ICANN79 | CF – Joint Session: ICANN Board and CSG
Tuesday, March 5, 2024 – 4:15 to 5:30 SJU

FRANCO CARRASCO: Hello. My name is Franco Carrasco and I am the participation manager for this session. Welcome to the joint session with the ICANN Board and the Commercial Stakeholder Group. Please note that this session is being recorded and follows the ICANN expected standards of behavior.

Interpretation for the session today will include English, French, Spanish, Chinese, Russian and Arabic. Please remember to state your name for the record and the language you will speak if speaking a language other than English. Please also speak at a reasonable pace for our interpreters. The discussion today is between the ICANN Board and the CSG. Therefore, we will not be taking any questions from the audience today. However, everyone is welcome to use the Zoom chat. Please note that private chats are only possible amongst panelists in a Zoom webinar format. Any message sent by a panelist or a standard attendee to another standard attendee will also be seen by the session's host, co-host, and other panelists.

Having said all that, I will now hand the floor over to the ICANN Board chair, Tripti Sinha.

TRIPTI SINHA: Thank you, Franco. Welcome, everyone, to the joint session of the CSG and the Board. We always look forward to these sessions as they are a

nice, informal setting. Even though there's some questions that are sent back and forth, we hope that the conversations will be very candid and organic in how they occur.

So with that, I'm going to turn it over to Chris Buckridge, who's chairing this session.

CHRIS BUCKRIDGE: Yeah, thank you very much, Tripti. And welcome, everyone, to this session. It's the end of what we laughingly call day two here. So everyone, I think, is starting to feel the burn a little. But I think it's a combination here of CSG and Board with, I think, some really interesting topics that we have to unpack and discuss. So I'm hoping we'll have a chance to hear a number of different sides of some of these topics and really dig in to the issues there.

I'm going to pass over, I think, to chair of the CSG, Philippe, to launch us into the first of the topics that we have to discuss here today, which is an echo of a discussion we've had with a few other groups on the EU's NIS 2 directive. So, Philippe, please.

PHILIPPE FOUQUART: Thanks, Chris. Well, on this one, I'll be very quick and I'll hand it over to Mason to help us sort of articulate the variety of views within the CSG on the matter. Mason?

MASON COLE: Thank you, Philippe. Thank you, Chris. First, the BC very much appreciates this session with the Board. Thank you very much. It's always valuable to us and to the CSG.

I have a brief statement I'd like to read regarding NIS 2, and then I think we're going to dive into a broader discussion. So on behalf of the CSG, first, thank you for the opportunity, obviously, to comment on long term developments regarding the NIS 2 Directive. The CSG welcomes the Board's question, which was posed before ICANN 79, regarding the potential development of adjacent policy. There is not yet a unified position within the CSG regarding policy development as it relates to NIS 2.

The one area where we do agree for now is that there is no expectation on the part of the CSG that ICANN Org would be an enforcement arm for EU governments or for development of regulation in various jurisdictions.

The CSG agrees that this is an opportunity, however, for contracted parties to make advances in WHOIS policy in a way that could potentially harmonize operations with NIS 2 requirements, including things like maintenance of accurate and thick WHOIS data for both registries and registrars, verification of data, fulfillment of legitimate requests, availability of registration data for legal persons, and access to WHOIS free of charge.

What remains to be seen, obviously, is the result of the transposition of the directive into binding member state law. But the CSG is optimistic that the community will cooperate to ensure that reasonable WHOIS policy will prevail following the implementation of NIS 2.

We look forward to that outcome over the long term, and we look forward to this discussion. Thank you, Chris.

CHRIS BUCKRIDGE: Thanks, Mason. The Board question on that was certainly coming from some discussions that we'd had and the concerns that you'd raised around that. So I think really the goal here was simply to unpack the issues and the positions and try to find a way through to common understanding.

But I think, Becky, if I can throw it to you.

BECKY BURR: Yes, thanks. And thank you, Mason. You and I have had a couple of exchanges on this, and when Chris and I were talking about the topics and he mentioned he had talked with you with the CSG about it, we thought, let's just put it on the table and have a conversation in depth rather than across the forum floor here.

So on the first question, I think, obviously, we don't know precisely how this going to be transposed, and even once it's transposed, we don't know exactly how it's going to be enforced. "Welcome to EU member state directives." That's just the way it is.

But the first thing we really want to drill down to is, is it your position that there is something about the ICANN contract or consensus policy that is inconsistent with full compliance with NIS 2? That's just a …

MASON COLE: Thank you, Becky, for that question. No, I don't know that there's a position that is such that you just articulated. I think there's the position on the part of some within the CSG that there's an opportunity to harmonize ICANN policy with some of the demands of NIS 2. But again, there's no expectation that ICANN becomes an enforcement agency for European regulators or for any jurisdiction for that matter. But for the sake of harmonization within the WHOIS world, there could be an opportunity to make those policies a little more similar, at least. And I'm sure others have other views.

LORI SCHULMAN: Right. I'm going to wear my IPC hat as well as my CSG ExComm hat, because there is a division. So I do not want to purport to be speaking for the CSG as a whole.

So in terms of our constituency and our position at the highest level, to say that, "Well, the burdens of responsibility for data control are now at the registers completely per a number of policy developments that in theory, no, they're free to comply with NIS 2 or not [on]," fair point. But I think what's an unfair point is that the temp spec was written with GDPR in mind, and there are specifications in the temp spec that relate to GDPR and GDPR compliance. And the entire EPDP policy framework was built around GDPR compliance.

So I think it stands unprecedented and it's logical that as we're evolving policies based on evolving law that this now existent and enforce[d] NIS 2 deserves the same consideration from the community to provide guidance to the point that Mason makes about having as close to uniform standards as we could reasonably have, having

understandings about what we're going to consider as certain terms and how they're enforced, and that it's reasonable to expect that where ICANN has taken the responsibility to ensure that we're in compliance, that that responsibility again translates to NIS 2 as a natural evolution.

BECKY BURR: So this is extremely useful to me because I'm hearing something slightly different than I heard before, maybe not different from what you were saying before, but just the way I heard it, because what I had interpreted it was that there was a view that something about either the contracts or consensus policy precluded full compliance with NIS 2. And I don't think I'm hearing you say that.

LORI SCHULMAN: I'm going to jump in here and say we're not saying that. And you asked a question directly about the contracts, per se. So at the highest level I would say no. But there are policies, community practice guidelines. Does the temp spec then evolve into the articulated PDP policies that will eventually become part of a contract? I mean, there's so many moving parts here that I think to ask the question "is there anything in the contract?" doesn't necessarily encompass the issue.

So we're trying to get to sort of the contractual realities and also issues that are very confusing right now and conflated inside the community.

BECKY BURR: So I wasn't trying to oversimplify or obscure something. I was just trying to clarify that we are all on the same page, that right now I am not

asserting what is ideal. I'm just saying right now, registries and registrars can comply with NIS 2 and ICANN contracts and policy obligations.

LORI SCHULMAN: Yes, I'm going to emphasize that, at least from the IPC standpoint, yes, they can comply because all the burdens have been put on them in terms of making determinations.

That being said, there's debates here in the room, as you well know about (and this is a sticky wicket, but I'm going to put it here) about controller functions. And does the contract reflect the reality of controller functions? That's a different question, I understand, but in the strictest sense, no. Right now, given the freedom that registrars have, they can comply in the way they see fit. I'm going to concede that point because I think from a legal perspective, that's accurate. But talking about policy and what should happen at ICANN and how it happens and the kind of leadership that's expected from ICANN I think is the bigger question.

CHRIS BUCKRIDGE: Thomas and Mason.

THOMAS RICKERT: Yeah, thanks very much. And as you can see, this is a complicated matter and there's no unity within the CSG. But I've been discussing, particularly with Mason before this meeting took place, for him to put

together a statement that highlights the common views that we hold in the CSG.

We certainly discussed this topic within the ISPCP as well. And at the moment there is no finite common position. But I think that there are a couple of themes that have evolved, and these themes, I think, are supported by several individuals, at least in the BC and IPC as well. And that is, number one, that we did not identify any data processing as required by NIS 2 that would put the contracted parties in danger of violating existing ICANN contracts or policies.

Number two, we have not identified anything that would prevent the contracted parties from doing the things they need to do under NIS 2 within the framework of the contracts and policies that ICANN has. In order to illustrate this, there might be a need to collect the data of the administrative contact in cases where the administrative contact is different from the registered name-holder. That's in Article 28. And as you might remember, we have killed the Admin-C in the EPDP. So it might have a regional Lazarus moment, a moment of resurrection. But that's possible because the registration data policy allows for the processing of additional data elements.

And thirdly, I think that there is support, not by all, but by many, that it would be dangerous for ICANN and its community to use national or regional laws as a trigger to start policy development, because that might degrade ICANN and its multistakeholder model as the technical implementer of regulatory requirements.

CHRIS BUCKRIDGE: I'm just going to insert a reminder for people to speak slowly for the translators. I'm sure not relating to anyone specifically, Thomas. Mason?

MASON COLE: Thank you. Chris. First of all, Thomas, thank you for that statement. I appreciate the good faith that the ISPs and the IPC and the BC are all using to work together to try to—

TRIPTI SINHA: [inaudible]

MASON COLE: I'm sorry. Thank you, Tripti. I was just saying that I appreciate the goodwill inside the CSG regarding trying to arrive at a common position, and I appreciate Thomas's statement. So thank you.

With regard to some specifics under NIS 2 and existing WHOIS policy, my understanding is the admin contact could be one area where there's an opportunity to reconcile. I believe it's required under NIS 2. There's an opportunity where we can level up WHOIS policy with regard to that requirement. Just an example to bring up. So I'll leave that there. Thank you, Chris.

LORI SCHULMAN: Yeah, I just want to remind that in the EPDP, in the recommendations, just because it's been a while, that administrative contact, I believe is optional now. So perhaps it's time to reconsider that, not make that

optional, because we know there's a big body of law that's coming that says you have to do this. So those optional kinds of things that may be out of order with how the law actually functions is what we'd like to focus on.

BECKY BURR: Thanks. This is very helpful because I think what I'm hearing is that what you see as the need for policy development here is about putting registries and registrars globally under a similar behavioral requirement as opposed to a compliance box.

Okay, and I get your point, Lori, about we changed the policy globally to address GDPR. That's totally fair. I think (the Board has no position on this; I'm just riffing here) … I'm not even sure where I would come out on thinking this through, because we just had a similar conversation in the ALAC where they made clear that their point was that there should be a level playing field for registries and registrars. Now, we agreed in the ALAC that we probably shouldn't use that level-playing-field analysis for competition and antitrust law complications. But I think what you're proposing is a very different thing.

Now, in order to develop policy in ICANN, it has to fit within the picket fence and it has to be developed through a bottom-up process. WHOIS is sort of by definition, within the picket fence, access to accurate and up to date registration information, obviously within the limits imposed by applicable law.

So we're not calling for an issues report on mean? Isn't that what you guys should do?

LORI SCHULMAN: Maybe. That's why we're having this discussion, right? I mean, the IGM/we're taking Tripti seriously at this. We're having an informal conversation about concerns we have and how to solve problems. So if the issues report is a way to go, perhaps that's exactly what we need to mean.

So we're like you, right? Brand new law. It's been ratified at the EU level, still not implemented in the member states, but it's still law, it's still there, still need to abide, and we have to figure it out too, right? So if in this process of this exchange, part of the figuring out is, yeah, it's time to ask for an issues report, then that's what we do. But my guess would be that perhaps the time to ask for that report would be after the 27 states implement so we can see trends, understand where there's friction inside the member states themselves. I would hate to actually jump the gun on that without understanding what implementation is truly going to look like, and also to watch global trends, which ICANN is very good at. Regulator[ily] speaking, a lot of times where the EU goes, others follow for lots of reasons. I mean, there are trading partners with the EU that can only be credited as if they're following EU law. And that comes to the expectation that the accuracy requirements and other requirements … NIS 2 is a huge bill that has a lot to do with cybersecurity and very little to do with WHOIS.

So by watching those trends and understanding where 27 states have come out, I think that's the time for the issues report. I think now would be too soon.

CHRIS BUCKRIDGE: I think looking ahead to what we might have to do sounds very positive. I had Thomas quickly, then, Philippe.

THOMAS RICKERT: Yeah. I just want to react briefly to what you said, Becky, regarding the temp spec being a reaction to the GDPR, which, I mean, is obvious because they both happened in May 2018. But the history is that ICANN has failed to respond to not only European privacy laws, but privacy laws in multiple jurisdictions for 15-plus years, and they have been warned that things were not in compliance.

So I think that just because the temp spec was a reaction to the GDPR should not be good enough reason for ICANN to react whenever there are new laws coming up.

And the EPDP team at the time has had quite robust discussions on to which extent the GDPR should even be mentioned in our report, because we did not want to make it a reaction exclusively to the GDPR, particularly since laws pursuing comparable concepts were emerging or even existing at that time in other jurisdictions, in other parts of the world.

So I think that we should probably step away from that a little bit and hopefully agree that it is not the best of all ideas if we request ICANN's community to react to laws if and when they come into place, regardless of the jurisdiction that they come from.

PHILIPPE FOUQUART: Thanks, Chris. Just very quickly, on the discussions within the ISPCP, that thing about timing and the notion of an issues report was exactly what we were getting at. And as a question, I think a number of us are very aware of the fact that we don't even have a draft for the national law, that we do not want to start something with a moving target, and that there will be a time for that to be addressed. But it still phrases a question within the constituency as to whether there's any constraint within the policy at this point that would prevent, as you put it, across the Board a level playing field, even if that's not the right term, for the contracted parties to meet the requirements.

BECKY BURR: So I wasn't suggesting that this is the right time. I was just trying to articulate for all of us around here so that we were on the same page. And I completely agree. The last thing you would want to do is react to a directive that hasn't been transposed, and which, even after it's transposed, can be applied and enforced in 27 different ways, because that's the beauty of a directive.

And to Thomas's point, of course, there have been lots of changes in data protection law since 2018, including many in the United States, for example, where states are directly modeling laws on GDPR.

So, yes, I agree we shouldn't talk about the GDPR, but I was just trying to make sure I understood, and we were all on the same page about what was driving this. So now I do, and that's great. And I think we're in strong agreement that we don't know what is going to happen with the transposition, and it would be premature to do something now. And I'm also not saying the way an issues report … There's a process in the

bylaws about what you need to get an issues report done and all of that. So I'm not pre-judging any of that. But this has been extremely helpful to me to understand the conversation that Mason and I have been having across the forum hall, which has not been particularly productive. But this was very helpful.

CHRIS BUCKRIDGE: Great. Thank you. Yeah, we promised not to rabbit hole too much on this, but I think we've given it an appropriate amount of time, and I think it was a really useful discussion. So thank you all for that.

Philippe, I'm going to hand it to you now to launch into the other questions that you had for the Board.

PHILIPPE FOUQUART: Thank you. Chris. I think we can go to the question on the amendments relative to DNS abuse. I think that's the one, yes. Do I have to read it?

CHRIS BUCKRIDGE: We've obviously read it. So, I mean, if there's a sort of concise version—

PHILIPPE FOUQUART: I realized that in the text we don't say DNS abuse, but obviously, you know what we talk about. It's those amendments that we're talking about here and whether there's been some consultation between the Board and the general counsel and CEO on how those amendments would be enforced somehow and how the community may contribute to the thinking behind it. And I think we had a discussion earlier with

our NCPH colleagues as to how maybe we could contribute to that if help is needed.

Thomas, would you like to elaborate on this, maybe?

THOMAS RICKERT: Yes. Thanks very much, Philippe. When we discussed this earlier today, I think there was broad agreement that we would be very interested in learning through facts and statistics on what the effects of the contract amendment are, not that much in terms of the overall level of abuse, because that's sort of independent of what the contract amendments do, but specifically with respect to: of contracted parties that have previously not responded, are they now responding now that we have the contract amendment?

Second point would be, now that we have the contract amendment, is ICANN Compliance in a position to monitor that previously silent contracted parties are now taking action on abuse cases and taking sufficient action?

And the third point would be whether parties that have previously not reacted are facing escalation leading to de=accreditation if they are not good corporate citizens in this environment, because obviously this was not meant to police those that are already responsive, but we wanted to get hold of those that flew under the radar and did not react to abuse reports.

And I guess that those three data points could help us assess how effective and successful this contract amendment is.

CHRIS BUCKRIDGE: Thanks, Thomas, and thanks, Philippe. Probably no surprise I'm going to pass this to Sally Costerton to answer.

SALLY COSTERTON: Thank you. Thank you, Chris. Thank you, Philippe, for the question. So, specifically addressing the compliance issue, we have a 15- person team who are processes at the moment for abuse related obligations, three subject matter experts who support the rest of the processes as necessary, and we're training two new processes at the moment. We're preparing, as you would expect, for the new DNS obligations, and we're confident we have the resources needed to carry out the role.

So Jamie Hedlund and I have worked extensively on mapping the requirements moving forward. Of course, we don't entirely know how many we're going to get, but we're making the resources flexible enough so that when we're planning, we're budgeting for additional resource. We've got the capacity to do that. So I wanted to reassure you that we are on top of that.

In addition to the staff, we are preparing on different fronts, which include updates to complaint submission web forms and case processing system to ensure that granular data regarding the enforcement of new obligations can be collected and reported to the community. The team is preparing to launch a report dedicated to the enforcement of the new DNS abuse requirements, which will include data related to the enforcement of registrars' and registries' obligations which will eventually be part of a twelve-month rolling series updated

every month to illustrate historical trends over time. For example, it will include the number of complaints broken down, received, broken down by type of DNS, the number of cases resolved with the contracted parties, whether the contracted party took mitigation actions to stop or disrupt the DNS abuse, what type of action, whether there was no action.

So really, it's as much as we can do to dig in and provide really granular analysis of exactly who is doing what and what is happening as a result of that, which I know is exactly … We've talked about this a lot in our meetings. This is an important priority so that there's a real understanding in the community and for all of us as to: so what do we know now? And based on what do we know now, what do we do differently and what needs to happen in the future? So I wanted to reassure you about that.

The dashboards will contribute to measuring the impact of the amendments, but of course, it's not the only thing. They can't be the only factor for measuring the impacts. We don't want to go too far the other way. The compliance has visibility, the team has visibility, over the instances of DNS abuse that are the subject of our broader cases, not over every instance of DNS abuse that occurs. So it sounds obvious, but just to be clear, we have to know about it in order to report on it. So if it doesn't directly come to us, then I know that might sound obvious, but when we're thinking about these things, we have to be careful not to get too narrow down in the process and think this like a magic solution.

So the final thing I'd say is that (I know we've talked about this before, but in this meeting, I want to reiterate it) we really see this as a partnership. This is new and, between us, across the community (so between us, but also in the broader community), there's a lot of interest in this. We've had a lot of questions on it. We'll have a lot of input. We want to continue to do that. So as the contracts move into implementation, as we see the new abuse patterns emerging and we report on those, we want to keep the dialogue going about how we iterate those dashboards and those metrics so that it goes on being relevant. So to some extent, we sort of don't know what we don't know, but we're ready for that. So I hope that answers the question.

PHILIPPE FOUQUART: Thanks, Chris. And thanks, Sally. Yes, it does. Just a follow-up on this. Although that was somewhat implicit in what you said, I would expect that report to be subject to comments from the community. And if there's a need for, I don't know, a new metric, there's always room for improvement moving forward.

SALLY COSTERTON: Yes. For the purposes of clarity, absolutely. You're quite right. It was implicit, but I could have been more specific. Thank you.

CHRIS BUCKRIDGE: Looking around, Mason, please.

MASON COLE: Thank you, Chris. So I want to bring up a corollary issue, if I may, on that. First of all, Sally, thank you for that update. Very helpful. I think that comports with the answer that Jamie provided the other day during the executive session.

A corollary to this is an issue that I think the non-contracted parties are trying to raise a potential next step with regard to the fight on abuse, and that relates to the ability to also provide accurate information about statistics about DNS abuse and such. That's the ability to act at scale against abusers. We brought this up earlier. I got slapped around a little bit in the community for bringing this up as sort of getting the cart before the horse. But the ability not to play whack-a-mole anymore with abuse is extremely important, and we wanted to find out what the Board thinks about this. The ability to handle abuse at the account level, to deal with broader swaths of abuse, would be a much more efficient way of dealing with abuse.

Has that been considered by the Board? And if not, we'd like to encourage that conversation.

TRIPTI SINHA: Thank you for the question. So we would like to see the results of these amendments and see what kind of information we get back and then take it from there. But we haven't gone down to that level of granularity. And so I hope that answers your question. But thank you for bringing that to our attention.

SARAH DEUTSCH: I would just add that we are generally aware, and especially the CSG has complained about systemic abuse. So it would be good to see the data and see if we can figure out which of these incidents are isolated, which would be classified as systemic abuse, and then what could be done to address the more systemic abuse.

EDMON CHUNG: I just quickly want to clarify. Mason, what do you mean by account level? As in registrar? Registrant? What do you mean by account level?

MASON COLE: Thanks for the question, Edmon. To simplify it, to boil it down: more at the registrant level. So there are instances where you have one registrant perpetrating abuse across thousands of domain names. So instead of dealing with it domain name by domain name by domain name by domain name, you deal with it in one swath against one actor, and you can effectively eliminate abuse across a much broader swath of activity. Does that help? Thank you.

CHRIS BUCKRIDGE: Okay. I'm not seeing any more hands at this point, and I think we've probably got some clarity from that. So thank you for that discussion.

Philippe, I'll pass it back to you for the next question.

PHILIPPE FOUQART: Thanks, Chris. I think the next is for Lori to introduce …

LORI SCHULMAN: Yes. Hello. We've been talking a lot about RDRS in the last few days. It's very important to the CSG. It's a top issue for us. That's why we're here asking these questions. I may amend the questions a little bit based on some of the discussions we've had already. I was planning to report, but I think you can find this information fairly easily now.

We had an open session today, a CSG working group session, on requesters' experiences with the system. We have some very high-level slides. We shared stories. I want to thank Eleeza Agopian and I want to thank Sally for dedicating Eleeza to this project. She's been extremely easy to work with and very open to receiving feedback. And we did come to some agreements that for what we're calling RDS Stories Project, the information will be fed directly into the small team, so the small team can feed the information through ICANN processes properly, so we get all one funnel, which we think would be very helpful. So I wanted to let the Board know about that.

And I'll ask my question, and as I said, I may supplement it depending on the answers. But in terms of data itself, I'll leave the data aside to say that, generally speaking, we do have uptake in use. We do have mixed results. We have some very positive feedback in terms of having a centralized space. And having templates has been extremely helpful.

We definitely have some challenges, roadblocks, so to speak, on some of the clunkiness, counting that it takes over 35 clicks to file one when action, which I think is interesting to know, the fact that certain things like powers of attorneys can't be permanently attached to templates, which you and I, Sally, have discussed in earlier meetings, and just some other sort of logistical bumps in terms of usage.

Again, what we heard this morning was simply from the requester point of view. We certainly understand there's a whole world of controller point of view from the registrar point of view, and we hope to dig into that. But initially, given that this project is a two-year test and it's going to gauge demand, we want to make sure that demand is maintained.

So my first question goes to this. How will the Board work with ICANN Org to ensure that the two-year test period is iterative and that improvements based on user experiences can be implemented throughout its operation? That's the first.

CHRIS BUCKRIDGE: I'm going to pass to Sally, but I just wanted to say I was in the session this morning, sitting at the back, and it really was a really valuable session. I think it was a masterclass in queue management from you, Lori.

LORI SCHULMAN: Thank you.

CHRIS BUCKRIDGE: But no, it was really useful to hear from such a diversity of operators and to see some of the statistics they brought in. So thank you for organizing that.

LORI SCHULMAN: You're very welcome. More to come.

CHRIS BUCKRIDGE: And I will pass to Sally.

SALLY COSTERTON: Thank you, Lori and Chris. Yes, we've talked about this a lot, Lori, you and I, for the benefit of everybody. More broadly, it's an incredibly important question you're asking.

So for requesters, I think there's a couple of things inside your question. I just want to make sure I'm hitting the right topics. The first question is what I'm going to call usability of the platform. So you talk about multiple clicks, for example. And the second issue, which has been always an issue ever since we even agreed that we would do this experiment, is how do we make it meaningful? How do we incentivize requesters to request, and what is it that we are asking them to do on the platform? Because one of the challenges about this is purpose. If I'm a requester, is my goal to get an answer? Is that why I'm doing it?

LORI SCHULMAN: Yes. Sorry.

SALLY COSTERON: I'm not trying to be facetious. What I'm saying is … I want to go back a step. So, when this decision was made by us collectively as a community that we would try an easier way to try and solve some of these issues about data for the WHOIS, and the community decided that we would try a two-year pilot … I'm going to call it an experiment, and I'll explain why I'm using that word: because the answer to the engagement that has been going on inside the organization, as well as

obviously you've been doing a lot of engagement with your stakeholders … And I think we might talk about that a bit later. But we have also done a lot inside the organization, with communications, with the engagement team around the world to reach out to what are often completely new audiences, really (they're not necessarily inside the ICANN bubble) to say, "Please use this platform. Please use this tool."

And what we've discovered is that when we frame that as "please participate in the experiment,["] that is helping us to work through what is going to happen in the future. That resonates even if people are, particularly, not from inside the ICANN world.

When we're not clear that that's what it is, then we hit more challenges. Now, I mean, that may sound obvious, but it's taken us a few weeks and a couple of months of actually getting and having that dialogue to really recognize that. We were talking to the Contracted Party House about this issue this morning as well; exactly the same issue.

So how we frame what I'm going to call the ask is really important, and I want us to be able to do more work outside this meeting, but with our groups to make sure that we are all on the same page as that. And that also affects what kind of communications materials we're using, if we're giving you the right slide decks, if we're giving you the right phraseology. So that's about framing it well and we're learning as we go.

And you use the word "iterative," not particularly in that context, I don't think, but specifically in the feedback. And this is the second part of your question, which I think is also really important. So with that, particularly if we get that right and better (the question about gathering

data about the use of the platform), that in fact is the purpose. That is the usability of the platform. It's not the only purpose because of course we need to know how much the registrar is going to contribute, how much they are going to answer. There's the exchange, if you like, that we have to work on, and some of that is up to the registrar. We understand that, but this of course has always been an experiment in understanding that: what is for what, and what do we do after that?

So with that (and I know that you know this probably, but just for everybody else's benefit), as we collect the feedback, which we are doing, then we are collecting it, we are taking it back to the standing panel, and we are iterating. And I've just seen Eleeza walk into the room. Very timely, Eleeza. We're just talking about the platform. We are taking that feedback back into the standing council. We're bringing it back to the stakeholders and internally to iterate as we go, to adjust and tweak the platform as we. So, it's not like every day we're making a change, but there's a very substantive process which is properly resourced at the staff level. And thank you for your nice comments about Eleeza and her team.

So otherwise the experiment won't go through the distance of the two years, which was your final point. How can you make it meaningful for that time period?

So I hope that's helpful. I'm sorry if I took slightly longer, Chris.

LORI SCHULMAN: I'd like to respond though to a couple of things that you said. It definitely makes sense. And just for your comfort level, at least in the IP

community (the Intellectual Property Community), we are definitely framing this … We're calling it a beta test just to make it easier for people to wrap their heads around "beta test." We're also, again, having sort of user drives where we have qualified practitioners of law put in requests based on some legal reasoning, legal basis.

But with that being said, there is a hole here. We raised this issue at the executive Q&A yesterday, but I would like the Board to walk away with some of these thoughts, too. It's very clear in the scoping of this project that this was a two-year pilot to gather data to see if there's demand that may, in fact, warrant a more sophisticated system like SSAD. So we're clear about the remit.

But what we're seeing, now that the program has launched, and with the questions that I'm getting asked by my members, now with my INTA hat on and IPC hat on, when looking to the budget, when looking to long-term plans, after the two years we don't see an indication necessarily that, well, at least there'll be a centralized request system.

Whether or not that data supports SSAD is one question. But I think there's a second question underneath this. If we're adopting, pushing, marketing, making suggestions, in two years from now, we have a product that is reasonably working, whatever you decide, that means (commercially reasonably working), where requests are being made, there are responses, information is shared after a qualified balancing test, blah, blah. That makes sense. If the idea is, well, for two years, we just want to see if you want stuff, and registers may or may not disclose stuff, I don't see that as incentivizing even the beta testers. That's my concern.

CHRIS BUCKRIDGE: I have Edmon, but Sally, do you want to respond?

SALLY COSTERON: Well, I have Eleeza in the room, actually, so I'll give you my general thoughts on this. We have talked about this, and of course the Board will review this. So the purpose of the beta of the experiment is to review it as we go along. That's part of the reason why it's quite a long period of time for a beta test: so that you have enough substance that the Board can say, "Well, okay, what do we know now?" which is exactly what you're saying.

And one of the questions that came up in the executive Q&A on this was a very specific one that … I can't remember who the questioner was now. I apologize, but he came forward and said that he'd been looking at the FY 25 budget.

LORI SCHULMAN: That was Michael Graham, Treasurer of the IPC.

SALLY COSTERON: Thank you very much. I do apologize. It's been a long meeting. I think my sleep levels are quite low. And he asked a very direct question, which is talking about that issue, and he said, "I can see headcount now inside the staff for this, but I can't see headcount in the FY 25 budget. Does that mean it's a stop? It's like it's going off the edge of a cliff," which I suspect is what is triggering this question, which I totally

understand. But not everybody might have been in that Q&A session. They might not understand that's where it came from.

And the answer is that we're in the process. Of course, we've still got public comments coming in from the FY 25 budget, but there is no expectation from my perspective on the staff that we would just stop. I mean, that doesn't make any sense. The fact that there might not be a specific nominated headcount? Don't worry about that. There is plenty of resource in this part of the organization to handle this.

The bigger question, which I would give back to Chris or Tripti, is the recognition that as we go along, this will be continuously reviewed … We will provide the data to the Board as well as to the community so that they can continuously review what's actually happening and, therefore, what is it telling us?

Is that … I'll give it back to you, Chris.

CHRIS BUCKRIDGE: I'm happy for you to respond to that. I don't know if …

TRIPTI SINHA: So, Lori, in any goods software development lifecycle, there are iterative changes that are made within the two-year pilot. So yes, the data should inform us and then we should have versions (current version, plus one, plus two, plus three) that are developed within the two-year span. So we're hoping that that's the route it takes.

CHRIS BUCKRIDGE: Okay, Edmon?

EDMON CHUNG: And building on what was said, I don't want to just talk about the system. I think Lori and you mentioned it's great to see INTA and others promote the use of this, but sometimes I feel that when you talk about user experience or user expectation, you might mean a slightly different thing than what ICANN and the platform can actually collect as statistics and data.

And with that, I actually encourage you and INTA and others to collect other sites of data, because the data you might want to look at is: if we have a legitimate request, is it coming back in what time versus if we ask the registrar directly, for example. That is not data that we would be collecting, but maybe you guys can. These kind of data might actually inform later discussions along the line.

And also you might want to test the system, sending in very legit requests and not-so-legit requests and see how that responds. Those would not be data that the ICANN platform would collect, right?

So those kind of user experiences, if you ask (I feel that you might want to touch on that) is not something that the platform on the ICANN side would not be able to collect, but users and others might be able to collect.

LORI SCHULMAN: I'd like to respond a bit to that. We are not encouraging, just testing. [“Put in a legitimate request[”?]I don't think that's healthy for the

system, quite frankly. And we've heard very loud and clear from the registrars that this is a burden on them, too, in terms of volume of review. So we're not inclined to put in not legitimate requests.

At the same time, practically speaking, I certainly, operating as a legal professional, would presume that my request is legitimate based on the fact that I have an investigation that I need to conduct. Or a law enforcement professional or cybersecurity researcher, to put it frankly.

And the issue of what's legitimate in a way, is what's at issue, right? In a lot of cases that we're finding just to talk a little bit about the data (I don't have my numbers in front of me, but we have reports from INTA members and IPC members; some are the same), if a trademark request is being submitted versus a law enforcement request or a cybersecurity research request, once the trademark request is noted as a trademark request, we're getting responses like, “This is a trademark matter. File a UDRP.”

Well, the whole point is, investigation needs to happen. You could file an UDRP without having the name, and then, of course, WIPO will go and retrieve the data for you for the WHOIS registration. But in fact, in order to avoid that next step of filing a case, the best practice is to investigate it first. And that's kind of where some of this friction is happening. If we could understand at a community level, on both sides of the request (the requestor and the requestee), what is legitimate, I think that would be very helpful, particularly in applying a balancing test.

CHRIS BUCKRIDGE: Thanks, Lori. I've got a bit of a queue for me. I've got Mason, then Jim, and then Sally, and Sarah.

MASON COLE: Thank you, Chris. I'll be very quick. From the BC's point of view, I think we agree with much of what Lori just articulated. We recognize it's early in the system and there are learnings to be had on both sides. But from the BC, we're also concerned about data that is not being collected, that even with slight tweaks of the system, could be collected and could be valuable.

And I'll give you an example. Perhaps it would be easy … I make this analogy based on a shopping cart analogy like you might use when you're shopping online. If you go to RDRS, you put in a domain name, and you learn that the domain name is housed with a non-participating registrar, you may abandon the system at that point. That may be a really valuable piece of data to collect, rather than just abandoning the system and saying, well, that wasn't a request that was put through, so therefore it doesn't count. It does count. There's interest in what's behind that domain name. That's the kind of data that could be collected that would really give you a granular level of information about demand for the data behind the domain name and a better indication of demand for WHOIS data.

Just a suggestion that we wanted to pass along. I hope that's helpful.

JIM GALVIN: Thank you—

CHRIS BUCKRIDGE: Sorry, Jim. Sally just asked two fingers.

SALLY COSTERTON: Sorry, I hate that expression, but I don't know another one. I've just had a note from my team. We do collect that data, so we know the numbers of domains that are non-participating lookups.

MASON COLE: Thank you. So do I understand, Sally, that if I go and I enter a domain name and I recognize that it's housed in a non-participating registrar, and I back out of the RDRS at that point, that data is still collected?

SALLY COSTERTON: That's my understanding. Eleeza, sorry. This is just going to take two minutes, but let's just get this absolutely right, because it's a very specific question. But that is my understanding, Mason, yes.

ELEEZA AGOPIAN: Hi. So there is a metric in the report. I was just looking for the number and I'll put it in the chat. But we are collecting all of the domain lookups: how many are participating, how many are not, and of the ones that are participating, which ones actually turn into requests. I think that was your question. I'll put the metric number in the chat.

MASON COLE: Thank you.

CHRIS BUCKRIDGE: Brilliant. Seizing control again here now. Jim?

JIM GALVIN: Okay, thank you, Chris. I'm listening to all this discussion about statistics and granularity and understanding the system, and Lori's comment earlier about "why participate?" if you're not actually going to get the data. I'm sort of oversimplifying, but that was embedded inside your question. I want to go back and remind us of the core purpose of RDRS, because I haven't heard that stated here. It really was intended to be about how the Board could consider the SSAD recommendations. It was intended to inform the Board's considerations of the SSAD recommendations.

So this is just a pilot service which we all acknowledge, and I think any data that we get is informational and valid and useful (even negative responses) because what's important is informing what the next steps will be and what else we want to get to, what other policy considerations are important. The SSAD was a rather large, all-encompassing system, but there were some specifics about who gets what data and when and why. And I think understanding the kinds of requests that are there and then understanding the kinds of responses that they get is successful. And it's important to have that data.

As Eleeza just offered some comments about additional granularity in responses and what they look like, the Board is very interested and, in fact, working closely with staff to increase the granularity of the data that's coming back out of these trend reports. We're only getting stuff

monthly at the moment, but we are very interested and concerned about understanding what the data means, and that does imply greater granularity. The staff, as Sally has indicated and Eleeza says here, are interested in increasing that.

So what I would ask (what's useful and important here is if you have additional insights, and you've mentioned a few here; I'm sure we've got notes; all that's going to be captured), what else do you think would be helpful in informing what we are learning from RDRS? And what else do you think would be helpful in informing what's likely to come next so that the Board can incorporate that into its thinking going forward? It's only a pilot for two years and it'll evolve as we go along.

LORI SCHULMAN: Right, and that's well noted. And we are. I'm going to say that that's why we're driving these efforts so hard. We're doing exactly that. So that's happening.

But I do want to inject some reality here, real-world reality. Just like registrars on their end are dealing with real-world realities of regulation, I'm dealing with the real world and I'm using my own organization. We have 30,000 individuals in my organization that would be very ready to go ask a centralized system and make a request on data, period, understanding that there is a test to be applied and that there is not 100% guarantee of information. So I'm going to stipulate all that.

But if you're asked to go somewhere and make a request and you keep making requests, and the response rates from the request continue to

be low, no matter what the demand is, if the response is low, the demand will fall. That's what I'm concerned about. Right now …because I'm very careful to say, "This is a test. Please help us with the test. You may not get everything you want, but we want to know what you have gotten or what you need. What is the input we can provide?"

I'm going to put the e-mail for INTA's data collection (I'll call it effort) here. We've promised every other week to provide any answers to the small group. I really encourage you to use it no matter where you are on the spectrum of requestor or controller at this point. But that's what this is for, because the survey that is being used from a practical perspective, is coming at the end of responses that come from registrars in very small type. It's not highlighted in bold red or there isn't anything there that says "Respond, respond, respond. We need you." And that might be, Eleeza, another thing to maybe work out with the responses.

But what I'm also hearing is, after doing all the clicks and getting these answers or non-answers or partial answers, that either people aren't noticing the survey or they're tired and they're just simply not … Even in the IPC who are as knowledgeable about RDRS as you can get at this point, some have said, "Where's the survey? I didn't realize there was a survey." So I think making that button red and bold and pleading and very "Help us finish this test" would be extremely useful because right now I'm frightened. I'm frightened that the survey is not getting the responses it should get in doing the efforts we're doing at INTA, and Dr. Crocker/Steve is doing with Edgemoor Institute because we want to get all that extra info and as much as we can beyond sort of the yes/no/click-here responses that you'd see in a survey.

CHRIS BUCKRIDGE: I see Jim has a two-finger response and then I've got Sally and Sarah. Can I encourage us all to be a bit concise because we do have one more question which I would like to give at least some time to before the end in 15 minutes? So, Jim, please.

JIM GALVIN: Thank you. So, very quickly, in trying to keep this positive and constructive, I want to tighten up some of the words that you're using. You're talking about not getting responses, and I want to be very clear that I think what you're referring to is not getting responses that you would expect, not getting the data that you're asking for. The Board is very interested in the quality and the granularity of what all responses are. So in responses that don't include data, there's a set of reasons that are there and we are actually asking and considering, is it possible to get greater granularity there? It's important to get that data. We still consider that important. I don't think we need the 30,000 that you were talking about every month. But we're very aware of the fact that the vast majority of responses don't actually have data. And we want to explore and understand what that is because that helps understand what's really needed from an SSAD system. So thank you for that.

LORI SCHULMAN: Yeah, I'll [inaudible] One, it's both if you're actually getting something, whatever it is. The other is if you get something, and that something contains the data you've requested. I don't think it's one thing or the other. [It's] both.

SALLY COSTERTON: So there's an awful lot of good suggestions here. As Jim was saying, we're looking for them. The Org is absolutely open, as I said, to taking suggestions. But I would also really encourage you to engage directly with the registrars as well. And for the standing panel, the standing committee, that is part of its role: to give you a place to talk directly to the registrars. And based on the discussions we've had with them, I think they're very open to that. And they want us to do this as a collaborative effort. So we don't want to get in the way of that. We want to support it. We'll take feedback, but the more we can put that directly into that channel, the better, just because that way it's going straight to where we need it to go. So thank you very much for the suggestions. I just wanted to make that point. Thank you.

CHRIS BUCKRIDGE: And Sarah, please?

SARAH DEUTSCH: So one thing that I think Jim mentioned is that this came up in the framework of the SSAD. But the SSAD had the "D" for, I think, disclosure in the name. So I do think it's reasonable that people going through a form with 37 clicks would be expecting, maybe not all the time, but they feel they have legitimate interests and would want the data. So I think important to understand that this is a test, but is it a static test? And we ask the same question of the contracted parties, but is there a low-hanging fruit of things that could be fixed from our learnings in the last couple of months? So when you get a rejection and it says "more

information needed" but you don't hear what that is, we ask the contracted parties, "Could you go back and help the requester figure out, "What is that 'more information'?" because ideally if there's something that could be fixed that would allow that request to become successful, perhaps that's something that everyone could work on together.

So I would urge you to kind of study the data and look for that low-hanging fruit.

CHRIS BUCKRIDGE: Great. Thank you, Sarah. I'm going to wrap up the question there and thank you all for the very interesting discussion on that.

Philippe, I think there is one more question from CSG.

LORI SCHULMAN: Just want to follow up. We did ask … And I'm not going to ask for an answer today, but you thought about it, I know, because you've seen the question about the marketing plan that you could share with the community [and] how you're promoting that. If you could provide a written answer to the CSG, we would be most appreciative.

CHRIS BUCKRIDGE: Okay, that's noted. Thank you, Lori.

PHILIPPE FOUQUART: Thank you, Chris. That last question is on the notion of a risk analysis, for lack of a better word, related to the various events that will be held in the process of WSIS+20.

Just to put some context of this, the ISPCP developed a response to a questionnaire put forward by the UN Commission on Science and Technology that will be held sometime in May. The purpose of all this was essentially to put ICANN on the map and express some support for both ICANN and the multistakeholder model, which we did.

But beyond that, and just to get into more granularity, I guess, and going beyond the simple support and pushback against the grand plan of taking over … I think it's much more subtle than that. And there are segments in ICANN's mission that are probably more at risk than others. Just to take an example: cooperation on root server, for example, is probably not something that could be easily taken over. [There's] cooperation on DNS management, which is held sometimes by our cc friends, where arguably, because it's just that (it's just cooperation with no enforcement), well, maybe it's more at risk. I'm thinking that maybe the examples are not correct. But it's just to illustrate what I mean by risk analysis in terms of what's actually at risk within the various dimensions of ICANN's mission.

So we appreciate that maybe it wouldn't be wise to share that widely because we know best the system, but certainly we would see an interest in some thinking along those lines and some sharing, since a number of our members (and I'm not speaking only for the ISPCP) will be involved in that process through our respective national delegations. So it'd be worthwhile doing that, we think.

CHRIS BUCKRIDGE: Thanks, Philippe. I think Tripti is going to answer this.

TRIPTI SINHA: Yeah. So, Philippe, thank you very much for the topic. And ICANN, the Board, the organization, is taking this very seriously. As you know, there are many events. There's just a culmination of events occurring this year and next year, and I've already counted four, which is the WSIS+20 and the Summit of the Future. And now NETmundial is also percolating, as is the Global Digital Compact inside the United Nations. And the United Nations is pushing a tripartite model, if you will. And the three prongs of the model are governments, business, and civil society. And just witnessing the discussion we just had, which was civil society, plus experts from different disciplines, plus technical individuals, they're not considering that level of granularity. And that's what makes ICANN work, and that's what makes standards are developed and protocols are developed and so on and so forth.

So we're taking this very seriously because there's a lot at we. Sally internally has developed a modality, and I'll turn it over to her to talk about it soon. But just to let you know, we were at the IGF this past October or November (I forget when it was) and I was pleasantly surprised that overwhelmingly people were in support of the multistakeholder model. However, there is a big push in the UN to change the paradigm to be multilateralism, and that would just, in my opinion, be just a huge problem if it ever went in that direction. So the discussion we just had wouldn't happen anymore. You wouldn't be at the table, because the United Nations inherently means you've got to

be a government entity to be at the table and so forth. So our voices would be left behind.

So we're taking it seriously. Sally's put together some different modalities of outreach. There's tons of information. She has a very strong team called the Government Engagement Team, which is led by Veni. So I'm going to turn it over to Sally now to talk about all the different things they're doing. Sally?

SALLY COSTERTON: Thank you, Tripti. Incredibly important question. Thank you. What are we doing? So at this meeting, we will start what we're calling the WSIS Outreach Network. I mean, we've got to call it something. So this is a fairly light touch coordination facilitation, if you like, for us as a community to do a few things, partly to just have a space to coordinate. And coordinate what? Well, I can tell you at this meeting it has come up at every single meeting we've had and when we were at the Mobile World Congress last week [in] every single bilateral I had with every single government, which is because of what Tripti is saying. So this is supportive governments really wanting to know that we the technical community is engaged.

So we know that there is a need for our community as a whole and our technical community, but also our wider Internet community, also, including some governments, and anybody who's interested, to say, what's going on? That's the first thing. What's going on?

And the second thing is, what does it all mean? Because it really is hard to understand. So there are lots of groups, including in our ICANN

community, who really want to know and want to be involved, but it's very complicated and very difficult to understand and there's just an enormous amount of it. So the team that Tripti is talking about … We're very fortunate in ICANN. We have a lot of resources in this area. We always have that. We have a project team now in place, plus Veni's team, to run that as a kind of what you might call an ICANN secretariat. So that's actually coming out of David's team. Carlos is doing that for us. But we'll run a mailing list, a standard ICANN mailing list with the standard rules, which is now live. So in the session on Thursday afternoon here at lunchtime, we'll tell the community all about that, give you some more information, and we'll post it on our website.

The second thing we'll share is materials. So all of us coming together (it doesn't matter who we are) … So I know, for example, you just talked about the material. Thank you very much. Because I saw it …. You shared it with me when you sent it. So that's exactly the sort of thing that if you wanted to, we can post that on the page. Then everyone else who's coming to that table can see that.

Now, that's partly so that we inform each other, but it's also to avoid duplication, because there are lots of organizations (for example, there's a couple of ccTLDs, the big ccTLDs like CIRA and auDA) who are doing a lot on creating materials, education materials. auDA has done a big report analysis on the GDC, for example. But unless you're on the auDA mailing list, you're not necessarily going to know that that exists. We know, ICANN, because we see all of it, not literally, but most of it. So that gives us that point of coordination.

So I think to your question about the risks, the third part of this. … And this will be a mixture of coming together and seeing what people want to do: if we want to have calls, if people say we want to actually get together and interpret and analyze, which is what you were talking about. What does this really mean? Now then, we have to be a bit more careful because you're quite right: we don't want to post all that up on the public website. That would be a bit crazy. And we are going to have to find the right balance, particularly for ICANN itself, under my CEO goal. What do we publish and share and what do we not share? But what I can say is, inside our community, under my CEO goal, we're doing an awful lot of this. So what does it really mean? What are the risks? Who's saying what? What might that mean?

And what I'd like to offer to this group is I'm very happy for Veni and his team to come and brief you directly to have that discussion with you. I'm more than happy. And in fact, I would welcome it. So if we can arrange that either here or probably separately on a call, please just let me know and we'll get that done. Thank you.

PHILIPPE FOUQUART: Thanks, Tripti. Thanks, Sally. Well, we're obviously looking forward to contributing to this.

And just to reiterate on the question of material (I'm sure that what I'm going to be saying applies to the ISPCP, but to others selfishly), the availability of material is also for us to use internally to channel, as I said, through our respective national delegations. As you said, these are complex problems. On the questionnaire I mentioned, it's far-reaching (the SDGs and all that). It's very complex and it takes some time to get

into it. The more material we have readily available to sort of sort out the various concepts, the better. So thanks again for this and looking forward to more.

SALLY COSTERTON: I couldn't agree with you more. And we have made sure that as much as we can predict, we've allocated enough staff and resources of the right type, because what you're also talking about is a lot of communications materials. So this is not just that we need topic expert (we do, and we have them), but we then need to make sure that we've converted that into distributable materials, slide decks, PDFs, things that you can take to a bilateral that we never need to know about, but that we're collectively comfortable with. We go, "Off you go. Please use this. This is our best guess"—that kind of thing.

So we absolutely hear you and thank you for raising. It's incredibly important.

CHRIS BUCKRIDGE: All right. Thank you, Sally. Thank you, Philippe. Franco told us at the beginning that we had 20 seconds until the session began. We now have 45 seconds until the session ends. So Philippe, any last words?

PHILIPPE FOUQUART: Just a warm thank you to all for the conversation and the spirit in which it was held. Thank you, Chris.

CHRIS BUCKRIDGE: Thank you very much. I think this has been a really valuable discussion of several topics for the Board. So thank you for bringing your A game, and I really enjoyed the discussion. And I think this session is now closed. Thanks, everyone.

[END OF TRANSCRIPTION]