SAN JUAN – Joint Meeting: GAC & ICANN Board
Tuesday, March 13, 2018 – 17:00 to 18:30 AST
ICANN61 | San Juan, Puerto Rico

MANAL ISMAIL:    So welcome, everyone.  Please take your seats.  We're starting now.

So this is GAC Session 28, GAC meeting with the Board scheduled at 5:00 p.m. for 90 minutes on Tuesday, March 13th.

So thank you for Board members who are here with us and then welcome to the GAC room.

And thank you for reaching out to us in advance asking for our questions and for our goals as well.

So we have submitted, I mean, written answers to the key goals that we already have.  I'm not sure whether we want to go through this here again, or is it enough that we have submitted in writing?

But it would be interesting also to know how you are dealing with the goals that you have submitted, I mean, across the community.  So shall we go through the answers or...

CHERINE CHALABY:     It would be helpful to just go quickly through it.

MANAL ISMAIL:     So sure.  Just a second.  Yeah.

So the question was:  What are the key goals in 2018?  And we have divided our answer into two reports, one on the substantive policy issues and one on the operational issues.

On the substance, first to ensure that all public policy considerations relevant to implementation of ICANN compliance with GDPR are properly taken into account, including access for ensuring public safety and general transparency.

Second point is work with all stakeholders towards a satisfactory resolution of the ongoing dispute concerning the applications of .AMAZON and related strings.

And the third goal is work through the relevant cross-community working group process to ensure that relevant public policy considerations are reflected in the cross-community working group final recommendations, in particular with regard to the issues of jurisdiction, diversity, and human rights.

A fourth point is satisfactorily resolve all outstanding public policy concerns regarding protections of IGO and INGO identifiers.

And, finally, use the high-level governmental meeting that is to be held at ICANN63 to progress relevant policy discussions and engage with the rest of the community on public policy aspects of ICANN work.  So this is on the substance side.

On the operational issues, the GAC is aiming to pursue implementation of its joint statement with ALAC on enabling inclusive, informed, and meaningful participation in ICANN, including the use of well-established cross-community processes to facilitate engagement in post-IANA transition work such as the empowered community and establishing the IRP arrangements.

The second point is work with ICANN and the community in preparing and conducting the high-level meeting.  Again, that's to be held at ICANN63.

So those are the short-term goals for 2018.

For the longer-term goals, again, we divided them into substance and operation.  And with respect to the substance, the GAC will be working towards, first, a sustainable approach to the use of geographic names at the top level and other levels.

Second, an agreed policy framework for future gTLD rounds including relevant public policy dimensions. For example, consumer safeguards, engagement with developing countries, community-based applications, and an agreed role for GAC input.

The third point is working on a sustainable and workable framework for registration directory services, the WHOIS, that meets the needs of the full range of stakeholders. This was on the substance side.

On the operational side, the GAC will be working towards further enabling inclusive, informed, and meaningful participation in ICANN including more efficient and effective public comment processes and collective priority setting among community members.

The second point is working on more efficient and effective use of the available time of GAC members, particularly intersessionally.

So this is basically the goals that we have submitted on the shorter term and on the long-term, so…

CHERINE CHALABY: Thank you.

MANAL ISMAIL:          Any comments from the Board or from GAC colleagues?

CHERINE CHALABY:       No.  Just a quick comment.  And the purpose of these is that, as we said before, the Board does not really create its own priorities per se in our own activities.  We try to align our activities and our priorities with the community's priorities.  So knowing your goals for 2018 helps us in terms of our focus.

And in terms of the longer-term goals, we -- we will be shortly starting a new strategic plan for ICANN for the year 2021 to 2025.  And it is important that all of us, all the stakeholders, get involved in that so that they also put their priorities and the things that matters inside that plan so that it is truly a community-driven exercise.

So thank you very much because this helps shape -- shape also the beginning of the strategic planning exercise.  Thank you.

MANAL ISMAIL:          Thank you, Cherine.

So we've also shared the list of questions we intended to raise here initially.  But then after discussions here, we moved a few points to just for the info and updates to the Board, should you

wish. And so we shortened our list of questions. So, yeah, thank you.

The first question is -- guess what.

[ Laughter ]

-- on GDPR. Yes, please. Chris.

CHRIS DISSPAIN: Would it be sensible perhaps to do the updates first and then run -- so that the discussion can just run perhaps? Thanks.

MANAL ISMAIL: Fair enough. Yes.

So quickly on the updates, first of all, regarding the timing of the Board response to the GAC communique and here, we welcome the fact that the Board has provided a detailed time line for responding to GAC communiques and promise to make efforts to reduce the time line as possible.

And I thank Maarten. And we've worked through the BGRI working group along with David and Christine as well. So thank you all. And they provided a comprehensive time line along with the challenges that may keep the Board from really reducing this response time. But we appreciate the consideration. So thank you for this.

On the .AMAZON, the GAC has received a thorough and detailed update on the work by the relevant governments to look into the proposal submitted at ICANN60 by amazon.com.  And I pause here and see whether GAC colleagues would like to make the update themselves or...

Brazil, would you like?

BRAZIL:                              Yeah, thank you.  This is Benedicto speaking for Brazil.  Yes, in case there would be an interest on the part of the Board, I could repeat the update And maybe try to shorten up a little bit in relation to what we did at the GAC -- at the GAC meeting.

Well, basically what I reported is that after Abu Dhabi and in line with the commitment we have undertook, we submitted a proposal we had received that was presented by Amazon at the Abu Dhabi meeting.

We submitted to the first meeting -- monthly meeting of representatives of Amazon members at the Amazon seat in Brasilia.  And afterwards, this was up in our proposal, included in the agenda of the ministers of foreign affairs who met on 1st December in Tena, Ecuador.

In light of the information they provided, the ministers decided to set up a working group to look into the proposal and to

prepare a report for them on the days of which a decision shall be made in regard to the proposal -- in regard to the response to be given to the proposal, including, of course, the alternatives to accept, reject, or make a counterproposal.

This report is being prepared. We have been working on a permanent basis in that regard, and we have held three plenary sessions for that purpose. It should also be noted that Amazon provided an updated proposal on 7th of February.

That proposal was examining those three plenary sessions we have had so far. And in the second-to-last meeting we held on 22nd February, we decided to request some -- few other clarifications in order to make sure the group understands correctly all the elements contain the proposal and will, therefore, be in a position to prepare a sound report for the political authorities to consider.

Amazon has replied, has already provided the required clarifications to those queries. And in the context of this meeting itself and as per contacts that have already been -- have been maintained in the context of this meeting itself, we have received also an expression of interest on the part of Amazon to provide further information that will provide even more detailed inputs for -- in regard to their proposal.

So basically that's where we are.  The working group shall resume its work on 27th of March after this meeting.  We intended to resume next week.  But there will be a very important meeting in Brazil, the World Water Forum that will also require the participation of the Amazon Corporation treaty organization members that will also have an interest to participate in those meetings.  So on the 27th March, we will resume.

We may need, besides that meeting, yet another meeting that will probably be scheduled for the week after.  So our best expectation at this moment is to conclude that phase of work by the beginning of April, mid April at most.

So it will immediately be convened to the political authorities for their decision.  So that's the point we are.

And at this stage, I'd like to thank the Amazon representatives for keeping us very much updated and well-informed on the proposal and also the ICANN org, ICANN staff for the support they have been providing in a facilitative role towards making the appropriate -- facilitating the contacts between the countries and the company.  Thank you.

MANAL ISMAIL:                    Thank you.

Just to add that we also aim to respond to the Board's request for additional information by the end of ICANN61 as agreed.

So before moving on, Goran? No? Any comments from any --

GORAN MARBY: Just a very short comment. Benedicto, I would personally like to thank you very much for your thanks to my staff and also for your thanks for the Amazon, the company. I'm very impressed with the process so far, and I hope that we jointly -- you jointly can make it to an end because we also have the dates to take into account. But I am looking forward to work with you on that. Thank you.

MANAL ISMAIL: Thank you, Goran.

Moving on to the third and last point for -- for information, is on the two-character code at the second level. And we've had this discussion. We agreed that there was some disconnect in the process, but there was a very constructive discussion with ICANN and government engagement and the GDD departments, and we're trying to take corrective measures and to undertake an initiative to mitigate governments' concerns with regard to the release of two-character codes at the second level. And we intend to follow-up on the implementation of this at ICANN62.

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So...

And again, if GAC colleagues would like to chime in here and...

Yeah, China, please. Feng.

CHINA: Thank you, Manal. Thank you, Chair. And thanks go to board members presenting at this joint meeting. Taking this opportunity, I would like to make an observation in -- observation in relation to this item.

We appreciate efforts taken by president, CEO Goran Marby and your team in mitigating the concerns of governments in terms of the release of two-letter codes at the second level since last year.

The issue of two-character code has significant public-policy implications which attracted much attention and it caused concerns for many GAC members.

As you are fully aware, GAC members always are concerned about public-policy issues. This reminds me of the new round of discussion regarding the geo name under way. Likewise, the new round of discussion regarding geo name also has the same level of importance. I think this is an issue very sensitive to governments and to the GAC.

Currently the new gTLD subsequent procedure work track 5 is focusing on the geo name at the top level. Presumably at particular phases somewhere along the track, the process, the Board might have to make decisions related to geo name. So I think when it comes to that juncture, in order to avoid a similar case of the two-character happening again in the future, I will kindly urge the Board comprehensively take into account all aspects around the related subject and put efforts on soliciting perspectives from GAC members and then carefully make the related decisions.

This is the end of my intervention.

Thank you.

MANAL ISMAIL:          Thank you, China.

Any comments or reactions to this?

So Goran.

GORAN MARBY:          Thank you very much for your intervention and your comments are noted.

Thank you.

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MANAL ISMAIL:     Thanks, Goran.  And again, I thank -- I thank ICANN people for the constructive discussion, and also I thank my GAC colleagues for showing flexibility and willing to find a constructive way forward, which was really helpful at the end of the session; to find an agreed way forward.  And we'll keep following up with ICANN org on this, of course.

So with this, we can now move to GAC questions.  And again, maybe we can take them in reverse order as well.  So we can start with the IGO protections, because this is just one question.  And then we go to the GDPR.  I see nodding, so...

So here, in a letter of 22nd December to Donuts -- 2017, to Donuts, Incorporation, concerning Euclid University, the Board vice chair and the president of the Global Domains Division noted that the protections for IGO acronyms remains a topic of discussion between the GNSO and the GAC and is being facilitated by former ICANN board member Bruce Tonkin.

So can the Board confirm that the facilitated process in this regard has not progressed since then, since ICANN58, and indicate what are the next steps?

Thank you.

CHRIS DISSPAIN:     Thank you, Manal.


MANAL ISMAIL:     Yes, please. Chris.


CHRIS DISSPAIN:     Chris Disspain.

Thank you for the question. No; it has progressed.

The situation is that the facilitator -- the facilitation that Bruce Tonkin did led to an understanding that ICANN org would look into creating what we're shorthanding as a watch list which would enable IGOs to be informed in the event that something that was an acronym of their name would be -- had been registered. That -- that's -- ICANN org are working on that and on figuring out how to do that.

In parallel to that, the GNSO was running a curative rights mechanisms PDP, and we had decided that -- we all agreed, really, that the curative rights PDP needed to be completed before, so that we could effective launch everything at the same time. So that you could release -- unreserve the acronyms, release them, and then the watch list would provide IGOs with notification, and then they would have the curative rights to fall back on should they need them.

The Board learned today that there may be some issues with the -- with GNSO policy development process.  It appears to have hit a bit of a problem in reaching consensus, and it may be that that PDP, in fact, will fail to reach consensus, in which case, if I understand it correctly, we would need to find a solution, another -- another way.

Just at the meeting we just held which was with the Contracted Parties House, we agreed to have a conversation with the -- with the Contracted Parties House, or, rather, with the registrars; see if we could find a way of short circuiting the issue or shortcutting the problem of the curative rights mechanisms so that we were able to move forwards on this.  So things are happening; it's just happening very slowly.

If I may make two other points.  The issue of Euclid University is an interesting one.  The -- To be clear, the names have now been solved; right?  So the names of the IGOs are reserved and there is now a process by which those names can be released to the IGO to be registered.

For some reason, Euclid University have suggested -- have chosen that -- believe that Euclid is an acronym of Euclid University, which it isn't, but it is nonetheless on the acronym list.  And, in fact, there are a number of examples on the acronym list provided to us by the Governmental Advisory

Committee that are probably not actually acronyms. To take another example, The Commonwealth is listed as an acronym. Commonwealth is listed as an acronym of The Commonwealth, which it quite clearly isn't.

So I think that there -- It's always open to the IGOs to ask the GAC to have their acronym removed from the list. That's the first point. So Euclid could have -- could ask the GAC to remove Euclid from the list.

And, secondly, it illustrates the challenge of regis- -- doing anything with the acronyms without solving the problem because you can't have a circumstance where you effectively provide a rights to the IGOs to register an acronym, you know, in every TLD. That wouldn't be workable.

But, to finish off, just to say that we -- we got some information today, which I've now told you, and we are seeing if we can find a way around that. And believe me when I say that I'm as keen to sort this out and get rid of it as you all are.

Thank you.

MANAL ISMAIL:        Thank you, Chris, for the update. And, yeah, we were having the same discussion at the GAC as well. So -- And Euclid is a good example also for the need to review the list on one hand and

also find a process to release from the list. And I don't want to preempt or conclude our GAC discussions yet, but we were having this discussion, and we might have something in the communique at that respect.

So any GAC colleagues who would like to weigh in or...

Okay. Perfect. Yeah. WIPO, please.

WIPO:  Thank you, Chair. I just wanted to follow on what Chris said by way of thanking Chris and others involved for moving this process along. We've been pleased to see that in terms of the full-name protection, we believe we've made a lot of progress. And we have a little bit of work to go to narrow the gap, and we're hoping that we can rely on ICANN for a little bit of assistance in that respect.

So I just, again, wanted to record that we're pleased to see that moving in a good direction.

And then just to also pick up on what Chris said, we have had not only serious concerns with the interim report of this GNSO working group which has signaled that it would come out with recommendations which squarely conflict with GAC advice but also in the process breakdown in the working group itself. And

obviously that's an area where I think we're all looking to see what unfolds.

Thank you.

MANAL ISMAIL: Thank you, WIPO.

Any other comments?

So if not, then we're left with the GDPR. So can we go back? Yeah, thank you.

So the GAC would appreciate any reaction that the Board may have to comment -- to the comments submitted by the GAC on ICANN's proposed interim model for GDPR compliance. In particular, how specifically the model will reflect the GAC advice in the Abu Dhabi communique to maintain a WHOIS system that keeps, ask I'm quoting, "WHOIS quickly accessible for security and stability purposes, for consumer protection and law enforcement investigations, and for crime prevention efforts, through user friendly and easy access to comprehensive information to facilitate timely action," end quote, and keeps -- and again quoting again -- "WHOIS quickly accessible to the public, including business and other organizations, for legitimate purposes, including to combat fraud and deceptive conduct, to combat infringement and misuse of intellectual

property, and to engage in due diligence for online transactions and communications."

And maybe I can pause here and we can take them one by one? Or...

Okay.

GORAN MARBY:    I would propose that we -- Because there are detailed -- tomorrow we're going to have a session at 9:30, I think it is, where we also give the opportunity to go through detailed questions.  I would very much engage in a sort of more general "where we are" questions about the GDPR, because there are some things that they are threats, they are opportunities.  And I think if it's possible, we can engage on that and have the detailed questions maybe tomorrow.  Because -- And also, I know it was late, but we also submitted the cookbook, the same information.  We sent it to the Article 29 group just a couple of days ago.

Would that be okay?  At least start on the general.

I'm saying discuss it now.  We start from the top and go down rather than go from --

MANAL ISMAIL:

So let me go then through all the questions, and then we can figure out how we would like to tackle them.

I mean, maybe we can -- I mean, so let's go through the rest of the questions. And then we can decide on the approach.

So the second question is: What is expected of the GAC in relation to the design and implementation of the accreditation programs? And, specifically, would that role be advisory or operational?

Third, providing more clarity on what will happen between the implementation of the interim model on 25th of May and the time when the accreditation programs are operational?

What's also been referred to as the interim interim model.

And is there a risk of having a blackout of the WHOIS for an undetermined period?

The fourth and last question is: Can board members express their views on the possibility of operationalizing in the WHOIS system the important distinction made in GDPR between legal and natural persons?

So, I mean, those are the questions that were compiled by the GAC. And so over to you, Goran. And let's see how you would like to approach them.

Thank you.

GORAN MARBY: If I start -- and I suppose Becky can help. And we have J.J. here as well. But there are a couple of things I would like to take the opportunity to say.

First of all, we appreciate very much the interaction we've had with the GAC and individual GAC members through this process.

This law was enacted -- sorry, this law was designed several years ago. And, apparently, as a community, as an institution we didn't pay much attention. We started very late.

Just to set some basic -- so we started a process really in South Africa to define something that didn't exist. ICANN as an institution doesn't have a policy for WHOIS.

We have several things that is in our contract, but we don't have an overarching where we answer the question between the balance of the right to privacy and the need for access to information.

And that's important because we actually did spend a lot of time coming up with that answer.

There is no process for this -- when the founding mothers of ICANN came up with a system of this, this is no process how to

do this. Because one of the things that we realized during that is that ICANN org actually is some sort of data controller in this. That means that I'm legally bounded. I have to make a decision about this. Because, otherwise, I will put not only org but the whole ICANN institution at risk.

So -- and that's very important to remember. It's like asking the community to make my taxes.

We did that process, and we invited the community because we know there's a lot of interest.

And we are -- there's one other thing that is important.

We are sort of in between a rock and a hard place on this. On one side, we have a law that is not enacted. WHOIS has never been tested when it comes to privacy in Europe. And that's one of them.

The other side of that is we had policies set by the community that you can see in our contracts.

But, when we use the term "contracts," we often use that in a -- you might think as an ordinary business or contract. One thing that is interesting to note which will answer one of your questions, is that, if local law -- and I hope you appreciate this -- local law always supersedes our ability to enforce contracts.

We're not a government. We are a voluntary an organization who has volunteer arrangements with each other. That means that, if we don't know the law, we cannot enforce the contracts. Because the contracted parties, of course, have the right to look upon those contracts and say we don't know what the law says and then they can make their own decisions about it.

So, to answer one of your questions, if we don't get guidance from the DPAs before the end of May, which is something that we can provide a contracted parties with, it would be high risk that the WHOIS will be fragmented from there. I don't want to use the word "dark," but it's really very much important, especially for the European member states, to engage with the DPAs and the Article 29 groups to provide that. Because it would be easier, of course, if I can actually say to the contracted parties exactly what to do. But we can't.

And that is important to remember in this discussion. It's not an ordinary business contract.

The WHOIS actually predates ICANN. And it's been discussed, as you know, in the ICANN community for the last I think 200 years now. And we've never been able to reach that, but the community still has made a lot of progress.

One of the important things of that is to come up with what we call the tiered access model. That doesn't come out of the blue.

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We received a letter from the DPAs somewhere in October who sort of guided us in that direction. As you also know, we over the years have received information from DPAs at different points in time where they have said things about the WHOIS system. We've been able to -- and very much thanks to also the European Commission -- have a good contacts with the Article 29 groups and DPAs so we have a continuous dialogue.

And these things are important to take into context in any discussions.

So what we've been trying to do -- and this is not -- like many -- in the beginning I think people sort of expected this as an implementation procedure.

We sort of negotiated with this side. And we've come up with something. And that's a decision, and then we go on. Here it's about being compliant with a law.

And you all represent governments. And you know how important it is to be compliant with the law.

And what happens now is we've been taking all of those different parts of the community. And we asked them to provide us with information, for instance, with civil society, from police forces, and other ones so we can actually build what we called a reason why information should be saved or for disputed.

And we did that hybrid. And what we've done now -- and just a couple of days ago we disputed that under the name the cookbook through the DPAs.

We also, because we know there are unanswered questions in this, provided them with information about questions that you are raising to us where we don't have an answer to.

It is in the hands of the DPAs of Europe. They have a right to look at what we do and tell us what to do. Thanks to the good cooperation we have with them, we're hoping that we can have that information as a guideline from them also before the law is enacted.

But the mechanism of this is that neither I or the Board, if we don't know what the law says, can exactly know what's going to happen. That's why we need the guidelines.

One of the aspects of the -- if we are -- if we do have a tiered access model, we then need to have an access system for that. And that's what we call the accreditation model. Through dialogues -- and, for instance, if you just make an example, I'm not saying that the paper has a value or non-value. But in the Berlin paper, it stated, for instance, that ICANN as itself can be seen as someone who can't do accreditation. That would be the same as self-accreditation. We've had those signals before. And, therefore, we sort of turn it around.

So I would  for a moment forget about WHOIS.  Forget about it.  We are now creating this system for the first time.

And some of the examples we've seen start off that the only time you can access to this data in the accreditation model would be through, for instance, due process.  You have to have a court order to get access to the data.

Because of the fact that we see that we have a higher demand because of policies set by the community, we tried to move that away.

And the question, of course, comes from what are then the mechanisms to get access to data?  And we have proposed one model.  We've been expecting other models to come in, and we just received one that would be sent to the DPAs.

The notion of that is that we will ask the GAC -- and it's not operational.  I wouldn't say it was.  The first thing was to be a vehicle for police forces.  We think it's important that member states makes its own decisions which are legible police forces, use GAC as a mechanism and send that information to us so they can get access to the data.

And then you have, for instance, intellectual property as an answer.

Our suggestion there was that the GAC as governments -- we are really asking you as governments now, not as a GAC, to come up with a code of conduct for organizations that it would be possible for them to get access to data. We will then take that code of conduct and, for instance, speak to WIPO who can operate a license (phonetic) and make sure that an organization follows that. And we can find other vehicles for doing, for instance, for cyber security and other ones.

But I want to make one thing fairly clear: WHOIS will change. It will be different from what it is today. Because there's another end to this is that the people actually getting access to the data also now have a responsibility under GDPR.

So I'm sort of -- and you have to put those things in all of context of what we're trying to do.

So what we've done is that we've taken into account the GAC advice with the comments you have made. We've -- some of them we've placed directly into the hybrid model. And some of them we're actually talking to the DPAs as well.

But you, as member states in Europe, of course, have the ability to exchange that information directly with, for instance, the DPAs in your country. There is no rule that you can't send information to them to talk about it.

But with you, I can also broaden the discussion a little bit. WHOIS is not a central database. It's not like I'm sitting on a big pile of information. This is very much information that belongs to the contracted parties. I don't have access to any special information about this.

There are other WHOIS systems out there. CCs has WHOIS systems. RIRs has WHOIS systems as well.

And I would think that some of the recommendations or guidelines that would come out of the DPAs at one point in time would also have an effect on the local CCs. Because what happens when the law is enacted is really something quite interesting. For the first time there would be a balance set between the right of privacy and the need for information. It's happens it's someone I trust, the DPAs of Europe.

Anyone who says I believe truly -- because I have -- I used to be a regulator -- who says that they now exactly know how to answer all those questions, I would say we don't know. We are fairly certain that the model we have come up with is something that will be -- is sustainable for being compliant with the law, taking into account the policies as well.

The answer is, of course, we don't know yet. Knowing is very important.

Remember that, on the other side of this, as an institution for ICANN, there is a very big institutional problem, I believe, if we don't comply to this law.

And it's also, in budget times is also a big fee that could be put upon us as an organization if we fail in this. I don't remember the number now, but it's actually a substantial amount of money.

On the other side, we have the policies set by the community, which is important to make sure that we aren't overcompliant. So in our questions sent to the DPAs, we're asking questions that implies that we make sure that we don't get overcompliant as well.

This is where we are today. And I'm thankful -- and I'm really thankful for the support and the help and the conversation we've had with the GAC as a whole and the GAC as individual members. But I have a plea. GAC is a very important institution not only in ICANN but also because you represent member states.

We need your help to continue the dialogues with the Article 29 groups and the DPAs of Europe to make sure that they actually understand that, on the other side of this, without firm recommendations from them, there is a big risk that there will be a fragmented WHOIS in the end of May.

I don't think that's a good idea. I happen to think it's a very bad idea. Because unsecurity is not good. I go for any means. I try anyone to try to convince the need for this. You are member states of Europe. And I'm begging you humbly to help me to get this firm out. Thank you very much.

MANAL ISMAIL: Thank you, Goran.

So any comments from GAC colleagues?

Netherlands, please.

NETHERLANDS: Yes, Thomas from the Netherlands.

I think, Goran, being one of the members from the country which really got this thing running, maybe I could say something about this.

I think we have to show our own contact with DPA nationally. We talked a couple days before we went here also with them. You have contacts. The org, ICANN org has contacts.

But I think we have to be very -- we should also consider that ICANN as an org has -- let's say we want to know where the responsibilities lie for what kind of action.

I think DPAs are helpful in interpretation, assessing.  But first there should be some model on the table.  The model now is not complete, is fluid.

I think we -- you cannot expect the DPA to react on something which is not completely able to be assessed.

So I think we are very much converging.  I think our DPA is kind of positive also on many aspects of this cookbook model.  But I think we should also very much take up the responsibility where it belongs.

And I think this is also something which for ICANN as a joint controller and the registries have the interest not only legal interests to act accordingly, but also I think a responsibility according to the mission of ICANN, which is, basically a secure and stable system which, in effect, will be damaged by not granting access or having a system which fails and which consumer trust will be damaged.

So I think we have to be very much cognizant of who does what on which moment.

And we are very much helpful as GAC to come up with, let's say, advice and even also cooperate with making lists.  But I think ICANN has the challenge and also the opportunity to make

something which is harmonized for the rest of the world, basically. One world, one Internet.

So, in that sense, I think some repository in which agencies can be accredited or self-accredited is something which is best done in the ICANN environment.

Thank you.

GORAN MARBY: First of all, just to point out, you do agree with me that when the law is enacted without guidance, I have no powers to actually effect the contracted parties. Because that's actually very important. So we don't have an assumption that I can actually enforce something which I can't.

Everything else I agree with. But that's so important in this context.

We don't have a commercial agreement where I can charge them for anything. Because local law always supersedes.

And I take any responsibility I have, but I can't take responsibility that I don't have.

The second thing is that we can always debate how far we've gone. Eight months ago we didn't have any model for compliance whatsoever.

We didn't have any suggestions for accreditation models.

We had nothing.

And we've been going -- together, together, we've actually created something we didn't have in a very short period of time.

You might say we started late, and I'm totally agreeing with that. We should have started this many, many years ago, maybe even when the law was discussed within the European framework.

So we are trying to have a conversation with the DPAs also respectful of the fact that inside the ICANN community there are good reasons for different alternative views on this access. There are the privacy side. And there are also the, for instance, police forces.

Or -- I gave an example earlier. We have an initiative internally which is called the DAAR project. Don't ask me what the acronym means, because I don't remember. We're trying to figure out mechanically to go after what we call bad actors. We get the same access to information as everybody else through the WHOIS system.

If -- when it becomes an accreditation model through which tiered access, we will have to accredit ourselves to the same system to get access to the data. So we are in the same problem

as everybody else who works in the cyber security space on this one.

And we are engaging in the discussions with the DPAs. But that's another thing I would like to point out. The DPAs is not an interest group in this. The DPAs are the ones who make the decision. It's nothing else. They are the ones who now by law in Europe are the ones who are going to have the duty to look upon those things.

They are the ones who take care of this decision.

They're not an interest group in that sense. Thank you.

MANAL ISMAIL: Thank you, Goran.

Norway, please.

NORWAY: Thank you, Manal. And thank you, Goran, for being so honest and very clear about where we are in terms of uncertainty about models and compliance with the GDPR to the models that have been put forward.

Also, when you ask very kindly about the assistance from GAC when it comes to the communication with Article 29, I was just -- the Article 29 group, can you just give us some more words

about what you think about them?  Like letters like being part of the direct discussions with Article 29, or what did you think about that?  Thank you.

GORAN MARBY:    I have this -- and maybe it's because I was a civil servant for such a long time.

I think that as governments, you have another weight to your words than if I said them.

And I -- that's why I so respectfully humbly ask to you communicate and send this message not only to me, not only to me but to the individual DPAs in the member states or directly to Article 29.  That's what I think.

You know  and you've seen the communication that the Article 29 group -- by the way, the Article 29 group disappears when the law is enacted.  And it's replaced with a board which has exchanges powers for making those decisions.  So there is a little bit of a catch 22 situation here.

Honestly, I -- when you look at this process for the last six months and you compare that for the last 20 years about discussions about WHOIS, I think we reached far.  And I think that the DPAs are very respectful of that.  We can see that in the communication.

The question is, of course, am I the best person to represent governments in Europe with your views to them? I think you're better than me of doing that.

So that's what I'm asking.


BECKY BURR: If I can just follow up on that. This is Becky Burr.

I think one reason it's particularly important for the governments here in the GAC who understand what WHOIS is used for and how important it is to communicate with the data protection authorities, is to convey the -- what you describe so eloquently in the comments that you've provided about the public interest in access to this data.

Because all of us who have to live with implementing it, it's a principles-based regulation. It's not prescriptive. There is judgment that needs to be made. And parties are making judgments based on risk assessment.

To the extent that people are making a risk assessment that is too conservative and that goes against being able to deliver the kind of frictionless access that the GAC has asked for so eloquently, being -- having you as articulators of the public interest and knowledgeable about the law in your countries and all of that explaining to the DPAs just how important this is,

that's -- and how important it is for us to get clear guidance, that's just a crucial -- that will make a crucial difference between having something that is as uniform as possible and as easy to access as possible or something that is much more fragmented reflecting different risk calculations.

MANAL ISMAIL:           Thank you, Becky.  Any further comments or requests for the floor?  U.S., please.

UNITED STATES:          Thank you very much, Manal and the board, for this information. I just have I guess one question, and it's kind of premised on I -- what I've been reminded of multiple times this week which is that the DPAs are independent.  There are many of them, and it's not typically their job to say whether or not something is compliant.  That being said, if we're unable to get an affirmative response from the DPAs or a DPA that this model is compliant, where does that leave us?  Because what I'm hearing is that leaves us in a situation where either we're in the dark or fragmented, whichever word you want to use, but that's a very dangerous place to be.  And I'm concerned about that.  Thanks.

GORAN MARBY: Me, too. I'm trying -- I'm not trying to sugarcoat this. I'm Swedish. And remember, this -- what we're talking about here can have a direct effect on your CCs as well. Because -- or RIPE, for instance, in Europe. So it is a big problem. So if you have concerns, join me with us. Me and Manal has been talking about this for a very long, and I shared those concerns with you already eight months ago. This is -- I think I went on record and said in South Africa that this is -- uncertainty creates problems for the WHOIS system as it is. And we don't know the law. I sometimes called the law the mother-in-law, not to paraphrase my wonderful mother-in-law, but it's like when I was a teenager and my mother -- I asked my mother, can I go out? And she said yes, if you behave. And I went out and behaved. And apparently we had two different versions of behavement because then I couldn't go out again. And this is a part of what the law is. It's a behavior law in that sense that is actually trying to make us to think differently. And that's why it's so -- what Becky said, is a little bit hard for us to say exactly the outcome of certain decisions.

My job has been -- and I've said from the beginning -- my job is to preserve as much as the contract obligations that we have today. But I have to also be compliant with GDPR as the law. What makes this really unique is the fact that we are -- ICANN org as a company incorporated has also to be -- has to obey the law.

I would never foresee that. And that is what makes it extra complicated. Which means that at one point in time I also have to make a decision. And if I take the wrong decision becomes I'm not compliant, that could have a severe effect also on the budget of ICANN. And we're talking a lot of money there as well.

So that's sort of how we -- and we've done a great job because eight months ago we didn't even have models for compliance. We haven't had that discussion. We're taking a lot of progress during the last eight months. And I think and I know that the DPAs of Europe individually and also in the Article 29 group are appreciative of that. We have correspondence with them, we have meetings with them, and we have a meeting set up with them very, very soon to discuss it. We're also talking to them how to make the -- we asked them specifically, can you, for instance, give us forbearance. So they will say that they will not go -- go after contracted parties if we can say that we're -- forbearance in that sense is that they accept that we work on a model, they see that we're making progress, and they will wait to do anything until we have that model implemented. We asked of them specific question, and we hope we get an answer back as well.

To other things that they are independent. Yes, they're independent, but they're also -- doesn't mean that you as governments or governments representatives cannot share this

information to them so they have an understanding of how it's -- important it is for other parts of the government.  There are very good regulatory authorities.  They would what I guess take that information into account when they make the balances between what the law says, the privacy concerns, and the right -- the need for information for police forces and other ones.  I just think it's at a higher weight that information coming from you, coming from me.  Thank you.

MANAL ISMAIL:          Thank you, Goran.  Any further comments or questions?  So any -- yeah, U.S., please, go ahead.

UNITED STATES:          While we're here, so let's think positively here and hope that we do get an affirmative response from DPAs.  I assume that then means that we have full commitment that the implementation of this model will be enforced, and while it's -- it's assumed that an accreditation model is part of that or accreditation system.  But I just wanted to explicitly ask that the contracted parties, as part of this, are going to accept whatever accreditation system or systems comes out of this.  Thanks.

BECKY BURR: So I think that the -- let's realize that right now we are in a compliance situation, a short-term compliance situation. We need to come into compliance. That said, this process is not intended and can't be used to displace the policy development process which is admittedly been -- has been bogged down but which will have to proceed, hopefully with clear guidance and insight about what works and what doesn't work. So there is some hope that if we get clear guidance from the Data Protection Authorities on this we will also have the ability to move quickly into a full-blown policy development process. In the meantime, there may have to be an -- there is probably going to have to be an accreditation system. I'm not going to say we're going to wait forever on that because I don't think the DPAs will give us forever to have accreditation in place.

The contracted parties are on the record as saying they want to work with ICANN on an accreditation model, but obviously if there's clear guidance that what ICANN has come up with passes muster in the -- with the Data Protection Authorities, then ICANN has the ability to enforce meaningfully. And so that's another piece of why the clear guidance from the Data Protection Authorities is so important, is because it makes -- it makes ICANN able to enforce. So I don't think -- I don't think contracted parties actually are dying to break WHOIS, but you can take that or leave it as you -- as you want. I think most of the

contracted parties, frankly, would prefer to do nothing and not change the system at all.

Having said that, if there are reasonable assurances about compliance, one, contracted parties will comply and if they don't, ICANN will have the tools to make them comply.

MANAL ISMAIL:     Thank you, Becky.  Chris, would you like to add something?

CHRIS DISSPAIN:     Just very briefly.  Just to add to that that what Becky talked about the need for a policy development process and we started a conversation, we've started a conversation with the GNSO based on optimism that to figure out how we would do that. Would we tie that into the existing RDS PDP or would they stop that one and start a new one.  So we're already in the phase of discussing with them what steps need to be taken in respect to -- to knitting this into a policy development process.

MANAL ISMAIL:     Any -- yeah, Netherlands and then France.  Netherlands, please.

NETHERLANDS:     Thomas de Haan, Netherlands.  Just a quick question because I think which part is PDP and which part is compliance?  Where is

the -- where does the -- where do they cross over and where do they -- because I think --

BECKY BURR: I think it has to be compliance until a GDPR compliant policy is developed. So there can't be a gap. That's the -- that's the trick here. We have to have the incentives properly align once the compliant -- the interim model is in place. We have to have the incentives properly aligned for people to come to the table and create a policy that's GDPR compliant and that serves the needs of the ICANN community. But I think there can't be a gap. If the incentives are not properly aligned and the process drags out, then it stays compliance. That's not an ideal situation because there probably are things about WHOIS that members of the community want to be different than they are now.

MANAL ISMAIL: Thank you, Becky. France.

FRANCE: Yeah, thank you, Manal, and thank you for the board and the CEO for this exhaustive presentation. We know it's a challenge for ICANN org and for the community to ensure (indiscernible) compliance with GDPR. So, you know, big thanks for trying to achieve that in a timely manner. And of course as GAC, I think --

well, it's my personal opinion, but I think as GAC we are really ready to help you in our advisory role.

We talked a little bit about the risk of over-compliance as well and, you know, good example of that for some stakeholders would be to protect in the new WHOIS legal persons as well as natural persons because as you know, legal persons are not covered with the GDPR. Actually it's question B that you have on the screen. So I was wondering if the board members have any opinion about that. Thank you.

GORAN MARBY:          Yes. It's -- it's been a fantastic day. So far people have said to me that we are so over-compensating and we also have people who said we are under-compensating. They also are saying we shouldn't have a WHOIS according to the GDPR. I think I've said that sort of brings me back to say that everybody seems to be unhappy, for different reasons.

The way we try to handle that is that in the documentation we've sent over to the -- to the DPAs so far, the Article 29 group so far, the famous cookbook, we try to phrase that as questions. Things that the community has asked us where there is no real community consensus about. So we can ask those questions. Because as any discussion with any regulator or anyone we have

to ask the questions the right way.  So that's how we try to handle that.

We will update that document, of course, after this week.  We have received a lot of new input and questions about specifics.  And we will, of course, send that out to the community as well.  But that's how we're technically trying to address the question about over-compensation or under-compensation.  And I think right now it's a 50/50 between the comments I've received so far.

MANAL ISMAIL:           Thank you, Goran.  Any further comments?  Yeah, WIPO and then Belgium.

WIPO:                   Thank you, Chair.  I wonder if in sending the model to the DPAs for their feedback if there's a vehicle by which members of the community could also provide feedback to the DPAs in terms of the concerns that are being raised that are feeding into this model and our discussions.  Thank you.

GORAN MARBY:          Thank you.  Very good question.  And nice to meet you.  I talk a lot about you and now I'm with you right now.  And sorry for using you as an example.  The -- we have, since the beginning of

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this process, many, many times have said to different parts of the community, please discuss with your local DPA or send letters to the Article 29 group, which I know it's happened.

We are not a lobbying organization for different perspectives from the community. What we've been trying to do is to make sure that the DPAs have access to the information. That is also why we set up special websites with this information.

And I hope you agree with me that very, very fast with anyone who posts anything from us, even if they just didn't like what we said, we post it on our website.

As a former regulator, I know they do a fair amount of work. They will take into account what we say here and how we do things, and they are proper civil servants. So I would guess that they would search for information as well.

We have established this discussion directly to the Article 29 group. But the Article 29 group consists of your member states' DPAs. They could be in the same building. Thank you.

MANAL ISMAIL:         Thank you.

Belgium, please, go ahead.

BELGIUM: Thank you, Manal. Severine Waterbley from Belgium. So I would just like to mention that GDPR is not just a European issue, even if it's like -- it look like a discussion between Europe. It's about privacy.

So it's very important we find a solution with ICANN where everybody takes responsibility. And I will take mine as representative of a government.

But at the same time, I think the GAC, it's not yet appropriate committee for establishing a list of law enforcement body or for playing a role in the accreditation.

First of all, it's an advisory body. And, secondly, all the countries are not represented in the GAC.

So do you have any other solution for the countries which are not represented in the GAC? Thank you.

GORAN MARBY: Again, thank you for giving me the opportunity to explain again that we are not asking the GAC to make a decision on police forces. We're asking -- in this proposal, we suggested that because we think individual countries should make that decision and, therefore, yes, provide you with that so it could be sent to us as a vehicle because governments usually like to talk to governments.

So we're not asking you for any decisions or lists in that sense. It should be your government who makes that decision for you. It's probably something that is more important than anything else.

When it comes to the other side, we're asking you as governments often (indiscernible), which I agree with, about the public interest as a good place to come up with a code of conduct. That's not operational either.

When it comes to -- we have today -- and I don't know how many percent of all the countries in the world. We have a substantial amount of GAC members, which we are very, very proud of. And we will find means and ways, of course, to reach the ones who are not members for all the reasons.

We will not say that you have to be a member of the GAC to provide this because we actually see you, in this case, as a government -- as a place for governments to meet.

But I also would expect with countries that are not members of the GAC who would like to have, for instance, their police forces to be able to get access to the data would be interested to provide us with information. Thank you.

MANAL ISMAIL:                    Becky.

BECKY BURR: I just wanted to follow up on one thing, and it's a request. All of you are in country and have -- probably have worked with your DPAs from time to time. If there's anything that -- that you think we should be doing to engage more effectively with the DPAs and with Article 29, we would certainly love to hear that. Thomas' is very constructive comment about the need to provide comprehensive information in order to get its sort of garbage in, garbage out is a point that's very, very well-taken.

And I think if you look at the cookbook there's a great deal more detail in there, although obviously there's always room for improvement.

But, you know, you are closer to the DPAs than we are. If you have suggestions about how we should engage more effectively, please share those with us. We definitely want to know all of those things.

And if you think there's a body that's a more effective source of credentialing for law enforcement, we want to hear your suggestions on that. I think part of what is going on is we're looking for all of the expertise from -- closest to the source as we can get.

GORAN MARBY: Could I -- I just don't want to repeat myself. We -- self-accreditation seems to be our understanding, is not going to be accepted by the DPAs with the knowledge we have today. And some information says -- seems to say that ICANN in the multistakeholder model could not -- is seen as a self-accreditation model.

We could be wrong in this assumption, and we will try to figure it out and dialogue with the Article 29 and the DPAs of Europe. But that is the underlying assumption we are having today. If you can provide me with information that says that we have overachieved on this one, I would be very happy to acknowledge that. Thank you.

MANAL ISMAIL: Thank you, Goran. Any further comments either from GAC colleagues or board members? Cherine, please.

CHERINE CHALABY: Just in closing, I really want to repeat the request from my colleagues. We need your help. We need to preserve WHOIS, and we don't want to find a situation where we have a fragmented WHOIS.

And this is a plea to particularly the GAC members from the European community. We need your help.

Please, if you haven't contacted your DPA, please do so. As Goran said, your words, what you say weighs quite -- quite heavily, much more than what we say. So we do need your help. Please help. Thank you.

I also wanted to say something else. I notice on your agenda you have a meeting starting at 6:30 regarding strategic outlook. And I know it's the end of the day and a lot of people will be tired. And probably the format of that meeting into groups is not something you're used to doing.

But here again, we are going to embark on the new strategic plan for ICANN. And we -- the contribution from the GAC is quite important.

And we -- you should know that the board has gone through this exercise already, and we enjoyed it. We again are always reluctant to put the effort in a format which is different, but it actually works. So if I can -- if I can encourage you to do it, that would be great.

Poor Manal has gone through it now twice, and that will be the third time. Once was the Board and once this week with the SO and AC chairs. And they went through it, and it was very beneficial.

So for Manal, it will be the third time.  So we really look forward to your contribution.  Thank you very much.

MANAL ISMAIL: Thank you, Cherine.  And thanks to all board members.  And we value our bilateral meetings, and we appreciate the mechanisms we have in place to continue collaboration.  Again, the BGRI working group, the CEO facilitation calls, the post-communique exchanges, the regular calls with the government engagement team.  So I hope we will continue working closely on topics of interest.  Thank you.

CHRIS DISSPAIN: Thank you very much.

[ Applause ]

MANAL ISMAIL: Thanks to everyone.  This concludes the GAC-board session.  And for GAC colleagues, please remain in the room so that we can continue with our sessions.  Thank you.

**[END OF TRANSCRIPTION]**

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