
ICANN78 | AGM – GNSO - Registration Data Policy IRT Session
Thursday, October 26, 2023 – 1:15 to 2:30 HAM

ANDREA GLANDON:

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DENNIS CHANG:

Thank you, Andrea. Welcome, everyone. Andrea, could you remove that pop-up window on the screen? My name is Dennis Chang, and this is the Registration Data Policy Implementation IRT Session at ICANN78. So typically, the IRT sessions are closed session for the IRT members only, but at the ICANN meetings, we open the sessions for everyone to participate.

So what we'll do is we will conduct our normal session and a working session, but it is going to be a topic that I think many of you have heard about throughout the week today, and we will open it up for public comment or your comment after our session, IRT discussion. So you're welcome to participate. We have two items out there on the agenda today. One is the urgent request, and the second is the implementation timeline.

Just to give you a quick background, we had an IRT session where we set a timeline for publication and we had targeted August, 29th. And we were going to start implementing beginning September for the 18-month duration. However, we have received a letter from the GAC, and that letter was addressed to the board asking for couple of things. One, urgent requests being an important topic, and it is high impact items. So they asked that the board review the urgent request requirement. Second point that GAC made was that it was not their intention to throw down the progress or the implementation, so they asked us to proceed and one way they suggested, the way that could happen is to possibly publish the policy without the urgent request as being any requirement.

Today, what we will be discussing here is whether or not that is a good option that the IRT would all support, and how we could do that, and

then how the timeline would be affected if we did this. Let me get right into it. So what we have is a policy, and this is a Google Doc version of the same policy that we have in publication at the IRT on the IRT website. And I remind you, this IRT wiki is a website that the IRT updates to do its work, and everything on here is available for public. So the draft policy language that we IRT has reviewed and published was on July 24th.

That's the date when we discussed the urgent request, came to an agreement on how it should be worded, and we published it. And that is the version that we were about to publish, and that is this version. Within the registration data policy, of course, you know that it covers all the transactions, processing of the registration data, data dealing with the collection and transfer of those registration data, publication disclosure and retention.

Now, disclosure section 10 is where we discuss the urgent request requirement. Before we get there though, in section 3, we have a definition and interpretation section where we define the term urgent request in 3.8, where we define urgent request for lawful disclosure as something that is imminent threat to life, serious bodily injury, critical infrastructure, child exploitation. So it's a very strong definition that warrants an urgent request. That's 3.8 section is the definition, and then the requirement is section 10 and specifically 10.6 is where we discuss the urgent request.

Now, the IRT did not have any real issue with the definition. We got to the definition part pretty quickly, but I have to tell you the timeline for responding to the urgent request was a very difficult topic for us. We

spent many months discussing this. We went through the public comment, and after the public comment, very long time.

The range of the timeline for that response was from immediately to where we got to, and that is a generally 24 hours within two business days, "business days", and another business day for specific cases of larger complex cases. So that is the background.

Now, so what is being proposed and this is something that I have done so that you can actually see what is being discussed right now is number one, we're proposing that we remove the urgent request in its entirety and completely from the policy. So the word urgent request does not show up anymore. It doesn't exist in our policy and therefore even the definition that we have worked on and agreed to, we will remove it as well as the requirement in 10.6. This is what it will look like, and I make the point of showing you exactly what the change is, so there's no doubt or confusion, what we were discussing.

The effect is as if there was no recommendation requiring us to Implement the urgent request. There is no separate request. We only have one request for disclosure and our policy will cover just to request board's disclosure in a "normal case". Now so far, is there any questions on the background and the setting before we start the discussion? Anyone? Steve, go ahead.

STEVE CROCKER:

Previous meetings of the IRT, one of the points that was pressed, made very forcefully is that the IRT is limited in its scope by its structure by the

rules of implementing policy but not allowed to change policy. Isn't this a change of policy?

DENNIS CHANG: This is what we're discussing. Do you think it is? And if it is, how can we go about it? And, Becky?

BECKY BURR: If I could provide a little bit more background here because the board did discuss this issue in response to the request from the GAC. And sort of unrelated to the whether it's 24 hours plus two days or 24 hours plus two business days plus one business day. The board looking seriously at this thought that this definition and the timing here is just not fit for purpose. If we actually have a situation where a child is about to be kidnapped then having providing WHOIS lookup as a response to this in a world where law enforcement is not authenticated is extremely problematic.

We are inclined to publish the policy without this. Having said that, we recognize that this is actually sort of first of its kind situation where the board approved a policy recommendation that came from the GNSO. And then subsequently on sort of review of this said, actually we don't think that the way this works is in the public interest, and we want to have further discussions about it.

I do think Steve raises a reasonable point about whether this group or the board can unilaterally change policy. I would have thought that, that would be some sort of suspended piece of the policy or something

like that so that we can go back to the GNSO and council and have that conversation. So the board is not asking this, the IRT to unilaterally dispose of this. We want it sort of put in a box and held in abeyance until we can have that conversation.

DENNIS CHANG: Thank you, Becky. Go ahead Seb.

SEBASTIEN DUCOS: This is Sebastien no longer speaking for the GNSO, but having been in those conversation all week, I can completely confirm that the GNSO will be more than happy to play ball and quickly if needed and asked.

DENNIS CHANG: Laureen?

LAUREEN KAPIN: And just to underscore the quickly part on since if this is put in a box, which is what the GAC had asked to be done, we would want to underscore that the quickly part is really important so that there is a viable mechanism in place rather than what is now going to be a bit of a vacuum.

SEBASTIEN DUCOS: Sorry, this is Sebastian again. I want to make sure that I'm rephrasing correctly. Quickly amending the document to be able to publish the policy, the work that needs to be done on it, I don't want to speak to

them. It's for them to work out their calendar and their priorities. I can't do that.

LAUREEN KAPIN:

Right. And I understand that. I'm just communicating a desire, not a dictate. It's not in our hands. I'm just saying because there is this vacuum created so that there will be an opportunity to deal with this more precisely and to ensure its fit for purpose that procedurally, hopefully the steps will be taken with dispatch so that we can then get back to the policy work and grapple with this issue.

ANDREA GLANDON:

Dennis, Roger has his hand up in the zoom too, please.

ROGER CARNEY:

Thank you. This is Roger. And just specific to Steve's point here, I didn't know this was before and I was reminded this week that the language in the final report does say that urgent will be considered. It didn't say that it will be implemented. It said it would be considered. So technically, I think that's okay, but I do appreciate the board and council saying that we can take a look at this later. So, thanks.

STEVE CROCKER:

Good. The other aspect of urgent request besides putting a timeline on how long it takes to respond is how long and by what method urgent requests reach the registrar because this language picks up at the point that the urgent request has actually made its way to the registrar but

there's, speaking of vacuums, no specification whatsoever about how it gets to the registrar. And given the notion of urgency that's a necessary part of the sort of an inescapable part of the overall equation.

The GAC somewhat to my embarrassment has been much faster than SSAC at getting a report out but we've circulated and I think most people have seen a prepublication version of what is forthcoming from the GAC. And the one focus, key focus in that work is on the process and timeline for thing. And to make the point, I believe the current wording says acknowledgement of receipt within 30 minutes.

So that puts a really tight timeline on the ability from the time that whoever makes the request to the time it gets to the relevant registrar, and then things take however long they take after that, but at least addressing the front-end aspect of that. When this comes up for consideration and putting all the pieces together to bring it back into service as it were, that will be another part of what ought to be considered. Thank you.

ANDREA GLANDON: Marc Anderson has his hand up as well.

MARC ANDERSON: Thank you, Marc Anderson, for the transcript. Roger gave me some food for thought there with his comment. I had noticed that, but that's an excellent point. I actually raised my hand to respond to what Becky and Steve had said earlier. We we're focusing on the proposed policy

language, but thinking about the policy recommendations that the board and the GNSO council had approved.

I'm wondering if that's what we should be looking at in communicating back to the GNSO council that these are the pieces we're having trouble implementing or maybe want the GNSO council to look at again. I think that's maybe the piece that we need to highlight and send to the GNSO council for action.

BECKY BURR:

I just want to be crystal clear that the board's concern is not the fight about whether it's two days 24 hours and two days or 24 hours and two days and one day. The board's concern is more fundamental. I think you're right, Marc, that we need a sort of more fundamental look at this. It's not just this sort of small timing, so Steve's piece is a relevant piece of the puzzle.

STEVE CROCKER:

I'll be happy when it's not referred to as Steve's piece, but is [inaudible 00:19:24].

DENNIS CHANG:

Thank you, everyone. The important decision for the IRT, I think is in twofold. One, do we agree at this time to remove the urgent request from the policy? And the second, do we agree that it should be and can be published without the urgent request. Knowing, recognizing that urgent request was in the recommendation and it was worded, please consider. So we have considered, and therefore, did we do our job? Or,

yes, we considered and we have then taken the action to maybe pull it back and consider it in a more of a wholesome way where lot of other factors and urgent requests are being discussed.

So that's, I think, what we're talking about. To tell you probably that I've been receiving inputs for those who couldn't make it due to conflict have told me that it's important that we publish this policy as soon as we can, and everybody I spoke to basically said they will support publication without the urgent request in the language.

And that's why I took the liberty of showing you what it would look like without the urgent request, meaning that is completely removed in terms of the requirement and the definition. And therefore, the policy itself without it can stand and be implemented in all other aspects. So, is there anyone who would object to proceeding with the publication and if so, could I hear from you? Hearing none and seeing none, I'm going to consider our work complete with the urgent request being removed here.

Now, so then, as an ICANN Org, now, we have an obligation to report back to the board that we have received support from the IRT to proceed with the policy publication without the urgent request. And then we will now further get guidance from the board that if we would be okay and for us to go ahead and schedule the publication in our following our normal process, which you know well now.

Now secondarily, how we handle the urgent request, I think is a separate discussion and of course, those of you who are interested, can fully participate, and It will be an interesting challenge for all of us in terms of not only the response time, but the whole process of how we

consistently make and receive and respond to those urgent requests that has wording like imminent threat to life. Huge challenge. Go ahead, Steve.

STEVE CROCKER:

With respect to publication of this, is it your intention to note that urgent requests were removed and that, that represents a variation from the policy and that this is done with direction from the board that this should be handled in some exceptional fashion.

DENNIS CHANG:

Very good question. Let me bring you to my next, what I have prepared. So as you saw, this is the original and this is what it looks like without it. Now, let me show you this other document that we carry and within our IRT wiki, we have many items as you know it's a huge policy.

And there is one we have a document that we started and we started calling "drafting error". Now what is this? Do you remember this document? It's not on here. Roger has added to the title, let's see, explanation, implementation explanation. That's what we called it as well as "drafting error". We started with it. But as you remember, we have run into several. You can count, I think 13 cases where we have come into a recommendation language. And when we examined it, we recognize that perhaps it is not what it was meant to do I meant to say.

And fortunate for us, many of these IRT members were in the original PDP working group, and they have confirmed that it was not meant to be an optional [inaudible 00:25:26]. I'm just showing you an example

here. It was not meant to be an optional, but it needs to be a requirement, in other words, we have actually changed the policy requirement, what it should have been or could have been as a MAY to a MUST.

So this is what we have documented, Steve. We found the policy recommendation as stated optional, which you would have normally said MAY in terms of a policy language, but we changed it to MUST, and we have highlighted this and we have provided rationale. And we have done this case after case, and we spent a lot of time doing this, if you remember.

To answer your question specifically directly, what we will do and what I propose that we do, and I think it's important to document for this group, that we will add to this document and publish it on the IRT Wiki. In this case, it will be an item number 15, urgent request.

This was the recommendation language and we'll recite that. Here was what was discussed, and here's how we did it. And this will be part of the IRT wiki that we were at here. What do you think? Is there a better way? I like this idea because it collects all of the IRT discussions and decisions. Go ahead, Laureen.

LAUREEN KAPIN:

I absolutely agree with the notion of having a document where all the explanations live. I think that's great. What I'm concerned about is the transparency and visibility of this information. And I'm wondering if in whatever announcement is made that, hey, this is finally published. If

there either could be a repetition of this information because it is so important or a link to the Wiki, because that's inside baseball, the Wiki.

I have trouble finding these things. I'm sure I'm not alone. I just want to make sure that, there's clarity to the public about what is happening with the process. And just putting it in the Wiki makes me nervous that no one's going to know where this information is and it's not going to be visible.

ANDREA GLANDON: Dennis, we have Roger and then Owen.

ROGER CARNEY: Thanks. It's Roger. And I'll agree with that. I think that it seems like this would be kind of trying to bury it. I but I think it's...

LAUREEN KAPIN: Same.

ROGER CARNEY: I think it's in a perfect spot to be in because it is one of the things we've done, and that's what these are. But again, I think the important thing is we have to come up with a way to communicate to council that we did look at recommendation 18, and we did specifically consider urgent request, and we think the council needs to look at that. I think that as an IRT, we're done with recommendation 18 because we did consider it, and it moves on and then council has to make a decision on how to

move forward. I don't think it should be with this IRT, though. Just my thoughts. Thanks.

OWEN SMIGELSKI:

How could you forget about me, Dennis? Hi, everyone. This is Owen Smigelski, for the record. Following up on with what Laureen said, when ICANN does publish policies on their consensus policy page, there's usually notes underneath there. And so, perhaps in that note, we could say please, I don't know the wording right now. I'm a little frazzled after 178 days here. But I think we can certainly do something there where we point people directly to that and make a note so that they do understand the context in the background of some of the areas. Thanks.

MARC ANDERSON:

Marc Anderson for the record. I'll just give a plus one to what Roger said. He's right on that. That makes a lot of sense and makes for a good path forward, I think.

DENNIS CHANG:

Not to put you on the spot, Seb, but you are still serving as the GNSO council liaison to the IRT, Correct?

SEBASTIEN DUCOS:

So they're having their wrap up session next door, and that's when they nominate the liaisons. On this meeting, I am. If this exercise should last another 3 days, I am. Beyond that, I can't say.

DENNIS CHANG: Understood. So for the record, you have noted and attended our IRT session here, and you're free to convey our actions to the GNSO council whether we do it, we follow that up officially or not. We'll talk about that. But please let them know that this is a direction we're going to go, and so they're going to be left with some homework. Thank you.

BETH BACON: I got caught whispering, sorry. This is Beth Bacon. I'm just wondering. I appreciate that Seb has a full 72 hours left in him for officially. But we're going to just to confirm, we're going to send something for you IRT or org are going to send something formally to GNSO saying, this is our decision. Please see item 15, 16, whatever it ends up being. You need to consider this, and that's going to come from org as the IRT.

DENNIS CHANG: We could. What do you think? Is that necessary?

SEBASTIEN DUCOS: Normally, as I understand, it goes through the liaison. Now, I'll go and sit with Dennis to write that email together and make sure that we've all understood the same point.

LAUREEN KAPIN: Thanks, Dennis. I just want to flag, because I heard Roger's point about the language in recommendation 18 about, and I'll read it verbatim, a separate timeline of less than x business days in brackets will be

considered for the response to urgent reasonable disclosure request, ta-ta-ta, etcetera.

And I'll just flag that it would be quite concerning if the conclusion was reached of, well, we considered it, and we're done because we couldn't come to an agreement. That would seem to me to contradict very much the spirit of the GAC's concern and the SSAC's concern here and that's separate and apart from the concern of the greater community that there needs to be a vehicle to deal with this very narrow category of request, so I just wanted to share that.

ROGER CARNEY:

Great. Thanks. And I think that's appropriate, and I think that's exactly why, Seb and his role is, is not just saying we considered it and left it there, but we considered it and the liaison is taking that back to council. So, thanks.

DENNIS CHANG:

Yeah. Not to mention, SSAC is going to come out with their advice formally to the board, so you know that it will be recorded and tracked as a board action to follow through, and we're all very interested in how we solve this problem. Well, with that, I'm going to conclude the urgent request topic for our IRT discussion. And with it, I will now move to the IRT timeline.

So just to confirm that we are now couple of months from when we had intended to publish, and we're going to after coordination of the approval process with the board, we will set our publication schedule.

I can't promise you exactly when that would be. We will follow our normal publication and it will be a massive undertaking. We have, I don't know, counted from 35 pages. We have to update synchronously. So it will be sometime we can do that.

Now, in terms of 6 plus 12. I have actually been receiving good feedback that everybody likes that plan that I think Sarah called it a quiet period, and I like those terms even though we're going to be working furiously behind the scenes, quiet in terms of actually making the transition.

So we will go ahead and do that, and we will reset the dates. This is the important part in terms of policy language that we shouldn't forget, and that is, I have not done it, but when we set the date, you can expect that section 4 with the effective dates will be changed, and all I'm going to do is change the dates. Okay? So when you see me providing an updated version, don't be surprised that's a change that you should expect.

ROGER CARNEY:

Makes sense. This is Roger. And I would I think we're okay, but I would just suggest the change doesn't fall on a huge holiday or something like that. And I think we're okay because I think we're actually moving in the right direction, so, thank you.

DENNIS CHANG:

Yeah. My team is global in nature and they're very good at pointing that out to me. Now, just particularly, I the February of

ANDREA GLANDON: Dennis, Owen has his hands up. I think he wants to...

DENNIS CHANG: Owen, go ahead.

OWEN SMIGELSKI: But let me just kind of get general guidance. I'm assuming it's going to be, say, gets published November 15th, hypothetical. Would you just take August 29th, whatever that time is and then add that on, or are you thinking bigger, longer, shorter?

DENNIS CHANG: That's exactly what I wanted to talk to you about. I was thinking, yeah, as soon as we can get our approval and processing done, and I think there's a value in having the language published. I think there's a value in doing that as soon as we can. I mean, we all know what it is, those of us in the room. But those people out there, they need to see it officially with legal notice tied to it. I think that needs to happen quickly as you can.

Now, in terms of when we start the transition period, that's a topic that I wanted to talk to you about because there's some value in keeping our typical policy implementation calendar, if you will. So February, August, February, August, those are two months that we consistently use when we want to do something in a big way, and this is a big thing. I'm thinking maybe February, no matter when we publish, we'll reset the transition start to February and I don't know how you feel about that. One way or the other. Does it matter?

BETH BACON: Just to confirm, so I understand, are you saying that would February would start the 6-month quiet period, or the quiet period goes up until February?

DENNIS CHANG: So quiet period starts whenever we publish, and we issue legal notice. I should have said August then. August is when we would start the transition period. We might have in in other words, never less than 6 months of quiet period, but it could be seven months or seven and a half period. I think that's okay. And if you would allow me to do so, I would like to have that flexibility. Go ahead.

ROGER CARNEY: Thanks, Dennis. I think that, thanks Catherine, for bringing that up. So it's August to August, basically. August starts at August. Well, everyone will have to be in place by then. Yes, Thank you.

SARAH WYLD: Hi. This is Sarah. I'm sorry, I feel like I maybe won't understand this until I see it written down. I have trouble with dates. But does that mean that now we only get 12 months? Because we just said August to August. Thank you. I'm sorry, I'm confused.

DENNIS CHANG: Okay. It's, it will always be 18 months or more. The quiet period may be longer is what I'm trying to say. The 6 months instead of 6 months,

7 months, but the transition period will be limited to 12 months. That won't change. Go ahead, Beth.

BETH BACON:

All right. Thanks. So, we've gone through. This is Beth. Sorry. We've gone through this and we didn't have any discussion other than we all agreed 6 months because we understood that ICANN itself, and then we also need to coordinate registries and registrars, but ICANN has a lot of work to do itself on agreements and things, and that's when that coordination period, that 6 months is, and then 12 months for implementation.

Tacking on another two months just of like, it's out there, but we're not doing anything. It seems like too much. I think that we need to be really cognizant of the fact that this registration data policy is allowing registries and registrars to comply with various laws that some of which have been out for a real long time, and some that are coming down the pipe. I don't think adding those extra months is a great idea. I understand that we all like a little more time, but I don't love that idea. I think that once it's published, we got to get going.

DENNIS CHANG:

Okay. This is what I wanted to hear, your feedback.

ANDREA GLANDON:

Marc has his hand up.

DENNIS CHANG: Marc?

MARC ANDERSON: Marc Anderson for the transcript. I guess, Beth makes some good points. I don't know if I feel strongly. I think if we went with what Beth suggested and start the 6-month period as soon as it's published, I'd be okay with that. I don't think I would have a whole lot of heartburn with your proposal either, so I guess I could get on board with either approach, but I hadn't considered Beth's points, and she does make some good points. Yes.

ANDREA GLANDON: Sarah's next.

SARAH WYLD: Thank you. This is Sarah. Marc said what I was going to say. So, I don't really feel that we need to be tied to an August date specifically, although it is nice to keep things tidy like that. I think I would rather just get started doing it. Thank you.

ANDREA GLANDON: Roger?

ROGER CARNEY: Thanks. This is Roger. And thanks, Beth, for bringing that up, but it's a good point. I don't know that it matters a whole lot. As Marc said, I don't know that any registry systems will be able to be up within the

next 6 months, so that registrars can actually go to that. But if that's possible, that's great. Again, I'm marched here. I don't know that I care that much either way, but it's a very good point. So, thanks.

BETH BACON: Thanks. So, I'm being simple. I apologize. When is now the new proposed date for this to get published? Is it February? When do we think the consensus policy is going to be published?

DENNIS CHANG: I think it will be, well, we're in on end of October. So we, like I said, the process that we would have to go through is report back to the board, and the board has to consider our proposal officially, and they'll have to I think convene a meeting and then give us direction that is okay. Then we can go ahead and set up our machine to get started, and it'll take a couple of weeks. I would think maybe November.

BETH BACON: End of November, you think?

DENNIS CHANG: For thanksgiving?

BETH BACON: Yeah. Because I was going to say November's in, like, 4 days.

DENNIS CHANG: I know.

BETH BACON: Okay. Yeah. All right. Yeah.

DENNIS CHANG: Okay. In the end of November, maybe early December. That's why it's getting close to the February time, but we will publish as soon as we can, and that's not the question that I'm asking.

BETH BACON: I think that to Roger's point that, I think that any registries that hasn't been working on this for a while is going to have a rough time even if we have a year. If you haven't been thinking about this, you're in trouble. So if it's going to, if we know that this is ready to go, we know it's going to the board, I think it's beholden on some registry and registrar coordination for us to get ourselves together. And then if we have an issue, like if it becomes very apparent that we're going to need something, then maybe we look at Dennis and go, just wait till February. But I think that people are thinking about this and we need it.

DENNIS CHANG: Okay. So, I'll tell you what. When I have some definite days of publication, why don't I check with you all and send you some here's a couple of ways we could go, right? Meaning that we publish right away, but then we start to transition period in August or we start transition period in June. That's probably what we will be looking at couple of

month difference. Okay? Anything else on the timeline? If not, we'll close that topic, and then I didn't have anything, but AOB time reserve. Sarah, go.

SARAH WYLD:

Hi. This is Sarah. I want to say a big thank you to the entire staff team because you have done so much work on this project, and we could not have gotten through it without you, and also to Sebastian for being an amazing liaison. Thank you, everybody.

DENNIS CHANG:

Thank you, Sarah. With that, I will conclude the meeting. Thank you, Andrea. We're done.

ANDREA GLANDON:

Cheers.

DENNIS CHANG:

Cheers.

ANDREA GLANDON:

Thank you. You can stop the recording.

[END OF TRANSCRIPTION]