
ICANN74 | Policy Forum – GNSO: IPC Membership Meeting
Tuesday, June 14, 2022 – 09:00 to 10:00 AMS

UNIDENTIFIED FEMALE: Hello, and welcome to the IPC Membership meeting. Please note that this session is being recorded and is governed by the ICANN expected standards of behavior. During this session, questions or comments submitted in the chat will be read aloud if put in the proper form as I will note soon. If you are remote, please wait until you are called upon and unmute your Zoom if you would like to ask a question.

For those of you in the main room, please raise your hand in Zoom. And when called upon, unmute your table mic. In the secondary room, please raise your hand in Zoom and go to the standalone mic when called upon.

For the benefit of other participants, please state your name for the record and speak at a reasonable pace. You may access all available features for this session in the Zoom toolbar. With that, I will hand the floor over to Lori Schulman.

LORI SCHULMAN: Hello and welcome to the IPC face-to-face meeting. It's great to see everybody face-to-face or half-faced as the case may be. So all of you who took the effort to get here, we so appreciate it. I'm

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.

going to keep my remarks very short because we have a robust agenda today.

But I do want to remind everybody who's in the room and in The Hague and a member of the IPC that you are very welcome to join us at our no-host cocktail on Wednesday at the Royal Leonardo Hotel, which is just two blocks away from 6:00 PM to 7:30 PM. You pay for your own drinks, but the IPC officers are very pleased to be treating you to small bites. So please come, and we'll have a chance to really catch up and get to know each other with a little bit less than six feet distancing.

And from that, I'm going to go right into our agenda. We will have a GNSO update from our councilors John McElwaine and Flip Petillion. We'll have a participation update with our participation coordinator, Jan Janssen. I'm going to add two people onto the agenda, Glen de Saint Géry will be reporting on the Standing Selection Committee, and Alex Deacon will be reporting on the EPDP IRT. And then, we will get to our substantive policy discussion.

As you know, one of the changes we've made to the IPC agenda this year is we devote 20 to 30 minutes of every meeting to a substantive discussion that helps us develop our policy position as we move forward. This substantive discussion will be about the NIS2, the cybersecurity director that was recently passed by the EU, and Niklas Lagergren from Disney will update us. He has

extensive experience in Brussels. He is really a wonderful resource for the IPC, and we welcome his advice as we've gone through this journey with NIS2 and how it impacts ICANN.

Then we will have a few minutes for any other business. If you have any other business, please put it in the chat. I will note it, and I will include it in the agenda at the end.

So I also want to thank the IPC officers who are here. For those who don't know me, I'm Lori Schulman. I am the President. Brian King hasn't flown in yet today. He's got another meeting, unfortunately. He's our Vice-President from Clarivate. Our secretary is Susan Payne, and Susan is our recently-elected GNSO councilor too. And our Treasurer, Damon Ashcroft, who's on the NomCom, so also absent today. It's Susan and I at the head table. Our GNSO councilors are John McElwaine, who will be completing his third year, and Flip Petillion who's completing his fourth year and will be handing the baton to Susan. And our ever-diligent participation coordinator, Jan Janssen. So thank you. And now, I'm going to yield to John and Flip.

JOHN MCELWAINE:

So I'll just kind of go over real quickly what the agenda is for the upcoming Council meeting. And we need to just confirm that we have the right direction on the one vote. So the first item is, in fact, going to be that vote. And that's going to be on the final report and recommendation from the EPDP on specific curative rights

protections for IGOs. This was a working group that I was the liaison to.

I made the motion to adopt the final report. It's essentially a solution to allow IGOs to have the ability to take part in the UDRP proceedings due to restrictions on them agreeing to being subject to national laws for any appeals. So we've developed in that working group a process for dealing with that that involves an arbitration-like appeal if chosen.

The last indication that we had was that we were going to vote in favor of that. And so if there's any significant opposition, maybe at the end of my report, we can have some discussion on that, or just have some discussions in the hall. Other than that, the Council meeting's going to be just a number of discussion topics. All of them are pretty familiar to folks.

The next thing we'd be taking up in the meeting is the impact on the SSAD Light, or as we heard yesterday, the new WHOIS disclosure system. The discussion's going to be around that process if undertaken by ICANN Org. It's going to take about six weeks. And there's going to be certain ongoing workstreams that will be delayed by about a month-and-a-half. Those are the SubPro ODP, the CZDS3.0, and the EBERO program.

With respect to the rest of the meeting, it's really then dominated by discussions concerning various issues with SubPro. There is going to be a discussion on forming a GGP, which is going to be a

GNSO guidance process consistent with the implementation of several of the SubPro recommendations.

We're also going to get an update on the ODP. So as folks know, ICANN is now studying the impact of all policy. And we're going to get an update on what the operational design phase and what its analysis is, and how that's coming along. And then, I think last but not least [inaudible] SubPro, we're going to have a discussion of the closed generics issue. So, again, it's going to be heavily-weighted on the subsequent rounds of gTLDs.

Lastly, just procedurally, we're going to be discussing some workstream within the GNSO concerning improvements to PDP, in particular talking about tracking and coordination. So as folks know, the GNSO Council's very focused on project management. And so this will be just a discussion on how we can improve that. Flip, do you have anything to add?

FLIP PETILLION:

Thank you, John. Perfect.

JOHN MCELWAINE:

I'll turn it back over to you to see if we want to have any discussion or questions about any of that, Lori.

LORI SCHULMAN: Thank you, John. I am interested in knowing if there's anybody here who has an objection to the IGO EPDP recommendations because my understanding from our last few discussions is this is something that most IPC members would favor. But before we give that instruction for councilors to vote, if there's any strong objections, now is the time. All right. I'm going to take that silence as assent, John, in terms of your instructions.

And is there anything else you'd like to ask our councilors before we move on? Perfect. Thank you. I want to, again, thank John and Flip. GNSO is always a challenge in terms of the workload, the number of issues being tackled, the complexity. And our councilors have served us especially well during a very fraught time. Thank you for your service. So next up, we're going to devote... Oh, I'm sorry. There's a hand in the chat. I didn't see. Who has their hand up? Oh, Anne. yes. Thank you.

ANNE AIKMAN SCALESE: Just a quick question. I thought I was muted. Okay. Thank you both. I noticed in the last GNSO Council meeting that that measure was deferred in relation to Contracted Parties House. And I was wondering what had gone on there, and why the vote was deferred just by way of background.

JOHN MCELWAINE: Sure. So there was some discussion—and this is nothing that was new to the Council—about whether the solution in the final report was within the scope of the working group's charter. So the CPH wanted to discuss that issue a little bit more internally and actually proposed an amendment to the motion that specifically has the GNSO Council finding that the final report is within the scope of the charter, which I think is a good thing.

Again, it's something that we've raised early on that the charter was a bit narrow because this was a subsequent workstream to deal with a recommendation that was not approved by the GNSO Council, and it was fairly narrow. We had to come up with some creative solutions to try to make it all work, which hooray, as a community, we did. But there was some issues as to whether that would be within the scope of the initial charter. Thanks.

ANNE AIKMAN SCALESE: Thanks so much because that work has taken so long. And I'm happy to know that it looks like it's going to sail through now, or no? We hope. Okay. Bye.

SUSAN PAYNE: There's one other hand that's actually just from me. And just before that, I'll just remind everyone raise your hand in Zoom if you want to speak. It's the way that we can manage the meeting with the virtual and in-person attendees. So just a quick question

about the GGP, which is the GNSO Guidance Process, John, if you don't mind. I know this is just a discussion item at the moment. It's not been sort of formally tabled for a vote.

But there is this proposal that's been circulated for a GGP to deal with a number of sort of SubPro issues, proposing perhaps a sort of overarching kind of group and an overarching sort of charter that could then have individual issues kind of slotted into it. There will be obviously opportunities after this week to talk about it as well.

But it would be I think good to get a sense or from you—I hope to have a sense of what people think about that. I must say just to kick it off personally, I feel like the GGP has never been used before. And perhaps it might be easier to get people comfortable with the idea of a GGP if it was targeted to a particular issue rather than something that looks quite open-ended with a sort of a steering group for want of a better word that doesn't exist yet.

And so I recognize that that might mean multiple charters for different issues down the line. But I feel like maybe that might be a more sort of practical way to actually get people comfortable with doing this on something like applicant support where I think there's agreement across the aisles that it's important. So I wondered whether you and Flip have any thoughts on what your stance would be during the meeting and also just generally if there's other input on this.

JOHN MCELWAINE: That's a really good point to make because, actually, speaking with Jeff Neuman last night, he was lamenting that people weren't more involved on the Council level and providing any input on this concept. So he kind of recognized that the SubPro work has been not forefront in everybody's mind. So I think it's kind of new to the Council, though it's not a new agenda item whatsoever. I haven't done a lot of work with subsequent procedures. I don't know if Flip has or if anybody had served on that work track to provide some guidance. Anne?

ANNE AIKMAN SCALESE: So is the question about using the guidance process for resolving SubPro issues? I'm not sure I understood the question clearly.

SUSAN PAYNE: Yes. It essentially is, yes. I think there have been a number of issues that have been identified, one of which being applicant support. But there are others where the SubPro working group did sort of identify that some additional work might be done. And so thinking particularly about applicant support, staff raised a question about whether it was policy or whether it was implementation. And the idea was maybe rather than getting into the weeds on that, perhaps there should be a GGP that could work on that issue.

But the proposal for the GGP that is sort of floating around but is not on the table yet but is up for discussion is one which would sort of have the flexibility to kind of bring in a number of different issues and it's sort of like an overarching GGP. And then, you would start a stream on applicant support. And then, you might start a stream on something else.

ANNE AIKMAN SCALESE:

Yeah, I've had some discussion about that with both Jeff and with Paul actually behind the scenes because it seemed that the guidance process was certainly appropriate for the issue of applicant support. The guidance process—I guess I'll say that my background is I was on the policy and implementation working group where we developed the GNSO input, GNSO guidance and EPDP measures after the 2012 round.

And Jeff and I had actually discussed that when ICANN staff comes back to GNSO and says, "Hey, we think this is a policy issue," first of all, it's really important for GNSO Council to preserve its prerogative to determine what is policy and what is implementation and what belongs properly within the policy realm and what belongs in the implementation realm.

But to further the discussion, Jeff and I looked at that guidance process tool because it is a tool that can be used to work on policy issues that do not implicate the registry agreement or the accredited registrar agreement. It literally says in the guidance

policy in the guidance process that you can deal with policy issues if they don't impact RA/RAA. So we thought that's very appropriate for applicant support. And we felt on SubPro that that was going to need additional work.

Now, apparently, there were several other issues thrown into the bucket, some of which from my point of view are implementation issues and really are more appropriate for either the IRT or the GNSO input. I think Paul may have had some comments on that. I don't know where that ended up on GNSO Council's list.

I definitely think that the guidance process is appropriate for the applicant support issue. As to how they bundle up all those other issues, that's up to Council, I guess. If they're going to go that direction, put them all inside the guidance process, which I think Jeff favors. I'm not sure about the others. Maybe Paul has comments.

LORI SCHULMAN:

I'm going to put a pin in this though, Paul, unless you have a burning comment. No? All right. So I want to stay on schedule because of our guest speaker who is dialing in. He's a remote speaker. So this is clearly an issue we need more conversation about. So we'll note that as a follow-up. And I think all the points about what goes where when is critical to how we support this effort. So I'm going to note that. And we will continue this in our

regular meetings and perhaps, again, even with a special meeting devoted to that particular topic. So thank you very much.

We're going to go next to participation update. We're going to do a speed round because I really do want to end at the half-hour point. And if a reporter's not here, then we'll skip the report and we'll do it online. I think that's the way we'll get through it quickly. And I'll ask Susan—and I believe [inaudible] can't make this meeting—if you could deliver a quick update of the SOI if you're up-to-date that you can start.

And, well, Jan, I'm going to lead it over to Jan, but I'm going to ask Susan to do SOI and prioritization at the same time. And Jan, we have two more reports just for you to note. We have a report from Alex, a quick one on EPDP Phase 1 IRT and from Glen on the SSC where she has an update. And now, I'll hand it over to Jan. Thank you.

JAN JANSSEN:

And I can be I think very short. There is one personal thing I would like to say for those who were at the SSAD meeting yesterday. You may have seen a Jan Jansen in the chat who was particularly active, but it's a different name. It's a one S Jan Jansen. It wasn't me. It's a confusingly similar name and proceedings are ongoing.

On the update, I think Alex, it is good to see you here, and I will give the floor quickly to you. For participation opportunities, I

think there are no new opportunities in new policy activity. But I think that people who are active in a group could help assistance. And that's not only in the policy group. It's also I think in the EPDP IRT, which is a very important implementation review, which can have implications as well on other policies the way it's implemented on the UDRP, for instance. And I think that Alex could help somebody at his side who has some hands-on UDRP experience.

Then for upcoming work, I know that Mike on the transfer policy would like to get some assistance in the public comment that will be in drafting the public comment by the IPC, which is not up yet. But they are finalizing the report. And I expect that soon after this policy meeting that it will be out there for public comment. I hand it over to, I presume, Alex.

ALEX DEACON:

Thanks, Jan. So just to follow up on your point, that additional help in the IRT would be welcomed. I feel like I'm the last man standing in that IRT, me and the GAC folks fighting the good fight. If you remember, the EDPD Phase 1 finished in record time, six months in 2019. We recognize that we wanted a quick implementation.

And if you remember Rec 28 recommends the effective date of the implementation of the policy be February 29th 2020. We blew past that and recently hit the 3-year mark in the IRT work and are now

into our fourth year. But thankfully, there is now a date that's been set for public comment of the work that the IRT has been doing for the past three years.

One of the issues that is of concern and that I raised several times in the IRT is the lack of the publication of the data processing agreements, which is ongoing discussions and negotiations between the contracted parties and ICANN. I believe they are close, but no assurance has been given. And I think it would be a mistake to go to public comment without knowing or confirming what the joint controller relationships are. So I think that's about the end of my statement. But if you have any questions, let me know.

LORI SCHULMAN:

Thank you, Alex. We're going to go through statements. And I have not had questions right now. We can wait till after because I really do want to stick to the schedule if you don't mind, Jan. We can just go into the next report.

JAN JANSSEN:

Yeah, sure. Is that Susan on the prioritization or...?

LORI SCHULMAN: It would be Susan, yes. You can follow the list and then add Glen. And I don't see Scott on the call. So I can give a very quick accuracy update.

SUSAN PAYNE: Hi, everyone. Just a quick update on the prioritization. And I can be super quick on this because I think I have given an update in a previous call. I participated for the CSG on the prioritization pilot, which was attempting to use the new prioritization framework for how to prioritize some of the backlog of work. We only worked on specific review recommendations. So we had a sort of narrow, targeted set of recommendations that we had to prioritize. And we were using a sort of matrix that was balancing importance and urgency. And we tried to sort of grade things in that basis.

Staff did a good job of putting in a suggested prioritization for the recommendations we needed to work through. Sometimes the group quite easily agreed on that. And sometimes we had a bit more discussion. It was a really quick process. We only had I think four calls over the space of a month or so.

It was an okay process. I think given the limited number of recommendations we were working through, I think it was relatively noncontroversial, and people were able to come to agreement on it. But I think it will be a harder exercise when we've got a wider slate of recommendations and competing priorities on sort of some of say the policy recommendations to try and

work through for a future effort. But there'll be a big discussion on prioritization in the plenary coming up. So I guess I will stop there.

LORI SCHULMAN:

Okay. I'll take the baton from Susan for accuracy scoping. And again, I'll do this very quickly because it's very much linked to the work that Alex is doing on the EPDP IRT. And I want to re-emphasize Alex could use support, folks. So if you have knowledge and any interest at all, please speak to me and Alex and Jan. You can contact all of us. We'd really like to support Alex. This is a tough time, and he could use us.

That being said, accuracy scoping, there were four main questions that the scoping team were asked to look at. What is the current working definition of accuracy? We could barely agree to that. The second question is are there any gaps in how accuracy is measured at ICANN? And right now, accuracy isn't being measured at all because of concerns about GDPR compliance.

Then, there is a third question is what would we like accuracy to look like at ICANN in the future? What would we recommend as good practices for auditing and ensuring accuracy among WHOIS data? The first two questions have been answered. And we have a draft report on the first two questions that we are negotiating right now in the working group.

There is a recommendation for many in the working group that the work be paused. The reason that this recommendation is being made is in order to do questions three and four, we would have to understand what information ICANN could collect from the contracted parties in order to do the auditing work that would be in order with any compliance requirements.

This requires a data processing agreement. And for those who are unaware of what's been going on in the data processing agreement area, it's been over three years where ICANN has been negotiating with the contracted parties on what a data processing agreement looks like. There's some issues about ICANN wanting uniformity, and the processing has to be very specific to purposes.

And perhaps a one-size-fits-all agreement wouldn't work for ICANN. So there's a lot of open issues on this. My personal feeling is that I think the work should be paused. However, if we pause the work, it could be the death knell of the work itself.

The European GAC is very much in favor of keeping the work going. But we're going to have a meeting today. If you're interested in this subject, there is an open meeting. Please come because at some point, I'm going to be asked to vote. Scott and I will be asked to vote on whether or not we should pause this work.

We do not have an IPC position at the moment. And we will need one when we come to a vote. And I will poll the list at that time. And is Mike Rodenbaugh on the call? I don't see Mike. So we're going to pass Mike. And I'm going to pass the baton right to Elizabeth Reed to give an update on the SOI team. And then we'll wrap it up with Glen.

ELIZABETH REED:

Hello. I hope you can hear me okay. I'm on [inaudible]-time, so I'll try and keep this quick. First, thank you to those who responded to the survey. It was very much appreciated. The task force has been working on formulating their recommendations based on those survey responses and also issues raised by the task force members.

At this stage, we have settled on a few recommendations, the main one being that we are recommending that the current SOI questionnaire or template be divided into two parts so that there is a parent SOI and a child SOI. The parent SOI would be intended to be rather general. And so there's an umbrella SOI. And the child SOI is intended to be a very specific statement of interest that's relevant to the particular GNSO activity that the participant has signed up for in hopes that this would make sure the information is the most relevant information being shared for that working group and is also up-to-date and hasn't been kind of forgotten.

Another thing that I would like to raise is that there was discussion about the issue of lawyers in particular using professional legal privilege to not name the client so that there are some situations where the working group doesn't know who a person represents truly. A compromise does seem to have been settled at in that in situations where professional legal privilege or confidential agreements prevent disclosing that you're representing a client or the client's name that you provide instead a high-level description. For example, I represent a registry client instead of actually requiring the person to disclose the client's name.

I would be interested in feedback as to whether that is considered acceptable by the IPC members. Given the time, I will send a written update via the email list. So if people could keep an eye out for that email and do provide me feedback or concerns that they have, that would be great.

The last thing I would like to raise is that it's also being very much decided that there should be a recommendation stating that case examples and guidance material need to be developed to accompany the SOIs in that currently, while the questions seem to be on the right track, the people aren't answering them in a very helpful way.

So the hope is that case examples and guidance materials will really show the standard of information that we're expecting

when people do complete the SOI and particularly the kind of information we're looking out for. I think that was everything in terms that I would like to bring to people's attention. I will send the update as well to the list. Thank you.

LORI SCHULMAN: Thank you, Elizabeth. Jan, do you have anything to add? I know we have Glen wrapping up.

JAN JANSSEN: We can directly go to Glen.

LORI SCHUMAN: Okay. And after Glen, what I'm going to do is switch the order. Susan has a brief any other business. Susan, I will ask you to talk about that after Glen. Then, we'll give Nik because he's online now the rest of the time. And then we don't have to worry. Okay? Makes sense? Okay. So we'll go with Glen, then we'll go with Susan. And then Nik, you'll be on. We're anxious to hear from you. Thank you.

GLEN DE SAINT GÉRY: Thank you very much. Thank you for accepting me as the alternate to the SSC in the event that Brian couldn't attend. And that is exactly the case today. Brian cannot attend unfortunately. Briefly, what has happened is there were two matters that came

before the SSC. The selection process for the GNSO nominated fellowship program mentor.

There were two candidates, Chris Disspain and Imran Hossen. Chris Disspain was the preferred candidate for this role. And there was one respondent who indicated that they preferred Imran Hossen. All the feedback was very positive for both the candidates. And Chris Disspain was nominated the fellowship program mentor.

The second matter that came up before this committee was the amendments to the SSC charter, which have not been amended since 2018. And they were very small amendments to the charter. They were all accepted. And this has already been supported through a motion in the GNSO Council. And the revised charter has been accepted. And so I'm very short. Thank you very much. If you have any questions, please let me know.

LORI SCHULMAN: Thank you, Glen, and I'm going to whip it over to Susan.

SUSAN PAYNE: Thanks. So this is just a quick AOB. And it's just a flag that we will shortly be conducting the elections for the officers. For those who aren't already familiar with this, we do do elections every year. So officers serve for a one-year term. And they can serve up to four

years, although there is no requirement on an officer to stand for those full four years.

So all of the officers [inaudible] that the president, the vice-president, the secretary, and the treasurer are elected annually. And we'll shortly open the elections, not imminently, but within the next sort of month or so. So please start giving some thought as to whether you would be interested in taking up a leadership role and standing for one of those positions.

We do know at a minimum we will be looking for a new secretary because I am moving onto the GNSO Council. But without having consulted the other officers, anyone can stand for any of the posts. I don't, as yet, know whether any of the other officers would actually like to be sort of rotating off the leadership for the next term.

But in any event, it's always excellent to have a sort of thriving and contested election process. So just give it some thought and keep an eye out. And do, if you want any more information, reach out to any of the officers to ask about what it's like to be on leadership and what it is and so on. Thanks.

LORI SCHULMAN:

Thank you, Susan. We really appreciate your efforts as secretary the last four years. You really help keep things running smoothly through COVID and everything else. So thank you very much. And

now, I am very pleased to introduce our guest speaker, Niklas Lagergren. Many of you know him. He works for the Walt Disney Company. He is a government relations person on the ground in Brussels. And he has been providing wonderful advice to the IP community regarding how to navigate the EU regulatory process and in the ongoing negotiations with the NIS2 directive, the cybersecurity directive that was recently passed by the EU Parliament and the EU Council, and he'll explain it better, Council of Europe. So I'm going to move it to Nik if we want to put his slides up. And Nik, if you want to say hello and add to that introduction, please let those who don't know you know who you are and thank you.

NIKLAS LAGERGREN: Can you all hear me well?

LORI SCHULMAN: Yes, we hear you perfectly, Nik.

NIKLAS LAGERGREN: That's great because I have some troubles with my camera today. I hope to be able to put it on at some stage. But for the moment, the camera doesn't really seem to work the way I want it. But I'm glad you can hear me at least.

LORI SCHULMAN: Okay. And what I'm going to add is here I will watch the queue. And I will manage the discussion in the room. And Nik, I'm sure people are going to be very excited by the conversation. Thank you.

NIKLAS LAGERGREN: Thank you, Lori. And I'm very excited myself to be here not only because I was really honored by your invitation both from you, Lori, and the IPC leadership, but it also brings back very fond memories to me because some of you might remember that at the beginning of this century for two years, I was actually one of the IPC councilors on the GNSO Council from 2003 to 2005. So it's really nice to be back among this group.

But in any event, if we can go just to the next slide, what I would like to do today is just to walk you through three or four slides. I hope to be done in 15, 20 minutes so that we have time for a discussion afterwards and basically say a few words about how the NIS2 directive came about. I'll keep calling it NIS2 but just to mention the whole name once, it's the directive on measures for high common level of cybersecurity across the Union, which is repeating directive 2016 1148, which was the old NIS1 directive.

But I'll stick to just NIS2 for today's purpose. And so after saying just a few words about how this came about, I'd like just to try to summarize the substance of the provisional agreement, which was found on the directive a couple of weeks ago. I say

provisional, and I'll explain to you why I'm saying provisional, and that would also neatly move me to the next steps on this directive in the last slide. So I think we can start with the genesis. So if we can move to the next side, please. Thank you.

So I think it's important to keep in mind that ever since the EU started developing a comprehensive data protection and data privacy framework at the turn of the century, which basically, of course, led to the famous 2002 58 directive that most of you are probably cognizant about and which a few years later led to the GDPR, there's been calls for clarifications coming from both left and right about how the status of WHOIS should be treated and how WHOIS should be understood basically and managed in the framework of the comprehensive data protection framework, which exists in Europe.

And it was a constant question coming back in the first few years of this century. But I think it's fair to say that when the GDPR entered into force in May 2018 and basically WHOIS went dark, at least most parts of WHOIS went dark, the calls for clarifications became so loud that basically it was impossible not to take heed of them. And basically, this translated—just to give you a little bit of details about how this happened within the European Commission, at that stage we started getting calls from both [DG HOME] at the European Commission, DG JUSTICE, basically the Director General in charge of the privacy framework, but also DG

CONNECT, which is very often the correspondent or the DG which is in dialogue with ICANN, for instance, for GAC purposes.

And basically, they all agreed that something had to be done in terms of clarification so that WHOIS could start reoperating again. And the interesting thing is that in these debates basically back in 2019 and 2020, initially people were speculating that perhaps the right course of action would be to include a specific provision on WHOIS databases in the Digital Services Act, which was proposed towards the end of 2020.

But basically at the highest level of the Commission, it was decided that even though the DSA included interesting provisions on know your business customers, know your customers, KYBC as it was referred to, people felt that this is such a specific issue that it probably would have a neater and more natural place in the forthcoming NIS2 proposal, which was adopted by the Commission right before Christmas in 2020.

And the interesting thing was that all of this resulted in quite a strong political will to do something about it, which you could see within the Commission that put forward a proposal which, when you look at it right now, for instance, Article 23, a specific article devoted to WHOIS in the NIS2 directive, it has been tweaked, of course, during the negotiations between the Council of the EU that gathers the member states and the European Parliament. But basically, the gist of it looks very much like the template that

was put forward by the Commission in December 2020. And I'll get back to these pillars in a few minutes.

And I think then what was quite helpful to the fact that we've managed now to have an agreement on this provision and the directive in general is that early on in the process at the beginning of 2021 when the proposal was sent to the government of the member states gathered in the Council and to the European Parliament it was decided to basically grant the lead rapporteurship on this file to an MEP with specific knowledge on the issue. They chose a member of the European Parliament who's called Bart Groothuis. He comes from the Liberal Renew group.

And he was actually a relatively recent addition to the European Parliament because basically he came in not at the time of the last elections, but he was basically part of the quotas of new MEPs that entered the European Parliament to replace a lot of the MEPs that were lost after Brexit on the British side. And he had an interesting background in the sense that he was actually working for the Dutch Ministry of Defense where he was responsible of a team that was dealing with cybersecurity. So he was obviously the right person for the job.

And at the same time, in 2021 and the beginning of 2022 we had two presidencies of the Council of Ministers, first Slovenia and then France, which shared the conviction that basically

something had to be done about this issue. And they seemed also to be gathered in the belief, and the same was true for the Portuguese presidency in the first half of 2021, that basically they had this joint conviction that what is illegal offline should also be treated as being illegal online and that basically taking it from there, something had to be done about reinstating a fully operational and well-functioning WHOIS system.

So basically, once the proposal was transferred to the European Parliament and the Council, basically the usual traditional ping-pong match between the two institutions started. At the European Parliament, the main committing chart was the Industry Committee, the ITRE Committee as we know it by its acronym, and several committees to really translate the fact that this was an issue of wide interest from a wide set of MEPs within the European Parliament. Opinions were also requested from the Civil Liberties Committee, which is the one that is really with the deepest knowledge of the data privacy issues. An opinion was also requested from the International Trade Committee. And the Internal Market Committee was also asked to weigh in, which they did.

And after the summer of 2021, it became quite clear that basically there was an emerging consensus, which was quite strong within the European Parliament, which was also matched by a similar consensus developing within the Council's horizontal working party on cyber issues, which basically gather the specialists on

cybersecurity and cyber issues within the governments of the 27 member states that perhaps the two institutions were close enough to each other in order not to go for formal first readings that would have triggered formal second readings in the other institution and basically added extra time to the whole procedure.

So the agreement that was found was basically that the European Parliament through its Industry Committee would basically come up with a provisional agreement that they wouldn't vote on it in its plenary session that would have formally concluded the first reading. And at the same time, the Council would do the same, not to adopt what is called the general approach at the European level, which is basically what concludes the first reading of the Council. But that instead of doing this, they would basically open up for informal negotiations, which we refer to in Brussels and Strasbourg speak as a trilogue between the Council and the Parliament with basically the European Commission acting as an honest broker between the two institutions. And the trilogue is basically what started at the beginning of this year. And can we perhaps move to the next slide at this stage? Thank you.

So the agreement that basically was passed on the 13th of May basically states the following. First of all, it should be noted that the recipient of this directive in terms of who is it going to is basically the member states of the European Union who now, of course, have to implement it at the national level. And it also,

even though it's directed at the member states because it's a directive, it's not a regulation, which would be immediately applicable, basically it also mentions, it distinguishes between two kind of entities that can be either public or private, essential entities on the one hand, and important entities on the other hand.

And the difference between the two is basically that essential entities are subjected to ex ante obligations in terms of cybersecurity whereas important entities are just subject to exposed obligations. And it's interesting when you look at who fall within the two categories, you realize that under important entities, we find, for instance, postal and courier services, waste management, food production, and so on. And under essential entities, you find energy, transport, financial market infrastructures. But also, importantly for our purpose today, you find digital infrastructure, including DNS service providers and TLD name registries basically.

And under NIS1, the previous directive, basically it was left to member states to decide which operators were falling under the qualification of operators of essential services. But with NIS2, all this list has been formalized as per the annexes to the directive. And the interesting thing is that the NIS2 directive introduces a kind of size cap rule in order to make sure that very small players are not regulated by the system. But interestingly, with regard to DNS service providers and TLD registries, the size doesn't matter.

And basically the directive provides that all DNS providers and TLD registries are basically in scope of the directive. Size doesn't matter if you will.

And this is interesting also when you read it in conjunction with the definition that is being provided about what we mean, for instance, with TLD registries. The directive defines the concept in its Article 4. And it's interesting that for the purpose of WHOIS in Article 23, it specifically says that this includes not only registries but it includes registrars. It includes agents acting on behalf of the registrars, privacy proxy registration services, and domain resellers as well. So it's a very wide definition.

And that basically moves me to the five pillars of Article 23, which even though they've been slightly tweaked during the process, are quite similar to what was already in the original Commission proposal. You have basically a first pillar, which is Article 23 Paragraph 1, which basically states that member states should require registrars and co to run WHOIS databases for the purpose of ensuring security, stability, and resilience of the domain name system. And all of this in accordance, of course, with EU law for what concerns personal data.

And here it's interesting to read this in conjunction to some of the recitals. The recitals always matter in these instances. For instance, Recital 62, which basically recalls that legal persons are out of the GDPR scope and that basically the GDPR rules apply to

private persons, of course, but not to legal persons where basically the whole set of data should be accessible.

It's also interesting to look at another recital, which is Recital 59, which basically states in no uncertain terms that this is not just a matter of basically registrars being in a position to process data for WHOIS purposes if they so wish. It's actually an obligation to do so, which falls under Article 61 of the GDPR. In other words, basically legitimate processing. So this has to be done. And that's really the first pillar of Article 23.

When it comes to the second, Paragraph 2, it's really the idea that data should be collected and maintained in a database in order to be able to contact the holder of a domain name. So here, basically what is listed as the need to collect the name of the domain, the registration date, the registrant's name, the email address, the phone number. And the same should apply also for admin contacts if those contacts are different from the above.

Thirdly, in terms of completeness, accuracy, and verification, the text mentions that procedures should be put in place to ensure this completeness and this accuracy. And also, including specific verification procedures that should make sure that the data itself is accurate. And here, there was a moment where some MEPs, for instance, had been arguing that perhaps this verification should only be necessary in situations where following the registration of domain name, there is suspicion that basically online fraud,

cyber-squatting, or anything like this is going on. And that only when there is this kind of suspicion basically the verification should take place.

But that was totally cleared during a follow-up technical meeting at the very beginning of May that included the procedures where it was stated verification has to happen in all cases. We shouldn't caveat that by saying that verification is only needed when there's a suspicion of anything because, of course, on the face of it, when a domain name is registered, you don't know before whether the purpose of its use will be legal or not. So this was, I think, for our sake a very useful development that this idea wasn't taken onboard.

In terms of the fourth pillar, Paragraph 4 mentions, of course, that the making available of the WHOIS data should be done without undue delay after registration, at least when it comes to what is not personal data. And then, in terms of provision of access, an issue we have discussed several times, for instance, with Lori and some others in this group over the past month, the provision states that access should be granted to legitimate access-seekers within 72 hours, but that for this purpose, specific policies and procedures should be put in place. So it cannot be any kind of arbitrary procedure, but it has to be based on necessity.

And here, again, it's interesting to look at the recitals. If you look, for instance, at Recital 60 of the directive, it specifically mentions

that, of course, legitimate access-seekers include law enforcement authorities. But it's not limited to law enforcement authorities. And I would also draw your attention to Recital 62, which basically states that access to the WHOIS databases should be ensured free of charge. We've heard, of course, of registrars that have been playing with the idea of charging sometimes extortionary sums for WHOIS access. But that basically is a no-go if you look at NIS2. And the last thing that is also mentioned in Recital 60 is that access-seekers should basically provide a statement of reasons for why it is seeking access in all of this to facilitate the assessment that should be made afterwards.

Can we move to the next slide? I realize that time is flying and that it's already 10:00. So I'll go really quickly through this one. In terms of next steps, and that's why I'm just talking about the provisional agreement for the moment, we know that the text has been basically agreed politically between the two institutions. But what is happening right now is that you still have a few technical meetings that are going on. And, of course, the lawyer linguists, as we refer to them, are looking at the text because even though the negotiations have been carried out mostly in English so far, you need to make sure that basically what was adopted in English is also exactly the same as what will find its way in the 23 other linguistic versions from Bulgarian to Swedish and Greek and so on.

So here on this slide I'm actually mentioning that rubberstamping this at the Industry Committee of the Parliament will take place in June. But the latest I've heard is that actually that would only take place in July. And on that basis, the European Parliament plenary should confirm. So probably in September that basically it would agree with the NIS2 directive as currently negotiated. And taking it from there, basically, it will go back to the Council of minister. And they will say, "We understand that basically this is the consensus and the agreement that the European Parliament is willing to sign up to. On that basis, we also agree with the new text as amended by the European Parliament."

And taking it from there, basically once that is rubberstamped, you need the new directive to be published in the official Journal of the European Union. And then, the idea is that 20 days after publication—that might happen say at the end of September or early October—20 days later the text enters into force. And here, we face the usual compromise, EU type compromise, because the European Parliament wanted from that stage the member states to have 18 months ahead of them to make sure that the directive was transposed into national law whereas the Council wanted more time. They wanted 24.

So basically, the usual agreement is that you meet each other halfway. And that's why it was decided that the transposition deadline would be 21 months later. According to my calculation, it probably means that by September 2024, all of this will have to

be basically in place at the national level because here I recall again that this is not an EU regulation. An EU regulation, if you, for instance, are familiar with the DSA, the DMA, EU regulation are not transposed at national level. They're immediately directly applicable. But here in this case, you need basically a piece of national legislation to implement the directive at the national level.

And here for the purpose of our group here, I think it will be very important for us to be carefully watching the way this text, which is potentially a very helpful one, how this text is implemented at national level to make sure that—we know, of course, that the directive itself is a minimum harmonization directive. So it doesn't stop any member states to decide we will actually go further than the NIS2 directive, as long as you're still in conformity with EU law. But we'll have to be watching very carefully if all of a sudden, we get word about certain member states that might want to stop short of the NIS2 obligations and basically underperform in that system.

And for all of this, and I know some of us here around the table are already talking about this, we'd have to look at the kind of early warning systems we will need to jointly develop to make sure that if we see a problem surfacing in a specific country that we basically engage local allies to make sure that national implementation in particular of the recitals I mentioned here, Article 23 and the definitions of Article 4, are basically

implemented at national level in a suitable way. So I think I'll leave it at that. And I'm sorry, Lori. I went a little bit above the time that was allotted to me. But I hope the presentation was useful.

LORI SCHULMAN: Thank you, Nik. It was extremely useful. I think it helped clarify the process for many around the table. Even myself, who has been completely immersed in it, even got caught up in some of the nomenclature early on. I thank you for the clarification in chat about the voting. We're going to try to squeeze in just a tiny little bit of time. We have enough for two questions. And then we can take this discussion to a special session of the IPC as well if there's enough interest. Does anybody have a question at this point? I see Paul's hand is raised. And Paul, go ahead.

PAUL MCGRADY: Thanks. So this is not a question that can be answered today in the minutes that we have left. But my question is if this is going to happen, what's our strategy to come alongside the Contracted Parties House and work with them on implementation issues in a way that is nonconfrontational, that doesn't back us into the same corner we got backed into with the GDPR implementation issues?

And then, specifically, PDP as we all know, even if you put an E out in front of it, it takes forever. A voluntary amendment would

be much faster. So I just would like for us to consider the last five years and think through if this really is a breakthrough, how do we do this in a different way that we get different outcomes much faster? Thank you.

LORI SCHULMAN:

Thank you. I'm absolutely going to consider that a rhetorical question for the moment, but absolutely worthy of discussion because I agree. If we can reach across the house to come up with some commonsense approaches to common advocacy goals and messaging, it would be much, much better for the community. So I think that is a goal to think about. How do we work with the contracted parties where mutual messaging would be beneficial? So noted. Any other questions?

NIKLAS LAGERGREN:

Lori, just one comment here following Paul's question. It's true that it's a rhetorical but extremely relevant question. But one thing that I should add here, which I think will inform our discussion with the contracting parties is that we have to keep in mind that, of course, this directive and its Article 23 applies basically to registrars and company, the whole definition that falls under the jurisdiction of the member states. But we also have to keep in mind that basically if you're dealing with registrars that are not established in one of the European Union but still provide

their services in the European Union, there are two rules that are added here.

First of all, if you are in a situation where an operator does that, it needs to register, to have a leader representative in one of the country of the EU. And basically, that will be the point person for any questions or cybersecurity procedures that might be engaged. So in a sense, this applies not only to registrars that are formally established in the European Union, but basically to any registrar that is operating cross-border or not in the European Union.

LORI SCHULMAN:

Thank you, Nik. I think that's clear because that's one of the questions that I know a lot of our members have been asking. Who exactly does this apply to and how? So, again, if you have more questions for Nik, please post them to the list. He follows the list. He's a member of COA. As you know, COA is a very active IPC member. For those of you who don't know, COA has a new executive director. Hello, Matt Williams. So I'm sure we'll be hearing more from COA and Matt and Nik. and COA's been absolutely indispensable in lending its resources to the entire IPC and to fellow organizations like INTA in terms of how we move forward with NIS2 implementation, monitoring, and to Paul's excellent point, what kind of coalitions do we need to be building

to make sure these laws are sensible, workable, and the least vague possible. Thank you.

And I want to thank you all. And don't forget the cocktail tomorrow night. I put the details in the chat. It's been great seeing you. See you around the venue, and hopefully, we'll see each other in Kuala Lumpur. This meeting is adjourned. Niklas, you did great. Thank you so much.

NIKLAS LAGERGREN: Thank you.

LORI SCHULMAN: It was worth the overrun. No worries.

NIKLAS LAGERGREN: Thank you for that, Lori.

[END OF TRANSCRIPTION]