
ICANN84 | AGM – GNSO: IPC Membership Work Session
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BRENDA BREWER

Hello, and welcome to the IPC Membership Session at ICANN84. My name is Brenda Brewer. I am the participation manager for this session. Please note, this session is being recorded and is governed by the ICANN Community Participant Code of Conduct, the ICANN Expected Standards of Behavior, and the ICANN Community Anti-Harassment Policy.

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JOHN MCELWAIN

Thank you. We're going to go ahead and jump right into the agenda. I'm going to yield all my time for welcome, but everybody, welcome. Glad to see a bunch of old faces and new faces here at the IPC open meeting. Just to let everybody know, we're going to have, in terms of discussion of policy work, hard stop at around 11:20 if we need to have a presentation by Heather Forrest on the registration data policy, and then from ICANN compliance on their compliance efforts with respect to that.

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So without further ado, I'm going to go ahead and hit a few non-agenda items here and turn the floor over to David Hughes, our vice president for a brief committee report.

DAVID HUGHES

Okay, so I'll be very brief. Our committee members may want to speak on their own behalf, but we had an effort to reinvigorate our committees and repopulate. We're still working on some membership. So if anybody's interested in participating, let us know. We're always happy to have more members in all the committees.

The big news, I think, is that we reconfigured, I don't know if that's the right word, revived the comms committee. And is Simon here? Oh, here we go. He was there yesterday. I'm just confused. And Simon has now stepped up to be chair. I've agreed to co-chair with him for a while until he's up to speed. But the plans include, do you want me to just go through the list, Simon, very quickly?

SIMON KNOLL

As you wish.

DAVID HUGHES

Okay. So we are going to rebuild the IPC website. Simon has relaunched a new IPC website called IPC LinkedIn that we'll talk about online. We don't have time today. And how everybody can use that to communicate and link into their LinkedIn and post and stuff. And we have the desk outside, as everybody may have

noticed. And we're increasing our presence. Even today or tomorrow, we're going to have a bigger banner behind it.

And we brought candy today. Simon took the initiative and printed up double-sided handbills. Everybody should have a few of those in their pocket if you meet anybody who's interested in IPC. The front side tells what we do and is appropriate for everybody in ICANN, just so they understand what IPC is. And in the back side is the recruiting and QR code for people who would want to join.

So those are the highlights from that committee. Margie, Michael, Jan, if you want to say anything about your committees, they are doing great. I will say, Margie has really stepped up with the policy committee and doing a fabulous job. She's more than pulling her weight. Thank you so much. It's quite a heavy load. Yes, please.

UNKNOWN SPEAKER

Just I want, as you mentioned, that Simon is working on the communication side of the IPC. Just I wish to express my willing to contribute if you need anything in the communication part. Because it's my field of expertise. And if there is another, maybe, is there allocated budget for communication activities in the IPC?

DAVID HUGHES

I think we could discuss allocating a budget, yes. No, I think it's possible, yes.

UNKNOWN SPEAKER

Okay.

DAVID HUGHES

We don't have a specific budget yet, but we're talking now about the budget to rebuild the website. So we can roll that into that discussion.

UNKNOWN SPEAKER

Okay. Thank you.

DAVID HUGHES

Oh, the last thing I should say is, oh, yeah, everybody should take a card, take a couple of cards and pass it on. Last thing was, we did a presentation. Simon and I did a presentation to the, where's Glenn? Where's Glenn? To the IPC fellows and newcomers. And it was very well received. We presented for 30 minutes, and then we got 30 minutes of questions about IPC. So that was very encouraging. And a new member out of that presentation. So it's all good. That's it. I know we don't have much time. Thank you.

JOHN MCELWAINE

Okay. Jan, over to you for our secretary's report.

JAN JANSSEN

I'll be even briefer. I want to shout out to Glenn as well, because she's been fantastic in reaching new members through mentoring. And so everybody should take her as an example as well with these

flyers. We're seeing an increase in interest in membership and really like new members that are really dying to do the work. So that's really, really great. And so there's a lot of new blood coming in. And so I'm very grateful for that.

Then in terms of the bylaws amendment, stay tuned. I think we won't do that during this meeting. But shortly after meeting, it will be circulated. We had our membership lists, our roster really cleaned up because it was long overdue. And I think the last election process went very well. Thanks, Brenda, for that as well. And so we're in good shape to have our new bylaws up for voting.

JOHN MCELWAINE

Thanks, Jan. So I'm going to go now back to the agenda and turn it over to Susan and or Damon to just give us a brief Council report. Thanks.

DAMON ASHCRAFT

Susan, I'll go ahead and I'll yield to you and then I can jump in. Go ahead.

SUSAN PAYNE

Yeah, hi everyone. So we've been having obviously the usual kind of working sessions. We had an informal Council meeting yesterday where we just sort of discussed a few kind of open issues. One of the main ones that unsurprisingly we spent some time on was trying to get a sense of the room on this vote on the

interpretation of the IGO, INGO recommendation that Council will have to vote on tomorrow.

Where we landed was that I think Ann having spoken to the seconders as well had expressed a willingness to withdraw the first three motions. So the options one through three leaving on the table the one which is essentially is a vote on the narrow interpretation of the language with inclusion of some kind of sort of fluffy safeguard language around the kind of things that the Board had suggested in their letter that they would feel they needed to do in order to make IGOs and the GAC aware should there be applications that were problematic.

It looks as though probably that is the motion that will stay on the agenda for us to vote on, but we did have a kind of quick tour of the room to get a sense of whether that had enough support to pass. It's borderline frankly and I honestly, I think whichever motion went forward it's probably a bit borderline. I think it has enough, I think it will pass but it will be tight. I say that not to put any pressure on anyone but it is important that Damon and I do feel that we're confident we've got instructions from the IPC and that were we to vote either in favor or indeed not to vote in favor that is the will of the people because I think every vote will be important.

So again, I mean, we talked about it in quite some length in our closed meeting yesterday but my sense coming away from our meeting yesterday was that our instructions are to vote to support that particular interpretation and so to support the motion but I

guess if there's a strong feeling that I'm misinterpreting that we need to hear it before tomorrow. Thank you.

DAMON ASHCRAFT

All right, so that covers our Council vote. The other very important issue that we're going to be voting on is Council leadership and very pleased as most of you know, Susan Payne is up for chair. She's currently running unopposed and so certainly going to be voting for her for chair and then also for the vice chairs, we don't vote on these individuals but just to share who they are. The two vice chairs are Jennifer Chung from the Contracted Parties. She joined Council with me a couple of years ago and is very capable and very receptive and then also Peter, and I don't recall his last name from the non-commercial side. That's going to be a solid team. So congratulations to Susan we look forward to working with her as our chair. So that's also on there.

The other thing I also want to call to your attention it's a discussion item. It's on the PPSAI, which is Privacy and Proxy Accreditation Implementation. That was a policy that was passed over a decade ago and the IRT has been working on it for 10 short years. I don't think it's necessarily 10 short years, but they've come back to Council and they had some questions on different terms, such as do we use privacy and proximity interchangeably, etc. and there's several different threshold questions.

You'll see in the instruction email there's a detailed document that kind of explains things. Do take a look at that. It's not up for a vote

right now, but that is going to that's going to percolate along. And we've seen this several times over the past few months where a policy has been passed and the IRT comes back oftentimes many, many years after it's passed with questions and there are delays. And frankly, the more delays that we get on these types of things, the less likely that the policy that as it was passed by the Board, as it was intended by the Board is likely to be implemented as it was passed because time goes by and people try to relitigate the issues.

So I don't want to get too deep in the weeds with that, but I want to call that to your attention. Take 10 minutes, read that. It's in your email and then let Susan and I know if you have questions that that is going to be a topic that I think is definitely going to come back when next term when Susan is chair. Does anybody have any questions over anything? Karen?

KAREN BERNSTEIN

Can you just summarize what the proposal is? Yeah, the IRT. When are they...?

DAMON ASHCRAFT

Yeah, the issue isn't the policy itself, it's the implementation of the policy. And the IRT basically came back and there was-- it's hard to summarize and have a short conversation. So I want to be respectful of our time. In your email, there's a link to a document that lays out all the different threshold questions. A lot of them have to do with, okay, what are the definitions of privacy? What are

the definitions of proxy? What happens if they're used interchangeably? Another one of the questions is to, what about unaccredited registrars? And things like, what about if they offer privacy and proxy services?

Those are the questions and the clarification they were requesting. One of the things that did come out of that small team is the non-commercial side of the house is likely trying, is going to push for additional policy work after this is implemented. So this was considered a policy win for us. And there can always be policy work on top of that as well after it's implemented. So it is a significant thing. Heather.

HEATHER FORREST

Yeah, thanks, Damon. I just wanted to say, apologies. Heather Forrest for the record. I've gotten out of practice. I just wanted to say, given this is an open meeting, because we spent a bit of time talking about this yesterday, and I'm sorry, Damon, you were in travel yesterday. You know, just so everyone's aware, it's not just that we talked about PPSAI yesterday. In fact, we didn't talk very much about PPSAI. We talked about IGO, INGO.

And one of the things that we acknowledged in that closed session, and I think it's important to acknowledge it in an open session, is that as regards IGO, INGO, we, you use a good word there, Damon, respectful. We're respectful of the fact that that was a PDP process with which we had some discomfort about the outcome. But nevertheless, we respect the outcome of a PDP working group,

even though it doesn't go our way. And part of the rationale for that is respect for the policy development process. And I think I would encourage our friends around the community to not pigeonhole us on constantly trying to get a win for ourselves.

And I really think we all need to rise above as a community and say, look, that is frankly what the bylaws say in article 11, right? The GNSO makes policy and that happens through Council. And just because we didn't get what we wanted in a particular PDP doesn't mean we're going to undermine it some years later. So I just wanted to put that on the record as regards PPSAI. We're not just here trying to win scores on the Board all the time. Thanks.

DAMON ASHCRAFT

Yeah, I mean, Heather, that's an excellent point. I was on the small team. And I think one of the points that I raised on the small team was ICANN has an issue as far as credibility and getting things done. And so we need to work really hard and diligently when policy is implemented or made, it needs to be implemented and it shouldn't be on a decade process. That's just ridiculous. Sorry, Brian. Yes, sir.

BRIAN BECKHAM

Hi, Brian Beckham for the record. And as Mike Rodenbaugh said yesterday, I've shared views on the IGO topic on the list. So I don't think it's necessary to kind of retrace that ground here. I have to say, well, first something Susan said yesterday, it's not true to say

that there was a clear consensus in the IGO working group. There were minority statements submitted. And in terms of the kind of ICANN perpetual issue of second bites at the apple, I don't think it's as black and white as is being presented here. I think it's clear that there are different views on how the working group recommendations should be implemented.

And I appreciate it's a gray area or potentially slippery slope in terms of the kind of issue of re-litigating and second bites at the apple. But I don't think it's right to be portrayed in such a black and white manner. I think most of you probably know that there's likely to be some abstain votes at the Council vote on Wednesday. So I think that itself is pretty clear evidence that it's maybe not as black and white as is being presented. So thanks.

DAMON ASHCRAFT

Okay, I don't see any other hands for the Council agenda. Oh, Anne, go ahead.

ANNE AIKMAN-SCALESE

Yeah, thanks, it's Anne. I have to agree that it's not totally black and white. In fact, it's my understanding a member of the IGO, INGO will be voting no. And so to portray this as some kind of second bite at the apple or re-litigating, I think is actually inappropriate. But what I want to make sure of, because my main point in all this is that Council is the manager of the policy process. I just want to make sure that Susan and Damon feel that your

instructions are clear to vote yes on option four, motion option four, because there'd been a little fluffing. Was that clarified when we were out?

DAMON ASHCRAFT

I mean, again, I was traveling yesterday, but from reading the room, I think the plan is, is that Susan and I are going to vote yes on option four, absent constructions coming to us to the contrary at the end of this meeting or the end of the day. This is the speak now or forever hold your peace on this issue, but I understand that there's going to be disagreement, there could be abstentions, but Susan and I do need instructions. So thank you.

BRIAN BECKHAM

I'm happy to take this offline, maybe with Susan and Damon and others, but I'm not 100% clear, and I raised that just for the benefit of other people who might be trying to track this. What is the upshot of option four? Does that take us back to option one?

SUSAN PAYNE

Yes, essentially. Sorry, and sorry for everyone, we keep talking in terms of options, but yes, it is the narrower interpretation of what the policy recommendation means in terms of when I say narrower, the narrower in terms of the protection being afforded. So it means that the strings go into a list where they're not subject to string similarity assessment against.

As I've acknowledged before, like as an IP lawyer, that's not what I think would be the ideal outcome in terms of, I think it's unfortunate that that might be the interpretation of the language, but I do believe that is the interpretation of the language. But I also can see that the others differ. What we endeavored to do in the motion was then to add some additional language that doesn't really take things forward in terms of changing the position that would exist anyway, but just reminds everyone and tries to clarify that there are opportunities for objection processes should there be a confusingly similar application.

There are opportunities for the GAC to issue advice on public policy grounds. And that indeed we welcome mechanisms being put in place that would ensure that no one is unaware. Were a conflicting application to be filed, we'd like them to be aware. And so it's essentially around those grounds. So it's not developing new mechanisms or proposing new mechanisms that don't exist, but it is saying, yes, the Board has said in its letter that they would feel they needed to tell the IGOs and the GAC if there were a confusingly similar application. Our response to that would be, yes, please do, please do. And so that's what it is.

JOHN MCELWAINE

Okay, I'm not seeing any other. Well, Anne let's cut this off, honestly. I mean, we've got to move on this. I think where we stand on the instructions are unless we hear anything developing coming

out of this meeting or subsequently, it's to vote for option four, is that? Okay. And I'll just say if there's--

ANNE AIKMAN-SCALESE I think this has to be the stop point. This has to be it. I don't know what would come out of this later.

JOHN MCELWAINE True, that's fine with me.

ANNE AIKMAN-SCALESE And thank you, Susan, because the way you incorporated the Board letter suggestions into the motion that you drafted was very constructive and we appreciate it. Thank you.

DAVID HUGHES I just want to add tomorrow, the 29th, I think that's tomorrow, at 13:15, GNSO Council will have to discuss the PPSAI small team. So if people are interested, they can go.

JOHN MCELWAINE Okay, I'm now going to move on in the agenda and turn it over to Margie for a policy work and participation update.

MARGIE MILAM Brenda, could you put up my slide, please? Okay, next slide. I tried to summarize the key issues because we don't have a lot of time.

And in particular, yesterday, we did not have a chance to talk about the developments in the RDRS. And so I think it's important for the IPC to understand what's happening this week. The Board is going to vote on Thursday to extend the pilot for two years.

As I understand it, it's going to require mandatory participation of the registrars. It's going to address somehow the privacy proxy companies that are affiliated with registrars. It'll have ccTLD voluntary participation. They're going to work on an API. And there's apparently some alignment analysis document that's going to get published at the end of the week.

So it's this really weird notion that the Board is voting to add some improvements to the RDRS in response to the public comments because we had the public comment period earlier this month. But we're not seeing the paper until after they voted on it. And it puts the IPC in an interesting position because we submitted a comment basically saying that we thought the RDRS was not fit for purpose. It needed a lot of improvements before it would be fit for purpose. Some of these are useful. I mean, I'm not going to deny that they're not useful. They're useful, but the one thing I think that everyone should understand is it doesn't require disclosures. It's just a ticketing system, if you will.

So you'll still, when it gets implemented, it will have every registrar in it, but the registrar can take the notice and say no. So the question I think for discussion purposes is what does the IPC want to do going forward? I think many of us had in the past decided that

it wasn't even worth participating anymore because it was so useless to our clients. But if for the next two years, if the IPCs and its clients don't participate, then what does that mean? And so let's have a discussion about that.

JOHN MCELWAINE

So as I mentioned, I was thrilled that you brought this topic up because it's going to really dovetail well into Heather's presentation on the registration data policy and then on ICANN compliances. So the presentation, what people may not realize is that the RDRS runs on the RDP. So the registration data policy is the consensus policy that applies to the request and then the process of disclosing information if deemed appropriate. So that will be an interesting for people to kind of start aligning to that.

And furthermore, if it's mandatory, then you're going to have no other option. You're going to have to use the RDRS. I presume, maybe not have to, but it's going to be--

DAVID HUGHES

It's mandatory on their side.

JOHN MCELWAINE

Well, no, no, that's fine. But yeah, I mean, it's like possible that the only way to make a request then will be through the RDRS. I can't guarantee that, but if it becomes mandatory, that's also likely. So it seems that with that development, there ought to be some involvement in particular too, if we focus on, and I think it'll

become more apparent, on the RDP. So again, sort of the underlying basis for these disclosures, we can have a nice two-prong attack on improving things. Thanks.

MARGIE MILAM

We have a queue. Michael, you're next in the queue.

MICHAEL GRAHAM

Yeah, just real quick. My understanding is that the Board is going to publish their paper on Friday after their vote. And I'm just raising my hand to participate in the public comment that's going to be called for after that, because I think that's going to be very important. And the question is mandatory for what portion of the RDRS? It's certainly mandatory, they say, in connection with the urgent requests. The other, I'm still a little bit cloudy on what they're going to say and how they're going to say it, but it seems that both the Board and the GAC are aligned in putting forward that proposal.

MARGIE MILAM

Damon, next.

DAMON ASHCRAFT

Sure, Margie. If you could just clarify and explain to us, apparently they're going to have mandatory participation. We've heard from years now from our friends in the contracted parties saying, it can't

be mandatory because it wasn't in the contract. So how is that see change possible? Could you just let everybody know, please?

MARGIE MILAM

It's possible through the consensus policy adoption. So as it tags onto the RDRS, that's built into the contracts that if a policy is adopted by the Council and then all the way up through the Board, that it becomes part of the contracts. But the other thing, you're right. It doesn't mean that you can't, it prevents us from going around the RDRS, but the reality is it may be the only way to get your submissions looked at. So that's an interesting thing.

The other thing you're going to find on Thursday, which I forgot to mention, is they're going to reject the rest of the EPDP recommendations. So the Phase 2 recommendations were all or nothing. Remember there was this SSAD that was part of the policy that was recommended. It had accreditation. It had registries participating in it. This does have no registry participation whatsoever, which is a little problematic because NIS2 requires registries to respond to WHOIS requests. They actually have obligations in Europe to respond for legitimate purposes.

So it'll be interesting. And I actually wasn't aware that there would be a public comment. Michael, is that your understanding that there will be one opened on the paper once it gets published?

MICHAEL GRAHAM

That's my understanding. And they are calling it a supplemental policy process, which they believe has already been done and can be followed in this case.

MARGIE MILAM

Okay, so that's the update on RDRS. Anyone else want to be in the queue? I'm sorry, okay, go ahead.

MACIEK PIASECKI

Hi, Maciej Piasecki, a fellow. Glenn is my wonderful mentor. I think this is a good time for a newcomer question given the agenda. I'm especially interested in DNS abuse myself. And I was wondering what kind of skills do you need from possibly new members or people who might not be members but would like to get involved? And that's my question.

JOHN MCELWAINE

So what we need with respect to DNS abuse is new thoughts and help on drafting, particularly like comments. We just had comments provided on DNS abuse where we talked about what would be some good steps that should be taken to get policies made, how quickly can those policies be developed? So any just having that bandwidth of addressing those DNS abuse issues that get asked of us to comment on is I think the main issue and any other new creative ideas you might have for addressing them.

MARGIE MILAM

All right, the next topic is new gTLDs. There is a public comment period open. Thank you. Closes on November 17th. ICANN has been doing these public comments in phases. So this phase deals with RPMs and termination rights and a few other things. We do need some volunteers to kind of kick off this effort because we have it coming up due on November 17th. Is there anyone here that's actively involved in the subsequent rounds that can give us an update on those issues or would like to volunteer to lead the drafting effort with respect to that public comment period?

JOHN MCELWAINE

Real quickly, Marc, I know you've been involved, and then we had the meeting that you just sent around and if there are any changes that could come out in that comment. So you want to talk about some of the RPM changes that are being looked at?

MARC TRACHTENBERG

I mean, who knows what the entire universe of those changes are, but we just discussed a small subset of them. So ICANN reach out to me to have a meeting. They said they wanted to run several proposed changes to the Trademark Clearinghouse by me, I guess, separately, they reached out to John, I guess, maybe Susan as well.

Of course, they didn't coordinate with anybody. They just did it separately. And when John and I showed up for our meeting, and we didn't even really know exactly where on three we're meeting, we're like literally walking back and forth to try and figure out

where they are. Then they tell us they combined our meeting. Which it's fine for us. Maybe it would have been for other people.

I don't know, but basically, they proposed two changes to the Trademark Clearinghouse. The first change they proposed was that right now, when you try to register a domain name during the claims notice period, the registrars hit the TMCH in real time with a query. And if they receive a hit, then they issue the claims notice, right? That's from the first round. What they want to do is they want to change that process so that there's no more real-time query of the TMCH database. And instead, registrars would be required to engage in some sort of regular downloading of the entire file of everything in the TMCH.

And John and I kind of looked at each other, we're kind of scratching our heads and what's that? Yeah. And so the first question I asked was, where is this coming from? You know, are the registrars asking for this? They said, no. I said, oh, the registries? No. The Trademark Clearinghouse? No. Well, where did this come from? They said, well we were sitting around thinking about things and we just came up with this. And I said, why are you wasting your time, like dreaming up things to change about RPMs that doesn't really make any sense. If no one's driving this, this is just a waste of time.

I'm summarizing, but we went kind of back and forth and back and forth. And I said I really, I must be missing something because somebody has to be driving this. And they said, well we just think

it could save cost and time. And I'm like, for who? This registrar's already spent development hours and money changing their process to work in this system. And now you're going to make them change their process again, invest more development dollars in changing their systems to accommodate this new thing.

And then it additionally, like this issue was already litigated in the first round because this exact topic came up. And the reason that we didn't want the downloads is because now you expose this entire file from the TMCH, which has the potential for misuse, especially now with AI analysis to identify gaps in trademark coverage for domain names and different TLDs.

So we said, this already was discussed and decided there's a reason we don't have this. Why would you change this now? You know, if it ain't broke, don't fix it. Just leave it alone. They didn't love that response, although I think they were expecting it.

And so then they moved on to the next topic, which was similarly like demented, which is that right now, or from the first round, the process is when you're going to launch your TLD, you must submit a launch plan to ICANN. ICANN then reviews that launch plan to make sure it's compliant with all the things that you have to do, they approve it, and once they approve it, it's published. So what they want to do in this round is you'd still submit your launch plan, and ICANN would not review it. And then apparently if someone in the community had a problem with the launch plan, they could then complain about it.

And so I said, oh, so you're essentially outsourcing your compliance function to the community. And they said, well, no. I said, yes. And I said, first of all, no one has the bandwidth to review 2,000 or 2,500 or 10,000 applications. People don't have the expertise to do it. And this is clearly 100% of compliance function. You increase the application fees by \$50,000, like this is not covered? I said, no one's going to support this. This doesn't make any sense. And they said, well we're trying to streamline and save costs. And that was very revealing because we kind of knew before, but this keeps reemphasizing to us that they have a significant mandate for cost reduction.

And so that is, I think like one of their top priorities. And I'm sure they're sitting around and meeting after meeting, they're figuring out like, where can we cut costs? I mean, I don't know why they have a trillion dollars, especially from the first round, but regardless, like this is clearly their mandate. And again, we said, look, no one's going to support this. This doesn't make any sense.

I said, I'll propose an ultimate solution for you, which is if you want to reuse overhead, create a template launch plan, and it's going to work for 99% of the applicants, and you just let them use it. And they said, yes, but you're telling us we still have to review it. I said, not if it's a template, that is the point you have drafted the template, they just have to sign off and agree on it. And in the 1% of cases where people do something different, they can just give you a red line of the template plan and that will reduce overhead.

So they kind of like that, but it's not clear whether they're going to move forward with even putting these out for public comment. You know, I asked them not to, hopefully they won't. I lobbied later with Amanda, and I'm trying to crap on it as much as I can. And I just talked to Reg and some other people, and they are not fans of either of these proposals either. So I think the registrar similarly are going to express some displeasure informally, and hopefully we avoid having these even come up in their proposed changes, which would be the ideal outcome.

JOHN MCELWAINE

We got a queue building. So let me hit that. And mention, thank you, because you did a great job of articulating that to them and to everybody here. And it's a perfect example of why. From a policy perspective, we do need to watch for comments on the new gTLD program, because those suggestions were being created by staff coming from a good place. They're trying to save ICANN some money and that's their job, but there were some unintended consequences that Marc very articulately pointed out. So we got to pay attention to these comments, which we haven't been doing a great job with. So I'm going to hit the queue here and just reminder, we have a hard stop in 12 minutes. So Susan, over to you.

SUSAN PAYNE

Thank you. Hi, it's Susan Payne. Super quick. I won't reiterate what Marc said. Completely agree with it. And I did have a meeting as well and made very similar comments without us even having

colluded. So surprise. What I just wanted to say was the base registry agreement, the RPMs language in particular is something that came out of the RPMs working group, the particular language I think that's in there at the moment came out of the RPMs PDP working group.

There was a recommendation essentially that tries to firm up the obligations that the registry operators have to abide by the sunrise and trademark claims. And so it's some brief language that's trying to make sure that that gets captured. It proved to be quite challenging to agree what that language ought to look like, but I think it's ended up in a good place. So, I just wanted to flag, like not all of this in there is necessarily bad, that is probably something we want, I'll volunteer to help with the comments.

JOHN MCELWAINE

Okay. Michael, I'm sorry. I skipped you apparently.

MICHAEL GRAHAM

Oh, that's okay. I was just wondering in that regard, Susan, I was also involved in the RPM review. I thought this was all covered. We looked specifically at the TMCH and this was not a proposal that came out of that work. So yeah, it's a staff created possibility policy. I don't know. I guess it's an implementation.

JOHN MCELWAINE

Okay. Damon, over to you.

DAMON ASHCRAFT

Sure. Marc, thanks so much for going to that meeting and for summarizing it. This whole concept seems a little bit odd. Do you have any insight as to why ICANN would reach out for sort of an unscheduled meeting to get your feedback when they knew it was going to be negative and they didn't want it. I mean, why would they even ask for it? It just doesn't make any sense. Am I missing something in that? It just bizarre.

MARC TRACHTENBERG

I mean, I can only speak to what rational actors would do. So I don't know in this case. No. And John can confirm us too. I think they clearly knew that they were not going to receive a positive reaction. I can only assume that they were trying to more clearly understand what the objections would be to try and handle them and try to persuade us, which they were trying very hard to persuade us ineffectively that this made some kind of sense, which it like clearly didn't.

I don't know. I think there's like some, maybe lack of coordination inside ICANN as well. Because when I spoke to some people later in different parts of ICANN, they kind of knew about this, but maybe you didn't know about all the meetings and we're not as surprised about what our response was. So I think maybe they were just feel in the waters and seeing how people respond, starting with us who

they knew we would really hate it. But I don't think they anticipate that there'll be similar sentiment in other parts of the community.

JOHN MCELWAINE

Okay. Brian, I know you wanted to get in queue.

BRIAN BECKHAM

Yeah, thanks. Brian Beckham, just super quickly. And I don't know if I fully understood, but I just wanted to recall, there was language coming out of the RPM Phase 1 working group that registry operators couldn't circumvent the intent of policies with their launches. So I think that's one thing maybe to look at. And then separately from that, asking the community to review launch plans is it just feels like a recipe for tension and delay. So I'd be interested to follow up with you guys, maybe offline on this.

MARGIE MILAM

Okay. So, there's a public comment, November 17th on the base agreement. And then there's string similarity, another public comment on December 4th. I don't know who's tracking string similarity in this group, but we'll also need a volunteer for that. Anyone? Okay. You can volunteer on the list. We have a lot of things to get through today.

Okay. So next topic is DNS abuse. Earlier in the week there was a session where they went through the comments to the issue report. And the question is how to proceed with exploring additional amendments or revisions to what's being done for DNS abuse. And

there was a debate over whether there should be one PDP, two PDPs. That was seemed to be the approach that ICANN staff was pushing, two issues to be resolved through PDP. And the question was what the timing would be. We did hear some interesting comments from the GAC representatives about wanting to get the DNS abuse issues resolved before the new gTLD agreement is finalized.

I don't know how realistic that is, but it is a pressure point in order to see if there's some way to resolve the issues without having to go through the PDP process, which would be very long, and would result in a policy three years, four years from now, which wouldn't necessarily be good for the community and for all the abuse activities that we're trying to fight.

DAVID HUGHES

So in some of the meetings and some of the discussions, a DNS abuse standing committee has been mentioned or raised or proposed or something and shut down, of course. And we don't have time to discuss today, but is there a way to make that happen? Is there a path to that for us? Not just us for us, for ICANN. I mean, they have an existential threat here. I think until they realize that, I don't know what's going to happen.

MARGIE MILAM

The problem with the standing committee is whatever they come up with has to get resolved some way before it's actually

enforceable. So it's either going to be a consensus policy, which is the PDP route or contract negotiations, which was what we were advocating for in the meeting based on our public comments.

Marc made a good point essentially that if the registrars seem to think that the two issues are ones that they should deal with, they might as well just negotiate the amendments now in a way that they feel like they can implement. And then at least we would have progress on that as opposed to wasting the community's time, not wasting, cause it's important issue, but in the sense that if it can be resolved quicker, why not explore that option? And Marc, you want to chime in?

MARC TRACHTENBERG

Right. I wasn't going to like reiterate my comment from yesterday, but basically my comment was is one or two PDPs really the best mechanism for addressing this issue, which is a rapidly changing issue. It's like, let's create a policy to stop fax abuse. By the time this policy comes out in two or three years, I mean, it's just maybe not going to be so relevant anymore, especially with what's happening with agentic AI and just other things. So people were not very happy with this comment.

But afterwards I got more positive responses where people kind of understood when I was able to more clearly explain what the intent was, which is, let's just find a way to address this more quickly, as opposed to a process is not well-designed for rapidly changing threats. And the comment I was going to make now is if we have a

spirit for the next round why couldn't we have like a spirit for DNS abuse? And so, yes, that group of course cannot make policy. I understand that. But to the extent that you have representatives from different parts of the communities, in particular, the contracted parties, and that small group, we love small groups now.

So we have that small group on DNS abuse who looks at issues, brainstorms on ways to resolve them, gets buy-in from that spirit group, and then basically just goes to the GNSO and says, Hey, this is our recommendation for changes that should be made. And if the GNSO approves it, then the Board has the opportunity to go implement it. And we avoid this snail-paced PDP process, which is very cumbersome and not well-suited anyway. And yes, there's going to be some people in the spirit group that will throw some grenades, but I think you'll have the opportunity to address them and diffuse them more quickly and efficiently in that small group than in a gigantic PDP.

MARGIE MILAM

Yeah, Marc, that's a great idea. Having it be part of the, kind of the new gTLD thing, just another standing committee, and then that feeds into that process that way. Yep. Any other comments on this topic? Heather, go ahead.

HEATHER FORREST

Yeah, thanks, Margie. I just want to point out that I think the theme across all of these three is we're not doing things fast enough. We are not developing policy fast enough. And it also picks up on the previous agenda item as well. I think until we get to a point where, particularly with these highly dynamic areas, and let's face it, our area has always been highly dynamic, right? Until we get to a point as an organization, lowercase O organization, that we can develop policy at the speed at which these policy issues arise, we are going to keep having this problem.

MARGIE MILAM

Thank you. Okay. Next slide, please. Or is there anyone else?

MICHAEL GRAHAM

Margie, real quick on that. I suppose we can't schedule or get a team together for a response based on the fact that it hasn't come out. The final report hasn't come out yet. Do we know when that's coming out? And when it does, and there is a response, I think adopting the suggestion that Marc had of setting up a small team should be part of our response. Thanks.

MARGIE MILAM

This was the public comment. So what happens is ICANN staff produces a final issue report, and then it goes to the Council. So, our counselors are going to have to make those suggestions and so, we'll try to tee up a way of moving forward on that issue when that happens. Okay. A couple of other things going on--

MARC TRACHTENBERG I think one point on that, I think to the extent that people agree with this proposal, maybe it would be a good idea during this meeting to informally kind of float it around to see what other people think, especially registries and registrars, because if they're supportive, this is going to have a lot easier path than if we find out later they don't like this idea.

MARGIE MILAM There's other public comments open on the stakeholder group constituency amendment process. Oh, I'm sorry. Go ahead.

MACIEK PIASECKI Maciek, a fellow. I wanted to ask how common is this practice of, well, I don't want to use the word circumvent, but for the lack of better term the PDP process, and do you tend to do a risk assessment when you propose to do this contract negotiations route? What things can go wrong, basically?

MARGIE MILAM It's not very common that contract negotiations are proposed. It happened a year and a half ago. And so there is precedent for it. And the time before that it was almost 10 years before. So it's a very rare process. Usually, things go through the PDP process, but it's a very long process, and it takes five years before start to finish,

before something's implemented, maybe in 10 years, like we mentioned before on the privacy proxy issue.

Okay. So, we do need some volunteers if we want to submit a comment to the amendment process for constituency and stakeholder groups. I don't know if that's anything that's important to us, but I think we make decisions sometimes that it's not high priority for the IPC. I don't know, John, what's your thought on that?

JOHN MCELWAINE

I'm not sure I know enough about that to comment on it right now. I mean, it seems like it's something that if we can find the bandwidth to tackle, we should at least have people look at it. But yeah, I'd kind of reserve taking a deeper dive to know how hard I really need to twist arms.

MARGIE MILAM

And the other public comment, and thank you for pointing out which is actually an important one has to do with the urgent request issue that issues apparently on a separate track from the RDRS pilot, and it has to do with authentication of law enforcement. And so that's another one. So, we have a lot of comments we need to get IPC on. Anyone want to volunteer for that one, the urgent request?

Okay. Well, we can follow up on the list on that. And then there's a public comment on the Latin American strategic plan and ICANN

meeting dates. And those, we have a little bit more time on that, and we can talk about that on the list. And then the last thing I think I wanted to raise was we're going to be changing from a process perspective since there's so much work and we're not getting a lot of discussion among us on the issues.

We're going to try and approach where we would have weekly policy meetings Monday, the same time that we normally have our meetings, to talk about specific topics. And so, it's voluntary, but it is, I think, a way for us to get a little bit more feedback from the IPC on these issues. My question for the group is, do we want to start those Monday, or do you want to wait a week given that we're all traveling? Wait a week? Okay. So I'll work with Brenda to set those up. And Lori Schulman and I are going to alternate in leading those efforts.

BRENDA BREWER

This is Brenda. Just with a reminder, we do have a membership meeting on the 10th of November.

MARGIE MILAM

Okay. So the next special meeting would be the week after that. I think that's when we would kick it off. Okay, thank you. All right. That's all I have.

JOHN MCELWAINE

Thank you. Well, doing my usual job of not managing time. Well Heather, I'm going to turn it over to you just three minutes late. But

I'm really look forward to hearing you speak on the registration data policy. Thank you for agreeing to do so.

HEATHER FORREST

No worries, John. I'm well familiar with what it means to be voluntold. Good morning, friends. I was worried, John, about 20 minutes. I'm even more worried about 17. But what we'll do is I'm going to do a bit of a crash run through the reg data policy in terms of its substance to the extent that you-- cause I'd, I'd like to open it up for discussion. I know there are some questions about, and I want to make sure we're all adequately on the same page before compliance comes in. Yes, that is the lovely view from my office window. Isn't that cool? Brenda, thank you very much. Can we go to the next slide for me, please?

So again, what I'm going to do is a very even quicker refresh of the reg data policy. I'm going to talk about the topic that's of most interest to us, I think, which is how to access registration data. I'm going to talk about some response obligations, and then I'm going to do a bit of troubleshooting. And ideal that this happens. Well done to John for reaching out to compliance, because I think some of the things I'd like to set you up to be able to ask some further questions of them. And I have some suggestions about what we can do going forward. Brenda, if I might have the next slide, please.

As we do that, I'll just dive in and say, so the reg data policy is now binding ICANN capital C capital P Consensus Policy. That's as of the 21st of August this year. It is, I think the best thing to say in

summary is the latest installment on the dance as it were between contracted party obligations and global privacy laws in particular, the GDPR, but not just exclusively the GDPR. I want to put a little bit of a post scriptum here. I'm not going to talk about it today because there is no time.

But I would actually like to get some views in this community for those of you who are familiar with the NIS2 directive. I think the NIS2 throws a whole another set of questions into this. And I see some nods around the table. So anyone who wants to have a chat about that, great fun to be had, but let's do that because I think it's important.

Suffice to see the reg data policy applies to all ICANN accredited registrars and gTLD registry operators. I think the thing for us to know particularly for the lawyers in the room is that it sets up this sort of dichotomy of 'may' versus 'must' language, things that a contracted party may do, things that a contract contracted party must do. For those of us in the room who remember it, the distinction between thick and thin, it replaces that with this notion of a minimum data set versus what we call a full data set. And I think that is fairly significant.

In terms of what the landscape looks like now, many of the new gTLD registries opted for the minimum data set. Our usual suspects, and sorry, I should have said all gTLD registries, the usual suspects, right, Identity Digital, Google, PIR, Verisign, not at all surprising there, and of course Verisign really never left then.

gTLDs which operate with eligibility restrictions have generally retained a full data set, that's Earth, Osaka, Barcelona, for example. They're not the sort of community that we would maybe vent our frustration at those sorts of TLDs with restrictions on them. Some went middle of the road, interestingly enough, and the way that they did that was just by making the old administrative contact optional. Radix did that, they've got a suite. There's a few of them out there that went that middle of the road route, and I think we're yet to see what that actually looks like.

So, what spits out of RDAP now, I've given you two slides. Brenda, if you can take us to the next one, please. I've compared for you the registry output and the registrar output. Registry output on the left used our own Com Laude domain name as a guinea pig here. You see that the fields are quite different both in number and in substance. You see what I offer, this is what should be spitting out. We'll talk about what happens when this doesn't spit out of the process. All right.

Brenda, if I could have you go to the next slide for me, please. So how can you access that data when dealing with infringement and cybersquatting? I think there's what you can do in principle and then what you should do or what you could do. There's two options really, they're here on the screen, you can make a data disclosure request to the registry and or the registrar. No, you can do both, or you can make it a request to the RDRS. And I think the Board vote on the RDRS is an interesting one because that will change the present position from that being a voluntary system to being

perhaps we call it an involuntary system. I think I'll come back to the RDRS because I think for now and pending that vote, there are some things that we can say.

I'm going to focus my time this morning on that first option, that making a data disclosure request. So, first of all, it's important to note that both the registrar and the registry operator must, again, that must make distinction, right? They must publish on their homepage, a publicly available webpage where their domain services are off from the homepage, which is like the main homepage of that site of that registrar registry, meaning you can't hide it off into some corner. You have to publish a link to how can you make a request for this information?

Brenda, if you can go to the next slide for me, please. And you see, I've given you again, the guinea pig here of where we have this at the bottom of our page. The link there will take you to disclosure requests and access will take you to a dedicated page that tells you exactly what to do. This is an obligation under the reg data policy. That page that you get sent to must specify three things, the required format and content of requests, the means of providing a response to the request or, and the anticipated timeline for responses. So I've given you some examples of what this may or may not look like. Brenda, if you can take us to, we'll just page through the next, I believe it's three slides.

JOHN MCELWAIN

I think it's important to add to that not every registrar is currently doing this. So definitely check to make sure that's being done.

HEATHER FORREST

Exactly why I want to show you. Forgive me, we'll talk about this one. And then I want to come back to some examples for John's exact point. You'll see that the pages I show you are very different. I've chosen you some different examples.

Let's talk then about content, right? Okay. You're sent off to that page. Section 10.2 of the policy says that the required format and content to requests must include the following at a minimum. So again, that kind of notion of a floor rather than a ceiling. All expected stuff here, right. The identity of the request or the nature and the type of the business entity, the individual, these sorts of details, again, for our community within the IPC, things like powers of attorney important, right.

My advice to you, and I can say more about this, is to the extent that this stuff is requested, give it, don't give any reason to have your request turned back. Yeah. To the extent that this is, is what's specified, then go ahead and provide that information. Seems logical, but you'd be amazed that apparently this isn't happening. And of course, I don't necessarily think it's the folks that are doing this for cybersquatting and trademark infringement reasons, but a failure to provide a list of, here's the data elements that I'm seeking.

In essence, incomplete requests are just around the place, and compliance will have something to say to that this morning. Information about the legal rights of the requestor, again, that should be easy for a community looking to do this in relation to cybersquatting. An affirmation that the request is being made in good faith. Again, seems fairly logical and agreement by the requestor to process their own data values.

So with that in mind, if we go to my section 10.1 examples, Brenda, in the next slide, please. Cool. So here we see GoDaddy's page, right, fairly detailed. I want to just put your eyeballs on that in number two. GoDaddy will initiate an investigation and respond to a request within 30 days of receipt. I mentioned something briefly about response times. Next one for me, please, Brenda. Super. So very different style looking page, right? Still a page. This is one, two, three. Still a page that then links to another page. And we'll go on to the next slide, please, Brenda. Forward, please. Yeah, thanks. That's okay. It's got that funny jiggle to it, too.

Okay. In terms of the form and format of your request, yeah, you can see I've given our own example because I can stand behind it. This is to the extent that you're not given detailed instructions like this, that's already, again, that's a must obligation, right? It has to set out the form of the request, what information do we want from you, when will we respond by, and so forth.

Some registries and registrars are using a web form, and to be honest, I think that that's not a bad idea rather than something like

this, or in addition to something like this, simply because that can help to remove the complaint about garbage in, garbage out, yeah? To the extent that you're not getting a complete request, then it's very easy to knock something back, right?

So it's very easy to set up a web form that if you don't fill in each of these fields, then we're simply going to generate a null response. On the contrary, I mean, you know that, and I've seen them, you get requests for apparently Mickey Mouse likes to have information disclosed, yeah? So again, garbage in, garbage out, but to the extent that you get a web form, don't be put off by that, as long as it's setting out in principle, the format of how this stuff has to be set out is not mandated, but certainly the types of information sought needs to be seen.

So let's talk about that time frame things. We mentioned time frame here in the tiny little language on screen. The contracted party must acknowledge receipt of a disclosure request, which meets their required format. So again, do your homework and don't give them a reason to reject a request. Without undue delay, but no more than two business days from receipt.

Now, you notice you didn't see that reference to two business days in one of the examples I set out. They must respond without undue delay, but no more than 30 calendar days from acknowledgement, absent exceptional circumstances.

So we see some variation in how those time frames are dealt with, whether the two days is mentioned, whether it's the 30 days that's

mentioned, whether that in between two days and 30 days is an interim process. Plenty of discussion, as you can imagine, in terms of what without undue delay means. We could spend all day. It's sort of a how long is a piece of string discussion on that one. But I think let's put our time, rather than in the mechanics, let's put our time into the substance of it.

And then in terms of process, right, the registry or registrar must quote, evaluate the disclosure request in a timely manner and determine whether to disclose the requested registration data. Now that evaluation has to consider three things. First of all, legal basis. Secondly, legitimate interest. Thirdly, the data subject's rights under applicable law.

Now, that is a balancing test. The lawyers in the room would be very familiar with how balancing tests work. I think the best thing that can happen, and indeed this is captured in an implementation note, is to the extent that the contracted party sets out how it intends to apply the balancing test. I think the reality is no one's A, sure how to apply the balancing test and B, willing to disclose how they want to apply the balancing test.

To some degree, I have to say, I have, I'm not going to say sympathy, but I have some understanding for that. I agreed to be voluntold for this because I do think I'm in a pretty good position in being able to tell you sort of what happens on the registrar's side with this.

That said, I have to tell you straight up front, I've not received a request through the RDRS, we volunteered, haven't received a single request. The reality is many of the IPC members in the room are our clients and your clients and others like them are the folks who are trying to use this policy, not the folks who are trying to do something to move around the policy. There's an obvious, let's say, I can tell you what should be done. I can tell you to some degree what I'm seeing happening. I'm afraid I can't tell you how, what the magic bullet is on how to get your response to generate a valid result. But Brenda, if you can take us to the next slide, please.

So you're going to get, let's say, and in fact, I'm going to move through the time frame obligation. We've dealt with that at a high level, right, that two days, 30 days. We've talked about the process. In terms of the content, I think this is where we can usefully spend our time, right, is either you're getting your data disclosed or you're getting refusal.

If you're getting a refusal, then you are supposed to receive a rationale for why the data can't be provided, whether that's in whole or in part, including a clear explanation of how that decision was reached, an analysis and explanation of how the fundamental rights and freedoms of the data subject were weighed against the legitimate interest of the requestor. In other words, make explicit that balancing test. And again, if we're not seeing it on the website, we're probably not, not necessarily saying always, we're probably not seeing it in the response as well.

I'm just curious, how many of you have gotten refusals, but not received that kind of explanation? John, I know. Yeah, yeah. Okay, all right. So it's an interesting point that I think needs to be brought up with compliance. And I think compliance will say how do we evaluate whether or not that response is fulsome. In my view, as the IP community, right, firstly, I think it's fair to say that we have had some difficulty within ICANN in recognizing that the legal basis and the legitimate interests of an IP holder are indeed legal bases and legitimate interests, right? So that's one starting point. The presumption seems at times to be, you got the UDRP, now use that.

I'm a little bit put off by the discussion this morning about how we got the TMCH, use that, is suddenly apparently on up for discussion. So I think that's one to be explored. Secondly, there is a genuine risk of action against the disclosure for breach of data subjects' rights. Yeah, that's not false. Yeah, let's make that very clear. Although I don't receive a mountain of these requests, I am nevertheless live to it every day that if we had an issue, if the information commissioner's office in the UK came to me complaining.

Now, I think there's a distinction to be made and it's an important one for us to bear in mind. I think the individual armed request, I don't lay awake at night, staring at the ceiling, waiting for a complaint from one data subject. What I do wait for is systemic, evidence of systemic abuse of data subject rights. That gets me in trouble with the ICO. And I can appreciate, let's say, the distinction between the two. And I think that's important here. And if we are

looking at registration data requests on their merits, then we should be looking at them as an individual request. Yeah. It's only when there's systemic activity that I think that the contracted party needs to feel concerned.

Again, perhaps I could be told I'm rich for having this discussion because I have yet to receive anything through the RDRS and so forth. But this just isn't the sort of complaint that we receive. Let's talk about troubleshooting because I think that's the best points to be gained here. So what can you do? First of all, if you are not getting any response at all, that's the clearest case for an ICANN compliance issue, right? Okay. John's pointing at his watch. Brenda, could you take me to the final slide, please? So you have-- oh, well, sorry. There it is. Good.

If you get no response, so, whoops, we have, I've got on the slide for you when you see them, you have in essence those four options on screen, right? First of all, try both. Secondly, try RDRS to the extent that you have someone, to the extent that this thing remains voluntary. Ultimately, ICANN compliance, right? And let's talk to them. They will have some facts and figures for us this morning about how they're going to police that. And then, of course, you have a UDRP, which is a costly option and so forth.

So I'm more than happy. We didn't have a great opportunity to talk about these things in substance. I'm more than happy to put together a small group of heads if you want to talk about this further. John, back to you.

JOHN MCELWAINE

Thanks. Let's go ahead and bring-- I see Jamie and his team are here. So bring you guys up to the table. And I think, Brian, while they're getting set up, if you had a comment and Marc, if you had a comment.

BRIAN BECKHAM

Yeah, thank you. And I'm curious to hear what Jamie and his colleagues have to say. But just, Heather, since you mentioned the Information Commissioner's Office, I would throw into that list, in addition to ICANN compliance, national regulators. This is from the ICO website. This is a header of a section. Data protection is not an excuse when tackling scams and fraud. And there's some quotes and information. So I think, yes, ICANN compliance, but also I would think about national regulators. And I think, to be frank, a test case on this would be welcome.

JOHN MCELWAINE

Marc, over to you quickly.

MARC TRACHTENBERG

I'll be super quick. First, a proposal. I think it could be helpful if we maybe draft a template request form for the IPC, including all these timelines and everything else that you could refer back to. So I think that would be helpful. And then just a second quick comment. I think for this balancing test, it depends a lot on a variety of factors, including where the registrant is and whether the

GDPR applies or not. And I think we have to understand the reality of registrar and registry businesses in order to be successful in what we want to accomplish, which we aren't always so much.

And so here, there's frankly not much incentive for them to disclose because there is significant potential liability, whether it's legal liability or whether it's the cost of dealing with a complaint that a customer makes to the data authority, which they still have to deal with. They have to respond. I mean, it's going to cost them \$20,000 to get a lawyer to respond to this one complaint because the customer is pissed off that they disclosed the information and that happens. I know that it happens. So that's the reality.

And when you look at things like GDPR, legitimate interest, well, a court order from the U.S. is not a legitimate interest. It's specifically excluded. So just for context, there's now liability. So when a registrar receives a court order to disclose information from the U.S. and the data subject to the customers in the EU, they now have a big problem. They're not sure whether to comply with the court order of the U.S. or whether to risk being in violation of their legal obligations in the EU. And that's a real problem.

So I'm not giving them a pass. I'm just pointing out that we have to be very conscious and understand what the actual issues are for them in order to try and craft a solution that will maybe not be so painful for them and can give them more incentives to comply. And maybe those incentives are on the other potential legal liability, which is not meeting their obligations under NIS2 or other things.

But again, we need to be thinking about these types of things to make sure that the incentives for them align with the outcomes that we want.

JOHN MCELWAINE

Thanks for those comments, Marc. Well, it's certainly a good amount of education that needs to go on. I think judging from some of the nodding going on at this table, people are learning about the registration data policy from a requester side. I'm thrilled to have Jamie and his team. We have Leticia Castillo and Amanda Rose here from ICANN Compliance. I'm not sure who's tackling the presentation, but I'll turn the floor over to you guys to tell us a little bit about how ICANN Compliance is dealing with this.

JAMIE HEDLUND

Sure. And I will turn it over to Amanda, but I just wanted to say thank you for having us.

AMANDA ROSE

Amanda Rose with ICANN Contextual Compliance. I will be giving the presentation. Thank you for proceeding with the requirements so I could skip that part. I appreciate that. I'll mainly just jump right into the observations that we've had and the types of complaints we've received. We have a pretty small sample size, but you can go ahead and skip to the first slide.

Okay. So essentially, since the August 21st, which is when registration data policy went into effect, we have only received a

total of 22 complaints concerning disclosure section 10 of the registration data policy. That, of course, is a month and a half, a little bit more than that. So it is a small sample size, but it also reflects pretty consistent numbers with respect to obligations that were under the temporary specification before under section 4.1, I believe it was. It's obviously evolved and changed since the new requirements went into effect. So we see some variation in the types of complaints we've received.

However, the second slide or bullet there is showing that a number of these are under privacy or proxy service, which is a trend that we've seen since 2018 when most registrars immediately went to redaction. A lot have now transitioned to providing privacy or proxy service in lieu of redacting. So they'll give the option for registrants to apply that service. As of now, I believe most are probably aware of the PPSAI policy implementation or policy work that is ongoing that deals with disclosure of privacy and proxy services, but currently proxy services is outside of scope of section 10. So when we do get complaints that involve a proxy service, those are outside scope that we can do under section 10. So those are subsequently typically closed if it doesn't have another underlying obligation or concern that we can see.

Proxy service is a little bit different because the registrant is actually the customer as well. So there is some application of section 10 to privacy services that we will be able to pursue as that is considered redaction in terms of the registrant identity, so the name or organization that may be redacted. As you can see, the

numbers there, again, the percentages are with that small 22 number, but 23 of those were utilizing a proxy service and 14 were under privacy. So they were valid or within scope. I know specific to the obligation to publish or process a mechanism for requesting registration data, we've received three complaints out of those 22 that referred specifically to that failure to provide the link.

And I know I saw a number of hands on what people have observed, I think, with respect to not having that in a registrar's homepage. It must be, as was referenced earlier, linked to that homepage. So typically, what I've observed is that it's at the bottom, as the example showed, the bottom of the webpage with the link near the terms of services or legal disclosures, that sort of thing. So just random observation, I guess. We do always check when we do receive a disclosure complaint. We will go and see if that is there, whether or not the complaint is regarding the failure to link. We do check that proactively.

We can go to the next slide. Which is the next slide is the metrics, more specific metrics on the complaints that we did receive. Again, 22 of those or I'm sorry, 22 complaints of those 12 were closed as out of scope. So that can be various things. Again, I said the proxy service is out of scope if the response isn't provided to like requests for evidence. So we want to see the actual request that went to the registrar and any correspondence. And if someone doesn't reply to compliance, that'll just automatically be closed. But those are typically the two reasons that those 12 would have been closed.

Eight of the 22 resulted in registrar investigations. And two of them are just we hadn't heard yet from the request for additional information from the complainants. Of those eight that we did initiate, all of them actually we included questions regarding the failure to link the processes on their webpage. So we are seeing a significant number where they have not yet implemented that. I guess not significant again. It's a small sample size. But of those we are investigating, we have seen most of them that we need to follow up with some questions on that in terms of their compliance.

Five of those actually did not involve anything to do with an actual request and response and fulfilling those requirements. And that might be, for example, that was under proxy. So that request was out of scope, but they still have failed to include the required publication. And the other three addressed both the webpage and the disclosure obligations and processes. Can you pop that link in? Okay, perfect. There's the link to the complaint form that we use for, or that anyone can use to submit a complaint to us there. We can go to the next slide.

We are including questions in our registrar audit. This launched in July and because it launched in July, it asked like, is the registrar implementing measures consistent with the temporary specification or are they implementing registration data policy? Hopefully they all respond registration data policy since it is after August now. So we will be checking to make sure of all of the

oddities that are responding that they have fully implemented section 10.

We have specific questions that we posed one, making sure to have that link to their processes, but also to explain their process for reviewing and responding to requests for non-public data, checking those against the procedural requirements that are in section 10. If they have processed a request and denied a request, we're asking for an example of that to ensure that it does include the detail that was discussed previously of what must be in a response, including if applicable, the balancing of interest.

Just to clarify, that requirement is if applicable because not all jurisdictions require a balancing test, that's actually GDR specific. So if that's not included, it might not have been required. So just to keep that in mind, the previous portion does say they have to explain their analysis. So their analysis might not be GDR specific, but it still must have a level of detail to fully understand the reasons for the denial. So just a little plug.

If you're submitting a complaint because the content of the denial is not adequate under section 10, then just be specific in that. That'll help us to narrow down what we're looking at. And we will, of course, review any response, but it just helps to include that in the explanation of the complaint. And if it's actually just about failure to publish the webpage, that's great to include as well. We're trying to figure out is this actually about a disclosure request and denial and failure to meet those requirements, or is it just

about the webpage? Just indicate that and we can just promptly get that out because that's a pretty quick thing we can check. Okay. Next slide.

We have just started this past month for September was the first month we created a new report specific to disclosure obligations. It will be published each month. Usually about the middle of the month is when the prior month will come out, but Leticia will provide a link to that report. It includes the volume of complaints received, the reasons for any closure of Atascope, as well as the reasons of any closure for post-investigation with a registrar. We have all new explanations on that. It'll explain the results of the outcome of the disclosure decision as well, so it'll give you that level of detail.

And then it's not included in the current September report, but a future report will also include a new chart that explains is this under privacy? Is it under proxy? Is it actually redacted? Which will hopefully help inform the community with respect to once we do get PPSAI into implementation, if that does occur, how those will be impacted once those are brought into within scope of disclosure obligations.

I think the next slide is just a preview of the report. The coming soon chart is on the right here, and it'll look more similar and prettier once we get on the report itself, but the chart on the left is the actual chart that's currently published for September. And I see

we have three minutes left, but that's the end, and I'm happy to take any questions.

JOHN MCELWAINE

Thanks. I'll go ahead and kind of kick things off. So with respect to 10.6.2, I've been doing a lot of work with the RDRS, one of the biggest themes that I've had is this failure to communicate, which is what I love about the RDP, is that it does have a requirement that if that a response to a request must either provide the requested data or provide the rationale for why the registry operator or registrar can't provide the data, they have to provide a clear explanation of their decision, etc.

You know, I could file compliance complaints when I don't feel like that has gone on, but I think that will be just a conversation between me, that registrar, and I can't compliance. Has there been any thought about having some sort of like best practices document or some way for the community to understand what it means to comply with that 10.6.2 in terms of when a denial occurs, providing that explanation? You know, to Marc's point, they ought not have to go out and have a legal decision drafted that provides a lot of information, but there needs to be something more than just saying we think that the applicable law undisclosed prohibits us from providing that.

So it's just sort of a stock answer. Has there been any discussion at compliance how we can, as a community, come to a better

understanding as to what that rationale, that level of the rationale ought to be?

AMANDA ROSE

We have not talked about that. That's something we can certainly consider going forward. We definitely do have complaints that we are processing regarding seeing how much detail is there, and that's a new obligation, so it's something that's we're starting to see more and more of. So we have, again, I'm going to say it again, but a very small sample size of these responses. So I have yet to see a lot of what this means in practice.

One thing that is great that I like about this policy is that obligation is there, whereas it was not in the temporary specification. There was no response requirement articulated in that and not even a level of detail that was needed. We interpreted reasonable access to require a response, but as far as like this level of detail, that is new. So it is something that I have not seen a lot of samples of, but it's certainly something that we can consider, like I said.

JAMIE HEDLUND

This is Jamie Hedlund, if I could just add. I mean, we've issued advisories in other contexts, and this might be another one that's good to do and be happy to take your input on what would be helpful content for that.

JOHN MCELWAIN

Yeah, that sounds like a great idea. Any other questions? We are at time, but real quick one.

MARC TRACHTENBERG

Thank you for this presentation. It's really useful to know, and pardon my ignorance, but in these particular decisions, once they're made and they're reported here on the dashboard, are these actually then available for view? And if so, where and how? Thanks.

AMANDA ROSE

You mean the decision from the registrar to the requestor? Are those visible?

MARC TRACHTENBERG

No, the decision in compliance once you've received a complaint and then made a decision one way or another.

AMANDA ROSE

So once a complaint is closed after investigation to a registrar, it is documented. I think it's the third chart on the report, and it says exactly the outcome of our investigation. And I'm not sure if I'm answering your question or not, but it also includes the outcome of the disclosure decision in that explanation. So it'll say like either they demonstrated compliance or did not. And then with that, whether they demonstrated compliance and the request was granted or denied or whatnot.

MARC TRACHTENBERG But other than in this chart or just only in this chart?

AMANDA ROSE Just in our reporting, correct.

MARC TRACHTENBERG Thanks.

JOHN MCELWAINE Okay. I don't see any other hands and we are at time. Thank you so much for coming out and presenting on this topic, and we look forward to engaging with ICANN compliance on these issues and others. Thanks.

JAMIE HEDLUND Thank you. Thank you again for having us. We're happy to come anytime.

JOHN MCELWAINE Thank you very much.

SUSAN PAYNE Super quick AOB, just to flag tomorrow at 9 a.m., there's a kind of GNSO coordination meeting on the review of reviews. I think originally, we'd hoped we might have time to have a kind of update on what's going on in this meeting, but we ran out of time. But if

you don't have anything else on your schedule, then do look at going to that 9 a.m. session. It's not completely irrelevant to the IPC. We've had concerns about things like structure and other issues. And so just going and hearing what's being discussed and expressing views about things like what should the future of reviewing ICANN look like is worth attending if you have time.

JOHN MCELWAINE

Thank you for that AOB. Okay, we'll conclude this open meeting for the IPC. Thank you.

BRENDA BREWER

The meeting is adjourned. You may please stop the recording.

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