
ICANN76 | CF – Joint Session: ICANN Board and CSG
Tuesday, March 14, 2023 – 16:30 to 17:30 CUN

WENDY PROFIT:

Hello and welcome to the joint session of the ICANN Board and the Commercial Stakeholder Group. This session is a discussion between the CSG members and the ICANN Board. We will not be taking questions from the room. Attendees are welcome to chat amongst themselves and the chair of the Commercial Stakeholders Group may call on CSG members to answer additional questions.

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A reminder to the speakers, please state your name for the record every time you speak and please speak slowly and clearly for our scribes and interpreters. And with that, I hand it over to Matthew Shears who will be chairing this session on behalf of the Board. Matthew?

MATTHEW SHEARS:

Thanks very much. Hello, I'm Matthew Shears of the ICANN Board. This is the joint meeting of the ICANN Board with the Commercial Stakeholder Group, CSG. We have rather a lot of individuals around the table, so we thought it might be useful for everybody to introduce themselves. Just before we do that, though, let me just give the floor to Lori for some introductory comments.

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LORI SCHULMAN: Hello, my name is Lori Schulman. I'm president of the IPC. We're very happy to be meeting here with the Board as a page turns, so to speak, as we're looking for a new CEO and we have a new Board Chair and we're very excited about the possibilities and we're just very anxious to get into the discussion. So thank you.

MATTHEW SHEARS: So should we start from this end? And we'll just do a quick tour of the tab. Thanks.

BRIAN KING: Hello, this is Brian King. I'm the vice president of the IP constituency and thanks to our Board members for joining us today.

JAN JANSEN: I also extend my thanks to the Board members. I'm Jan Jansen, the secretary of the IPC and I'm a Brussels-based lawyer.

SUSAN MOHR: And I'm Susan Mohr. I'm the vice chair of the ISPCP constituency and also want to extend my thanks to you for joining us today.

PHILIPPE FOUQUART: Thank you. Philippe Fouquart, ISPCP chair.

DANKO JEVTOVIC: Danko Jevtovic, vice chair of the Board, and thank you for inviting us.

STEVE DELBIANCO: Steve DelBianco, vice chair for policy in the Business Constituency.

MASON COLE: My name is Mason Cole. I'm chair of The Business Constituency and it's good to be here with all of you. Thank you.

TRIPTI SINHA: Tripti Sinha, ICANN Board. I'm very happy to be here today.

BECKY BURR: Becky Burr, ICANN Board.

MARK DATYSGELD: Mark Datysgeld, GNSO Councilor for the BC and co-chair of the small team on DNS Abuse.

TIM SMITH: Hi, Tim Smith and I am the CSG representative for the Business Constituency.

AVRI DORIA: Avri Doria, ICANN Board.

MAARTEN BOTTERMAN: Maarten Botterman ICANN Board.

EDMON CHUNG: Edmon Chung, ICANN Board.

MATTHEW SHEARS: Super. Thank you very much, everybody. And if I can just remind everybody to state their name before they speak and to speak not too fast. Thank you. Which goes to me as well. I think, Lori, we're going to start with the Board question. If we could put the Board question up. Okay. Let me just read this. The ICANN Board would like to explore how to combine the efficiencies of an agile approach to problem solving like the Council's small teams with the need for accountability and transparency to make progress on policy conversations. When would such an approach be most appropriate and how can we ensure that it does not circumvent required steps in a policy development process? Lori.

LORI SCHULMAN: Thank you. I am going to take the privilege of fielding the Board question and any of my colleagues when I'm done with the intervention, please feel free to step in. Steve, I will go directly to you after my intervention. So we want to thank the Board for the question. We think it's a timely and very relevant question to probably what is the top concern of most stakeholder groups here in ICANN now.

We have three suggestions and I will go through them carefully and then I will pass the microphone on to members of the panel up here. But also, if you have any follow-up comments or questions, we will have a roving microphone and Wendy Proffitt will have that microphone. So if you want to intervene in the room, raise your hand in the room. If you're online and wish to intervene, raise your hand online and our very supportive Secretariat will read your question if you frame it properly

with question, question. If not, I can watch the chat. Matthew and I can watch the chat. What's ever easier for the Secretariat at this point?

So we'll begin. So we have three suggestions responding to this specific question. First of all, we recommend that the Board allow the GNSO guidance process known as the GGP to prove that it can work to solve problems on a faster track. The CSG notes that the GNSO GGP has been developed to address the issue of applicant support in an expedited manner. We heard a report today as a matter of fact.

The work process of the GGP is estimated to be nine months. An update on the process was presented January 23rd and then again today. Is this process deemed sufficient by the Board for other policy-related questions? If not, what does the Board think an appropriate time frame should be without compromising the multi-stakeholder model?

The CSG recommends that the Board allow the GGP to work through its first problem and re-evaluate its effectiveness. I don't know if the Board wants to answer the question to point one now or if you'd like me to go through all three points. I'm happy to go through all three. Okay.

The second point is consider forming expert groups. The CSG recognizes the urgency of problem solving and unclogging the implementation pipeline. There may be cases where a quicker method than the GGP could be developed for problems that require specific expertise to solve. The Board is empowered to seek the guidance of experts. It may be efficient to do so for problems that require technical knowledge such as cyber security, privacy, intellectual property, grant administration, or other areas. The community has recognized experts in these fields.

If the Board were to take such a path, then the criteria for the selection of the experts and a rationale for why such a focused team is needed should be submitted to the community for comment. Deliberations could run like other teams where the number of official participants is limited. Observers are free to join without the right to intervene. Once the problem has a proposed solution, then a truncated public comment period of 30 days or less could commence to ensure all community members have a chance to weigh in.

Finally, the Board could consider forming rapid response teams or RRTs, just for a new acronym. Another approach, the Board could be called upon in specified situations to propose expedited answers to problems. The RRTs could be categorized by project, like SubPro, or theme, like privacy or cyber security.

Specific criteria for who should comprise the team and when it should be called upon should be developed and circulated to the community for comment. Once the teams are selected and organized, they could be on call for specified terms and then renewed accordingly. How the community interacts with the RRT recommendations would have to be worked out. A truncated comment period would most likely be appropriate. Like most ICANN endeavors, all meetings of proposed expert groups or RRTs would be recorded and available to the public for transparency and accountability, and we look forward to hearing whether or not you think these options are viable and how we could do to help implement them.

MATTHEW SHEARS: Thanks, Lori. Thanks very much for these proposals. I don't know if there's anybody on the Board who wants to briefly comment on these. Okay, we can maybe comment on those in terms of the other question that you provided to us, so maybe we can link those together. Thanks.

LORI SCHULMAN: Sure. That's fine. What's ever most efficient? Oh, yeah, I was going to pass the mic to Steve. I apologize for forgetting.

STEVE DELBIANCO: Thank you for that. No, not at all. In the Board's framing of the question, in particular, the Board pointed out that the example of the small teams, Council small teams, and Mark Datysgeld, who's with us on the BC, was a pioneer for the small team on DNS abuse, and I had the pleasure of serving for the BC on the small team for what we were calling SSAD-Light and now calling the Registrant Request Service.

And in both of those cases, I believe that the factors that contributed to success can be boiled down to limiting the scope such that the outcome of a small team can feed directly into something that is implementable, as opposed to the output feeding into a PDP or a process that requires a much more heavily-structured approval sequence. So with respect to the DNS abuse, the team, small team focus, is on the small team, and small team focused on what would be implementable, how? Via an already-baked contractual amendment process that the registrars and registries had agreed to a long time ago, one that would allow Org to negotiate with contracted parties, and the opportunity was that if CSG and the contracted parties agreed on maybe the scope of some

amendments with respect to DNS abuse, that that process could begin quickly, and those conversations only occurred in May to June of last year, and I already understand we're very close to seeing contract amendments that will isolate the bad actors in the registrar community, those who are not participating at ICANN.

So it was narrow scope that didn't have to go to a PDP, went right to contract. In the case of the small team on SSAD or Registrant Request Service, we were also brought in on a very narrow scope to see what could be implemented quickly and inexpensively with the option of trying to gather information, not only about the demand, but the quality of requests that come in. So in both cases, the small team avoided stepping over the picket fence, stayed away from consensus policies, stayed away from something that required a PDP, and in both cases, I'm optimistic enough at this meeting to believe we'll see a lot of action by both. In fact, both will be at implementation by the end of 2023. I hope that helps.

MATTHEW SHEARS:

Steve, thanks very much. I think certainly from my perspective, looking at the way the team worked, it was very effective, and I think it came out with the right kind of results, so that's particularly the one on DNS abuse that Mark was involved in. So thank you for that.

MARK DATYSGELD:

Thank you very much, Steve, for positioning that, and what I would like to bring up from our experience as a small team that stood out as very important is that we were, instead of chasing the things that we could

not agree upon, it was about what is it that we absolutely agree upon, no matter what, right? And to do this, we did community consultation, as well. And to do this, we did community consultation as our first step, and from that, by understanding what the community had said, we came to the conclusion, look, there's this one or two subjects in which, in spite of all the differences in the community, we so happen to agree upon, so why would we further discuss this, right? We brought this back to the community. They said, yeah, that looks about right. And that's how we moved ahead with the group. So while this is not a solution to every problem, certainly, I'm not claiming that it is, and the PDP is an incredibly important process, for certain things that we so happen to be aligned with, that could be a good solution. How do you bring that back to the Board level? I wouldn't know. But in terms of strategy, that has proven, I think, quite effective for us. Thank you.

MATTHEW SHEARS: Anybody else on this? Anybody else want to jump in from the Board side on the responses from the CSG? Yeah, Maarten, please.

MAARTEN BOTTERMAN: Thanks for that. I think what we've seen over time is general, like, how do we get things moving and moving faster and don't lose time? So I appreciate the experiments that have done with the small teams, the interactions that are not formally in the bylaws, but they're not excluded either, to help us to reach the finish line. So I think we should continue to find ways forward to reach finish lines.

MATTHEW SHEARS: Thanks, Maarten. Anyone else? Lori, I think we can go to the CSG questions.

LORI SCHULMAN: Yes, thank you very much. The first question will be presented by Philippe of the ISPCP.

PHILIPPE FOUQUART: Thank you, Lori. Philippe Fouquart, ISPCP Chair. And I'll take the liberty of rephrasing the question to make it possibly less in your face. Pardon my language. And just to build up more seriously on the conversation we've just had, the Council-Board meeting this morning exchanged on early engagement from both the Board and ICANN Org with the working groups to improve both delivery and relevance of the output of a PDP. You've talked about how liaisons can work together, how ODA, like micro-ODA, could be done during the PDP as opposed to after the PDP.

Beyond those, looking at the GNSO project management tool, there remains a number of recommendations in the pipeline approved or yet to be. So the question is, beyond the above, does the Board see other short-term priorities that would help reduce the backlog of these projects? And what prioritization exercise should be applied? Thank you.

MATTHEW SHEARS: Thanks, Philippe. I think Tripti is going to lead us off on this.

TRIPTI SINHA: So I'm sorry, I might have not heard the latter part of your question. Could you repeat the second half?

PHILIPPE FOUQUART: The second part is about the prioritization that could be exercised. That's somewhat beyond what's on the screen. So feel free to address only the first part.

TRIPTI SINHA: I think why don't you respond to the prioritization one?

MATTHEW SHEARS: So in terms of the prioritization, there is, of course, now this annual process of prioritization that involves the community. And I think we're going to be seeing another version of that, another call for volunteers pretty quickly. So hopefully that will continue to identify and move forward the prioritization of those particular recommendations and etc. So that's part of that.

The Board on its side—Tripti will speak to this, but we're also obviously prioritizing and moving work forward quite expeditiously now. So we're hoping that that will help remove some of the backlog in that sense as well. So I think there's positive traction and actions that are being taken that are going to address this pretty quickly and more over time as the community engages in these prioritization exercises.

TRIPTI SINHA:

So I'd like to address your first question. So what are we looking at to improve efficiencies and, of course, work stagnation? I will agree that work did stagnate. However, things have changed. The question that we sent to you to answer actually was an effort to look at different modalities of expediting and getting work done. So that was our impetus to write to you regarding that.

The Board met in October in Los Angeles. We had a mini workshop when we joined the contracted parties house summit, and we actually did a deep dive into how do we improve our processes and improve the efficiencies to get to a better place because work wasn't getting done. And the outcome of that has been quite impressive. And actually, there were lessons learned from, Steve, what you did and, Mark, what you suggested, which we saw results from the small teams. And that yielded the registration data system request as well as SubPro, which is also the GNSO has also created small teams.

And so very recently, I would say in the last two to three months, many things have happened which are moving the ball forward. One was the approval by the Board to implement the, I don't like calling it the WHOIS disclosure system, but work has started on that. It will be delivered very soon. By the end of this meeting, you will see on Thursday that we will be approving many recommendations from the GNSO to get SubPro moving. There are some pending items. We've worked with the GNSO to ensure that all of the four items will be done to our satisfaction by ICANN 77 and then potentially for us to suggest a launch date.

So we have become efficient already. There's still many miles to go, but we're working in the right direction. And our initial question to you was

to seek your input on exactly how we could improve our efficiencies. And my apologies. I was reading that question and not listening to you the first time when you asked me the question. So hence my hesitation.

LORI SCHULMAN: Philippe, you have a follow-up?

PHILIPPE FOUQUART: Yes. Thank you. I just want to add to what you just said in response to the Board's question that I think the ISPCP and I'm sure the CSG would endorse the proposals that were made this morning in terms of those that emerged from the PDP improvement initiative, such as the liaisons to the working groups, discussions between the liaisons, presentations to the Board, ODA element provided to the working group. And I think those tie into what is expected moving forward to improve the delivery of the approved PDPs.

LORI SCHULMAN: I'm going to take the privilege of an intervention as well and say I really am very positive about the future. And I want to thank Sally and you for making the decision to just do a simple thing, like change the name, right? You don't like it because it doesn't do what it purported to do. And we talked about this in Kuala Lumpur. It's just great to see even a tweak like that because it's signaling to the community that you are listening and conveying, what's the word, productivity in a very realistic sense with less spin. And generally speaking, I think the goal overall as we go through our questions, it's about getting real. It's about understanding the reality of where we are and what we have to do to

work together. And the first thing is to be accurate and honest. And so we see what may be viewed as a small thing is quite a large thing. And to Avri's point, we love this idea of referring to it as redress because those of us on the commercial side really think this is the first step to redress. So we are quite pleased and I wanted to say thank you.

TRIPTI SINHA:

Thank you very much, Lori. I would like to say that this is one of my pet peeves is I think we get into a state of analysis paralysis and we try to boil the ocean. And, Mark, what you were saying about the small group, what it does is you start to look at the problem and put it into little chunks and see how much of that is doable and solvable. And so I think when you get into that state of trying to boil the ocean, you lose the forest from the trees, right? So let's get back to basics and try to solve problems. Thank you.

LORI SCHULMAN:

Thank you. Are we closed on this topic? Are there any more interventions? Any from the floor? All right. Then we're going to go on to Mason of the BC. Mason, please go ahead.

MASON COLE:

Thank you, Lori. Mason Cole for the BC. I'm going to go ahead and ask question number two, even though as it appears on the screen, we've revised it a bit. Oh, I'm sorry. I'm going to revise a bit of question number two based on what we heard this morning. So let me just ask away. Two of the three CSG constituencies plus the ALAC set forth in a letter two

months ago their expectations for community consultation based on 2009 and 2013 precedence regarding changes to the RA and the RAA.

We have not received a reply from ICANN org that we heard this morning in the Q&A session that there would be only the opportunity to contribute during a perfunctory comment period. Can the Board elaborate on this change in procedure and whether or not community input, even in only a comment period, may have an impact in the event of perceived shortcoming and outcomes? Thank you.

MATTHEW SHEARS:

Thanks, Mason. I think, Theresa, if you're there somewhere. Theresa, if you want to address either that, or Becky.

BECKY BURR:

Why don't I start? And Theresa can respond on the response timing. First of all, I think you also, if anybody was in any of the other sessions today, I hope you heard me say this agreement, these agreements, these amendments are a first step. They are intended to be a first step. They are intended to address, not completely entirely, but to address what we heard most commonly, the complaints about the existing registrar accreditation agreement and the registry agreement. The contracted parties came to the table with concern about scope creep and there was a commitment made to them on the scope of this, of these amendments.

But these amendments will give ICANN the tools for enforcement that ICANN doesn't currently have, but we anticipate that it will follow on very quickly with policy development, these kind of mini policy

development processes that are targeted and hopefully will produce whatever additional teeth and additional bells and whistles with respect to what steps registries and registrars must take to detect, mitigate, and remediate abuse.

So, they're real. These things will have a real impact when they're done. And the contract, the amendments are not finally agreed on, but they are material and substantive. We always put these contract changes out for comment. The point of this is at least one and probably a critical point is the ICANN Board can't accept something that is not in the public interest. So, the comment period is really about hearing from the community to make sure we have listened to everybody regarding the public interest.

We expect that we will also hear that there are lots of other things that could be and should be added to modify the contracts. We fully anticipate that. Our listening session is not intended to be perfunctory. What it is intended to be is to start the discussion on the policy development process to put more meat on the bones, although I want to say again, we're giving Compliance a tool that they don't have that is a powerful tool.

You can provide whatever input you want during the comment period and you can say, the following 12 things are missing from this discussion. That's fine. We'll listen to you. But our purpose really is to get the public interest. The problem is if you do that, we could open up the negotiations again, we could blow up this process that we've done. It would require us to break faith with the contracted parties regarding the scope, just to be clear. But we can then undertake a massive

contract negotiation. And it's our view that what would be the most beneficial to all is to grab the benefits, the improvements and the enhancements that will really come from these very targeted changes, and then to move from there in quickly into policy development that will provide more breadth and depth with respect to that.

The other thing is this is not the last bite at the apple. People are always complaining about people taking more bites at the apple. There are going to be plenty of more opportunities to take a bite at this apple, particularly with respect, if all goes well, I think we have created some trust with the contracted parties and they may have other things that they're willing to bring to the table in negotiation in the short term.

Moreover, there are going to be new registry agreements and new registrar accreditation agreements in connection with the SubPro next round. Those are also additional opportunities. Those are also additional opportunities for making changes in the contract. So I cannot prevent you from providing a list of all of the things that you believe are missing from the contract amendments to address all of the concerns that all of us have and those concerns are shared. But it is the collective view of the Board at this point—and again, we haven't seen the final amendments, but it's the collective view of the Board that the world is going to be a better place if we make agreement with the contracted parties on these targeted changes, implement them and move quickly into the policy work and the other opportunities for change.

LORI SCHULMAN: Thank you, Becky. Theresa, did you want to intervene or not at this point? Because I'm very happy to hear what you'd have to say. We were told you'd be intervening. Or is this sufficient?

THERESA SWINEHART: I think this covers it really well. Just to add on the contracted parties had also said there's other areas that will need to be addressed. There's other areas that have to be addressed. Those are more appropriately dealt with through a policy process, but this gives a very specific tool on a very limited scope that allows for dealing with some immediate situations that have come to the attention. So I think it's been summarized well and we appreciate this. And a listening session at a time which allows for the input into where the policy conversations can go, we can help facilitate and support easily. So I think this touches well on it.

LORI SCHULMAN: Thank you, Theresa. And I do want to say before I pass—Mason has put himself into the queue. If anybody else wants to be in the queue in the room, raise your hand. We'll recognize you. I just do want to intervene very quickly. I do think from a logical perspective, surgical strikes make sense because they go to this issue of speed that we're discussing. And if we can identify one small thing that we can fix fast, it's certainly better than taking a holistic review that would take years. So I do think that depending on the outcome of this negotiation, we may also be looking at this as a model to more rapidly address some of the issues that we have. I don't know if you remember, Becky, but eight years ago, I think it was in Helsinki or seven years ago in Helsinki, you had come up to me.

We had talked about a letter that the IPC had submitted naming whole areas of abuse that we wanted to see action on, quite frankly, from compliance. We discussed the letter. And we discussed the letter with ICANN staff. And the first thing that was said was, well, we don't have the tools in the contract. It's unfortunate that it took seven years, but it's fortunate that we're here. So in that regard, I do want to thank the Board and the contracted parties for understanding that opening the door even a little bit is certainly better than keeping it closed. And with that, I'll go down to Mason. Thank you.

MASON COLE:

Thank you, Lori. And thank you, Becky, very much for your answer. I don't intend to be difficult about the issue. I do want to be clear that the CSG made clear to contracted parties in bilateral conversations that we had with them that we had no intention of developing any scope creep or otherwise expanding our contributions into what we would like to see into the contract. It was strictly related to DNS abuse. So I can understand, as I've been on the other side, as you well know, that contracted parties are constantly worried about scope creep. And that's a worthy concern on their part. I just want to make clear that the CSG had no interest in anything of that nature. We were just looking for the opportunity, as the community had in 2013, to have some advanced input into what we would like to see into the contract. We'll obviously take the opportunity to make comments, but I just want to be clear on where the CSG was coming from.

MATTHEW SHEARS:

Thanks, Mason, for the clarification. Appreciate it.

LORI SCHULMAN:

I think we can go to the next slide with question three and question four. So I will be presenting question three, which is, and I, again, I'm going to add nuance to this question. We asked it at a very high level, but we have some specifics that I'd like to follow up with to whomever will be addressing this for the Board. The original question is, what are the Board's plans to have ICANN implement approved policies for Thick WHOIS and privacy policy? And we're doing this within the context, and it relates to question four, is how do we see the new laws that have developed in Europe, particularly NIS2 and now the transposition process affecting ICANN, and how is ICANN looking at the implementation of NIS2 to ICANN itself rather than to the contracted parties per se?

BECKY BURR:

Thank you, and maybe I'll answer the questions together. Obviously, ICANN has been following NIS2 closely. It is a directive, so it does require the implementation by all of the member states. We know that some of them will be fast and some of them will be slow, but we also know there may be some differences in the way that things are transposed. And so we'll be watching that closely. I think at this point, it's pretty hard to tell until we get some of the transposition how it will affect ICANN itself, but we are following that closely. But the two questions that you ask, particularly on Thick WHOIS, sort of roll right into that.

So on Thick WHOIS, just to recount a little history, the Thick WHOIS policy was fully implemented, but enforcement was put on hold. So it's there. It was implemented. Enforcement was put on hold.

Subsequently, the EPDP Phase 1 policy recommendations came out, and they contained a policy recommendation that affected the Thick WHOIS, which is they essentially said the decision about a thick or thin registry is going to be registries can access that data and be thick so long as they have a legitimate purpose under the law for accessing that data.

You might recall that this one particular recommendation was the subject of about a year's worth of correspondence between the Board and the GNSO Council, where we literally said, did you really mean that? Did you really mean that? Did you really mean that? And I'm being a little facetious about it because I was the person who was saying, did you really mean that? Is that a way to change policies? But the GNSO Council said, we really meant it. The thick registries should be thick where they assert a legitimate interest in acquiring the registration data.

So under the current policy right now, if a registry came to compliance and said, I have a legitimate basis for getting this data, but the registrar isn't giving it to me, the compliance would have an enforcement hook for that. But the registry needs to assert a legitimate interest.

I do understand that some people claim that NIS 2 gives registries a public interest obligation to be thick, right? I think we need to be very careful about how we parse that. But I think that there is that assertion. Our read is that NIS 2 neither prescribes nor prohibits thick WHOIS. And we think the claim that there's a public interest obligation to be thick at the registry level is at least in tension with the anti-duplication provisions in NIS 2. So recall that NIS 2 says, by the way, this should not

result or need not result in a duplication of collection of data. So that's the way ICANN is reading.

But even if we're wrong, we can only enforce the policies that the community adopted. And so right now, the policy that ICANN is working on is that a registry determines for itself whether NIS 2 requires it to be thick. And if so, it would certainly have an interest in the data that would be enforceable under the EPDP Phase 1 policy.

LORI SCHULMAN:

Becky, I want to thank you for that very involved answer. I do know that on the CSG side, we do interpret some of what you said a little bit differently in terms of the obligation that is placed on the registry. Because the way we see it, this is not a data minimization issue. We look at it differently. The data minimization issue comes at the collection level. And there are mandates in the law itself that require certain pieces of data to be collected.

We do not envision mandating registries to collect that data at all, but in fact, just that the data would be legally improperly transferred between a registrar and registry through their own contractual obligations, rather than putting the burden on the end user from whom the data is collected to submit it twice. That is how we are looking at the data minimization interpretation, which I believe is a legitimate interpretation.

BECKY BURR:

So, let me quickly respond. I would love to take that offline and have a long conversation with you. We will. I have to say, as somebody who

practices data protection law all day, every day, that transfer to me is a collection. But I understand, and that's why I was being careful about it.

Nonetheless, if that's the case, then if your interpretation is correct, then the registries are going to say to the registrars, you have to give us the data, and ICANN will enforce it if the registrars don't. But our policy, for better or worse, is that it is up to the registry to assert a legitimate interest in the data.

LORI SCHULMAN:

Thank you. And I do have two follow-up questions to this, and it goes to sort of we're going to watch, we're going to see, because this is evolving. We've got 27 nation states that will implement, and the wording may or may not be the same, different. There is a potential issue of harmonization among the 27 member states, but also reminding that the directive is a floor, not a ceiling. So, we don't know what's coming down the pike. So, in that way, we're aligned.

However, if you look at the requirements now in Article 28, do you think there are any of the, I think it's eight or six, I don't remember the exact number, but are there two or three that we could agree on now, no matter what happens, are just simply part of the directive, and perhaps it might be advantageous to start certain work streams so that we're not caught flat-footed the way we are in GDPR?

BECKY BURR:

Well, the GNSO is certainly entitled to call for an issues report and a PDP on anything within ICANN's remit. So, nothing precludes getting started on that work.

LORI SCHULMAN: That's great. And I have one more follow-up question, if you'll permit me. And that is, we were wondering if, and you may have answered this, but it's more directed towards Sally as interim CEO. Hi, Sally. We were wondering if there aren't specific work streams necessarily being set up. And you're right, this is in the hands of the GNSO for the most part. But in terms of the organization itself and how it's looking at NIS2 in relation to itself, you are a registry too of the .int, right? So, you're in NIS2 in some respect. Is there anything that staff is doing to get ready for implementation at the organizational level?

I'm going to stop with Org. I'd like to start referring it to as operational versus policy. And I'm just going to start that trend. So, at the operational level, is there anything that staff is doing?

SALLY COSTERTON: That's a great question. And I'm going to look into the room. I don't know who's the right person to answer that question. Theresa, I don't think it's you, is it? It might be you.

THERESA SWINEHART: No, it's not.

SALLY COSTERTON: But it's probably Ash, isn't it?

THERESA SWINEHART: Yeah. So, why don't I suggest that we come back with the answer on that? I really want to answer the question. Because it involves a few different functions. So, that would give us an opportunity to make sure we get the full answer back.

LORI SCHULMAN: We're very welcome with written follow-up. And I'm very happy to submit the follow-up question in writing to the relevant staff. If that would help, I can submit it to you, Sally, and Tripti.

SALLY COSTERTON: Yes, please do that. That would be nice, Lori. I want to make sure we answer the question fully. It's an extremely good question. Thank you very much. We'll come back to you in writing.

LORI SCHULMAN: Great. So, we'll do that. I can't guarantee this week, but you'll get it within the next five days. Thank you. Does anybody else want to make an intervention on this subject? Anybody in the room? Because I know we have passionate thoughts. Vicky Sheckler from the IPC.

VICTORIA SHECKLER: Thanks. That was a two-part question. And we talked about thick WHOIS and NIS2, but we didn't hear your thoughts on implementation of the privacy proxy policy. So, I'd love to hear that. Thank you.

BECKY BURR:

Thanks. So, yes. ICANN has said that the registration data request system is actually an opportunity to look into, to work on implementing the privacy and proxy services accreditation issues. And so, ICANN Org is currently conducting research and putting together the sort of what is needed to complete the implementation of those recommendations in conjunction with the WHOIS, the registration data request system. I'm going to keep saying that until I call it something else.

We do think that this development is an opportunity to test out an integrated approach for centralizing the process for submitting third-party requests, both for non-public gTLD registrations and data concerning gTLD registrants who use privacy and proxy services. So, there is some information about the status of the implementation on the policy/implementation page at ICANN.

I think the bottom line is we've now gone through the Board adopting a resolution for building the registration data request system and now is our opportunity to think about whether this is the moment to implement the PPSAI system, recommendations, sorry.

MATTHEW SHEARS:

Thanks, Becky. I think, unless you tell me otherwise, Lori, I think we've exhausted our questions. We do have some time. Are there any other comments or questions or thoughts? Yes, please, Brian.

BRIAN KING:

Thank you, Becky. That was helpful on privacy proxy. What's the next step the Board will take on that? Will there be a Board resolution

directing Org to finish the privacy proxy implementation? Or just to be maybe clear in a short sentence or a few. Thanks.

LORI SCHULMAN: We just passed the resolution on the WHOIS request system. And honestly, I haven't thought about the next system on privacy and proxy. But I know there are people at this table and in this room who will remind me that we need to take that next step.

LORI SCHULMAN: Thank you, Becky. As you know, this has been a passionate issue on the commercial side. And I apologize to Vicky because that was a key question from her. And we got so engrossed in the first half that—not to diminish the importance of the second half. I don't know if the Board would mind this. I mean, we talked about sort of spontaneous questions. If you'd be open to just if we have those few minutes, if there's something anybody wants to say about anything, we've got the Board here. If there were answers that weren't quite clear or you feel like our questions weren't complete, we're open here. Jan. Thank you.

JAN JANSEN: It's not going to be an off topic question or comment. But about NIS2, I heard you, Becky, say that it is a directive, which is 100% correct. And that it needs to be transposed across all member states, which is also 100% correct. Some member states will be slow. Others will be quicker. But that doesn't allow you, I think, or this community to just sit back and wait how it will play out.

The baseline of NIS2 is perfectly clear. The minimum that needs to be accepted is perfectly clear. And it is not because a directive is not transposed in a member state by the deadline that it has no direct effect. And that means direct effect that individuals, they can enforce EU legislation in court of a member state. And a provision of EU law is capable of having direct effect when it is clear, precise, unconditional, and does not give member states substantial discretion in its application. I believe that there are many, many provisions in NIS2 that qualify this definition. And so a lot of provisions of NIS2 will have direct effect. So I was wondering what the Board take was on that.

LORI SCHULMAN:

So I don't disagree with anything that you said about the fact that some of these provisions will have direct effect. And some EU member states will transpose pretty quickly, and those are likely to be big EU member states. So you're right. We're not going to sit and wait until the last EU member state transposes to say, okay, now we have to do something.

On .int, I just don't know. So just to answer the other one, it was sort of my impression that ICANN might be the registry and the registrar for .int, and therefore thick by definition. But I just don't know the answer to that question. So that's the question that we need to ask.

There are some things about NIS2 that we don't know precisely what the accuracy requirements will be. That's something that transposition will, we hope, provide some guidance. But again, there is some work underway on accuracy, and that is a place where we very much hope that we can move the ball forward on that and that the transposition

will be informed by the policy work we do here. So I'm not saying wait before you do any policy work.

On the question of the thick versus thin, I think we have an honest difference of opinion about what's required. And I don't know how we resolve that, but I can tell you that the registries will have their own views on this as well. And unless we have consensus policy, ICANN can't unilaterally say this is what you must do. Each registry is going to have to decide what is necessary to come into compliance with the obligation to have registration data.

But the answer is nothing is standing in the way other than all of our collective capacity to spend more time doing ICANN work from preventing policy work that is policy work related to NIS2 so long as it's within the ICANN mission and the picket fence. And accuracy and WHOIS stuff is in the picket fence. So we don't have any disputes about that.

But in terms of the thick WHOIS thing, until the European Court of Justice tells us what it means, right now we have an honest difference of opinion and the registries themselves have their own opinions.

LORI SCHULMAN:

First test case? Who knows? Hope not. I mean, I hope that the policy solutions work within our own group and discussion before it would go to that level. But it does raise very interesting questions, I think. And Mark has his hand in the queue.

MARK DATYSGELD:

Thank you very much. I would like to step back a little bit to our first topic about the speed of work at the Board level. Last year, in our conversations with the Board, we heard a lot about the prioritization effort that the Board was undertaking and that this was a priority during that year. I would like to know if you could share some insights, it doesn't have to be anything too extensive, but at least some ideas of where that prioritization effort has landed, if the Board has identified their key areas to move ahead and where does that process as a whole stand. So, in other words, has the Board moved from the planning stage of that into the, okay, we know more or less where the priorities are and we feel ready to follow this path? Thank you.

MATTHEW SHEARS:

Thanks, Mark. So, the Board is about to go through its next round of prioritization of work. So, we did this about a year ago. At that time, we went through much the same processing much of the community has been doing through prioritization and levels of P1 through P4, etc. That prioritization was very much focused and geared around the prioritization that obviously the community has been going through. So, our hot topics were very much those of the community.

We will go through that process again. I do not anticipate that there's going to be necessarily any discrepancy in that in terms of what's key for the community. Obviously, SubPro, DNS abuse, all of these things that we've been talking about today will continue to take a significant portion of the Board's time and the Board's effort. So, I suspect that will still be very much at the top of the agenda.

And like everything else, we have to juggle things as we go, but we're going into that process within the next month or two, I would suspect. So, we'll be renewing that prioritization and renewing our effort and where we put our resources, but I don't suspect it's going to change much from the issues that we've been talking about and that are very current here at this point in time. Hopefully, that gives you a little bit of sense.

We've got a couple of minutes. Anybody want to raise anything in the last minute? Not seeing any hands. Okay. Then we'll give you back a couple of minutes. Lori and CSG members, thank you very much for your time. It's always a pleasure. And thank you, everybody, for coming to this session. Lori, I'll give you the last word.

LORI SCHULMAN: Yeah, the last word is session adjourned. Thank you.

MATTHEW SHEARS: Thank you very much.

[END OF TRANSCRIPTION]