ICANN82 | CF – GNSO: IPC Membership Work Session
Tuesday, March 11, 2025 – 13:15 to 14:30 PST

BRENDA BREWER

Hello and welcome to the Intellectual Property Constituency Membership Work Session on 11 March, 2025, at ICANN82 Seattle. My name is Brenda Brewer, and I am the participation manager for this session. Please note that this session is being recorded and is governed by the ICANN Expected Standards of Behavior and the ICANN Community Anti-Harassment Policy.

If you would like to speak during this session, please raise your hand in Zoom. When called upon, virtual participants' mission to unmute in Zoom. On-site participants will use a physical microphone to speak. Please state your name for the record and speak at a reasonable pace. And I will now hand the floor over to IPC President, John McElwain.

JOHN MCELWAINE

Thank you and welcome, everybody. This is the open IPC meeting, and I'm really excited to have some guests here. Hopefully we can tell you a little bit more about what the IPC does, what some of our projects are, and we're going to talk a little bit of business as you can see from the agenda.

So to start, I had promised the IPC members I would give a report out on the survey that we had done on members. So Brenda, if you

can advance it to that slide. I think it should be the next one. There we go. All right. So as everybody knows that we sent out a survey to members and asked a number of different questions about what they're involved in, what their priorities were, and even down to when's the best time for a meeting. And this is going to be a high-level summary of what we were able to discern from all of that. And I'd say we got a pretty good amount of survey respondents, somewhere around like 25, which I think is pretty good for this size organization.

But one of the things that we've all known is that the IPC is heavily, heavily involved in all aspects of work going on here at ICANN, whether it's a bright group of counselors we've had over the years, a lot of involvement, leadership on Council, leadership in working groups, and just a really strong showing on the working groups and the IRTs that our constituency is interested in and has a lot of expertise to bring to those policy work streams. We're also involved in other things such as the nominating committee and the various reviews that go on at ICANN. So if we can go to the next slide, we've got a breakdown.

So as you can see, this is how busy we all are. It may be no surprise that right now we've got the highest number of people involved in the IRT, so the Implementation Review Team, for the rights protection mechanisms, almost equal number of people involved in the subsequent procedures, PDP, all the way down to smaller numbers, one or two people involved in things like the nominating committee, RPM reviews, etc. So this is the survey. Those who took it, this is what they're involved in. I think it just shows that this is

an active, engaged constituency. If you could go to the next slide, please.

No surprise, and this goes hand in hand with the IPC's mission statement. These are the issues of importance that people identified, the number one being access to domain name registration data, so that's being involved with things like the RDRS and Privacy Proxy. Second on that list is rights protection mechanisms, so that is the Uniform Domain Name Dispute Resolution Policy, the URS, Uniform Rapid Suspension, other rights protection mechanisms like the Trademark Clearinghouse. Right below that of issues of importance was domain name abuse, and then just below that the new round of top-level domains. Again, we have a lot of people in that working group. They continue to go down, but what's great to see is all of this, from a survey perspective, aligned with what we have on the website, what we have in the bylaws that we just passed. So it was good to see that we have good alignment here. Next slide, please. No problem. I think I've got this.

Anyways, also I reported out on this in a little bit more detail in the closed meeting, but the IPC has been taking a look at being more strategic in its approach and developed a plan that's focused in four areas. So for folks who weren't in that closed meeting and for our guests here, we're working on improving our organization. So we, at the closed meeting, approved a vote on a new set of bylaws, and we are further engaging to talk with the law firm that helped us on investigating the proper entity form. Mark, that email has gone off to counsel. We're also going to look into some administrative

support, whether early on it might be as we've spitballed, maybe it's a summer associate from a law school, some help to get all of the work that we know is coming into more of an organized fashion.

From a policy focus perspective, and I've been joking, people have seen me engaging in it already, we've really tried to come to consensus on things like talking points and statements, so that's why there's been a lot of circulation of that type of material so that we're all singing from the same sheet of music. To be honest, it helps me if I have to ever speak on something, to have the experts feed me the information I need on NIS2, and it's what Michael used to do, the SOI talk yesterday. So it allows members to jump in and articulate the IPC's points without having to have studied up and been an expert on it.

Communications. We're going to work on getting better communications out, emails, doing a website refresh, all those blocking and tackling issues that we're all familiar with that are just going to make your membership value more and provide a deeper connection to the IPC. And lastly, we're going to work on growing membership. So if you have any new faces here and you want to join the IPC, just see me after the meeting, be involved in the intellectual property, and we have a really simple application process, and we'd love to have new people join.

And we're also going to be working on trying to come up with other benefits for membership, whether it be having a newsletter that you can repurpose and send out to your clients, taking some of those monthly emails and utilize that to update your colleagues.

Just we're going to be working on developing some materials that give a little bit extra benefit to being an IPC member. So that's really the high level of the strategic plan. All right, Brenda, I think you can move on.

So with that, I'm going to turn it over to Susan and Damon to talk to us a little bit about what the GNSO Council has been doing so far and any other guidance you might need for the upcoming meeting. Thanks.

DAMON ASHCRAFT

Sure. All right. Thank you, John. So far at this ICANN meeting, the Council has had three hours of prep sessions or three hours of working sessions. We've also had a closed meeting. Our regular Council meeting is going to be tomorrow afternoon. It certainly is open. We've gone ahead and we've sent out the email on that. We encourage everybody to attend if you can. We've gone over several of the issues in the closed meeting on Saturday.

One of the things that has come up since then is there's been further discussion with respect to billing contact or billing data contact in WHOIS information. And to make a long story fairly short on that, there was an EPDP that was tasked with a bunch of issues, and one of them apparently was, well, should we require registrars to maintain billing contact for domain name registrants? Apparently they discussed that. They discussed a whole bunch of other things. They came out with a final report that didn't necessarily speak to the billing contact data. And the argument from the other side is, well, that was a drafting error. We should go

ahead and say it should not be stuff that registrants or registrars should maintain.

I don't like that from a substantive standpoint. I'm not. Personally, I have a huge amount of heartburn on that from a substantive standpoint. But the bigger issue I think for us is that they're now asking Council to go ahead and bless it and say, well, we can't really talk about this. So we'll go ahead and we'll still say, we'll infer intent. And we'll say, yeah, this was the desired outcome. I don't like that. Susan doesn't like that. And we've gone around. I think most folks in this room would agree that's the right way to go.

And it's been discussed at length at Council. We're going to have a discussion, not a vote on it tomorrow, a discussion. And there have been three options proposed by Council leadership. And I think, Brenda, I just sent you that slide. I sent it to the list. It didn't go through. Brenda, can you put that slide up? I emailed you real quick.

So here's the three options. And just as a background, if you don't know, the way Council voting is set up is that the contracted parties effectively, if they vote together as a block because of weighted voting, we will never be able to win in that scenario. So we would have to essentially have at least one of the contracted parties flip and vote on our side. They obviously don't want to have billing contact as part of the WHOIS data, so they're heavily leaning against that. If you look at the three options that have been proposed, there's a third opt there, which basically says defer it,

put it into a subsequent PDP. And then you would also give the contracted parties a deferral until that process is started.

In my mind, that's a good compromise. I don't know from a substantive standpoint if we would end up at least, we wouldn't turn the Council into just rubber stamping something that wasn't necessarily supposed to be rubber stamped. This also doesn't necessarily harm the contracted parties. They're going to argue that we're going to try to relitigate the issue in the PDP, which is an issue we might face. But I'm thinking that if we have an option here, we should push for bullet point number three as a compromise position. Susan, do you want to say anything else? Did I mess anything up in that long-winded explanation?

SUSAN PAYNE

No, you certainly didn't mess anything up. I think the only other moving part is that in relation to that, the idea of a motion agreeing that this was a drafting error, one of the things that we pointed out was that at the moment we're not seeing anything in the final report that really indicates that this was a discussed issue and, therefore, that demonstrates it was a drafting error. And Farzaneh from the NCSG volunteered to go off and dig around in the legislative history to help identify whether it was actually a discussed issue.

So she has circulated a whole bunch of links to things like communications and so on. Have not had time to dig into it yet, really. And I think that's the only thing is whether part of our discussion is obviously we haven't had time to dig into what Farzi's

dug out. You know, it may be that when we have done so, it does indicate that we're comfortable that it was an error. And that might make people feel differently.

DAMON ASHCRAFT

Yeah, I mean, so Farzi, if you don't know Farzi, she's very outspoken, speaks up a lot at Council, and she did do, it looks like a lot of research and found out where it was discussed, multiple deviations as they were going through. In my mind, the argument that it's just a drafting error, that doesn't make sense because the more times they've discussed it, you would think that, okay, you've discussed it 15 different times. If you didn't put it in the final report, we did not intend to change the status quo. And so that's how I would present that argument. I have not looked at all her links and all her history, but to me it just doesn't make sense. Mark, what are you thinking?

MARC TRACHTENBERG

Marc Trachtenberg, for the record. Don't love the third option, only because I think it's similar to the first in that by endorsing a compliance deferral opens this door that I don't like by saying that now we can just do that. Now we can decide when compliance should make sure we contracted parties comply and then other times they can just look the other way. So I don't, I mean, I understand the intent and I'm not suggesting there can't be a compromise. I just don't really love that one.

DAMON ASHCRAFT

Mark, I don't like the third option from the standpoint that it basically defers compliance. I mean, if it were up to me and I were King, I would say, no, you're going to comply to it. You're going to comply with this until we change it. Otherwise that being said, I think we have to compromise because we have the contracted parties. We also have the non-commercials being heavily in favor of option one. Margie.

MARGIE MILAM

This is Margie Milam in my personal capacity. I was on the EPDP when it was started and, and I was also on ICANN staff in the past. The interesting thing about the billing contact is that, and this is the argument we heard at the BC meeting earlier today is that the claim is that it's no longer used. So let's get rid of it. But my understanding is that the billing information and billing contact is not just best as part of the whatever, the RDRS or registration directory service, but it's also part of the escrow. And so it's an escrow obligation to have the billing information.

And the scenario where it might be relevant is in the customers of a privacy or proxy provider. So think about it in that scenario where there's a customer to a privacy proxy provider. The only information you'll see in the WHOIS, well, you won't even see it in the WHOIS record because it's not public, but it would come into play when a registrar goes out of business and you now you have to rely on the escrow information to determine who's the actual customer. And my understanding is that that's where the billing

contact may actually be relevant and be in a protection for the customer of the registrar.

DAMON ASHCRAFT Margie, would it be fair to frame that as a quote unquote privacy concern then or that nature of customer data type of concern? Because the other side loves that stuff.

MARGIE MILAM It's a customer protection issue. And sometimes registrars do go out of business. So where ICANN's left holding the bag and maybe it's a question for ICANN as to whether that's come up in the past when a registrar has gone out of business to be able to look at the escrowed information and see whether the billing contact points you to the right who has control of that domain name.

SUSAN PAYNE So could I ask you a question then, Margie? Like if you were in the PDP, I mean, do you feel that the PDP group had this issue raised multiple times, but didn't reach an agreement? Very definitely being, being edged towards the it's quite clear. Obviously everyone agreed that we didn't need this anymore.

MARGIE MILAM It's been a while since we were in. I don't recall it being discussed. That doesn't mean that it wasn't, but the way I think we were dealing with the issues was what's going to go in the public WHOIS and billing contact was never part of it anyway. So it wasn't part of

that discussion. It was all about confirming the temp spec. And what did the temp spec, as I recall, didn't say anything about billing contact. So if you think about how we got there, but if someone could forward me Farzi's research, I'm happy to take a look at it and see whether there's more to it than I recall, but I don't recall us even discussing the billing contact.

DAMON ASHCRAFT I'll find that email sent to you now, Margie.

ANNE AIKMAN-SCALESE Yeah, thanks. I heard the discussion on Council and I also read some of the links that Farzi sent along and I think it gets us back to that point of, hey, even though it was in the charter, it wasn't really decided because Trang says at one point, it would be helpful if somebody would clarify whether the billing contact needs to stay in. And then, I think Farzi sent Alan Greenberg responded that he didn't object to it going out, but that's obviously not a consensus determination by the IRT. And so my question number one is on the first one, when there's a reference to the IRT determination, does this go back to the IRT asking them what's your determination about this? What does IRT determination mean in number one?

DAMON ASHCRAFT I don't know. I don't know off the top of my head.

ANNE AIKMAN-SCALESE Susan may know.

SUSAN PAYNE So I don't know either. We are being told that the IRT agreed that this was a drafting error and that the RAA therefore should be amended accordingly. I don't understand why, if that were the case, if the whole of the IRT thinks that that is the case and has agreed on that, I don't even understand why it's come to Council at all.

ANNE AIKMAN-SCALESE Yeah. I just don't know how that was done. But my second question relates to the registration data policy that was issued for contracted parties that takes effect in August 21, I think, of 2025. And I do believe that that does not contain in it a requirement to collect billing information, which Thomas has tried to point out, there's a big difference between the billing goes into escrow and just how the registrar charges the registrant. So I don't quite understand all of that. But if there's an existing policy that ICANN published in 2024 that goes into effect August 21, 2025, and it doesn't contain billing contact in it, then how are contracted parties--?

JOHN MCELWAINE This is John McElwain. I'm not 100% sure of this, but I put it in the chat. I'm about 90% sure that the WHOIS elements never included billing contact. Billing contact was something that had to be collected for data escrow purposes. It was an accident to put it

into, like, this, again, laundry list of issues they would look at in the charter. They said, look at billing contact. And they probably addressed it. I mean, I haven't looked at Farzi's stuff. They probably addressed it once or twice and said, hmm, that doesn't make any sense because that's not part of the EPDP looking at what WHOIS data elements. And it just got shuffled aside. Now people are trying to use this as an effort to stop the billing contact data from being transferred to data escrow through the IRT is what I think is going on here.

ANNE AIKMAN-SCALESE: Just very quickly, I felt this. Why don't you just amend the charter and take billing out of it? Because if it wasn't it would be a retroactive amendment of the charter, but at least if it's not really part of registration data, why is it in the charter? But then she thought it belonged in the charter. I think Sam Demetriou said that she thought it belonged in the charter. I don't know.

MARGIE MILAM: The other thing I'd like to point out is that the EPDP report actually had a recommendation relating to the deletion of the, elimination of the technical contacts. So they went actually and spelled out what should not be there. And that just seems like a big gap. If we, because I was on that group, were actually thinking we needed to get rid of the billing contact, why would not have it been treated the same way as the technical contact, which was eliminated through those recommendations?

JOHN MCELWAINE: So I'm not exactly sure who's next, but let's go Dean and then to Paul.

DEAN MARKS: Thanks so much, Dean Marks, for the record. The question may be so far off base that feel free to ignore it, but I was just wondering in this billing contact issue, would there ever be any way to try and then explore in terms of what are legitimate payment methods for domain names and what are not? Because there has been some concern expressed that cryptocurrency and Bitcoin payments for domain names makes it much harder to trace abusive and criminal activity. So is there any potential hook or opening there? Thanks.

DAMON ASHCRAFT: I don't think so. Susan, if you have other thoughts. I mean, I think that's an issue that could be discussed. I don't think in the context of this it could be discussed, but Susan, let me know what are your thoughts on that?

SUSAN PAYNE: I'd say no as well. It's also been pointed out that a bit like we were always having these conversations about the WHOIS data and this whole separate set of data that actually relates to who owns the domain name and there are two different buckets of data that a registrar has. And so this billing contact is viewed very much as a like technical obligation, and we keep being told, but of course it's

not actually who pays our bill, if you know what I mean. It's actually the customer necessarily.

It might be the same data, but it's like if we didn't keep this billing contact, that's a specific contact field in the record as opposed to we obviously have records of who our customer is. That's the distinction we're being told. And obviously if you were going to get a court order in order to identify the customer, you actually would be wanting to know who is it who's paying your bills, not what is the name that's put in the billing contact. So that's where-- I'm sorry, I've jumped ahead of Paul, but I'm done.

PAUL MCGRADY You all see how I'm treated. I'm treated very badly.

SUSAN PAYNE I mean, in many respects, I'm on the same page as Paul in the sense of I do think this isn't really our issue as such in terms of the specific contact. But I'm not on the same page with him about-- yeah, I'm uncomfortable about the fact that if this was in the charter to consider, there were even these emails that went around saying, hey, guys from Trang what do you mean to do about the billing contact? Are you trying to amend the RAA here? And until I dig into anything else that Farzi circulated and feel confident that there was a conclusion on that, I'm not sure that were revision. And absence of a decision isn't a decision.

But I do see a bunch of people in the chat going like they agree we should be keeping our powder dry, this isn't our problem. And so it

would really be helpful to get a sense of the room because we are arguing on this and if people think that this is a storm in a teacup we shouldn't be having, we can go down the option one provided there's enough in that legislative history to not completely-- yeah, and provided there's not something that really clearly says no, no, no we absolutely don't agree to the removal of the billing contact. I mean, if there's enough to make it look like actually it was a drafting error we can go down that path and this goes away. And if no one really cares about it apart from procedurally, then I'm happy to find a way to procedurally as long as we don't have a red face over it. But not sure.

JOHN MCELWAINE: Anybody else want to talk? I just want to make sure that nobody else wants to. All right. Uncle Paul.

PAUL MCGRADY: So a couple of. I won't reiterate. Mike, you guys have all heard it. The reason why it's here, I think, and Steve can defend his honor if I'm getting it wrong, but I think this was raised by staff because they do see the issue of a failed registrar and not having that billing contact as an important registrant protection and they're hoping that we will fight this battle for them. And so I get that, right. That's why we're here. It doesn't make me think that we should be fighting this battle because we have other, and especially because the data, nobody can get to it absent a subpoena. The data escrow

agent's not responding to disclosure requests. There's no mechanism for that, right.

And so should the ALAC be losing its mind right now because of the end user risk of this? You betcha. Should the NCSG be losing its mind right now because of the end user risk to this? I think so. They're not, right. But in terms of an IP issue, I just don't see an IPO. What Farzi put out was basically some examples of how it was discussed. I think intellectually we could say this is akin to saying, what are your three favorite colors? Well, my three favorite colors are red, green, and blue. And then saying, great, but you didn't mention black, white, purple, fuchsia, and since they weren't mentioned, then they're still on the table, right. Well, not every report's going to mention everything, right. It was discussed. I think intellectually we can hang our hand on that if we want to.

View option one if we want to. And we can have a voting statement saying we're saying yes to this, but that doesn't make the underlying concerns related to registrant protections go away. And so we're voting yes. We're going along to get along. But we think that in the voting statement our concerns about the end user registrants are noted, right. And that may be a way forward. But in any event going along to get along on this one. Thanks.

ANNE AIKMAN-SCALESE Thanks. It's Ann again. I'd probably be more aligned with Damon on option three than option one for a couple reasons. One is I don't know what IRT determination means in this context. And if there's some precedent that oh, somebody had the chair right back and

say, well, we decided that billing contacts are relevant, that is not a working group IRT process. And so I'm bothered by the quote, unquote, and maybe IRT determination. I don't like option one as much as option three.

JOHN MCELWAINE Steve, you want to clarify?

STEVE I was typing a response in honor of defend my honor because Paul invited me to. So I actually don't think that I can raise this issue because they have a concern about the genuine usage billing contact information. I think that we actually did share some of the same procedural concerns you're talking about. And please take all this with a caveat because, like I said, this is not my area of expertise. I'm not the SME on this. But I think we actually coalesced around option number one, at least from an Org perspective, for what it's worth. And then I think your question, Anne, is the IRT came to agreement about where this issue is now. It was actually an IRT agreement that it was a drafting error, if that helps.

ANNE AIKMAN-SCALESE Sorry, did they issue a summary?

JOHN MCELWAINE Okay, so Lori, over to you.

ANNE AIKMAN-SCALESE So I have a process problem with that.

JOHN MCELWAINE Lori, over to you.

LORI SCHULMAN Yeah, I'm going to agree, too. I have a process problem with one, and Anne and I typically agree on process problems. I think that does set a precedent. Even if you say it doesn't, it does. And so I'm not in favor of it.

The other concern I have, and I might have lost some stream of consciousness back in the fourth year, so correct me if I didn't understand. So right now what would happen is if you did, one, the billing contact would not be included or be included? Not be included. Okay, so here's the thing. And to Paul's points, but as a counterpoint, is I think billing information is key. I think that if we employ follow-the-money tactics in some of our enforcement, we would strongly encourage the inclusion of a billing contact as part of disposable information with or without a subpoena.

And I can't see a supporting one as being helpful to IPC interests at all. And we know that with the PDP, yeah, it's going to take forever. But what happens now is, to my understanding, won't the status quo remain and that the billing contact stays until we decide it doesn't stay? That's what I'm missing in the argument.

DAMON ASHCRAFT I believe it would stay, and I can tell you there is very little appetite on Council to go with option two and start a whole PDP. Just so you're aware, it would be a very-- we could certainly redirect it, we could certainly say we like option two, but we would really be swimming uphill.

LORI SCHULMAN I don't want to support option two. If I were to vote on this, I would vote for option three. I would not vote for option one. Absolutely not. I don't think it's in our interest to do so. And I know it's not directly an IP issue, but it is in terms of enforcement and, as I said, the follow-the-money issue.

DAMON ASHCRAFT In my view, it's also a process issue as well as far as we are the group of lawyers in the room. You know, we should follow the process and it should be clear, and then we shouldn't just be assuming things after the fact.

LORI SCHULMAN Right. So then I would double down on three and I yield my floor.

DAMON ASHCRAFT Jan.

JAN JANSSEN I think it's not only a process issue and not only an IP issue from the follow-the-money perspective, but it's also an IP issue from

registrant safety. For small and medium enterprises, they may not have hired a reputable registrar, especially if they're in jurisdictions that they have no registrars that they know of and they don't have the knowledge that we have in this group to go to a reputable registrar. So if, as a result of that, they invest in a business and they lose their domain name because of that, then it becomes an IP issue, and I think we ought to the IP community to also protect the small businesses.

JOHN MCELWAINE I'm going to draw a line under that, and I actually like Dean's idea. Maybe a subsequent PDP can look at billing contact stuff in greater detail and stop any sort of fraud and the use of fraudulent information to purchase domain names. So that might be a way to bring that in. We can only hope. Okay. I'm going to move on through the agenda here.

JOHN MCELWAINE Do we have an answer? We need an answer.

DAMON ASHCRAFT I thought we were coalescing around three clearly. No? We can do that.

DEAN MARKS I think it's only fair to Damon and Susan.

DAMON ASHCRAFT This is not an official vote.

DEAN MARKS Informal. Informal.

LORI SCHULMAN A temperature check. May we take a temperature check of the room?

JOHN MCELWAINE Okay.

DEAN MARKS I'm sorry. I'm sorry, Paul. That's what I meant. A temperature check.

JOHN MCELWAINE If you are hot for option one, raise your hand. If you are hot for option two, raise your hand. Very, very cool. All right. And if you are hot for option three, raise your hand. Okay. Well, I think we've got a good temperature in the room. All these rooms have been cold. Marc?

MARC TRACHTENBERG Are we confident there's no other options that are available. Because I don't really like option one or three.

DAMON ASHCRAFT

Marc, there could be other options, I think, overall to resolve this issue. We're not voting on it tomorrow. These are three different paths that were lined up for discussion tomorrow. And so, if we go with three, as I think where we're going to go, it doesn't mean we're necessarily married to three. We have to eventually-- that's our final vote. It's not a vote tomorrow. It's just a discussion. And I think what Susan and I would do would be to say, look, we think we should compromise on this. Three is an acceptable compromise. This is the direction we probably should go in. But let's look at it further. And it'll probably come up on a vote on the next meeting would be my guess.

MARC TRACHTENBERG

I mean, can the position be that we don't really like any of these options from a policy perspective? People have differing views on the substantive nature about the billing contact and how important that is. But that's actually-- and everyone is concerned about the process problem. Is there a better solution where we don't violate the process and the policy? Can we brainstorm about that?

DAMON ASHCRAFT

I think it's a discussion. I think we could certainly let the Council know that, yeah, there's divergent views within the IPC on this. But where we are coalescing is the process point. And we think it's important that we follow the process. We'd be more detailed. And

therefore, we support three as a compromise for right now. Happy? You okay? I mean, it's not perfect.

MARC TRACHTENBERG: It's not perfect. But like I said, if it's just a discussion, not a vote tomorrow I would not be so bullish on three and say we don't love three either. You know, we're not saying that we couldn't maybe get behind three. But for right now, three is not great either. It's not. Can we brainstorm about other options that have less of an adverse impact on the process and policy going forward?

SUSAN PAYNE: So, I think there's another option. I don't know if you'll like this one either. And it's not one that Council can direct. But this whole provision is a provision of the Registrar Accreditation Agreement. And at any time, the registrars and ICANN can negotiate an amendment to the Registrar Accreditation Agreement. And if they did so, then they would negotiate to remove this requirement to Escrow billing contact. And then that go out, there would be a public comment exercise.

That is an alternative path, which certainly addresses the procedural issue. But whether you all are going to say you like that one, I don't know because that has you less involved in the decision making. But as has been pointed out, it's not a policy matter per se. It's the fact that this is whether the policy that's been created has changed an obligation in the RAA or not.

JOHN MCELWAINE Do we have anybody else? All right. So, leaning towards three, don't vote on it, obviously, or not. Okay. And any other options I think the IPC is willing to listen to. Okay. So, we are right at about time to have a guest.

DEAN MARKS I just wanted to quickly thank Susan and Damon for putting the issues out so quickly. And engendering this, I think, was very helpful discussion. So, I just wanted to say thank you to both of you.

DAMON ASHCRAFT You're welcome. It's our job as counselors.

JOHN MCELWAINE So, what you're saying is you were just doing your job?

DAMON ASHCRAFT Yes. Yes. Thank you for listening.

JOHN MCELWAINE So, I don't know if we want to take a little break now. Okay. And we can get you set up and get the PowerPoint. I will move. Yeah, you can sit anywhere because the cameras will rotate. So, we're pleased to have Rowena Shoo from NetBeacon Institute here. And has a 20-minute presentation on what NetBeacon Institute's been

up to. And we really thank you for coming to the IPC open meeting. Thanks.

ROWENA SCHOO

Thank you very much for having me. Am I good to start? Yeah. So, for those of you who don't know, the NetBeacon Institute was created by Public Interest Registry. We're fully funded by them. And our mission is really to make the internet safer for everybody. And primarily, we provide tools and services to registries and registrars to help them tackle abuse and hopefully make the world a bit better.

So, today, I'm going to talk a little bit about our project that we have called NetBeacon Measurement and Analytics Platform, or NetBeacon MAP for short, and how we might be able to use some of that data to start to think about what impact the gTLD contract amendments have had. So, if I could go to the next slide.

I think I've explained that already. Thanks. So, we'll look at some aggregate data and we'll also look at some data per registrar credential. So, I expect people are a little bit familiar with the amendments that came into force in April last year. But as a refresher, these changed the gTLD contracts so that registries and registrars now have a requirement to take appropriate mitigation actions that are reasonably necessary to stop or otherwise disrupt abuse when domain names are being used for this defined term DNS abuse.

So, DNS abuse is defined as phishing, farming, malware, botnets and spam when used as a vector in this context. And there's some requirements around having evidence that is actionable and for the registries and registrars to lateral damage or other risks associated with any kind of mitigation action they take. And so, they can take that action themselves or they can forward it on to another party in the ecosystem who might be more appropriate to act. Next slide.

So, the project that we have called NetBeacon MAP is aimed at measuring the use of the DNS for phishing and malware. It's a project that we run in collaboration with our academic partner, CoreLabs, who are based out of Grenoble University in France. So, they're led by Professor Marce Kunitzky and his team there have published a full methodology for us which is quite helpful. And I've also linked to a blog and report that I wrote which gives a little bit more information about how exactly we collect this because it does get a bit complicated. But I'll give you the basic outline today.

And so, that diagram on the screen is summarizing the methodology. Basically, we start with a selection of reputation block lists that CoreLabs selected to be fairly reliable. It's always tricky with this because these lists aren't made for the purpose of using them for, they're typically created for the purpose of network booking. And that means their tolerance to false positives is a bit different to what we would expect for action at the DNS level.

But we do our best to get the most reliable lists and then we refine them down or CoreLabs refines them down for us. They do a little cleaning and deduplication. So, they take out IP addresses. They

refine down to unique domain names. And they also remove something that CoreLabs call special domains. So, these are domains that would be typically inappropriate to act on at the DNS level. So, they might be subdomain providers, dynamic DNS hosting. They're linked to lots of other things that would then be implicated if mitigation action was taken.

And then there's a big process of analysis. So, CoreLabs take a collection of evidence at the time. So, DNS records, content, screenshots. And then they put all the domains through a process to figure out if they would classify the domain as maliciously registered for the purpose of the abuse or whether it's a case of compromise. So, usually that's going to be that the website is compromised. That the domain name is associated with. Which is typically quite important because the mitigation action is less likely to be registrar-registry level DNS action. It's more likely to need the host involved.

So from there, there's a process to check uptime that starts at five minutes and goes out to 15, 30, 1, 2 hours. Continues out for 12 hours and then we do that for 30 days from the point that the domain name went onto one of these block lists. All of that gets wrapped up into our reports, which we publish on our website. And for this particular research that I'm presenting today, I guess I wanted to flag a few things about our methodology. One is that we really optimize for accuracy over coverage. And so, we try to do this consistently across time and across registries and registrars. So, we're not trying to capture all the abuse that exists on the internet.

The other thing that is worth noting is that when we talk about mitigation action having occurred, we're really looking to see if we believe the harm has stopped. So, we're looking at a number of factors. It could be action that is taken by the registry. It could be action that's taken by the registrar. So, for example, server hold, client hold. It could also involve changing the name servers to no-one sync calls. It could be a hosting provider or another relevant actor that's taken the action. The data I will present that is associated with credentials is because the domain is registered to that registrar. We're not saying necessarily that they pushed the button. So, if I could have the next slide. Yeah.

So, this is just giving you a sense of how I've narrowed down the data here. So, we only look at phishing and malware in MAP. And then for this analysis today, I've focused on our registrar data set, which only includes generic top-level domains. I've isolated for domains that our methodology has classified as being maliciously registered. So, we think they're registered for the purpose of abuse. And then I'm looking at how much mitigation has happened. So, the percentage of mitigation out of all the domains. And looking at that over time and just overlaying some dates that we know are important or interesting in relation to the contract amendments. So, next slide.

So, this is the aggregate data. So, what you're looking at is a stacked percentage bar chart. The months run along the bottom, and it starts with January in 2023 and then goes out to November in 2024. And so, this is basically looking across all the registrar credentials, what percentage of the unique domains that we

identified do we believe were mitigated. And I think some of the key points I thought were relevant to plot on here. So, the first one, little letter A, is when the amendments came into effect. The next one, B, is when there was the first TLD breach notice issued by ICANN. That was in July. And then in September, there was a registrar breach notice as well.

I do understand that ICANN compliance are doing a lot of work behind the scenes. It's just that the breach notice, they would say they're doing engagement that leads up to this. But I do think it's also like a relevant signal to the industry like, oh, okay, ICANN's definitely enforcing it, and they're going to issue breach notices. So, I think that might change registrar and registry behavior as well.

And so, what I did find is that the last four months on this screen were the only months that we had with over 90% mitigated, which seemed like a promising trend. To look into this a little bit more deeply, if I could go to the next slide. Here, I just tried to group months together in quarters so that we could balance out ups and downs and start to look if there was a trend. Do note that this scale starts at 50%. So, the line isn't quite as steep as it looks here. But I think probably there's quite a lot of work that needs to take place to change these numbers even a little bit. It sort of is starting to look like there might be a promising trend of more mitigation happening since the contractual amendments have come into place. Next slide.

Okay, so then I looked at this and I was like, okay, but maybe some registrars are doing more and maybe some are doing less. It would

be interesting to look in a more detailed approach. And then I had the problem of, which registrars do we look at? Because I think there's almost 3,000, and many of them have low or no abuse. And it's pretty difficult to plot that on a chart.

And so, what I did was looked at the volume of malicious unique domains that we had identified over this time period. And then I basically ordered by the registrar credentials with the most in terms of raw volume. And you find that if you take the first 20, you get to 80% of the abuse over that time period. And that's a slightly different group to the top 20 by DUM. There's about a 50% overlap domains and management. Sorry, yeah. So, if you took the largest 20 registrars, being large because they have a lot of domains, about half of them would be in this list. The other half would not. Okay. So, next slide.

So, this is quite a colorful chart. Basically, what I've tried to do is put registrars down the side, and then months along the top. And so, the darker the color, the more mitigation is happening in that registrar credential. And what I was trying to do is start to identify whether this was changing over time. So, were there registrars that weren't typically mitigating at high rates that were then starting to mitigate more? So, if I can go to the next slide, we'll dig in a little bit deeper.

So, for this part, I got six months of data from before the amendments and six months afterwards, just on the end of the first six months, because that's what I had at the time. And I worked out an average mitigation percentage for each registrar in the first six

months and the second six months. I then took the difference between those and put these in order of the most improved to the least improved. So, the ones at the top are the registrars where it's starting to look like their typical mitigation rates are increasing quite a lot since the amendments came into place. So, I'm not sure if you can quite read it, but the top registrar, there's a difference of 17%, then 15, 10, and then it goes into single digits, down to some no change, and then a few have gone down a little bit as well.

MARC TRACHTENBERG: Trachtenberg for the record, just so I'm understanding these numbers correctly, your input is from these block lists, right? So, what you're really analyzing is what percentage of domain names were mitigated, only that were on the block list, correct? And so, maybe something was reported by a reporter, but if that happened and the registrar actioned it or didn't, that wouldn't show up here, right? This is only looking at what is on the block list and then what percentage of things that are on the block list and not coming in through other reports were mitigated, correct?

ROWENA SCHOO: Yeah. We don't have insight into every single report every registrar gets, so it's only siding with those source lists and narrowing them down in the way that I described and then looking at whether those have been mitigated or not within 30 days.

MARC TRACHTENBERG Right. And that was, to be clear, not a criticism because I understand that you can't have access to that. I just wanted to clarify that when you're looking at these numbers, that's what it is.

ROWENA SCHOO Yeah. And it's really hard because there's so much abuse and bad things that happen in the world that never get reported to anyone anywhere, let alone getting them onto a list in a consistent fashion so you can be methodological about measuring it. So there's a big picture that we just aren't seeing because of ability to research.

DEAN MARKS Thanks, Rowena. This is a little bit of a follow-up from Mark's question, but just out of curiosity, I know at least NetBeacon used to have its own reporting portal where people, anybody could report abuse. Are those reported into account or not in this mitigation analysis?

ROWENA SCHOO Thanks very much, Dean. We still have it. It's called NetBeacon Reporter. We've rebranded because our name was confusing. So that project is called NetBeacon Reporter. We also have built into that now a mitigation monitor. So we are monitoring mitigation of reports going through there, but they're not in this study. And the reason we separated these two things is because when we were building them, reporter was about helping people who want to report abuse, get it to the right place with the right evidence.

This was meant to be a much more like academic methodological same way, because we realized someone could just be like, oh, here's a bunch of reports and put them through a reporter. And that's just what we'd see. And it's still a risk with reputation block lists, but at least it's done consistently.

DEAN MARKS: Thanks so much. And that makes a lot of sense. Thank you so much. Well, I was just wondering if you were getting more and more reporters through NetBeacon Reporter. I hope so.

ROWENA SCHOO: We are, yeah. We are having more reports come through.

MARC TRACHTENBERG: You wouldn't have this through your study, but I'm wondering, anecdotally, do you think that the registrars are mitigating the abuse because the domain names are on various block lists? Or do you think that the mitigation is not related to the block lists, but they're actioning reports that they get separately?

ROWENA SCHOO: It's going to be a mix. There'll be registrars and registries that will pay to ingest feeds. And our feeds have always been public, the ones that we've used for this. And many of them are pretty free or low cost. Some of them may also be independently reported to the registrars. At some point, we also started reporting ours quite a while ago. But we tend to report ones that aren't already mitigated

by the time we get them to, because that's also something that happens. So yeah, sorry, it's a mix. I mean, obviously, a registrar needs to find out about something in order to mitigate it. And there's a number of different ways that that can happen. It might be through ingesting feeds, or it could be an independent report.

MIKE RODENBACH Mike Rodenbach. So this is all anonymized by registrar. Obviously you know. Are you intending to, or will you, or is the data somewhere where it's not anonymized, you can see who the best registrars are?

ROWENA SCHOO Sure. So yeah, we will be increasing what we publish in terms of mitigation rates. We already published some tables in our PDFs on our website that look at volume of abuse per registrar. And we publish tables that are high and low. We do the same things for TLDs. I guess I will say that one of the things we're thoughtful about is that any registrar or any TLD can have a bad time. I think many of you probably know Graham. He often says cyber criminals got a cybercrime.

The abuse often ends up somewhere. What we try to look for is consistency of approach. And so in our tables with high abuse, we tend to require people to be in there for four out of six months before we unredact their names. The idea behind this is that we're putting it out there, redacted, we're testing it. We want to make sure that the data is good. So we want to talk to the registrars

involved to match up with what's going on for you. And then we'll start releasing some mitigation rates and probably speed as well in those reports. Okay. Thanks. Great questions, everybody. Next slide.

So yeah, early data. It's only six months after the amendments that I've included here. There seems to be some promising trends towards higher mitigation, and particularly some registrars look to be improving from where they were before. I think it's going to be interesting to watch this as compliance do more activity and we see the consequences of that. As with any research, we've talked a little bit about some of the limitations anyway, but we are observing a real world here and that's pretty difficult and pretty challenging to have causation and really understand what's going on knowing that we're surely going to be missing a picture of the abuse.

But we've done our best and we hope it's interesting and helpful and I'd love feedback. We're going to do more of this. We'll look at TLDs as well. And as I mentioned, we'll start publishing some unredacted data in due course as well. Thank you. Thank you so much for having me. Happy to take any questions if there's any more as well.

JOHN MCELWAINE Anybody have any questions? Yeah, Susan.

SUSAN PAYNE I should have asked this at the beginning. I'm assuming because this is an open session that those slides are okay to get published and circulated and so on.

ROWENA SCHOO Yes, of course. There's also a blog that this is based on and so there's a link to that in the slides as well so you can read that. I think there might be a question in the Zoom room.

MARGIE MILAM I have a question about, you said the mitigation rates are increasing, like how? Is it significant? Is it like from 10-20% or? Just curious how impactful the increase has been. Thank you.

ROWENA SCHOO Yeah, sure. So if we could go back a slide perhaps. I think there may be about two slides if possible. So this is looking at each registrar and so it does vary a little bit per registrar. So in the two six months blocks when I looked at the difference, like the registrar that changed the most had a 17% increase. The aggregate data, we were starting to see months in the 90%. From memory that was only an increase in 1-2% on the month before. So the reason I wanted to break it down this way is because you can really hide signals of the data in the aggregate because it's going up but when you look at it this way it's like, okay, some people are increasing their mitigation a lot it seems while others are staying the same or maybe some are going down a little bit as well. Thank you.

JOHN MCELWAINE Okay, any other questions in the room? Okay, well thank you very much for presenting to us. It was really informative and it sounds like a great project, so thanks.

ROWENA SCHOO Wonderful, thank you so much for having me and for all the brilliant questions. Thank you.

JOHN MCELWAINE Okay, well moving on to the next part of our agenda is to get an update from Mike Rodenbach on the nominating committee.

MIKE RODENBACH Okay, I don't need five minutes for that, unless there's questions, but bottom line is to remind everybody that the application window is closing as of March 28th. We're filling three Board seats, none of which can be from North America, but also ccNSO, GNSO, At-Large seats, so anybody that you know or in your organizations that are interested in the process, feel free to talk to me about it. There's also some slides I sent around to the list I can send around again, but that's it. There's really not a whole lot to say other than we are in the midst of the application window now. They're in the slides I don't recall right now.

JOHN MCELWAINE

Okay, well with the time we have left, I'm glad we're able to get to this. We had talked so long on the Council report. Patrick, can you cover any of the open policy work we have, and I believe that is related to the applicant guidebook.

PATRICK FLAHERTY

Thanks, John. Patrick Flaherty of Verizon for the record. So there's only one comment period open for consideration, so this is the fourth in a series of public comment proceedings from ICANN Org for a proposed language for draft sections of the next round applicant guidebook or AGB. The deadline for submitting comments is April 2nd. I've sent around more information and a link to the comments to the distro, but for people's consideration, maybe look at things like, for example, the application fees, the name collision section, brand eligibility. Those are things in the past that have been of interest to different stakeholders.

So we don't have any volunteers yet for anybody who might want to submit comments on behalf of the IPC or help with drafting comments, so please give that some consideration, and reach out to me and we can get that started. What is stated in the notice from ICANN about this fourth round is that they say as a reminder that all sections of the AGB when finalized will be put out again for final public comment in May, so there will be a second bite at the apple if for any reason we don't submit comments this go-around.

And then the other thing I wanted to mention just as a follow-up, so we submitted comments recently in connection with the community participant code of conduct on SOIs, statements of

interest that is, and general ethics policy. So that report just got released. It's unfortunate we didn't get a chance to really do a deep dive into the report. I even haven't reviewed it since it was just published I think yesterday or the day before, but we did have a meeting yesterday and Mike did a fantastic job reiterating the concerns the IPC raised in its comment filing, and that's also highlighted in the report. So I will send around a copy of the report and I'm sure we'll be discussing it on our next upcoming call. And that's it.

UNKNOWN SPEAKER

So one quick thing on the code of conduct. The one thing that was interesting to me yesterday was Samantha Eisner, who's deputy general counsel at ICANN, in giving some of her summary did state that they were going back not only to the enforcement but to the actual provision on code of conduct to re-look at it at language, and hopefully that's something that we will be able to have some additional input in, but I think we'll be watching that channel.

MIKE RODENBACH

So back to the new TLD, the guidebook comments. You know, we will have another bite at the apple when the entire guidebook is ready, but obviously now would time a lot of these sections are ones that certain IPC members, and I know Anne, Mark, Paul, Karen at times have chimed in over the years now on this, but Patrick and I discussed a little bit. We put it on the list a few times, nobody's really speaking up and saying we should have an IPC comment about any particular topic. So if any of you think we should, now is

the time to speak up so we can get that organized. We only have a few weeks.

JOHN MCELWAINE Lori.

LORI SCHULMAN Yeah, I want to thank Michael. I thought you did a great job, by the way. I also intervened there and I wanted to share some observations. One, if you're here in the room representing an association, I know that Nick is and if anybody else is, please take care that this disclosure could, if it's read in its broadest interpretation, could require your association to publish its members list. Okay, so this is a very serious thing in all levels.

In terms of the attorney ethics issue, I had a little sidebar conversation with ICANN Council and JJ and Sam, and while they did say they see some of our points, there were other points not necessarily, and when I explained that we went and approached the ABA and we're doing very careful research about this issue and not raising it, what's the word, frivolously. JJ's exact words to me, I'm ready to take on the ABA. Yeah. So I'm just going to put that there. Yeah.

And then finally, very positive news is that Samantha did say in the public forum that it seems like they've made some progress in carving out exceptions for associations, that the association issues raised by INTA have-- they read those. In terms of the attorney, we have a long road to go, a long road, but I'm also tomorrow at 8 in

the morning this time giving a briefing to DC area IP associations to alert them to this issue. I presented a slide show. I have the packet that I'm going to present tomorrow and I'm happy to put it on the IPC list, but I do think there's a sweet spot here. I think this can be resolved, and I even said that yesterday.

Again, informally, I'm running into some members of the Board who asked me some questions, and there is a point where I think we can compromise, but we need this process to slow down a little bit so we can figure it out. So the message was the IPC is certainly willing to continue talking, but if this is passed in its current form, there's going to be pushback.

JOHN MCELWAINE So I'm going to draw a line under that, so I think we have a good email string on it and people can get together and talk about it, but I know Susan has said she has an AOB item, so you have a minute. AOB? Okay, real quick.

MARC TRACHTENBERG I'll just say quickly, there's two parts of the commenting process. There's one part, which is submitting a comment, and then there's the other part, which is making sure that ICANN and the groups reviewing it actually implement what your comment was, because a good example of this was when Lori had a comment submitted that she had a comment submitted to, I think the statement in the guidebook was no string should delegate that representability risk to the internet, right? Pretty good, pretty reasonable statement

that everyone could agree with. I think Lori's comment was something along the lines of I think there's a lack of clarity and security and stability. Could we have a better definition of what that means or what that risk means? So their response was, they just struck the language. And so there's a lot going on. There's like a lot of side discussions in the chat and everything else, and I almost missed it, and I thought--

ANNE AIKMAN-SCALESE No, you caught it, and they agreed to put it back in.

MARC TRACHTENBERG Right, so I eventually caught it, but my point is, like, if I happened to not be paying attention that second, that would have gone right by me. But it's that stuff where it's like, wait a minute, are you properly processing these comments? You know, you can't just strike stuff, because that is something that everyone agrees with that sentence. That's the prime directive of ICANN and new gTLDs, and so we need to be also monitoring to make sure that our comments are well taken or they're implanted properly.

MIKE RODENBACH I mean, things are moving really quick, and to ICANN's credit, in a way, at least they are really sticking to the schedule this time. They're flooding the zone. I mean, they're just dumping lots and lots of stuff, and I mean, what, four or five meetings a week sometimes nowadays, it's really hard to keep track of it.

MARC TRACHTENBERG Three meetings that are two hours each, and they dump 10 documents on you the night before the call. I mean, it's, like, impossible to follow anything.

MIKE RODENBACH I mean, but basically, bottom line is now is the time on these topics. You don't want to wait until the final guidebook comes out, because that's going to also be rushed for sure, and there's going to be lots and lots of comments on the final guidebook as opposed to now, where it's really just folks that are interested.

ANNE AIKMAN-SCALESE Right. Well, I think the final we really want to focus on and make sure that by May, we know what we want to say about it. But very quickly, folks, we need to think about this ATRT4. And I talked to John about this before and asked for the AOB item. But there's continuing talk about the Bering ATRT4 again, and now there's a talk about, Tripti said this morning in a meeting with contracted parties that we need to look at this whole thing and revise the way we do reviews, etc. And Chris Despain, I thought, had a pretty practical approach where he said, well, why not make ATRT4 include a review of how we do reviews if everybody's unhappy about it or whatever. And I think this is definitely not the year to say we're deferring and giving up on ability reviews. So please think about what you think about that because April is their deadline, the Board's deadline to do something about it.

JOHN MCELWAINE Thanks, Anne. Sorry, Susan, you're AOB.

SUSAN PAYNE Well, so actually, it was very similar to Anne, so it's okay. I wanted to flag that the Board's been asking everyone if there's time at their meetings what their views are on reviews, and obviously no one's going into that prepared.

UNKNOWN SPEAKER So on your point, Mark, the policy and implementation working group, and then I think it was followed also by the TRC, whatever it was, developed a really good way of dealing with comments, and that was they would take each comment from each constituency bit by bit and respond to it in a chart form. And I think that was the way to go to ensure that even if your comment or your proposal was not incorporated, there was a rationale for that. Don't know if there's any way of having that be a requirement of moving that through, or certainly it was a best practice that should be followed, and that way you're sure, yes, they've not only published it as their comments, but they've considered it and they have a response to it.

JOHN MCELWAINE Okay, we really do need to let everybody go. Thank you so much for joining this open meeting of the IPC, and the meeting is adjourned. Thanks.

BRENDA BREWER And you may end the recording. Thank you.

[END OF TRANSCRIPTION]