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ICANN70 | Virtual Community Forum - Joint Meeting: ICANN Board and NCSG  
Tuesday, March 23, 2021 - 09:00 to 10:00 EST

FRANCO CARRASCO: This session will now begin. I.T., please start the recording.

Recording in progress.

FRANCO CARRASCO: Hello and welcome, everybody, to the Joint Meeting between the Non-Commercial Stakeholder Group and the ICANN Board on the 23rd of March 2021.

My name is Franco Carrasco from the ICANN staff, and I will be the Remote Participation Manager for this meeting.

Please note that we are holding this meeting as a Zoom webinar. Be advised that the floor in this session is reserved exclusively for interaction between the Non-Commercial Stakeholder Group and the ICANN Board Members.

We, therefore, have the members of both groups promoted to panelists today, and they are the only ones able to speak.

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Please note that NCSG panelists on the call are those whose names were provided by the NCSG directly, Therefore, NCSG members who were not assigned as panelists will be attendees today.

For our panelists, please raise your hand in Zoom in order to join the queue to participate. All panelists are muted by default, so you may proceed to unmute yourself when you are given the floor.

Before speaking, please ensure that you have all your audible notifications muted and clearly state your name.

Please also bear in mind to select the language that you will be speaking within Zoom, including English.

Also, please remember to speak slowly for all the scribes and interpreters.

Please remember the Board will only take questions for the constituency with whom they are in session today. Consequently, the Q&A pod is disabled on this Webinar.

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Interpretation for this session will include English, Spanish, French, Arabic, Chinese and Russian. Please click on the interpretation icon in Zoom and select the language you will listen to during this session.

For all participants in this meeting, you may post comments in the chat. To do so, please use the drop-down menu in the chat pod below and select "Respond to all panelists and attendees." This will allow everyone to see your comment.

Note that private chats are only possible in Zoom Webinars amongst panelists. Therefore, any message sent by a panelist or standard attendee to another standard attendee will also be seen by all other hosts, co-hosts, and panelists.

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Finally, we kindly ask everyone in this meeting to abide by the ICANN Expected Standards of Behavior. You may view these on the link provided in the Zoom chat.

Having said this, I will now give the floor to Maarten Botterman, Chair of the ICANN Board.

Maarten, the floor is yours.

**MAARTEN BOTTERMAN:** Thanks, Franco. Even though you still read it from a paper, you know it by heart by now.

Welcome, everybody. Welcome to the meeting with the ICANN Board, a very important occasion with interaction and constructive dialogue, which is so important for us to ensure that we communicate with each other and fulfill the mission of ICANN.

So for this session, Matthew Shears, well known in the NCSG, will moderate the discussion on the Board side.

So, Matthew, please.

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MATTHEW SHEARS: Thank you, Maarten. And may I be so bold as to wish you a happy birthday today, if I'm not mistaken.

MAARTEN BOTTERMAN: Appreciate you not singing, just saying that. Thank you.

MATTHEW SHEARS: I wouldn't sing. I wouldn't sing.

Welcome, everybody. Matthew Shears for the record. Good to see you. Good to see your faces. Hopefully we'll see you in person soon.

Thanks to the NCSG for some excellent questions. We're looking forward to a good discussion, of course. But we only have an hour so we're going to have to speed through this, I suspect. So let me hand this over to Bruna to start things off. Thank you.

BRUNA SANTOS: Thank you very much, Matthew and Maarten. And maybe -- let me just add to the chorus of happy birthday today. So happy birthday, Maarten.

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And thanks, again, for this meeting. We have a set of questions around three topics. One is the effect of the pandemic on the ICANN community. The second one would be the EPDP. And the third topic would be the sub pro. This was a question that was added last minute, so I also apologize ahead of the question.

So let me just -- let me just hand the floor to Stephanie. She will be the one leading the questions about the EPDP.

And, also, if any of our NCSG members who are updated to speakers here would like to offer some additional perspectives or questions to this, please let us know in the chat or raise your hand. So thank you very much.

Stephanie, you have the floor.

STEPHANIE PERRIN: Thank you very much. This is Stephanie Perrin for the record.

And I have a vague sense that we may have asked this question in the past because it's a recurring problem. So the question is -- and I'll read it, if you'll bear with me. The EPDP has been a long, painful, but very instructive process. We are concerned about the

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tendency for matters for which we have conceded and tried to reach a consensus being simply reargued on the platform of consensus at the next stage of the process, in other words, building on what we've agreed to, that matters will return. The chairs have a hard enough job chairing these difficult PDPs, but now they have to stop warring sides from opening up settled matters under fresh titles. How does the Board recommend that we deal with this problem?

Now, let me be clear, we all have our particular positions. I'm not suggesting that, for instance, the NCSG would ever stop arguing for human rights. I'm talking about specific, and in the case of the EPDP, legal issues that we thought we had settled which are now being brought up fresh. I'm sure Becky will be familiar with this problem. It's really a question of managing the process.

MATTHEW SHEARS:

Stephanie, thank you for that.

Indeed, I think Becky is going to jump in and kind of give us a lay of the land but also in terms of how we've seen this evolving over time.

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So, Becky, over to you. And then I think we'll have a couple of other Board members who want to add to it.

BECKY BURR:

Thanks. And greetings to everybody and happy ICANN70.

So as Matthew suggested, there are two parts of this question. One is a sort of general "how does the policy development process work and how can we make it better" and the other is specifically on the EPDP. And I'm just going to talk about that last issue.

Obviously, it is clear -- and I think we all will acknowledge it -- that parts -- that the community, and I don't think anybody is free of this, does take advantage of opportunities to attempt to relitigate issues that have either been clearly closed and everyone acknowledges or, in some cases, that there is a disagreement about whether the issue has been clearly closed.

I've been working with a subgroup on EPDP on the legal team questions. And we've been very disciplined about making sure that we're staying within scope, the scope of Phase 2(a), limiting our questions to those questions that are helpful for the specific



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topics on the ground. And I think that it takes a commitment from all sitting around the table to do that.

I personally am encouraged by the work of the legal team in this regard. And so, you know, the best thing -- advice, and certainly the way in which I'm dealing with this, is to encourage everyone to come to the table in good faith, to pay attention to the scope of the work in front of us, to acknowledge when issues have been resolved and to politely remind people when there are efforts to reopen issues that have been resolved.

I think, frankly, we do have to acknowledge that in the case of the EPDP the introduction in Europe of certain legislation, in particular NIS 2, has raised some new questions about topics that were -- that many people thought were closed as part of the original process.

I think it's fair to talk about those. But I think in the end, it's up to the members of the policy development process teams, the working groups from the community, to be clear about what's in scope, what's out of scope, what's settled, and what's not.

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Keith Drazek, who is the chair of the EPDP Phase 2(a), will be reporting to the council on progress. And I think that's going to be an important marker for us in terms of how we proceed going forward.

So that's what I have to say specifically about EPDP, but I know the topic is more general and a bigger question beyond EPDP.

STEPHANIE PERRIN: If I could just jump in and say, Becky, you have done a masterful job on the legal committee. I do hope that we can continue that through the plenary and through the open comment that closes on the 30th. Thanks.

MATTHEW SHEARS: Tatiana, I see you have your hand up.

TATIANA TROPINA: Thank you very much. Well, first of all, I would like to second Stephanie's comment about Becky's absolutely stellar job on the legal team of the EPDP, both Phase 2 and now I tried to follow, of course. But I was a member of the committee. And, indeed, it's

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really hard to keep these on track and not rehear the issues and not repeat the same questions.

Thank you, Becky, for leading this work.

I have a question that, perhaps, broader than EPDP but Becky just brought it up. And it is about NIS 2 directive and the issue that might pertain the consensus that have been reached on the EPDP -- during the EPDP process.

I want to ask the Board, if possible, what is your general take on this? Those of us who live in Europe and who were following the discussions around the previous NIS directive know that it took three years to negotiate it, one and a half years or two years to implement it. So it's quite a process. And what we see right now in the directive is not necessarily what we'll see at the end of it or we'll see in the end product because I can certainly say that NIS directive adopted in 2016 was very different from the document that appeared at the beginning of 2013.

So what is the Board's take or opinion, if any, on the cost to relitigate a PDP, to stop of these outcomes, and so on and so

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forth, in the light of the proposed legislation? Is there any position on this already, or do we have to wait for it?

MATTHEW SHEARS: Becky, do you want to jump?

BECKY BURR: Matthew, I think that's going to fall to me, too. So thank you to, Stephanie and Tatiana. Thank you for your work on the Legal Committee. It's been a team effort.

On the legislation, I don't believe that the Board -- the Board is extremely interested in these developments, is following them closely. We've had Webinars -- community Webinars and Board materials, on it.

You are correct, it is -- NIS 2 is not a done deal in the sense that it still needs to be adopted and then it will -- there will be an 18-month transposition period. I think there are some people who believe that this will go more quickly than it might otherwise. But, of course, because it is a directive and because it will be transposed, there are significant issues of implementation across member states.

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So the board has not taken a position. And, frankly, it is -- because this is a policy development process, it is up to the community to determine the extent to which it wants to take these things into consideration.

The last thing we want, however, is to be caught in the same situation we were with GDPR, where suddenly it's about to come into force and ICANN hasn't wrestled with it and adjusted its policies to reflect it.

So I think that there is some value to being proactive and thinking about it.

I don't have a view, and I don't -- you know, some of the European members of the board may have more informed views about the likelihood of change between now and adoption.

In the directive itself, let me just say that the two issues that I see raised for contracted parties in terms of the accuracy of WHOIS data and distinctions between information about legal persons that does not contain personal information about natural persons and registration information that contains personal data of -- that contains personal data, those two issues are on our

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plate, and so it does not seem to me to be completely out of -- unreasonable to be concerned and to want to understand how that could implicate the work that we're doing in Phase 2A.

And just to be clear, I think the legal team did formulate a very good question on how we should be thinking about NIS 2 right now as we work forward in terms of the Phase 2A questions and implementation of the policies we've developed.

So we hope to get more information about it, but we're all in a learning curve here, and nobody can predict what is actually going to happen in the end.

MATTHEW SHEARS: Thanks, Becky.

Certainly we will be following it as it evolves.

I think Goran wanted to jump in.

GORAN MARBY: Good morning.

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Yes, as you know, Tatiana, I've been well invoked in the European process in my previous work. And I agree with you, we will not know what comes out of this.

But maybe -- so here is the sense I'm getting. The members states has already, in principle, agreed on many of the things that is inside the proposal. Of course, otherwise, it wouldn't be there. For anyone else, you should know that this is a technicality, the European Commission is the only one that can write the legislative proposal. It then has to be adopted by the council, which is the member states, and the parliament.

And what happens now, in reality, is that the parliament and the member states are now sort of in negotiations.

We are in contact with both member states and, of course, we are also speaking to the parliament, (indiscernible) of the parliament. For transparency, I want you to know that.

Personally, I think that the structure inside, most of the structure inside the NIS 2, will stay. I think there will be continuous debate about the role of the European Commission on this one and which powers they have. But I'm also a little bit afraid that it will become

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what the Americans sometimes call a Christmas tree bill in the sense that I don't -- maybe it's not so many things that will disappear, but other things will be added to it. This goes for both this one and the Digital Services Act. And what I hear is that it's a great interest for the questions relating to WHOIS in the political discussions.

So I agree with you, Tatiana, the fact that this will take some time. It will be -- we don't know exactly what it is in the end. But I'm -- we are concerned on the fact that it start having its life on itself.

As you know, we made contributions from a technical perspective because we want to have clarifications. And that's also our role. We're staying away from having a sort of policy point in there. But there are things that concerns us when it comes to, you know, definitions. So we do understand them, also the potential implications on the root server system.

But we will keep informed. And we want to make sure -- and we will be transparent about the actions we do, as we have up to now.

Thank you very much.



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MATTHEW SHEARS: Thanks, Goran.

Any follow-up questions or comments on NIS 2?

MAARTEN BOTTERMAN: Just from my side, if you allow me.

MATTHEW SHEARS: Please.

MAARTEN BOTTERMAN: What is true for NIS 2 is true for everything: We are in a time where exposure change is happening, not only from COVID, but also from legislative initiatives and other matters. So it also means that we can't wait until we know everything before we start moving on something.

At the same time, it means if we set out to move somewhere, you need to do it in such a way that we keep our eyes open. You see this reflected in the ODP approach and in other approaches moving forward. Just doing what we say we should do right now

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has become impossible without looking to what is changing in the environment while we're doing what we're doing.

Importantly, we do it together and transparently. So....

MATTHEW SHEARS: Thanks, Maarten.

We did get a little bit away from some of the underlying issues in your original question, including issues around what you were kind of lamenting, which is the evolution of the multistakeholder model, how we work to get consensus.

It would be interesting for us also to hear from you if you have suggestions as to how these particular challenges can be worked through. So if there are thoughts, we'd love to hear them.

I'll leave that question out there.

Okay. Bruna, do you want to take us to the next question?

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BRUNA SANTOS:

I do. And thanks for the questions and also explanations of the board's point of view on NIS and also the legal committee.

We are at the beginning of the -- some of the discussions around NIS and (indiscernible) and some of these legislative movements from the European Commission. So apologies for the lack of responses, because we also have had some strange feelings about these initiatives so far. So that's it from me.

With regards to the second set of questions, I think we can condense them a little bit, because we also have the additional one with regards to Sub Pro.

But about the pandemic and ICANN community, we have some questions about whether -- how much -- whether and how much money has the org saved so far in the absence of traveling and events. And some things we know did require a lot of funding and investment.

The second question around this topic would be whether there has been any tangible steps from the board to address high community burnout and decreasing participation.

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Our concern here is that -- I mean, at least NCSG has been facing some real decrease in participation. And we're really concerned that this, indeed, poses a threat to the multistakeholder model, ICANN's multistakeholder model. And we have also see that civil society has changed a little bit its ways of working and concentrating some of our actions more towards the emergency of the pandemic instead of many other topics that were also necessary.

And maybe the last one would be around vaccinations. Our question is very practical again, whether -- and we want to hear from you whether or not there is -- there are any discussions around vaccine passports or either how we will be thinking about this reopening and the -- like, the transition to hybrid meetings, to present meetings, and how the -- it's basically questions about the future of ICANN meetings. And some things we have been talking about at the survey and a lot of other spaces. So, yeah, these are from us on this topic.

MATTHEW SHEARS: Thank you, Bruna.

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Very good questions. And questions, of course, around (indiscernible) are meetings are ones that the board spends quite a bit of time discussing.

But we have -- I think Danko is going to address the first point, about the issue of money.

Danko.

DANKO JEVTOVIC:

Yes. Thank you, Matthew.

My name is Danko Jevtovic. I'm the chair of the Board Finance Committee. And I'll try to be brief on this question. If there are any sub questions, I can try also to answer them.

So as you probably know, our fiscal year is from June to June. So the previous fiscal year 2020 ended in June 2020. And we had significant savings from travel and meeting costs, approximately \$6 million.

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Now, also, we have additional savings. So the total funding exceeded expenses by approximately \$14 million in that fiscal year.

So currently, we are in fiscal year 21. And we expect a similar amount of funding excess from this year.

Saying that, it is, I believe, important to remind us a bit about ICANN budgeting cycle. And throughout the budgeting cycle, expenses are planned and approved. So even if we do have excess of the money because some of that has not been spent, the only spending that is allowed to be executed by the org is what is planned in the budget.

And second important point is that in planning the next budget, we only had to plan -- we only could plan things that are approved by the board. So we know about significant -- to say mildly -- significant incoming work that we talk all the time about. But we also know that this work hasn't been approved by the board and the expenses haven't been planned and they are not in the current budget.

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So the money we have saved is planned to used in support of the ICANN missions and strategic plan.

And, of course, board is very much thinking about it. And we are working on a financing structure that will enable us to, with better transparency and better accountability, track multiyear significant projects that are incoming.

So we believe that this situation actually provides significant opportunities.

And the last thing I would like to mention is our reserve fund, that we're on track of gaining the amount that was planned, meaning the level of the reserve fund should be at minimum the planned level of expenses. But also, we plan to move some of the funding, some of the money from the operations fund, into the reserve fund in order to better protect ICANN's security and to use some of these savings to, well, ensure our financial stability.

So that will be it. Any question, I will be happy to answer.

MATTHEW SHEARS: Thanks, Danko.

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Any questions for Danko?

BRUNA SANTOS: Thank you, Danko, as well.

This is Bruna again.

I guess one of our GNSO councilors has a question in the chat. Where has this money been directed to, the money that we saved from meetings last year. Has it all gone directly to the reserve fund? Or something else?

DANKO JEVTOVIC: The money hasn't been redirected. The money is there. So it's saved.

And most of that money is currently in the so-called operating fund. And we have a proposal running through the BFC, and should come on the board agenda, to move \$10 million from that operating fund into the reserve fund.

And as I said, we are planning on financial structure that will enable us to use those savings that are currently there and



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operational but cannot be used through the current budget. So we have a plan for a structure that will enable us to use them to do the work that we all know about but haven't been into the current budget.

MATTHEW SHEARS: Bruna, I see there's another question.

BRUNA SANTOS: Yeah.

MATTHEW SHEARS: Danko, I don't know if you're seeing the chat, but it says, with all the savings the org is making, are there discussions around other support forms being offered by ICANN? As a comparison to Rightscon.

DANKO JEVTOVIC: Well, the current discussion what can be done with the money is part of our budgeting cycle. So we are -- we have closed the comment -- the public comment on the budget. So I am actually not aware of the discussion and the initiatives that you have mentioned.

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MATTHEW SHEARS: I see there's a question about ICANN72. Maybe we can hold that.

Goran is going to answer the third of these three questions.

Unless there are any other questions on the first question, maybe we can go to the second one, which is what measures can be taken to address burnout.

Maarten?

MAARTEN BOTTERMAN: Thank you. So, basically, first, what we've seen is, well, we didn't choose to go for virtual meetings; we had to. And overall ICANN Org has been tracking also what happened with participation to ICANN meetings. Initial analysis shows that from 2016 to 2019, we had about 18-, 1900 people in attendance. Over the virtual year, that's been going down to 1700. So there was a slight decrease but not a very big one.

At the same time, we also recognize that it's different people partly, people who wouldn't travel but more participate on the virtual meetings than the other way around.

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It's also clear that it's working across time zones, which has its own challenges.

So I think it does require us all understanding that this is the case and in the planning of the meetings to take this as well as possible into account. As you know, the meeting planning is -- for the ICANN meetings is done for the community and for the constituencies is done by the constituencies themselves. So highly encourage to take that into account at every level.

From our side, there's keen attention to it and we try to contribute as well as we can to this. And ICANN Org will look further into what can be learned from what is currently going on in terms of the numbers, the data. So that's the best we can.

And with you all, I think the advantage of being in one place at the same time zone is something we all look forward to having again as soon as feasible.

MATTHEW SHEARS:

Maarten, I think it's worthwhile just stating how much we on the Board would like to return to the face-to-face meetings and how

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much we struggle with that challenge in terms of the upcoming meetings. It's a very important issue.

Bruna.

BRUNA SANTOS:

And thanks, again, Matt and Maarten, for the answers. I just wanted to clarify that this is -- again, this is not anything against the virtual meetings. We know that's the only option we have available so far. And it is, indeed, really important that we are insisting on having those meetings. We are anticipating being here, and that's why we find so valuable the exchanges we have with you from the Board.

But there was also some message about a similar comment that Raoul has in the chat about the burden of this one year of the pandemic on the noncommercial side and how it is -- it is difficult for everybody but how it can be even more difficult for us to keep our members engaged and keep our members coming to meetings, in fact, if the priorities have changed. So it was more something in that sense and not really a criticism on virtual meetings. But thanks again for the answers.

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MAARTEN BOTTERMAN: And thanks for that. We are aware of that, and Non-Commercial Stakeholder Group isn't the only one. We see similar things with ALAC and other groups and with other groups in different ways, right? Sometimes it is are you having time off to do the ICANN work or is it part of your work and things like this.

So very cognizant of that. And, yeah, any suggestions how we can help always open to.

MATTHEW SHEARS: Thanks, Maarten. Maybe -- there are some questions in the chat. But maybe, Goran, you might address a couple of those, if you want to take the third point. Thanks.

GORAN MARBY: When it comes to -- first of all -- oh, so many questions, so many good answers. First of all, when it comes to the over, I have got a question: Will the last meeting of the year be virtual? The answer is we don't know. I will give it a 50/50 shot. Let's go back.

After the ICANN69, we did a survey with the community. We got hundreds of answers to that survey. We actually asked what the

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community thought about the virtual meetings because there was a lot of, I would say, criticism about ICANN69 for good reasons. It was a long meeting. It was very long hours. There was a lot of sessions, and a lot of them were conflicting. And that was not a good -- I think we all agree we had to do something about that because the amount of sessions, et cetera, et cetera, are set by the community. And I think we all agree that after that, we need to do something different.

So we went out with a survey. I can ask someone to post all the blogs we've done about this.

We're now in the process together with the SO and AC leaders to work through a leaders how work through a proposal how to continue evolve what we do at meetings, both actually during virtual times but also coming into when we're going face-to-face meetings again, because there are things that we have learned due to this process that can also enhance the face-to-face meetings, when it comes to translations, when it comes to remote participation. Technology has been evolving a lot as well.

So in that sort of -- there are actually some things that sort of changes how we might do things. A lot of the survey results was,

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for instance, when we have ICANN meetings, a bigger focus on sessions that goes across borders rather than everybody goes into round rooms so the community can work out things.

There's also been things about having a more regional approach to some of the things we do. But, also, the meetings that maybe this group should potentially meet by themselves sort of because -- outside of the ICANN meeting so when you come to an ICANN meeting, you can participate in that group. There's a lot of good things there. And the SO and AC leaders are looking into it for a proposal.

So where are we in the world? I'm looking at Bruna right now. I just read a news report about Brazil this morning. We don't know. I mean, here in the U.S -- here I live in California, there is a lot of vaccine all the time. But in other parts of the world haven't really started. So I don't know how this is going to work out. But when we start traveling, I don't think ICANN will sort of be the problems with vaccinations. It's actually going to be the airliners and the countries.

The ICANN meetings are so big that when we go to a country, we do that and we create a relationship with the government.

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Otherwise, we can't do it. For technical reasons, we need a lot of WiFi to be able to do an ICANN meeting. And to be able to have that amount of WiFi, sometimes we have to have permission from the government because we suck up all the bandwidth that exists. And you don't do that without -- or there is protection or there are other things that can happen.

One of the things we've seen over the last couple years increase when it comes to visa and stuff, when I'm unfortunately seeing is that there will be more things added to the visa such as probably in Europe they're talking about having an electronic visa for vaccines, et cetera, et cetera. And I think that's going to be just making this world more complicated.

But here's the thing, so it's not going to be ICANN who is going to set them up. It is actually going to be, I think, for the governments and the hotels and the airliners, all of them are going to set them up.

But here come the thoughts from us. I include the Board and the Org. We cannot go to a country or a region that sets up too many obstacles for ICANN people to travel there because we can't have -- let's say that -- because I'm hearing this. Let's say that, just for



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fun, that the Netherlands will be a completely virus-free zone -- I have no idea why I picked that, Maarten -- in the time for our last meeting. And we can have everybody from Norway, Sweden, Finland, and all them can go to the Netherlands. The U.S., South -- Latin America, Asia is now excluded.

We can't have a meeting like that because decisions are made by the one who -- I just realized Tatiana is also living in that region.

My point is that we can't -- it could be so, it could be technically possible for us to have a meeting somewhere with a very limited participation. And then we really have to ask, should we have that? Because if we can't get people into the meeting from different parts of the world, we probably shouldn't do the meetings.

So I hope I answered many of your questions.

The hybrid parts, I believe we're going to increase the remote participation and do that better.

The time zones will always be an issue.

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Thank you. I'm open for more questions about it.

MATTHEW SHEARS: Tatiana.

TATIANA TROPINA: Thank you. Hello from virus-free Netherlands, in the future perspective. I know, dreamers.

Goran, just a small clarification on your last point, I was sincerely hoping that you would answer it and I can lower my hand.

So if the meetings' preliminary scheduled on the ICANN schedule for the next few years, if it turns out that the meeting is taking place in a country which is actually locked, even being virus-free, would you consider moving them to the fully virtual meeting or would you consider changing location or there is no -- there is no consideration of this yet?

GORAN MARBY: Do you mean --

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TATIANA TROPINA: Yeah, let's say, so, for example, the meeting in The Hague in two years -- or, no, in a year, next year. Let's say Netherlands is COVID-free but there are too many obstacles that government --

GORAN MARBY: We do not do the meeting.

TATIANA TROPINA: We will not do the meeting. We will not consider moving this location somewhere else to a more friendly country?

GORAN MARBY: We would consider moving it to something that more people could participate or not having the meeting because the important thing --

TATIANA TROPINA: That was my question.

GORAN MARBY: I know that we are -- this is a -- it's a fairly hard-core statement to do that. But since the beginning of this, we always said that this

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is made by the people who comes to the meetings. And it's important. If we can't have enough participation from different stakeholder groups and different parts of the world, then it's not going to be an ICANN meeting and that's important to us. So I hope that answers your question. I hope you agree, by the way.

MATTHEW SHEARS: Thanks, Goran.

Any other questions on this broader topic of pandemic and ICANN community? Any comments?

Not seeing any hands, Bruna, back to you.

I think we have a late-late question that we wanted to see if the Board might want to answer.

BRUNA SANTOS: We do. Thank you very much, Matthew. This is Bruna again for the record.

Also, thank you, Goran, for the answers.

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Just on that note, I do think the situation is still very unclear for us, at least in the next two to three years. But it's interesting to hear that this level of risk assessment around restrictions for traveling will be included in the meeting strategy. And we do hope it's something we can discuss with you further in the future.

We had one last question about the Subsequent Procedures Working Group. But I'm going to hand the floor to Kathy, if she is still around, for her to lead the discussion.

KATHRYN KLEIMAN: Terrific. Thank you, Bruna.

Can everyone hear me? If we could advance the slide to the next question, it should be -- hopefully Bruna provided it and hopefully staff has it.

I'm Kathy Kleiman for anybody who doesn't know. And it's so good to see all of you. I wish we could do this in person, as others have said. But I hope you and your families are doing well.

Late last night I got the notice that I can now schedule a vaccine appointment. So I'm very happy. Northern Virginia is a little bit

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behind in the curve on that. I'll be getting it later this week. So hope the same for you.

And private PICs, private public interest commitments, are very much the hot topic of ICANN70. Our only plenary session will be held on this. And I see that you don't have the question.

So let me give a preface, and then I'll ask the question which is a pretty straightforward question but the preface is not.

So private public interest commitments, for those who don't know, are somewhat an exception to our rule that we create policy together, policy by consensus. These are a set of private commitments that were created kind of standing on one foot after the 2012 applications were already accepted because we needed a place to put down -- broadly put down commitments to expand the scope or mirror the scope of who could register in a new gTLD.

So there was great concern of a closed generics, as anyone who lived through that period knows, .BLOG, .CERT, .MOBILE. A number of companies have said we're going to own all the domain names in that field. And the GAC said, No, these are

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generic and common terms to their industry and business. So PICs were ultimately used to expand the scope and make sure that all competitors were allowed to register domain names.

Similarly the GAC said, Wait a second, certain strings are highly sensitive and we want you to restrict who can go in, .MEDICINE, .CHARITY, .FINANCIAL. And similarly PICs could be used for that.

And that covers the vast majority of the private and nonprivate public interest commitments.

But there's a third category, and I'll loosely call it the kitchen sink, where people shoved a whole bunch of other things in, things that in some cases we had negotiated and decided against in consensus policy. In some cases, it went straight to the core of content, that we will remove registrants for the following content-based reasons.

And we're here because we represent a lot of registrants. And sometimes they do things that aren't completely popular with their governments or with others.

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And so here's -- so the ICANN board -- Maarten, you sent a marvelous letter to the Subsequent Procedures Working Group. But it came in late in the day. We had already been working for about three and a half years.

But your letter said the language of the bylaws, referencing the 2016 bylaws, could preclude ICANN from entering into future registry agreements that include PICs that reach outside of ICANN's technical mission as stated in the bylaws.

And then you said the language of the bylaws specifically limits ICANN's negotiating and contracting power to PICs that are in the service of its mission. And you added that the ICANN board is concerned that current bylaw language could create issues for ICANN to enter and enforce any content-related issues regarding PICs or registry voluntary commitments.

It was a really good letter. We wish we could have spent more time. Becky Burr, Avri Doria, in their personal capacities, but also as liaisons from the board, came and talked to us for a full session, the Subsequent Procedures Working Group.



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But overall, it was the end of the day. We were not able to have any independent legal advice, we didn't have any ICANN legal advice. There was no white paper looking at the substance of these private PICs.

So here's the question: Given that the Subsequent Procedures Working Group was unable to undertake the legal research to understand the impact of the 2016 ICANN bylaw changes on future proposed private public interest commitments, what work and research will the board be taking to help you understand these issues and to help us in the community understand these issues?

Thank you so much for the long introduction.

MATTHEW SHEARS: Thanks, Kathy.

We'll give it a whirl.

I'm going to turn it to Avri first.

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AVRI DORIA:

Thank you. This is Avri speaking. That's right, I'm supposed to remember to say.

Hopefully, I can be heard.

So, first of all, you know, as we tried to be specific (indiscernible) with at the time, we were asking questions because we really do need to understand this. So in some sense, the easy answer to your question is, yes, we will try to understand this. We will try to do the legal work that answers it.

Now, you started -- but to drop back a little, you started comparing it to, you know, the contracts that were drawn before the bylaws changed and the situation we're in now. And the two really aren't comparable in that sense. And that's why a lot of those things are grandfathered in there prior.

But one of the issues that we've got and where this originates is, we want to make sure that if there is a PIC, if there is a -- you know, a registry-specific public concern -- I'm losing the three letters at the moment -- that those are things that can be enforced. So we really end up with the two questions of, first of all, are all these,

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you know, PICs and such, do they come in in a way that can be enforced, that compliance has something that they can do with them?

And the other thing, then, becomes the question of to what degree can ICANN make an agreement that is counter to its mission? And that seems very simple. No, we cannot make one that is outside our mission. But actually understanding the full detail of what that entails is sort of something that I believe, you know, assuming we get as far as asking for an ODP, those would be the kind of questions that would be included in that in terms of making sure that the legal background for those things is well set and well understood before, A, accepting, and, B, defining how an implementation is done.

I am sure Becky can probably add to what I have said. But I think the simple answer, if I had just taken it simply, is, yes, during the process of something like the ODP, during the process of coming to a decision, that is certainly something that will be dug into.

And I'm sure it will be done with a large degree of transparency. Whether there's a white paper or something like that is really

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difficult for me to hand-wave about at the moment. But there certainly would be transparent discussion, et cetera, on the issue. So I'll stop there. Since your hand is up, it already prompted another question.

KATHY KLEIMAN: Before we pass it to Becky, can you help me with an acronym that I'm surprised that I don't know, but I don't. ODP.

AVRI DORIA: Operational -- Did I get it right? ODP, the --

KATHY KLEIMAN: Go ahead.

Yeah, if you could explain it to everyone, I think that would be great, because we're adding a new layer.

MATTHEW SHEARS: The operational design phase.

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AVRI DORIA:

Well, okay. And it's something that, of course, others like Goran would probably be better explaining.

But it's basically -- There's been a process in -- between the board and the org in terms of making decisions for a long time, that we ask questions, that they do a certain amount of prethinking, preworking, prefiguring. They answer the questions. And we go back and forth until we get to the point of having enough information to sort of say, okay, we're ready to make a decision.

What the ODP has done is basically sort of take that, define it in -- you know, there's basically a memo out explaining how this thing works, and basically a process that we're going to use on a couple PDPs in terms of framing what the -- what the implementation would sort of look like before going into implementation, coming back with responses to a set of questions that need to be researched, analyzed, and defined before an implementation could start.

Did I get it right, Goran?

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MATTHEW SHEARS: I think you did, Avri.

GORAN MARBY: Perfect, Avri. Perfect.

KATHY KLEIMAN: Can I ask a quick follow-up, then? Sorry, the old geek in me, I was a technology professional before I became a lawyer.

Operational design phase sounds like implementation. That's not normally where you do foundation legal research. But if it is, I'm happy to hear.

AVRI DORIA: It's pre implementation, whatever the names mean in other context. It's basically -- it's a set of work that's being done before implementation is kicked off, before the board even decides on, you know, going to org and saying, yep, these recommendations are approved, go forth and implement. It's basically something to be completed before that decision is made.

So, yes, it can include that.

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KATHY KLEIMAN: Thank you for the detailed questions. In the meantime, I think you were about to pass the ball to Becky.

AVRI DORIA: I was going to say essentially since Becky and I have been working, sometimes she speaks and sometimes I do. I just wanted to give it to her to add anything I didn't add.

BECKY BURR: No. I think you got it perfect.

Yeah, as usual, Avri has nailed it, and I don't have anything to add other than to -- just to reiterate that there are two issues. One is a, even if it's a -- clearly within ICANN's remit, is it enforceable? Is it something that we can measure -- is compliance something that we can measure?

And the other is, taking into account ICANN's remit, how can we construct commitments that do not put us crosswise from the bylaws?

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MATTHEW SHEARS: Thanks, Becky.

Bruna, are there any other issues or are there any comments? We have a couple of minutes left, I see.

BRUNA SANTOS: Not from me, no.

But in case there is anything else from our members, just raise your hand.

I think Kathy has her hand up.

KATHY KLEIMAN: I was pausing to see if others wanted to comment on this. And, of course, we'll publicize a session that's coming up, I think Becky's in it now, too, on Thursday morning where we'll be talking about private PICs as well.

But, Avri, I just wanted to circle back and make sure I understood that as part of ODP, the legal -- so the answer to the question what work and research will the board undertake on this issue of



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private PICs, scope, enforceability, will probably be undertaken during the ODP. That's something that the public, including the Noncommercial Stakeholder Group, will have access to, question mark? And that's where we'll kind of talk about guardrails, what can be in, what can be out in a private PIC?

Is that a bad summary or a quick summary of what you said?

AVRI DORIA:

It's not a bad summary. It may be a little bit more specific than I would have -- will they come out with things that are defined as guardrails in the way that you guys have all been using guardrails, I can't say, sure. There will be analysis. There will be edges drawn. There will be, you know -- if it's like most legal things, being that I'm not a legal person, you know, I always find that there are fuzzy borders in all of those things, and then there are guidelines on how to look at these, how to understand them.

So I can't say what form the analysis will take. It's just I have a very strong belief that there will be a fairly complete analysis of what we can do legally and what we can't do legally. And that's - - whether it's a guardrail or not, I can't say.

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KATHY KLEIMAN: Happy to hear it.

Thanks so much for your -- for your discussion and for everyone's discussion. Really appreciate it.

MATTHEW SHEARS: Kathy, just -- and for those who may not be that familiar with the ODP, Maryam has put a link to the ODP paper and associated blog. So please take a look at that. This will be a tool that we will use going forward.

Bruna, back to you.

BRUNA SANTOS: Sorry. I had a few issues with my microphone here.

No, I don't think we have any additional points. Just taking the time to thank you all for the opportunity and the exchanges.

Apologies again for the last-minute questions, but we do hope to keep this conversation going about the ODP, the PDP, the legal

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committee, and many other topics that we have discussed today.  
So just a big thank you to all of you.

MATTHEW SHEARS: And a big thanks also from our side.

Excellent questions. Really good discussion, which is what we really appreciate. And good to see everyone again.

And as we said before, hope to see you in person soon.

Meeting is adjourned.

**[ END OF TRANSCRIPT ]**