
KOBE – Cross-Community Session: Next Steps in ICANN's Response to the GDPR
Monday, March 11, 2019 – 15:15 to 16:45 JST
ICANN64 | Kobe, Japan

STEVE DelBIANCO: We're all here. Let's begin this session, this cross-community session called: What are the next steps for ICANN's response to the GDPR.

UNKNOWN SPEAKER: Can't hear you.

STEVE DelBIANCO: I don't think I can talk louder.

Mary, can you help us with that? They say they cannot hear.

Hey, good afternoon, everyone. Welcome to Kobe. This is the ICANN64 cross-community session. Our topic is: What are the next steps for ICANN's response to the GDPR. I will introduce the panelists and review the agenda in a moment.

I'm Steve DelBianco of NetChoice. I'm also a BC member and the moderator for the session.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

I had the pleasure on Saturday afternoon in the sunshine of touring Kyoto, the ancient temple of the emerging cherry blossoms and the amazing historic district of Higashiyama. It was for that brief afternoon that I thought not one minute about GDPR and WHOIS.

[Laughter]

And what -- what a wonderful feeling that was. Ah, but here we are. We're back. It's ICANN, and GDPR and WHOIS are back on the agenda.

So let me set up this session. For those who are new to the topic, the E.U.'s General Data Protection Regulation, or GDPR, applies to processing of personal data of subjects that are residing in the European Union regardless of where the processor is located. The GDPR took full effect with fines in May of 2018 which prompted ICANN org to change how it enforces the WHOIS policies we had on the books.

ICANN Board adopted the temporary specification which gave the GNSO a year to expedite policy development to replace that temporary specification.

All right. So bring you up to speed. Last month the expedited policy development process, which we call the EPDP, produced a policy recommendation to replace that temporary specification.

And then the GNSO Council a week ago today approved that on March the 4th. So the ICANN Board is right now accepting public comments on that final report before it votes to approve it and turn it over to staff for implementation.

All right. So that's what's happened so far. The purpose of this session is to talk about the next steps that are required to reconcile WHOIS policies with privacy laws, with the EPDP and the legitimate needs for registrant data.

So our agenda will be to -- a quick introduction of the panelists and then we have just three slides of substance. That's it. We have a great opportunity with the experts that are here and for you in the audience to ask questions.

The expert panel I have here is an impressive lineup. Just waiting for your hand -- raise your hand, I said when, I introduce your names so everybody knows precisely who they are.

We have Alan Greenberg with the At-Large. Alan Woods with Donuts and the registries. Ashley Heineman, the U.S. government, NTIA, also a GAC member. We have Benedict Addis with SSAC. Cathrin Bauer-Bulst with the European Commission. Goran Marby, the ICANN CEO. Matt Serlin with Brandsight and the registrars. Mark Svancarek with Microsoft and the business constituency. And Stephanie Perrin with the Non-Commercial Stakeholders Group.

On this group, we have everyone but Goran and Cathrin are members of the EPDP which makes it especially helpful when I turn to the next slide.

This is a -- I get the blame for this one, but this is my attempt to try to come up with a single schematic that has the benefit of vocabulary and context. So the vocabulary here is to try to look at the left side of the diagram and understand what we mean by publishing data, disclosing the data versus access, which is on the right-hand side.

Early on in this EPDP, there was complete confusion over whether access was the same as disclosure or what did it mean to publish the unredacted fields. So we did our best in the PDP to sort that out and deal with in phase 1 the left-hand side of the diagram, phase 1 dealing pretty much with the publication of data from WHOIS. That's the upper left-hand corner. And the lower left-hand corner was the idea of disclosing data upon request, that the registries and the registrars who live in the middle would have to decide whether to answer a disclosure that came in.

Now, the EPDP charter also includes phase 2, the right-hand side of the diagram. That was to develop a standardized access system. A lot of times we'll called it the unified access model, or UAM. Those of you who were there at the meeting in Panama

know that that's when we started to call it the UAM, but it's the same concept of a standardized notion of getting access for validated and legitimate purposes.

And the GNSO chair, Keith Drazek, reiterated yesterday phase 2 is part of PDP charter. So now we have approved PDP phase 1, the idea is to turn to phase 2.

I also wanted to mention that in the Barcelona meeting, ICANN org set up a technical study group, or TSG. They just met -- when we arrive and they've reviewed all of the aspects of a unified access model with regard to the technology. Will the RDAP technology accommodate ICANN stepping into the role of the ICANN RDAP hub where they would validate the credentials of accredited parties? ICANN would then make the query to the registrar, the authoritative source of the data. The registrar immediately returns that data to ICANN because ICANN is already established. It's a legitimate purpose and an accredited entity.

That data then gets passed along to the requesting entity, who is bound by the code of conduct they originally gained in how they use and dispose of that data. So the idea of that entire cycle on the right-hand side is what we need to turn to in phase 2.

So what I would love to do, start right now is give each of the panelists here an opportunity -- we will start with Goran and move right on down the table -- with respect to their perspectives

on how do we make the right-hand side, how do we make phase 2 successful. We will try to limit it to five minutes each and then allow some reaction from the other panelists.

Goran, over to you.

GORAN MARBY:

Thank you. And thank you for inviting me to this panel. First of all, we would like -- again, thank you, all the hard work in the expedited PDP. It is, as we said -- we never done that before, and maybe we try to avoid it to do it again.

In your historical description, I want to add something more. Before the Board took the decision about the temporary specification, we actually had another community process with a beautiful name of Calzone.

And I think that's important because we actually did something which was fairly unique. We based the temporary specification on a process with the community. And that was never fought about when we actually -- when we did the rules for a temporary specification.

So we're moving into phase 2 and there's a lot of interest in that one. So what I'm going to read out is a little bit from the Board's perspective on this one. In our way, the creation of a unified access model requires three elements. And one of those

elements, which I'm going to spend a little time on, is what it says that if the DPIs recognize ICANN as a responsible party.

One of the advantages we had, thanks to the Calzone process, going into the temporary specification was that we had legal advice. And we call it "legal advice" as it comes from a lawyer, so let's put that in context. We had guidance from the data protection board which is not only guidance, it actually says something and it's a legal meaning. And the legal we had was, one, you can collect data. You can have a WHOIS system. And it's okay to share some of that data public, and some of that data has to be retracted and can only be reached through certain measures.

And that was -- that was what led up to the temporary specification. That's really what the phase 1 is.

Going into phase 2, we lacked that legal guidance, and that's important to know. And I'm cautioning everybody to think that it is easy to get DPAs' legal guidance. It's a fairly -- it's a process. If you go into the DPAs' home pages, they usually say something like, We are not a consultancy. Go out and figure it out yourself.

And the matter of the fact is that the laws itself has a very clear intent, and that is that the data processors and the legal controllers are the legal entity who is responsible. And in our

world, that's the contracted parties. They are the ones who are legally responsible, and that's the intention of the law.

So the way we looked at it is you have to either change the interpretation of the law, change the interpretation of the law by the DPAs, or do something different.

And, for instance, the last time I was in this room, I had a presentation from Ram and his cool gang about the potential technical solution going forward.

So I guess my end is that we support the work. We will do anything we can to support it. But I actually think that it's going to be a little bit harder to construct a unified access model without that legal advice and -- because the contracted parties has to accept that someone else makes the decisions instead of them. And I have a trust in that they would like to have something to say about that process. Thank you.

STEVE DelBIANCO:

Goran. Thank you for that. And the technical study group, which you announced in Barcelona, delivered very quickly a very specific and satisfying result.

We had hopes that similar progress could be accomplished on the legal front, but you're exactly right. And I understand that it will be very challenging to accomplish certainty on the legal side. I

guess what we're looking for is an appropriate allocation and reduction of risk and not necessarily a full-blown "assume all the risk."

GORAN MARBY:

May I? Because I forgot to say that. The technical study that was done is a part of the solution. On top of this, we also have to look into accreditation houses and how to handle that. For instance, we -- for -- we envision WIPO, for instance, to be an accreditation house. I know EuroPOL has had some thoughts about an accreditation house. And I know that in this room there are people who are looking into accreditation houses because someone has to look upon the ones who are actually asked the questions and validate the questions as well.

What we're doing now with that -- repeating myself -- is that we are going to take that into a package. We're going to look through it legally and then we're going to with help hopefully from our dear friends at the European Commission -- I'm looking at you, European Commission -- go back to the DPAs with a question: Will this change the format of the discussion? Will it diminish the contracted parties' legal responsibilities? If that happens, we will, of course, put that information into the work progress that happens in phase 2 because that's absolutely a policy work for the community to make any further decisions about it.

But that will actually-- at that time, if that happens, it will actually move back to the ICANN community the ability to construct the unified access model, which it doesn't have today.

STEVE DeIBIANCO: Thank you, Goran.

Ashley.

ASHLEY HEINEMAN: Thank you. This is Ashley with the GAC but also the U.S. government. And I'm going to try and keep my remarks from being convoluted because it's hard to respond to this very complicated visual aid here.

But I think to focus more on process and how we make phase 2 successful, I think it's going to be absolutely critical that we manage to have a very clear, narrow scope because it can be very easy for us to talk years about this. And that's why I really like the technical working group's proposal because it provides a frame for us to work from. It actually even went so far as to highlight some things that they think need to be fleshed out from a policy perspective. I think that's helpful in keeping us more contained in what we need to do.

I think what's also interesting here in this graphic, while the technical schematic does not cover this, what's noted here is the accreditation component. And it's not clear to me, for example, that that's something that we need to talk about in the EPDP for phase 2. That is going to be the responsibility of the third parties that want access. And that is going to include a lot of liability issues for them as well.

I think it's going to be here where we actually see the liability spread out. And I think we need to recognize that and perhaps assure our contracted party compatriots that it's not all on their shoulders.

If we can get to that point, perhaps we can get ourselves to a comfortable level that we can see ourselves through this and in a way that's also quick and fast moving because unlike phase 1, we don't have that external time pressure. And that concerns me because the need for access for legitimate purposes is really critical.

And I think from the WHOIS user perspective, we were very patient. I would say we were very constructive in phase 1, and we just hope to get the same courtesy moving into phase 2. I think we will get there. But I think having that narrow, clear scope is going to be absolutely critical. Thanks.

STEVE DeLBIANCO: Thank you, Ashley.

Alan Woods with the registry Donuts.

ALAN WOODS: Thank you. So Alan Woods, for the record.

It's a difficult one. I mean, Goran, you've already given me a lot of food for thought on what you said. And I just -- I think we can start with something such as the timing. And I agree, I think this is going to be a much more -- we need to get a considerate approach in this. We had a very hard-stop deadline on phase 1, and I genuinely think that led to some difficulty at the very end of the process where there was almost a scramble. And I think we need to avoid getting into that process.

I'm all for setting a goal, definitely a time line that is reasonable between the parties. But we need to continuously review and see whether or not our progress is making that -- that time line not loom but that it is reasonable continuously. I think we can definitely come to an agreement, and it's in all of our best interest to keep it moving really, really well.

But, again, as the PDP, it was a very punishing time line at the beginning and I think we all felt a little bit of that, especially, as I said, at the end.

What I would say as well, you pointed about the need for the legal guidance. I completely utterly 100% agree with you on that one. And I think we have -- we have a process. So up until now, we've had to talk to the European Data Protection Board and to the data protection authorities with a process that was in train. And we were trying to ask them to assess something that was already running. And that is always going to cause them something -- some consternation because it falls into the realm of them giving legal advice of something running as opposed to giving their guidance as a DPA.

And I think we in the phase 2 -- and I said this on the last day -- and for those of you who sat through our first day of the EPDP this meeting -- that what we should really aim to do within phase 2 as well is to create it in such a way that, one, we start at the beginning and then do it in the form of a data protection impact assessment approach where we are ticking all the boxes in Article 36 of the GDPR, which is the prior consultation approach for a data protection authority.

So prior to us beginning to process data within the unified access or disclosure model, then we can actually go to our DPA, the lead DPA, of the contracted parties. So the DPA, of course, for ICANN I believe has been confirmed as Belgium. I'm not sure but I believe that.

Yep?

GORAN MARBY:

No single, individual DPA will make the final decision about this. That has to be done by the Data Protection Board. And I don't think that any -- it could be individual DPAs but just a fact that we are in multiple jurisdictions in Europe means that they have to answer collectively.

ALAN WOODS:

Apologies. I mean, I was going off letters that were sent to you last year but that could change, of course.

So, basically, we can then submit our work and suggest to the DPA, whoever that may be, that this is our proposed model from beginning to end. This is how we're going to process the data. This is how we propose that accreditation will come in. This is how we propose that the data will be processed.

And they will give us an indication of whether or not if it is as per we say, it would be likely to be compliant or not. Now, it's not a golden ticket. We can still get it wrong, but it gives more comfort to everybody involved and gives guidance to the contracted parties, gives guidance to ICANN, which I think, Goran, you're looking for, and, of course, gives the comfort to the governments as well.

So I'm looking forward to being able to jump head first into this. And I mean, the registries are, of course, so very much interested in getting this done and through but in a way that minimizes all the risk, not just to the registries and the registrars but to ICANN, to all the parties involved, and especially to the registrant themselves whose data, of course, we are processing.

So I'm looking forward to it. It's going to be a lot of work, and I think bring it on is what we need to say.

STEVE DelBIANCO:

Thank you, Alan, we'll go to Matt Serlin with Brandsight and one of the registrars on the EPDP.

MATT SERLIN:

Yeah, thanks, Steve.

And, Alan, I'll point out, at the end of phase 2, you'll probably have hair that looks like this and you'll be much more gray. So this is what you have to look forward to.

So just a couple of things. I know, Steve, you want us to talk about phase 2, and I will in a second. But I also think that I'd be remiss if I didn't take the opportunity to point out that while we're considering phase 1 to be completed and that the final report has been submitted, the council has pushed it to the board, there's

still a lot of work to do in phase 2. We've got the Implementation Review Team. We've got this period of time between when the temporary spec expires and when we anticipate the policy to be effective. So there's a lot of work to do.

And from a registrar perspective, we're really interested, obviously, in working on phase 2. But we also want to make sure that phase 1 is rolled out in such a way that makes it very clear to registrars what the change in policy is, what the expectations are. And so I know it's just a small thing, but on this slide even you have registrant organization X'd out. And actually, there is in the final report the opportunity for registrars to go through and cleanse that information and actually display some registrant organization if it doesn't include private data. So I know we're all eager to get to phase 2. But, you know, I would just be remiss if I didn't point that out.

So in terms of moving to phase 2, just to echo kind of what Ashley said, you know, I think for us to have a very good and narrowly focused work plan is important. We spent a lot of our day on Saturday, I think it was when we met, talking about things that we can do, lessons that we've learned in phase 1 to really structure our work in phase 2 such that we can be successful in a reasonable amount of time.

The other thing that I would point out is, obviously, we're spending a lot of time talking about the standardized access model, but there were, I think, at least a half a dozen items in phase 1 that we actually ended up pushing to phase 2. So one of the things that we talked about as a group is, does phase 2 need two phases? And, you know, I know, you know, everyone is eager to focus on this as well. But it's also important that we close off those items that we didn't in phase 1.

So I think we're all looking forward to progressing, you know, moving forward, and finally coming out with, you know, some guidance and a good work plan that'll get us there.

Thanks.

STEVE DelBIANCO: Thank you, Matt.

Also, we move now to Cathrin Bauer-Bulst of the European Commission.

CATHRIN BAUER-BULST: Thank you, Steve.

And just to echo Matt, I would also suggest that there's some work to be done on the implementation of phase 1. And there's some important questions from a data protection perspective that

would need to be resolved still in the implementation. Of course, the European Commission will submit comments and work with the EPDP and the implementation team to try and get to the best possible result from a data protection perspective.

Just to pick up on a couple points, I'm not speaking on behalf of the GAC, but to just reiterate one point of GAC advice, which is, the GAC has consistently pushed for a comprehensive model that includes what we call the four As, so accreditation, authentication, access, and accountability.

And also, from a data protection perspective, it is difficult to separate the data processing process at a certain point in time. So what the DPAs will eventually want to look at is a comprehensive model that also covers those four aspects, because what you're doing as a data processor and a data controller does not stop at the collection point. So that's also one aspect where we would like to see swift progress from the perspective of the GAC. And everybody before me has already highlighted the need for a specific time frame to be put into place. And from the public safety perspective, obviously, the swifter the work can be delivered, the better, although I don't want to be responsible for Alan's haircut after this phase is over.

[Laughter]

Now, in terms of the concrete efforts that have been going on, we want to welcome exclusively the work of the technical study group, which I think is extremely helpful, as others have pointed out, in showing the precise manner in which such a model could be implemented. And from a data protection perspective, that is very important, because that's where the rubber hits the road. That's where we actually see how the safeguards might be implemented, what conditions can be imposed, and how everything would be put into practice.

So some of the benefits of this first output from the technical study group are precisely that. The DPAs no doubt will be very interested in seeing that output. However, it is incomplete without the policy that accompanies it. So it is only a bit of information that we can share. And no doubt, the DPAs will come back to us and say as long as we do not have the policy accompanying this model, it is very difficult to make any definite pronouncements on this.

So we still have a lot of work to do on that count. And there, we particularly welcome the step that ICANN has taken to make a legal advisor available to the EPDP. And we would encourage that to continue for phase 2, because that is really -- it does not replace the guidance from the data protection authorities, but it is an essential step in translating our policy ambitions into the kinds of legal terms that can then demonstrate the -- to the data

protection authorities that we are taking the right steps to implement the policy. So we hope that will continue. And as the European Commission, of course, we're always ready to help formulate the questions. And we are represented on the EPDP, as you know.

When it comes to codes of conduct or the kind of ex ante impact assessments that are provided for under the GDPR, we think that those are very helpful tools to pour the policy into specific formats that are recognized by the data protection authorities. And that can then lead to feedback from the data protection authorities on the actual models. I would just warn everyone that as the people before me have said, the data protection authorities can never bind their hands. So there is no such thing as definitive guidance. They can only provide an indication of whether what is proposed is acceptable from a data protection sense at that point in time. And that leaves it open for them, of course, to later launch investigation anyway. So I think that is a risk we have to accept and we have to take the necessary steps to reduce that as far as possible.

Now, I want to leave you with two key questions for phase 2 from our perspective. If you look at it from the data protection perspective, what will be particularly interesting and challenging to cover is, first of all, the legal basis under the GDPR for the data processing. Consideration has been given to GDPRs article 6, 1-F,

the legitimate interest. At other points in time, we also considered the public interest. And it is a challenging prospect in a situation where we are operating in a system that is based on private contracts. Because what was envisaged under the GDPR is to actually have sensitive issues defined by law. Whereas here, we have an organization that is the steward of the public interest and is actually taking care of that public interest through the tool of private contracts. And multistakeholder policy takes that form. And I think there's some openness on the part of the GDPAs to recognize this and to make amends for it. But that will be one thing we need to consider very closely going forward.

And the second thing I want to leave you with is the question of international transfers, so how we can actually implement data being transferred from a registrar in one jurisdiction to a requestor in another jurisdiction and vice versa. That will be, I think, a big point for phase 2. And the Commission remains committed to support both the EPDP, but also more informal engagement with the DPAs throughout phase 2.

Thank you.

STEVE DelBIANCO:

Thank you, Cathrin. Just one quick question. Has any of the entities that we list as examples, have any entities applied for and

obtained some level of guidance to be accredited for their code of conduct yet?

CATHRIN BAUER-BULST: No, they haven't.

STEVE DelBIANCO: That'll make it so challenging to get the guidance that Matt asked about. Because I have a feeling that specifics of a given applicant will help to define the general for the others.

All right. Thank you, Cathrin.

With that, we're going to turn to Mark Svancarek of Microsoft, a member of the BC and also on the EPDP.

MARK SVANCAREK: Thanks, Steve.

To start, I'd just like to thank everybody on the EPDP for putting up with me for all these months. And I'm sure you're all looking forward to working with me in phase 2. I'm really excited about phase 2. Contain yourself.

[Laughter]

One of the challenges, I thought, in phase 1 -- let me step back a second.

If you've been to any of the technical study group sessions, they talk about, you know, designing the airplane before it was specified. And, you know, trying to design a system without any hard requirements. And for me, as a former engineer, that was how phase 1 felt. We were designing policy without thinking about how the system would ultimately be implemented. And this was kind of always a struggle for me.

So now we've done a lot of foundational work in phase 1. You know, definition of certain purposes, definition of certain (indiscernible) types, things like that. I think that's one part of the framework for phase 2. We also now have the outputs from the technical study group. And for me, these two things together give some definition for what we need to build in phase 2. And so I feel very confident in our ability to deliver on phase 2.

On the other hand, as people on the other side of the table have already mentioned, there were a lot of tough questions, a lot of tough issues in phase 1 that were postponed to phase 2. So we have a number of tough issues that need to be resolved while we are thinking about, you know, implementation details like what you see on the schematic here. And so I'm hoping that we can find some sort of a balanced approach. Our colleague Thomas Rickart has put forward the idea that we should be looking at parts of the problems that could be partitioned and worked on in parallel which would allow us to move forward at a steady stream

without having to make everyone take on the same crazy hours that were required by the external deadlines imposed on phase 1.

That's it.

STEVE DelBIANCO: Thank you, Mark.

Now to Alan Greenberg, with the At-Large Advisory Committee or ALAC.

ALAN GREENBERG: Thank you very much.

We talk a lot about risk and liabilities in this process. And I think it's important to remember that there are risks and liabilities on a lot of different -- in a lot of different areas, certainly financial and other business ones to contracted parties.

The risk that we're going to be spending untold numbers of hours building a policy that presumes a legal environment that we don't know will exist is a risk. It's a risk to an awful lot of time being spent on something that may not bear fruit, ultimately. And there's a risk to the Internet ecosystem and DNS ecosystem from not being able to deliver data to those who need it. So it comes on all different sides.

Mark mentioned Thomas's parallelism within the EPDP. But I think one of the things that's been missing to some extent in this whole process is parallelism on the whole overall project. There are lots of parts to this that we know have to be built. You don't build really complex systems -- and, trust me, this is a really complex system -- by working on it serially. You have to work on it in parallel. And, yes, on occasion that means you have to go back and engineer something because you didn't quite do it right. But that's the only way we're ever going to get this done in any of our life times. So things like accreditation models, we have to start working on them and start getting them firmed up, because somehow, they're going to have to fit into the overall mosaic.

The EPDP itself we need a target. I'm afraid of -- like Alan Woods, I'm afraid of a hard deadline that will cause a scramble. But we certainly need strong targets. I think we need a narrow scope. I think we need to make sure that we're not trying to define everything in the extreme detail, because we'll be here forever if we do that. There are some things we're going to have to trust to follow-on groups to do and then pass by the community or pass by us, whatever, and not try to define everything to the last data element that X, Y, Z will be able to access.

There's -- as several people have mentioned, there's a lot of loose ends from phase 1. And we deferred them because they were

really difficult. And why we think suddenly we're going to make them easy, I'm not sure. But I think it's really important.

And lastly, resources. We've had marvelous staff support on the EPDP to start with. We had a chair who managed to guide us through that. And those of us who have worked on a large number of groups within ICANN know, leadership matters. It can make a group, or it can destroy it. So I have my fingers crossed that we'll find a good chair to replace Kurt. And there are financial implications also. We learned in this group if we didn't already know it that face-to-face meetings really change the dynamic. And I think we're going to have to make sure that we're adequately resourced.

Thank you.

STEVE DeIBIANCO:

Alan, with the minute that you have in your time left, you suggested that do we or ICANN org need to look at the accreditation processes and accreditation models. A question all of us should think about is whether it is our job at all. I have a feeling that accreditation will be pursued by the entities on the right-hand side, law enforcement, cybersecurity, I.P. protection. And they will need to satisfy the data protection board as to accreditation. I'm not sure that ICANN will need to be involved in that. What are your thoughts?

ALAN GREENBERG:

I'm not saying ICANN and our staff and our volunteers do it. I'm saying it's a piece of the puzzle that has to be ready when we try to make this thing live. And we have to take the responsibility to make sure it is happening by someone at the appropriate place at the appropriate time or we're going to find out there are gaps and we have everything ready to go but. And we can't afford to do that. You know, it may well be something we outsource in one form or another, or get someone else to volunteer for. But we have to make sure all of these little pieces are ready to fit together.

Thank you.

STEVE DeBIANCO:

Thank you, Alan.

The entities that seek standardized access will have the greatest incentive to structure a code of conduct that will satisfy what the GDPR allows. They will have the greatest urgency to get it through so that they can begin to use the standardized access model. I do realize there's a risk that if we build the policy and the technology, what if you opened the door and nobody came through it, I think that would demonstrate that what we've

designed might be too difficult to do. And your point, I guess, is that we have to make sure it's usable when we turn it on.

ALAN GREENBERG: Having blacked out a lot of WHOIS, we have gotten a lot of people's attention.

STEVE DelBIANCO: Thank you, Alan.

Now to Stephanie Perrin with the Noncommercial Stakeholders Group.

STEPHANIE PERRIN: Thanks very much, Steve. It's a great honor to be invited to speak on this panel. And I won't be sounding like I'm very grateful when the first thing I do is attack the slide that we have.

I just want to make it crystal clear to everybody in the audience that this slide ought to read "fantasy of publication disclosure and standard access," because what we agreed is on the left-hand side in phase 1. I'm not saying that we won't be working on these things. But it is not consensus policy that ICANN will be running an RDAP hub. What the technical study group has demonstrated is that RDAP works and that it could do many of the things that we want it to do. But we aren't there yet. Our

position, I hope -- and I can't speak for our whole stakeholder group, because we haven't got there yet. But I'm not convinced that ICANN should be managing this within the walls of ICANN. My own feeling is that it should be in an independent data trust with -- with a board, an independent board, directing it. And I think it can do the things that we need. We also have not agreed yet on entities being accredited and approved by the DPAs. That's a reasonable thing to do as long as it doesn't wind up being anticompetitive. And I'd like to echo what Alan Woods was saying. If we do a proper data protection impact assessment, as we wanted to do on phase 1, these are some of the issues that we would be measuring. Because ICANN has a role to ensure a fair, competitive operation, neutral operation of the DNS. It's one of the reasons I don't believe it should be managing access, because that becomes a -- very difficult and political.

In terms of the management of liability, we need more legal advice on that whole matter. And it's not clear to me that ICANN has agreed to be the controller, which is kind of step one in actually running and even subcontracting for the entities that are going to be doing this accreditation -- accreditation and, you know, running the basic system.

I'd also like to bring up the kind of overriding fact that we seem to be missing here as we move on into phase 2. And that is that the purpose of this exercise in managing our compliance with

GDPR is not to find a way that will maximize disclosure to third parties. I realize many of the entities in the room and many of the members of the stakeholder community in ICANN, that's their prime goal. The prime goal of the Noncommercial Stakeholder Group is to comply with data protection law and human rights law and -- including the charter in the case of the European Union, and to ensure that any solution is proportionate. And when I hear discussion of speed and convenience and lack of cost, inevitably, that erodes that concept of proportionality.

So those are caveats.

In terms of moving forward in phase 2, we are all exhausted. And I don't think that the final stages, where we were having three meetings a week, three hours a day, then small group meetings in the afternoon -- I know I was putting in six-hour days just on the calls, let alone the reading and the research. And if you're not doing the research and the legal research on, you know -- then you're not really doing a job.

So I don't want to embark on that in phase 2. Sure, we can set a deadline. But let's make it a realistic deadline so that the product we come up with is not going to be blown up in court within six months of us producing it. I think that people tend to focus on the data protection authorities as the so-called "risk" here and something being found not compliant. Don't forget that

individuals can sue. And that's how safe harbor came down. One individual, a second-year law student, taking that case to the court and having the whole shebang thrown out.

So please keep that in mind as we push. We have solutions at the moment. They may not be everybody's ideal, but the skies aren't going to fall if we take the time to do a proper job. Thank you.

STEVE DeIBIANCO:

Thank you, Stephanie. And the right-hand side is aspirational and yet it's still informed by -- it's informed by the charter for the PDP that talked about standardized access, it's informed by the Article 29 working party statement that encouraged ICANN to develop an access model -- their words, not mine -- and it's informed by the technical study group that determined, as we all suspected, that RDAP could get it done.

So now we're going to go to Benedict with the SSAC.

BENEDICT ADDIS:

Hello. Can you hear me? There we go. Hi, guys. I got into a lot of weeds thinking about this problem, and then I listened in the last session to this really great question from our Haitian colleague, and I don't know if she's still here. I'm peering at you. I don't have my glasses in today so everyone's a kind of blur. But she said -- she stuck her hand up and just said, "How does the average

Internet user know who they're transacting with?" And we said well, the TSG model answers that and we thought about that. But then I think between then and now we have been thinking actually this exposes, this question, really fundamental question, exposes a lot of the chewy stuff that we're going to have to deal with in phase 2. Like an Internet user asks who they're dealing with. Do they get an answer? How quickly does that answer come back? Is it right? Does it depend on where the asker is or the askee or who they're asking? Geographic distinction. Does it depend -- and this is something I've really, really care about -- does it depend on whether the registrant is a legal person or a natural person, so a company or an individual? Can that person nominate a technical contact to manage that domain? And these are all questions that we've pitched, I think, to phase 2 and that we should consider -- we should just consider how we answer that lady's question.

I think that an RDAP model does -- is flexible enough to answer those questions. But what I would hate to see it become is a boys club that only suits a small group of people who are nominated to ask those questions. And I think SSAC supports the idea that individuals can ask who they're talking to online.

So that's the first thing I wanted to say. But there's a different problem. And this different problem relates to those who would seek to protect the Internet ecosystem. And this is a tricky one

because we've always thought of WHOIS as a, you ask one question, you get an answer kind of thing. But what law enforcement and what security folks need, as well as the ability to ask a question and get an answer, is something different. And we've been sort of diligently thinking about a different problem. And I need to be really clear about this. What law enforcement and cybersecurity folks need is the ability to go off and say, "I've got a bad guy here. What other domains do you know about that this bad guy runs?" And when we've talked about things like bulk access or reverse searching or all these different names, that's essentially the problem that we're trying to solve. And so far I haven't heard anything in the phase 2 discussions that comes close to answering that question.

Now interestingly, I've heard a massive sigh to my right here from Stephanie. And I'm going to put it to her now and later that actually this is a privacy enhancing measure and not a privacy damaging one. That sounds kind of weird, so let me articulate that.

If -- in order to do the job of finding out what bad guys run what domains, the only way you used to be able to do that was download all of the data and look through it automatically for correlations. You might look for a telephone number that was the same across a bunch of registrations. You might look for an email address that is the same. That is horrible from a privacy

perspective, right? That -- all of those beautiful privacy controls everybody has worked on so hard in all of these processes go out of the window because all of that data gets sucked out and abused, right? So what's more, in my mind, a privacy solution that works for everyone is the ability to say, here's an entity, an email address, a telephone number. Tell me what other domains that entity runs? Because then nothing is being disclosed. And that answers the question without having what we've referred to as the leaky submarine problem, where the data slowly leaks out of the system and escapes any privacy controls. That's, to my mind, the realistic way to not maximize disclosure. Thank you.

STEVE DelBIANCO:

Thank you, Benedict. I did want to note that if and when we deliver a UAM, the right-hand side, it doesn't replace in any way the left-hand side. We'll always publication pursuant to the phase 1 policy, we'll always have disclosure requests in the lower left-hand corner, because not everyone will be an accredited entity. And they'll have to pursue the opportunity of asking a registrar or registry to disclose in the lower left. They may or may not get an answer in 2 days, 10 days, or 30 days, but the right-hand side is only for those that can meet the bar on getting accredited to the satisfaction of the Data Protection Authorities.

So Goran, we'll start with you. You only get one minute. All of us get one minute each to see if you want to react to what others have said about phase 2 and then we'll move on.

GORAN MARBY:

I want to act a little bit about what Catherin said, the only reason -- and maybe we should be proud of this -- the only reason we got any advice at all the first time -- I mean, look, ICANN is a well-recognized international institution which we can all be proud of, and that is the only reason why we got that. We were able to formulate to the DPAs the importance of an answer, and we got from our dear friends at the European Commission. I'm looking at you again. We were able to get that and also with support from the GAC. It was a unified message that everybody agreed on certain principles, and that became a very, very strong voice.

Until we have that strong voice within the community, which is the multistakeholder itself, it's actually hard to get the answer. There's no obligation from the DPAs to give us any answer at all, regardless how well we ask the questions. And if it's a dream, I don't know, maybe we're in the business of dreaming. We have committed ourselves to work to answer those questions for the community. But we also need a very united community to be able to have those answers. Thank you.

STEVE DelBIANCO: Thank you. Ashley, one minute.

ASHLEY HEINEMAN: Thanks. Yeah. So I just wanted to react to the comment that was made regarding maximizing access and somehow that was at the expense of GDPR compliance and keeping the data subjects' data private. I don't think it has to be zero sum like that. I think you can achieve both of those goals, and I think that's what we're trying to achieve here. And I think also, there's sometimes this pull to like make this like a big educational exercise that we're going to like solve, you know, all the problems in one fell swoop. I would just urge the group to keep things as simple as possible. Start there. If there are legal issues that are identified through that, that's fine. But let's not -- I got in trouble for saying this before -- but let's not boil the ocean unnecessarily. Because again, I think, let's try and get this done as quickly as possible because I think that will put all of us at ease to a certain extent, just for different reasons. Thank you.

STEVE DelBIANCO: Thank you. Alan.

ALAN WOODS: Thank you. Alan Woods for the record. A few things. First thing, we were talking a lot about the TSG and how they did the work

very quickly. And I agree, they did do the work very quickly. But we must remember that the entire list of the assumptions that the TSG were based upon is the work of the PDP phase 2. We need to decide whether those assumptions were valid assumptions. But as a proof of concept, yes, they proved that they did the work and they did the work very admirably and we should thank them for that.

Benedict, I would pose a separate question to you as to what an actual registrant would think and not as to who has my error-- I actually can't remember what your question was, but the real question we should be asking is, a data subject will ask, who has my data, who is processing my data and who do I go to, to have my rights taken care of? And I think that you kind of -- no, it -- you have to be on the side of the registrant in this. That's what data protection is about. You have to -- it's about the focus of the rights of the registrant.

And my final one, I just want to say as well, that, you know, accreditation -- and again, accreditation is something that's mentioned an awful lot. Accreditation via the GDPR takes a minimum of two years and it did so under the directive. So accreditation is a very long, drawn out process and much more than two years normally. So let's keep that in mind as well. We have to be careful.

STEVE DelBIANCO: Matt.

MATT SERLIN: Yeah, I think, I don't know if it was Stephanie or Alan that said it, just in terms of the pace. You know, I think -- you've heard us all say, you know, it's in everyone's interest to get this done in a timely fashion. I think what we're nervous about from our experience in phase 1, and we still sort of see this, it came up during Saturday was, someone is looking at the recommendations going, how did we get there? You know, so because of that frenetic pace towards the end that we had, you know, so many things that we were juggling, I would just caution us all to make sure that yes, we want to do it timely but this is such a critical thing we want to try to do it as right as we can as well.

STEVE DelBIANCO: Cathrin.

CATHRIN BAUER-BULST: Yes, thank you. I want to quickly react to the fact that there isn't yet much guidance from the DPAs on phase 2, and I think that reflects the fact that the DAP's main concern was the limited public availability of WHOIS data. In fact, they have always

recognized that there is a need for -- or that there is a possibility to grant access to legitimate users. So the question that we really have is, how can we set the right criteria up front and then hold people accountable when they don't meet those criteria? And that does not come at the expense of speed and convenience. In fact, there has been recognition recently by the European Court of Justice that the type of data we're talking about is not particularly sensitive in nature. So there are -- there's actual case law that will support us in this work, even if we don't have specific guidance from the DPAs yet that can help us build a model that we can then stress test with the DPAs. Thank you.

STEVE DelBIANCO: Stress tests, my favorite word. Mark.

MARK SVANCAREK: Okay, a few comments. I think it's important that when you look at this schematic which as Stephanie says -- Steve and Stephanie say is aspirational and really just for discussion purposes, you see a flow of a request coming in and then data being disclosed over to the other side again. That data is variable, at least in -- in most of our considerations. So some requesters are going to get some data, other requesters are going to get other data. It's going to depend on a lot of factors like who you are, how you've been accredited, what authorization you have to the data and what

purposes you put forward. So some people are going to get very little data. Some people are going to get somewhat more data. And I thought that Benedict had an interesting idea where some people are not going to get the data that we think of when we think of WHOIS. They'll get some other set that has been computed or calculated or maybe is a cross-reference of a larger dataset but does not include a bunch of phone numbers and email addresses. So that was the first point I wanted to make.

UNKNOWN SPEAKER: And apparently the last as well.

STEVE DelBIANCO: Thank you, Mark. Alan.

ALAN GREENBERG: Thank you very much. Stephanie made reference to some people wanting to see as much data disclosed as possible. There's other people around the table who want to see absolutely as little information disclosed as possible. We're here to implement GDPR in particular and perhaps more generalized privacy information, privacy legislation. I think we have to keep that in mind. I'm not someone known to shirk work, but if we don't keep the workload reasonable in this process going forward, we're just

going to lose people and we're going to lose a lot of the people that we really need around the table.

And lastly, I'll agree with Benedict. We really have to make sure the risks to the Internet ecosystem and the DNS are considered when we look at all the other risks. Thank you.

STEVE DelBIANCO: Stephanie.

STEPHANIE PERRIN: Thanks very much. I guess since I only have a minute I'd better be brief. We believe that there are other ways at this point, the Internet having grown up just like ICANN has, to guarantee consumer protection other than releasing data. The model that we have followed for so many years is a bit worn out.

In terms of the workload, this is the critical piece that is going to generate the complaints, in my view. So I don't think we should be taking any shortcuts. We should make sure that we are doing this in a proper, diligent way. That doesn't mean that this model actually isn't what we're driving at. In my opinion, it is a lot to load on resellers and registrars globally, operating in different languages, to discriminate themselves when determining whether an access request is appropriate. So it is -- this is a good

model, but I predict we're going to have to make many changes to it, and I think we should flag that.

STEVE DelBIANCO: Thank you. Benedict.

BENEDICT ADDIS: I was waving wildly at Alan, but -- but that was just a shortcut for saying we -- we've talked about the balance of the ecosystem and how absolutely the rights of the data subject are critical here. But we just sort of act -- want to remind the audience that the rights of the ecosystem, the participants of the ecosystem are also important.

And Goran, hey. The mediators were great. That's a really good thing. And we'd love to keep using them. That's all from me. Thank you.

STEVE DelBIANCO: All right. Fantastic. We have two quick slides before we go to audience Q&A. We'll have another chance, but I have got to move ahead to the next two. What we also realize is that GDPR and WHOIS are not everything. GDPR also affects some other elements in ICANN's ecosystem. We have existing policies as well as projects underway, and the question for the panel is to look at

this list of five existing policies and ask your opinion about whether they need to be updated to make them consistent with what the EPDP came up with in phase 1 and with the GDPR in general. So we'll go down the row. You only need to speak on this if you feel that you want to add something. Thank you. We'll start at the end of the table. Anything from you, Goran?

GORAN MARBY:

We have spent an enormous amount of time looking into different policies and different sets and that is a work that's ongoing. But can I answer the question a little bit differently? I got the question about a year ago when we started this and they asked me, what would you like, Goran? And I said what I would like is that we actually figure out a way to have a general policy when it comes to privacy and the need for information, that it's applicable for all types of policies and all the work we do. It's sort of a public interest policy about privacy. Because we sort of look at this -- we look at this from a very mechanical perspective. We use the GDPR discussion and we say it's a law. I -- you know, if I could go to the DPA legislators around the world and say ICANN as an institution, as a multistakeholder model, as an international organization, this is our view on everything, I actually think that that could be beneficial. Not only think what we do because WHOIS is only one of all the databases we have. And to have that, instead of sitting behind and waiting for legislation that sometimes could be very

hard for us to implement and actually fragmentize the Internet, we would have something we could present to the world as a very strong, this is what we think, this is what our belief is. And I happen to believe that ICANN is -- you are such a strong messenger that could actually make a difference.

STEVE DelBIANCO: Thank you. Does anyone else on the panel want to speak to these five items, about whether they need to be revisited. Alan.

ALAN WOODS: Very simply to say, I appreciate that our final report is 188 pages long but it's somewhere in the middle is recommendation 27 which is this. So yes, we have recommended you look at this.

MATT SERLIN: Yeah, I would agree with what Alan said. I would also focus in actually from a registrar perspective on the transfer policy. Actually there was a meeting yesterday of the contracted parties technical operations group, and we spent a good 60 or 90 minutes specifically talking about the transfer policy and the updates we need to make there. Because actually what we've done is we've weakened some of the safeguards that are in place. So that would probably be at the top of our list.

MARK SVANCAREK: I agree, short answer is yes. I am somewhat concerned that we have a bunch of policies that have now become out of sync with the EPDP and have to be updated. They're not going to be updated by the people who are on the EPDP who are already incredibly stressed and overworked as it is. And so I worry that will continue to be out of sync and misaligned for some period of time that is not bound by any deadline, and that seems like that could just be an increasing problem and risk.

STEVE DelBIANCO: Alan.

ALAN GREENBERG: Basically I agree. Number one, we have to do what we already said we'd do. We know there are things in the URS and UDRP which are now pointing to fields that don't exist -- that won't exist anymore. So we have to make these changes.

I agree strongly with Matt. The transfer policy potentially puts people at risk. We used words that I think said the GNSO should urgently look at this. But the GNSO chartering a PDP, which is not going to be a real popular thing to do right now, and if we did would take two years to finish, that's too long. We have to figure out a way to get around that, which says we have to set policy

without going through the policy process. And I don't know how to do that, so we have some work ahead.

STEVE DelBIANCO: It would be an extra expedited PDP or EEPDP.

Stephanie.

ALAN GREENBERG: E-squared PDP.

STEPHANIE PERRIN: I can actually make a pragmatic, helpful suggestion here. Part of the role of the data protection impact assessment is to see other policies and isolate the things that need to be changed. That would be a parallel process that I think we might be able to support. Some of these, such as the transfer policy, is a relatively quick fix. We already know what's broken. That comes with doing a DPIA. That takes time doing a DPIA, and we have to assemble some people who actually know what they're doing when they do a DPIA, and that may mean hiring some people. So I hope we're not going to be on a scrawny little budget like we were the last time because we need some money to do that. And we need the money for the legal review, because my advice, and it's -- I'm going to be saying this so you might as well

get used to, is we need a total legal review of the 188 pages to make sure that we're on the right track.

That you can.

STEVE DelBIANCO: Benedict.

BENEDICT ADDIS: SSAC have previously written that thick WHOIS is a critical security need, so all I need to do is remind you to go off and read our communications. It occurs to me that in the wake of phase one, that's not something that needs to wait any longer to start reviewing these policies. And as Stephanie has mentioned in the correct context as well.

Thanks very much.

STEVE DelBIANCO: Thank you.

The final slide is one we don't need to react to here because it will come up in Council on Wednesday, this notion of should we restart two projects that have been on hold pending an outcome of the EPDP. And now that phase one is delivered, Council will discuss extensively on Wednesday, whether to restart the privacy and proxy services accreditation and whether to revisit

improvements we wanted to make for registrars and registries to get -- it's a procedure to look at how to reconcile conflicts between WHOIS and privacy law.

So why don't we move to the microphones, and I'll watch for the remote participation. And we've got plenty of time now for some audience Q&A to interact with this panel.

I see Goran and then Alan. Goran, you first while you folks move to the microphone.

GORAN MARBY:

Actually, I would like to make a comment because I had to check something. So just on Stephanie's point, the plan is for us, after - - so we move phase one into an implementation now, which there are going to be many things that we have to work out. And we offer the contracted parties, I think it was a month ago, to formulate that in a way that makes a nice experience for everybody, whatever that is. But after that we actually plan to take not the 188 pages but actually the contractual arrangement to the DPAs and ask the questions if this is according to the law so we make sure that we have that. And we can't do that until after the comment period and after the discussions in the implementation.

Thank you.

STEVE DelBIANCO: Alan.

ALAN GREENBERG: Thank you. Taking off this hat and putting on the hat as the chair of the RDS Review Team, one of our issues we did look at was the privacy/proxy PDP because it was recommended by the first RDS Review Team. And our position is strongly yes, we must continue with that quickly because there still is applicability to it. There are all sorts of implications in it; you know, pricing, which might kill the whole thing, but we need to try to finish that.

In terms of conflicts of privacy legislation, there's lots of other privacy legislation other than the GDPR and other people might be subject to it, and I think we have to factor in those contracted parties as well and be able to accommodate them if they don't happen to be in Europe.

STEVE DelBIANCO: First question over here, Farzaneh. >>FARZANEH BADI: Thank you, Steve. Farzaneh Badii, Noncommercial Stakeholder Group. It's an observation first, it's not a question, per se. We have been putting these cross-community panels on GDPR for the past year at least, and unfortunately the balance and the moderator neutrality has never been preserved. They advance certain

stakeholders' interests, and it is quite obvious that they try to insert their views and be more vocal on these panels when they're moderators. I do urge you to -- and the community to fix this issue so that we can actually have a balanced conversation that will help our multistakeholder issue better to tackle the issue.

We asked for the Data Protection Authority presence for the past year, and every time I have been involved with organizing these panels and we never get one.

So my question is you keep saying we need guidelines and we need to talk to them. What is the resistance? Are they going to say something you don't like? Well, let's face it, you might.

And the other thing, many issues that you mention here has not been agreed upon by the community. So the unified access model, and I have -- and we have made it clear we are not against disclosure. The unified access model has not been agreed by the community. The technical working group has been put together by the CEO. It's a CEO initiative. It's not a community initiative. And we should fix a 20-year wrongdoing to domain name registrant personal information. We expose their personal information out there for 20 years. It's not only a matter of GDPR. Let's just bring some privacy and also a way to disclose information to the legitimate parties.

Thank you.

STEVE DelBIANCO: Thank you. ICANN staff, Cathrin and others up here have in every one of these cross-community sessions invited Data Protection Authorities. They have respectfully declined to even reply.

CATHRIN BAUER-BULST: Sorry. Just to pitch in on this one, to defend the DPAs. I mean, they're very willing to help, but they're not our legal advisors and they are not accountable to us. They are an independent authority that is in charge of implementing the GDPR, and they have been very open. And I think those who have been in contact with them, including Goran, will confirm that they want to interact both unofficially and officially as much as they can, but they cannot engage in this travel circus that we're engaged in, and we need to do the homework and then consult them.

GORAN MARBY: Thank you, Cathrin. I, too, hundred percent agree with you. Yes, we don't act unofficially.

STEVE DelBIANCO: All right. We'll go to this microphone.

ARI GOLDBERGER:

Hi. My name is Ari Goldberger. I'm a lawyer, and I represent domain registrants. And I think one of the unintended consequences of the GDPR is a lot of the domain registrants want their information to be public. They want people to be able to reach out and buy their domain names and -- or inquire about them or maybe do a business deal. And that -- the GDPR makes that a lot more difficult now, and who gets the power is the registrars, like GoDaddy for example. You do a WHOIS search and you don't have any information and there's a little link there that says, "Do you want to buy this domain name?" Then GoDaddy or some of the other registrars will contact the owner. They'll act as a broker and they'll make money on that. And I think that's an unintended consequence of the GDPR, and it's not good for domainers. And I wonder if there's a solution for that. If I want my information to be public, I should be able to make it public and that should be something that is at the top of the agenda; you know, the right of the domain owner to either be private or public. And I'd love to hear what your views are on that.

MATT SERLIN:

Yeah, so I was actually trying to find it in the final report, but I'm fairly certain it's one of the recommendations that as soon as -- I forget the exact language, but essentially registrars should offer to customers -- Commercially reasonable? Yeah. That registrars

should offer the ability to their registrants to display the information in the publicly available RDS.

ALAN WOODS: And just to add to that as well, I mean, I completely agree. I mean, the thing is we didn't write the GDPR, and this is something that has been coming for many years, and unfortunately, we just didn't have the preparedness in order to adapt quickly enough on that one. So in the meantime, until we have that solution in place, we're all going to have to just grin and bear it until we get that solution in place, unfortunately.

ARI GOLDBERGER: Great. Thanks.

STEVE DelBIANCO: Stephanie.

STEPHANIE PERRIN: Stephanie Perrin. Why would that have to be done by ICANN and through the whatever replaces WHOIS in the multiple listing service for real estate is run by the real estate brokers. It's not run by any regulatory authority but looks after the sale of real estate. So why doesn't some enterprising entrepreneur such as yourself start something up and post it there? Then we don't need to

worry about it here because this is a quasi regulator here and we have to be careful.

ARI GOLDBERGER: That's a good point. There's a company named Domain Tools who has the records on WHOIS for the past 20 years or so so you can go into WHOIS history and maybe find --

STEVE DelBIANCO: We're going to refer you to recommendation 6. Read that and get to us if you think there's any element in there that you think needs to be clarified.

ARI GOLDBERGER: Super. Thank you.

STEVE DelBIANCO: That would be helpful.

ARI GOLDBERGER: Thank you.

STEVE DelBIANCO: I have Mark and then Goran.

MARK SVANCAREK: Yeah, I just wanted to make a comment about Stephanie's intervention because during this week, I encountered a company who really wants to become an accredited party in this so they could create a service like the one that Stephanie was talking about to facilitate these sort of transactions.

GORAN MARBY: Thank you. First of all, we are not a quasi regulator. We are not a regulator at all. We are not even close to a regulator, and I know that because I have been a regulator. And we don't have the empowered -- we don't have the power to enforce anything over our contracted parties when there's a local law that forbids that. That's one of them.

Can I also point out, there's a question about legal obligations. One of the fine tuning of all of this is if our dear fend from Tucows over there actually gives data to someone who misuses it, the one who gets the data is now also under GDPR. So the company you mentioned is now under GDPR and they have to act upon exactly the way as a contracted party does. And if he misuses that information after he got it from Tucows, and I'm not picking on you, it's just that you're standing there, Tucows also is responsible as well.

So it becomes -- It's a series of things. If you give information in bad faith and you don't do your homework, that's one of the

tensions with the law. I call it, in my bad sense of humor, virus, but it's not the intention of that. But it's easy to say let's form this entity that takes care of the data and that every problem goes away. That's not the case.

So, yes, we have no option -- we have no -- if someone would come around and say that they can do a technical hub for access of the data, they have the same situation that we have, and that is that someone has to take responsibility for the data. Someone has to take legal responsibility for accessing the data and providing some of the data. We can move that around if we want to, but it's the same single question: How do you diminish the contracted parties' legal responsibility if it's impossible?

Thank you.

STEVE DeIBIANCO: Thank you. We'll go to Dirk and then we have a remote question.

DIRK KRISCHENOWSKI: Dirk Krischenowski from DotBerlin and vice chair of the geo TLD group.

Thank you for sharing this interesting overview slide. And as a registry, I'm really surprised that we're out of the game with phase two since you established a third way to secure and save

data. So the registrar is also having its registrar escrow service, then you have the new RDAP way, and then you have the thick registry or thin registry of the registries.

The question is do you need registries anymore to store any data? That might be a question I have. That's the first part. And the second is I recently stumbled over the topic of the consumer protections was brought up by the ccNSO, and in a foreseeable time I think we will have the consumer protection cooperation in regulation being in place in Euro. So consumer protection request would then go a different way. And I guess also cybersecurity, IP protection, and child welfare would go a different way. So it's only left, then, to law enforcement who could access the data at the end of the day, or I'm -- doesn't -- doesn't the consumer -- consumer protection doesn't interfere with the privacy protection at the end of the day?

STEVE DelBIANCO:

Dirk, this is Steve. With respect to the first part, the Technical Study Group or TSG makes it very clear that their recommendation is for the unified access to go to the authoritative source of the data with the closest relationship to the registrant. That's why this diagram shows that the registrar, the authoritative source, is the one revealing under the unified access model. That doesn't change what happens on the left side

of the diagram. And as to whether we should eliminate registries, I guess we'll go to Alan on that.

ALAN WOODS:

I'm very happy to do that. First, I just wanted to say I think we're kind of slipping into a mix between what the EPDP has done and what the TSG are doing. And I do think it's a bit misleading to have this here because it is causing confusion. Again, they are not -- they're not in line. They're not doing something as a result of the EPDP. They were tasked with a very specific task which they completed. So let's be careful with that one.

But my actual response, then, is do we need to get rid of registries. I believe the question is do we need to get rid of registry data. I'm sorry that I have to say this but if you just look at, you know, recommendation one, purpose 1A and purpose 1B, it set out where we believed as the EPDP team that, yes, there is a potential for that data. But again, you know, this is something we need to look at in implementation and things like that. But that is the purpose. And all the data that we considered is there.

STEVE DeIBIANCO:

Thank you. There is a comment -- Elliot, we're going to go to you next. I wanted to read a comment that came into the chat from a remote participant.

Kristiina Lanki said that in URS, that stands for Uniform Rapid Suspension, it should be an easy to get the ownership of a domain by challenging the legal owner and when that issue is handled.

I think that was in response to the idea -- the question that came up earlier.

Elliot Noss.

ELLIOT NOSS:

Thank you. Elliot Noss from Tucows. I want to start with what now seems to be my regular meeting update on what's going on in the field in terms of access to data. And there's three things I would like to speak about. The first, probably most important for this group, is that volumes -- volumes of requests remain incredibly low, and most -- the overwhelming majority of those requests come from commercial or intellectual property interests, and a significant portion of those requests are malformed or provide very little data.

Finally, when those requestants -- requestors are asked for more information, they don't respond. We have a blog post on the open SRS blog. I really encourage you all to read T we are spending a lot of time and effort to create a complicated system. You tend to create systems or platforms when a manual task needs to be automated because it's being performed so many times.

At this point, with WHOIS we are the second largest registrar in the world that is simply not the case. So I note that in terms of our scale of concern and the problem.

Now a couple positive things to share with you. First, we think we may have a solution to the issue of personal or business registrant. That has been a thorn in the side of many, and it's been nearly impossible for registrars to deal with.

We think there may be a solution which is simply that requestors become able to demonstrate categorically, and we'll talk about what those specific standards are, that a domain name they're requesting the information for is actually a business and not an individual. The problem has been to deal with the historical data set, so maybe the way to square this circle is to deal with it going forward.

Next, you know, I want to address Benedict's point. And, Benedict, I want to remind you of something we've now spoken about at multiple meetings and that I've said to a number of people in the security field. For me the issues around data access that the security community needs requires pseudo anonymity. And further, that registrars -- forget about registrars not having the time to do that. They don't have the engineering skills to do that. I'm sorry, registrant community. Present company included.

The security community, on the other hand, can solve their own problem by creating a third-party solution that is open, that registrars can have access to and use, and I repeat my invitation that I've made before that we are thrilled to work with anybody in the security community who wants to step up on that.

And finally, you know, I want to come back to Stephanie's point about tradeoffs. I think that Ashley said that you can somehow design a system where you can have faster and broader access without compromising the balancing of rights here of the privacy of individuals. That is not a property of any system that can actually exist. At a mathematical level, unless we can create a system has zero error, the faster and the broader the access, the more compromise there will be to the rights of the registrants' privacy in data.

So I just think that we all need to take note of that.

Thank you.

STEVE DelBIANCO:

Thank you, Elliot. We're down to four minutes left, so we will start with Mark and then we will allow any of the panelists to react to what Elliot has offered or any other comments they might have. Mark.

MARK SVANCAREK: Thanks. Yes, I read Sarah's blog post with great interest and also some concern because, as you said, there's a lot of malformed --

ELLIOT NOSS: Sorry, we're not CIRA. Open SRS. and.

MARK SVANCAREK: Pardon me?

ELLIOT NOSS: You said CIRA's blog post?

MARK SVANCAREK: Sarah.

ELLIOT NOSS: Oh, Sarah, the author.

MARK SVANCAREK: You know, it works for you.

[Laughter]

And so I had a similar concern when I saw, first, the amount of malformed requests; second, there seemed to be a certain amount of redundancy; third, when requests for additional

information were posted, that they were not always responded to.

And so I immediately leaped into action and so contacted a number of parties that I know who are generating some of these requests and said, look, it's completely unreasonable to ask people to be turning these things around fast -- you know, we hate the 30 days thing. So, you know, you're doing it faster than that -- and then not provide well-formed things, especially since they're defined now on the left side of the diagram and then not respond back when there's additional requests.

And so I talked to a bunch of people, said, Look, you got to get back to Tucows and clear this up because some of the questions that I had, there were discrepancies in the information I was getting from both sides. Rather than pick and choose a winner, I said, you just got to get together and get your story straight among you.

And I will be meeting later with Sarah and Reg to work even more on this. And I'm committed to clearing up at least this portion of the problem, get us all on the same page, and make sure that there's a commitment to quality on the part of the requesters so we can move ahead with other, more difficult problems.

ELLIOT NOSS: Thank you very much for that.

STEVE DelBIANCO: And, Elliot, thanks for trying to pay attention to the lower left-hand corner because disclosure requests will persist. Even after we design an excellent unified access model, not everyone will be accredited. So finding a way to make it reliable and predictable I think is going to serve the interest of registrars as well as those who need the disclosure.

Cathrin.

CATHRIN BAUER-BULST: Yes, just very quickly. Thank you. I think Elliot's feedback from practice actually makes a point that we made earlier about the consideration of implementation options as we look at the policy and as we develop it because that feedback from practice and also the work that the TSG is doing is really helpful in helping identify privacy protective options that can then encourage policy choices that make sense for everyone. So just another plug to also continue this work also through TSG. Thank you.

STEVE DelBIANCO: All right. We have one minute. Stephanie and then Ashley and then we're done.

Stephanie.

STEPHANIE PERRIN: Thanks. I wanted to follow up on Farzi's point about inviting data protection authorities. We did have a standing offer from Mr. Cannataci, the U.N. special rapporteur on privacy, who some may remember came at the invitation of the Council of Europe to Copenhagen. He said he would be happy to come back and happy to go through all of our questions. That was back in the RDS day, and we kind of let that drop. Yes, Mr. Cannataci is not a data protection authority but he is the U.N. special rapporteur.

STEVE DelBIANCO: Ashley, final word to you.

ASHLEY HEINEMAN: I think you want to have the final word because mine is not going to be that inspiring.

Largely, I just want to agree with what Cathrin said but also bring those experiences into the EPDP as well because I feel like there's a lot we could be working with from my registrar/registry colleagues that aren't. I feel like we really get bogged down, no offense, in the fears of GDPR and not necessarily, Hey, we've got practical experience that we can bring to the table and work

constructively towards a goal. So thank you for that. It's really helpful and interesting.

STEVE DelBIANCO: Goran, you are not tasked to be inspiring, not just brief.

GORAN MARBY: Not at all.

I'm Swedish, you know. I'm not going to be inspiring, especially not at a quarter to 5:00.

I just want to -- our experience right now from compliance is actually echoing your comments. We see very little complaints about WHOIS, more than the usual one, because they are about, for instance, accuracy of data.

It tells me something, I think it's a dialogue between police forces and the contracted parties. And you may now -- you may now be a little bit surprised, but I would like to give a compliment to many of the contracted parties who's working quite literally. They also take risk. They actually do take risk because we don't have -- we don't have all the answers. And I congratulate you for that.

Maybe I can -- if there are particular companies who would like to have a bigger risk from individual contracted parties, they may pay the legal fees and the court cases. Thank you very much.

STEVE DelBIANCO: Let's have a round of applause for the folks on the panel and the EPDP team.

[Applause]

Thank you.

[END OF TRANSCRIPTION]