
ICANN76 | CF – GNSO: IPC Membership Meeting
Monday, March 13, 2023 – 13:15 to 14:30 CUN

DANIEL GLUCK:

Hello and welcome to this IPC members meeting. My name is Dan Gluck, and I am the remote participation manager for the session. Please note that this session is being recorded and is governed by the ICANN Expected Standards of Behavior. During the session questions or comments submitted in chat will be read aloud if put in the proper form as noted in chat. Now, I'm going to post that in there. And if you'd like to speak during the session, please raise your hand in Zoom.

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LORI SCHULMAN:

Thank you very much, Dan, and welcome to supporting your first IPC meeting. We welcome you. I'm going to give a brief president's report. As you can see from the agenda, it's a short agenda, but with a substantive discussion about the SOIs that will last about 30 minutes that we felt it was really important given the chatter on the list, and

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there's been a lot of chatter. I haven't gotten a sense there's a clear consensus from the IPC on where we stand with the SOI. And I also feel that Susan will explain her thinking about what's going on in the working group. And I'm going to give you all a heads up, we're going to be asking for another volunteer to represent the IPC on this issue.

So give that some thought. And as you can see, in the welcome, we do have the suggested meetings, these are the ones that are directly related to being part of the IPC and the Contracted Parties House. We highly recommend that along with all of our constituency meetings, that you make sure that you are part of the global geopolitical legislative and regulatory developments for those who are still here on Thursday. This is ICANN's external relations team does an excellent wrap up of what's going on globally and ICANN's take on it. And to be frank about it, sometimes the IPC is in alignment with ICANN's take on the situation, and sometimes we are not.

So it's very important that people familiarize themselves with what's going on outside of ICANN in order to be more effective inside of ICANN. We also have happy hour, you all should have gotten the invitation. Some people are going home early [00:02:43 - inaudible] because he has to work. Yes, you have to work and I'm sorry, you can't come to the cocktail. But with all that being said, it is going to be on Wednesday night, at the Canopy Hotel by Hilton. If you need the invitation again, come tap me on the shoulder afterwards, I don't remember the address, but the Canopy is about a seven-minute taxi away.

In order for people to be safe, people who are attending the cocktail are encouraged to meet in the lobby of the Crystal Resort at 6:30 to pair up or more to go to the reception in a taxi safely. And I we think it should be fine if you catch the taxi on this end at a hotel, and then you catch the taxi on the other end at the hotel. And my husband and I are going to stay until the end of the reception to make sure nobody's there alone and being forced to be in a cab alone. So we will make sure everybody has a buddy and everybody's safe and can enjoy the evening.

We're going to have beer, wine, deluxe appetizers, we're going to have some music, won't be too loud, we'll be able to talk, and there's indoor and outdoor space, so it should be really fun. And then the last thing on the President's Report is the GAC Public Safety Working Group and Commercial Stakeholder Group meeting. There were several IPC members who were part of that meeting, including myself. I actually watched the list and co-chaired with Lauren Kapin. The top of mind for the GAC right now is the contract negotiations going on at ICANN, and that was the number one issue they raised.

And of course, we have not had any fulsome reporting out, so it's very hard to figure out what we need to do and we're not sure where the negotiations currently are. With that being said, there is an understanding that given the benefits of the outcomes of the negotiations, that there should be transparency, and as much community input is possible into the end result.

Understanding that while the community is not at the table, we are absolutely the beneficiaries of the outcomes of these negotiations.

For those who don't recall, the IPC signed a joint letter with the BC and with ALAC to talk about just that, making sure there's transparency, regular reporting, and a reasonable comment period. We've also put together a drafting team of interested parties to talk about what types of suggestions, what type of language might be helpful to achieving the community goals with these amendments, and there is some interest from the GAC in working with ALAC, IPC, and BC on these issues.

So we're going to continue to update you and to provide suggestions when time permits and when there's an opportunity. So again, just keep your ears open here, keep your eyes open on the list, and we'll get through this folks. I'm going to turn the microphone over to our senior and junior for lack of a better word or more tenured counselor, John McElwaine and Susan Payne to talk about the GNSO Council update.

JOHN MCELWAINE: Susan, you want to go ahead?

SUSAN PAYNE: Yes, hi, everyone. Thanks very much. So I'm Susan Payne. A quick Council update, and I should have had the agenda up in front of me when I started speaking, but I don't. But I would say, and I will turn this over to John to add anything as well. John is obviously one of the vice chairs at Council with Sebastian who is not being able to attend.

John and Greg, the other Vice Chair have taken over the chair, so he undoubtedly has been having some extra side meetings in that Chair capacity that maybe we wouldn't normally have someone at the table for. For our Council meeting on, I want to say it's Wednesday, we don't have very much in the way of votes, we have one vote, I believe, which is to approve the CCOICI recommendations.

I can't remember what that stands for, something to do with continuous improvement. Essentially, the recommendations are around some changes to the working group participation survey, and we had a discussion on them at our last meeting, and now it's time assuming that there's no request not to have a deferral, we will be voting to approve them. I don't think either John or I feel that there's anything particularly controversial in there.

The idea is that there should be additional opportunities for working group members to give some input to try and improve the PDP process. If anything, the only area that we really had discussion about was, it was decided by that group that that those surveys should be anonymous. There are obviously pros and cons to that. As the Chair, I'm quite sure that it's probably challenging getting anonymous feedback. On the other hand, as a participant, it's equally challenging to give feedback that's attributed to you if you want to say something critical about the Chair.

So the working group came out with a decision that they would keep the input confidential, and so that's the basis of the recommendations. So I don't think we feel that we-- obviously, if people have reservations about this, we'd love some input, but

otherwise, I think we will assume that it's uncontroversial, and that we will vote in favor.

Other than that, I know that we do have some time given over to discussing subsequent procedures, particularly given that we've had this indication from the board that there are 38 recommendations that they will be having in pending status. And we have to have some more discussion on how as a council, we take that forward, and what if anything, procedurally what we need to do, and indeed, start actually maybe addressing the substance of that feedback from the Board. And I think that's probably what I'm going to say. I'm going to hand it over to John.

JOHN MCELWAINE:

Just while I'll raise some issues that we need to be thinking about, I don't know if we have time to discuss them, but with respect to SubPro we saw at the staff briefing on the IRT, there's going to be some discussion had on whether it ought to be an open and representative model. And I was too embarrassed during the session to ask what that is, but I figured out later. So an open and representative model is where usually you'd seen in a working group where you have an open participation. So anybody can join the working group, but then any votes would need to be taken in a representative capacity. The weird thing is with IRT, there are no votes.

So I guess the concept that Staff was floating was to make sure that there were essentially assigned stakeholders to the IRT so that we wouldn't have any surprises in the end. So if somebody just wasn't

participating, and felt like their voice wasn't heard, it wouldn't get all the way to a point where you'd have a breakdown in the IRT's work.

Then also with respect to the SubPro, and whatever, the RDRS system, there's going to be some discussions at the Council level as to how do we go about changing some of these recommendations. So for instance, with the RDRS, there's, with the board resolution, a request that all registrars be part of the RDRS. But to do so, there needs to be some quick policy work that occurs. And with respect to SubPro, there are other recommendations that are going to need to be changed to a certain extent to get voted upon by the board that's at 38 that are being deferred and the small teams working on.

But the big question is going to be what is the process to make those changes? So anybody who's got a real deep knowledge of ICANN policy in particular, the GNSO operating procedures, love to get your thoughts on it, and just watch out. That's what I think the discussions are going to be centered around at the Council [00:11:59 - inaudible] those big picture sort of process issues. I think, yes, that's it.

LORI SCHULMAN:

Thank you, John. Is there any comment on this? I didn't see any hands in the chat. I want to make sure I didn't miss any hand in the chat. Okay, it's fairly straightforward, I think at this time. So I'm going to pass the microphone to our secretary and participation coordinator who has some news. He's going to be wearing one hat after today, yay. Jan Janssen.

JAN JANSSEN: Thank you, Lori, and so thanks for the spoiler. But it's very, very happy to see that Matthew Williams has applied for and was appointed by leadership to become the participation coordinator for our group. So thank you, Matt.

MATTHEW WILLIAMS: Thank you very much.

JAN JANSSEN: And then as a secretary, I can say that there are some membership applications that are being reviewed and that I hope that I will be able to welcome them to to the IPC shortly.

LORI SCHULMAN: Thank you. One of those pending application who's in the room is Jason Elster. Welcome Jason, raise your hand. He's a new member of the family, family yet to be, but we'll hopefully he will pass all of our rigorous requirements for IPC.

JASON ELSTER: Thank you very much, Lori.

JAN JANSSEN: I vote denied.

LORI SCHULMAN: Exactly.

SUSAN PAYNE: And like you already approved him.

LORI SCHULMAN: Before we go on to the substantive discussion, I do want to just highlight two other issues. Since people didn't attend the closed meeting, I would like to relay here in the open meeting that many people are aware that Board seat 14 is open.

This is a GNSO appointed position, representing our side of the house. So our side of the house are the non-contracted parties, which are the commercial stakeholder group which comprises the IPC, the BC, the Business Constituency, and the ISPCPs, which I actually know what that means, Internet Service Provider and Connection Parties, Connection Points or something like that. But I thought I'd do it anyway. I was close. And so we're working with a non-commercial stakeholder side that has two constituencies, the Nonprofit Operational Concerns Group and NPOC, and NCUC, which is the Non-commercial Users Constituency Group.

We're in the process of negotiations. Our side of the house is chairing the process, and we're chairing it in full cooperation with the Chair of the NCSG which is Julf. Many of you know Julf Helsingius, and he's been great and cooperative. The CSG took the initiative to interview five candidates, very thorough interviews. We ranked our choices and sent our top two choices to the non-commercial side, those two choices were Damon Ashcraft, from the IPC who many know, and also

former chair of the NomCom and acknowledged ICANN leader in governance.

And the second choice, not second choice, these are co-choices I should say, is Mark Datysgeld, who is the GNSO counselor for the business constituency, has chaired the GNSO small group on DNS Abuse, and who's also recognized as an upcoming leader in ICANN. And so, we feel that there's very two fully credentialed, ready to go candidates.

It's now up to the NCSG to see if either of these two candidates are someone they could support or perhaps suggest their own. They're in the process of doing their own set of interviews. And we should have an update, I'm hoping in the next couple of weeks, in terms of where we sit in the Board and getting that seat filled in a timely fashion.

The second announcement I'm going to make is on behalf of Damon, our treasurer. We gave the treasurer's report in the private meeting, but one thing I want to reiterate here, IPC dues were due December of 2022, it is now March of 2023. You and I are a culprit as well. If your organization has not paid their dues, please do so. And please do so as soon as you can, because we're going to start to run into election season. And if your dues are not paid, you can't vote. Oh, we repossesses cars, just on the side.

So just to walk away with those, we are diligently working to fill Board seat 14, and from our end and full transparency, the list of candidates, a full set of questions that were asked each candidate was sent in and a little brief bio of each. So as far as we're concerned, we have our top two choices, and we're just waiting to hear from NCSG.

Now, as I've said, and as you know, for those who diligently follow the list, there is a heated discussion going on regarding the policies that should or shouldn't apply that IPC should or should not be advocating for, for statement of interests, and potential disclosure of clients.

Susan Payne and Elizabeth Reed had been diligently attending these meetings, lots of issues and questions has come up, there are very strong feelings in the room and online about where the IPC ought to stand. But when the leadership met together, we agreed that after analyzing the inputs on the list that were not clear, there is real consensus about where the IPC should be. So with that in mind, and as you know, one of my goals as president for the last year and some months, is that we make sure we set aside some time just talk about substantive issues.

This is about really getting our thoughts out so we can fully discuss without anybody feeling we're doing things behind closed doors. This is a an exercise in transparency, it's an exercise in education, and we're hoping that by having these discussions, it can give the leadership much more guidance on where we need to be when we're asked to represent the interests of the IPC. And with that, I do believe Elizabeth was going to be online, but now can't-- Oh, she is online. Yes, I see her. Thank you, Elizabeth.

Okay, but Susan has volunteered to do it in Elizabeth stead. But that being said, I want to really recognize Elizabeth. She's new to the IPC, she very bravely volunteered for working group first out, we gave her this group because we thought it might be a good one to dip your toe in the water, there shouldn't be too much going on here, not a bad one

to learn the ropes, and then here we are folks. So I want to thank Elizabeth for sticking to it. This kind of help having new members is really key to our success, we're very happy that Jason will be joining too. And please keep encouraging your colleagues, your friends. I know at INTA I do push for IPC engagement, every opportunity I can.

So we hope that you all doing that in order to get more help quite frankly. And more voices, we need more voices generally, because you know a lot of us have been doing this work now for 20 years, we are bonded, we're tight, we feel like we could finish each other's sentences, and often we do, I'm not immune from that myself. But unless we get some new thinking in here, younger thinking, quite frankly, my work life is maybe 10 more years, but I can, hopefully is more than 10 years, envision 25 years this year, hopefully another 25 years with some really substantive improvements.

But that only happens if we can cultivate a new generation. So what we are doing, and I will disclose that in my INTA hat, as well as my IPC hat, we are going to do a big, big push during the policy meeting in Washington to get more members on board. We feel it's a very good time, Washington is an optimal place for meetings, we have had interest, diverse geographic interests from our IPC members. I can say the highest number of people, when I announced we had one airfare, we've got the most geographically diverse interest, including a young new member who wants to come.

So I think Washington will be a great hub to really push for IPC membership. We also plan to engage. It's the summer, but we're going to do the best we can to engage policymakers, to engage

embassies. In that case, we have ins to governments in DC, the EU Commission has an office there, every government has an office there. So we're going to really work hard to push for public awareness of what our issues are and why it's so important to be engaged and stay engaged. And now, Susan.

SUSAN PAYNE:

Yes. Thanks very much. Hi, again, it's Susan Payne again. So Elizabeth is not in Cancun, and she's based in Australia. She's a young lawyer and private practice, and I can't remember what the time differences but she's kind of in transit or somewhere where it's very noisy, so as she said, in the chat, she's listening in, and she's going to take note of what's happening.

But we agreed that it would be easier if I did this, rather than her try and do it from Australia. The other thing I would say is Elizabeth, as Lori mentioned, was voluntold, kind of, nicely voluntold to participate in this working group as the primary. And I agreed to be the alternate just to give her some backup and bearing in mind the time difference issues. And it's worked very well, but obviously, Elizabeth has got her day job to do.

And so, there have been times when I've stepped in and taken over for her where she hasn't been able to join. But Elizabeth has been doing the vast bulk of the work, and she's been doing a great job. And indeed, she will be posting a statement or a draft statement for you all to look at, which she has drafted. And she's done a really good job of trying to capture the feedback so far. After this meeting, and depending on where we've come out, and what the feedback is at this

meeting, she's going to update that and then post it to the list so that people have plenty of time.

But in the working group, we've been asked to put in, effectively our statements of position by next week. But I just wanted to, first of all, make sure everyone understands what the recommendation or the potential recommendations are, and see if there's any way we can find the kind of path forward because I think it's become very, very heated, and there's a lot of assumption of bad faith on each side.

And I'm not sure that it's necessarily warranted. And I hope that we maybe can find a path forward. If we can't, we can't, and the statement will go in expressing our position. And in that regard, some real detail, if there's an American Bar Association provision, someone provide it, they get out and provide it, because really, Elizabeth doesn't know what the American Bar Association says, or what a recent case from the ABA says, and you guys around the table feel really strongly about this, and need to give the input that is required. And with that also in mind, I do feel that as the backup to Elizabeth, it would be a lot better if it was someone other than myself, who actually has all of this information at their fingertips and feels really strongly about this, because I don't have it at my fingertips.

And this is not my battle if you like, if any waiver that we have is not going to apply to me. I don't participate in this space as a lawyer, so I don't have an ethical waiver. I will be making the necessary disclosures for myself. And I feel like you know this has become so heated and people, we're expecting on a call for someone to justify

their position and give chapter and verse, and I can and an Elizabeth can't necessarily do it.

So we really do need someone who feels really strongly about this, and there are a number of you in the room, one of you needs to step up and do it. So with that said, the proposals are firstly, that there should be this kind of parent and child SOI structure. So the parent will be kind of a general SOI, and it will be a lot of the stuff you already given an SOI.

So it's like, the general stuff about who you are and who your employer is and where your primary location is, and you ICANN affiliation, so your IPC, or if you have more than one affiliation, more than one, and if your employer separate from you is in the Registrar Stakeholder Group, but you don't participate in there, well, you'll mention that too.

And then just indicate which will update regularly indicate the working groups you're in. And then there will be what's called an activity specific SOI, which is a child SOI sitting below that overarching one, which will be completed for each activity, so each kind of working group or other effort that you volunteer for. And the intention of that is that it should identify the basis on which you're participating in that specific effort. So if you've got a client base, generally, but it's nothing to do with your participation in the RPMs IRT, you don't need to disclose that because it's nothing to do with that specific effort.

And so the reason for the parent child thing is to try and recognize that people can be even wearing different hats in different efforts. Speaking for myself sometimes I might be in there wearing my

comodo hat and representing the interests of our corporate domain clients. And sometimes I might have a specific client who wants me to do X. And I should be able to do SOIs that reflect that.

And then if we can go on to the next one. This is the sort of roughly where the language has got to on the waiver. It's are you participating in this GNSO policy process as a representative of any individual or entity, whether paid or unpaid? And then we've worked to definitely define representative to try to address some of the concerns that have been raised by people here about are they going to have to disclose everyone who's ever spoken to them and given them instructions.

And so it's that in this context, it means you are acting on behalf of a third party as the represented party by whom you have been appointed specifically for the activity, so that working group, or as part of a larger engagement. So if you've got someone who says, I'm going to pay you to go in six working groups for me in ICANN, then that would also count, to represent and or advocate for their interest views or positions.

The language that we are all fighting about is the square bracket language to lower down, which talks about the waiver. Obviously, we tried to tweak that language to address a proposal that Elizabeth I had put forward as if it wasn't possible to identify the person you're representing by name, is it possible that we could expand on the general explanation of who they are and what they do so as to allow people to understand where you're coming from, even if they don't know who your client is.

So for example, I represent a large multinational brand owner in the entertainment sector, and to the best of my knowledge, they're only participating through me, they don't participate in another group, or something like that. That language, obviously, as we know, is the language that is still very contentious, and on the contracted party side, there's a feeling that that waiver simply shouldn't be there.

And I understand, and obviously people will, again, start sort of expressing their views. I understand that it's difficult, potentially, or it's, in fact, there are Bar Association's that restrict you from disclosing your clients if they don't give you permission. But undoubtedly, the point that keeps being raised is well, if your client X participated in person, everyone would know who they are, they would complete an SOI. Why should they hide themselves by refusing to give you permission when they appoint you? And that is the difficulty that we are struggling to justify in that group. Okay.

MARK DATYSGELD:

My clarifying question is that at some point in February, another document was sent out saying that Staff for the revised language changed it. So is this now the latest, or was that document deleted, because that document was different? And that document changed the language about as part of a larger engagement to a role that encompasses activity. So I just want to make sure that we're talking about the latest proposal that's on the table.

LORI SCHULMAN: Can I follow up to with a clarification, because this is confusing me too. We heard a presentation in the NCSG that contain language that if you don't disclose you don't participate. Is that in or out? Because here, this looks more reasonable to me than what we heard. Impulse looking at me because we were in the same meeting. We heard language that was a little different. Is that coming? Is that language there? Or am I not there yet with you? Yes, Paul was in that meeting, too.

PAUL MCGRADY: Thanks. Is there a recording, Paul McGrady. Yes, so I think that that language, that last sentence that they were kicking around, was not language for this, I think it was their statement. It's their position that if you do not disclose, then you are not allowed to participate in the multi stakeholder model.

LORI SCHULMAN: Okay, great clarification, because I was starting to get confused on details. So thank you for that clarification, Paul.

MARK DATYSGELD: We go back to the original question, which was sorry, what is the language that we're actually even discussing?

SUSAN PAYNE: I believe this is the latest language.

MARK DATYSGELD: So they rolled back the other document with all the other changes, or...?

SUSAN PAYNE: I'm not sure what you're asking me.

MARK DATYSGELD: On February 13th, Elizabeth sent out a document, and she said, since our last meeting Staff have further revised language response to feedback that the exemption is still too broad. Please see the attached. So is the language in the document on February 13th the latest proposal from Staff that we should be discussing, or is it that, because the language in this document is different?

SUSAN PAYNE: I don't know that I can answer that. I thought this was the latest version, so I may have to double check while you're all talking. But I would say that the language is not fixed, and so if the definition of representative, that's one of the reasons for wanting to have this discussion was, if the definition of representative doesn't work, but there is different language that might make things workable. We can propose that, but we haven't been proposing that to date, we've been objecting to the principle.

MARK DATYSGELD: But now you have to start with the principle. And I think the principle is that we don't want nebulous language that arguably obligates you

to disclose every client that your firm has, because you're kind of generally working for them, and they're like, hey, keep tabs for me on what's going on, and you know kind of what we think about things.

And so the language arguably says that, and in this version, it's as part of a larger engagement. In the other version, it's to a role that encompasses this activity, and that's what I find concerning because I'm concerned that someone's going to weaponize this, because it's easy to say, oh, it doesn't really matter so much, but it does matter if somebody weaponize it, and they want to kick you out of a group, because they argue that you're not meeting your disclosure obligations.

And so that's the problem. Disclosing a client that specifically is instructing you to advocate on their behalf for that specific working group or whatever, I think that's generally fine, assuming that the client permits you to disclose them. And I think maybe even you could tell the client if you don't permit me to disclose, then I can't participate in this thing.

Even that I think is probably okay, but it's just this nebulous language. And so that's where I think this disconnect is between the two sides, because they clearly believe that we're trying to get all paths, and we're trying to not have to disclose who we're working for, and that's not the intent, it's this other thing. And so that's what I think we have to communicate that we get that we need to disclose if someone's specifically instructing us to work on a particular working group, or maybe we can participate. Okay, that's not what we're arguing about. What we're concerned about is this other thing, and it's easy for you to

say that no one's going to weaponize it until they do, and then what are we supposed to do?

SUSAN PAYNE:

So thanks for that, Mark. And it's really nice to hear you say that, because from my perspective, that disconnect has been the instructions to me and Elizabeth as well, that we have only been hearing from you, we can't agree to this. And if this language is too vague and isn't adequate, we have it in our power to propose an amendment that makes it clearer so that you feel comfortable that it's only applying to the particular activity that you're engaged in. But we're all here as people who-- we all have a responsibility here to be actually coming up with a suggestion so that we can put it forward to that group, but that group is only hearing that we all want to hide you were being paid by.

MARK DATYSGELD:

I don't think that's fair to say because we've been very clear in-- on the list and the discussions, we've been very clear about what the concern is, which is exactly what I just said, which is the fear that we somehow have an obligation to disclose like every client of our firm. Obviously, the message is not getting through, so we can't debate that, that's not debatable. I've heard the feedback from contracted parties and various people, so the message is not getting through. But I think it seemed to me that the communications were clear on the list.

SUSAN PAYNE: Again, I'll just say, that's why this language was amended to try to make it clear that it wasn't expecting you to disclose all of your client base. If it still isn't clear enough, then we need to suggest an amendment, and if we suggest an amendment, and we say that with this in place, we can accept the waiver being removed, this problem goes away. But we're not giving that message because you're not giving us that message, you collectively are not giving that message on the list.

MARK DATYSGELD: I have a proposal, just take out as part of a larger engagement. That satisfies me.

JAN JANSSEN: Well, I will point out though, that Susan's not-- you're rightfully confused, because a number of us said, we don't think we should have to ever disclose under any set of circumstances who paid us to represent them for a specific activity, because that would violate-- if we don't get their consent, that would violate our ethical obligations. And then nobody else in this community has a gating requirement like that, and so why are you picking on lawyers? I'm not saying whatever. I'm just saying Susan's confusion was right. There was definitely-- that's to Paul's gaming point, and others.

LORI SCHULMAN: I recognize Paul, or Susan, do you want to run the queue for this discussion? What's easier for you? Okay, Susan, will run the queue from here.

PAUL MCGRADY: Yes, so, just in reaction to some things. One, I don't know, if the message is not getting through so much as is they that whoever doesn't want to hear the message in the way they were using things like, a legit rules of ethical conduct in the discussion yesterday with Council, and even this bracketed text, I've been actually looking at the rule itself, someone's going to commit a crime or something, I guess we can disclose, but there's in the comments on it. There's even a comment that says, revealing information that is not itself protected, but could reasonably lead to discovery of such information by a third person. There's only so many ways to say that without people.

To me, I'm reading this, it's why. Why do we have the vague disclosure requirement? Is it to try to figure out who you're not revealing, or what's the point? And so, I do think we've got a real hard and fast issue, and I think that we are kind of, to a certain extent, I'm going to say some things at this level, and I'm going to say some things at this level.

So at this level, we're kind of buying the bid. We're saying things like, well, in order to get the waiver of the required disclosures, these are not required disclosures. There's nothing in the ICANN bylaws that require these kinds of disclosures, and frankly, whether or not it's just lawyers or not, lawyers who have the ethical rules we have to deal

with, but there's also the reality that when clients come to me, and they say, who should I be working with on the new gTLD program?

I'm going to say, well, you got to ask them if they're going to disclose who you are. Because if they disclose who you are, then you should expect to be at least one competing application, and you should expect an email asking for a private auction because those folks going to want to make money off you. That's the reality, right? It's just how the system, and this is historical fact, this stuff happened in the last round. So this is not just an issue for lawyers, this is an issue for any service provider that wants to participate in this community. And so just pointing at the lawyers and saying, aren't they being recalcitrant? I don't think that is the answer.

And even as I was listening in today, as a council liaison to the GGP on applicant support, and they want pro bono lawyers to volunteer their time and pro bono service providers to volunteer their time. So somebody comes from an underserved region, wants to apply for a gTLD, and frankly, it could be a brand. It could be a smaller company that wants to have a larger global footprint.

That would have to be disclosed, and they should expect exactly what everybody else should expect, which is competing in applications and private auctions. That will ensure that nobody from an underserved region gets to have meaningful applicant support. So there's all kinds of follow on things that I don't necessarily know have been flushed out. So here's the higher level thing. So I do think we should get-- well, I'll save this up for a second. Susan, I hear you. So those of us

that have a concern on this, we should feed you the appropriate ethical rules.

I think I did earlier in the process, I'm happy to dig deeper on that, to dig into the comments, others around the table, if this bothers you, I hope you do the same. But at this level, this is clear that the issue is not going to go away, and people are prepared to say things like, if you don't sign up for this new rule, and you're not welcome at ICANN.

The only time I've ever known anybody not welcome at ICANN was when they were abusive in a working group, and they were told, finally, after months, and months, years, to go away. And so to say wholesale, anybody who sees a harm and a disclosure to a client or a customer, and I say customer for the non-lawyers, that you're just not welcome to multi stakeholder model, and that's a fairly breathtaking thing to say.

And I'm not saying it to be critical of the people who said it, I'm saying it to alert all of us around this table that they're serious, because you don't say things like that unless you're serious. So this isn't going to go away by us just sloughing off the concern and not trying to understand what's causing this, what's causing this concern, step one.

But it's also not going to go away by them simply saying, no, you got to do it and violate the ethical rules or get lost. And that's not an outcome either. So whether this gets resolved, frankly, and this is why I said, whether this gets resolved at this, whatever this is, I don't know if it's a working group or not. I'm not sure how this is procedurally set up, or if it gets resolved at this spot, or if it gets resolved at Council, it is going to be resolved.

And it may just be that instead of asking our negotiating team to do something Herculean and try to work this out if people at the team level don't want to work it out, that we simply give Susan and Elizabeth enough information to put in a proper statement of the problem, and then it goes to Council, it's something where there's not consensus, and then the people who are still up in arms about it will still be up in arms, and then Council will have to sort it.

And so I will say that this is not the end of the procedural road on this, and so Susan will just get you what you're asking for, and see what can be done. But I'm a little concerned about procedurally going into this thing, sort of accepting the bit, that this is somehow a new requirement, or this is something that has always been a requirement. This is new, we have to understand it better to understand why, but I don't think that if we can't get to an agreed outcome at this level, okay, well, then it's Council's big maths and that subs problem. Thanks.

SUSAN PAYNE:

Thanks, Paul. So I mean, the only thing I would say is that it's not you're not welcome at ICANN, it's within that working group. It's not like we're throwing you out of the whole of ICANN, but I take your point. So there's a bunch of people in queue. So Rick.

RICK LANE:

Thank you, and miss you guys not being in Cancun, so I hope you're having some margaritas.

SUSAN PAYNE: I'm hearing you at the moment, Rick, or at least not very well.

RICK LANE: Can you hear me now? Is that working?

SUSAN PAYNE: Not yet.

RICK LANE: Let me try now. Come back to me. I don't know why my --

SUSAN PAYNE: No, no, you're okay, Rick.

RICK LANE: Okay. So thank you. First of all, I was thinking, hoping, sorry, I'm not with you having margaritas in Cancun, it's going to be fun. To what Paul just said, again, I'm looking at this as a non-lawyer, so I'm always weird because I worked in a law firm for too long, and I hate the non-lawyer, lawyer differential, and that you can have certain privileges as a lawyer and not as a non-lawyer. So I think it should be across the board, whatever it is, is my first thought. But second, I still don't understand who is pushing this and why, and why we need to disclose. I think someone said it's perfectly in one of the emails, which is a good idea is a good idea, and it shouldn't matter where it's coming from.

And in fact, sometimes I know this from the political world, if the idea is a Democrat's idea, the Republicans hate it, if ideas are Republican's idea, the Democrats hate it, and I think that creates animosity when you don't know where the ideas are coming from, but they're good, then you can have an honest dialogue. But having said that, I don't understand why the contracted parties are pushing this so hard. And to what Paul was saying, it just doesn't seem that we should agree to this at all, it just doesn't make any sense. And again, for full disclosure, I have no clients, I would check no in the box. This is my own personal views, so I'm not trying to hide anything.

But there are circumstances where I just don't think people need to have this information and [00:45:40 - inaudible] be knocked out of a group, any organization or any process at ICANN, it is for everybody. It's a multi stakeholder process, and it shouldn't matter if you've listed or not listed who you're working for, or who you're working for. Three banned contracted parties from everything that they have a conflict of interest in, that's all of ICANN. So I don't think it makes any sense from a procedural standpoint, and I think it's unjust. Thank you.

SUSAN PAYNE: Thanks, Rick. Brian.

BRIAN KING: Thanks. This is Brian King for the transcript. Do you think we would be well served to maybe put pen to paper and cite some of the ABA model rules or other rules that explain this? And I keep coming back in

my head, and I think if we can do this, well, it won't sound so antagonistic.

But I keep coming back to domain names and privacy and how much we cared and we tried, and we really took the contracting parties liability concerns into heart, and the EPDP, and all the work that we did, we really worked hard to try to understand their real or perceived risk and liability for what we were asking them to do, and we really worked hard to try to find an outcome that worked for them. I do feel like this is, for some reason, an attack. And I don't feel defensive about it, but it seems like this is somehow aimed at the lawyers, and that's primarily us, I think. But I think if we can clearly articulate what the ethical standards are, and why those exist, and what they mean, that might be helpful.

And the other distinction I would make that I think is probably very relevant to this conversation with the contracted parties is, we're not talking about anonymity or hiding who the client or who is being represented is, we're showing up with a person and a face and a name, and that person's name might be Paul or might be Brian, but we allow, basically anonymity in the domain name system with privacy proxy services, and you may never know who's behind that.

But we at least have somebody in these working groups that has a name and is reachable and is available for discussions and participating fully. So we're talking about two very different things, and I just think if we sight to some of that stuff, and put this in perspective, maybe that'll help.

LORI SCHULMAN:

Yes, I'm going to-- actually it's a perfect segue to what I'm going to talk about. In our closed IPC meeting, we also had a similar discussion, although we waited for this substance here, but we did talk a little bit about some principles. And exactly to Paul and your point, Brian, and about sort of what's pull out the model rules.

But we also have to remember that the model rules aren't just about the American Bar Association, there's an international Bar Association based in Brussels. So what I would recommend, and I think it's worth to spend the IPC budget is robust right now, we could afford to spend on professionally prepared legal opinions from non-ICANN attorneys. Because what's happening now is we have extremely experienced attorneys know what they're doing that even within his own group, are having some debates about where the obligation stops and starts.

And I think it would be a really good idea to reach out, I have a couple of connections in the ethics world, so to speak, at the ABA and at the Virginia State level where I am sure I could get a prepared statement in a relatively quick period of time, giving them the briefing papers from the SOI. So PTL has volunteered that he is also very well connected to the International Bar Association in Brussels. What I would not recommend doing is putting forth ABA rules without looking at the international picture, because we are definitely more than American lawyers, although some people argue not so much.

But to me, that's the way to go. I'd like to have legitimately independent documented opinions from at least in a so called International source, and a well-respected American source. And if anybody in any other jurisdiction around the table would offer to lay

their connections to create an opinion as well, we would be open to that.

Because this is absolutely about taking that 30,000-foot view in terms of what ethical obligations are, where's the floor? We're not even sure where the floor is right now. We think we know. Susan, I think -- Mike, were you're going to raise your hand?

SUSAN PAYNE: Hang on. I've got a couple of other people in the queue, though, ahead of you, Mike.

LORI SCHULMAN: All right. And I'm going to let you guys know, we have seven more minutes, and so please keep your interventions to a minute or less. Thank you.

SUSAN PAYNE: Okay, so I have Paul, and then we'll go to Mike.

PAUL MCGRADY: Paul McGrady again. I want to ratchet down the rhetoric, and Brian didn't mean to ratchet up the rhetoric. I don't think this is an attack. Somebody has a bee in their bonnet about something. And I don't know what that something is. I don't think anybody's coming for us. I think that somebody out there has spotted a problem, and they think this is the way to deal with it. And that's why I think that there's still opportunities to talk through this to Susan's point that she doesn't

think anybody's acting in bad faith on this, there are people of goodwill on both sides, but the rhetoric is heated. And so I think we have to figure out how to tone down the rhetoric.

I think that Lori's academic approach to this is probably pretty going to be pretty well received. And that will level set and then we can talk through all this with the folks who are leading the charge in this. We may never know what set this off, and it doesn't matter. It could be no just because I'm nosy, but whatever it is, it is what it is. And so we have to calm folks down on both sides, or all three sides, or how many sides there are. And I think that's sort of the next step. And so, Lori, I like your idea, but again, in terms of how we react to it, I think we just have to be very calm and matter of fact about it, because it's pretty matter of fact. Thanks.

MIKE BRENNAN:

Mike Brennan here. So I don't know, I'm not feeling like it's necessary to go out and necessarily get legal opinions about this, I feel like we're maybe not as far away as we thought. I think Mark's intervention at the beginning, and I was confused on the list as to what Mark and Paul's and some others Brian's position exactly has been on this. I think Mark helped clear it up a lot, actually, and I just don't feel like we're that far apart. Do we have specific issues with this bracketed language? Does anybody? Speak up now, but it seems pretty reasonable to me, anyway.

And so I think we need to give specific guidance to Susan and Elizabeth soon, I don't necessarily think we need to drag this out, spend a lot of money on ethical opinions if we're not really in in as big

of a debate as maybe we thought before this meeting. I think the one point that's been raised very well by Paul and others is around utility applicants. And I don't think that any party in the community is intending for you to disclose who your potential applicants are. So I think that that's an easy sort of carve out that pretty much everybody would agree to, and that ought to be presented in your group, Susan. Thanks.

SUSAN PAYNE:

Thanks for that, Mike. So I discovered that I couldn't see Matt had his hand up. So I actually have Matt in the queue as well. And I'm supposed to be wrapping this up, but I also see [00:54:20 - inaudible]. But Matt first.

MATTHEW WILLIAMS:

Thank you. Matt Williams for COA. I appreciate where everyone's coming from on this. I'm a law firm attorney myself. I do think as narrowed, COA is inclined to be supportive of this proposal. I would like to know oftentimes, why people are advocating the things they're advocating for or asking me questions about things, and I think that the COA members would appreciate that also, but I'm also supportive of Lori's idea that we get some opinions are on it. And yes, I really get where everyone's coming from.

UNKNOWN SPEAKER:

Aside from the ethical rules and obligations of lawyers and put it out that we've spent all our time talking about, for an organization that is

absolutely fixated on privacy, has anyone brought up the fact that you may want a non-lawyer, an agent of yours to come and advocate on internet issues for which you don't want to have your identity disclosed or put up on a list for all the reasons that we hear that you may not want your name associated with the domain name, because you want to come out and make public interest statements within a working group, and you don't want any retribution as a result of that because your opinions are not favorable.

So I find it very interesting we were just talking about earlier that we took in the during the EPDP, the contracted party houses, thoughts and opinions about liability around not breaking privacy laws. And I just think it's really interesting that that group would just throw out this entire privacy argument.

But there are a lot of reasons why somebody might want you to step up on a microphone in front of 4000 people, get broadcast around the internet, and make statements, everything's transcribed, et cetera, and they don't want them to be subjected to some sort of retribution or otherwise, that's a privacy concern. So I just wonder, is ICANN undertaking or whoever is proposing this undertaking that analysis? Because I think that's actually a bigger organizational issue than is what we've been talking about.

SUSAN PAYNE:

So this isn't being done by ICANN, it's the usual kind of working group of participants. It's meant to be representatives from each of the groups, I would say, the participation from some groups has been spotty at best, and so that hasn't been raised. But some groups have

been specifically asked for their input where they have not been participating.

UNKNOWN SPEAKER:

No, I get that it's a working group thing. I'm just saying, this undermines the process as a whole. So I think it's brings up another question. I think it's sort of wonky that you have a working group who may come up with something that undermines ICANN participation as a whole. But anyway, just throw that out there. I think we're all fixated very narrowly on one thing, and I think that there's a larger issue at play.

LORI SCHULMAN:

And I think Susan, I'm going to have the last word, and I'm going to let us all go because it's four. But I want to say this, we were very successful in the trademark Clearinghouse arguments to argue that we should not reveal what's in the Clearinghouse because it reveals business strategy, that was honored.

So I think if we can make compelling arguments here about business strategy, that that we can say there's precedent for this, which people in privacy, yes, there's a precedent for understanding the business need, as well as ethical responsibilities, and that's going to be the last word today. Please keep talking on the list.

I am thinking that once we at the leadership level, take all this in, and figure out where we're going to go next, that it's probably going to be a healthy exercise to run a poll, a real poll, like a Doodle poll, yes or no,

up or down, just to, again, get a sense because we're hearing that we're close, and then there's some people who are very vocal that this is not a good idea. We have a healthy representation here, but the whole membership has not weighed in, so maybe we need to give them a chance.

With that, I'm going to say thank you for the robust discussion. Thank you to Susan. And see you around the hall, and come to our party because we like you.

MARK DATYSGELD: And just to announce my new service Clients by Proxy.

LORI SCHULMAN: Yes.

MARK DATYSGELD: Speak to me after the meeting.

LORI SCHULMAN: Exactly. Meeting adjourned. Thank you.

DANIEL GLUCK: The IPC Members meeting is adjourned, and the recording is stopped.

[END OF TRANSCRIPTION]