SAN JUAN – Joint Meeting: CSG & ICANN Board
Tuesday, March 13, 2018 – 13:30 to 15:00 AST
ICANN61 | San Juan, Puerto Rico

MATTHEW SHEARS: If everyone will take their seats, we'll get started. Thanks.

Okay. Good afternoon everybody, this is the ICANN board meeting with the commercial stakeholders group.

We are looking forward to a good discussion this afternoon. The Board had sent questions to the CSG, but they seem to have somehow been lost. We'll come back to those at the end and just kind of get them on your agendas going forward.

Just, as a little housekeeping, if you will, before we go around the table for the scribes, there will be tomorrow morning from 9:30 to 10:30 a follow-on meeting on GDPR where John Jeffrey will be present to answer questions in this room. So 9:30 to 10:30 tomorrow morning in this room, follow-on session from GDPR from the earlier one this week.

Okay. With that, could we start with tour de table.

Steve, if you could just say who you are for the scribes. Thank you.

STEVE DelBIANCO: Sure. Steve DelBianco with the business consistency. And my firm is NetChoice.

CLAUDIA SELLI: Claudia Selli business constituency. I'm with AT&T.

MARK McFADDEN: Good afternoon. My name is Mark McFadden. I'm with the Midwest Internet Connectivity Exchange.

AVRI DORIA: Avri Doria, ICANN board.

TONY HARRIS: Tony Harris with the ISPCP. I'm from Argentina with the Argentina Internet Association.

TONY HOLMES: Tony Holmes representing BT here. And I'm vice chair of the ISP constituency and for this meeting standing in for our chairman who, unfortunately, can't be here, Wolf-Ulrich Knoben. Thank you.

MATTHEW SHEARS: Matthew Shears with the ICANN board.

CHRIS DISSPAIN: Chris Disspain, ICANN board.

CHERINE CHALABY: Cherine Chalaby, ICANN board.

BECKY BURR: Becky Burr, ICANN board.

SARAH DEUTSCH: Sarah Deutsch, ICANN board.

BRIAN WINTERFELDT: Brian Winterfeldt, IPC president.

VICKY SHECKLER: Vicky Sheckler with the IPC.

PATRICK CHARNLEY: Patrick Charnley, IFPI, IPC member.

MATTHEW SHEARS: Great. Thank you very much. I understand we're going to spend quite a bit of time on GDPR. So I suggest we jump straight into that.

Who will be -- who will be leading and introducing -- yes, sorry.

TONY HOLMES: If I could just explain a little bit the way we've organized this meeting. I think most people are aware that this is an opportunity for the commercial stakeholder group to meet with the ICANN board, which we very much appreciate. It's an important part of our schedule. And the diversity within the CSG means that we take it in turns to, basically, set out the agenda.

For this particular meeting, the issue of GDPR is, obviously, incredibly important to all of those three constituencies.

So we've divided our time a little differently for this meeting. We normally have 30 minutes per constituency. But, because of the strength of the concerns around GDPR, we're actually coming together as a CSG group to meet with you for the first 45 minutes.

And then following on, once we've concluded the discussions on GDPR, then we'll have 15 minutes per constituency to raise issues of particular concerns from those groups.

And following on from your remarks, Matthew, to kick us off on the GDPR front, Steve DelBianco will lead. Thank you.

STEVE DelBIANCO: Thanks very much, Tony.

Steve.

STEVE DelBIANCO: Thank you, Matthew, Tony.

I think a number of you were at the session yesterday, the cross-community session on GDPR where we tried to surface a lot of the commercial stakeholder group concerns with the proposed interim model. So we won't reiterate those in front of the board. It isn't necessary. What we thought is important here is to focus on board level concerns, as opposed to legal teams specifically or operational.

There are four broad themes we've explored over the past 24 hours.

The first is asking the Board about its preferences and awareness for process to get from where we are to where we're going.

The second is to get the Board's input on guiding us and proposing an accreditation system.

And the third is get the Board's awareness about the selection of a model is going to affect whether the community will deliver on our job, which is to develop an RDS PDP. Because, if everyone in

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the community is equally incentivized to compromise, yes, you can move ahead. And we'll have observations to share with you that we believe that the current proposed interim, if it's what gets finalized, is going to buy us that process against compromise.

And then finally wanted to share with you some observations about risks and optics -- optics with the outside world, the multilateral world, which would probably enjoy the opportunity to find another chance for ICANN to mess something up.

And later this -- later this year as the United Nations, the ITU plenipot, when they're gathering, let's just be aware of bad optics, if later this year some of these implementation decisions we've made have some unintended consequences, perhaps even some intended consequences.

So those are four threads that I'd like to cooperate with the ISPs and the IPC at grinding down each of those threads.

The first of them was process. So today we asked Goran a little bit more about management. So where do we go next? And under what thread -- when I go to the ICANN bylaws, under what thread is all this? Because we understood what happened in Abu Dhabi was a compliance statement, came straight out of compliance, John's department. And then I asked Goran this morning, when the interim model is finalized by ICANN, would it

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be finalized in something that the Board would engage in? Would you end up voting on that? Would there be public comment? And would it be used as a registry agreement?

And Becky Burr gave me a heads up on this last Friday. Becky, the idea that maybe this goes through the base agreement temporary policy process. We're just interested to hear your thoughts about where the process goes from here.

Because it will teach us about where it is we need to weigh in on that process, how quickly we have to engage, and how specifically we have to engage. We'd welcome a response on process.

BECKY BURR: So, just to be clear, the Board is quite focused and aware of the risks for non-compliance, risk if -- if WHOIS becomes fragmented, all of those things quite focused on it. We spent quite a lot of time in our workshop talking about it.

Where we go from here is -- this is still -- in this interim period, there is a compliance issue. There is also a policy issue. So, just to be very clear, the ultimate solution -- you know, the ultimate output here is a -- is the RDS PDP policy that's compliant with GDPR.

And nothing that is going on today is intended to undermine that process or to suck the air out of the room that would allow compromise.

So I very clearly hear the concerns that this process not be weighted in a way to provide leverage or disincentives or any of those things. But let's keep in mind that behind this -- sort of at the bottom is there's a compliance -- a GDPR compliance obligation. So, whatever comes out of that process, has to comply.

The question is: How do we get that process going and comply with GDPR as we're going forward.

As Goran has said, ICANN has been very actively engaged with the data protection authorities and continues to be and will continue to be in coming weeks. They very squarely put this on the table and said we need your guidance and your input. And there are significant risks that happen if we don't get clear guidance, clear actionable guidance. The Board very much supports that concern that we really need the DPAs at the table. We need them engaged, and we need them to give us actionable advice.

In terms of the -- how whatever is decided on gets rolled out, we are still taking -- we're still in discussions and taking guidance from org on what the options are and what the path that they

propose. There are several, I think, that they're all out there in the air. And there are consequences for the organization from each one of those.

So the Board has to understand with guidance from ICANN legal, what all of the implications of those are.

No -- to my knowledge, no decision has been made. And I think I would know if the decision had been made.

I'm just looking at John.

So we haven't gotten a final recommendation. But we are anxious to hear input on what the compliance mechanism is as we get there.

In terms of the most critical things right now, I think it is encouraging everybody to encourage the DPAs to engage for them to understand what the consequences of not engaging are, to encourage the GAC to be engaged directly with the GAC members to be engaged with the DPAs as well.

STEVE DelBIANCO: Thank you, Becky. Steve DelBianco again. As the Board is considering the various options for the process, the options for the mechanism of rolling out a final interim, we would be interested to know what those options are and the Board's

consideration about what you'll pick. For instance, if you pick the temporary policy option through the registry agreement, what we did -- what would that mean for the registrars? What's the temporary policy option? Temporary policy options have certain public comment period implications. They have board approval implications. We don't have to get into all that right now.

But we would appreciate knowing as soon as you have narrowed down what the potential mechanisms are. We would appreciate understanding how do we adequately weigh in to make sure that our point of view is reflected in the mechanism. It's a fair question. Because, thus far, the mechanism we've been using to get to the proposed interim is something just being invented as we go along. It's not a bottom-up community process. It's an expedited compliance statement followed by a lot of management and consultation and moving ahead. So that was our process point, and I appreciate your answer.

You then talked about -- moving to our second issue on the engaging with DPAs and so on. Goran advised us all to hug the GAC. Every time the GAC sees us coming, they run the other way. They're so tired of being hugged right now. And I think it's because it's not realistic to expect that DPAs are going to answer our wish and respond with specific guidance on how we should do an accreditation system.

The most we could ever hope for is for governments themselves to talk about the way they want to accredit law enforcement and governments. But I don't think it's going to be safe for us to simply wait for the DPAs to come back or to engage with you or Goran in a way that's specific enough.

So we want to take the challenge. So the IPC -- some consultants that work in both the BC and the IPC and the BC are working right now on some architecture for an accreditation system for the government and non-government entities. We expect to have something to you in the next 24 hours to get things started. But, as we introduce that process, we need to make it clear. I don't think the GAC is going to want to play the kind of role that you were inviting them to. And I don't think that the DPAs are going to be as helpful in a prescriptive way of giving guidance. They may well react to things that we come back with. And that's the way this is going to work. But we just want to make sure that we play by the right rules. If we do move ahead with architecture for an accreditation system, how do we insert it into the process? How do we be sure that it's supported by staff in the sense that staff can evaluate it vis-a-vis the RDAP that's moving along?

Staff could support it by hosting Adobe calls so that folks at the IPC, the BC, the ISPCP, the contracted parties, the NCSG get on calls and get things done.

This is something that came up this morning in a meeting with Goran.

ICANN, when faced with a crisis in the past, has often moved very quickly and decisively with providing community support. Think back to the transition, 2014. Instantly, under the previous regime, ICANN stood up staff support for two large threads -- the IANA thread and the accountability thread. And we were able to get large group meetings. And I don't necessarily say anything has to be face-to-face. But staff support for holding large calls seems like a relatively minor expense with a major benefit, especially if it can knit together those of us here when we return back to our day jobs on Monday.

So this is with respect to the accreditation system seeking some more input from the BC -- the IPC and the ISPCP so that board members that are here can react at helping us be helpful on the accreditation.

BECKY BURR: So I think it's extremely positive that you guys are working to put together some suggestions. We would certainly welcome that. We need all of the good thinking and creative thinking that we can bring to the table.

I am going to speak for myself and say that I would certainly expect and encourage ICANN to be supportive of that effort. And I don't have any reason to think that they won't be.

There's nothing -- there's very little that's more urgent in our world right now.

And I think you can -- board and ICANN org are -- we're all focused on the same thing.

So, please, do get your architecture proposals, suggestions, whatever.

You know that I have personally been saying we want all of your best thinking. And we want -- we want ideas about the most efficient and effective mechanisms for doing that. You guys are going to have a better pulse on the resources to do a legitimate job in terms of accreditation. So we want to hear about those.

STEVE DelBIANCO: Goran just joined the table. Goran, we were just asking the same question the CSG asked you this morning, which was Fabricio's question.

We were seeking staff support for having continued dialogue and discussions.

The word "support" didn't mean endorsement by ICANN. It just means support of the kind that has been given in the past when cross-community working groups had to convene in an emergency and move quickly. That is why we thought that was such a reasonable request and were quite surprised that it wasn't being received more favorably. The idea of staff support, not support of the idea.

GORAN MARBY: I'm a little bit -- I've said all along that if you provide us with information, we will pass that along. Was that not the question?

STEVE DelBIANCO: Yeah, it wasn't about passing it along, and you have been helpful in that regard. Thank you. This was the fact that the IPC has led an effort trying to come up with an accreditation system. We hoped in the next 24 hours to get it into the conversational mix, and Brian is going to give you more details in just a second. What I was asking is that to continue the momentum on that discussion, we asked for whether staff support could be available to convene some Adobe sessions with dial-in over the next week or two so we can get a broader circle of people to discuss the specifics of accreditation system. And we want staff support from the technical side so we can fit into it the RDAP

protocol and that's a lot of work to do in two weeks. We can do it, but I think we're going to need the staff support as well.

GORAN MARBY: For the record, I was not asked that specific question. I was asked if I would permit a 12-month -- 12-people something coming together, and my answer was, it's up to the community or up to you to convey whatever you want. If you -- I don't think we ever said no to facilitation of any meeting or any Adobe room whatsoever. Thank you.

STEVE DelBIANCO: Maybe we just asked it the wrong way. Brian?

BRIAN WINTERFELDT: Thank you so much. I want to thank the board for being here and taking time to be with us today. I wanted to follow up on some of the points that Steve brought up with regard to the discussions with the Article 29 working party and the DPAs. We've heard from the board and from staff that the answer to our problems and moving the needle on the interim model and even helpful feedback for the accreditation process is to have discussions with those people. Originally we were asked to speak to them directly. At this meeting there's been several suggestions that we should actually reach out and speak to our

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GAC representatives and have them have conversations. We actually had a meeting after our meeting earlier today with Goran where we were able to speak to the U.S. GAC representative and they told us that that actually is very difficult for them to facilitate those discussions and that the European GAC members are actually very reluctant to engage with the DPAs. So that leaves us in a bit of a tough spot.

We also don't have a lot of details about which Article 29 working party members or DPAs ICANN is speaking to directly. We don't know the identity of those people. We don't know who they are, and we don't obviously have details on what ICANN is telling them and what they're telling you all. So we feel like we're in a little bit of a frustrating position. So we're hoping for maybe more information, and is it possible for ICANN to facilitate a discussion for us since it seems like the GAC is maybe going to hit a wall in being able to assist us.

GORAN MARBY: If I may, I think I understand your question. The basic is you would like to be in the room when we talk to the Article 29 group, which is very hard because there are many members of the community would like to do that. Or when it comes to transparency, what we've said to you is what we're saying to them. We actually gave you the cookbook with all of -- at the

same time as we sent it to the DPAs. That's what we're talking about. I can understand your frustration. I have no problem of understanding it. I also know how hard it is to get this working. But I can't do your work when it comes to your relationship with your lobbyism (phonetic) in Brussels when it comes to the Article 29 group. Because I have to represent all the views. And I think we -- we've -- I understand your frustration. I also understand the Catch-22 in that sense that the Article 29 group would like to engage with us so they get a full picture. But the DPAs, who sits in the Article 29 groups, are individuals. And that's why I think, as -- I'm just trying to be helpful to you as well as to the other ones by saying, engage with them with the individual DPAs who belongs to the governments who sits -- is it next room or down? That's the best avenue I can get. Because they're actually paid by the same salary system. And you -- may I say, in this table here, on this table you have actually an excellent expert who knows how the rest of the system works very well. And I would say that you should utilize that competence. Sits next to you, Steve. And I know that because he's lobbied me.

PATRICK CHARNLEY: Thank you. Can I just follow up on the question of DPAs and Article 29? So entirely appreciate your point, but, you know, it's for everyone in the community to contact DPAs and also to encourage their own GAC members to contact their DPAs and to

get the point across. One thing that I think would be helpful though because presumably the decision -- or rather the analysis that the Article 29 working party would undertake will be done centrally and in dialogue with ICANN is for us to understand exactly what has been put in front of the Article 29 working party in terms of the myriad uses of WHOIS that would be taken into account in balancing where the proportionality assessment comes down for the purpose of the GDPR. Because one thing that does concern us is if that decision is made without all of the information about the various public interest uses, then it could be made in the dark, to an extent. So some further transparency might be extremely helpful.

BECKY BURR: So can I just answer that? All of this information that's been provided them is online and includes all of the user stories that were collected, you know, at -- compiled and then recompiled. There's also a listing in appendix one. But all of the work that the community did to get us the user stories, wasn't editing of that. That was -- that was passed on as a whole without editorial comment.

STEVE DelBIANCO: Beyond that, you know that the IPC and the BC spent an entire weekend quickly telling the story in a fresh narrative, and Brian

sent that to the DPAs and Goran gave us some guidance about specific folks to send it to. And that was done on February the 1st. So were you aware of that as well? We did put those stories in front of them. Maybe we need to resend it, and we'll take whatever guidance you have about whether things like that need to be resent over and over again.

GORAN MARBY: For transparency, I -- I have asked every part of the community to do the same. I'm not taking sides. And you know, Brian, I've asked you as well. One point, I made it very, very -- it's been very, very important for me and my team to be as transparency as we can. I do understand out of history, out of suspicions that there might be some who believes that I'm trying to do things hiding. I think the board will accomplish me with this saying we've been -- the information we're sending, the dialogue we're having is the one you know about. There's no side conversations anywhere. We probably have made mistakes as well, when it comes to communication, but I think I -- I try to do it, the heart in the right place.

Now I'm going to channel my -- I was a regulator before. And I did this for seven years in Europe. Some people might say I did a very bad job and some people would say that I did a good job. But one of the things I know, it's -- before DPA makes a decision,

by law they have to go out and investigate it by themselves. It's not like they sit in their own rooms collecting data that is sent for them. They have to be able to do a judgment based on facts they have to find as well. You can't just (indiscernible) waiting for information that someone sends to them. And I have the greatest respect for the individual DPAs from Europe. And I know -- or I believe from my -- from the experience I have that they are doing a job right now where they look into different sides of this story. And you help them because you -- that's one of the reasons why I've been trying to be so fast, which I think is one of the fastest times in ICANN history to publish the letters and the emails and the stories we're getting from you on our Web site as well, to provide also anyone who wants to know this also in the DPA community about those things. Now especially thanks for about 100 letters I received from your community with exactly the same content over the last couple of days. It's been a struggle to get them out as soon as possible, but we have published them.

So we are trying to share that, and it's been important to us to share the information as soon as possible. Thank you.

STEVE DelBIANCO: Away from transparency, as a former regulator, I would love to understand a likelihood that the DPAs will react in two specific

ways. Will they actually look and say, ICANN, looks like your proposed interim model goes too far. You didn't need to go as far as that, like hiding registrant ID or applying it globally or to natural and legal persons. We have this assumption that we may get back a -- a positive indication that looks -- it looks like this proposed interim model is compliant with GDPR, reserving the right to see how it's implemented, and that will not help us at all with our argument that we believe the proposed interim went too far. That's the first element of reaction that we worry about. And we're wondering how it is we continue to make the argument that it went too far if we don't put something in front of the DPAs, for instance, that has registrant email in public WHOIS. So if the question were asked to them, here's proposed interim A and proposed interim B, are they both compliant, that would be incredibly helpful. And the other, before you came in, is that none of us have much confidence the DPAs are going to tell us -- guide us in any explicit way on how to design an accreditation system. We believe we need to get busy on that.

GORAN MARBY: Thank you. I can't judge some probabilities. I'm grateful for the time and effort the DPAs are taking this -- the WHOIS question on. The -- so it's very hard for me to judge on that. I think there's a common interest to look -- the WHOIS question we've -- we've been luck -- successful to put the WHOIS questions on the

political as well as practical agenda in Europe over the last six months. It didn't exist six months ago. Or eight months ago. Some people say that I over-exceeded when it came to having people to pay attention to the important WHOIS question. So that was my -- sorry, I missed your last question.

STEVE DelBIANCO: It's all right. You can't make a probability answer, but I want the board members that are listening and present to understand that CSG believes that the model that was selected is overcompliant and we have three specifics we lay out all the time, but just focusing on the registrant email address.

GORAN MARBY: Sorry.

STEVE DelBIANCO: And without being able to present that to the DPAs, you're not really understanding whether or not we could have actually left it in there and been compliant.

GORAN MARBY: Sorry. Sorry. I -- the way we tried to frame that is because we have to ask a question. And the way we tried to frame that in the cookbook is actually bring out some of the things that there's

not an agreement in the community. So we have a section about things that are unanswered, which we sent over as well. So that's the way we try to frame it, so we can ask the question. I see that you don't agree with it. That's how we tried to frame it.

We also this week have gotten new input and new information and we've said that we're going to take that into account and update the cookbook so we would send another version on to it. But we also wanted them to give them time to start looking at the broader principles.

STEVE DelBIANCO: If the answer we got back is the model that you proposed is compliant, we would ask you to follow up with an immediate question and say okay, thanks for that answer. If the registrant email address were on the public WHOIS, would that also be compliant? And if they're thinking along those lines, we would get a very quick answer, because there's a possibility, Goran, that they won't read the 30 pages of well-documented community input that's in the middle of the cookbook but instead just react to the proposed model itself.

GORAN MARBY: I don't think -- I would be very surprised if they didn't take that document into full reading. I would be extremely surprised. Actually, I would -- I don't think -- that I would say is a sincere probability. I have a greater respect for the DPAs than that.

TONY HOLMES: Just on that point, would you be as confident, having read the detail, they would come back with the full explanation? I think that is the key thing here.

GORAN MARBY: I would have loved to have the DPAs here to answer that question. I don't know what shape or form they will answer. That's -- but could I put a way back in this one? We didn't know that eight months ago either. If we would have done nothing, we would have been sitting here and you would have been even more upset because we wouldn't have -- even had the discussion about a potential model. We wouldn't have had the user cases. We wouldn't have the legal analysis. We wouldn't have nothing. We still would have the same question, we need clarity from the DPAs. Now we provided the DPAs with as much information about the WHOIS model itself, we've been -- we are providing the avenue for you to provide your individual interest in it as well, so we are better off than we were nine months ago or eight months ago. But we're still in the same Catch-22, which

I will repeat myself, which I don't think is a good answer but it is. If we don't get clear guidance from the DPAs about their intonations when the law comes into effect, there is a big risk that the WHOIS will fragment -- get fragmentized in the end of May. And that, I think, is a joint concern.

MATTHEW SHEARS: Steve, can I just -- I think John wants to jump in before you. Thanks.

JOHN JEFFREY: Yeah, and I'm sure you know this, but in the proposed interim model, so the topic document that sits on top of the cookbook, the proposed model, the Calzone model, if you will, the second section is competing community views about elements of the proposed interim model. And it goes specifically to whether or not anonymized email addresses should be substituted for email addresses for registrant administrative and technical context. You're right, we framed it from the approach that we took in the model, but we clearly indicated both in the conversation before we sent this to them and in this document that we had competing views and it was very important for us to understand if they could provide guidance on that topic.

STEVE DelBIANCO: True enough, John.   But if they respond that yes, that's sufficient, we wouldn't have known the answer to the question "was it necessary." So we will ask you to do your best that when you get an answer that says your proposed model is sufficient, you want to come back and say, Was it necessary to anonymize the registrant email? Please ask that question and get us an explicit answer. That's so important to us.

And then with respect to risks -- because in the time that's remaining, we had a risk that the community process, the RDS PDP, would find itself unable to reach compromised and consensus, especially when you look at the structure in GNSO with contract parties, Noncommercial Stakeholders Group, and Commercial Stakeholders Group. We are 1/4 of that process. And if in the PDP we are the only quarter who is significantly interested in having deviants or changes from the interim model, we will not be able to achieve consensus. So we want the Board to be fully aware that the Commercial Stakeholders Group desires the selection of an interim model that is sufficiently displeasing to contract parties, CSG, and NCSG such that we all have an incentive to compromise. Because you well know that if this is done as a temporary policy, you can renew it for up to a year and more. And the longer the interim stays in effect, the less likely that we'll ever do something that would, for instance, restore email addresses to the public WHOIS. Those

decisions put us on a path of dependency as soon as we leave the gate with the final interim model.

I see that Chris has something.

CHRIS DISSPAIN: So you want us to make sure that you are all equally unhappy. And we are quite good at that, so I'm sure we'll manage.

But I just wanted -- we are about to start a conversation with the GNSO about what to do in respect to the PDP and GDPR. Now we don't -- it's not up for us to decide, but we are about to start that conversation which obviously you guys are going to be involved in.

So if you could think -- I guess this is kind of different to what you said about the model but still very important. If you could think about what you think is the best way forward. You know, do you stop, reconstitute, start again? Do you feed it in? Is it going to get lost if you feed it in? All of that stuff, we have been very -- we thought that it would be useful for us to have that conversation with you.

Just to go back to your point, I completely understand that your suggestion is that once -- you can't go back. Once you've gone -- you've taken that step forward, it's very, very hard to go back. I acknowledge that.

MATTHEW SHEARS: Steve, Steve, just a check where you are in your four points. So we're still on point three, right? Which is --

STEVE DelBIANCO: We had thought that the first 40 minutes to 45 minutes would have been GDPR, and we are at 40 minutes right now. I checked.

MATTHEW SHEARS: Okay. Have we addressed the fourth point? No.

STEVE DelBIANCO: I am keeping track of that. The fourth point was optics outside of this building, outside of this entity. And I -- a number of you were at the IGF in Geneva. A number of you are well aware of the United Nations multilateral bodies who have events of their planned later this year.

And the timing of that is such that if our interim solution makes a substantial portion of our community very happy -- I think we heard that yesterday on the session that I chaired -- it won't really help us very much if the very same governments behind the DPAs that like the interim model are really upset at compromised access for law enforcement, consumer protection, and business users for cybersecurity purposes.

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So the optics of having this go badly extend well beyond just inside of ICANN. There are risks associated with overcompliance that frustrates the access that people have today. And I know the world is changing, and we know that tiered access is coming. We get that.

And, yet, if we do it in a way that feeds our critics, the timing will be bad later this year. We don't want to create a situation where ICANN looks as if it has botched something. You are all well aware of the plenipot and the General Assembly and areas like that where ICANN is a favorite target. That's diminished in recent years. I think we have all done a great job through the transition of diminishing that target on ICANN's back. And, yet, let's not put another target up there by botching this.

BECKY BURR: I think we heartily agree that that is a goal that we all share.

STEVE DelBIANCO: That is a risk that balances the earlier stated risk which was the risk of being found out of compliance in May, either ICANN out of compliance or its contract parties. And those risks are all there. But the balance of the risk is to overcomply in a way that we didn't need to in a way that frustrates access that will feed our critics.

MATTHEW SHEARS: Anybody want to add anything on that last point? No? Okay.

GORAN MARBY: I'm going to take what you say, but I'm going to change it into something because there's always risks. And this is could be a risk. We could debate if it's high or low.

But let's go back to four years ago when this law was starting to talk, where were you then? Where were we then? When this discussion really -- when this discussion about the balancing of the right to privacy and the need for access to information, we don't have a policy for that. And where are the other areas where we need to address those things?

And one of the things that concerns me is that we are not living in a bubble. We are part of a world. And we see more and more legislative proposals around the world. And I shared this, this morning, I think, that we will see many more proposals that can have a direct ability for us to make policies.

We are working internally to try to figure those out, who they are, so we can supply them to you in the community without taking political actions to it, not to interfere in the politics of it, just to make sure that we are aware of them because when I look back -- and I looked back what I should have done four years

ago. I wasn't here but what I should have done is actually to look to -- to understand implications of GDPR four years ago or five, whenever it was and maybe been in the room when the legislature was proposed by the European Commission because we could have been there and said, We don't take a side in this discussion politically but it will have an effect on the WHOIS system such as this.

Because now we're doing this under the sort of torch of something, under a swort (phonetic). And I really want to make sure we avoid that because this is not the only time we will see those risks going forward. Thank you.

SUSAN KAWAGUCHI: Can I --

MATTHEW SHEARS: Yes, Susan. Please.

SUSAN KAWAGUCHI: So this is Susan Kawaguchi for the record, part of the BC. So, actually, five years ago, the Board was on top of this. Fadi was on top of this, well aware of what was coming down the turnpike, well aware that WHOIS couldn't be maintained in the way it has been. We all understood that five years ago. We

probably all understood that 20 years ago. For sure ten years ago.

The Board initiated -- or Fadi initiated the EWG and ICANN paid to put 12 of us or 15 or how many were on there along with a board member, Chris Disspain, on this working group and said, sit in a room, figure this out, and come forward with a report. And we did.

And then we took that report. The Board then initiated -- requested a PDP. And there's a lot of good principles.

Is the EWG report perfect? Absolutely not. Is it a good framework and details a lot of principles and would have provided a good model to move forward with and tweak it, change it, talk to the DPAs? But none of that was done.

So we lost our opportunity by not finishing the work that we -- that was initiated five years ago. Yes, that fed into the RDS PDP. And we've been trying as a working group desperately to come to terms and consensus working through it. But it's not fast enough. So something else has to change.

But -- and I know, Goran, you were not here five years ago. But that work was started. And Chris Disspain was here, so...

CHRIS DISSPAIN: Susan, thank you. I'm really glad you brought that up because --

[Applause]

And I'm going to take that applause for both of us because I think we did a fantastic job.

I'm really glad you brought it up because I've kind of resisted the temptation to refer to it because it's not really my place to do that.

But I agree. I mean, I think we spent -- it was two years of my life I'm never going to get back. And we spent a huge amount of time working on it. And I -- it takes a lot for me to get personally affronted, and I'm not actually personally affronted by this. But it is a little sad when you hear, Well, it was all well and good but it was outside the process so basically we don't care. Fadi -- Fadi did it outside the process, therefore, it doesn't work.

I mean, there is a huge amount of useful information in that experts report. And we were all -- and let's be very clear, it might have been outside the process, but it was GNSO-wide representation and ccNSO representation. So it had lots of people in it.

That said, we are where we are. And the key -- the key is this, I think. I completely understand the problem of doing -- of

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possibly overcomplying. I get that. And I totally understand throwing back.

But I just want to take one minute to sort of hypothetical -- for a hypothetical with you. If you are right and we don't get any guidance from the DPAs, then that means that we as ICANN for our responsibility have to take the most -- legally, least risky approach that we can to dealing with an interim solution because we are responsible.

So the registrars and the registries and ICANN are the ones who end up being legally responsible. I think that's a fair thing to say. So we have to take a view of the risk, and we have to take the lead and we have to do what we think is the most conservative, least risky thing to do because we're going to be saying to the registries and registrars, in order to stop fragmentation, if you do this, you should be okay.

So we have to take the leap to say: Is doing X -- it could be the registrant email address, it could be anything -- is that acceptable? If we do get guidance, I completely understand that that guidance may need to be tweaked, may need to be asked again. You may need to go back and ask for clarification. I completely understand that. I don't think anybody on the Board or in ICANN org is suggesting you get something from the DPAs and that would be it.

The worst possible scenario in my view is we get guidance that no one understands. So I hope that sort of encapsulates that we are not saying we are not going to ask additional questions. We are saying we have to make a decision at the end of the day, and it's our risk.

MATTHEW SHEARS: Thanks, Susan. Thanks, Chris. I will turn it back to Tony. It's a great question. We could let it run for the whole session, but we do have other questions to address.

GORAN MARBY: One quick comment. I'm just now reading the conclusions when it comes to accreditation models from that expert working group. And we're going to bring those also into the conversation with the DPAs as other alternatives. Okay?

MATTHEW SHEARS: Okay, Tony.

TONY HOLMES: Okay. Thank you. I believe across the course of today we are actually now in a much better place than we were earlier. I think one of the -- one of the things we came here with was a desire to express to the Board that there's a willingness within this

community to help advance things in any way we can and to work with you to achieve that. I don't think there's any doubt about that whatsoever. We have expressed how we can do that as well.

There's also a big level of concerns that we have from our particular part of the community over this issue. And I think now that level of concern and what it comes down to is very well understood by all parties. That also helps move this forward. So thank you for your time on that.

We are now going to switch over to the traditional way of meeting with the board, which is to turn back to some particular issues from each part of these three diverse constituencies.

The first group to raise a question and discuss it with you is the business constituency. And I should add that we have a strict 15 minutes each. And as the ISPs are going last will certainly be calling time on that. So please help us with that.

Over to Claudia. Thank you.

STEVE DelBIANCO: I think we will only use five in the B.C. and return the rest to you because you deserve it.

The first, I wanted to mention that the budget point -- the budget constraint point, the B.C.'s new chair, Claudia Selli, made a point in yesterday's public forum that the B.C. suggested something that could be cut and save $100,000. So you all heard that yesterday in the public forum. I won't go back there again now. And I will return to just one point on here. It is the second bullet on your list. The structural reviews, the seven AC and SO structural reviews that the Board runs, when we come up in the next year or so on the next GNSO review, the third one, we are very interested in being sure that you design a terms of reference for that review in keeping with what's in the bylaws and you allow the GNSO to have something to say about that. That review would look at the GNSO and say: Does the GNSO have a continuing purpose? I think so. Is it effective? And would any change in structure and operations be desirable to improve its effectiveness? To improve its effectiveness?

So the words have been in the bylaws for 14 years to say look at the GNSO to see whether changes in its structure or its operations would improve its effectiveness.

And I'm afraid that many of us in GNSO believe we haven't been as effective at our main goal: Generating policy through the PDP process. We had an entire session on Saturday led by GNSO Council chair. And I think that Heather was able to surface so many internal as well as staff-driven observations that the PDP

process is underperforming. So that's an effectiveness issue. And we are going to ask that when you put out the RFPs for this study that we have a broad discussion of finding an expert who is adequate to assess that effectiveness and that they have a scope that looks at processes and structure since it may be necessary to do both.

Now I say that in an atmosphere of budget tightening, and I realize the SSAC review was relatively inexpensive. I don't think this will be as inexpensive. And it may be that the budgeting for the structural review of GNSO, where 98% of ICANN's revenue comes from, that that review will deserve an expert who understands it and given free rein to look at processes and scope to come up with better recommendations.

That's really all we had to say on that subject. I'd be glad to hear your reaction or go to the next.

MATTHEW SHEARS: Avri, go ahead, please.

AVRI DORIA: Thanks. Avri speaking. I think that fits totally within the palms of the OEC, for the group, is to have a wide discussion with the GNSO and all the constituencies and stakeholder groups of what

UNKNOWN SPEAKER: Could I -- Sorry.

CHRIS DISSPAIN: Steve, Goran wants to say something about the budget generally, but I'm speaking -- I want to speak sort of personally for a second.

I completely agree with what you've said, but I have a question for you. I know I -- in all of these sessions pretty, much if I did a survey and I said, "Who thinks the GNSO is broken," everyone would agree the GNSO -- I mean, you might not agree the word but you know what I mean by that; right?

Why do you think you have to rely on an independent review? Why can't you launch your own GNSO PDP? If you've got -- if all of the sections of the PDP or most of them think it needs reform, why can't you launch your own PDP on the reform of the GNSO? The ccNSO did that. The ccNSO did a PDP on changing its rules. I acknowledge, nothing like as complicated as you guys. But is there a reason why it can't be done using your own policy development process?

STEVE DELBIANCO: I would observe that the process that Heather and Council began on Saturday felt very much like that. It was sort of the issues report session for fixing the PDP process. And I get that.

But keep in mind that the structural reviews, these reviews that are done, the last significant one was 2009 when -- we don't do things that way anymore, but in 2009 the Board at that point accepted a report that significantly changed the voting and structure inside of GNSO. So big shocks like that come from the outside, if you understand what I'm saying. And I realize that improvement of process should come from the inside. So we'll do both.

TONY HOLMES: Thank you. And if I could just add to that reference back to 2009, the acceptance of that structure also came with a commitment that it would be reviewed after two years. That has never happened.

GORAN MARBY: Now the Board will go to sleep because they heard me say the same thing I don't know how many times. But I've said to the Board, this was the discussion, I think it's important, even if we get tired of the message, we have to repeat the same message in

the same words to everybody, because we don't want to get -- things to get lost, and this is about the budget.

So -- yes, Chris, you can go to sleep. I can hear you.

The matter of fact is that you all know, and I share this with all of you all the time, is that we see a flattening of the -- flattening of the budget -- of the funding coming into ICANN. That has not a dramatic effect but it has the effect that for the first time ever we have to start looking at priorities in a different way.

I'm tasked with the responsibility to throw the first stone, and that is only the start of a process where we enter a community dialogue, and I think we have 150 different comments from the community, something like that, in the budget dialogue, and then it goes back to the Board, it goes back to the org, it goes back to the Board and finally it will be adopted by the -- adopted by -- approved by the empowered community.

But here's the thing. There's a couple of things that has happened during this week which I think is very fun. One of the thing is that there are some clarification I would like to do. There has been discussions about personnel, for instance; that the cuts has been unevenly shared. I want to point out that, for instance, if you look at travel support, we are increasing travel support in numbers with about 12% to the community, we're decreasing it for the org about 12%. We have cost cuttings in the

budget for org for about eight and a half million dollars, which is about roughly six and a half percent. Already this year because of less funding we have saving plans, and it's not, that's not why it's so cold in this room, already for about 8 million this year.

But the big problem is different. It's that about 80, 85% of the budget in total is fixed. It's a result out of policies. It's out of decisions made by the community or the Board or the org that is hard to change.

Policies, bylaws, we went from 40 pages in bylaws, something, to 350. FY19 is one of the first years we see the full effect of the cost we took on after the transition with all the new compliance coming in.

But we don't have a good process to have the discussion about the 80-85%. And this week we actually started that discussion. So we're talking about, for instance, reviews. One of the things with reviews next year, the accountability review, is that an additional cost of $700,000 in the budget and we're already running eight reviews.

So look at this from two perspectives, one of them is that the amount of time we spend on reviews is enormous, and in a couple of years we're going to have one or two reviews. So it's unevenly spread.

So more -- in all the discussions we've had, we realized that maybe it's time for someone to throw the first stone again so you can shoot it down, is that we start a conversation about aligning reviews.

Other things that comes up, and this is sort of a real time, we're discussing the length of the meetings. Are we efficient when we're having the meetings? The meeting rotations? And I'm just channeling what people have been talking to me about. That is a conversation that is hard to start, but you have been very good this week of actually starting to talk about them. And I'm not judging on them, but there are many of those things we maybe should relook at going forward.

And -- Because the importance of this is not the 10, 15%. That's why people ask me why you cut $10,000 there and $10,000 there. We need to be able to talk about the 80-85% as well, because the world has moved on since -- someone said, since some of these decisions were made.

Thank you.

MATTHEW SHEARS: Any other comments on the GNSO review?

Tony, over to you.

TONY HOLMES: Okay. Thank you. So we will now hand over to the Intellectual Property Constituency.

Brian, you have your 15 minutes. Thank you.

BRIAN WINTERFELDT: Thank you so much, Tony. The IPC has opted to use our 15 minutes to talk about everyone's favorite topic, GDPR. How did you know, Chris? We thought we were going to surprise the Board.

We wanted to thank you for the opportunity to put in comments on the calzone. We are still digesting the cookbook, and wanted to ask a couple quick questions. We know we're limited on time, and we respect the fact that you guys have a very packed schedule.

The first thing I wanted to ask about is bulk aggregated data access, and I know that we had discussions, as you know, with some leadership in the contracted party house. In that meeting they were kind of frank with us that they thought that port 43, you know, access to the full WHOIS data is dead. We stated in our comments that there's actually important uses of that data in the cybersecurity world and in corporations to keep platforms

safe for users and to go after bad actors. And without the ability to aggregate and correlate that data, that work is stopped.

So we want to find out from the Board what your thoughts are. And we know it's sort of not mentioned in the interim model so we wanted to find out where we are with that, and what it means to be accredited, how much data do you get access to, and will that work be able to continue?

MATTHEW SHEARS: John, can you take that? Thanks.

JOHN JEFFREY: Certainly. So I think the answer is partly still to be determined, and in part because we don't exactly what the implementation of the WHOIS -- the nonpublic version of the WHOIS is and what the access will look like.

One of the concerns we had in the discussion, the earlier discussion which I think we had with your groups in the dialogue about leading up to the calzone model, was the concern about the term "bulk WHOIS," and we've learned some new information about that even coming into this weekend. And as we understand it, bulk WHOIS is not really something documented or required under the ICANN agreements, and I'm interested if someone has a different view.

What we understand it's used for is single queries to port 43 or to other places that then are, by third parties, collected into a database and offered as a service.

And so that's something that's not required under the ICANN agreements, but it presents an interesting difference from where we are in the current position where all WHOIS is public and where we will be in the future where there is some part of it that will be behind a firewall as nonpublic WHOIS.

So what we've decided this week is, we will certainly do is include as a sixth point of divergence within the community the fact that there has been this difference. There would be a change under a new model where there's layering or tiering, and that this will change the way that parties who have legitimate purpose to access the data have been able to access it previously. And so we'll go in with that question into the DPA discussion.

BRIAN WINTERFELDT: Thank you, yes, that is actually very important and we do appreciate that and the focus on it. We think it's incredibly important that organizations -- there's one vendor in particular that has 500 enterprise clients that depend on them, including governments as well, on agencies like the FBI that rely on that

type of work. And so it's critically important to see it continue and we appreciate that attention.

One other kind of related point that we've talked about is what accreditation will look like and what it means when you get behind the wall. And that's something, again, in our discussions with the contracted party house where they indicated that, contrary to what we heard from ICANN staff where one division they had is once you're accredited, you have access to all of the data; that there could be much more limited and scaled, I guess, basically, accreditation. So there could be querying domain by domain, and they even mentioned potentially having to query data field by data field under a specific domain. And obviously we're very concerned about that it, and that's something that we just want to point out as a divergence and something that we think is really important. Obviously it relates to the bulk WHOIS issue, but also just to our regular day-to-day work that we do on intellectual property and cybersecurity.

JOHN JEFFREY: And to be clear on that point as well, we've taken the position all along that you would have access to those full records. We hadn't heard the issue until you had raised it with us about -- in your other discussions that there would be some sort of different approach to it. So we've come into this under the assumption

that once you're behind the wall, you would have access in a similar way that you did before, not that it would be throttled query by query. In fact, I think part of the dialogue that we thought could become part of this discussion is if you're behind the wall and you're clearly an accredited party to utilize that information, why would there be any sort of throttling like currently exists? So that's one of the dialogue points we thought was very relevant to this.

BRIAN WINTERFELDT: Thank you so much. It's good to hear that we're on agreement on a point. That's great. Thank you so much.

I want to turn it over to my esteemed vice president, Vicky Sheckler, for the IPC for next question.

Thank you.

VICKY SHECKLER: Thank you.

Another question we have for the Board is if you can share with us your vision and expectations once an interim model is established and how ICANN will monitor and enforce compliance with whatever model comes out.

Thank you.

JOHN JEFFREY: So there was a discussion in the Board this week about the various ways we could cause compliance to occur under the model. One of them, of course, I think Steve referenced which was a temporary specification under the current agreements where there's a need for an emerge policy adoption. So we would look at that as a proposed possible path.

The other discussion has been around whether contract waiver would work. We understand that there's complications related to contract waiver since the starting point would be the current agreements with the registries and registrars which everyone is pretty much in agreement won't be compliant with GDPR to publish the full set of WHOIS.

So -- So that's a discussion that's ongoing on the Board, and I think they'll continue to have that as we come through these next stages. But it looks like the temporary specification is one way that we think it could be implemented.

Also, Goran may want to talk to this but Jamie Hedlund is convening a group inside ICANN to talk about how we can make sure that compliance with such a measure would be taken and how that would be approached.

GORAN MARBY: Yes, he does. I mean, yes.

To be -- When -- When -- The model is primarily done for ICANN org to be compliant and we're going to use that in the same when we enforce our contracts. And of course we need to have appropriate measures so we can enforce our contracts according to that model.

I don't think that we have a disagreement in this group about that importance, and that's why we're looking at different things, also from a practical level, how we can do it. And the Board is, of course, engaged in the discussion as well, because if we -- if we would come up with a model and nobody would follow it, that would not be a very good solution to going forward GDPR.

CHERINE CHALABY: So just to add a little bit more to what J.J. has said, the Board all along considered the -- the interim model, if you see what I mean, as a compliance issue, and delegated these responsibilities to the CEO. But we're keeping a very close eye on it, and he's keeping us updated all the time, and we're very supportive of everything the CEO is doing on that.

When it comes to the implementation or whether it's interim specification or not, this is -- this will require a Board decision.

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So we will -- we're not at that point yet. We've had a discussion this week, looking at the various alternatives, but we are waiting for, obviously, the answers from the DPAs. And then we will be put in front of us the various option depending on this response, and then we will have to make a decision accordingly.

VICKY SHECKLER: Thank you for that. Given what you just said it sounds like you have at least a preliminary path forward to get to that decision. Can you share with us a little bit about what your timeline is?

CHERINE CHALABY: I think the timeline is depending on when the DPA answer us; right? Which is -- what? Towards the end of this month? That's the expectation?

JOHN JEFFREY: Yes. So we have our -- our discussions with the DPAs relating to what we've just submitted to them are expected to occur the week of March 26th. And despite Steve's concern that we may not get advice, we're hoping we will get a significant amount of information that would allow us to move forward with a model and a plan at that point, or we'll have a clear path on what questions are still pending.

Then moving from there, we'll have a model that we could choose to take a temporary specification on or move in a path. Until that point, we see that there could be some barrier in picking a temporary specification before we know what it would say.

And by the way, Theresa wanted me to remind you that we're also coming to talk to you about these topics at 4:45 today in your -- in your group.

VICKY SHECKLER: As you can tell, it matters a lot to us. We really appreciate it.

Does anyone else from the IPC have a question they want -- I'm sorry.

BRIAN WINTERFELDT: I have a next question, but I welcome any other IPC members who would like to come to the mic and speak and ask a question as well. But while we are waiting, I wanted to quickly ask about ICANN org having access to WHOIS data. I understand that work that's done potentially at the SSAC level and other internal reasons why you might need access to that data. I don't see that being provided for in the interim model. So I was wondering where the status was on that.

GORAN MARBY: I can start, and David will continue.

Yes, we have an internal project which is called the -- from the discussion (indiscernible) which is the aim to learn more about how the domain name market works, and I think we have a presentation this week where we will supply more information. And to the point, we have -- we have access to the same data as everybody else. Nothing more, nothing less.

If there will be an accreditation model, we have as an organization to be compliant to that model as well.

So we will be sitting in the same bracket as other organizations that would like -- that is nonpolice force that would like access to the data. So we have that problem as well if you want to proceed with that project.

I don't know, David, if you would like to comment.

DAVID CONRAD: Sure. We have sort of the primary project right now -- excuse me -- that is interested in WHOIS data is the DAAR project. And the only information in the WHOIS that the DAAR project cares about currently is the registrar information, which is, at least in theory, not PII and, therefore, could be considered part of the public

portion of the data that would be outside of the gated or layered access. There have been discussions about other -- at least within my group, the office of the CTO -- other research projects that could look at correlating the information in the WHOIS data to try to track down specific -- thank you. Yes, I am a rhinovirus carrier. Please stay far away from me.

But as Goran says, any access that we gain is gained through the same mechanisms that anyone else would gain access.

As a researcher, we would have to apply for accreditation, presumably in the gated model as well.

MATTHEW SHEARS: Great. Thank you, David.

Any other questions or -- ah, yes. Please, introduce yourself. Thank you.

MARC TRACHTENBERG: Marc Trachtenberg, member of the IPC. Goran has said several times today -- Becky as well -- that we should speak to the DPAs in particular with respect to the accreditation process but also other aspects of the interim model.

I'm just trying to better understand to what end we would do that. There's 27 national DPAs for companies that are outside of

the EU. Which DPA are they supposed to talk to? How many of the DPAs? Is one enough? 5, 10, all 27? Do you have to talk to the thousand DPAs at the lower levels? Do we need to get a letter from the DPAs? What if the DPAs disagree? I'm just trying to understand what really the purpose of this is. Can we just tell you what the DPAs said? What do we do with this? What is the end goal of speaking to the DPAs?

GORAN MARBY: I think you that have an expert -- I don't want to give you a lesson on lobbying and how you deal with regulators, which is, essentially, something that this group here are good at. There are people sitting in this room who are very professional in how to do this.

My job is to give the DPAs through the Article 29 group the broader picture of what you've been saying. And you know I've been doing that.

But it's very hard for me to take on to myself how you are to do it. You have people here who knows how to do that and answer those questions. I think it would be out of scope for me to do that. Thank you.

MARC TRACHTENBERG: Just to clarify, I understand your point. But, assuming we figure out how to talk to these regulators, what end product can we deliver to you that would be sufficient to have you make changes to the interim model?

GORAN MARBY: The important thing is that, if you think that they don't have that information, it's to find a channel to supply that information to them.

They will then act as a, Article 29 group. And they will do their job and balance the information they have. And they will give all of us information back.

They will not supply me with information. They will provide that information to all of us.

So, basically, you're doing the same thing as we do. We supply them with information for their consideration. And I think that's a very good thing to be doing. And I asked you for that for a long time.

MARC TRACHTENBERG: But, again, once we do that, what can we deliver back to you that would be sufficient to alter the model?

GORAN MARBY: If you will get a straight answer from the DPAs, just give it to us.

MATTHEW SHEARS: Thanks, Goran. I recognize we've come to the end of the 15 minutes for this segment. So, Tony, I'm just going to look to you if we want to move over or we take one more question.

TONY HOLMES: I don't believe we have time to take one more question. I'm sure everyone is aware of the healthy competition there is amongst the CSG constituencies for time with the Board. I believe it's time to move on. I'm sorry about that, Paul.

PAUL McGRADY: Thirty seconds.

TONY HOLMES: To make a point, you're not going to get an answer now. And I'll ask the Board to come back if they want to. No more than 30 seconds.

PAUL McGRADY: This is a question about optics. When the branding community leaves here, we have to go back and explain what happened. We have an interim model that addresses the needs of contracted

parties for compliance. We don't have an interim model that addresses the brand need for access to WHOIS to combat cybersecurity issues and phishing and fraud.

It's not a situation where everybody is -- feels the same level of frustration. We have a model that addresses one problem. And the model does not address our problems at all, and we're told to go to the GAC.

And so, when we go back, we want go back. And we want to say we support the multistakeholder model. ICANN's continuing to rebuild its credibility after the bounce and the bump of round one.

But, at the end of the day, we really do need for this part to be taken as seriously as the contracted parties problem was taken. Thank you.

GORAN MARBY: Could I comment? I believe the contracted parties probably has exactly the same notion as you.

That we have not taken their concerns into account and, therefore, they're equally unhappy. Thank you.

MATTHEW SHEARS: Tony, to you.

TONY HOLMES: Okay. I'm sure everyone is going to be really disappointed that we're not going to speak about GDPR from the ISPs.

The full title of our constituency is the ISP and connectivity provider's constituency. And with that we are certainly interested in the technical aspects of the Internet.

There's also an expectation on us I think from end users that they entrust us to help ensure that there is the stability and security within the Internet itself.

And one of the current challenges that ICANN faces is the issue around the KSK rollover. I'm really pleased to see David here. Because I think he has some interest in that issue as well.

And, certainly, it's an issue that the ISP community are actively working with the ICANN staff, some of David's people, to move that along the right path. So, with that introduction, I'll turn over to Mark Mc Fadden to take us further. Thanks, Mark.

MARK McFADDEN: Thanks, Tony. And I'm glad David's here, too. Although I'm glad he's several seats away from me.

The Board -- let me introduce my remarks by saying that I'm going to take a few minutes to reflect on some of the ISP implications of the key rollover.

And this truly is something very different from what we've been talking about in the past.

Then I want to talk about -- I want to bring it up to the Board level and talk about some implications of the rollover delay that we think the Board should be aware of.

There's two important ones that I'll come to towards the ends.

Let me begin by saying that the board is well aware of all the work that the CTO's office has done on KSK rollover and the research that was done in the summer and in the fall that resulted in the initial delay. One of the things that David's office did was reach out to the ISP community and ask if we could be of help. And the ISP constituency is very interested in being of help. Because we're the people whose phones are going to ring if things don't work.

We're the part of the community that has the Help Desk. And so we're the part of the community that, in the event that the rollover takes place and something bad happens, we are part of the community that's greatly affected.

Given that, one of the things I can report to you is that the CTO's office and the ISP community have worked collaboratively. And I've been very appreciative -- I think I can speak for everyone in the ISP constituency that we've been very appreciative of how the CTO's office has reached out to us.

And one of the things that the Board knows is that the CTO's office did a lot of research that led up to the initial delay.

The ISP constituency supported that delay. We think that the reasoning behind the delay was well-founded. We think that the reasoning for doing further research was well-founded and the CTO's commissioning of further research was an excellent decision.

One of the things the Board will also know is that on February 1st the CTO's office proposed -- made a short proposal to end the rollover delay and proceed with a new key rollover in October of this year.

And that's where I come to my first comments from the ISP constituency. Because, in the proposal that came from the CTO's office, one of the things that they reflected on was that, as a part of the research they did the second time -- and this is truly due diligence out of the CTO's office -- they were still unable to tell what the effect of the key rollover would be. They were

unable to tell how wide the problems would be upon key rollover.

And yet one of the things that we reflected on is that, without knowing the magnitude, yet -- without knowing the magnitude of what the problems would be as a result of key rollover, the proposal is to move ahead, that it's time to move ahead.

And I think what we question or what we wonder about is what's the rationale for that? Why now? Why at this moment when we still don't really know what the implications are.

In the short document that the CTO's office provided for public comment, one of the things that we see in it is a discussion of, well, here's the research we did. We really haven't found out much that's new. We really don't know the scope of the problem. We don't know what will happen when we do the roll over, but let's do it.

And that's what's out for proposal. One of the things in the section two of the proposal that's an intriguing part of the proposal for the technical community is the suggestion that the research that was done didn't find a threshold at which they would stop the rollover.

So what would stop us from doing this rollover? There was no numbers. There's no metrics, right?

So what occurs to us is that, well, if there are no numbers that tell you to stop from doing the rollover, there are also no numbers that tell you to start to do the rollover. Right? Now those are all -- to be completely honest with you, those are all comments that should come from the ISP community and go into public comments. And that's what will happen. That's absolutely fine. We as an ISP community, I think, are sort of dubious about whether or not the rollover should take place since we've seen no data that actually supports the notion that we know how great the outages might be. There might be very small outages. There might be enterprise outages. There might be larger outages with resolvers that are misconfigured in important ways. But we simply don't know.

And what the CTO's office has done is hire very, very good people that the ISP community trusts to actually research that data and look at it.

And yet -- and yet, what I'm saying to the Board is that the ISP's community, a community whose phone is going to ring if something goes wrong, the ISP community is looking at the small paper that the CTO's office gave us to count on and doesn't see anything in there that actually motivates us to move ahead so quickly.

Now those are truly things that are related to the rollover proposal from February 1st.

Let me bring the Board's attention to a higher level set of issues. And these are issues that come out of the research that the CTO's office has done. And there are two things that I'm asking of the board. And, since David is here, I'm going to ask them of him as well.

One of the things that the CTO's office has done is commissioned outstanding research in this area. And a lot of research. Because the original research that took place actually caused the initial delay.

The subsequent research is research in support of trying to figure out how widespread the problem is.

And, as I mentioned to you, we still don't know.

One of the things that the CTO's office has done as part of that research is collect a lot of data.

Fundamentally, as a principle, when ICANN collects data, it should be made available to the community.

Let me say that very succinctly. When ICANN collects data and there are no contractual obligations otherwise, that data should be available to the community.

In the CTO's office, when it does this kind of research, should not just be encouraged -- they should be required to make that data public so that other researchers can take a look at that. So the ISP community, the connectivity, the IXP community can take a look at that data. It's an important principle that goes beyond the CTO's office. And, if you would catch me in the hall, you'd hear me saying this all the time. When ICANN collects data for its own purposes or as a result of the work that it does in its basic business, that data is the entire community's, not just ICANN's.

And so, while in this particular case the ISP community feels very strongly that the research data that was collected as a result of looking at the state of resolvers globally should be made available to the community, we think that's an essential principle. That's a board level principle. That's not just David's office. That's the community in general. And that's all data collected. We realize that there's sensitivities. We realize there are legal sensitivities, contractual sensitivities, and so forth.

The second thing I'll say to you is this -- and this is the second of the board issues. Besides the availability of the data, one of the things that -- one of the things that the CTO's office has done is made public the plan for restarting the key rollover.

That's an excellent thing.

But one of the things that's happening in the CTO's office is that we're seeing a lot more important initiatives come out of that office.

And one of the things we'd like to see from the Board and from the CEO is more of these initiatives getting more public scrutiny and transparency through the public comment process.

So let me stop there. Two things: First of all, public access to key data. And the second thing is more public transparency on interesting initiatives from the CTO's office. Thanks.

MATTHEW SHEARS: Thank you very much.

Goran and David, you've got three minutes. Thanks.

GORAN MARBY: On the first point you raised about the KSK, which is not intended to break the Internet, so we don't have the problem with GDPR -- one of the things that we are discussing more and more -- and I'm channeling my inner David because he's losing his voice -- is the inability to know who actually uses the services in the first place.

I personally think this is a discussion we need to take with the SSAC and the RSSAC and all the technical part of our community

to really discuss if there is something we should proceed -- if there's anything we can do to make their interaction better so we actually know who uses this.

So we avoid the sort of questions that come out of the KSK.

On the other side -- you know that we are in the process that we started a year ago, I think, called the ODI, open data initiative. And, of course, you've read the CTO report to the Board.

You will see that in my goals there, one of my goals from the Board is to have the first substantial deliverings in the ODI process during the first six months.

But I've said that before that we had a lot of information. We didn't have a strategy. We're building a strategy. And then to actually supply with an IPI.   Because you're right.   The information that is not for other legal reasons should be publicized. We've not done that very good before. I admit that. Also with a project -- if we publish this, no one can find it because no one can find anything on icann.org. At the same time, we're also building a documentation management system to give you the probability of actually finding something as well.

I think some of the information you are looking for is actually already publicized. It's just that we hide it so well in the big wardrobe of ICANN -- the Web site of ICANN org.

David.

DAVID CONRAD: Right. To some of the specifics, the question from Marc, I appreciate the opportunity to speak, if I could speak, to the KSK rollover.

The situation we face is actually very complicated for ICANN.

We have, as a result of postponing the KSK rollover in September, we basically posed the question to the technical community as represented by the participants of the KSK rollover mailing list what should we do moving forward? Should we roll, or should we not roll? The consensus of that particular communication channel, which is an open mailing list -- anyone can join. It's still open, and I still encourage people to participate on that mailing list -- was that the data that we are receiving from what's known as RFC 81.45 implementation, doesn't actually provide us with actually any help. Because what it's telling us is that the configuration of resolvers, not the configuration that users would experience should we actually roll the key. So the data that we are receiving right now back in August of last year, we had received an indication that upwards of 5-8% of the resolvers were being misconfigured. This was a surprise to us because we found -- the standard from which this implementation was derived wasn't actually approved until

April. And the first implementation didn't show up until August. So in September, when we started getting this data, it was actually pretty shocking that people would actually implement this so quickly.

Today, looking at the data, it's now between 20-25% of the resolvers indicate they are misconfigured. And this is data that we make available on a Web site at research@icann.org.

 We show the graphs of the current data that we're receiving by looking at L-root data.

The implication here is confusing. So in -- as with any time icann.org is confused, we look to the community to provide us input as to how to move forward. And the input that we have received to date via the KSK rollover mailing list and which resulted in the draft plan that we put out on February 1st, was that the data that we received does not provide us sufficient information to decide that the -- that we should continue to postpone the KSK rollover. And, in fact, we should move forward as soon as possible with a continued and accelerated effort at communicating to the world that we will be doing the KSK rollover.

The reason or one of the reasons why folks in the technical community believe that we should move forward with the KSK rollover is the reputational damage that DNSSEC has received as

a result of the postponement. In fact, Geoff Huston of APNIC posted a blog to CircleID that suggested that DNSSEC deployment has actually decreased over the past year and a half particularly around the postponement of the KSK rollover.

It went from about 16% of resolutions down to about 13% now. There is leave within at least some portion of the technical community that continued postponement of the KSK roll will undermine the interest in deploying DNSSEC, and that's something that at least the folks who participated to date in the input thought would be a negative outcome.

We would strongly encourage the input of more community members through the public comment for the draft plan to try to provide a broader base of input from which we can modify the plan as appropriate. The October 11th, 2018, date is obviously tentative. It's based on input from the community and approval by the board ultimately after review by SSAC and RSSAC and pretty much anybody else you can think of.

With regards to the making the --

CHRIS DISSPAIN: Sorry. We're now five minutes over time and we need to call the end.

DAVID CONRAD: Sure.

MATTHEW SHEARS: Thanks. Tony, the last word.

TONY HOLMES: Just to thank the board, David and everybody for this opportunity. It's certainly always a privilege to do this and a very important part of our meeting, so thanks to everyone. And you, Matthew.

MATTHEW SHEARS: Goran.

GORAN MARBY: Could I also take the opportunity to thank you for the morning we had this morning. As always, was open and frank discussions, and I'd love to be invited again to continue them. Thank you very much.

MATTHEW SHEARS: And --

TONY HOLMES: That will certainly happen. Thank you.

MATTHEW SHEARS: Our apologies for not getting to the two last questions. We'll come back to you on those, and thank you very much.

[END OF TRANSCRIPTION]