical term of whether we're a controller or joint controller or sole controller. The issue that we're trying to change the dialogue to is that ICANN would like to be held responsible, if that's the right term, for causing WHOIS to be collected and published where it's consistent with ICANN's policies. And I think that's how we're trying to move the dialogue; that it's not about a "gotcha" and whether we're listing ourselves as a specific type of controller. We would like to make sure that it's understood that, if it's possible to, reduce the contracted parties' responsibility so they're more assured in collecting and presenting the data that is consistent with the policy.

Where we believe that we are acting within the law and where the policy is within the law, we would like the contracted parties to believe that, too, and feel confident in being able to collect and produce that information. Where there's questions and it's outside of the law, we understand that the contracted parties won't do that, and that serves no one's interest.

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BRIAN WINTERFELDT: Great. I'd like to turn it over to Steve DelBianco and the business constituency.

STEVE DELBIANCO: Thanks, Brian. This is a follow-up to the notion of the temporary spec and its next renewal. And, Mike, let's suppose, to take your challenge, that the EPDP continues to work and we continue to try to get a gating question on unified access, but at the same time the most -- one of the most troubling aspects of the temp spec is that reasonable access has no parameters around it. And I'm not speaking of required disclosure. I'm speaking of a modest set of parameters, such as what is the format of a request that should go in in terms of standardization. That doesn't mean it's unified. It just means it's got a standard form.

A second would be the number of days or hours one would expect some kind of a response. Not a disclosure of the data necessarily, but some kind of a response. And if the response is no, we're not going to disclose, it would be wonderful to have specificity of the reason.

So I've just listed three really modest things that could clarify reasonable access. A standardized format to ask the question, an expectation of time to get a response, and for the response, if it doesn't include the data, to include a reason why it's not there.

If we were to come to agreement with the contract parties, the SSAC, the GAC, and the ALAC on clarifications for that reasonable access -- and again, I'm being aspirational like we are with the unified access -- if we had unanimity across that breadth of the community, could we ask for

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clarification in the temp spec as soon as possible for that? Would that satisfy, Mike, the comment you made earlier?

Thank you.

MIKE SILBER:

Again, on this, J.J. has a different view. My view is that can't be in the temp spec. The temp spec is very specifically circumscribed in terms of the bylaws as well as the contract, and we can't create additional contractual terms outside of the contract or the bylaws.

So to me it would be a voluntary set of guidelines. John and his team may be more creative in finding a way to hold people to it. But I don't see, as I understand the temp spec and the way it's structured, that we can do so.

I think, as you're saying, I think your requests are reasonable. I certainly think that what you're asking for is understandable, and I would expect the contracted parties would be willing to engage. I think where the rubber may hit the road is if somebody thinks that a reasonable time is ten minutes and somebody else thinks a reasonable time is ten days, that's where the dispute may lie. But I think if you can resolve those issues, I shouldn't see a problem. I'm just not sure how we would be able to insert that into the temp spec.

STEVE DELBIANCO:

Just for the purpose of answering, John, just assume that the contract parties, SSAC, business community, GAC and ALAC all agreed of two



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days to get some kind of an answer with specificity. Just assume for a minute. If we had that kind of agreement, could the temp spec be modified to clarify what reasonable access is in a way that would be enforceable?

Thank you.

JOHN JEFFREY:

So if -- if your hypothetical scenario, which you know how lawyers are very fond of hypothetical scenarios, if your hypothetical scenario occurred and you had the whole community agreeing, I don't know if you excluded someone in your list of acronyms, but if we had the whole community agreeing, then I think we could obviously find some way to implement that. We would figure it out; right? Whether it's a temp spec or an agreement among the parties, whatever, if that's reasonable. If we could show that's within the law and everybody is abiding by it and we can enforce on it, then maybe the temp spec is the right thing for a short period of time.

But the idea is not to change the temp spec or to adjust the temp spec. The idea, as we understand it right now, is to get into a policy framework. So if we've got agreement like that, maybe we should be moving it through the EPDP and getting it done.

BRIAN WINTERFELDT:

Great. Thank you so much.

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Brian Winterfeldt again for the IPC. The next question we had, we were wondering what, if any, role the Board has with regard to ICANN senior staff's discussions with the European authorities to establish a legal justification for unified access.

CHERINE CHALABY:

So the Board is following this EPDP and the legal staff work at two levels; right? There's the detail level where we have board liaisons involved. We have board members like Becky who is very knowledgeable about the subject and other board members. So they keep the Board all the time abreast of what ICANN org is doing at the detail level.

On the other hand, we also operate at the aggregate level. And the most important thing that the Board is doing there is ensuring that there is support from the community; right? To seek that guidance from the Data Protection Authorities. And that is Goran has the support of the community in so doing. So that's what we're doing. At one level, we're at the detail, understanding what's going on, and at the higher level is making sure that there is support for this work for seeking that guidance.

Did that answer your question?

BRIAN WINTERFELDT:

Yes.

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CHERINE CHALABY: Thank you.

BRIAN WINTERFELDT: Yes, thank you.

All right. We are back to the ISPCPs on this question. Are you out of questions?

WOLF-ULRICH KNOBEN: Not more on this one.

BRIAN WINTERFELDT: Steve.

STEVE DELBIANCO: Steve DelBianco with the business constituency. So with respect to presenting something that the data protection board can react to, I understand that it's all about how one asks and the package that's presented. So asking for guidance is probably not going to work in an open-ended fashion, but instead a hypothetical, theoretical package, best-case-scenario package would probably be necessary to present to get an answer. And then a challenge for us is to deliver policy that meets that package, policy surrounding the accreditation models, auditing et cetera, all of which would take a very long time to do. But I'm trying to emphasize the need for this to be seen as a gating function where getting a yes or a no early on the sole controller legal responsibility causes so many other dominoes to fall that we're

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encouraging that to happen quickly. That doesn't mean that we're implementing and adopting policies. It's putting a hypothetical scenario in front of the Board with enough specificity to get the yes or no on sole controller, and then coming back to say, hey, community, let's figure how to deliver.

So is the Board comfortable with that sort of a proposal? Because it does call for expedited hypothetical presentation in order to obtain guidance but it doesn't call for expedited delivery of all the policies behind it.

CHRIS DISSPAIN:

So, Steve, I get it. I understand completely. And it's great that we're having this session and you're putting ideas on the table and -- and all of that. My only immediate response to what you just said is, yes, you go with a hypothetical. If every -- I mean, everyone would have had to have agreed that that hypothetical is okay. Because if you get a response back that says yes, then whether you like it or not, there will be assumptions made that clearly that is what is going to happen.

So you can't put a hypothetical out that is then going to be the subject of debate afterwards simply because it becomes meaningless. That's why what we have been asking for, rather than using a hypothetical, is guidance. Now, I know it hasn't necessarily been forthcoming, you know, I can see a sort of thing where you could have a series of hypotheticals, but then you're kind of defeating the whole purpose because you want speed and you want it done immediately, and that's

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quite challenging. Can't change about. That doesn't mean we haven't listened. We are listening, and we hear what you're saying.

STEVE DELBIANCO:

So as one follow-up, not being a lawyer, I just read enough of the GDPR to see that there is some guidance with regard to code of conduct, which we would obviously use for accreditation. There is some guidance about being a sole controller and the other party being a processor. So they have those, including examples from the Commission that have been thrown out there for us to look at.

What we don't have is examples that apply to the ICANN scenario. That's what makes it different and difficult.

So you've raised a difficult question, is that if the community had to come to consensus on how just to put together a straw man, I don't know how we can do that expeditiously such that we get a yes/no question.

Now, you talked about managing expectations. That if we got a yes/no to a hypothetical, would it presuppose that we are going to deliver it? Because the answer to that is no, it shouldn't presuppose because if we can't come to consensus on putting meat on the bones of the hypothetical, then we'll never get there. We'll have tried, but we'll have at least put our effort behind something that has a chance that, if we delivered it, that they would say yes.

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So I would ask you to potentially take the risk of managing the communities' expectations, because we need to get that gating question answered as soon as possible.

Thank you.

BRIAN WINTERFELDT: Becky, you wanted to follow up?

BECKY BURR: So just to repeat Chris's, we totally hear you, and ICANN is obviously pursuing this with the goal of figuring out sooner rather than later whether it's workable or not. But it's not going to go with all of the policies intact. That's not going to -- ICANN doesn't have the responsibility. That's the communities's work. It's entirely possible, though, to have a conversation in which you say here's a mechanism. Assuming that all of the purposes and all of that were consistent with GDPR, would this have the effect?

I think those -- ICANN understands that's what its job is, that's what it's doing.

STEVE DELBIANCO: Can ICANN do that right now based on what you've heard this week?

JOHN JEFFREY: We're still looking at T obviously there's a lot of working parts to this and we're going to study it. And as I said when I was hanging over the

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edge of the table there, I think it's something we're going to take into consideration. We're taking your input. We're listening to the community, and we're going to do what we can to move it forward.

But there's an important EPDP process going on, which is very much relevant to this and very critical.

CHRIS DISSPAIN:

That's exactly what I was going to say. Steve, we've got to be really careful that what we do doesn't blow up the EPDP, doesn't create more stress and more problems, more issues within -- they've got enough work to do. That's all.

STEVE DELBIANCO:

I know that completely. And I'm on the EPDP as the alternate for the BC. No matter what question, no matter whether the Commission gave us a blessing for unified access model, we still need the EPDP to define how registries and registrars collect and process the data. It's completely necessary no matter what.

So it can't blow it up; right? You understand it has to be in parallel. But you're worried about the stresses it would create, and I think I take your point.

JOHN JEFFREY:

I think it's important for us to continue to say that even though it's obvious because we don't want people in the community to take from this session that we're having a conversation with you which we're

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going to do something unique and different that then creates conspiracies and other theories about our collaboration as opposed to actually setting out that there's a policy process under way. This is part of how to move these pieces forward, but we understand that at the end of the day, the PDP is going to be how ICANN sets its policy.

BRIAN WINTERFELDT:

Great. Thank you.

We're going to go to the last question on GDPR WHOIS. Again, Brian Winterfeldt for the IPC. What role does the Board see for the community and discussions about technical and legislative political solutions for unified access model? What role does legal advice from the community possibly play? And what does the Board think the best way to tackle the problem as identified by ICANN of the data controller is?

BECKY BURR:

So I just -- you know, this is something that Goran described yesterday and described again this morning as something that the contracted parties' letter came out. He's just thought about it. I don't think anybody on the Board knows precisely what the remit of the group would be. And I think we're all waiting -- we're all -- you know, we're all in discovery mode. But I think, you know, the notion is that he has said the intention is that it's a highly technical group.



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STEVE DeBIANCO: Does "technical" mean legally technical and engineering technical or only engineering?

BECKY BURR: Well, I don't know, we would have to ask Goran that. I don't think that -- I was not considering it to be legally technical.

BRIAN WINTERFELDT: Great, thank you so much. So we're going to shift gears away from GDPR WHOIS to our next round of questions. And I think we can go ahead --

UNKNOWN SPEAKER: (off microphone).

BRIAN WINTERFELDT: Unfortunately, the questions that are being shown on the screen -- I have to apologize -- were the prior iterations. And we went through and tried to consolidate and have less questions, and it doesn't appear that they made their way to the screen. So I apologize that they're not linking up. I know it's probably confusing.

Maybe we just don't want to show the questions that you all have because I don't think they are reflective of all the questions we're going to be to asking. Again, we tried to eliminate a lot of the questions.

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MATTHEW SHEARS: I think it's probably -- thank you.

BRIAN WINTERFELDT: Apologize for that. We will be -- shall do better in Kobe.

I would like to go ahead and turn it to Wolf-Ulrich to start with the first question from the ISPCPs on the next round.

WOLF-ULRICH KNOBEN: I'm Wolf-Ulrich Knobén for the ISPCP. Because of limited space, I shall be the only ISPCP entertainer here. The others have more space here. But the questions come from my colleagues, and they may chime in later on here from the floor.

These are actually -- both questions which have been displayed for the ISPCPs -- or if they could be displayed again, it would be helpful for --

MATTHEW SHEARS: Apologies. Could we put back the ISPCP questions.

WOLF-ULRICH KNOBEN: This is related to the -- in recent ICANN meetings, it has been brought to our attention that the projected growth in the sale of generic domain names has not materialized and that this negatively impacts ICANN budget resources.

What plans does ICANN have to address this shortfall? One possible strategy would be to produce relevant informational materials that

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highlight the option for Internet users to establish a "professional" online identity by means of a domain name. In brackets: It bears no connotation to a social network in the display bar or on a printed business card. This would not be a promoting campaign, just a well-crafted reminder of domain name benefits and availability.

Is that something you could comment on? Thank you. We would be grateful. Thank you.

MATTHEW SHEARS:

I could ask Xavier to comment on that, please. I think we will need a mic up front.

XAVIER CALVEZ:

Thank you. Thank you, Wolf-Ulrich, for the question. I will comment first on the point of budget resources. As you have indicated, we have largely seen altogether that ICANN's funding is stabilizing to a level of approximately 135 to \$140 million. And as a result, of course, our management of expenses is logically and necessarily impacted by that.

The shortfall I think you're referring to is against expectations more than against history. What I mean by that is ICANN's funding has never been higher. There's not a decrease of ICANN's funding. There is a funding that is coming lower than what we expected it for FY18, and we managed to offset that shortfall with more than offsetting a set of cost reductions, which have been carried out by the organization. And Goran mentioned that this morning in a different group, nearly 10% of lower expenses than budget at the end of the day.

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Regarding possible approaches to, if I understand correctly, boost ICANN's funding by boosting the domain name market, that's not in ICANN's role to do that, I believe. But others may want to jump in.

What we do is obviously trying to understand better the impact of the new gTLDs on the domain name system and its market and, therefore, trying to project as accurately as possible what we think the volume of domain name registrations is, which is then having a direct impact on ICANN's funding.

But I don't believe we want to consider too much activities such as the one that's been suggested in order to promote or appear that we would be promoting any kind of domain name business. Thank you.

WOLF-ULRICH KNOBEN:

Just a brief answer to that. Thanks very much, Xavier, for that. So it is not the intention -- to understand where we are, ICANN's remit are not the intention to put you in a situation where you might, well, be in a promoting campaign or what else. This is not our intention.

It's just the understanding and the -- well, the request or internal question of how can we together move that ahead, you know, in order to make that a success of new gTLDs, a real success. Thank you.

XAVIER CALVEZ:

And if I can just add then -- thank you for the clarification -- it sounds like a very good topic for the community to discuss and potentially

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come up with activities that receive the consensus of the community on how to do that best.

BRIAN WINTERFELDT: Thank you very much. I would like to turn it over to the business constituency for the next question.

JIMSON OLUFUYE: Thank you very much. This is Jimson Olufuye, vice chair, finance & operations, BC. We have generally seen our external issues like GDPR that has impacted the ICANN itself. So this question is related to that and is: What is the Board doing about engaging the International Telecommunications Union at the upcoming plenipotentiary, which is 29 October to 16 November in Dubai, in view of ITU's desire to encroach on ICANN's remit? That's the first part.

MATTHEW SHEARS: Great question. Let me take it up a level first, though. I think there is increasing awareness of the pressing need to be -- to monitor and be more aware of and engage in the types of processes. You mentioned one GDPR which have an impact on ICANN's mission and the DNS.

We have now as a Board priority the role with org of reassessing how we measure the importance of our various relationships with entities in the Internet governance ecosystem to try to determine how we engage with them, on what issues, and what the relative importance of those entities and processes is.

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So it's all a part of raising the organization's awareness of these issues and being able to anticipate and react to them. And GDPR is a good example of something that kind of came as a surprise but wasn't really a surprise but we didn't act fast enough.

The hope of this -- this is one initiative that will hopefully contribute to that. The other one is that as a part of the strategic planning, we've identified the absolute imperative of having early warning monitoring systems in place. And that is already being put in place. So hopefully that ability to avoid those kind of situations in the future will be accounted for.

Now, when it comes to the ITU, the Board is very aware of the various proposals that have been put forward by ITU members. It's more the desires of some ITU members to encroach on ICANN's mission as opposed to the ITU itself, clearly.

The Board is not going to be directly involved in the ITU. That engagement is -- I think as you probably know, Goran will probably be speaking at the ITU and we have members of the global engagement team who are engaging in person. But the Board is very aware of what those challenges are and will keep apprised of those through global engagement.

JIMSON OLUFUYE:

Thank you. Quickly, related to this: What is the Board doing to promote the multistakeholder approach to Internet governance more generally in other U.N. event or agencies? Consists of the ITU itself because if

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ICANN is participating -- I don't know how it is participating. Would that be constructive? Because we know it is a treaty organization where the representation is only government. And they are considering many issues that have serious relationship with what ICANN does. Thank you.

MATTHEW SHEARS:

I'm going to say kind of the same thing I said for the other answer but with a slight twist.

As a said, this is a growing awareness of the need to be aware of engaging in these spaces. Whether or not that's direct engagement or whether or not that's engagement through working with members of the I-Star community or Internet ecosystem, that depends on the circumstances.

What we have recognized is that there needs to be more education about ICANN's multistakeholder model and about the DNS. And so these are important parts of how ICANN should be engaging in Internet governance.

When it comes to the IGF, there are a number of Board members who are participating in the IGF this year. And there is ongoing support -- actually, I'm sure Marilyn could probably correct me if I'm wrong here - - ongoing support for the IGF from ICANN. Thanks.

BRIAN WINTERFELDT:

Great. Thank you very much.

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The next question will be an IPC question. I would like to turn it over to my colleague Susan Payne.

SUSAN PAYNE:

Thanks very much. From what has been said earlier this week, I believe that some of the Board has been following the discussions about the PDP improvements, the so-called PDP 3.0.

We were wondering whether the Board have any suggestions for us as the community about how to better address some of the challenges that the PDP process is facing. Those might be, for example, sort of stalemate and gaming.

I would happily go into more detail on examples of challenges, but I think, as I say, the Board has been following this quite closely.

MATTHEW SHEARS:

Let me just comment and then I will turn it over to Cherine. That's absolutely right. We very much welcome those specific suggestions from the community in terms of what are those challenges. So the more we can hear in that respect is very important. Let me let Cherine -- if you can comment.

CHERINE CHALABY:

Thank you. That actually takes us to one of the questions that the Board had asked. I wonder if we just put that question on the screen so that I can respond to you. Can we put that question? It's the second one.



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So this question about the multistakeholder model of governance and policy development and how should it evolve to meet the increasing need of inclusivity on one hand, accountability and so on and, on the other hand, getting things done, getting policy made, and achieving consensus in a timely manner is a question that we have put to all of the constituencies.

And the reason we've put that -- and I want to explain why we did this -- it's not because we thought about it in vacuum. It's because it came from the community as part of the strategic planning exercise that we have been undertaking since -- for the last seven months, since San Juan.

I don't know if you were present yesterday in the opening ceremony, I mentioned the result of the exercise we've done with the community is the identification of five major trends that the community believes will have an impact on ICANN's future. And one of them is governance. And the way the community articulated that trend or that issue or that concern in the future is as described here.

So we raise that discussion with the -- with the GNSO yesterday. And we said this is an issue about governance overall, not just about PDP, and asked them whether they wanted to talk about governance overall or PDP 3 specifically. It was a mixture of the two.

And there was obviously a lot of support at the GNSO from what we heard that there are issues that need to be addressed. The Board at the moment doesn't have an answer to this -- to a very specific question or specific issue. We intend on posting a consultation paper to the

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community roundabout sort of May/June time frame next year. In the meantime, we want to hear what the community has to say, what are the views of the various constituencies.

Do the constituencies believe there is an issue that needs to be addressed or not? It is very important to say that the multistakeholder model that we apply to ICANN we've used for the last 20 years is -- is a very successful model. It's part of what gives us our legitimacy. But like anything else, it grows, it matures. And I think we owe it to ourself to have the courage to look at it and say can we do some changes, some modifications here to make it continue to be more relevant and more efficient so that it supports us for the next 20 years.

So that's the -- this is the question -- that's the reason why we posed that question. So we'd love to have a discussion, if we have time, and engage with yourselves and find out if there are issues that you can point us to think about.

So, for example, the things we heard as part of the strategic planning exercise is that there is, as I mentioned, increasing demand for inclusivity across the whole spectrum of our activities. That's one thing.

The other thing we heard is there is a need to improve our policy development process to achieve consensus in a more effective and timely manner, another thing.

We heard there is concern about progress being ground to a halt because of polarized interests.

We heard there are concerns about volunteer shortage and fatigue.

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We heard about the need to change our review process so they become more effective and better use of the volunteers that we have. We're talking here about the specific and organizational reviews.

We talked about the involvement of the technical community. In some cases, the technical community is very engaged with us but we'd like to find a way maybe of easing the burden because they also have volunteer fatigue.

There's also discussion going around the community about our meetings, our public meetings, which are essential to our sort of collaborative network. There's a danger that they're becoming very large, very expensive, and they are cluttered with meetings that no one can keep pace with what's going on. So there's a lot of things across all of our activities, and we -- I think we would like to help the community and facilitate discussion at the community level and see if there are ideas coming through the community.

As I said, the Board doesn't have any solution. The Board is not going to propose a solution to the community. In the first instance, the Board wants to hear what the community has to say.

And we may have to go through one, two, or three consultation papers gradually with the community until maybe we find a way of improving our efficiency, improving our effectiveness.

Did that answer your question?

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SUSAN PAYNE: I think so. Thank you for the very thoughtful answer. And I think we will look forward to engaging as this process goes on.

CHERINE CHALABY: We can start now if we have time.

SUSAN PAYNE: If we have time, yeah.

BRIAN WINTERFELDT: Great. Thank you, Cherine. Thank you, Susan. I would like to turn it over to the ISPCPs, to Wolf-Ulrich, for the next question.

WOLF-ULRICH KNOBEN: Thank you very much. I do it on behalf of my colleague Tony Holmes. He's around. It has to do with budget questions on the one hand but related to where you have commented on with regards to meetings, Cherine, as well.

And the question is: The ISPCP constituency are very aware of budgetary challenges facing ICANN and the need for fiduciary prudence. We are also aware that one of the major challenges directly relates to costs incurred as a result of holding ICANN public meetings.

We have heard suggestions that holding public meetings at the same hubs each year should substantially reduce costs, as would reducing the number of meetings per year from three to two potentially. We

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would be interested in learning how Board members view those options.

And I was following your comment. You're just starting with some comments on that. So if you could -- and it would be good if you could also be in the process of the community discussion of that.

MATTHEW SHEARS:

Let me turn this over to Chris, first, and then Nick as he's available. Thank you.

CHRIS DISSPAIN:

Thank you. I get this because I, along with Sebastien Bachollet who was on the board at the time, were the board representatives on the meeting strategy -- cross-community Meeting Strategy Working Group. And at that -- over that however long it was, the idea of hubs was considered in great detail. And there was support for it, but there wasn't consensus. A number of groups of people felt very strongly that reducing the rotation of meetings wasn't a good thing. So for that reason, when we put the new structures together, we didn't do that. What we did do was to create what is now called a policy meeting, the middle meeting of the year, in a way that we thought it likely would mean that we didn't have to go to such big places and, therefore, we'd have more choice. We could be more diverse in the places that we chose and so on.

Since then, a significant amount of work has gone on on working to improve the economy of our meetings within the structure that the

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community, cross-community working group, said that we should be using. So perhaps, Nick, you do address that point. That would be helpful.

NICK TOMASSO:

Thank you, Chris. Over the years the community has not had much of an appetite for hub locations or reduction of meetings from three to two, as I'm sure many of you know. So when we started looking at ways to save money, what we did was we did a very deep dive on the financials for an ICANN meeting. And what they found from ICANN 47 through ICANN60 it cost us about \$4 a year -- excuse me, a meeting, to run a meeting.

So we started to examine where the big costs were, and we found it was in air travel and hotel accommodations for funded travelers which include staff, board, community, contractors, et cetera, and in the cost of meeting facilities. That amounted to 59% of the \$4 million spend and it would come out to 27% for air travel, 24% for hotel accommodations, and 8% for the meeting facilities. So along with that information we started to figure out how we could locate venues that would be more cost effective but would continue to provide the same high level of quality that the community expects from us. And we also -- you may have noticed that we publish dates 2021 through 2023 but we did not publish locations. Being tied to a specific location or geography, if you will, on specific dates limits our ability to find venues and to negotiate.

So we looked at all nine meetings from 2021 through 2023, we identified the most cost effective venues, we avoided the concept of hub -- of hub

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locations, although not intentionally, but as it worked out, we found nine very cost effective locations which we hope will save us about \$2 million a year. With a \$4 million spend on average today, we intend to bring those meetings in at \$3.3 million. So that is the approach that we have taken. I asked many of the SO/AC leaders in San Juan if they would allow me to submit a proposal. They said yes. I submitted a proposal in Panama, and it received very broad acceptance. So that is how we're moving forward.

MATTHEW SHEARS: Thanks very much, Nick. Are there any other board members who want to comment on this?

BRIAN WINTERFELDT: Great. Thank you very much. I'd like to turn it over to my colleagues in the BC for the next question.

MARILYN CADE: My name is Marilyn Cade, and I'm going to address a question to the board that elaborates on the third question about the cross-community working group on auction proceeds. I'd like to open my comments by saying that we are very privileged in -- I am with the BC, but we're very privileged in the CSG to have had throughout the work of the CCWG a very collegial team working together. Initially our voting member was Anthony Harris, Antonio Harris, and I have now taken that seat, but we have representatives actively participating from all three of the constituencies. So we are very, very interested and committed. We

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would lend our acknowledgment and appreciation to the two liaisons who are really very, very effective and consistently there to interact and support and engage, and we appreciate the board letters that have been sent. We also find it extremely helpful to have the reliable and continuous support and engagement of Xavier and Samantha.

The working group is considering -- but I do want my question, please, to be addressed to the full board. The working group is considering, has considered four models. And one of the models involves a suggestion that there would be a internal department established at ICANN. We, of course, will submit more detailed comments during the public comment period, but my -- the question has to do with, does the board feel that there has been sufficient risk assessment at this time, in particular of that model, which thoroughly examines implications of operating a grant-making, grant-monitoring, grant management, grant closing business which is actually a very highly specialized sector of work? Has the board examined the implications, for instance, if that happens that each grant will be listed on the ICANN IRS forms? Has the board thought through the implications of HR of having to hire people for a period of years and then terminate those people because the function -- the department will be closed when the amount of money has been disbursed, and -- or is the board thinking that that more thorough risk assessment would be postponed until the community makes a more directed recommendation, and if that is the case, has the board discussed the implications of the community voting in the wrong direction because we as the community are also not experts on grant-making, grant-monitoring, grant evaluation?



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MATTHEW SHEARS: Thanks, Marilyn. I'm going to turn to Maarten, and maybe others want to jump in afterwards.

MAARTEN BOTTERMAN: Yes, thank you, Marilyn. As you know, we've been following this closely and interactively and at times you've provided inputs to make sure that these kind of risks are taken into account. You are also aware that the (indiscernible) search has not been proposed yet. But yes, we also think actively and we had actually discussion in the board even about these risks and how that relates. We're very much aware that whatever we do with the funds in the end will be available, whatever model we choose.

Within that, we've begun to really look into depending on which of the models would be the outcome, with what risk that would come, and we will definitely feed that back into the working group as soon as we can. Does this answer your question?

MARILYN CADE: And again, as I said, and I really appreciate your response, I am, of course, very much aware of that, but I think that as the report has now been published many more in our communities will be probably raising additional questions, which, of course, will be in our public comment process.

MAARTEN BOTTERMAN: I fully got that. Thanks.

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BRIAN WINTERFELDT: Great. Thank you, Marilyn. And thank you, board, for answering that question.

MARILYN CADE: Brian, may I make one unsolicited comment, please? I just wanted to - - this is nothing to do with the previous comment, and I apologize for -- to my chair for doing this and to others. I just wanted to thank the board and the staff for wearing the 20th anniversary pin and for ensuring that we are all recognizing and celebrating the progress that we've made because I think even just this discussion that we're having now and the engagement with the board is an example of the strengthening of the relationship between the board and the community. And I hope everybody will wear their pin.

MATTHEW SHEARS: Well said, Marilyn. Thank you.

BRIAN WINTERFELDT: Thank you, Marilyn. I would like to turn the microphone over to my colleague Vicky Sheckler for the next question from intellectual property constituency.

VICKY SHECKLER: Thank you for that. And unfortunately, I'm going to move over to some challenges that we're seeing and hoping you can help us with some of

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these challenges. As you may know, the Privacy/Proxy Services Accreditation Implementation initiative has -- it's on a slowdown, the PPSAI has been on a slowdown since -- and had virtually no work done since the meeting in San Juan and we raised concerns about this. We were under the impression at the beginning of October that it was going to get jumpstarted again and that the documents would come out for public comment to actually implement this approved policy development policy. Unfortunately, last week we received a message that ICANN had unilaterally chosen to slow down the work further, and the rationale that was given, as I understand it, is that there's concerns about disclosure requirements for privacy/proxies being different from the disclosure requirements that I assume would apply to registrars and registries under the WHOIS system. I would -- I would love to learn more from you about the rationale for this policy, what you think about getting it on track and how we can move forward, particularly in light of the fact that under the temporary spec, as I understand it, it only applies to standard WHOIS information and that those standards do not apply to proxy/proxy services. If I'm wrong about that, I would like to know that as well.

MATTHEW SHEARS:

Thanks, Vicky. We're going to turn it to Cyrus, please.

CYRUS NAMAZI:

Thank you very much. Vicky, this is a very good question, and we didn't come to this conclusion lightly. In fact, I myself a couple of months ago wrote a letter to Steve Metalitz and the Coalition for Online

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Accountability committing to continue to follow through with the development of the policy language to the IRT and taking it to posting for public comment.

The painful realization that we have come to is that because of the increasing uncertainty that is the result of the GDPR, some of the critical components of the accreditation agreement for privacy/proxy just cannot be completed with enough certainty for us to go forward. The data processing part is -- to answer your question that you raised, is one of the key components that we just do not believe we can get enough clarity around it to move forward and continue to spend time and energy and resources, both on the part of the IRT, on the part of the staff as well as, of course, when you move to public comment on the part of the community. This is not an issue that is unique to privacy/proxy. This is touching 13 other programs that we have across the ICANN organization that have to do with registration data services. Thick WHOIS has been essentially stalled for not this particular reason but because of the uncertainty that the GDPR has created and the issues between the registry which is VeriSign in this case and the registry stakeholder group on their Registry/Registrar Agreement, changes that they have to agree on.

So it's really not a -- an intentional slowdown because we have other things to do, although we do have many other things to do. It's really the -- a determination that the continuing to expect the same pace to develop the accreditation agreement, considering how much uncertainty we have around the available information, has pushed us to essentially a certain slower pace than what we had before. I'm happy

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to provide more answers for you offline or if you'd like to ask a follow-up question, of course.

VICKY SHECKLER: I think we're running close to time, aren't we?

BRIAN WINTERFELDT: We've got 15 minutes.

VICKY SHECKLER: We've got 15? Can you clarify for me, please, when you're talking about there's uncertainty about data processing, are you talking about disclosure or are you talking about other aspects of data processing?

CYRUS NAMAZI: It's all aspects of it, frankly. This is -- like I said, the data processing part is something that is touching on my data escrow agreements, it's touching on the privacy/proxy agreement, part of it. The entire thing at the moment is being debated within the legal team within ICANN and as well as the outside counsel that we have that's assisting us, and we have not been able to come back with a certain sort of confidence level in it that would move us forward.

VICKY SHECKLER: Are there any plans to discuss this further with Data Protection Authorities?

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CYRUS NAMAZI: Yes, this is in fact a part of the plan. It is not that specific piece but the entire thing is being discussed. We're not getting too much feedback, frankly, from the Data Protection Authorities to a point that we can actually move forward with certainty on a particular sort of interpretation of the law. But yes, we're not dropping this. We will continue to explore different avenues that will give us the certainty that we need to move forward.

VICKY SHECKLER: Thank you so much for being frank with me. I look forward to continuing with this discussion with you offline. Thanks.

CYRUS NAMAZI: My pleasure.

MATTHEW SHEARS: Thank you, Cyrus.

BRIAN WINTERFELDT: Thank you, Vicky and Cyrus. I'd like to turn it over to Wolf-Ulrich again with the ISPCPs.

WOLF-ULRICH KNOBEN: Thank you, Brian. It's Wolf-Ulrich Knobén. So we had finished our questions here with that, but while I have the microphone, thank you

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very much. So I take the chance now to answer also your question with regards to what are our priorities and maybe there's some exchange from others. There's one thing we are looking for in the -- mainly. So yesterday we had a specific outreach event which was hosted by Telefonica company here and besides that in a nice tower and very nice environment, and I have to say, it was really well visited and also it was a good chance, well, to draw the attention of potential interests in what we are doing.

So there was one panel especially dealing with identified technologies and the Domain Name System in a 5G and IoT area, so relating to the -- involved the development of new technologies in the identifier scenery. And this is one thing we are interested in how that relates to where we come from with regards to the networks, with regards to the security of networks and that. And that is one major item what we are going to -- to take on our agenda and discuss, you know, how it relates. And it turned out already, so from that panel, that it might have really different -- different impact related to those different technologies and what we are doing. So what I'm saying, that is a major part of that, what we -- what we have on our agenda, and I would like to ask the board as well to take an eye on this -- these developments also to keep an eye on that as you did and ICANN did also in the past and also when the board is changing, new board members coming in, and so that -- that should be on your agenda as well. Thank you.

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MATTHEW SHEARS: That's a great comment. Maybe Maarten, you want to talk about this in the context of the strategic planning?

MAARTEN BOTTERMAN: Yes. Thank you. Basically this is one of the points we recognize in the strategic planning exercise. For those who have been in the room here yesterday, you may have heard that we see this exploration is one of the key points that we foresee. Technology is changing with increasing speed. It's unpredictable how it will exactly affect us and it will be there for the good as well as maybe partly for the bad. So for sure, it's a key point in our view of what we need to explicitly address in the years to come.

This will lead -- one thing is kind of close of following of technologies. The other thing is like how would we fund making sure that we continue to understand that and be close to the ball. So I think it's going to come back to the community also in -- for the public consultation on the strategic plan and we foresee that this would be a center in that very important. So thank you for bringing that forward.

BRIAN WINTERFELDT: Great. Thank you so much. Next it's the BC's turn.

CLAUDIA SELLI: Thank you, Brian. We also had finished the question that we wanted put forward to the Board.



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But maybe, if we still have time, just one additional question if you can comment on the fact that not only GDPR is impacting ICANN but going forward there are a lot of legislation locally and in different jurisdiction that will have an impact on ICANN. What's the plan going forward to avoid the problems that we're facing right now?

MATTHEW SHEARS: It's just volunteer.

GORAN MARBY: Thank you. Goran, for the record. It's a fascinating question. And I think we need to figure out the concrete answer to that together in the community as well. Because, yes, we see a lot of new legislations that potentially can have an impact on our ability to make policies, not only GDPR. And we actually started posting them -- some of them on our blogs.

But it's important for me also to reiterate some other things.

We're not a political organization. We don't have political opinions about different pieces of legislation. For instance, we don't have an opinion about GDPR as a law, as ICANN.

So we have to find a methodology where we go into that discussion, if we should have that discussion, with the effect from a technical perspective. Will this piece of legislation have an effect on how the Internet DNS works, for instance? Yes, we have said -- we have seen --

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you know that we've seen -- proposals that, for instance, breaks routing.

I have a goal from the Board to try to come up with a proposal how to engage with a legislative proposal around the world, which I'm also supposed to come back to the community with. And it's not going to be this is what we're going to do. More of a thought process how we can engage with it. A technical remit. This is not going to be an easy thing because we're non-political.

But we have an aim of being able to provide, with the community's okay, to provide technical input into political discussions, sorry, into policy discussions. I hope that answers your question.

JIMSON OLUFUYE: Brian, can I maybe quickly follow up?

BRIAN WINTERFELDT: Sure.

JIMSON OLUFUYE: This is Jimson Olufuye. Just a quick follow-up on a lighter note to commend ICANN for the responsiveness which I've observed over time with regard to how we can provide some support to some external organizations like CSTD, IGF, so on and so forth. This is good.

We also mentioned that, as a proactive measure, we have stakeholder engagement offices around the world. I believe you're putting them on

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notice to also look at what is going on around with regard to IG. For example, in Africa this is a good thing like all these prep meetings that the engagement offices should be engaged early enough going forward. Thank you.

GORAN MARBY:

Thank you. I also think ISOC has a very important role in this that can take things also from a political side as well.

So we would also like to talk more about ISOC how they will engage going forward. Because their role is very, very important in this.

Now I probably have made either Andrew very happy or very unhappy. I hope happy.

BRIAN WINTERFELDT:

Great. Thank you so much. I think we are actually out of questions for the IPC. So I think we might give the Board back a few minutes so they can catch their breath before their next meeting which I'm sure starts shortly.

MATTHEW SHEARS:

Any other comments from the Board? Nope. We'll take those few minutes. Thank you, everybody. These are very important sessions for us, and thank for your questions. Next time we'll make sure they're in sync. Thanks a lot.

**[END OF TRANSCRIPTION]**