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HYDERABAD – GNSO - Cross-Constituency meeting between the IPC Registrar Stakeholder Group (RrSG)  
Thursday, November 03, 2016 – 12:15 to 13:45 IST  
ICANN57 | Hyderabad, India

GREG SHATAN:

Hello, and welcome to the Intellectual Property Constituency Meeting with the Registrar Stakeholder Group. I believe we're being recorded. This is an open meeting but hopefully still one where we can have a frank and robust exchange of ideas, as they say.

I expect us to have many points of common interest. As a matter of fact, our first agenda item is identifying areas of perhaps common interest.

I feel like that's a good sort of Kumbaya place to start our meeting. Frankly, I do think there are areas where registrars and the IP Community have common interests in a smooth flow of things.

I'd like to open the floor because nobody is going to want to hear me talk for much of this meeting and somebody else has to talk to give Michele a rest, so we'll open the floor.

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**GRAEME BUNTON:** Let me just say thank you, Greg, for reaching out. The registrars appreciate being here. We enjoy this dialog, and it's often spirited and fun. It's good that we do these meetings and find those areas of common ground because it's helpful going forward.

This is quite open, so if you have while we're talking about areas of common interest or concern, you should feel free to run up to the mic and start that chat. Does anybody have a good one to start with? Ah, Steve.

**STEVE METALITZ:** Thank you. One thought that occurred to me, I think some of the other things that were added to the agenda later may also be areas of common interest, but one that I think we actually talked about a little bit in Helsinki was the question of transparency in the compliance process.

I think both from the IP perspective and from the registrar perspective, there are times when Compliance does something or doesn't do something, takes some action on a particular complaint and we're left puzzled by the justification and why they did it that way and what can we draw from it for future reference.

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I don't know. It may be that these questions that you guys have don't overlap with the questions we have, but I think there might be some areas of overlap and even so, there might be a common interest in having a more transparent compliance function.

With the compliance function obviously undergoing some change with Allen Grogan's departure and a new position description for consumer protection just being posted, I guess, this might be an area where our two groups can work together, or at least interested people from our two groups might benefit from a discussion. Thanks.

GRAEME BUNTON:

Thanks, Steve. There are certainly pieces of the compliance process that the contracted parties would not want to have be transparent as we're working through our dirty laundry, but perhaps we can maybe narrow that question a bit more and figure out — I'd be genuinely curious myself to hear which pieces you think should be more transparent and in a more narrow, concrete way and then we can figure out how on side we are for those sorts of things.

STEVE METALITZ:

Well, one example that has come up in the past is when a complaint is dismissed, it's usually just said—there's usually no

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real explanation given. A compliance complaint or the registrar responded appropriately is the reason given.

We're not trying to open up a new appeal process or anything like that, necessarily, but it would be good to know if there's something we can learn from that. For possible future complaints, that would be good to know. That's just one example. I think there may well be others.

I'm not suggesting that we hammer out a list of examples here but maybe if we have people that are interested in further discussion, we can get that started.

MICHELE NEYLON:

Thanks. There is a kind of a balance, I suppose, between I think maybe trying to satisfy your frustration but also maintaining the level of confidentiality that is required in order for registrars and others to be able to resolve reported issues.

Now, I suppose the frustration on your side probably stems from you getting a standard response saying, "Matter resolved," or something like that, so maybe breaking that out a bit further into some kind of generic buckets might help. I don't know.

I personally wouldn't be comfortable with saying, "Oh, yes, sure, make it completely transparent. We can put everything out

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there. That's grand. There'll be no problem whatsoever," because I can see that becoming a massive headache for everybody.

But in terms of maybe buckets of how these things were handled, maybe that might help you. I don't know. I'm trying desperately to throw you a bone here.

GREG SHATAN: If I could step into the middle of this literally.

MICHELE NEYLON: Do you really want to step in between the two of us?

GREG SHATAN: Probably not, but at least I can help fill the group. But the way I look at this, when you have that language, as you say, it's kind of very boilerplate language. It tells you nothing. In my lawyer life, that sounds like the kind of thing that you do when you've settled the case between the parties and you don't want anybody to know whatever happened. "The matter has being resolved satisfactorily, and the parties have no further statement."

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It's intended to tell everyone to move on and that is not conducive to understanding when, in a sense, if you're the one who's made the complaint, you feel like you're kind of a party and yet you weren't invited to the party and you don't know how anything ended up at all.

So I think perhaps the idea of at least a layer more of information being provided so that there's at least some understanding, some visibility into what's happened.

MICHELE NEYLON:

That's kind of what I was hinting at. I think I can understand your frustration because speaking personally and not on behalf of anybody else, I do report stuff to Compliance from time to time as well and then six months or later you get a response saying, "This has been resolved," but no actual reasoning behind it apart from, "It's been resolved." So I suppose if you would get slightly below that, in some respect that might help.

But at the same time, it wouldn't help us feel comfortable sharing information and working with Compliance in a collaborative and positive way if we were, as to use whoever's phrase it was, airing our dirty laundry. I've got really smelly socks.

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GREG SHATAN: Kiran Malancharuvil is at the mic.

KIRAN MALANCHARUVIL: Lovely image, Michele. Thanks for leaving us with that while we're eating lunch.

MICHELE NEYLON: You're always welcome. You know that.

KIRAN MALANCHARUVIL: I think that a way to think about this area of common interest as truly an area of common interest is to think about the ways in which we've clashed in the past on this issue about responding appropriately, for example, which is the language from the 2013 RAA, which has caused a lot of tension between these groups traditionally.

I think that if you consider that giving us more information – and nobody is asking registrars to air their dirty laundry or to give us any confidential information about registrants or anything like that in this context – but rather to give us more information about what it means to respond appropriately from your perspective, would be something that's very valuable function for us when we talk about transparency with compliance.

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Whether you are thinking about that in terms of buckets or whether you're thinking about that in terms of additional detail from registrar to registrar, anything that gives us more information about that would help us, I guess, eliminate some of the requests that we're giving to you.

At least from my perspective and from what I understand, our clients are perfectly willing to have a better understanding of what respond appropriately means so that they can stop spamming you with requests that you're not going to honor.

But without the information about why the registrar responded appropriately and what that means and what you guys consider respond appropriately, we have no way to tailor our request to you to what you're actually going to do.

I think an area of common interest is we don't want to waste our time asking you to do something you're not going to do. You don't want to waste your time reading a bunch of requests that you're not going to respond appropriately to or that you're going to respond appropriately but not in our opinion.

So truly this is an ask in which we can come together because we do have a really significant common interest in tailoring requests to you, or at least some of us do. I think most of us do.

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So I don't think that it's a contentious area at all. I think that that's an area we can come together. Thanks.

GRAEME BUNTON:

Thanks, Kiran. I think that's a good point. There is a lot of truth to cleaning out those queues and making sure that what's coming in and what's going out is usable for everybody.

It sounds like maybe that's a place for us to have a conversation with Compliance and figure out what Compliance is comfortable sharing, what we're comfortable with Compliance to share, and then we can move forward from there and see what pieces make you guys a little bit happier.

And like Michele was saying, it's not just—and I can see Maggie's in the room back there. Hi, Maggie. Our own tickets with Compliance are often not resolved satisfactorily or the information is, and so I think there's room for improvement there.

GREG SHATAN:

If I'll just weight in a little bit more, I think we all want to learn and we're picking up on how to be better at submitting compliance issues or issues to Compliance and not make requests that don't make sense.

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The only way you really—a major way in which one learns is iteratively, and if you can't learn anything from the experience, you're always on the ground floor. So something that helps inform us and, as you say, you also submit tickets, and we all need to see better how things get resolved. I think this, to some extent, goes into our topic on abuse reporting and response practices as well.

And generally to the fact that I think that for both of us, we have communities which are largely composed of good actors but that we each have our crazies in the attic and they don't benefit the ecosystem for either of us . So the more that we can mature all of these processes and make it more obvious to people when they are off the reservation, then we have a better chance of working together.

MICHELE NEYLON:

Just very briefly, we need to talk about this. Are you talking about—you seem to mingle two potential things: One is ICANN Compliance's response to your complaints to them, and the other is our response to your direct complaints to us as registrars.

Let me just break that out a little bit further. If you're having problems with registrars who you see and know, in other words

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like me or Graeme who's also here and others, if you're having specific problems with us, then why aren't you talking to us directly and just asking us directly, "What the hell do you mean by this response?"

Or are you having issues with the oft-used term in ICANN spaces of these "awful bad actors" who nobody seems capable of actually naming by name. Because if you're having problems with specific bad actors who aren't actually people in the room, how about you just actually name them and let's talk about them specifically so that the Compliance can actually focus on dealing with them instead of us ending up wasting a huge amount of time dealing with issues that aren't actually impacting us directly. That I think would be more helpful.

I don't know. I'm not trying to be combative here. Is it that you're having problems with some of us, or is it you're having problems with people who aren't here? I just want to understand better the problem.

GREG SHATAN:

I do agree with you Michele. I think we've probably mingled several streams here. Maybe we need to pick them apart. Maybe the answer is, "All of the above," but in different ways and I see Kiran back at the mic.

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KIRAN MALANCHARUVIL: First of all, I would like to point out that we should be more careful about comingling the issues because I think that we risk losing ground on something that we do have common interest on like compliance transparency to a point by talking about something significantly more controversial like abuse responses from registrars in particular.

I think on Michele's position about bad actors and why don't we name and shame them, in a lot of situations, we and our clients have ongoing disputes with these "bad actors" we'll call them, right? And so it's not productive for us or for our clients or for our internal processes and for our enforcement efforts to name and shame them, but that doesn't mean that we aren't dealing with them as best as we know how with our internal processes.

I think that the vast majority of the people we have issues with are not in this room. I'm not saying that they all aren't in this room, but I think that we know how to have direct dialog with the people that we've had issues with that attend ICANN and that's, for example, what this group is all about, right?

But I think it's also really important to note that we don't want to keep our processes as an individual who has a relationship who can have a conversation game. We want to create policies

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that are equally applicable to those of us that have the resources to have lawyers who come to ICANN who can come here and know who you are and know who Michele Neylon is and know who Graeme Bunton is and be able to talk to people directly.

We want individuals and small actors to also be able to avail themselves of policies that relate to transparency and enforcement functions that are all above ground.

It's a nice thought that everything can be relationship-based, but we're a privileged few that can have a relationship-based situation when we deal with issues with registrars. I think instead we should be aiming at policies and procedures that are equally applicable.

**GRAEME BUNTON:** Thanks, Kiran. Maybe this is a good place to segue into the Abuse Reporting topic.

**GREG SHATAN:** Actually before that, I'm just going to be very bold and disagree slightly with Kiran and say that I think actually the idea of raising complaints with registrars and recognizing for some of them, the bad actors, it can be useless and that you need compliance. But I think that perhaps encouraging those and those beyond us few

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who can tell Michele Neylon from Graeme Bunton on sight, that they also should have a feeling that if they go to a good majority of quality registrars, that they can have a reasonable dialog about whatever it is they would otherwise submit a compliance ticket on.

There's a tendency to often ratchet things up a little quicker or to rely on structured processes and sometimes, again putting my lawyer hat on, sometimes I've accomplished far more by just picking up a phone and saying, "Hey, you may not realize this, but the thing you did is infringing my intellectual property, my client's intellectual property," rather than sending them some two-and-a-half page stiff cease-and-desist letter. A lot of times when I pick up the phone the person says, "I didn't mean to do that. I didn't realize that. I really appreciate your telling me this in this way and not turning this into some sort of battle royal."

I think looking for and encouraging a more mature professional dialog when issues arise and finding ways for each of us in our community to say, "Hey, you know you can contact most registrars and they will deal with you like a reasonable human being if you in turn are a reasonable human being," and then you're going to find a few people on both sides who are not reasonable and may not even be human. Thank you.

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GRAEME BUNTON: Thanks, Greg. Maybe I will segue now into the Abuse Reporting because I think it is quite tied to this issue. Let me give, maybe, some context for the people in the room, which is a number of registrars agreed to try and work on a—it's not a Best Practice – but it's sort of an agreement on what are general purpose abuse reporting requirements.

We came up with an initial draft that was hilariously huge and poured everything into it and it was a monstrous document that no one was satisfied with. Then it went through another edit that, no, that one was just generally terrible. It went through a third edit where it became too unspecific and broad and not enough concrete action in there. We're now working on the fourth version of this thing.

I'm hoping to have the draft I'm working on sharable by the end of this meeting, before the end of this meeting. It depends on how the jetlag kicks in.

One of the pieces that I'm putting in there, and this is still up for discussion amongst registrars too and we'll see how people feel about it, is that the document sets out the general abuse reporting requirements. If you're submitting any abuse complaint, it should have all of these pieces of information. And then for specific types of abuse, there are these other pieces of information that we need.

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But it seems sensible to me, and other registrars may disagree and we'll have this conversation in our Constituency Day, about, "Okay, so if someone has submitted all of these pieces, what are the things that they should get by default back?" That would be a response that: a) we acknowledge that we have received that abuse complaint, b) the approximate time to complete an investigation into that complaint or the usual amount of time.

A response when that investigation is completed and if we can't give more insight into the completion of that investigation, some indication as to why. That could be things like it's now a law enforcement investigation or there's registrant safety issues involved, but to try there and give a bit more transparency into that abuse reporting process.

So even if you're not getting what you want, which is going to be all the time, you'll get some clarity into that.

GREG SHATAN:

I for one I'm extremely happy to hear the progress that you've made on the Abuse Reporting Guidelines, whatever you want to call them, the Practice Manual. Neither best nor current nor consensus, but that was one of the questions that has been on my mind is this document. We hopefully would like to give input

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on it in draft form since we're kind of representing a piece of the other half of the equation.

I think it very much behooves us to deal with the people who send you rancid pieces of tripe and expect you to treat them like valid complaints and have something that can be pointed at and say that, "No, what you've sent is a rancid piece of tripe."

We need to have a good understanding of what's where, but I think that setting expectations in the document and having something to point to I think will be hugely helpful in avoiding a lot of missteps. And then the fact that it may actually be done by the end of Hyderabad, or I assume thereafter is a full night's sleep and a couple of more days of editing might do, I think is really good so thanks.

MICHELE NEYLON:

Just on this entire thing around the abuse reporting, just bear in mind as well that there are multiple spaces where this is being discussed, not just within the ICANN space. It's also the infrastructure coalition we're running. We have a — what are we calling that group again — I think we call it the Public Safety Working Group where we're looking at it.

It's also being discussed at [MOG]. APWG are also looking at it. There are also some other discussions that are being held within

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the numbers community around abuse reporting, and also the Internet Jurisdiction Project as part of one of the deliverables even last year had a draft reporting template type thing there.

But one thing just from being involved in a lot of these different efforts is specifics and examples. One of the biggest issues we've all seen is people just submitting things like, "There's a problem with this IP address," or, "There's a problem with this domain name," and not telling you why or how or where or whatever.

So I've been picking on MarkMonitor, for example. I'm sorry Kiran, come on. You had it coming to you. They act as registrar for a lot of big brands. They're a registrar as well, so I'm sure they get some charming abuse reports for things like Google.com.

I wouldn't expect you to care, and that's okay. But the thing is that it cuts both ways. In getting reports, we've had reports from people reporting blackknight.com to us, which I thought was rather entertaining.

We need specific examples of what it is and also don't assume that we know what the hell we're looking at or that we can see exactly the same thing as you can. Some of the people abusing resources are very, very clever. They will do things like they will target it to a specific IP address, a specific ISP, a referrer, a whole

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bunch of other things. So sometimes if you send us a report, I'm going to come back to you going, "I can't see this. I don't know what the hell you're talking about," and I'll close the complaint.

Well, on the trademark side I've had one repeat offender who keeps on telling us that our client is infringing his trademarks but he won't tell us which bloody trademarks, even though we have asked him repeatedly.

These are just a couple of simple little examples, but the ones around providing more evidence is good. We are not experts in everything so sometimes we're going to close your report just going, "Can't see it. Don't know what you're talking about. Moving on to something I can actually deal with." Thanks.

GRAEME SHATAN:

Thanks, Michele, and just for everybody's edification, in this Abuse Reporting Practices document, there are semi-extensive guidelines for that information we're looking for in an abuse complaint to make it actionable, including things like screenshots and context and all those pieces that a registrar builds to understand what's happening. We're belaboring this now but, yeah, we get lots of—what was it, tripe? The un-actionable...

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GREG SHATAN:                      Tripe.

GRAEME BUNTON:                      Tripe. Hopefully, we can get this out there soon. People can wrap their brains around it, we can circulate it within our communities and get some good feedback and then try and start putting that in place.

Now it's again not binding on all registrars, but we had a good number that were interested and seemed to be on board and hopefully we can make that happen and spread the word.

GREG SHATAN:                      Thank you, Graeme. I think even as an educational tool, it's a good thing. Plus if you can — as we need to educate people. There are well-meaning people who don't know what they're doing, and there are ill-meaning people who know exactly what they're doing and various other types in between. But there are plenty of well-meaning people that don't know what they're doing and want to do a better job and don't understand why they can't get a good result for their client. They may be a bit thick or they may just have come into this relatively recently or whatever the issue is.

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But if we have something we can promulgate with the right caveats through our professional organizations and that becomes more known and creates some sort of a benchmark, again with all the appropriate caveats, then I think we move a lot closer to cleaning up a lot of the misunderstandings and the things that make one side cast the other as either unresponsive or completely ridiculous and overdemanding results based on nothing.

It allows both of us, in a sense, in our communities to try to – we can't really discipline the outliers – but at the same time I can look at something somebody sent and say, "By God, they're idiots." But if I can point to something that's a document and say, "This document shows you that this person's an idiot," that's helpful because otherwise you just might say, "So they should have done it this way and not that way."

JONATHAN MATKOWSKY: This is Jonathan Matkowsky. Can you hear me?

GREG SHATAN: Yes, Jonathan. Go ahead, Jonathan, and why don't you introduce yourself a little bit more since as a new member or a returning member those in the room may not know you.

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JONATHAN MATKOWSKY: I want to make some remarks personally. I just joined with RiskIQ, heading up their global brand threat mitigation practices. Also, I'm VP for Intellectual Property. I'm a lawyer by background, and an inactive member of [inaudible], Yahoo!, and Las Vegas Sands.

I'm looking forward to participating. I'm having some visa issues so I haven't been able to make it there just yet, but I'm looking forward to seeing everyone in person.

I just wanted to say I'm enjoying this topic. Personally, I think that the biggest issue that I see relates to the ticketing system itself that a lot of registrars are using and even ICANN Compliance of not generating tickets into an ID number. Complaints are submitted so there's actually not even necessarily an identification number to follow up on, so there needs to be some time stamping so that you have something to refer to.

And then for those registrars that do actually provide into an ID member, it usually comes from a "do not reply" box where you can't follow up to find out necessarily the status of whether it's in progress or closed.

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**GREG SHATAN:** Jonathan, let me stop you there for a second. This is not the first time, unfortunately, that in a Hyderabad meeting a phone intervention has sounded more like a séance with someone speaking from the beyond, or perhaps for those of us old enough to remember, the game Myst. It sounds like we're receiving a message about how to try to unlock some puzzle and move on and we can't quite tune in.

That's a longwinded way of saying we couldn't understand much of what you were saying, but it sounded like really good stuff. So what I'd like you to do is to put it in the Adobe Chat and then someone here can read it out. Apologies and it's just technical difficulties beyond our control. Thank you.

**JONATHAN MATKOWSKY:** No problem. I'll wait till I arrive. I don't have access to Adobe Chat because I'm in transit trying to get to the meeting, and I was only able to call in on my cell. So if the line is not clear, I'll just have to look forward to seeing everyone in person and follow up based on the transcript at a later date. Sorry for the inconvenience.

**GREG SHATAN:** Thanks, Jonathan, and sorry that you had visa issues getting here, and we hope to see you here soon. I'm sure one of the

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points of this meeting is to have a continuing dialog that goes on beyond lunch in a room in Hyderabad and to continue the process. So hopefully your intervention, once it becomes intelligible, can be part of that overall process of engagement.

Kiran Malancharuvil?

**KIRAN MALANCHARUVIL:** By the end of this meeting you're going to know how to say my name right, I think. I think that there might be a really narrow scope of this abuse reporting document that might be where we're seeing eye-to-eye, and it might be an easier deliverable by the end of the week than the huge whole document that I know you've been working on, Graeme, for some time.

I think that it comes from what Michele was saying about getting repeated requests from trademark owners that just don't have the relevant information in it.

I think that again for those of us in the room and those of us that have been lucky enough to sit in these meetings for the last six years plus, we know what you need from us and from our clients, and we've tried our best to tailor their communication or help them tailor their communication to you accordingly. But there are obviously a huge number of people who are communicating with you guys that don't know what your core asks are, and it

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sounds like you are willing to respond appropriately if we're giving you the right information, not respond appropriately according to your values on that. I'm not saying that you'll definitely take things down

But if you could provide to us a template even similarly to what we labored over extensively in the Privacy Proxy Group which Steve initially created, that would be fantastic. It seems like you know exactly what you need from us in order to make a determination, and obviously we're not asking you to make any sort of legal determination or be judge and jury, but to make an initial determination within the boundaries of what you're willing to do.

You know exactly what you need. We don't know exactly what you need. Would it be possible to throw that into a template and have that be the jumping off point for this document that we've been working on for, I think, over a year now? Would that be an easy enough deliverable for you that we could help you work on?

GRAEME BUNTON:

There is some gentle criticism in there about how long it's taking, and I think that's pretty fair.

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KIRAN MALANCHARUVIL: On all sides, on all sides, right?

GRAEME BUNTON: Most of that is actually on me just not finding the time to make it happen, and I apologize. The general reporting requirements I think are “carvable-outable” and sharable quite quickly and easily for discussion amongst everybody to see what people would think, so that’s easily done. They are in some sense inspired by the privacy and proxy illustrative disclosure framework so, yeah, I think we can make that happen.

GREG SHATAN: Perhaps the mention of the privacy proxy provides us a segue to the next item on our agenda and almost on time on the agenda, which is the PPSAI IIRT. I hope those that don’t speak acronym understood what I just said. Why don’t you frame this because it came from you into the agenda.

GRAEME BUNTON: I’m not sure that I have any direct information I’m looking for back from the IPC, but I think a lot of us are going to be in there probably. Can we try raising your hand if you’re going to be in the PPSAI IRT? Yes, it’s like a reasonable percentage of the room, for those following remotely, are going to be in there. I think

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we're in there for the long haul. I'm guessing this IRT is going to take two, two and a half years and we're going to be working pretty closely and at length with each other.

I don't know if anybody has anything they wish to address on this but making sure that we can do so cordially and figure out how to answer a lot of the tough questions that I think are going to arise and making sure also that we're able to restrain ourselves from rehashing policy issue and keep ourselves to just the implementation issues that are in front of us.

Because for everybody who worked in that PDP, there's a lot in there we discussed at length for forever, and it would be nice to put those things aside and work on the nuts and bolts of getting it done.

STEVE METALITZ:

Thank you. I would just second what Graeme just said. I think when you think about it, what we did in the PPSAI Working Group ended up being a pretty good example of IPC and registrar cooperation to move things forward.

Obviously, there are many implementation issues, but I think Graeme has framed it just right as far as how we need to approach this. I hope it won't take two to two and a half years,

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but there is a lot of work to be done so I'll just leave it at that.  
Thank you.

GREG SHATAN:

I think now we've put in a marker for two, two and a half years. Hopefully, we could get it done faster than that and then everyone will feel like they've accomplished something and in record time.

I think again the point I take from this is to try keep open lines of communication and to avoid, as you say, rehashing and also to avoid feeling like we're in separate silos on this. There's a common interest certainly getting it done and getting something done that works and hope that again continued dialog and sometimes involving adult beverages, if necessary, can take place to get over some of the stickier topics.

In the end, we're going to have to find consensus. We're both well represented in the group and in finding consensus. It's important to see ourselves as working really toward a common goal. I think everyone approaches it that way. We'll see how everyone feels in a few months. Thanks.

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GRAEME BUNTON:

Cool. I'm not sure there's anything else on the PPSAI IRT. Just a shout out that I think there's a working session here as well as an information session this week so if it's on your radar, you should come to one or both of those and we'll get that. Because I think there's only been a single meeting on PPSAI so far, so that ball is just getting rolling and feel free to jump on in and participate.

IRTPC next, unless there's anything else on that one. Registrars sent a letter to the GNSO very recently and so many people probably haven't seen it yet, but we're having significant issues with the implementation of a policy called IRTPC, which is about what's called the change of registrant. I would encourage you all to find and read that letter. If you would like a copy, feel free to ask me about it and we can share it.

The fundamental problem for us is that the change of registrant procedure is being kicked off—let me backtrack a bit and say this policy wrapped up, I think, in 2012. I can't recall off the top of my head when the IRT finished, but I think it was about a year long and it finished about a year ago. Implementation for this policy is supposed to go live December 1<sup>st</sup>.

The policy in general is fine. The issue we are having right now is with specific implementation, primarily around where this policy interfaces with privacy and proxy services and that the change of

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registrant procedure is being kicked off by, say, the addition or removal of a privacy service. That could mean that a domain is locked for 60 days if someone wishes to turn off privacy in order to transfer their domain.

I'd like to think about at risk registrants and being, if they for whatever reason need to leave, their registrar would be trapped for 60 days exposing their information in the public WHOIS. That for me is pretty problematic.

We've been arguing with ICANN staff about this implementation, and we raised some issues about this in the implementation for at least a year and we've gotten nowhere on that and this date is coming live. The more people start to write their code around making this thing work, the more arduous and painful and problematic it seems to be.

Ultimately, what we're hoping for is to get some consensus within the GNSO that because the policy is silent on issues of privacy and proxy and it's interaction with change of registrant, that the implementation issues we're having – and let me stress again it's just an implementation issue it's not a policy issue – we can move that particular piece of implementation into the privacy and proxy IRT where we can hopefully resolve it there.

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Broadly again, that ask is to get the GNSO to get some consensus on that. I think the mechanism ends up being that the GNSO sends a letter to the Board saying, “These concerns have been raised. We think it’s a good idea to move that piece into the PPSAI IRT, and we can solve it there.”

What I think we need to make sure that we’re doing is that we’re bracketing that problem quite narrowly and so it’s clear that our issues are not with the entire policy as a whole, that we have this narrow problem around change of registrant implementation, and also that we have a clear venue that’s at least reasonably immediate. Privacy and proxy IRT, as I said, is happening now so that it’s not that we’re pushing this out for forever. We would like to deal with this sooner rather than later. We think there’s an appropriate venue for that.

That’s my longwinded introduction to the IRTPC issue, and I’m here to see how the IPC feels about this. If you guys have had a chance to read that letter, raise some issues and maybe we can sort out if there are any difficulties there and allay some fears or answer some questions and help us move forward with that.

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**GREG SHATAN:** Thanks, Graeme. We did get the letter today. I think it may have been put on the counsel list a little bit before that, but I only got a copy today and I've circulated that on the IPC list.

We did have our IPC meeting directly before this where we did talk about it, but we're still digesting it. I think that there is some general agreement that this seems like an implementation issue, kind of a bit of an over implementation issue perhaps, and we need to go back to the first principles of what the policy was about, which is about domain name hijacking and other changes of registrant that were not intended by the registrant prior to the change, essentially, and figure out how to refocus a bit.

Now if anybody else—it shouldn't just be us facing in this direction doing all the talking, so anybody else plus Kiran, of course. Well, speaking of those facing in this direction, Steve Metalitz.

**STEVE MATALITZ:** I don't have much to add to what Greg just said, but just to say that now I think I understand why you're talking about two to two and a half years for the PPSAI IRT because you move a complex issue into there. But we'll take a look at that. I haven't even read the letter, so we'll take a look at that and respond.

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KIRAN MALANCHARUVIL: I have a clarifying question. Registrars are allowed to opt out of the 60-day lock, is that correct? And why wouldn't you just do that in that situation? I think I must be wrong about that. Can you help me understand that better?

GRAEME BUNTON: There's a mechanism inside the policy that allows you to get opt-out and become the designated agent for the domains in your purview. Somebody who has implemented this more concretely than me is probably better to speak to this than I am. Essentially, it undermines the policy as a whole where registrar becomes the designated agent for all of their domains. It removes a certain amount of discretion. Essentially, registrants are moving their discretion to the registrar and giving registrars essentially more power than we think we should have and guts the intent of the policy to a certain extent where, all of a sudden, we're the designated agent for all of our domains and we've opted everybody out of every notification.

UNIDENTIFIED FEMALE: [inaudible]?

GRAEME BUNTON: Does someone know the answer to that question specifically?

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JENNIFER GORE: What was your question?

UNIDENTIFIED FEMALE: Can you [inaudible]

GRAEME BUNTON: Darcy has got an answer on this, and I see James standing too.

JENNIFER GORE: You want to take it?

UNIDENTIFIED FEMALE: [inaudible]

JENNIFER GORE: Yes. I'll answer it from an ICANN staff perspective, but I'll defer to Darcy first.

DARCY SOUTHWELL: I think there are two questions here. One is a policy question, and one is an operational question. Operationally, it's a real challenge to treat privacy proxy services different than a change of registrant, different than other issues.

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Again, I think to Graeme's point, the policies is a little bit broad. If the point is to reduce domain theft, we can't operationally do something that counterbalances that. We don't want that power. It's also contradictory to what the whole purpose of the policy was to begin with. We want the implementation to work in an operational level. Does that help?

UNIDENTIFIED FEMALE: Sort of. I guess I don't understand why opting out of something as narrow as this situation [inaudible] letter would necessarily undermine the policy objectives.

DARCY SOUTHWELL: Because technology doesn't really allow us. That's one type of change. Operationally, for us to build various types of processes for a change of registrant – because change of registrant is one thing but there's a lot of reasons why registrant information changes. That's the challenge.

GREG SHATAN: Jennifer?

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JENNIFER GORE: Thank you. In response to your question related to the policy recommendation, whether or not the change of registrant from a policy perspective can be limited just to the privacy proxy, there's no explicit prohibition against registrars being a designated agent for any of what are the triggers for a change of registrant.

To answer your question from a policy perspective, it can be streamlined just to focus the designated agent as change of registrant for a privacy proxy or all of the items that are defined to be the change of registrant.

MICHELE NEYLON: How can I put this genteelly? This entire policy development was meant to address an issue around domain hijacking. The implementation has taken it to places that were never – basically, they go against the policy that was discussed. Let's call a spade a spade. This entire designated agent thing guts the policy, makes a total mockery of it, and doesn't solve anything, and just causes massive headaches.

Sure, on paper and in theory, you could end up in a situation where you have this designated agent only for specific things but in reality, it doesn't solve the problem that this was meant to address and actually causes another problem that shouldn't

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have and, as others have said, ends up giving us as registrars more powers over things than most of us would really feel comfortable with.

I'm sure James is going to speak much more eloquently to this than I can manage since he does that generally speaking. Personally, I think if you go back to the policy, look at the policy discussions and move back to the implementation in such a fashion that the proxy privacy thing is dealt with, then that's more in spirit with what was meant to be discussed and what was meant to be handled.

The entire issue was meant to be dealing with hijacks. If you then end up giving us these things, we're all agents, that might be fine in a case of say, I've got 20 or 30 really high value clients who are paying a crazy amount of money to take on that risk, but my average client is going to just going to go click, check and the next thing be suing me because of something or I don't know. There are just so many permutations to this, it just makes my head want to explode.

I don't think this was what the policy was meant to end up looking like. I think the IRT went somewhere it shouldn't have done. It wasn't helped, by the way, by the fact that there was a massive delay between when the final policy was published and the IRT kicked off, which meant a lot of people who'd been

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originally involved in the policy had all moved on with their lives. That did not help matters. Thanks. James?

JAMES BLADEL:

Registrar and the former Chair of the IRTPC Working Group, so it's my fault. Just when I thought I was out, they pulled me back in.

Michele is absolutely right. I think that we designed in the policy, we understood that there were going to be these edge cases and an unanticipated situations where we were going to need to find a way around some of these policy constraints or it's going to disrupt very basic functions in our industry like domain transactions or implementation of a UDRP. That could be another one where you would change a registrant. You certainly wouldn't want a situation where registrant was saying, "No, I don't want you to. I reject this."

We tried to come up with all of these edge cases. For the ones we can't think of, there's this designated agent that would help us out of this. To Michele's point, the implementation has gone in such a direction that I'm concerned that I hear a lot of registrars saying, "I'm just going to have a checkbox that says I'm the designated agent for everything. I'm going to make all those decisions for you, registrant, because that's a hell of a lot easier

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than writing all this code and developing all these procedures that catch all of these things.”

What we're saying in this letter is let's take a fresh look at this. The biggest problem right now seems to be privacy proxy services. Let's get that where it belongs, which is not a new idea. It came up when we were talking about the policy itself. Put this with the policy development that it belongs as opposed to where it's currently stuck. Maybe we can avoid this situation where the designated agent becomes this Deus Ex that jumps in and solves every problem that we can't think of.

I'm in agreement. I don't know that there's a whole lot of controversy here. If there is, it's between us and Jen. Generally, I think if we could speak a little bit with one voice, maybe we couldn't get this IRT back on track. Thanks.

GREG SHATAN: Speaking of Jen.

JENNIFER GORE: I just want to regurgitate the purpose of the designated agent. In this context, it only has the power to approve the material change, such as change of registrant. It doesn't have the power,

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the designated agent doesn't have the power to be the de facto control over the domain name itself.

From an IRT perspective, I believe in the recordings going back, there were several members in the IRT that wanted to defer privacy proxy or suggested that we defer that information to the PPSAI IRT. I know that that will be brought up during the IRT for that.

GREG SHATAN:

Thanks, Jen. I've got a very minor question just trying to understand the letter. At the end of Section 1, it says that ICANN's view contradicts Section 1.2 of the 2013 RAA, which states that PPE service providers are not the registrant. If I'm looking at the right document, the 2013 RAA 1.2 is just the definition of "accredited" or "accreditation."

GRAEME BUNTON:

I think that's probably section 1.2 of the interim spec on privacy and proxy.

GREG SHATAN:

Okay. Not the main document then. Okay.

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GRAEME BUNTON: It's in that document. It's just Section 1.0 of the subsection.

GREG SHATAN: Right. It's one of the subsections, sub-documents or sub-pieces.  
Okay.

PAUL MCGRADY: Can I ask a more fundamental question? Somebody mentioned that it's possible to move on with your life. How do we do that?

MICHELE NEYLON: Alcohol, I find, helps.

GREG SHATAN: Anybody else who had an opinion on how to move on from your life, or in your life, not from your life? That's entirely a different question. Maybe scheduling a 7-day ICANN meeting that takes two days to get to at each direction is one of those ways, but three days on the way here. In any case, I'm happy to be here.

At this point, we can go to the last topic on our agenda which is continuing dialogue after ICANN57, which hopefully doesn't just mean meeting at ICANN58. Michele?

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MICHELE NEYLON: Thanks, Greg. Just before you move on, just one thing just to close out the last topic around IRTPC, this is something that pretty much every single registrar has already voiced concerns about on our members list. We've sent the letter to the GNSO Council list, so we will definitely be tabling or trying to have table some kind of dialogue and discussion around this during the council meetings this week here in Hyderabad.

The question, I suppose, I have for you is if you guys in the IPC having discussed this and everything else, if you're going to turn around and go, "No, actually, we totally disagree with the registrars" or you agree with us or you're ambivalent or whatever, maybe there's some way you could actually let us know. Thanks.

GREG SHATAN: Thanks, Michele. I think that does fit the point of bilateral dialogue as opposed to always having to speak through ICANN. We can speak at ICANN and even between ICANN.

MICHELE NEYLON: I do quite enjoyed speaking as ICANN and through ICANN and picking on ICANN. I do enjoy that and so do you, I know.

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GREG SHATAN: I'm shy and retiring. In any case, just on the other point, Graeme, I have checked. The 1.2 in specification on privacy and proxy registrations is the definition of privacy service. Now, we understand that part and may want to change the draft. We have James Bladel at the mic.

JAMES BLADEL: Hi. Thanks, Greg. Just a brief note on scheduling and coordination, Darcy's letter that we wanted to table during the council meeting, if you've seen the council agenda, it is ambitious. It would probably fall to AOB, and we all know what happens to AOB. I think a more opportune time to raise this issue would probably be in the update from GDD staff, which we're going to have tomorrow. If you guys could take a look at the letter between now and then, that will probably be the one and only time that it'll come up.

GRAEME BUNTON: If I may just offer apologies for not giving you guys lots of time.

GREG SHATAN: No problem, but at least we've kicked off the discussion. We have some understanding, and we will have our own dialogue. If there are further questions that we want to pick at, then we

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could do so. I think that, certainly, if we decided we're going to blow it all up in some way, we'll let you know in advance so you can put on your gear.

That's not what I think we do. We're interested in what this was tailored to do and mission creep and spread and whatever other things you can apply, doctrines of unintended consequences or not things generally. Speaking for myself, I'm not interested in those things. I don't think that we're looking at this to say, "Aha" or "Well, they've put this in under the radar into the implementation," because we were looking for that thing.

I could be wrong. Some people may disagree with me. At least I think now we surfaced the issue. We have an understanding of it. I think we can talk amongst ourselves and then talk to you as opposed to sending some sort of ozone blast of this indirect. Thank you for raising it with us.

MICHELE NEYLON:

Basically, what we're saying is that Greg and Graeme are going to become best buds now and pen pals, is that it?

GREG SHATAN:

Absolutely. If Donald Trump wins the election, we could even become neighbors.

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**MICHELE NEYLON:** I've seen the house he lives in, and it's not a bad neighborhood.

**GREG SHATAN:** Looking forward to it. Probably living where I do in New York, it probably would buy my closet. We work like the Japanese to live like the Russians, as someone once said.

I think that moves us to our last topic which again is continuing dialogue after ICANN57. I think for something like the abuse document, I think we'd like to come back to you, obviously, before ICANN58, well before with commentary and thoughts. And similarly on the IRTPC, not only meet to the extent that we're talking about the IRT, but to continue discuss these things.

I'm happy to be the point of contact. Ideally, what we do is find points of contact other than the Chairs that we could give to each specific topic, especially those who, I can't say ideal with every topic equally in my life between ICANN meetings. You might find some people who are the most plugged in in our group to head those.

I think it's important for us to keep the flow going. Again, if issues arise where we think some dialogue with the registrars

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would be valuable but it's somewhere between an ICANN meeting, we should go forward and vice versa.

GRAEME BUNTON:

That's correct. Actually, I think that IRTPC conversation was a really nice example of being able to talk with each other and say, "Hey, we've got an issue. Let's figure out where we all are on this before it moves forward into the rest of the community and making sure that we're all on side. If we all have problems, we can sort it out." That's why these sorts of dialogues are great, and we should continue doing that sort of thing.

You're right in between meetings. I do my very best to give responsibility to as many other people as I can so that I am just a beautiful figurehead, to moderate success. We can figure out probably between the Chairs who those pieces of contact are and make sure that, as we tackle various issues, that those get tackled by the right people.

PAUL MCGRADY:

Greg, can we just go back for a minute and half on something? We do have a topic that got short shrift, and I'm sorry to bring it up at the end when we're in our Kumbaya landing glide. This week, speaking of open dialogue, I would especially appreciate an opportunity to visit the topic informally, not right now because we're out of time. I'm not sure how we phrased it but

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essentially living together happily in a post-IANA transition world.

There are some issues that are going to be discussed around the GNSO Council table this week about how the powers of the Empowered Community are used and the process involved in that. I know that that is an interesting topic for almost everybody in this room. I think that it's a good opportunity for dialogue and trying to reach some common understanding.

Without getting into details, I'd just like to throw that out there and say that that is especially something as you're sitting around the bars, having beers together or having a chance for lunch or catch-up time to consider making that part of the topic as well. Thanks.

GREG SHATAN:

Thanks, Paul. Apologies that we did skip that over as we melded the topic before and after into a single conversation. We squeezed out the issue of what life is like in ICANN after the transition under the new bylaws, under the new powers that are being given to the GNSO and how we can react and interact in that area.

I think now that we're there, we'll have to see how it works. There are some proposals floating around. I think we'll need to

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continue. I think if we keep open dialogue, it's very important to us that the GNSO is a working, functional organization.

It's not just the council. It's all of us. It's the Chairs. It's every member of every stakeholder group. We really all need to figure out how to work together and deal with where we now find ourselves because one of the places we find ourselves is under a worldwide microscope, a small part of the world that even knows what ICANN is. Nonetheless, whether we can exist without the backstops that we've had and show that we can engage in a greater degree of self-governance I think is important to us.

I think we hopefully keep that dialogue going. Let's generally keep the dialogue going. We will hopefully do this again in ICANN58. Hopefully at that point, it'll be a just another point in an ongoing series of conversations. Thanks.

GRAEME BUNTON:

Yes. Good. Working together. We'll see how that pans out as we talk about those things that Paul raised. I think we're wrapping it up.

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**MICHELE NEYLON:** We have literally two minutes, and there's no time between this session and the next one. We're supposed to transmogrify ourselves from room to room apparently.

**GRAEME BUNTON:** Right. Let me say thank you, Greg, to the IPC for reaching out. I think it's incumbent on us to do that for the next meeting to make sure we have this dialogue happen there. Like I said, about giving responsibilities to others, I'm going to give that to Zoe, make sure we do that then. I enjoyed this discussion today, and I hope other people got something good out of that too. Thank you.

**MICHELE NEYLON:** Thank you, Graeme. Thank you to the Registrar Stakeholder Group and the members for showing up. Hopefully, it wasn't just because there was lunch. Thank you. This meeting is now adjourned.

**[END OF TRANSCRIPTION]**