ICANN72 | Virtual Annual General Meeting - Joint Meeting: ICANN Board and ALAC
Monday, October 25, 2021 - 12:30 to 13:30 PDT

WENDY PROFIT: Okay. We are a minute past the start time, so at this point I think we have most of the main speakers from both community groups, so I will hand it to my colleague Lisa to kick us off.

LISA SAULINO: Thank you, Wendy. This session will now begin.

Can we please start the recording.

[Recording in progress]

LISA SAULINO: Hello. My name is Lisa Saulino, and welcome to the joint meeting between the ICANN Board and the At-Large Advisory Committee.

Please note that this session is being recorded and follows the ICANN Expected Standards of Behavior.

Interpretation for this session will include six U.N. languages: Arabic, Chinese, French, Russian, Spanish, and English. Click on

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For our panelists, please state your name for the record and the language you will speak if speaking a language other than English. Before speaking, ensure you have selected the language you will speak from the interpretation menu. Also, please be sure to mute all audible notifications and speak clearly and slowly for our interpreters.

This discussion will be between the ICANN Board and the ALAC members only. Therefore, we will not be taking questions from the audience. However, all participants may make comments in the chat. Please use the drop-down menu in the chat pod and select "respond to all panelists and attendees." This will allow everyone to view your comment.

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With that I hand it over to our ICANN Board chair, Maarten Botterman.

MAARTEN BOTTERMAN: Thank you so much.

WENDY PROFIT: If we could please start the recording. I don't believe the recording has started.

LEON SANCHEZ: It is on. It is on.

WENDY PROFIT: Okay. Sorry.

MAARTEN BOTTERMAN: That is in the left upper corner. I am an experienced Zoom user by now. It says recording. So thank you for double-checking, though.

So welcome, everybody. Welcome our dear friends in ALAC. We look forward to another session to really use the opportunity to listen to each other and to see how together we can help ICANN reach its overall mission.

So for that, I'd like to give the moderation in the hands of the man you sent us: Leon Sanchez, my vice-chair.

Leon, please.

LEON SANCHEZ: Thank you very much, Maarten, and thank you everyone for attending this call. As usual, it is a pleasure to have you with us. And as Maarten said, it's an opportunity for us to better understand how we can collaborate in deeper ways and of course try to advance ICANN's mission for the benefit of the end users.

So we do have -- sent some questions for you guys to provide input to the Board. And I believe that you would like to go with the first question, which is related to governmental interaction and ICANN Org. And for that, I believe Yrjo is the one who will address this from the ALAC's point of view. And what I suggest is that we just put the topics, the discussion topics for a moment so everyone is able to follow the discussion and know what we are talking about. But then afterwards, it would be great to switch into the mosaic mode so we can look at each other's faces while interacting, if you agree.

Would that be okay with you, Maureen?

MAUREEN HILYARD: Sounds great to me, Leon. Thank you.

LEON SANCHEZ: Good. So the first question is, we're asking to please provide input/comments on how you think the Board could efficiently identify and work more closely with governments globally as we -- as well as educate, train, and interact when it comes to geopolitical issues relating to ICANN's mission.

And for that, I believe, Yrjo, you are going to take the floor; is that correct?

YRJO LANSIPURO: Thank you, Leon. This is Yrjo Lansipuro speaking.

I think we understand why the Board is asking this question. Looking around in the world, we see a lot of legislative and regulatory developments relating to the Internet, and sometimes confusion about what aspects of the Internet -- that is to say, what layers -- legislators and regulators have in mind. We even see efforts by some governments to rub the basic tenets of how the Internet works. So it's understandable that ICANN is seeking to expand its interface with the governments over and above the established channels via the GAC, which in themselves are working well.

Now, I know that ICANN is already doing a lot of work to engage governments in the United Nations and on the international level in general, but as they say, all politics is local. And legislation and regulation happen mostly on national level. And of course in our case, in Europe, regional European level.

So we think that we can help. We can help establishing contacts and influencing governments, or at least trying to influence the governments, on the ground at national/local level.

We have 240 At-Large structures, ALSs, and independent RALO members in 104 countries. In many countries, our people are among the most knowledgeable when it comes to the workings of the Internet. Our ALSs and independents participate in regional and national multistakeholder Internet governance events and processes like regional and national IGFs. And these processes include representatives of parliaments and various government departments. In the recent ALS mobilization report, these types of activities are actually recommended. We can certainly encourage ALSs and the independents to be even more active as an additional ICANN interface with governments at the national level. And I understand that in some countries, this will be more feasible than in others, but I also believe that it's possible to lower barriers among stakeholders if everybody sees the advantage of that.

And now we come to what ICANN, the org, could do to help us, to help the At-Large and ALSs. There should be a constant stream of policy briefs and position papers from ALAC -- from ICANN to ALSs so that the ALSs would be knowledgeable and up to date in their interaction with other local stakeholders, including policymakers. Experience, at least from some countries, has shown that policymakers welcome information, insights, and experience from end-user perspective. But our input has to be relevant, accurate, and timely.

So in this connection, I would recall the joint ALAC-GAC initiative at ICANN60. We were asking ICANN to develop information activities that enable inclusive, informed, and meaningful participation at ICANN by all stakeholders.

Now I come to an idea that was presented by Joanna Kulesza, though she is not here because she's traveling; that is to say, further down the road, ICANN could leverage the growing body of research at universities around the world, possibly creating an ICANN academic engagement program. And this in time could develop into a sort of research-based track 2 or track 1.5 of international cybersecurity discussions and negotiations.

So (indiscernible) I want to stress --

CLAUDIA RUIZ: Yrjo?

YRJO LANSIPURO: -- that in our views --

CLAUDIA RUIZ: Pardon me for the interruption. Can you please hold the microphone when you speak? We're getting a lot of feedback. I believe it's rubbing against something.

YRJO LANSIPURO: Sorry. Can you hear me? Okay.

                      So I am actually closing. I just want to stress that based on our excellent experience of ALAC-GAC cooperation, that everything we do in addition would be sort of complementary and not substitute to this establishment -- established contact.

LEON SANCHEZ: Thank you very much, Yrjo, for this insight.

                      Maarten, would you like to follow up or comment on what we heard from Yrjo?

MAARTEN BOTTERMAN: No, just express really appreciate the constructive answer, as always. And, indeed, the bigger picture is that it's clear that we need to engage and make sure that the world understands what we're trying to do and why we're trying to do it this way. And maybe try to inform those on the impact that actions may have on the Internet.

So I really appreciate, Yrjo, your response, and let's see how we can leverage our joint wisdom. Really appreciate it.

LEON SANCHEZ: Thank you, Maarten.

And, yes, I think this is a good opportunity to remind us all that ICANN doesn't operate in a vacuum or isolated. So it's -- This is a great opportunity to take advantage of our ALSs and people on the ground to advance all the topics in regard to ICANN mission, what we do in ICANN, and find new ways of collaborating.
I just want to point to a report that our CEO has been marketing in all -- in all sessions now. You can see the link in the chat. And he's the sponsor for that -- for that advertisement, and I'm just echoing his advertisement to everyone so you can have that information handy.

In that report, you will see that there are a series of engagement activities that are highlighted between ICANN Org and the different governments that periodically get in touch with ICANN and vice versa. So this is a useful piece of information for you to have handy.

At this point I would like to call on other colleagues from the Board, should you want to add anything to has been said so far. Do you have any further comments or feedback that you would like to provide to the ALAC on this topic?

Okay. So I see no hands up.

Anyone else from the ALAC, Maureen, that would like to do any further comments on this topic?

GORAN MARBY: May I make a comment, Leon? Sorry.

LEON SANCHEZ: Sure, Goran. Please do.

GORAN MARBY: I really appreciate the answer to that. And the intention for the Board to bring this up is we do believe that we need more

interaction with the community, more discussions with the community. That's why we proposed, for instance, to have at every ICANN meeting, to have a 90-minute slot where my teams can come and talk to the community, we can have an interaction with the community. And I agree at the importance of the local presence. I agree the fact that many legislations are local, even if they start to having, you know, international effect sometimes. It's hard to limit the -- what happens on the Internet into a particular jurisdiction. So what we're really saying is, yeah, we agree.

On the proposal itself, it's always good to talk about proposals from a multistakeholder model. But we indeed to enhance this discussion a lot. And I also agree with you on the fact that probably right now, first time after the decision, the ICANN model, the multistakeholder model is challenged more than ever. And some to the extent is that the countries and governments maybe forgot and taking things for granted it just works without thinking about some of the legislations they might come up would have a severe impact on people's ability to connect to the Internet. And I think we have a place there and I think the community has a place there. We just need to work better together. We have to take that challenge on.

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So thank you very much, Yrjo. And I wouldn't have mind if you said it in Finnish, by the way.

YRJO LANSIPURO: I could say it in Swedish.

LEON SANCHEZ: Good. Thank you, Goran.

Anyone else who wants to comment on this topic, either from the Board or of the ALAC? No? Good.

So -- oh, yeah, I see Matthew's hand is up. Matthew.

MATTHEW SHEARS: Thanks, Leon. I just wanted to say how much I appreciate the -- the words from Yrjo on this, because one thing's for certain, and as Goran has said, we do need to work together. The environment is changing rapidly. The -- Some of the things that we may have depended upon, and Yrjo and I go back some ways in the WSIS process and everything else, that the dynamics and the situation is very different now.

So I think the more that we can share intelligence and information about what's happening in the local level, the better place we are

to promote the multistakeholder model and what ICANN stands for and its value it brings to this ecosystem.

So thank you for the suggestion, and very much appreciated.

LEON SANCHEZ: Thank you, Matthew.

I see both Sebastien and Maureen's hand up. I believe Sebastien was first, so I will go to Sebastien and afterwards to Maureen and then Alan.

SEBASTIEN BACHOLLET: In French.

Hello. These are conversation and interpretation tools. Sebastien speaking.

I totally agree with what Yrjo said. And I would like to add one point, nonetheless. At EURALO, we are trying to have several actors in the European Union. I know several people working very hard with their governments in Europe. It's true in France. It's true in the U.K. and in other countries. And the support of ICANN for multistakeholder activities is very important. Thank you.

LEON SANCHEZ: Thank you very much, Sebastien.

Let's just use our interpretation services.

There is two more hands. There's Maureen and Alan. But I think she prefers to Alan to go first.

So, Alan, you will now have the floor. And then Maureen will go afterwards.

Alan, please go ahead.

ALAN GREENBERG: Thank you very much. Just a very brief comment. Yrjo made reference to a joint GAC-ALAC request going back, I believe, about six years on the need for documents and briefings from ICANN in words that don't use any buzz words for the people who are unfamiliar with what we're talking about. And that includes new GAC members, new At-Large participants. And we're still not seeing a lot of that. So I guess I'm just restating the request from, I think -- I think Yrjo said ICANN60. It sounds about right. And it's something we still need on a regular basis, and we're just not seeing it enough. So thank you.

LEON SANCHEZ: Maureen. I'm sorry. I was on mute.

MAUREEN HILYARD: Thank you.

I just wanted to -- yeah, just to confirm, you know, what my team has actually sort of said today. If I could just indulge the Board for one minute. I would really like to take this opportunity to thank Yrjo Lansipuro for the brilliant work that he's done as our GAC liaison over these many past years. And he will -- this is his final meeting as the GAC liaison. And we will be -- he will be passing over to Joanna Kulesza in future meetings.

But I just wanted to make mention that I have really appreciated the work that Yrjo has done and just wanted to make that public announcement today. Thank you.

[Applause]

MAARTEN BOTTERMAN: Here on behalf of the Board.

LEON SANCHEZ: Thank you, Maureen. Thank you, Yrjo.

Good. So maybe we can move to the next topic. Could we have the question on the screen, please?

Good. So our next topic is on the advice/expected advice sent recently or to be sent to the Board. What would you like to explain or comment on? Are there any improvements to the current process the Board uses to address advice that you would like to suggest?

So with this, I would like to, of course, open the floor for our ALAC colleagues to give us their insights.

If we can now switch back to the mosaic mode, that would be perfect. Thanks.

Who would be speaking on this first? Maureen -- oh, good, Olivier. You have the floor.

OLIVIER CREPIN-LEBLOND: Thank you very much, Leon. And I hope you can hear me.

My name is Olivier Crepin-Leblond, and I will actually flip the question around because we started with the question saying what advice do you think we should look at, at the moment and then how is the Board to treat the advice. And I was just going to

give you a quick intro of how the consolidated policy working group works in At-Large.

That was created a while ago to treat every single piece of policy that At-Large has to deal with. As you know, At-Large has to comment or can comment on pretty much everything and anything that happens in ICANN, not just GNSO matters but pretty much everything else.

So we had two groups created. One to deal with process, that was the operational and financial budget committee group; and on the other side the policy working group, which Jonathan Zuck and I co-chair. And it does require a couple of chairs due to the amount of work, as you can understand, that takes place in there.

We have weekly calls, and we not only produce the advice for the policy advice commenting that is a pipeline that you constantly have but also, we are the group that supports the people that are now in the expedited and the no expedited policy development processes that you are seeing in the Generic Names Supporting Organization since the system has changed from an individual model to a representative model. So we have representatives there and, of course, they need all the support from our group to be able to navigate and to get the room in which they can discuss the issues that are taking place on the PDP.

There used to be a time when the ALAC used to write the advice. So here now we have, of course, the consolidated policy working group writes the advice. So we've got a larger set of people writing it. And then the ALAC, finally, stamps it, if you want, ratifies it, because every advice that comes out of the ALAC needs to be ratified by the 15-member At-Large Advisory Committee.

That being said, a few years ago -- and I'm speaking quite a few years ago -- that piece of advice or text used to be lobbed over a wall and caught somehow by the Board. And there were times when we never heard about it. I think that this is something of the past, and it's changed. And the processes have improved greatly, not only because the Board has now produced some documents which are publicly available so that we can see how the pipeline workload is going on, on the Board so we know when our advice is being addressed or looked at by Board members but, additionally, because in recent times, we've had increased interaction and two-way discussion. And I think that's a really great thing.

And today, for example, is one of these days when we will have that interaction with Alan Greenberg who's going to focus a little more on the expedited PDP on the gTLD registration data -- that good old friend that we've had for quite some time -- and focusing specifically on the SSAD.

Without further ado, I will let Alan take it over. And I think he has a presentation, so presentation has to come up.

Alan Greenberg.

ALAN GREENBERG: Thank you very much, Olivier.

Yes, there is a presentation.

We saw a discussion last week, I guess, with the Board on the sub pro advice we gave, and the Board came back to us with a whole slew of questions which are quite interesting, and we will be responding to them.

This presentation pushes that concept to a different level and suggests that maybe sometimes discussion is necessary before the Board has done its initial deliberations on it and come up with questions.

In the case of the ALAC EPDP phase 2 advice, this advice is unusual in a number of different ways. And we believe that a discussion -- not only a presentation but a discussion of it is warranted before the Board takes action, before the Board comes back and asks us

detailed questions. And this is a very brief attempt to do that right now in this session.

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If you look at the advice, we start off by summarizing what we believe the needs were in an SSAD and commenting on to what extent we believe they were addressed.

The first major issue is the SSAD was supposed to provide consistent, predictable responses to legitimate RDDS access requests and do it in a timely manner.

When you look at what came out of the PDP, we have service-level agreements, which "timely" is not quite the word for it, where it could take up to two weeks on the average but not even a maximum to answer regular requests.

It assigned priorities which were not deemed to be acceptable by many of the people around the table who would be submitting requests.

There was virtually no automation.

EN

Every individual registrar would be answering the requests according to their own policies and practices.

In terms of cost effectiveness, since this was expected to be paid for by the users and probably -- we estimate something in the order of 10 to $20 million to implement over several years, we just don't believe that what comes out of the system is going to be anywhere near justifying the cost and effort that was gone into it.

And, lastly, any system has to work in a changing environment. It has to be agile. And the processes that the PDP recommended for modification and evolution of the SSAD just don't come anywhere near meeting that target.

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In terms of the process that was followed, we have severe concerns that for the first time ever, the GNSO is passing on to the Board for consensus policy recommendations that did not have strong support from the community, from the PDP working group.

There were a number of recommendations that were defined in the report as strong support, but strong support is by definition most of the group supporting the recommendation. And in some

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cases, we had well over a third of them that don't support. So "most" is a questionable word.

Moreover, the GNSO forwarded to the Board recommendations for implementation as consensus policies where there was no consensus. And that just doesn't seem to make a lot of sense.

Lastly, we hoped at the time that the report was issued the legal/natural issue would be certainly discussed and resolved to a better extent than it was then.

We have now finished the EPDP phase 2a, and it's quite clear there has been virtually no change whatsoever.

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The net result is the SSAD is a very expensive, complex ticketing system, potentially long and costly implementation. And it's not clear that it will even be used because the PDP requires that it be -- operation be self-funded. And it's not clear that whatever the costs come out of it are going to be ones that are reasonably going to be borne by the potential users.

The ALAC has not a large part in this, but the same statements have been made by the potential users. Security, the intellectual

property communities have all expressed severe doubt that the cost process -- that the financial aspects of it are going to be acceptable.

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So we have a real problem. The ALAC still believes that the system for standardized access and nonpublic registration data -- this is the term that ICANN and the GNSO used going into this process -- is still needed. But we don't believe the SSAD -- the previous slide, please.

Yeah. We don't believe the SSAD is such a system. So we believe we need a system like this, but the only system that has been presented to the Board is one that we do not believe will not come anywhere near meeting the targets.
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So we need a system. Ensuring that such a system is used by the contracted parties is a GNSO responsibility. I mean, the Board is fully able to mandate that ICANN org build a system that does everything we want, but you can't mandate that it be used, and that's a real problem.

Only the GNSO or negotiations can do that. And we don't believe the system delivered by the GNSO is fit for that purpose.

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So how do you resolve the stalemate? And that's a problem which is sitting on the Board's desk right now.

And what we did in our advice is an attempt to start chapping away at the problems that we're faced with. And there's no attempt at all to believe that we have the complete answer.

And that's part of the reason we're having this session, because we think that discussions are going to be necessary not just something coming out of the Board as a magic silver bullet answer.

Next slide.

Okay. Okay. Next slide, please.

Our advice consisted of three parts.

One, we don't believe the SSAD should be approved because it will involve huge expense, time, and we don't believe what's coming out of it is going to be satisfactory.

We believe that the ticketing system aspect of the SSAD is exceedingly important. We want to be able to track what's going on. But that doesn't need to be a system anywhere near as complex. For instance, it doesn't need accreditation. It doesn't need response times. It doesn't need all the difficult parts of the SSAD. And we believe that's something that can be done either from -- largely from components ICANN already has or can be obtained on the open market or cobbled together.

So we think that's a relatively quick and simple thing to do that would benefit the community.

Lastly, we believe NIS2 will likely have significant impact, because NIS2, at least in the versions we've seen so far, is going to mandate things that many of us would hope would come out of the EPDP but didn't.

So assuming NIS2 does get adopted, and, you know, we can't predict that, but we believe it is currently being discussed by the parliament and we believe what will come out will be a significant change, but at that point we're in an interesting --- other

interesting problem. The European registrars and those subject to European law will have to adapt to this but we'll now have registrars in other parts of the world who can still bypass it all. That's going to lead to a very uneven playing field, and we believe a PDP should be initiated to make sure that all contracted parties are following comparable rules.

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And that's where we are! So at this point, if board members have any questions about the statements we made or the advice, we'll try to address them.

And I'd like to open this up to an interesting discussion of other ways that we can go forward. As I said, the ALAC doesn't pretend we have all the answers, and there are some complex problems. And if anyone else would like it raise things, not as board solutions but as, you know, simply ideas that may need to be talked about, developed, and enhanced, I'd be delighted if we heard some of that.

And I'll turn it back to Leon.

LEON SANCHEZ: Thank you very much, Alan.

So I think Becky would like to address this in the first place. So, Becky, if you would like to take the floor.

BECKY BURR: Great. Thank you. And thank you, Alan. That was really excellent presentation recapping the advice, which I re-read this morning, and was very useful.

Let me start out by saying that I think everyone on the board had hoped when we adopted the temps back and went into this process that we would end one a reliable and consistent and predictable solution for delivering WHOIS data, registrant data to those with legitimate needs to access the data. That was all of our goal going in.

I think, unfortunately, the reality of not being able to get very clear advice from the Data Protection Authorities and the place where Phase 1 ended up in, which was that it was likely, in the end, with respect to disclosure, always going to come down to a question of a (indiscernible) party, usually a registrar making a determination, applying the European -- the GDPR balancing test and making a decision about what way to move forward. And once you're in that situation, what you can have is an efficient intake system, but you cannot guarantee the outcome because it depends on applications of interpretations of the law.

So at some level, I think we all share the disappointment that we were not able to end up in a place where we could say (indiscernible) we knew when information, circumstances under which registrant data would be disclosed and when it wouldn't. And you, because you sat through all of those calls with me, you know that, you know, all of the advice that (indiscernible) on legal and natural and on all of those other things that we pushed very, very hard on, including, in particular, what I thought was going to give us some helpful information to the implications from NIS2, what we were seeing with EURid and .EU and all this, we pushed really hard to say does that give us a precedent for understanding a better way to make determinations about that. And the legal advice was equivocal at best.

So I think -- I don't want to diminish anything other than to say that I think that we understand the disappointment and wish we -- wish we in a different place with respect to this.

We do really appreciate the advice that we got. We are working for -- through it, and I think we have sent some clarifying questions. I understand the value of the conversation first, but it is important for us to understand those responses and questions.

And then finally, I think, you know, we have embarked on the ODP process. The ODP process, one of the issues is going to have to

deal with can we build it, how much is it going to cost, will it come in at a point where people will be able to pay for it, and, you know -- and I think we're all agreed that probably the most expensive part of the system is going to be the accreditation system.

So I can't tell you where we're going to come out other than to say we feel your pain in terms of we wish we'd had -- that we were in a position to deliver more certainty. We will certainly be considering the advice very carefully. We really appreciate the input and look forward to this conversation. And we're having the ODP precisely to answer some of the questions that you've pointed to and raised.

LEON SANCHEZ: Thank you, Becky.

I see two hands up, one from Hadia the other one from Alan. But I would also like to take us back to the original question that we posed to the ALAC, which is the advice -- expected advice sent recently, to be sent to the Board, what would you to explain our comments on? Are there any improvements to the current process the Board uses to address advice that you would like to suggest?

So I would rather have this discussion with the ALAC in regard to a more -- to a wider view of how we handle advice rather than just centering in the SSAD advice that was sent to the Board and that we have begun addressing it with this pilot in the fashion that we work with the GAC as well.

So I will go to Hadia and then to Alan. Hadia.

HADIA ELMINIAWI: Thank you, Leon, and thank you, Becky, for this explanation. And so I raised my hand to comment on what Becky was saying, but I would also address what you were saying, Leon.

So I think the question, Becky, is why would we build such a system, right? And not necessarily, you know, how much it would cost and -- but why? Why do we want the SSAD?

And before answering this, I would just like to iterate, reiterate that the ALAC and At-Large, we were always looking for a standardized system for access -- for access or disclosure. And we still -- and we are still looking for a standardized system for access slash disclosure. But the current system automates the recipient authentication and transmission of SSAD requests, but all disclosure decisions, apart from limited -- for limited use cases, are handled in the manner just the same as it is handled right

now. So the question becomes what is the purpose of building this system?

And then, Leon, going to your -- to your question, and then maybe I would also answer with another question. Like if you receive advice, is the Board agile enough in order to -- could it like -- based on an advice like suggest modifications or alternatives to a proposed policy, or does it have to go back to the GNSO and then it goes through the whole process all again? Like if you do want to respond to a certain advice but that advice would necessarily need some change in the policy developed, how does this happen?

Thank you.

LEON SANCHEZ: Thanks, Hadia.

So I guess Goran would like to comment on some of the points that you've commented to.

GORAN MARBY: It is true that the SSAD doesn't change who makes the decision. And that is, unfortunately, or fortunately depending how you see it, not depending on anything ICANN does. That is the law.

The law is very specific when it comes to the role of what we call the controller. And we talked about this before. And in the -- And there is several determinations that the controller needs to do to be able to share that data with anyone else. What is so famously called balancing test is one of them, where you balance the right of the registrant in this case and the need of the information from the requestor. But there are also other decisions that have to be made. There are other international laws relating to this like international data transfer. Is it possible you can only transfer the -- when it comes to European citizens, there are specific specifications about that.

The NIS2 as itself -- and I'm not a lawyer and I'm not going to say that I understand correctly how NIS2 will be written up or done, because it's not done yet -- might simplify for the contracted parties the very hopes they have to take into account when they do those assumptions, including the balancing test. That doesn't change that it's still, according to the GDPR, the responsibility of the contracted party. And this is worth repeating, and I think it's good to remind ourselves that that's why -- I -- whatever comes out of the community is always the best for me, but I think that's one of the challenges in this view or looking at it. The SSAD model could never take away the responsibility for the contracted party. And we did actually try. If you remember the strawberry model, we went to the European Commission, we went to the Data

Protection Authority and said, hey, we would like to have ICANN Org legally responsible for the balancing test. And we wrote a whole paper about it, we did a lot of work together with many interested community members, and unfortunately it stopped. And I might sound a little bit critical, but the Belgian Data Protection Authority turned to the European Commission and said we can't take this to the Data Protection Board, it has to be done by the European Commission, and unfortunately, they never did that. But we did -- We have tried different angles to change that.

And for me, I'm very old; I'm not very agile. Thank you very much.

LEON SANCHEZ: Thanks, Goran.

Now to the second point that Hadia was raising, I believe Maarten would like to comment.

LEON SANCHEZ: Yeah, no. Very quickly, or -- very quickly. But basically the point that you made is would the board be agile enough. In our thinking, maybe, but we are also bound by the bylaws that have been agreed by the community. And in that way, we are trying to

find our best way forward, which means we need to follow the process that we all agree to.

What we try to do here, and this was the intent of the question, is really to get the best out of the advice and the interaction. So in that way to see how that could work best.

So referring to some of the content information Goran rightly gave about the SSAD, let's not forget it's also how the law has been built up. How difficult it makes to make something that is actually fulfilling the publication in a good way.

Also, on the other side, let's find a way where we can get the best out of the advice process within the bylaws; otherwise, we have to change the bylaws.

And, Alan, with all respect for everything you bring, but if you want to talk before we ask the questions, how we prepare for meetings is by thinking what do we want to know? And so there's the questions. And so we try to engage in the best way possible in that way as well. So let's not see it as a one-time off thing, but as we develop with GAC over time a predictable process where it's clear where we're going to come in, how we make sure that we get it right, and take that into account while doing our job as mandated by the bylaws.

LEON SANCHEZ: Thank you, Maarten. Thank you, Alan and Jonathan, for waiting patiently. I will now go to Alan and then Jonathan.

ALAN GREENBERG: Thank you very much. A couple of quick points, and I won't be very long.

A lot of what Becky went into, and, to some extent, Goran is expressing the -- I guess "angst" is the best word, of our level of dissatisfaction with how the PDP turned out and how it was run. And it ranges from phase 1 discussions where we never discussed the balancing test with regard to what should be redacted or not. And that is something that GDPR allowed and requires.

But we can't change -- we can't change the history. Right now we are where we are, and we have to deal with it and make something come out of it as best we can.

With regard to the process -- and back to Leon's question and Maarten's comment of you can't discuss it until you've considered it, let me bring another tone into this.

I hope that helps. That is a limitation to the agility of how we can act as well.

When we write this kind of document, we have choices to make. You know, do we do a three-page document as we did in this case? Or do we do a 50-page document going into excruciating detail of exactly what our thinking is behind the conclusions we've come to and perhaps more detail of possible outcomes.

And to be honest, we have a lot of concern with doing the latter. Number one, it's an exceedingly time-consuming process for people who are doing this on a volunteer basis. And just editing a 40-page document just takes an almost infinite amount of time. Moreover, there's always a chance that not everyone is going to read it in excruciating detail if you put a long document in.

So this time, in any case, we chose to do a very terse, short document. But by definition, it's not going to be complete. And that's why, you know, certainly in my opinion, it's worthwhile having a discussion early in the process just to make sure that we're getting our message across. And to be honest, a public meeting like this is probably not the best forum for that.

But I do believe that early discussion is something that especially in a complex area like this can probably yield better results than just documents back and forth, even if it's -- and thank you, at least it's not one final document at the very end. Now we're doing things on an interim basis and trying to refine our positions. But I

think the earlier we can have discussions of complex issues the best we are.

Now, that probably wouldn't apply to the sub pro one which has so many facets and so many aspects. But I think for something like this, I think it has merit to consider going forward. That's really one of the things we're bringing into this discussion, that discussion earlier and oftener is probably likely to lead to better results.

LEON SANCHEZ: Thank you, Alan.

Jonathan.

JONATHAN ZUCK: Thanks, Leon. Jonathan Zuck here for the Board. I can throw my camera on briefly to be more personable.

Thanks again for meeting with us. We always value these meetings with the Board.

I wanted to go back to Leon's question about the advice process generally and ask a question, I hope, in a neutral -- in a neutral way with respect to ALAC advice and its juxtaposition to the

participation of At-Large volunteers in policy development processes.

Because we -- Olivier and I in the CPWG have worked to try to organize that committee to be a place not just for the generation of advice but also for the development of positions and the support of volunteers that then are assigned to participate in PDPs, whether it's the representational model or not. That's kind of how we've organized it and to provide this virtuous feedback loop when new issues arise, if compromises are suggested, et cetera. That sort of has become the role of the CPWG, is to develop positions, iterate through with the volunteers and their participation in the work groups.

And then the advice -- and then the public comment process comes out after that. And then the advice process has evolved into almost kind of an appeal process or a -- you know, a tactic of last resort or something, if it makes sense.

In other words, if we find that our arguments are found persuasive in a work group, we don't find the need to put advice on that, right? And there are going to be instances in which we, for one reason or another, don't get our way in a work group process or as a result of the public comments that we posted.

And so there will be instances in which our advice are reflective of things that we've said before by still considered important to have this mechanism of giving advice to the Board despite having voices issued as part of the work group process, despite them not winning the day in the GNSO policy development process.

But I guess I wanted to make sure that that's not something -- I want to make sure that we're not creating a situation where we're undermining the impact of our advice through our participation in these work groups.

We've heard from time to time from a couple of Board members and from some other work group participants that somehow there's something somehow disingenuous about participating in a policy development process and then providing advice anyway that's counter to that consensus.

I think that's a perfectly healthy way for the ALAC to operate, but I guess I would love your feedback on whether you view that to be the case.

I think it is the way we should operate because the better -- the earlier we're involved is better. And when we weren't doing that as much, then we got a lot of criticism that we would wait for the end of a five-year policy development process and then put advice in, right?

So I want to make sure there's nothing we're doing to bias the advice process through the early participation in the policy development process. Just a topic for conversation.

LEON SANCHEZ: Thank you very much, Jonathan.

So I see Becky's hand is up, so I will go to Becky. And then I would like to make a couple of comments myself. Becky.

BECKY BURR: So, Jonathan, you raise a very interesting point. And I'm probably speaking for myself, but I suspect my view is shared by most of the Board, that you are not compromising or undermining your position as an advisory committee by -- or your ability to provide advice by participating.

We very much appreciate the fact that we have -- (indiscernible) -- where both ALAC and GAC are deeply involved early on in the process, and we think that's healthier and produces a better result.

The question is -- the question is exactly what you put it. Like, okay, now the policy development process has run through. There was -- it worked the way it is supposed to work. I mean,

unfortunately it didn't produce a huge degree of consensus. But, you know, it followed the steps it was supposed to take.

And now we have a policy recommendation. I guess we don't actually have it quite yet. The GNSO Council is doing phase 2a, I guess, this week.

And then the question is, so can you come in and -- and what's the value of your advice now? Is it just another bite at the apple?
I think that the advice you provided was not just another bite at the apple. I think that it was quite -- I think it was quite useful and constructive. It sort of placed a lot of issues on the table. So I don't think that you should feel like -- like you're somehow handicapped in terms of commenting.

I do wish that we could find ways to reach sort of closure on things a little bit earlier.

This is just an interesting question. I mean, at the point where the EPDP moved from the uniform access model to the SSAD, it seems to me, it should have been clear at that point that what was going to be delivered was a centralized intake system that did not guarantee outcomes. And so my question is, like -- was that unclear? Is there something we should have done to make sure everybody was on the same page in a better way?

So now I'm going back into the process of the -- of the EPDP. But my only question is with the advice coming afterwards, was should we think about whether there were steps in that process as it was going along where there was a disconnect and what came out on the end was a surprise to what we thought when that transition was made from UAM to SSAD. And, I mean, that's the same. But yeah.

LEON SANCHEZ: Thank you, Becky.

So if I may now make a couple of comments, and I will switch to Spanish.

Thank you, Jonathan, for bringing this back to the main issue in our discussion. I think we are experiencing an evolution -- we're witnessing an evolution in the way in which policies are made within ICANN. For a long time, those of us who were in the advisory committees, we were asking for advice and for more early engagement in policy development processes. And so finally, this happened.

Now policy development from my point of view is being more parallel, more inclusive of other parties that make up ICANN. And it is true probably within the process we are not really successful

in showing some of our points. However, I didn't really see these as a way to reduce or diminish the importance of the advice provided by advisory committees such as ALAC or GAC.

I do believe it is an opportunity to have an impact on policy and a second opportunity to show these issues to the Board that we believe are important. In this case, there is the impact in Internet end users.

And I think the advice offered by the ALAC to the Board is even more relevant because it's not only a committee that provides better knowledge and better position and accuracy in policy development, but it is also the product of a long discussion within the ALAC and within the At-Large community. And I believe this increases the value.

Now, if we add the exercise we have been engaged in with the advice recently provided by ALAC to the Board, what we see is that the Board and the org want to elevate the discussion and to place the advice from the advisory committees in a much better place.

I think we need to encourage dialogue. We need to encourage the possibility of having this interaction in the discussion. And in this discussion, you provide us with your advice. We can ask some

clarifying questions. And then, finally, we can have a better way to consider this advice and add it to the Board sessions.

Thank you, Jonathan, for bringing us back to the discussion. And obviously if somebody else would like to take the floor, maybe Maarten, if you would like to say something about this, you can have the floor and I will be very thankful for this.

MAARTEN BOTTERMAN: Thank you. It was a good discussion. It is, indeed, about making things work. I have nothing to add to what previous speakers said.

It's really about getting things done together, also respect the bylaws.

Yeah, in all means, if you feel you're not heard, you can express that. But this is part of the system, right?

This is also why the Board every time we get a PDP, the first thing we do is go to public consultation. It's built into the process.

Avri knows much more about that than I do.

LEON SANCHEZ: Avri.

AVRI DORIA: I certainly did not raise my hand because I think I know more about it than you do.

I did want to add a comment on the whole is it second bites at the apple. I don't think it is. And I think others have pretty much said this, but I want to add one piece.

Oh, did I say this is Avri speaking?

I want to add one piece, that it is important that you participated. It is important that you repeated the things that you had said before and you don't think were taken properly into account.

And I think that that is a credible thing.

And you may have other advice, too, which you hadn't spoken of. And I think what that places on us is sort of the duty to make sure that the things that you spoke of in the PDP have indeed been discussed and dealt with. Then it becomes a question did they deal with them properly, and that becomes a separate question. But there really an absolute requirement of the GNSO Council and

of the PDP to have addressed it, even if they addressed it incorrectly.

So there's really two different issues going on here: Was your advice taken seriously, considered, understood and, you know, dealt with, in one way or another; and then is there an issue in your advice that even though it was dealt with, it still represents a problem that hasn't been dealt with?

And I just want to -- So I really wanted to say that I don't see it as a second bite of the apple. I see it more as, see, we took a bite of the apple, and it still hasn't been taken care of, and such.

And so I hope that helps and doesn't confuse things more. But I really see that as what is incumbent on us as a board when we have the PDP, we have the recommendations that were -- you know, especially those that were supermajority recommendations, and then we have "but we discuss this had and you didn't take care of it" advice. So I think that that's very...

I also think it's great, and I'll just reiterate, that you send a short one and we do this -- this -- the iterations that Leon spoke of. And we go through and make sure that we get to the point where we understand each other as opposed to you spending forever

writing 50 pages where we would have even more pages of clarification, I would assume.

Thanks.

LEON SANCHEZ: Thank you very much, Avri.
We have exhausted the allocated time for the meeting, so I would like just to give the chance to Jonathan if he wants to close the discussion on this topic. Very quickly, Jonathan. And then would go back to Maarten to adjourn.

So, Jonathan.

JONATHAN ZUCK: Thanks, Leon. I didn't mean to try to get the last word, but it is an interesting question for us in the CBWG and then, in turn, the ALAC how we differentiate in our activities of direct participation, public comment, and then advice. And I think we do endeavor to make those things narrower and narrower as we go, so by the time something is, in fact, advice to the Board, it's as refined and as specific as possible and confined to those things that we consider to be of relatively higher stakes than perhaps many of the things we might have commented on within the work group or within the public comments.

So we certainly endeavor to do that. I'm not saying we are successful all the time but that's our attempt. But it's not always clear what we should put where. And I just wanted to clarify with the Board -- and I got that clarification, so thank you -- that treating it as a kind of escalation path that says, okay, we have brought this up, but we still think it didn't get suitably resolved in the policy development process, and so we're bringing it to your attention directly, that that's something that the Board finds.

Then that's in line with our thinking. So thank you very much.

LEON SANCHEZ: Thank you, Jonathan. Well, thank you, everyone, for attending the meeting. I would like to turn back to Maarten. So with that, we can adjourn.

Maarten.

MAARTEN BOTTERMAN: Maureen, any last word from you first? You're muted.

MAUREEN HILYARD: Thank you, Maarten. I just wanted to say thank you so much for, you know, allowing us to attend today and be involved in such a productive discussion. And, you know, we really appreciate that

we've been given an opportunity to share what our interests and concerns and we're certainly looking forward to our next future meetings. Thank you.

MAARTEN BOTTERMAN: Yes. From our side, also. High appreciation of the way you fly, and basically, you want to add something, how can you add it best? And that is what we all are striving for. In fact, the Board itself is seeking for that as well. One of the proofs of that is that we published our liaisons document in which we describe how we think we can engage best while we still have to keep the right to, in the end, take the decision, because that's...

So I think there's always opportunities for improving, and we're very happy to seek the best possible way forward with you. And really appreciate the constructive -- the continued constructive attitude and discussion we had tonight.

So with that, seven minutes over time.

MAUREEN HILYARD: (Laughing) Thank you so much.

MAARTEN BOTTERMAN: Seven group minutes. This meeting is adjourned. Thank you so much.

LEON SANCHEZ: Thank you everyone, bye-bye.

Bye-bye.

[END OF TRANSCRIPT]