
ICANN80 | PF – GNSO: CSG Membership Work Session
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BRENDA BREWER: Hello, everyone. Welcome to the CSG Membership Work Session at ICANN80. My name is Brenda Brewer and I am the participation manager for this session. Please note this session is being recorded and is governed by the ICANN Expected Standards of Behavior. If you would like to speak during this session, please raise your hand in Zoom, and when called upon, virtual participants will be given permission to unmute in Zoom. Onsite participants will use a physical microphone to speak. Please state your name for the record and speak at a reasonable pace. I will now hand the floor over to Philippe Fouquart, Chair of CSG. Thank you.

PHILIPPE FOUQUART: Thank you, Brenda. Philippe Fouquart speaking as a rotating CSG chair. Welcome everyone to this CSG meeting. We've just realized that in the agenda that was posted, the word RDRS was not even mentioned. Hopefully, that was quite straightforward given the contents of this, but it would've been better had it been mentioned. Point taken.

Welcome to this session. This is essentially a follow up from what we organize in at ICANN79. Thanks Mason, for doing the hard lifting on this. So again, just claim may be here at this point, this is done in good faith and good spirit with the other initiatives during this meeting. I

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just want to acknowledge the two dependencies that we have for this piece of work. That's the registrar session that's planned for Tuesday morning with potentially an overlap, but not in duplicate.

We'll try and make sure that we remain on separate threads. And ultimately any improvement should find their way to the RDRS standing committee who met this morning. So I just want to note that we're in good shape in that regard. So as you could tell from the agenda, we'll be reviewing feedback from both requesters and registrars.

I have to say that the number of inputs at least in writing has been limited, but that does not preclude discussions as it wouldn't at ICANN in general. So bear with us, there's not much material on, on, on the slides that will be shared with this. Yes. Mason, would you like to add anything to this?

MASON COLE:

Thank you. Philippe. Mason Cole, Chair of the BC. I just wanted to add to Philippe's remarks, a couple of notes. Steve Crocker will probably be joining us shortly to add his two cents, but this session, like the one that we held in San Juan is meant to be constructive, and I underline the word constructive.

It's very important that if we are to make progress on RDRS and on RDRS, the eventual replacement, that we have a frank and constructive and helpful dialogue with one another, and that's the intention of this session. I hope that we can carry on in that spirit. As

Philippe said, we had very few advance requests for interventions in the queue, with Philippe's permission, we'll proceed with the ones that are in the queue and then take interventions from the floor.

We have an hour and 15 minutes, I believe, for this session, Philippe, so there's plenty of time to talk about what we're gathered here to talk about. So personally, I encourage as much dialogue as possible, because that's really the only way we're gonna make any progress. Thank you, Philippe.

PHILIPPE FOUQUART:

Thanks, Mason. Any other preliminary comments before we start? Okay. let's start with the third item on the agenda, and that's the feedback from requesters. Brian Beckham, you are first in the queue, mindful of the conflict in agendas. Thanks for being here. So the floor's yours.

BRIAN BECKHAM:

Thank you, Philippe. Thank you, Mason. Good afternoon, everyone. Brian Beckham from WIPO. I did have a slide, but I don't know, it's not really that important to be up there. The feedback that I wanted to provide and to be clear, we're not requesters, but we do hear from requesters who are brand owners who file cases with us. In the recent report by ICANN in the run up to this meeting, there were half a dozen or so categories for the reasons requests were rejected.

And I think if you tally those up, something like 70% of those requests really went to what I think could be reasonably described as system

design issues. So requesters weren't providing the right types of information annexes, this sort of thing, they weren't agreeing to the terms of the system. So the feedback that we wanted to provide was if almost 70% of the requests are being denied for basically the request are not properly filling out the form, I'm generalizing, then that strikes us as something that could be easily remedied to make the system more usable.

Of course, I think it's only fair to say that doesn't, of course, guarantee that the requester gets the information thereafter, there has to be a legal assessment of the grounds for the request, but at least it shouldn't pose hurdles in terms of submitting. And frankly it's not a good use of the requester nor the registrar's time to have to field requests that are incomplete.

PHILIPPE FOUQUART:

Thanks, Brian. Any comment on this? I was just gonna add that or a question for you, when you say an issue with the system design, do you include things that the interface could cover to make sure that the information that's provided to the registrar is sufficient?

I mean, there are things that are purely syntactical, I guess, and coming back to a discussion we had earlier, well, at the last session, that's one thing, and I took your intervention as covering that. But I'm wondering about those things that would not be syntactical per se, but that would include information that could make sure that the request is more easily treated by the registrar.

BRIAN BECKHAM:

Yeah, thanks. So I think it's less about, look, each requester has to provide in a narrative the grounds they believe supports their request. But thinking more in terms of things like, you know, if it's an attachment of a screenshot of an offending website or I understand that in some cases, a letter of authorization for somebody to file this request on behalf of a brand owner. You know, so things that are, you know, just objectively needed for the registrar to assess the request that's in front of them, not so much the narrative, but more the kind of evidentiary basis that would support the request. And really to kind of, I guess the idea would be to hard code that into the system.

So if there's, for example, no attachment, then you couldn't submit the request. A little bit like if you're trying to, you know, do a hotel booking and you don't provide your email address, then it says there's an error in the page above, please fill out this field. So you don't get to submit the request until all of the pieces that are needed for the registrar to judge that request are in the file that's gonna go over to the registrar.

PHILIPPE FOUQUART:

Thank you, Brian. Lori's in the queue. Lori.

LORI SCHULMAN:

Yes. Hello, it's nice to see everybody. Sorry I can't make it there in person this time.

PHILIPPE FOUQUART: Just a sec. Lori, there's an issue with the sound. We can barely hear you. Is there anything I can do? I don't know if it's on our end or on yours?

LORI SCHULMAN: I don't know, I'm gonna --

PHILIPPE FOUQUART: Oh, there we are. Thank you.

LORI SCHULMAN: Can you hear me?

PHILIPPE FOUQUART: Yes, we can hear you now. Please proceed.

LORI SCHULMAN: Okay. I wanted to follow up with Brian Beckham's comment because I have some specifics as to this issue about forms not being adequately filled out. And there were two events, East Eco and ICANN sponsored an event for requesters on how to fill out forms, and then INTA during its annual meeting had a full plenary session on tools for domain enforcement that spent a lot of time on RDRS, and we also discussed NetBeacon as an aside, we had Owen Smigelski there from Namecheap, we had Phil Mareno from INTA IPC, we had Odeline from

ICANN Legal Staff, and we had Michael Graham moderating, who is an IPC officer and also chair of NTIS internet committee.

So this was a room of 300, we had an overflow of 300 practitioners very interested in this subject. And the issue that came out from the registrar side is exactly what Brian had discussed here about incomplete forms. What I found very interesting is I went back and I asked Sarah Wyld from the small group and from TuCows, for those who may not know Sarah, well, what's missing?

And she came back with three very distinct suggestions. One is a clear explanation of who the requester is and their connection to the domain. The other is a description of why the requester needs the information or indication of why the issue would be assisted by the domain owner's personal data.

And the third was details on data processing, including how they will use this data, how it will be protected while retained, and when it will be deleted after the purpose for processing has been concluded. Number three, very much being directly tied to the requirements of GDPR and other national and state statutes.

When we look at the form that's requesting the information from the requester, none of these three to my knowledge, after reviewing the form, are included as direct questions. So it seems to me that perhaps it's the way the questions are being presented, and there's three right here that we could add to the form fairly quickly so that that information, which is frustrating to request to registrars that they're not getting, they can now get.

So some of this I think is quite practical, quite operational, and that if sides could collaborate a little more on how these questions are worded so that the requesters are giving what the registrars require, not necessarily what they're asking for. I think there's been somewhat of a disconnect there. And I'll end my intervention here.

PHILIPPE FOUQUART: Thank you, Lori. Just to note that under item four, I think Sarah will talk about that. And there is elements that could potentially be included in the interface to make sure that the information that's provided by the requester actually meet the requirements from the registrars, and you got three examples. And if anything, those three plus a couple of others could be the output of this session.

LORI SCHULMAN: Thank you, Philippe.

PHILIPPE FOUQUART: Thank you, Lori. Next is Sebastien.

SEBASTIEN DUCOS: Thank you, Philippe. Sebastien Ducos who's chairing the RDRS Standing Committee. Brian just walked out. I just wanted to say thank you. First of all, the initial comment, it doesn't work or it doesn't work for me, and then there's a follow up question and this direct information on it and that information was rich, that is something that we can do.

Then with Lori's compliment on it, it's actually super rich. Please have your delegates understanding committee enter that into our tracking sheet, into impressions document, have them put their name next to it, and we will look into it. I can't guarantee that we'll do it fast. Lori, I'm sorry, but it's easy. Sadly enough, not always that easy. We'll have to look with staff what can be done when, but it's a reasonable request, it's well described, it's exactly the sort of thing that I need.

The form itself originally actually comes from Sarah and Tucows. It's long years of work between Reg Levy and the team at Tucows to come out. And they brought that list to the registrars who looked at it and said, oh, that looks great, and we should adopt it as what we want.

And then it became RDRS and then we presented to the requester community, and now with the experience, we're finding where the kinks are and things they need to be changed. Please bring that feedback to the group, not just here, but to that list so we can track it and we can see when we can incorporate and how we do it. Thank you.

PHILIPPE FOUQUART:

Thank you, Sebastien, and thanks for the reminder, I should have made it clear at the outset that really the entry point is the standing committee. And if anything, ICANN commit to come out of this with a few lines and, and channel this at least through the – was it nice PCP rare part. I forget whether that's a representative mode, but anyway, and make sure that this is channeled through the appropriate apparatus. Anything else on this? Rod, you had your hand up.

ROD RASMUSSEN:

Yeah, thanks. My apologies for being a little late to the meeting. I just shared some feedback and observations I had from the MOG meeting last week with some folks that were at the table here. They asked me to bring that here so the rest of the folks could hear, some at least secondhand information about what was going on with a set of requesters. And this would be the cybersecurity professionals' area, which has been pointed out by RSSAC and others before, is not well represented at ICANN meetings and has not really been well represented, not just in this process, but in lots of processes. I think we have some kind of a symptoms of that.

Just a few points I wanted to make. Based on discussions of various sessions and things that went on there, there's still a very low amount of awareness around that the system even exists and that there's a trial going on, et cetera, which then leads to folks.

There has been some advertising on that, people have gone and tried to kick the tires a bit. Some people have been more successful than others. But I'm not sure that there's been a really a good communication between these communities. So the expectations aren't being set very well, which leads to a lot of complaints and et cetera. And requests being made that are probably malformed because people don't understand what they're trying to get done and how people are viewing it on the other side of the transaction. So there's a lot of that going on, that's just kind of a meta observation.

There was a particular anecdote that was the first time I'd heard it and I've heard from a couple others this has been an issue, and there was some discussion about that at the group session or the working group session earlier around understanding what is being asked for.

And I was talking to a longtime friend who was a senior VP at a security company who wanted to go and use the system and was started, set up an account and it was okay, but then when he saw the various, like, what legal basis are you doing? He's not a lawyer, but he's smart enough and, you know, position enough, he's like, I'm working on behalf of my company. How do I do this? He had lots of questions, went to his legal counsel.

His legal counsel looked over things and said, I don't want you using this. So that was kind of a, okay, alright, what do we need to do to make it a lot easier for people who haven't been in the room, who don't necessarily have presence in EU to understand GDPR and all those requirements to be able to get in and comfortably use the system, especially for line level analysts, right?

Your people who are actually are doing the figuring out cybercrime and all that kind of stuff. If they need to get this kind of information for part of their work, how do we create an environment where they can be successful at doing that? If we want to get data from that part of the community, we need to figure out how to better reach out to them and bring them into the fold and the discussions around that.

And, I think part of this was discussed earlier about how changing, like the options and some discussion around providing more education, all

that. I think it's a bit broader than that if we want to get data around whether this is applicable or not for the cybersecurity community, which from when we went back to the origins of trying to do this, that was one of the primary audiences we were trying to take care of.

And it's my own personal experience with this as well. I was like, I was part of this process, I was still like, eh, I don't know, what exactly do I want to do with this? So I think, you know, things like literally having discussions as you do in any product development process with the people who are going to use your product is like understanding what the product is supposed to do and not what it can't do, and how it fits into what you're trying to get done yourself so we can better understand and service those things. And I think that if you're gonna have any chance of success in, in moving this kind of thing forward, you actually have to talk to the people who want to use it a lot more. So, thanks.

PHILIPPE FOUQUART:

Thank you, Rob. And just before I go to Steve and Margie, just to be clear, or at least for me, the legal language that you are referring to, is that what is that called terms of views or the things that you have to commit to before using the system, at least for me. I see people nodding, so apparently people know what you're referring to. But if you would just be a bit more specific.

ROD RASMUSSEN:

Yeah, well, I think it's all of the above, depending on who it is, and that particular anecdote, it was for the submission and understanding legal basis and what you're responsible for, especially when you're doing on behalf of your company.

There's kind of, okay, how does that work? That's getting diving into the details, which I don't think is necessarily that productive, it's just an example. But it clued to me is like, okay, thinking about this from somebody coming in fresh, which we want people to do who've been requesting this data in the past that we've just had it for free, basically, from the command line.

Okay, well now you've got a whole new thing to deal with, it is like asking somebody who's learned how to crawl to, you know, drive a Formula One racer in a way. It's not gonna go well most of the time unless you've at least had some experience driving a car, for example. I'm using a terrible analogy, I'm sure, but I don't think the particular one is as important as understanding going to people and understanding where they're running into roadblocks.

And I think without more data around why people are abandoning, if you took a look at that chart of success, what could have been successful requests, like 40% of them, half of them weren't even making the request. Why is that? It's not the phone ring and they got distracted that maybe 10%, who knows? What's the data? That's something I'd like to know why people are going away from it because that could answer a whole bunch of questions that we're not even talking about right now. Thanks.

PHILIPPE FOUQUART: Thanks, Rod. That's useful to me at least. Next is Steve and Margie. Steve.

STEVE DELBIANCO: Thanks. Steve DelBianco with the BC, but I'm also on the standing committee. And this morning's discussion in the standing committee meeting brought up a conversation about how complete a request has to be when it is submitted. And this isn't something that ICANN Staff can always determine in the way they construct the code of the app.

Rather it's in the eyes of the registrar who's evaluating their legal restrictions and obligations and risks. So, Lori, point number two, I think you're still with us, Lori, but point number two that you put in the chat was a description of why the requester needs the information. But here's the key. You go on to say, or an indication of why the issue would be assisted by the registrant personal data.

That is a very reasonable thing to ask for, but this morning's discussion reveals that the registrar, some registrars don't see it that way with respect to what they're allowed to disclose and would require that a request be taken to a much more level of finality before they believe they can do the disclosure that you think you need to make it final, it's a chicken and egg, and that's a serious problem.

And I would invite registrars in the room, either at the table or in the chair, Sarah, if you can clarify this, the degree of completeness that

has to be there as opposed to information that would assist you in putting together the appropriate legal basis. Thank you.

PHILIPPE FOUQUART: Thank you, Steve. Before I go to Margie, Sebastien is on the same point, I guess.

SEBASTIEN DUCOS: Yeah, he is on the same point. So Sebastian Ducos, changing my cap for a second, and GoDaddy, I don't work for the registrar team but I've had many, many conversation with the people, I actually received your request.

And one of the things that obviously was making them tick is this idea of having a legal basis or looking for a legal basis. When you have a legal basis., you can get the data. If you're searching for something, if you're trying to build a case and don't yet have a legal basis, you don't know what that legal base is, I would suggest not asking quite yet. Build that case, have that legal basis, and then be able to request. We're not here to assist in an investigation. At least this is the way GoDaddy interprets the way they should handle. We're not here to assist in a investigation, we're here to help afterwards, but that legal basis is important to have in terms of GDPR.

And to the point Rod made, I just wanted to make a quick one, it was raised by law enforcement this morning. Indeed, the fact that we need to be better at explaining what, and particularly for people that are outside of Europe and outside of GDPR, it's already noted, but the

more it's noted, the better chances of getting-- so again, I'm not the person making the decision at GoDaddy, but it was a clear red line for the people that were doing it at GoDaddy. Don't come with a fishing expedition, come with something that has a legal basis, I'm not there to help you build your legal case.

PHILIPPE FOUQUART:

Thanks. And, even if there is no common reading among the registrars on the minimum level that you require from the requester, I guess at some point, what we are looking for is not necessarily-- what we are looking for the sort of a common denominator. It doesn't mean that obviously the request per se the access to the data will be granted.

But if anything, what's not satisfactory, I guess is that number of data that are sort of hanging in the air because there's the request coming from the registrar drafts for more information. Whereas if from the upstart we put that request in the form, I guess at least it's done. I guess what I'm saying is that what we are heading for is a better chance of reaching the dead end, if you see what I mean. Margie.

MARGIE MILAM:

Hi, Margie Milam with Meta. We've been submitting requests this year, at the last meeting we just started so, the information was a little bit fresh, maybe perhaps needed more time. But now that it's been almost six months, we're seeing a significant decline in the amount of disclosures that we were receiving and we've been sending notices long before the RDRS system was ever set up. We see names like

meta-facebook.com, rejection, instagramhelp.digital, reject. And these are like straight up cybersquatting and it pose a serious security threat. So I don't think it's necessarily just more knowledge of what you need to say in order to get the information.

I think there needs to be a discussion with the registrars about-- and maybe give examples of where it would be appropriate to disclose because we certainly provide ample information when we do make our requests including our trademark rights, the fact that we're trying to protect our users from fraud and abuse, and even examples of the domains being used for phishing, and yet that's not enough. And I think that when you look at it from that perspective when we're getting something like 6% success rates when it was perhaps closer to 30 before the RDRS was implemented it really just raises questions about how good does the request have to be before a request can be complied with?

And so I think that where there's like clear cut cases in the domain name in itself, it's very obvious that there's some malicious activity going on. Being able to have that dialogue with the registrars on what is it they need to hear before they can make the information available would be greatly appreciated. And I think we're not alone, I'm sure others are seeing the same type of experience. But when I give the actual domain names, it really puts a highlight to the kind of concern about the effectiveness of the system.

PHILIPPE FOUQUART: Thanks, Margie. And just a follow up to this and make sure at least I understand. Are you referring to situations where there is-- because you're saying that the number of disclosures is decreasing. Are you saying that there's some, or did you come across inconsistencies among one registrar, for instance, or between registrars on requests that would be in substance pretty much similar what you would've expected similar results, or is there a pattern there?

MARGIE MILAM: That's a good question. I mean, I think it's all of the above. I think that RDRS became an opportunity to change the way that the disclosures were evaluated, and we are seeing inconsistencies. There are registrars that will disclose in those scenarios and several that won't. And this is not a name shaming thing, and we know that's not what we want. We want to be constructive here and find a way to make a path forward and understand what, what needs to be done to be able to get effective disclosures. But when you see examples like that, it's a little-- there has to be a way that the information can be presented so that the reveal can be made.

PHILIPPE FOUQUART: Thanks, Margie. And probably an obvious note, but consistency is not necessarily something that we'd be aiming for. It would be ideal from the requesters point of view that two similar requests would lead to similar results. But I think we can appreciate that a legal analysis within two different registrars could lead to different results in terms

of being overly, I'm looking for the English word there., protective, overly conservative in terms of delivering the information.

That's not necessarily surprising or not necessarily something that we should aim for, but it's certainly frustrating from the request of standpoint that with two similar requests, that would lead to different results. if two registrars are involved, two different registrars are involved. I'm rambling, but I hope I'm making sense. Next is Sebastien.

SEBASTIEN DUCOS:

And sorry if I need to raise my hand at the room, tell me to, I will. So Sebastien, because I'm gonna give you two answers here. One as standing committee and then the other one as GoDaddy. The first one as standing committee. I hope, because the forms are designed for that, Margie, that you do get answers from the registrars that explain to you not how you should make the request to have a successful one, that's not their job, but to explain why they rejected it and explain where that particular request failed. And if it's not, then let's have the discussion with the registrars in question, because it is definitely part of the exercise and the return form.

Now on a GoDaddy standpoint, and you made two points. You said name that contains the name of your company, and then you even said when there are phishing cases, there's a very, at least from our point of view, and again, I don't do this job, I'm getting this back from the team that does, there's a clear difference between phishing, which is abuse and abuse recognized in this community and needs to be

handled and should be handled quickly, and a name that has been registered that happens to contain your name.

And it does make a difference for us, particularly if the name is registered but parked, not used, no email address used, no other form of delegation, that parking is a different case than something that is recognized as or recognizable as abusive. I hope that you get a different answer from the stuff that is parked than you do from things where abuse is actually witness like phishing. Thank you.

PHILIPPE FOUQUART:

Sure. On whether you get the information when --

MARGIE MILAM:

So we will frequently get a response that additional information is needed to process it, but we won't get the actual information that is needed to process. So that's a very common-- it's almost like an auto reply, you know, rejected, more information needed, and then you don't get the please provide this.

On the second, several registrars take the position that if it's a phishing site and the content's down, that there's no reason to give the information to the requester. But from a brand and a platform perspective, we're in the process of trying to identify how many other domain names that particular bad actor is going to use to phish our customers and our clients and all the people that use our services.

So it's very much still relevant, even if the content is down, and that's part of the whack-a-mole game that's played right now as you try to protect the users from fraud and abuse, because the domain name will come up, the content will come down, and the domain name might still pop up again, or they'll have a series of related domain names that have the same common themes and naming patterns that are related. And so you need to know who it is behind those so that you can identify the other domain names and take action. And so that's part of the approach as you're trying to enforce against the fraud on users.

PHILIPPE FOUQUART: Thanks, Margie. Susan's next.

SUSAN PAYNE: Yeah, thanks. Hi, it's Susan Payne. So I think one of the comments that, that you made, Sebastien, I may be sort of reading too much into it, but I think it seems to highlight that, for some registrars, there seems to be this perception that it's their role to decide the outcome of the legal case, and that the assessment of whether there's a legal basis is almost them to be the judge on whether you'd win, and that isn't the legal basis. The legal basis is you have a right to seek to protect your intellectual property rights. And if sufficient information is given, that makes it clear, that's what you want to do.

It shouldn't matter whether there's a clear evidence of phishing versus whether the domain is parked, for example, because it's your right to protect your IP rights, and there is a legal basis on that basis, not

whether you'd win the case, because there's all sorts of information that you as the registrar, I don't mean you personally, obviously, the registrar doesn't know, because of course you couldn't possibly provide all that information in the RDRS request, nor would you, because that's all about the other information you have about your case that you are planning to bring.

SEBASTIEN DUCOS: Sorry, can I answer that?

PHILIPPE FOUQUART: Sure.

SEBASTIEN DUCOS: Sebastien. And as GoDaddy, your direct response, I'm not an expert. I'm not a lawyer, and again, it's not my day job. My understanding is that in our view, there are other avenues for this, UDRP for example, the fact that you've engaged in that, that would be the legitimate, it wouldn't come from you, it would come from them, that's the answer that I'm getting, that until that is established by a provider that is specialized in it, then we wouldn't disclose the data, we would disclose it to them.

Now, if this is our wrong interpretation, and sadly the individual that is chairing this on our side is not here, but I'm happy to relate, I don't want to do too much of a plug, but come tomorrow in that session with registrar because that's the sort of stuff that is gonna be decided

or not decided, discussed. Why is this not passing the bar? Why should this pass the bar?

And if we have a wrong evaluation of the, of the law, nobody's perfect, please note it. And I don't say that we're gonna disclose, but we're gonna look at it. If there's different interpretation of this law that is new and we're all looking at, please do. My understanding was that RDRS for this type of thing is not the avenue.

And I said that this morning, I'll say it again, RDRS is only one tool, as I understand it from the people that work on it, one tool in a gamut of different tools that we use to resolve problems that we have online. Because of the way WHOIS was so easy to access before, it became the defacto first step in anything that we do. Do WHOIS get a snapshot of what that is, and look at it. It no longer is, but there's still many tools that we can use, and this doesn't have to be the entry point on everything that we do. That at least is the feedback that I'm getting.

PHILIPPE FOUQUART: Thank you, Sebastien. Paul.

PAUL MCGRADY: Thanks. Paul. McGrady hear. Just in response to what Sebastien just said, not a GDPR expert, but I don't know of anything in the GDPR that says enforcement or getting information to protect an intellectual property right is limited to one ICANN policy, the UDRP, I've just never seen that in the GDPR anywhere. I personally don't think it's in there, but I'm a humble guy, and so if that is the position that the UDRP is the

only method to that triggers a GDPR disclosure, I sure would like to have chapter and verse on that. Thanks.

SEBASTIEN DUCOS:

It's not what I said. I said specifically, if you have a [inaudible – 00:38:50] to somebody I have registered something that you believe is your right, your trademark, your copyright, that's the sort of avenue. If there is no other infringement, again, if there's no phishing for example, then it's just a name, it's just a name that somebody registered. If he, she is not using it for nefarious use, if the name is parked, it's just a name, it's just a string.

And that in itself, from where we stand, is not an infringement enough to go and reveal the registrar information behind it. There's no shop, there's no phishing, there's no copyright infringement or whatever, there's just somebody that registered a string. That's the case that I'm talking about.

PHILIPPE FOUQUART:

Thanks, Sebastien. And just a question for me, moving forward, given that there is different readings, not only from the requested side, but the registrar side as well, situations where disclosure can happen or not. Would that be within the remit or the studying committee to things like, or would that be a piece of work that could be undertaken later on sort of a-- if not a common reading, but at least a list of elements that could be considered in that situation? Again, I'm not a

lawyer, as you would know, but is that something that could be undertaken moving forward?

SEBASTIEN DUCOS:

So we've got mandate from the GNSO, it's certainly not part of it. Part of it is developing a tool, but not those standards. The tool is gonna help us decide what sort of tool we have in Phoenix, and we will have to go back, not us, the standing committee, but the community in general, go back to the set of recommendations that were made SSAD because they no longer fit for purpose. At that point, I think that that will be looked into, but I'm way too conscious of my own popularity in this community to chair that or take it on board for that. That would be for somebody else to do.

PHILIPPE FOUQUART:

Thanks. Thanks, Sebastien. Next is Fabricio and Jan, and we'll cut the queue there. Fabricio.

FABRICIO:

Perfect. Can you hear me?

PHILIPPE FOUQUART:

Barely.

FABRICIO:

Oh, can you hear me now?

PHILIPPE FOUQUART: If you would speak up.

FABRICIO: Can you hear me?

PHILIPPE FOUQUART: Slightly better. Please go on.

FABRICIO: Okay. Perfect. Sorry. Thank you. Yeah, I just want to jump in this conversation and sort of, I don't know if the term is to caution, but I guess I'll go with caution.

Caution that when we're reviewing the legitimate interest to reveal under the GDPR, that, at least what I'm hearing from the contracted party side, that we're not mixing in an ideology of well, we're not here to help build your case or an ideology of this isn't or shouldn't be your first line of investigation, or an ideology of, we think you have other options, so because there are other options we won't reveal until you trigger those other options. The reality is the law is the law, to Paul McGrady's point, the GDPR is pretty clear about legitimate interest in reveal.

And when we were hearing earlier, the registrar shouldn't be in the position to understand or have full knowledge about what is going on in an investigation or what the breadth and depth of the facts are

about that case, or the evidence is about what the eventual case may be. I think the contracted parties under the obligation of determining whether a legitimate interest has been relayed.

And to that end, then you don't need to understand whether it's a current or active site, whether it's this or that, it's just whether a legitimate interest has been made. And to throw in another bad analogy, when I was hearing this conversation, to me it was like hey, I need to figure out something about a property line for a house, but rather than just being able to find the land record and who owns it, because I could file a lawsuit or trespass or squat or build a fence and have them sue me instead, those are all options I should go ahead and trigger rather than just doing the thing I need to do, which is find out who owns the home and what the plot of land is.

It seems a little cart before horse or backwards as people would say. And so again, I would just caution that we don't mix in some-- I get the ideology that's thrown back at IP owners, which is, you used to have this for free and you should accept that it's not free anymore.

But I also would caution the contract parties not to build in their ideology, which is, you have other options, or, it's not my job. The law is pretty clear on legitimate interest, and I think we should just sort of read it for what it is. We all accept that we can't just ask for things willy nilly, but I think the contract parties also need to understand that it's a fairly pass through process, which is if someone exhibits legitimate interest to get the data, then that legitimate interest is sufficed and the data should be passed along rather than mix in all of

these things and say, well, you might have other options. I might, but I don't need to trigger them to get at the data while I'm using the law.

And that's all I wanted to say here because we just keep going down this rabbit hole of well, you could do this or you could do that, or I could just follow the law and ask you for the data showing legitimate interest.

PHILIPPE FOUQUART: Thank you, Fabricio. On this difference of readings on the term interest, I don't think we'll come up with a common reading on this, but certainly in terms of inputs to the standing committee, and that will be no surprise that there's clearly difference of appreciation there. And maybe that it also goes back to Rod's point earlier on the language and what's requested from the inputs. Last is Jan, I think in the queue.

JAN JANSSEN: thank you, Phillippe. You can all hear me?

PHILIPPE FOUQUART: Yes, we can hear you and see you.

JAN JANSSEN: Okay, perfect. Thank you. I understand your point Philippe, that you see that there may be a difference in reading, but I must say I second

reading as was explained by Fabricio, I think that the law is the law and there shouldn't even be a discussion on this point.

And there are several reasons, there's the reasons that were explained by Fabricio, but there's also another reason, and that is the relationship when an access seeker is seeking a disclosure request. When you are seeking the information and to obtain control over the information that you're asking for, then that requester of the data will become the controller of that data. And the registrar that is transferring this information is doing so as a processor of the requester in that instance.

And so even if we disagree whether a registrar should do an assessment and to what extent, whether the access request expresses sufficient legitimate interest, this can be dealt with contractually. The risk can shift to the access seeker entirely because that is the party that will determine the way that the information will be used. And if there is an issue in the end with the way that the access seeker has been using the information, that will be his or her responsibility, and nobody else's.

PHILIPPE FOUQUART:

Thank you. Thank you again. That's a good point. I don't know if that's something that would be acceptable to registrars, but it seems to me that speaking just as an engineer who used to use WHOIS in the past, if I have as a requester to bear the contractual responsibility of that information being disclosed, it goes back to Rod's point earlier. I'm just not gonna request information in the first place. So I guess

what I'm saying is that I'm not sure there's a simple solution for that. But just as a side note, mindful of time, Marie and Mark is last in the queue. Marie.

MARIE PATTULLO:

Oh, thank you. Marie Pattullo from the BC. I've put it in chat, but I just wanted to go back to your point, Paul, about intellectual property. And for those of you that may not know, the European Commission issued a recommendation in March. It goes to a number of things that have nothing to do with us, but there is quite a long section about domain names.

And there, I've put this specific wording in chat for you, and it specifically says, "A legitimate access seeker making their request on the basis of EU or national law, wording we're all use to, includes, well recommended, encouraged that service providers include anyone making a request for information pursuant to a directive." And that directive is the intellectual property rights enforcement directive at EU level. In other words, in the view of the European Commission, if you are seeking information to protect IPR under the IPR enforcement directive, that is the legal basis you need for this request. I hope that's helpful.

PHILIPPE FOUQUART:

It certainly is for me. Thanks, Marie. And last is Mark.

MARK DATYSGELD:

So I said this in the chat, but I'll say it here for the those that are present, which is Sebastien, I think you're conflating the analysis for determining whether to suspend the domain name with the analysis for whether to disclose registrant information. The former does require you to determine whether there's DNS abuse, the latter does not.

The latter only requires that you determine if there's any legitimate basis under the law for providing access to the registrant data. And the triggering factor cannot be the UDRP. I mean, one, I'll go further than Paul, it's clearly not written in a law, but two, that just doesn't make any logical sense. The UDRP is one avenue for taking action against a domain name that has the trademark in it, but maybe the domain name doesn't have the trademark in it and it's being used for phishing or fraud or something else.

And so, for all the reasons that were mentioned by Fab and by Marie and by other people, I mean, there is clearly a basis under the law and logically for that requester to gain access to that information. And I'd also go back to a point you made earlier about WHOIS being the access point for all sorts of disputes and matters.

Well, it should be because if you have some sort of dispute or some sort of issue with a domain name, you need to know who owns that domain name. That's gonna be critical to the analysis of the dispute itself. So of course, it is the entry point, and I don't think it's reasonable to take that out of the equation and to say that no one has

any need for the name of the registrant because clearly, they do to determine whether to take any other action at all.

PHILIPPE FOUQUART: Thank you, Mark. Do you want to follow up, Sebastien?

SEBASTIEN DUCOS: Yeah. So first of all, again, I'll repeat, I'm not a lawyer, I'm not a practitioner of this, I'm only repeating what I've heard, so please appreciate that none of what I'm saying is final. Second, I used the term UDRP as one of the examples, it's not the only one.

The only point that I was trying to get across is that, and as I understand that, where, and I insist on it, where it used to be that getting the name of the registrar was first thing that we need to do because it was easy, we need to find other ways to have that conversation to resolve the problems. I don't think anybody, at least not the registrar I work for, but anybody in this room is there to let it all happen and rip out.

We all want to make sure that we can find the solutions, and that one, that was the first avenue, from what I understand, doesn't have to be. What I also ask when I ask this internally is, are we sure that we're not sending people on a wild goose chase that they're gonna need to go and do this and then that, and then get back?

No, we need to find, and I think that we need to map, it's not for the standing committee to do probably, but between us and this

committee, between the contract party and the request is, map out a bit what that new map of the solutions are, because I'm not sure everybody is completely clear. And I'm not saying that we have the absolute definition and right to our point of view, please come again tomorrow and let's debate that and see where those points of view fare.

PHILIPPE FOUQUART:

Last bit from what Jan said, I fully agree with him, as soon as the information is passed on, the baton is passed and the responsibility is with the new, but the problem is that we're still on hook for having given the information in the first space. It's not like we give them information, and then, come with May, it's no longer a responsibility. If the new owner or the new processor of that information that, sorry, the new whatever, the requester gets the information, mishandles it, yes, they'll get penalized.

But we will get penalized for having given any information in the first place if we didn't know what was gonna happen with it, thus the conversation. Again, I understand where you're coming from, Mark, I'm not a lawyer, I'm not gonna argue it legally, I don't know any of those details. I'm just relaying what I hear and where I think the conversation needs to be.

MARK DATYSGELD:

I just want to clarify that, and this is Mark Datysgeld for the record, I just want to clarify that we're not seeking the WHOIS information

because it's easy, it's never easy. I mean, most of it's protected by proxy, so it's certainly not easy. We seek it because it's necessary and critical to be able to determine what steps are next.

PHILIPPE FOUQUART: Thanks, Mark. Thanks, Sebastien. If anything, that shows that conversation, and it's one of the things that need to be discussed between the two. I mean, if we come back to the distinction between things that can be improved on the interface versus things that are relevant for the registrars, there's probably a third bucket in terms of having a common reading or at least understanding what we disagree on at some point because lawyers are lawyers. With this, I'd like to move to the 0.4 on the agenda. We had two speakers the first of whom was Sarah, I think. And I think we had-- did we have some slides?

UNKNOWN SPEAKER: Brenda, could you add the slides that Sarah submitted, please?

PHILIPPE FOUQUART: While we're waiting, I know Ashley Heineman put something in the chat with respect to the prior discussion. I would suggest Ashley could come up and use some of this 25 minute time as well. Sure. Ashley,

ASHLEY HEINEMAN: Just to note that we'll be covering a lot of this information that I just put in the chat during our session, so I will not take up the time of this group, but thank you.

PHILIPPE FOUQUART: Thank you. And so yes, in the spirit of not having-- well, having overlap but not duplicates as I'll put it, we'll try and be efficient there. Do we have the Sarah slides? Okay. So Sarah, would you mind maybe starting?

SARAH WYLD: Sure. Is this slide coming?

PHILIPPE FOUQUART: It's coming.

SARAH WYLD: It's coming. Great. Okay. so thank you so much for having me today, I really appreciate the time. My name is Sarah, I work at Tucows. I'm the vice chair for policy of the Registrar Stakeholder Group and also a member of this standing committee. It's been so helpful to hear these perspectives. I don't agree with everything. I do agree with more than I expected to, which is nice. So my slide will have two sections and if it's not up right now, that's okay, we'll come back, you'll see it.

First off, just thinking about what to include in requests. And so this has already been discussed to quite some degree in this session, but I'm still gonna talk about it for a moment. First off, when you fill out the form, the address field is optional, but we actually, registrars do require that information.

It will be changing soon, so it will be a required field. But until then, please provide the address, that would be very helpful. Okay. Then we have some information that's actually not new to this room because Lori shared it, and I'm so happy to hear that these things I've been saying are being heard.

That was just great. So thank you Lori, and I'm still gonna repeat it. Requests do consistently lack certain information. And so specifically, that would be a clear explanation of who the requester is and their connection to the domain. A clear description of why they need the information. How is the situation at hand going to be assisted by the disclosure or the obtaining of that data?

And then finally, and this is the one that I think is the most sticky, details on how the data will be processed, which includes how it will be used, how it will be protected while they hold it, and when it will be deleted. So after the purpose for processing is completed, when will it be disposed of?

Now that's not really specifically requested in the form, and I think Lori said that also. And so one of the things this group could talk about would be bringing feedback to your standing committee members to have them suggest changes to the platform to ask more specific questions. We should also consider that the necessity of those pieces of information depends on the specific registrar evaluating the request and what their legal obligations are. Different registrars in different places have different obligations, and so perhaps some require really

specific information about when it will be deleted, that data or when, how it will be protected and others may not require the specifics.

So one thing for the standing committee perhaps to consider could be adding more information to suggest that the requester provide those points. But keep in mind that it's different depending on each circumstance. And I know that that's difficult because it's difficult for everybody, but that's a big piece of it.

The other thing I guess, again, spoilers, I was gonna say, come to this session tomorrow, Margie asked for examples, we will give examples and I hope that that will be as productive as we hope it will be. So come to that session tomorrow. I think it's 10:45 in the morning.

And then also we should just keep in mind that for domain names that have a privacy service on them, many registrars do require legal due process before disclosing underlying customer data. But some might not, and that is, again, perhaps a question of jurisdiction. Perhaps some for a law enforcement request would still just go through with that reveal even though they're not-- it's a little outside of the RDRS, but that's to be expected because different businesses have different policies. So again, thinking about that, it's difficult when we get different results and we might expect the same results.

Sometimes that's gonna happen, and so I think also what would be really helpful is to use the requester feedback form, which is provided. I think each request at the end, you get a link that's like, Hey, what'd you think of this? Come tell us.

And so if there are problems with the actual form that you're filling out in RDRS, it would be useful to submit the survey or to fill out the survey and say what it is. But if a registrar is denying a request and saying that additional information is required and not being clear about what that additional information is, I do agree that that bears further conversation. And I'm not sure who's best to have that conversation, but I do think it should be had. Okay. And there's the slide. There you go. Thank you so much for this time, and happy to discuss.

PHILIPPE FOUQUART: Thank you. Sarah, mindful that a large part of this will be discussed tomorrow. Any questions or comments of Sarah?

LORI SCHULMAN: Philippe?

PHILIPPE FOUQUART: Sure. Go ahead.

LORI SCHULMAN: Sorry, I can't find my electric hand, so I'll use my real hand. Hi. Sarah, I get your point about these conversations, and I feel like there's a few things going on. One is the formal conversation that the small group has, and they have their spreadsheet, and this is a formalized process driven way to get feedback to ICANN, which is needed and supported, I think, by everyone.

But what I'm also seeing, like for example, at the session that INTA held and this session, there's more informal talk going on. And I really think the more informal talk, which gets to really sort of the honest meat of it day-to-day facts, is really so useful. It wasn't until I sent you an email saying, what exactly are you not getting? And you could say to me, this is exactly what I'm not getting, that we could keep that going.

And I wonder if is there such a thing as sort of an informal session, is there' something that INTA could do as a service where we host informal sessions? I'm willing to ask some resources to keep this going, but I don't know what from an ICANN perspective, what's informal, what's formal? I mean, we're all using our meeting processes to get things out; INTA did, Eco did, ICANN is, but I almost feel like we need to have more of sort of like these coffee table chats.

And how do we do that? Or do we open something once a week where people can just come and talk and then if they want to add something to the spreadsheet or want to make more formal interventions, they can because I see this, as I said, two layers, this informal back and forth, and then the formal getting the stuff done that we need to get done to make this work for both sides.

PHILIPPE FOUQUART: Thanks, Lori. Certainly. Sarah.

SARAH WYLD:

Thank you. This is Sarah. Lori, I really like that for many reasons. It's interesting that we have the same two categories of issue in mind, and yet we have named them differently. So what you're saying is formal and informal, I think I would divide as platform functionality issues and registrar or request specific issues. So for the platform issues, yes, we should filter those to our standing committee members, like a checkbox needs to be in a different place, that kind of thing. Dropdown menu should be worded differently. That goes through the standing committee, because that's platform functionality.

If it's an issue of understanding what registrars need, understanding what requesters need, yes, we should have more of these conversations. And so the one thing I would really say is let's do it within the ICANN context to make sure that everybody has access to participate in those conversations. If we start taking them outside of ICANN, it becomes complicated with perhaps travel or remote participation or just making sure that everybody feels invited to participate. So I think yes, I'm not sure about weekly, that seems really often, but more conversations among ourselves I think will be very helpful. Yes, thank you.

PHILIPPE FOUQUART:

Thank you. Thank you, Sarah. And to the point of this being intended to collect data, maybe because especially on the issue of your second point about the motivation for the request, although that's tied up with the interest, the legitimate interest, obviously, and clearly there's not gonna be one reading of this, double negative, but it doesn't mean

that question should not end up in the interface, I think. I think we are not necessarily targeting the-- what we're trying to do is to improve the likelihood of this being processable for the registrar. I think there's still some value in making the ask more specific through the interface for the requester.

SARAH WYLD: This is Sarah. Maybe, I think it depends. I think it really depends on what the specific thing at hand is.

PHILIPPE FOUQUART: Okay. Thank you. Thanks. Ashley, you were next. Okay. And finally before we adjourn, I think James Bladel, are you around? You are on the speaker's list.

JAMES BLADEL: Yes, and thank you for remembering. But I would note that most of everything that I came prepared to discuss has already been covered. So I would just say plus one to a lot of the comments that were made, particularly, I think the most recent intervention from Lori about capturing these informal discussions where we share perspectives.

And I think as Sarah and others have noted, there's going to be another session on this topic later. Why not get everybody in the same room? And this session right now is like triple conflicted, and there's a lot of folks I think that should be here that aren't and will be at the other session. So I would encourage this group to come to that one

and everyone from there come over here, and we should maybe just try and get 'em all in the same room, I think it would be much more much more effective. So thanks for that.

And oh one other note, sorry, just while I have the microphone and so much attention and nodding heads. There was a comment from, I think it was Fabricio, about some of the responses containing recommendations to alternative channels for data, whether it's abuse or privacy service system. I just want to point out that those are intended to be helpful relay messages, not a wild goose chase and not a runaround. They are simply being positioned as we're denying this request, because there is another avenue that you can get this information easier, faster, or more pertinent information to what you're trying to do.

It is not an attempt to second guess the intentions of the requester, but more an effort to provide expedited alternatives. If it's being received as sort of a moving the goalpost, then we need to work on the communications and the verbiage in that response. But it's certainly not the way it's being presented. So just those points, otherwise, this has been fantastic. Thanks.

PHILIPPE FOUQUART:

Thank you. Thanks, James. And just on the very last point, I think the figures are available within the report, I was supposedly surprised that that those, the number of requests that that mentioned Oxy are privacy are not that high. So it's not, I guess what I'm saying, it's not a low hanging fruit as far as we are concerned, as far as it seems.

JAMES BLADEL:

Yeah, and just a point on that I note that there was a category of requests that was raised at the previous ICANN meeting where the request was denied because the information that the registrant had opted into WHOIS. So the response was, this request is denied because the information is available in WHOIS, please go look it up in WHOIS. So it is intended to be a kind of steering folks in the right direction and not running around in circles. We've also had some conversations internally about consolidating our, and this is just for GoDaddy, this is not an industry thing, but consolidating our privacy proxy service disclosure request process into RDRS, so it's a single channel.

And that would not only, I think, provide a more seamless experience for requesters, but it's going to make our lives easier on the other side too. So we're looking at that. I can't pinky swear that it's going to happen by date X or something, but it is something that we're saying there's a lot of parallel overlap between those two processes that would make a lot more sense if we just routed them into one system. Thanks.

PHILIPPE FOUQUART:

Thank you. Thanks, James. Mindful of time, I think what we'll do from here is that, again, a call for participation for tomorrow, although that session is also conflicted. I have to say that the ISPs have their meeting at that particular time, unfortunately, but there we are. And as far as this meeting is concerned, we will come up with a summary

that we'll share with the group and identify these things that would be relevant for our representatives to the standing committee to channel moving forward, as well as those items that will probably need a separate track. Mason, yeah.

MASON COLE:

Thank you, Philippe. Yeah, there will be a summary produced from this session, so thank you to everybody who provided interventions, particularly with the registrars. That will be produced after the Kigali meeting is concluded. And I just wanted to point out, Ashley brought up a very good idea, which is why don't we all get into the same room together at ICANN81 and talk this out rather than have session after session after session. I think that's an outstanding idea, and we'll try to move that forward, Ashley, thank you. Thanks, Philippe.

PHILIPPE FOUQUART:

Thank you, Mason. And with this, session adjourned, meeting closed. Thank you. Thanks everyone.

BRENDA BREWER:

We can stop the recording. Thank you. Thank you all for joining today. Enjoy the rest of your day. Bye.

[END OF TRANSCRIPTION]