
ICANN76 | CF – GNSO: CSG Membership Meeting
Tuesday, March 14, 2023 – 10:30 to 12:00 CUN

BRENDA BREWER:

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And with that, I will hand the floor over to CSG Chair, Lori Schulman.
Thank you.

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LORI SCHULMAN:

Thank you. Welcome, everybody, to the full CSG membership meeting. As many of you know, our three constituencies rotate the chair throughout the ICANN cycle. And this time around, the IPC holds the chair. I'm Lori Schulman. I am President of the IPC. We have Mason Cole, who is Chair of the BC, and we have Philippe Fouquart, who is Chair of the ISPCP here, all as leaders. We worked together to come up with an agenda that we hope will be enlightening, informative, and that we will get through well within our allotted time.

With that being said, I'm going to take the first few minutes to give you some updates on general issues that are important to the entire stakeholder group. The first is of course—because you might hear some buzzing the hall about Board Seat 14—is that our representative, Matthew Shears, is up for renewal. He has fulfilled two full terms for CSG, and he is interested in serving a third term.

In order to abide by the written process that was formerly entered three years ago with the NCSG, the CSG chairs the effort now and has followed a process that has come up with two recommended candidates that were submitted to NCSG. Those candidates are Damon Ashcroft from the U.S.A.. He's currently IPC Treasurer and a former chair of the NomCom. The second candidate—there's no first and second; they're co-candidates; we didn't rank them one and two but the top-two; I'm going to be clear about that—is Mark Datysgeld. Mark Datysgeld is the GNSO Councilor from the BC. He was a leader of the small teams on DNS abuse and is noted as a rising ICANN leader. And we feel it may be time for him to rise to the Board. So these two choices were sent to NCSG.

Along with the top choices—we were fully transparent—we sent our full list of interviewed candidates. We interviewed five candidates. They were the two that I mentioned—the top two—Matthew Shears, Christine Willett, who you might remember as a senior member of the ICANN staff who stepped away and has been in the private sector and wishes to engage, and Heather Forrest, as you know as the former chair of the GNSO and former president of the IPC and who is an acknowledged leader and bridge builder. So we were really blessed with a super deep slate. Lots of different experiences and strengths being brought to the table.

Unfortunately, Heather withdrew. As many of you know, Heather has now become the Head of Legal for Com Laude. And with that brings new responsibilities and new potential conflicts. So Heather, after some long discussion, decided it would be not the right time to pursue the chair, although we do hope in the future that Heather does because there were many who supported her candidacy.

We sent the list of candidates. He sent all of the questions that we asked the candidates. And we also sent a strawman. The process that was negotiated three years ago really did not address the issue of stalemate. The piece of the agreement that addressed the issue of stalemate was apparently verbal. For whatever reason, the agreements that were made in the room were not written down. And while people have memory of the agreement, we don't have documentation of the agreement. And that may become problematic as we move down the line. NCSG has agreed to interview of all of the candidates that CSG interviewed. So while we have expressed our preferences, they are looking at all of our suggested candidates. They may also add

candidates of their own, which they certainly have the right to do—however, under the written agreement. Under the verbal agreement, there was an understanding—at least it was conveyed to me—that CSG would leading and present a fair table of nominees, and one of those nominees would become chair. So there is some kerfuffle about how that process will work moving forward.

So I'm asking CSG to be very patient, to trust the leadership that we will find a solution out of this and we will find an acceptable Board candidate to both parties. I am determined that we do not default because we can't make a decision. That's the wrong path as far as the leadership is concerned. And that's how we're going to approach this issue.

Now, I'm also going to alert the CSG to another issue that has come up. I just had a very quick meeting with Sam Eisner of ICANN Legal. Matthew Shears, who is currently in the chair, I personally thought was sitting there under a Canadian flag. I think he lives in Canada, and I thought he was Canadian. In fact, he's British. He represents himself as a British citizen when working inside of ICANN. Therefore, Matthew is not a North American chair. Matthew is a British chair. So we may be precluded from submitting any North American candidates, which would unfortunately knock one of our top two out, Damon. It would also knock out Christine. And so we may have an issue where in fact, from a legal bylaws perspective, we may only have one top candidate simply because of the nationality issue. Sam and I agreed to keep talking, but I did want to alert the CSG that, if we have to look to another set of candidates or add a candidate, we're going to have to look outside of North America.

Now the good news is—the great news, in my view—that Mark is from Brazil. Mark is a proven ICANN leader. Mark and I have been working diligently—actually, he’s been working with the entire leadership—to address the issues that we think are so important now in this time of transition for ICANN. We have full faith and confidence in Mark. And I’m very happy to move forward expressing that full faith and confidence, if the citizenship issue becomes a bar to Damon. Full disclosure: I believe it will.

Damon?

DAMON ASHCROFT:

Well, I just wanted to say thank you so much to you and the whole CSG leadership for all that you’ve done for myself. And I think I speak for Mark. I know it’s a tremendous amount of work, so thank you very much. And I appreciate all that you’ve done.

LORI SCHULMAN:

Thank you so much. I feel it’s the least we can do to get the best Board representation possible. So thank you very much.

Steve?

STEVE DELBIANCO:

Thanks, Lori. We studied carefully that procedure that is locked into the GNSO procedures, and there are two things in which it is silent. To make you all familiar with it, it’s a process whereby a name gets nominated, and the CSG and NCSG each get one vote for either that name or none of the above. So the procedure determining which name goes up first,

which name goes up second and third, is unspoken. It might take turns. It might be alphabetical. I don't know which. So that's not written down. That's important, too, because the order in which it's presented ... For instance, it might be better not to start with the incumbent if there's opportunity to influence that. There may not be. And again, you don't want to necessarily go to the mat over order if our real goal is to get consensus around a candidate that might be a little bit more knowledgeable about business concerns.

The second thing I'll say is it's silent on the notion of, what happens if we're deadlocked? Well, not really. It just says we keep going. We keep going forever until we get a candidate that gets both votes. While we do that forever, the incumbent would stay in the seat. I don't think it's even at question. So the NCSG, if they prefer to retain the incumbent, can merely vote "none of the above" for everything, and they get their way. And so far, I don't see any indication that the NCSG is drawing a line in the sand. They've been very—agreed, Lori—willing to talk to you guys.

Have you talked with NCSG yet, Damon?

DAMON ASHCROFT: I have not had a formal interview with them yet. I've spoken to their members informally during this meeting.

STEVE DELBIANCO: Take advantage of as much informal as you can—I know Mark is doing the same—since the NCSG by its nature is rather informal. So it'd be good to do as many bilateral discussions as you can have and try to create acceptability. But it's a high bar. They're very happy with

Matthew. And Matthew was not an NCSG candidate. He was a consensus candidate. It happened in Reykjavik at the Iceland island.

You were there.

LORI SCHULMAN: I was there.

STEVE DELBIANCO: We were desperate to find a consensus candidate. He was there. Matthew was well-known to a lot of us. I personally was a big advocate. I worked with at CDT and knew him to be very business-friendly. And it turned out he was a huge asset in the transition—huge asset in 2013, '14, '15, and '16—which is one of the reasons I knew him so well.

So there's no unwritten deal whereby they got theirs and we get ours. There's nothing like this. There isn't even an unwritten that I'm aware of, Lori, with respect to any other elements. There's nothing that was done verbally that I'm even vaguely aware of.

LORI SCHULMAN: Well, that's good information to have Steve because I was in Reykjavik, but I was not in the renewal process of Matthew. I had no part in that. But there was, I'll say, hearsay, for lack of a better word, and I'm truly trying to be faithful to whatever the understanding was. And I agree: the written process talks about a perpetual situation. So I agree with you on that. And I will not follow necessarily an unwritten agreement unless there's consensus that there was an unwritten agreement.

So I fully appreciate your intervention on this matter, but—

STEVE DELBIANCO: [One final thing to add is], if Matthew were, for whatever reason, to not put his name in or resign, then there's a vacancy, and the pressure then to fill it becomes more significant. But as long as Matthew is an incumbent with three years left on his term limit, the pressure goes the other way.

LORI SCHULMAN: Right. I understand that, but we're also, again ... Because of this chatter about what was said in a room or not said in a room, we would like to further amend, if possible, that agreement from three years ago to contemplate if there is a resolution about "keep trying, keep trying, keep trying." I don't know, but we've offered to talk about it.

So we've also agreed to build bridges. If the amendment is feasible, we'll do it. If it creates more stalemate, we won't. Right? I think what happened three years ago ... And I do remember, when the written agreement was published, it was certainly leaps and bounds ahead of where we were before having that written agreement. To that extent, the fact that we have anything in writing is a very good thing.

And to that point, we were, in the NCSG meeting, called out for perhaps not following the written process. I will point out that we followed it mostly to the letter. I will say there were two areas where we had agreement that we would defer the process, not eliminate it. One is that the process requires background checks for all candidates. In order to save time and money we agreed we would do the background checks

on whoever the consensus candidate is or the background checks we were voting for. But to do five background checks when we weren't even through the process just didn't seem to make sense. So that's well-documented—I actually don't know if it's well-documented. It's well-discussed. And what I'm going to do, since I've heard the feedback from NCSG, is I'm going to document the rationale behind that decision so that we do have a record.

I'll finish and then recognize you, Damon.

And then secondly, the other thing we didn't do is actually have the election. The reason we didn't do that is there are two votes. We have to agree. We absolutely have to agree. So to have any kind of election seemed a little silly. We said, "Look, we've done the homework. We've interviewed the incumbent. We've looked out for candidates that we think will serve everyone's interest. Here they are. They're fair. They're qualified. Please vote." And we gave them the opportunity to vote between two people.

So as far as I'm concerned, we've acted in good faith and transparently as we possibly could. It took a lot of hours from the leadership team. And I really appreciate everybody diving in. We had comprehensive questions I'm happy to publish to the whole list. But we had about ten questions that we asked all the candidates. We maybe modified them a little depending on the situation of the candidate. I mean, with Matthew, that was certainly the case. He's not striving for the Board; he's on the Board. So what we wanted to hear from him is, "Okay, what you have done so far, and where you see yourself going in terms of advancing the interests of the entire house, not just one side or the

other?” because that was another piece of chatter we also heard at NCSG: we’re making sure that whatever candidates we put forward are going to advocate for intellectual property and business interests. And that’s exactly right. I mean, we all understand that, once you get to the Board level, you’re representing the interests of the entire organization, but you are sitting in a sea of interests. And so your interests should be factored in to how you make decisions, but [it doesn’t] determine your decisions. That’s a nuance that I hope we conveyed in the interviews. But certainly there was no directive that, if you’re not advancing a particular interest, we’re not interested. I think that’s just not the case.

Damon?

DAMON ASHCROFT:

Lori, I just wanted to mention that, after the dust settles on this ... I know there is a desire to formalize some type of agreement with the NCSG about this going forward so we’re not in this position. And I would suggest that, when you do that, you build in some type of provision not to give the candidate necessarily a guaranteed second term but to give them some deference for a second term. And the reason I say that is, being on NomCom and chairing that committee, that I heard from the Board over and over again how important it is that Board members, unless there’s really a significant problem, be given two terms. The way it’s been described to me is that the first term, oftentimes, even for experienced ICANN leaders, is often a learning term, and then the second term is where they can be really, really effective.

LORI SCHULMAN: Right. And then what I've also heard is that the third term—we're talking about a third term now—is that you've shown leadership as well.

DAMON ASHCROFT: That is absolutely correct.

LORI SCHULMAN: And that's where we had some questions and decided to support a different candidate. And I don't want to get into personal issues.

And I'm going to have Mark have the last word, and then I'm going to cut the discussion because we're already over the time for this topic.

PHILIPPE FOUQUART: [inaudible]

LORI SCHULMAN: Oh, you did, too? I'm sorry, I didn't see it. So Mark and Phillipe. Who was first?

UNIDENTIFIED MALE: [inaudible]

Alright, Phillipe, then Mark.

PHILIPPE FOUQUART: I just wanted to thank you. I just wanted to follow up on Steve's notes and the procedures and the prospects of a stalemate and the idea that

it's not explicit—the fact that, if there's stalemate, Matthew would stay on—in the procedures. It's not as obvious off the top of my head.

STEVE DELBIANCO: Not explicit? But there's no written [statement] by which you would remove someone.

PHILIPPE FOUQUART: Right. Okay. Okay, so—

LORI SCHULMAN: Right. And I want to just say that, in terms of the ICANN bylaws, if a seat is declared vacant, then the incumbent stays. But there'd have to be some acknowledgement that the seat is vacant. And that was the point Steve was making. So that's to clarify. Thank you, Philippe.

Mark, you have the last word.

MARK DATYSGELD: Thank you very much. I'd like to thank Lori for all the kind words and also all my peers for trusting me in this role. I don't take this lightly. I'm very honored that I would even be considered.

And to complement what Lori was saying, the other GNSO-appointed candidates—in this case, Becky—advocates very strongly and unabashedly for her side, as in she's a functional member of the CPH within the Board.

So where I feel we could really build some bridges and try to do something in we need an NCPH candidate. We need somebody will

advocate, no matter how thing we have in common or not. But at least we need to have our voice heard there because right now it's not homogenous. It's literally one person defending one side all the time, and the other going, "Oh, yeah." So whoever we end up with needs to fight our battles to some degree to the extent that it is allowed in this position. It's not allowed in any other position. If you go through the NomCom, you don't get the chance. Whoever ascends from our decision gets to do that. So no matter who ends up there, I would like to see us doing that: defending more of our interests actively in the Board.

LORI SCHULMAN: Thank you, Mark. And with that, I'm going to close the discussion—

PHILIPPE FOUQUART: I'm sorry, but just an ISPCP Chair, we had that discussion yesterday. It's a vision that the constituency doesn't share.

LORI SCHULMAN: Yeah. The ISPs and the BC and the IPC have different views on this, and I'm aware ... We have discussed the views. We're aware of the views. We certainly respect the views. I think, when we get to that point, we come back as our side of the house and resolve that because we are very aware of—I wouldn't call it a split—a definite different vision about whether or not the incumbent should stay seated or not stay seated. Let's let the process roll out before we come to any conclusions, and trust that the three leaders—we've all been working well together—will continue to work well together. So I have no question about that.

I want to just quickly say that, in the building-bridges conversation I had with Julf, we believe it's time for another intercessional, although we both agree we do not want it to be another travel situation. We would like it virtual. We would like it very subject-specific. Some of us have participated in four of five the intercessionals, or however many they had, and both of us agree, in terms of time and money, the travel aspect of this was not helpful. And the way that staff controlled the schedule quite frankly was not helpful.

So we are going to take it into ... Not that we don't love staff, but they built it in as it were an ICANN meeting, and that's not really an ICANN meeting. What we need is to focus on some tough issues consistently intercessionally. So we're going to work on doing that. And perhaps we have an intercessional that's based on one specific topic, or maybe we have a menu of topics. But it's going to happen. Hopefully it will happen this summer as the first one. And what I'm hoping we do is plan a series of intercessionals, topic by topic. I think that may be the most productive for the house because I would love to find issues of alignment. It's critical that we find issues of alignment.

So I'm going to end there. I'm going to ask Michael Graham, who's our NomCom appointee, to very quickly do his NomCom spiel. Then I'm going to go to Philippe, who's talking about identified CSG and CPH parties. Philippe, I gave you 15 minutes, but would you mind doing ten, given we've gone over on the Board discussion?

PHILIPPE FOUQUART:

Okay. So, Michael, you have a few minutes, and then we're going to go right to Philippe without any introduction to keep the agenda moving.

MICHAEL GRAHAM:

Okay. Thank you. Michael Graham. I'm Associate Chair of the Nominating Committee as Chair. There's a whole presentation, but I don't think we need to show it. There are a couple points that I do want to make for this group.

As you know, the Nominating Committee is tasked with finding leaders to operate for leadership positions in the various organizations within ICANN more or less as independent operators, as independent directors, rather than representing any particular SO or AC. We encourage strongly as many applicants as possible, people who interested in moving into leadership positions within the organization.

And just to tell you two things. One, the application process is open now. You can get the information regarding it at the [ICANN.org/NomCom2023](https://icann.org/NomCom2023). That lists all the positions. It gives more information on them.

What we will be reviewing this year and then nominating at the Washington meeting are two members of the ICANN Board of Directors from any region. One member of the Public Technical Identifiers Board of Directors and, especially important for us, three regional representatives to the ALAC At-Large Advisory Committee. And these are from specific regions: one from the Africa region, one from the Asia, Australia, and Pacific Islands, and one from the Latin America and Caribbean region. And those positions, I will say, are the ones that we tend to get the fewest applications for and want to get far more. So in your thinking, to identify either colleagues, clients, people you know within the community and outside the community who may be from

one of those regions, please, please encourage them to apply for those positions. It's very important.

We're also going to be filling two seats of the Generic Names Supporting Organization (GNSO). One will represent the contracted parties, and one will represent the non-contracted parties. Note they do not have to be from either of those parties to represent that party. It's an awkward sort of thing, but that's the way it is.

And then finally we're going to be selecting one member of the Country Code Names Supporting Organization Council.

The application process is open until March 23rd. Again, I encourage anyone here, anyone who has, again, as I say, a colleague, a client, or someone who's interested in being involved in the organization, to do so.

A further note. At least for the Board of Directors, one thing or quality that's often looked for is outside experience in boards of non-profit organizations or executive experience from outside the community. So that's something that is considered.

I will say that the two seats are opening up this year both have Board members who are finishing their second terms, so they are eligible to apply. I don't know if they will, but that's the case there.

And that's all I want to say so that we have time for the others. If there's any questions, I'd be glad to entertain them now or in the hallways. Thanks.

LORI SCHULMAN: Thank you. And just thank you for all the time. I know it's an extraordinary amount of time, Michael, you're putting in.

And we'll go to Philippe. Once Philippe is done, I will read Marie and Paul's intervention in the chat about bridge building, but I do want to get Philippe and the priorities.

PHILIPPE FOUQUART: Thank you, Lori. And this can be quick, hopefully. We, as usual, went through our CSG and CPH priorities to make sure that we're all on board with what we put forward especially with the questions that we have for the Board.

So in no particular order, although, as you would appreciate, some of them are more important than others, the first was the need to go through the backlog of recommendations that have been put to the Board. Those of you who are familiar with the project management tool at council would appreciate the number of recommendations and action items for the Board moving forward.

The holistic review, which has been subject to an informal meeting, apparently, this week, which was not planned. So that's certainly something that the CSG is keen on moving forward, possibly including the situation, which is my view, for Board Seat 14, a symptom of something to think of for the holistic review as far as the GNSO is concerned.

DNS abuse, unsurprisingly, or mitigation for that matter.

Volunteer workload and burnout. We've all been there.

And so it's a question for the group, for five minutes maybe, to see whether those are the correct ones and what are the others that are missing.

LORI SCHULMAN:

Absolutely. Thank you, Philippe. I will say that the NCSG ExComm is the group that put together the Priorities A-C. And we certainly had no problem adding, if there's anything to help volunteer ... I mean, ICANN is very good at providing us with a wonderful secretariat. That is very helpful. But we could still use help. We got to figure out what it is.

With that being said, I'm going to ask the ExComm not to intervene here. I would like to hear from rank-and-file CSG members. Are these the correct priorities? You can do a thumbs up. You can click yes, click no, if you think we ought to be considering something else. Today is the day we want to hear from you.

Are there any hands? Any hands in the chat? I don't see any.

Margie?

MARGIE MILAM:

I just note the absence of WHOIS. Just curious why.

LORI SCHULMAN:

Right, because here we are talking about CSG and NCPH. The NCPH is the umbrella. The WHOIS, I think, if you talk to NCSG, will say it's done. It might not be done. I mean, we can certainly put that out there on the table, but they're pretty happy with thing as they are. I mean, we know

their position. What we need to do is find alignment on common policy issues.

MARGIE MILAM:

Got it.

LORI SCHULMAN:

It's very important to understand that, as we go down the different levels, we are going to have different priorities. And I think a great illustration with that is the issue with the incumbent. The ISPCPs are happy—not happy; that's probably the wrong word. But they understand that, if we do not find a compromise candidate that the incumbent has had six years of experience ... And without a compelling reason, if we can't find someone else, there probably shouldn't be reason not to renew in the third term, whereas the BC and the IPC position is a little different. The way we look at it is that the incumbent made some assurances and promises in terms of communications with their constituencies that were not fulfilled. We asked the incumbent about this. The incumbent, to his credit, is a very honorable, good person. He said, "Oh, yeah, I promised that. Mmm, I didn't really do that. I'll get better." Alright, that's an answer, but it's an answer that the IPC and BC don't, quite frankly, have full confidence in. So this is a lot of this is stemming from.

So this isn't ... And then we are truly trying to make this as professional as we can and doing it in a way that reflects all of the different interests we have. And I think WHOIS is another area where there's a wide, even within our own constituency, I would argue, difference in the

perception of what a satisfactory resolution is to WHOIS. So rather than focusing on the differences, which I believe we've mistakenly done for the last four or five years, I'd like to start focusing on the alignment. That's my goal as the chair while I'm the rotation. I'm going to do the best I can to do it.

Fab?

I thought you raised your hand. I just like hearing your voice, so please.

FAB VAYRA: Yeah, if you're calling on me, I've always got something to say. We're on #2, right?

LORI SCHULMAN: Yes, we are.

FAB VAYRA: Quick question. Under 2A—sort of Margie's point—when we jointly talk about implementation of policy recommendations, do we have the list of all the things that were recommended by the community, approved, and then just sort of held, like thick WHOIS, privacy proxy, PPSI—all these things that are just sort of hanging out there? And they were hanging out there as a result of GDPR and the EPDP, right? Which has, under the most fair reading, completely been flipped on its head by NIS2. So to present that train isn't coming and to continue to hold those things up or to not reevaluate them ... Because we're getting to a point where we're just going to end up in the same place when GDPR game out, right? GDPR came out, everybody had this thought, and then we

just sort of waited until the last month, and then ICANN is sort of pulling plugs, putting up temp stuff, doing all that stuff.

I don't know if anyone saw me ask the question yesterday: "What are we doing?" Just some explanation, not, "What should you be doing?" but just asking what is Org doing. And Org's response was, "We're going to wait and see because we don't know what the implementation is." There's some requirements there that can't be ... I mean, we could all sit and look at each other and debate on four of the six, but there are at least two in there that are not debatable, and we shouldn't sit around and wait for a disaster to happen and have everyone be unhappy and spend the next six years arguing about it.

So speaking about community, it's a great time for us as a community, as a group, to get together and start maybe thinking about what those solutions are and how they impact 2A.

LORI SCHULMAN: Right, I completely agree with you.

FAB VAYRA: So my real question is, since you asked, are we going to talk about those things in 2A?

LORI SCHULMAN: Yes. We're not going to talk about them here. That would be the point of the intercessional, okay? So these are high-level priorities.

FAB VAYRA: [inaudible]

LORI SCHULMAN: And, yes, 100%, I think that it would be a mistaken not to. I agree. I believe that all of us agree. I think there's universal acceptance of the fact that the ICANN was just too [inaudible].

And I'm going to be frank. This is my policy nit. I have a personal aversion to talking about ICANN Board, Org, and community. Each of these three pillars, if you want to call them that, have their own processes and priorities, but we are one ICANN. And, with a new dawn and a new day, I've already expressed this to Sally as interim CEO. I'm done with Board/Org/community personally. I think it has created division where division needn't be. We are one ICANN. We have one policy goal here: to keep the DNS running, resilient, and safe—look at our mission—and to be ICANN to the rest of the world. I really believe that.

And we'll go into our [NIS2] discussion. And my position has been that, for those inside whatever part of the Org, Board, or community who felt somehow betrayed advocacy work that was done to clarify a question that had been created by the implementation of GDPR, that was actually a service. It was a service to the community as far as I'm concerned. And so I'd like to work towards that.

So the short answer is yes, Fab. Yeah.

FAB VAYRA:

Sorry to ... Steve, sorry. Just a quick question. On the volunteer workload burnout, is there a way to expand that to, I think, something that is right for the moment and would be beneficial and to your point, which is working as one, collaborating as one, and making sure that what leads to this workload and burnout is because we're coming at things very adversarially and we're doing so in, I would say, the wrong sequence? GDPR is a good example. There was a collaborative method that ICANN actually put in there, if you recall, that we all put in draft proposals of what a system could look like. But the time was so jammed that it become very clear that ICANN was working simultaneously or in tandem with what people were putting in proposals. So what ended up happening is we didn't actually get a collaborative result because there wasn't time.

So I would love if D was actually rephrased or reworked to talk about how we sequence things and work together and actually get community input into things so that we don't end up in this constant perpetual "No mine, no yours, no, it's too late," and then try to readdress the issue over and over again. I think that's what leads to us. So it's a working together to not end up with burnout.

LORI SCHULMAN:

We can certainly add that. I think that's a notable addition.

I'm going to ask Jan Janssen, as the secretary in the room, to please specifically note that. And we can add that.

Steve, very quickly.

STEVE DELBIANCO:

Yes, quickly. It's one 2B. 2B is the holistic review, and we discussed first in San Juan meeting an opportunity that the NCSG should embrace and that the contracted parties should embrace. And that is, why does GNSO only have two Board seats? It ought to have four: registrars, registries, commercial, and non-commercial. I've said to Damon we should take them from NomCom, but maybe they're just new Board seats. But there's no reason that GNSO, which is responsible for 99.5% of the revenue of ICANN and 99% of its policy work, should only have 2 of 15 voting Board seats.

So I bring it up here because the holistic review is the first reasonable opportunity we have ever had for such a thing. And it would be difficult. But in the BC's comments on the holistic review pilot, we tried to find a way to surface that, even though the comments were only about the structure of the pilot. Let's do everything we can to raise that possibility. Today's experience with respect to Board Seat 14 only makes it clear that NCSG and CSG should each have their own Board seat, and it's ridiculous to try to find this compromised notion.

So each of us need to weigh in on that especially because the holistic review as written wouldn't include recommendations but only descriptions of problems and concerns. Well, we ought to be able to do pretty well on describing the problem of Board Seat 14, but whenever possible, throw in the solution because the contracted parties should love our solution.

LORI SCHULMAN:

Thank you, Steve.

Yes?

OSVALDO NOVOA: Just a heads up. There was a small meeting of the Holistic Review Team. Very few attendees. Just to let us know they are coming out with a new terms-of-reference document for public comment because there were a lot of discrepancies between the first one and the public comments and the comments they received. [inaudible]. So they are coming out with a new document for public comment. Thank you.

LORI SCHULMAN: Thank you very much, Osvaldo. I think that's important to hear. Thank you for the status update.

What I'm going to do now is read the interventions from Marie and Paul. We're not going to discuss them but I will read them because I think they're important. Then we're going to use the rest of the time to do our NIS2 discussions. So we're not that far off schedule. We've gained back some time.

I'm going to jump to AOB now. Is there anything now? Today's AOB. Number four is now number three. It's so that we can end the meeting as we end the discussion.

Okay. So with that, I will read the interventions from two of our ... Well, Paul is a NomCom appointee councilor, but he's still our councilor in spirit. Thank you, Paul. Thank you. Marie is our councilor in fact and spirit. Thank you. So their interventions were the following.

Paul’s intervention was, “In addition to a virtual intercessional, the council, in its SPS, decided to get all the members of the house together for an informal discussion to build bridges. We are hoping to implement this for the June meeting, but staff wanted to be sure that the leadership of the stakeholder group was open to such an informal discussion before finding time on the calendar.”

Please let Paul know if you have any objection to such an informal session. He needs to get back to staff. I will tell you, as President of the IPC, I have no formal objection.

Do any of the other two leaders have a formal objection?

So then you can say all three CSG leaders are in favor of this. Thank you, Paul.

Marie’s intervention was, “We talked about the bridge building in LA with council. There are areas we can and should work together on. Often the problem we encounter is not intra-NCPH but, for example, with Org. and a lot of distrust is based on rumor and misunderstanding. Some basic human action can break that down.”

Fully agree, Marie. And I will put here an editorial comment that, when IPC met with Sally—David Olive was on the call, and Mary Wong was on the call—we did our pre-ICANN debrief that we tend to do with the CEO’s office. It was a breath of fresh air, I will say. It was a very frank, open discussion. Interestingly enough, one of the topics we talked about is the name of the registration data disclosure system, RDRS. That’s what we’ll be calling it now: the RDRS system or service. And I emphasized again the name issue was.

And then when I brought this up—because I do believe I was the first in the community to bring up the issue of the name in the open meeting—the pushback that I got was, “Well, it’s a pet name by some in the Org.” Well, I don’t care if it’s a pet name. I care that it accurately describes what to expect, what it is, not what it isn’t. And my comment was, “Let’s stop the spin.” We really need to stop the spin. We are not enemies.

And I also intervened that I’m really vehemently opposed to this Org/Board/community division that in my view has made things much worse in terms of clogging the pipes.

With all that said, Sally saw me in the hallway, gave me a big hug, and looked at me and said, “We changed the name!” It’s a small point, but it’s a big point. That would have never happened in the last seven years, okay? That’s just a fact. It’s a happy fact. I consider it a victory and a very good omen for the future.

And with that, I’m going to go into talking about the future. The future is now. And we’re going to have, for the last 50 minutes of this session, a robust discussion on the impact of NIS2. There’s a lot of opinions. The ccNSO had a very good session on Saturday. Thomas was one of the speakers. Elena Plexida from ICANN was one of the speakers and gave a very clear and good overview of the requirements of the law. And I was hoping to see more of that here this week. When we didn’t see it on the schedule, we decided that we would use the bulk of the time here to get down to brass tacks. Based on what Fab already expressed, it’s good to get on this now. Let’s find what’s uncontroversial and work on that. And the things that require perhaps waiting for more legislation or perhaps a little more clarity in terms of guidelines? Okay, but let’s start now. To

push it off, to let the ball keep rolling down the hill, is a super bad idea. We learned this from GDPR. We don't want to get caught again.

And with that, I am going to moderate the discussion. And we're going to have some fun here. Marie will give us the procedural update. Then we're going to talk about possible effects on ICANN policies, which Mason will chair for 40 minutes. And we have some very wonderful in-house talent that will serve on our panel. And then we'll go to, I think, the obvious question: what role should CSG be playing in advocating NIS2 inside of ICANN? The outside of ICANN is "You do what you do." Each of our three constituencies has different policies on outside advocacy. There's some constituencies, like IPC, that do not do outside advocacy as a point of policy. We have individual IPC members who advocate. BC advocates as BC. And ISPs, to be frank, I don't know how you do it. If you want to explain a little bit about that, Thomas, that would be great, too, if you do. And away we go.

I'm going to now hand the mic over to Mason to chair the rest of the meeting.

MASON COLE:

Thank you very much, Lori. Mason Cole here, Chair of the Business Constituency. As Lori and as Fab mentioned, we have NIS2 as a train coming down the tracks. And the ICANN community doesn't want to get caught flatfooted as it did with GDPR. So we've got an opportunity now to recognize that this legislation is coming and, according to member state implementation of the European Directive ... And ICANN needs to be in a proactive position to deal with it.

So we've got a panel here today of Margie, Brian King from the IPC—
Margie from the BC?

MARGIE MILAM: Yeah, Margie ... And don't forget [Marie] goes first [inaudible]

MASON COLE: Oh, excuse me. I'm sorry. Okay. It'll be Margie, Brian, and Thomas. And we'll take that up after Marie gives her introduction. So, Marie, over to you.

MARIE PATTULLO: Hi, everyone. For Brenda, Marie Pattullo for the record. The reason that Mason and Lori have asked me to do this is straightforward: I'm based in Brussels. That's all.

Now, as you all know—forgive me for repeating what you do know, but nevertheless, just to set the context—NIS2 was adopted in December. It's in effect already. And between now and October of next year, 2024, the 27 member states of the European Union have to take this text and change it into their national law. That's called transposition. They can do it any way they like. They can take the entire text, translate into national language, stick a number on it, and go. They can adopt various pieces of legislation. All they have to do is get the end result, what the directive says.

Now, the European Directive, the member states are not bound to do exactly what it says. What they to do is not counteract it. So in general you'll find that it's regarded as the baseline. If you somebody wants to

go higher, faster, or quicker, they can. But they can't do anything either in letter or spirit against NIS2. And NIS2 is now law. It's not yet in effect in the member states, but the law is the law.

So there are certain things that are happening within the European Commission which, as you know, is the civil service of the European Union, one of which is they've issued a call for a study about best practices on verification, accuracy, disclosure, how domain name [inaudible] dealt with. We don't yet know who is doing that study. It was by invitation only to put your tender in to do it. So unfortunately we know some people who did not put a tender into do it, but we don't know who did. When we do know, we will of course share that information.

There is also going to be, as referenced by Mason ... There may potentially be guidelines as well. At this point, we're unsure about that either.

So where are we in terms of procedure? We're at national level. 27 governments are going to be talking about how to transpose and implement this into their national systems. This will be done in 27 very different ways with 27 very different timelines, the end goal being October of next year.

If you want to lobby, my advice, being somebody who has been based in and around Brussels for 30 years, is you need to do at a national level, and you need to do it in the national language. If you look at Philippe, if you go down to Paris and try to delight me with a British accent from Brussels, they'll say, "That's nice," and politely show me where the exit is. If Philippe goes in and speaks French to the French government,

that's what you need to do. So if you have members, if you have colleagues, if you have contacts in specific points, hand-in-heart advice is to get the national flight carrier or the national person to go and speak with the national involved ministry or government department.

That's the overview. I will hand it back to Mason.

MASON COLE:

Thank you very much, Marie.

Any quick follow-up questions for Marie on what she just explained to the CSG.

Yes, sir?

[JAN JANSSEN]:

I would like to add a bit of an EU law litigative perspective to it as well because I heard a lot of talking between the distinction between a directive and a regulation. And Marie is absolutely 100% right about 27 member states, but there can be certain provisions in a directive as well that have direct effect. And what does it mean, "direct effect"? It means that individuals are able to enforce new legislation in a court of member state. And a provision of EU law may be capable of direct effect if this is clear, precise, unconditional, and does not give the member states substantial discretion in its application. I think, in this directive, there are a lot of provisions that would qualify that definition. And at least the minimum norm is clear.

So there is a real sense of urgency here for the ICANN community to come up with a good policy to make sure that there is some

consistency, which would make it much clearer for every party involved, and give much more predictability to stakeholder involved than if we go to each member state individually. So there is a real opportunity, I think, to do work within ICANN with that goal in mind.

MASON COLE:

Thank you very much for that perspective. That's very helpful.

Anyone else for a follow-up on Marie?

Thomas?

THOMAS RICKERT:

Everything has been correct that's been said. Just on timing, we heard about the October 24 deadline. We know that, in the —and I guess this is due to the comments that we've submitted on the draft of NIS, where the multistakeholder work hasn't been mentioned at all, so now it's in there that, when developing national legislation, they should take a look at what has been developed in global multistakeholder fora ... They don't mention ICANN explicitly, but it's a gentle reminder that this means ICANN. But we know how fast ICANN is in its community. So there's no chance that we get something as a policy-wide done in the next couple of months. And I know from one member state's government that they're currently working on the language of the transposition.

So, in Germany, for example, there's a law, and the folks that have been working on NIS1 thought, "Well, just update the law to reflect NIS2," and then said, "Wait, what's this Article 28 about?" So they don't

understand where that is. So they went to the GAC rep and said, “Where was that in our previous national laws?” and then said, “Well, there hasn’t been any place where that’s been done.”

So there’s a lot of uncertainty, and I guess the big risk is that ICANN, in its various community parts, and Org on top are sending conflicting messages to the national regulators. And I hear folks sort of doing a beauty contest at the moment on what the best validation mechanisms are. I’m not sure whether we’re doing ourselves a favor with that because we want the lawmakers to come up with something agnostic that allows for different existing approaches and new approaches to be compliant with the upcoming law.

And therefore we need to consider carefully how we approach national lawmakers in order to reduce the risks—risk; let’s put it that way—of them coming up with something crazy because, if you look at the RFP for the study, not only does it talk about comparing existing validation/verification policies in ccTLDs versus gTLDs—there’s a big difference, as you know, between what they’re doing and what target audience they have—but they’re also asking for validation/verification mechanisms in other industries, including the banking sector. So I think what we don’t want to see is that they come up with verification that would resemble opening a bank account because that would make it very difficult for startups to register their domain names or for users to register domain names. And I think we should find a nice balance.

I have more to say on that but I want to stop here because I think we’re going to get back to that.

MASON COLE:

Thank you, Thomas.

Alright, we have a few questions that the panel and I have come up with. We're going to run through a few of those questions. If we have time at the end, I encourage anyone in the room to also ask questions of the panelists because there's a lot to talk about regarding NIS2.

So let's open with one. NIS2 provisions, if you look at Article 28, deal specifically with domain name registration policy. How does NIS2 specifically clarify GDPR's application to WHOIS?

Let me start with Brian. Brian, can I have you open, please?

BRIAN KING:

Thanks, Mason. I was hoping you might start with somebody else for this, but I can give it a shot. So I think ... Well, I don't know if anybody else agrees, but I think—I think most of you agree; I'll just say it—ICANN overreacted to GDPR in terms of what it required or allowed contracted parties to do when GDPR went into effect. And a lot of work and some frustration in the EPDP, we weren't able to build consensus that the contracted parties should do what we all thought was a reasonable thing and rely on a registrant's self-representation about whether there was legal or natural person data in the WHOIS record.

And what we asked for—I thought we could get consensus until we couldn't—was an outcome that would allow the contracted parties to continue redacting WHOIS data, where the registrant said, "Yes, there's personal data in here, but the contracted parties should publish data when the registrant said, "There's no personal data here."[""] We thought the contracted parties should be able to rely on that

representation and publish registration data where the registrant made that representation. And we got legal advice to backup that position that said any liability that a contracted party would have there would be de minimis.

But one update now or one clarification of GDPR and its intended or de facto application to the domain name system that we got from NIS2 is that domain name registration data which are not personal data must be publicly available without undue delay. So that's a textbook example of the European Commission and then subsequently European Parliament confirming what we were saying all along: you can go ahead and publish the data which are not personal data.

So that's one example to start with. Thanks.

MASON COLE: Thank you, Brian. Does it go beyond that—the language in NIS2—though? Is it “should” or “require” or “must”? Is the language even stronger than what you suggest in terms of being permitted to do so?

BRIAN KING: Yes, Mason. Great question. It was an attorney's favorite word, “shall.”

MASON COLE: Thanks, Brian.

Margie, please?

MARGIE MILAM:

Hi. It also clarifies the legal basis for processing and accessing WHOIS information. That's where we ended up having difficulties on the EPDP: disagreements on how the legal basis under GDPR would apply. And now you've got GDPR Section 61C, which is essentially, if it's a legal obligation, which now it is, then that is very clear that that's a reason for processing the data.

And then it goes further than that because it talks about the value of the WHOIS information and the need for it for prevention and combatting DNS abuse.

And so it focuses both on the mitigation side but also on the proactive side. So when you make your requests, and a registrar is evaluating whether or not you have a legitimate interest, you can now refer to this language which essentially points to how you should factor the balancing test because if your reason for access is to present a cybersecurity incident or a legal act, then the legal basis is now much clearer because of NIS2.

MASON COLE:

Thank you, Margie.

Let's go to Thomas, please.

THOMAS RICKERT:

I think that, in certain regards, the European lawmakers have done us a favor. In other parts, they have not been very helpful. So on the legal versus natural part, for example, they say that data of legal persons shall be published, but then they say as long as they don't contain

personal data. And that's the issue that we had in the EPDP. So they're basically leaving us where we were before.

I would have hoped that they'd come up with a clarifying statement to the effect that, whenever you have legal data, you can publish to take away the rest of inadvertently publishing personal data. So that leaves us with uncertainty.

What's good is that some of the things that, in the EPDP, we had to work with on the basis of 61F, where an assessment had to be conducted by the contracted party. We can now expect a legal obligation for that processing. So that removes a lot of wiggle rooms for the contracted parties—and legal exposure, to be quite honest, because if your judgement according to 61F is objected against by a data subject, and if that objection goes through, that might affect the entire operations not only of a particular contracted party but of the entire industry.

The only issue is that at the moment we don't know how exactly these 61C obligations are going to look like, and I guess that's a remaining risk that we're facing at the moment, particularly when it comes to the various roles and responsibilities in the industry because what the lawmakers did is they say gTLD registries and then entities offering domain name registration services, and then they clarify in one of the recitals that these can registrars, resellers, and privacy and proxy operators.

And I think that what for sure can't have meant, because they also say that the principles of data minimization and privacy by design should be exploited to the fullest extent, that each of these entities do the job of ensuring accuracy and offering disclosure, right?

And there's a drafting error, I guess, in Article 28, Subsection 6. They say that registries and registrars should be working together to avoid a duplication of collection. But they just talk about the collection, and collection is just one of various processing activities that we know of.

Also, in that regard, there's some ambiguity coming into the game and then unfortunately we're not getting out of GDPR because NIS clearly states that GDPR is applicable for everything that we're doing.

So the 61C part is great if we're getting good transposition to national law, but for the rest, we're getting some unclarity.

MASON COLE: We have Jan in the queue. And then Brian, did you want to answer?

BRIAN KING: No.

MASON COLE: Okay. Jan, please?

JAN JANSSEN: In terms of the risk, Thomas, you are referring to, I think those are risks that it must be possible to mitigate quite easily actually because ... And there's already a hint in NIS2 towards that when it's talking about the quality that an e-mail address could have in terms of personal data being included there.

It wouldn't require a lot of development to make sure that, when a field is entered by whoever registrant, they're being warned, like, "Okay,

please insert an e-mail address that matches these criteria. And, that way, you would have complied with your obligations under the GDPR, had done the risk mitigation.

Then in terms of transferring data between registrars and registries, there is the question of having the right agreements in place. And that is exactly what this community is about—having those agreements in place.

THOMAS RICKERT:

Yes, and that's the part that I'm so frustrated with: one of the main deliverables out of EPDP Phase 1, namely to come up with these agreements between the contracted parties, is still not ready for primetime.

And I sincerely hope—that goes to your point ... I think that ICANN's fairly was that they have denied any applicability of European privacy laws for many years. So they were late in the process. We've approached them well before the GDPR kicked in, and they wouldn't talk about it. And then we had Goran quite honestly who just didn't want to accept any liability for ICANN, which didn't really help the process.

So what I hear from the negotiation team is that they are not allowed to even use the terms “process” or “controller” in the agreements. And I mean, if you look at Article 13, there you find the catalogue of the basic things that you need to inform data subjects about. The first item is: say who the controller is. Right? So I think that's an issue, and that's sort of what led to the commission becoming so frustrated with ICANN that

they say, “Okay it might be faster to come with a directive that even needs to be transposed into national law before ICANN gets its act together.”

So that’s the frustrating part in all that. So I pretty much agree with that. And maybe we can refresh ICANN’s memory that these deliverables are still not out there. And I hope with the leadership change that we’re getting more pragmatic with these things.

MASON COLE: Before the queue gets out of control, we’ve got Lori, Mark, and Fab. Lori?

LORI SCHULMAN: I have a question to Thomas. I hadn’t heard that you’re not allowed to use “process” or “controller.” So my question is this. What was the rationalization? Is there a rationalization? Or was it just simply a ban on the word? Because if you ban the word, then you’re banning the process, as far as I’m concerned.

THOMAS RICKERT: I’m not part of that small team. I hear that through the grapevine. But maybe they have replaced the words “controller,” “process,” and, “agreements” with Voldemort or something.

MASON COLE: Mark, over to you, please.

MARK DATYSGELD: Fab, is yours a direct response to that?

FAB VAYRA: Yeah.

MARK DATYSGELD: So please.

FABIEN BEREMIEUX: So, Thomas, one thing that you said that I just wanted to make sure we're all on the same page about—and this goes to working together—is ... We say you're still under GDPR, right? And I don't think anyone has—here, at least in this room, or anyone I've worked with—tried to pretend you're not. But the one thing the community has been seeking for a long time is clarity. And what I think NIS2 does is provide the clarity that has led us down—the clarity that we didn't have—this path with GDPR.

And so what I'm hoping is that we all look at this as the supplement to the GDPR that gets rid of a lot of the vagueness so that we can actually start talking about and nailing down the right things because what I don't want to say is, "Well, you got NIS2, but NIS2 still says GDPR, so we're back where we started." We're actually really far ahead in a very positive way. And so I'd like for all of us to embrace that positivity and use this as an opportunity to say, "Hey, we finally have that clarity. Let's work for it on that basis," as opposed to saying, "Oh, but we're still back where we were." We're not. We're really far ... And I don't think that's

what you intended. I just want to make sure it's not misread that way—that we're still back where we were four or five years ago.

THOMAS RICKERT:

I was just quoting what's in the text of NIS. I think it gives us a lot of clarity, but if the national governments just translate the exact language of Article 28 into their national laws, we will still have a lot of ambiguity. And I guess that's a little bit of an issue.

So I think we need to discuss what they should be putting in there, but I agree that it gives a lot of clarity in many places.

MASON COLE:

Okay, we're going to go to Mark and then Brian.

MARK DATYSGELD:

Thank you. To either Thomas or Margie or anybody could answer—I'm not an expert in European law, so I've been hearing these past few months the different discussions you've been hearing—what exactly is the spread of different interpretations that can be made? That's the thing that I'm not yet very clear on because I do understand the fact the way it will be internalized by different states varies. That much is clear to me, but what are we talking about in terms of that spread? Is it radically different? Are we talking about nuanced differences in interpretation? Or we don't know? Where do we sit on that? That's what I would like to know.

MASON COLE: Margie, please.

MARGIE MILAM: I think that's a really excellent point, Mark. And one of the things, I think, to answer what Thomas was talking about with this reference to the multistakeholder model in one of the recitals is that this is the opportunity right now for ICANN to do this, to get ahead of this by doing a temp spec right now that cements the way that the NIS2 should be implemented in the policy. And then that ends up becoming I guess somewhat deferred, right, Thomas? I mean the reason it's there is to influence the legislation. And so if ICANN stays silent and does nothing, then it missed the opportunity to have that unified approach. And to do that, you have to move quickly. You cannot do a PDP. You cannot go through four years. It has to be another temp spec right now.

MASON COLE: Margie, you stole one of the questions off my page, but thank you.

Brian, over to you, please.

BRIAN KING: Thanks, Mark, for the excellent question. Margie did a great job of answering it. A specific point is that one thing that would be helpful, whether this came from ICANN or came from the various member state laws, is the concept of legitimate access seekers. I think that's one opportunity for clarification because it seems that that's now okay. But we don't know who those people are necessarily based on the NIS2 language. So we'd like to see that clarified. If you look at the recitals and

all the reasons why the data needs to be processed, it's clear—there are examples—but within Article 28, I could use just a little more there.

I raised my hand to speak to the point about what it means in my opinion that this is all subject still to GDPR. I think, if you're someone who wants to bury your head in the sand and say, "Well, okay, but this doesn't really clarify GDPR because it still says it's subject to GDPR," I think you're grasping at straws, and that's not correct. What it means—that this is all still subject to GDPR—is that GDPR has principles that apply to data processing of personal data, and the principles of lawfulness—processing is now justified and required by the law—fairness, transparency, purpose limitation, data minimization. All that is still going to happen, and we worked really hard in the EPDP and all throughout ICANN to make sure that we justified why WHOIS data exists and the purposes for its collection and storage and transfer and processing, storage limitation, how long contracted parties have to retain the data, security of the data, and accountability. These are all principles within GDPR that are completely consistent with NIS2 and with what we're doing here at ICANN.

So when you see the language "subject to GDPR," tacked on with as asterisk to all of this, that's what this means. It's just that you still have to be a good steward as you already did anyway. It's not as asterisk on NIS2 that says, "Well, unless you don't think this applies with GDPR" or "comports with GDPR." Thanks.

MASON COLE:

Thank you, Brian.

Any other follow up on that topic before we move on?

Okay, I'm sorry. I missed Paul and then who—Philippe. Paul, go ahead.

PAUL MCGRADY:

Thanks. So I was going to save this until the end because I think Philippe's part talked about this, but Margie raised it sooner: what's the path forward? Is it pushing for a temp spec? Is it going to council with a list of things they should be thinking about and doing? So I'm just going to ask the question now. And maybe you can't answer it now, but you've got a lot of councilors around this table. What do you guys want from council on this? Thanks.

[MAGGIE MILAM]:

Unfortunately, council and policy processes move too slowly, so the ask would be to encourage ICANN to do a temporary spec, and then you follow that with a policy process. I know it was painful when we went through the EPDP the first time, but the process is triggering the temporary spec process, which the Board does, but the Board obviously listens to the council. So that would be the recommendation.

PAUL MCGRADY:

So do you think there will be pushback on that because the implementation regulation isn't done yet and they'll be told, "We don't want to do a temp spec," and they do another temp spec? I mean, they're going to ask, "Well, what should be doing with this year-and-a-half that we're sitting on?" I'm not pushing back. I'm just saying that's probably what they're going to ask. Thanks.

[MARGIE MILAM]: And I think that's why Jan's perspective on the immediate effect of the directive is so important.

And I don't know, Jan, if you have a case, or is it a statutory interpretation—something that you can use to give the immediacy of the need for this.

JAN JANSSEN: If I may respond, Mason, that is a principle of EU law, which is well accepted. So there is abundant case law on that fact, but the issue will be to really demonstrate that this directive—certain provisions—have that direct effect. This is an extremely clear directive in multiple aspects.

So, yeah, it's uncharted territory with respect to this directive, but there a lot of directives where that principle has been accepted. And even [on text,] that is much more vague, I would say, then this in this directive.

MASON COLE: Alright, I'm going to cut the queue now because we're running out of time. Lori has a couple other things on the agenda. So we're going to go to Thomas and the Philippe. And we could spend all day talking about NIS2. I'm very confident, but we're going to run out of time. So Thomas, please, and then Philippe.

THOMAS RICKERT:

On this temp spec idea, I'm not sure what the temp spec should cover exactly and whether there's even a basis for the Board to do a temp spec. So I think we should probably follow up on that separately because I think we have a registration data policy that pretty much matches what NIS2 requires. We have an RAA 2013, which requires the validation of one data element, which is also one of the requirements in NIS2. So I don't understand what additionally we would require with this.

I think we should rather probably advocate for coming up with some meaningful minimum standards so that we don't end up with one jurisdiction for pre-validation, others asking for post-validation, and yet others asking for different types of data sets that make it virtually impossible for the industry to use its existing business processes to be compliant.

MASON COLE:

Alright, Margie, quickly, and the Philippe.

MARGIE MILAM:

I can share with the team broader by e-mail, but there's certainly many elements of the current policy that conflict with the NIS2, and that's where the temporary spec becomes important. There's, for example, a requirement under Article 28 to collect an administrative contact. And so there's a reference to an administrative contact. Well, as you remember, we got rid of the admin contact in the EPDP. So in order to be able to collect that and give that to the registries—and there's also a requirement for thick WHOIS—you have to have a policy that requires

the registrars to collect that information from the registrant and give it to the registries.

So there's lots of elements of NIS2 that don't track the current policy requirement. And in order to make it work, you need to have an ICANN policy that basically cements the NIS2 requirements so that you can have thick WHOIS, so that you can have admin contacts in some of the areas where there is conflict.

MASON COLE:

Okay, thanks, Margie.

Philippe, you get the last word.

PHILIPPE FOUQUART:

Thank you, Mason. I'm somewhat late in the discussion because I raised my hand to address Mark's question. But it boils down to [2.C], too. So I was just going to say that, from what I'm hearing and from what I've heard, even in the early iteration of the text, is that, contrary to past directives, this one is quite specific as to [inaudible] detail in how this may be implemented. So that would be an argument to say, "Look, the latitude for the translation in national law/legislation is limited."

Now, on the other hand—and that goes to Point C—I know that, in some countries—I can't be very specific, but certainly in France—there will be national working groups of the DNS community that would, from a technical perspective, look at the text and reach out to the lawmakers nationally and try Chatham Lite on what is feasible, what isn't. So I suspect that, as far as ICANN is concerned, that is a matter that would

be of interest to the cc's, well, especially, since some of those are also [g] registries. So maybe there's some thinking to be done there. Thank you, Mason.

MASON COLE:

Thank you, Philippe.

Lori, I think we're at time, so back to you, please.

LORI SCHULMAN:

Yes, thank you. Incredibly, we're back on schedule. Thank you, team. This is wonderful. So we're going to go our last subject, and we can continue our discussion even on the temp space, because the big questions surrounding all of this is we may or may not do whatever we're going to do externally, right? That's up to every organization to figure out? Is it worth it, shall we do it, where are we doing it, do we go to the ... There's external factors in advocacy here. We all know it. We won't discuss it here because that's up to every advocate to form their own strategies a little.

We would recommend that if you have certain aligned interests and you have like-minded souls, perhaps you talk to those like-minded souls. So we do have some uniform messages outside of ICANN. But that's not CSG policy.

What we'd like to discuss is, what role should the CSG play in advocating NIS2 inside of ICANN? I think Thomas has been very clear—and Margie—and about that there's a lot of different areas inside of this organization

itself that could use the kind of advocacy work and the points that were made here today and asking the big questions.

And with that, I am going to toss the last ten minutes of the meeting. And Philippe, will you do the honor of adjourning as well?

PHILIPPE FOUQART:

Well, you tied up pretty nicely, I think. I'm not sure there's more to say on this rather than opening the floor for comments as to how we can generate some noise, some interest—because I think there are also some people within the community who may not be familiar as some of the people are with NIS2—and move this forward. And we probably need to talk about both the substance as to the things we need to discuss, but also the form, as it were. Would it be through council? In what form? Etc.

As I said, and as a sidenote, I think this is certainly an interest that is broader than just the GNSO. Now, once you say that, maybe it doesn't mean we have to go as broad as possible on Day 1 and possibly reach out to some of the interested parties within the GNSO. But I just want to point out that I know that within the cc's, there are those that have an interest on this.

So this being said, I'd just like to open the floor for comments on next steps for ICANN and what role we could play in this. I think we started already somewhat.

LORI SCHULMAN:

Maybe we throw that at the panelists and then we can get the rest of the room to chime in. So in your view—each panelists for a minute, maybe, or two—describe what you think the role of the CSG should be. And then we can open it to the rest of the group. I think maybe that would spark some responses. I’m going to do it alphabetically by name. Brian King? You’re first again. Ha-ha.

BRIAN KING:

I want to say thanks, Lori, but that doesn’t accurately convey the sentiment. I think, as we’ve alluded to, it’s the role of the CSG to advocate through council at this point for one ... Well, I guess for a couple things. One, for the facts and hopefully to invite everyone to agree on what NIS2 does and the requirements that it lays out for the contracted parties. And then I think we’ve done pretty well throughout the EPDP to work on a practical solution that we know is workable for the contracted parties. This particular policy area does revolve around the contracted parties and what they do with the data, frankly.

So I think we need to be sympathetic, empathetic, to where they are and also helpful in terms of explaining, as the legal experts in the room often at ICANN, what NIS2 means.

From a practical what-to-do perspective, I am on board with engaging through council to ask the Board to initiate a temp spec as the fastest way forward to bring the EPDP Phase 1, the outcome, the registration data policy, in line with NIS2 in the short term and probably kick off—it pains me to say—further policy development from there but to at least establish that baseline and correct the overreaction within the ICANN ecosystem to GDPR.

So hopefully that's a good start.

LORI SCHULMAN: Margie? Thanks.

MARGIE MILAM: I agree with Brian, but I also think it's broader than just the current policy because there is the privacy-proxy element that is also addressed and the reseller element. And both of those are probably more problematic than fixing for just the general ... So the ask would be also to address the issues of reseller and privacy-proxy. And we are in a situation with a privacy-proxy that we've got that implementation on hold. Probably restarting to address NIS2 issues is the right move.

LORI SCHULMAN: Brian, ten seconds, and then Thomas.

BRIAN KING: One specific thing as an example of what I mentioned in the legal experts in the room and how we help the contracted parties. Thomas mentioned the provision, NIS2, which calls for avoiding the duplication of collection of data. One way with our understanding of how the DNS works and the WHOIS process is that the WHOIS data could be collected once from the registrant, understanding that many of those parties in the chain of custody, if you will, of the data need to process the WHOIS data for their own purposes. So it wouldn't violate the letter of NIS2 to understand that there's no duplicate collection of data from the data subject but recognizing the practical realities of what the rest of NIS2

requires and that the registrars process the data for their own purposes, as do the registries, as do whichever entity, if not the registrar who sold the domain to the customer.

Sorry, that's longer than ten seconds.

LORI SCHULMAN: Thomas?

THOMAS RICKERT: I'm okay.

LORI SCHULMAN: You're good? Nothing to add? Alright.

I'll now recognize John McElwaine, [another] Co-Chair of the GNSO.

JOHN MCELWAINE: So it may be a question to Margie or Brian. How hard of a lift would it be to get briefing document on the NIS2 changes to, for instance, the temp spec and to privacy-proxy so that we have something to start from a management-of-the-policy process at council, saying, "Look, we understand that this directive is being implemented, but it's going to have to be at least this strict, and it's enforceable anyway. So although we're all waiting on states to really finalize their plans, let's get ahead of this game. Let's get a temp spec that's compliant with this. Let's get the privacy-proxies"? Is that a really difficult thing to do, like months? Or is it something that a group could work on?

[LORI SCHULMAN]: I'm going to answer that question. I think a group could work on that. We have been looking at this subject for—what is it?—three years now? Article 28 was changed at the end, but in my view, the change was not radical that we can't use what we've learned in terms of how we've positioned these issues and what we understand in laws to be.

And to Thomas' point, too, there's going to be a lot of interpretation. There's going to be a lot of open questions, but that doesn't we shouldn't start. And I think we need to start.

JOHN MCELWAINE: We'll be talking about a lot of these issues with the new RDRS system, so let's get it right, right? Let's not build that system and then have to turn around and have revision made to it.

LORI SCHULMAN: So I have a question to you as a leader of the GNSO. You could say yesterday, but please don't. What would be a reasonable timeframe to get that kind of briefing document from—I mean, I don't know if the CSG would do it as the whole CSG—at least some of the constituencies who are interested, like the IPC, perhaps the BC, and maybe even the CSG because I know that, at times, the CSG policies to diverge a bit from the other two constituencies. And we would want all three of our constituencies to weigh in.

And that's the question I'll ask the ExComm. Should we be weighing in as the ExComm, or should be weighing in as each of our constituencies?

Steve?

STEVE DELBIANCO: Hey, Lori. Just a response to that would be that, rather than make it a normative document of what should happen, that starts with a document that descriptively analyzes the NIS2 final and compares it to the current consensus policies and contracts with an effort to determine differences. That descriptive document is something which I would dearly covet the ISPCP's input with Philippe and Thomas with the expertise they have. It stops short of prescribing what should happen but takes us right up to the point of, what is the difference? And whether that justifies the temp spec or changes to contracts or a new PDP, we might diverge on how to get there, but I want your expertise on analyzing it because, of everyone in this room, I think Thomas knows it the best.

LORI SCHULMAN: Yeah, that's clear. I mean, the European practitioners are going to have the edge on this. There's now questions, as we've heard today. I think Jan and Thomas have really been super helpful with their input for the rest of us.

And so with that, I am going to thank everybody. This was a good meeting and, I think, highly productive. We have some deliverables going through.

And John, in terms of my question—don't answer it now—that's a question that, realistically, when you think it would be most helpful, you can just convey it to the CSG leadership, and we will work with the

GNSO to make sure an objective, analytical, comparative document is produced. I think we can commit to that.

So thank you again. Have fun. And see you at the Board meeting later this afternoon. Bye-bye.

[END OF TRANSCRIPTION]