
MARRAKECH – GNSO - CSG Open Meeting
Wednesday, June 26, 2019 – 08:30 to 10:15 WET
ICANN65 | Marrakech, Morocco

UNIDENTIFIED MALE: It is Wednesday, June 26th, 2019, at ICANN 65 in Marrakech. This is the GNSO-CSG open meeting at 8:30 in Hall [Teechka].

UNIDENTIFIED FEMALE: Could you please start the recording?

CLAUDIA SELLI: Thank you very much, everybody, for being here at the CSG open meeting. As you can see from the agenda, at 9:00 we're going to have Goran and Cyrus coming to be with us for 30 minutes. Maybe we can briefly start a discussion around what we would like to cover for our guest speakers in both cases.

UNIDENTIFIED FEMALE: [inaudible]

CLAUDIA SELLI: Right. I forgot, actually, to start with the introductions of who's here. I'm Claudia Selli with the Business Constituency.

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BARBARA WANNERR: Barbara Wanner with the Business Constituency.

ALEX: Hi. I'm Alex from IPC.

MARGIE MILAM: Margie Milam from the BC.

SUSAN PAYNE: Susan Payne from the IPC.

STEVE DELBIANCO: Steve DelBianco with the BC.

RUSS PANGBORN: Russ Pangborn, IPC.

HEATHER FORREST: Heather Forrest, IPC.

BRIAN KING: Brian King, IPC.

SUSAN KAWAGUCHI: Susan Kawaguchi, BC.

MARIE PATTULLO: Marie Pattullo, BC.

[MALIE MAKAS]: [Malie Makas], ISPCP.

JEN TAYLOR-HODGES: Jen Taylor-Hodges, ISPCP.

THOMAS RICKERT: Thomas Rickert, ISPCP.

[INAUDIBLE NEUVEN]: [inaudible] [Neuven], ISPCP.

CHRISTIAN DAWSON: Christian Dawson, ISPCP.

OSVALDO NOVOA: Osvaldo Novoa, ISPCP.

[MARCOS OKOWEKE]: [Marcos Okoweke] from BC.

JIMSON OLUFUYE: Jimson Olufuye, BC.

[ARIEL LAKEYEME]: [Ariel Lakeyeme], BC.

ROGER [BAH]: [Roger Bah], BC.

JENNIFER GORE: Jennifer Gore, IPC.

BRIAN WINTERFELDT: Brian Winterfeldt, IPC.

CLAUDIA SELLI: Thank you. As I was saying before, at 9:00 we're going to have Goran and Cyrus coming for the meeting. Later on at 9:40, we're going to have Janis Karklins coming in for a brief conversation. This time, we decided basically to go with a free flow without having a precise set of minutes for the different constituencies. But I would still maybe propose that, before they come in, we simply layout and coordinate at least the topic that we want to cover to make sure that we are not asking similar questions, if this is agreeable to everybody.

Yeah? I don't know who wants to start with topics that they would like to discuss. I guess the EPDP is high on everyone's agenda. Certainly, the latest discussion around the Strawberry Project and these type of issues might be of high interest, but I don't know if there are precise aspects that you guys would like to ask.

Steve?

STEVE DELBIANCO: Thank you, Claudia. Do we want to raise the specter of restarting the privacy proxy accreditation process? We've done that with Cyrus, I think, each of the last two minutes, without much satisfaction. With Goran beside him, it would probably go in a different direction. What is the latest status, and do we have any new arguments to help advance that?

CLAUDIA SELLI: Thank you, Steve. Sorry, I can't remember the name.

BRIAN WINTERFELDT: It's Brian. I understand the GAC is considering advice that would push toward resuming the IRT for privacy proxy, so I think it will be good to echo that sentiment here. I don't know if we have any new arguments, but a broken record doesn't hurt, either.

CLAUDIA SELLI: Sure, Jennifer?

JENNIFER GORE: Jennifer Gore, Winterfeldt IP Group. I think one of the arguments to your point, Steve, is that, prior to Kobe, in Barcelona, Cyrus stated that he was waiting for the final report for Phase 1 to be published. In Kobe, they said that they would have an update for us here in Marrakech. If they were waiting for the Phase 1 report to be published, now that the Board has adopted 27 out of the 29 recommendations, and the two that were not adopted really have nothing to do with privacy proxy, what is the mechanism or trigger to restart the implementation?

CLAUDIA SELLI: Okay. Thomas?

THOMAS RICKERT: I'd like to raise the point of controllership with Goran. Since the European Commission has sent its letter commenting on the Phase 1 EPDP report, ICANN still has not confirmed that they consider themselves a joint controller. I see this as an impediment for progress in the EPDP team that was still twisting in the wind on that point. So, if everybody is okay with that, that's something that we would like to bring up.

CLAUDIA SELLI: Thank you. Steve?

STEVE DELBIANCO: Steve DelBianco, BC. Thomas, we agree. That's a great point to bring up. You should take the lead on that one. Then I would suggest that, in the last conversation that Claudia and Jimson and I had with Goran, he took his initiative to say to us, "Get reengaged on the IRP." Council has it on the agenda today, right? To restart and repopulate the IRP Advisory Panel. So I think he will ask us to do that.

What about the three constituencies? Have we done all the things that we need to do on that topic?

CLAUDIA SELLI: Yes, please?

SUSAN PAYNE: Hi. Susan Payne from the IPC. I would say in relation to that that part of the problem has been the incredibly mixed messages coming out of that IRP group and indeed org about whether they have put out a call for new volunteers or not. They appeared to put one out to the SO/AC leadership. Then, when I contacted Samantha [Reiser] and said, "What's the process?" she went, "I'll

come back to you. We haven't put a call out for volunteers." Within the group, David McAuley, the Chair, was saying, "No, no, no. We haven't agreed on the wording for the call for volunteers." So I think this is why there is an issue with this: they haven't actually asked for volunteers or explained the basis on which people can volunteer. So maybe that's something we can explore: what are you proposing? Because I think there are people willing to explore that group and have been since Barcelona.

CLAUDIA SELLI: Thomas?

THOMAS RICKERT: I have another point with respect to the CCWG Accountability Work Stream 2 recommendations. Do any of you know the status of where the Board is with this? Because then I think it would be a good opportunity to ask because we haven't heard about this since, I think, November 2018.

CLAUDIA SELLI: Jimson?

JIMSON OLUFUYE: Thank you. Well, it may be good for us to get more clarity on the one million dollar flexibility fund being set aside for the SOs/ACs, if we get more clarification in regards to mechanisms and status.

CLAUDIA SELLI: Okay. Any other comments? Steve?

STEVE DELBIANCO: I might suggest that we continue to discuss how we will handle the second segment with Janis because there's only a ten-minute break for prep for Janis. With Goran and Cyrus, you never know. So why don't we think what we would discuss with Janis as well?

CLAUDIA SELLI: Absolutely. It's a good idea. We're going to go, in any case, also there with a free flow, so it's the same type of format. Whoever wants to start ... I know that there are people here from the EPDP, so I don't know if you have questions that come to you, Margie, or anyone else.

MARGIE MILAM: Sure. I think one of the thing we want to raise with Janis is being really sensitive to how consensus calls are made and how the room is read because I think, in the past, we tended to be pushed in the minority position when in fact it probably isn't the case

when you look at the broader team. We typically are aligned with the GAC, ALAC, SSAC, BC, IPC, and sometimes the ISPs that are with us. In that scenario, that's a pretty strong coalition or group of folks on the EPDP that carry the same message. So I think that's one of the things we want to explore with him to ensure that he's mindful of reaching out to the different groups when he's making consensus calls or trying to take the pulse of the room to ensure that he's calling out each of them and weighing those issues.

CLAUDIA SELLI: Thank you. Steve?

STEVE DELBIANCO: Janis was not there yesterday for the full-day EPDP, and Rafik chaired in a neutral and [ineffective] manner. Do we know whether Janis was on Zoom listening to the session? Probably not. So this is an opportunity – not a requirement – to share our perspective on how that went yesterday. It was a different exercise for us. We did a deep dive on a single-use case, one that was relatively simple. In my personal opinion, it had the productive effect, by going through Thomas's case, of exposing different interpretations of a word – the word “bulk access,” for instance, completely misinterpreted by people in the room. It had the opportunity to surface principles of agreement, this notion of

that you would lose your accreditation if you violated the standards.

So there was the opportunity, I think, to see whether we, as three constituencies, feel we ought to continue that process in tomorrow's EPDP meeting on a deep dive on a use case, if we think it's productive. I have to believe that would have some impact on the way he wants to organize the day.

I'd love to hear from Brian and everyone else on that.

CLAUDIA SELLI:

Brian?

BRIAN WINTERFELDT:

Thank you. I think we should convey a message that was largely positive about yesterday's EPDP call and the way that we were constructive and productive collaborating together. I think that there's an opportunity for us to highlight one thing I would like to see changed, I think, in the EPDP. When we started from the document that Thomas so kindly put together, there was a point in there that we didn't particularly like. Then we had made a couple arguments to delete that or to strike that particular bullet, and then, based on Milton's request that he didn't agree that it be struck, it was reinserted, although no one had ever advocated for that point. It just happened to be in the document.

So I would like to highlight a point that we're not negotiating backwards from something that the NCSG wants or any particular group wants. Maybe it gets down to how a consensus is measured or how a room is read. That really went against us for no reason whatsoever. I want to stay largely positive, but I think there's an opportunity to call things like that and to frame up our expectations.

CLAUDIA SELLI:

Okay, thank you. I think Goran has arrived. I see him in the back of the room, but Thomas, please. Last question.

THOMAS RICKERT:

Just very briefly, I share a lot of the points that you made. I think we should be cautious. I'm not saying that you won't be, but we should frame it as positively as we can. We always had completely different experience during face-to-face meetings during telephone conferences, and Janis never had the opportunity to do a face-to-face meeting with our group. So I think we should just highlight the things that went well yesterday and encourage him to pursue the same path for the Thursday meeting.

I think that part of the capturing of results is due to how staff is trying to keep up with the various comments, so I think that maybe we should take the staff team aside and ask them not to

rush into capturing results before the group has a full discussion about certain points. But other than that, I'm fully onboard.

CLAUDIA SELLI: Steve?

STEVE DELBIANCO: Just to close that loop, where we would hopefully go is to suggest to Janis that, when he chairs tomorrow, that we resume the process of trying to come to consensus about what's in that use case. Why? I said earlier I thought it was productive. It's surfacing misperception and differences. It was also productive at surfacing some consensus.

But why do we care about the use case? I think the use case – I wanted Goran to hear this – will lead us down the opportunity of presenting data protection authorities with an example of policy and asking them whether they believe this would be compliant with GDPR. We're a long way from that. I get that, but at least I saw a glimmer of hope that we could put something that was sufficiently specific. It could be something that we ask Goran and [Alana] to put that in front of the Data Protection Board.

So I see a number of reasons to continue yesterday's exercise with a new chair in place.

CLAUDIA SELLI: Okay. Goran, if you don't mind coming up to the table, we can start the meeting.

GORAN MARBY: I think I'm supposed to have Cyrus here, and I feel so alone without him.

CLAUDIA SELLI: Thank you very much for being with us today, Goran. I see that Cyrus just arrived. This is the usual interaction that we have at this year's [geo] level. We have 30/40 minutes with you, if you have a little bit more time to allocate to us. I don't know if you want to start by sharing any thoughts with us or if you want to go into more dialogue.

GORAN MARBY: I like the dialogue, I think. This is also my first meeting this morning, so my brain hasn't really woken up. Not that it makes any difference until 11:00, but at least I can blame that.

One thing I can point to is the fact is I don't know that you've see that the Board and myself made a statement about the potential for UAM earlier this week, where we tried to clear out some of the questions about a potential for a UAM, where we pointed out that

the only way to have a UAM – I’m not going to take the full text because I don’t have it in front of me – is to take away the legal risk for contracted parties when it comes to making decisions or accrediting the ones who answer the questions.

We are working through this Strawberry Project – I love those names – to be able to achieve that. So we worked together with the European Commission to formulate the questions [and see if we can go to the DPAs.] That team is meeting the Expedited PDP tomorrow. We had offered previously to have an engagement for the Expedited PDP. I hope that the Expedited PDP can also think about how to best engage with that group. At least we’d offered it.

With that, I open for questions. Steve?

STEVE DELBIANCO:

When you just walked in, I saw you sitting there and I wanted to call your attention to the idea that we explored a use case, a sample case, of a trademark accredited party getting a lookup. Thomas prepared it. We had a very good discussion in the day-long session of the EPDP yesterday, and I think we’ll hopefully do the same tomorrow. It leads us towards a scenario that potentially could present it by the Strawberry team to the commission or Data Protection Board to be able to get back some

sort of reaction as to whether what we've constructed would satisfy the GPDR.

So I'm looking at your reaction and I want Thomas to come on this because we're still struggling with how one gets sufficiently specific advice back from [Nikita], the commission, or the Data Protection Board on how can we and whether we can assume sufficient legal responsibility to make it work in the ICANN context.

GORAN MARBY:

One thing I picked up – I'm very happy for this discussion – during this last couple of days is that everybody wants to put things into brackets. One thing that is said, for instance, is that you have to turn the contracted party into a processor, and therefore ICANN should declare itself as a controller. Of course, it doesn't matter if ICANN declares itself as a controller. If that was so easy, then all the contracted parties can declare them as processes, so we're over and done with. You know that doesn't work. It's your actions that lead up to your definition of roles.

The other thing that is interesting is that we actually don't know the legal status of the different parties in a potential UAM. I think that is because nobody knows today. When the European Commission sent their second letter to us, they said some things, but they also left some things out. The first thing they said was

they think that, with the purpose that was defined in Phase 2, and also the purpose that comes out of this group – if you do the purpose like that – you can't have a UAM. They actually told you that, if you do a unified access model based on this process, you can have one. Otherwise, you can't. That was [fact]. They also said you could have a unified access model.

But they never said that's going to be because the contracted parties now become processors or that ICANN becomes the only sole controller. That's interesting and it leads us to understand that, yes, you can achieve a unified access model on that basis. Right now, if we, for instance, we went to the DPAs and said, "We want to turn the contracted parties into a sole processor," if we ask the question so specific, and they had another solution in mind – remember, the DPAs also said they'd like to see a solution; they said that in writing – they would never tell us alternatives. They can only answer the question.

So I'm afraid of going with a question that is too specific to the DPAs. So they can't answer it because, if they have another solution, like, "Yes, you can be a controller but you won't have any legal risk," I don't know. I don't want to put that into a corner in the discussion. Therefore, I'm refraining from having the discussion on if it's a processor or if it's a controller.

I think we have reached a point, at least we through the work of the Strawberry Group, where, if the TSG is the skeleton, we're now putting meat on that skeleton, together with the European Commission. Remember, the European Commission wrote this law. Inside the room – Ed and I can talk about that tomorrow – it's not only one part of the commission. It's actually the whole commission. So the letter, for instance, was written by [DG Adjust, DG Home, DG Connect], and legal services. That means something. That legal text, if anyone ever ended up in court, would make a difference. The funny thing is that they said to all of us, "You're wrong. This is the purpose you have to have."

So I think now for us is just practical. For us, there's no policies, there's no politics, or anything else. We're just trying to put the meat on the bones of the TSG – a UAM based on the TSG. We've clearly defined what a UAM means. The UAM means that the individual contracted party doesn't make any decisions.

But we haven't said that ICANN is going to make those decisions. We have talked about adding organizations like Europol and WIPO to make those decisions, and that makes it slightly more complicated because who are they, the controller, especially since WIPO and Europol is not under GDPR? Europol is under other legislation, but they're not under [GDPR] legislation.

This is a new law. I don't think there was an intention for a UAM model. I don't think that they sat down when they did this law: "How are we going to do a UAM for the WHOIS system?" We're such a roadkill. The legislator and the DPAs have shown us a path. I'm just trying to walk that path.

One more important thing. When this is done, this is going to be handed over to the Expedited PDP. The Board and/or me cannot take a policy decision. The first question you can ask yourself is, "Do we want the UAM?" That's up to you guys to decide. And who is going to get access to it? That's up to you to decide. We're only trying to show you the legal path for doing this. Thank you.

Did I answer your question, by the way? I answered a bunch of questions.

STEVE DELBIANCO:

I was surprised to hear you say that we want to ask the commission and the data protection authorities a very general question and not a specific question. I had the impression that the opposite was true, that we weren't getting any answers to general questions, but sometimes we get answers to specific questions. But if you're optimistic that Strawberry can solicit the kind of advice we need, we will cut and paste from that advice as we come up with our purpose statement and design what it is we want to put for them.

Let me just add to that, that, if you ask, “Do we support the UAM?” all three constituencies [and] the CSG had gone to the microphone starting in Barcelona to say, “We supported the UAM and encouraged org to do an aggressive campaign outreach/advocacy campaign with the commission and authorities.” So there’s no wavering with respect to the UAM and your role.

GORAN MARBY:

When I said “general,” it’s about the solution. The question can be specific. Do you see my point? If I asked them, “Can we turn contracted parties into processors?” then we’re going to get an answer to that. If the answer is something else, we won’t get an answer. It doesn’t mean it’s a general question itself. It’s just that we’re not specific about the solution.

As the European Commission said, which is completely unique – believe me ... I worked with the European Commission for a very long time, and to have the legislator helping us to formulate the questions to independent DPAs is unique. Remember, we were the only ones who got guidance from the DPAs running up when GDPR was [inaudible]. No other organization got any guidance at all. So there is something unique with ICANN. On a Wednesday morning, I feel very unique, by the way.

STEVE DELBIANCO: That's the feeling of roadkill, I think was the word you used. I think Thomas—

GORAN MARBY: Can I point to you that your support means a lot? Because the thing that makes this possible for me – it's not about me, but to be able to have me and my team having this conversation, it's because of ICANN, the multi-stakeholder model. ICANN is, believe it or not, one of the most well-recognized international organizations. We are extremely well-recognized. The reason we are is because we have this unique multi-stakeholder model, which also includes governments. When the community talks, we don't have to agree, but we agree on the principles. That is the difference. That's the wave I ride into in Brussels. Without this model, we would just be another trade organization and nobody would listen to us.

CLAUDIA SELLI: Thank you. I know I have Margie and Thomas on the queue, but I also wanted to stress that, whenever these questions will be put forward – at least I can talk for the BC – we would be happy to also reiterate those questions if this can help or to help support the engagement.

I know I have Margie and then Thomas.

MARGIE MILAM: Hi, Goran. Thank you for the work that you're doing with the European Commission. I think the letters have been very important and impactful. It's really refreshing to see that kind of engagement.

One of the questions I have for you: because I'm not familiar with the Strawberry Project, if you could just go back and tell us what it's about and give us a little more background. I'm just not familiar with what's going on there and the statement that you mentioned. Thank you.

GORAN MARBY: I don't know – is that an open session with the Expedited PDP and meeting with the strawberries? Go there. Listen to them. The Strawberry Group is set up – you might not like that I come up with names, but I don't like acronyms, so strawberries is better. It is a group that actually is working on putting the meat on the bones in TSG. It consists of John Crain from security, Dan from legal, [Alana], who's the project leader because she's responsible for our actions with the European institutions, Francisco, who is an expert on the RDAP protocol, and then we have project leaders like [Elise Sennett]. It's really just a working group.

The Board took a decision about my goals. It's going to be published any day now. One of my goals the Board gave me was to go and try to figure out the legal basis for a UAM. So you could say this group is set up by me because I have a Board goal. The Board already in the temp spec talked about the importance of getting access to it from a legal basis. So this is now just doing the work.

Again, as we said for the last one year, this work has to go back in the PDP.

CLAUDIA SELLI:

Thomas?

THOMAS RICKERT:

Thanks, Claudia. Hi, Cyrus and Goran. Good to have you here. I think this is a very good discussion, and I think we should probably talk more about the goals and the strategy that you've developed with the Strawberry team and the things that the EPDP team is doing in order to make sure that everything fits together at a certain point in time.

I think, on the controller question, it is probably unlikely for the commission to make any statement at any point in time and declare registrars to be controllers and ICANN to be the processor.

Also, I'm not sure whether that really helps with the liability question because GDPR also holds processors accountable, as the case may be.

I think that having those discussions inside the EPDP team but also with the commission – I think that the only way for us to get legal certainty for the parties involved for not being sanctioned based on what the UAM is doing is if the policy recommendations coming out of the EPDP team are transformed in a code of conduct according to Article 14. If this gets the authorities' blessing, then all the parties playing by the rules of this code of conduct will not be sanctioned.

I guess, for that to happen, we need to get clarity on the [roads] of the parties inside the ICANN ecosystem. Therefore, I think it would be very beneficial for our discussions for ICANN to declare its view on the role as a joint controller as the European Commission's letter has suggested.

Then you would have – for the registration data – registries, registrars, and ICANN being joint controllers if they have this code of conduct of whatever shape or form. They would be in the clear for what's in the code of conduct. Then we might have a technical operator, such as [PWC], who is doing the technical work, being the processor on behalf of the joint controllers. Or you have a certification authority, such as Europol, Interpol, or others, who

might help with the accreditation, who would then be independent controllers in that game.

I think, as a first step – we’ve discussed this previously – I think everybody around this table would find it very beneficial for the EPDP team’s work if ICANN would formulate a clear position on their joint controller [inaudible].

GORAN MARBY: Could I ask a specific question?

THOMAS RICKERT: Please do.

GORAN MARBY: Because you just made a statement. So you think that everybody around this table – repeat that – would think it beneficially for us to lock down one certain path and really tell – go to the European data protection organization[s] – one very detailed way and, if we get a no, it’s a no? Don’t you think there’s a risk associated with the way you’re now doing it? Because this is important. Because I just described a way, the way that has been given to us by the European Commission. They have pointed to this, and they’re actually working with us in this particular way we’re doing it. What you just said is that, around this table – I don’t disagree; you

can have that opinion. You just said something important. You said that you wanted to choose another way to reach this target. That I want to hear more about because, if you as a business constituency have a completely different opinion about the road where to go and how to do that, that's something we have to listen carefully for.

THOMAS RICKERT: Yeah. Let me be clear. What I said is that, when we prep for this—

GORAN MARBY: So far, I haven't heard that you actually are in agreement with that.

THOMAS RICKERT: What I said is that everybody in this group would like to get clarification on ICANN's role as a joint controller or as a [processor].

GORAN MARBY: My starting point, dear Thomas, was that there is a reason why we don't do that right now. [You and] Steve said that seems to be a good idea, but you are saying that the Business Constituency doesn't share the way we're doing it right now. I'm confused.

THOMAS RICKERT: So am I. I guess the question is, if you say you're not willing to take any position on that, that's an answer to the question. But I guess that we're looking for clarity. The EPDP report says that we need to get some clarity on the parties' roles. The European Commission has suggested that the parties would be joint controllers, so we didn't get a clear answer from ICANN on which role they see to be present for them.

GORAN MARBY: If you can come up with a joint thing, because I heard one thing from Steve, who understands, or says that he's in agreement with me, that – maybe it's not smart. Well, I'll have to ask specific questions about who's going to be the controller, also understanding that just naming us a controller doesn't make a difference because these are actions that lead up to your role. If there is another solution, then changing that ...

[STEVE DELBIANCO]: But, Goran, have we not already received guidance in the commission that a joint controller arrangement is appropriate?

GORAN MARBY: When the Strawberry group comes tomorrow, they can talk more about technicalities about this. There is a reason why in my statement I didn't say "controller" or "processors": because we

are not there. It's in the conversation with the DPAs because the DPAs who finally assess if you're a controller or processor. Because, if it was so easy to declare the contracted parties processors, they could do that tomorrow or today.

THOMAS RICKERT: [You] can declare themselves to be joint controllers. You have discretion in that. That's for sure.

GORAN MARBY: No. The data protection authorities vouch your actions to lead up to your role. A certain role leads to certain obligations.

[STEVE DELBIANCO]: Fair point, but you have made a great distinction earlier that the commission is the legislator. They wrote the law and can give us guidance about how this animal called ICANN and WHOIS would fit into the writing that they did. I thought that Thomas was just indicating that we have commission guidance that a joint controller arrangement would be in keeping with GDPR.

I get your point that the DPAs and the enforcement may have something very different in mind when it comes to enforcing. I get that, but at least as far as the legislature goes, do you agree that

we have a green light for joint controller? I think that all Thomas was doing was trying to confirm that with you.

GORAN MARBY:

I'm not going to go into that discussion right now because it would actually potentially limit the potential solution. It's like a rabbit hole for me because the law was not intended to have a uniform access model. You can't collect data for third-party access. So whatever we're doing right now is complicated and new. I'm not going to sit here and limit the alternatives for a solution by adding a discussion: "Oh, you should now do this." The Strawberry group is working through a lot of different processes to end up there, and I don't intervene with that work.

The whole idea behind this is to do something, and that's why we're not saying processes. That's why we're not saying joint controllers. That's why we're not saying controllers right now. It has to go through the process to do that. I still believe that – by the way, you have the European Commission in the room. It's interesting sometimes – yes, you have.

UNIDENTIFIED MALE:

[inaudible]

GORAN MARBY:

You had the European Commission. If you ask him a question about their position on something, the better you ask the question, the better your answer will be. He is in the room, and he is prepared to answer your questions about purpose. For instance, he's been sitting for three weeks and waiting for the question to describe the purpose because I heard there was a lot of different interpretations about the purpose.

Can we take a step back for a second? Is there anyone here in this room who doesn't think we should have a unified access model?

Is there anyone in this room who disagrees with the fact that we trying to take away the legal responsibilities for the contracted parties is the only way to do a UAM?

Good. Can we then support the Strawberry team? Because it's throw that mechanism that we can provide the Expedited PDP with the information on if it's legally binding or not.

Good. Let's not try to divert from that road. It was set up one-and-a-half years ago. Let's not do this inter-politics because you know as well as I do that there are entities – it's fine with me; it doesn't want to have a UAM; it doesn't want to have a WHOIS system. I'm fine with that. It's up to the community. You can have that discussion, but I think it's important that sometimes we hide the intentions in the discussions behind legal interpretations.

I think it's good that we continue and we have several legal experts. We have the European Commission. We have our own team with our own expertise. The DPAs and the European Commission have provided us with a path. You may not believe in that path. I've always said there is a potential that we won't be able to do a UAM because it is a hard thing to do, but we have chosen a path. Let's work on how to get there.

I asked the Expedited PDP to set up a small group to work with us. Unfortunately, that didn't work, so we are waiting eagerly for the Expedited PDP to figure out another way to work with the Strawberry team. Thank you.

CLAUDIA SELLI:

I have, first of all, a comment in the chat, if Ria can read that. Then I have Margie and Thomas. Thank you.

RIA OTANES:

Thank you. I have a comment and a question. The comment is from Betty Fausta from Guadalupe, Caribbean. "Good preliminary remarks from our CEO, Goran, about the principles of ICANN and its guidelines for evolutions. Keep and get better the multi-stakeholder model."

The question from Anne Aikman-Scalese: "Is ICANN attempting to maintain a status other than a controller or join controller in

order to limit its corporate liability – i.e., risk management – or is that privileged?”

GORAN MARBY:

Well, the basis of the question is that we operate this as a corporation, which we don't. We went out and said that we have some sort of controllership. We did that in 2017, I think. So we established that two years. The problem is to define it. The background on the Calzona process was actually that we went out and said that we have some sort of responsibility because the ICANN community makes policies. But there are limits to what kind of responsibility we can take. For a short period of time, someone thought that we could indemnify any decision that was based on WHOIS. We are a non-profit organization, and even if everybody thinks that we have a lot of money, it's hard for us to indemnify companies like Amazon and Google or anything. That's a lot of money.

So we're not doing this from a corporate way, but remember that the WHOIS system is in our mission and bylaws. It's a part of what the founders of ICANN thought what was necessary for transparency. That hasn't changed.

So it's a little bit hard to answer it from a corporate perspective. We've been extremely transparent in this process about what we think. Thank you.

CLAUDIA SELLI: Margie and Thomas.

MARGIE MILAM: I think, at least from my perspective, I don't really think we need to pin down whether ICANN is a joint controller or sole controller. I actually think what Goran said makes a lot of sense. As long as they get the input from the European Commission that helps clarify how to build the UAM, how it's done I don't think is as important as, can it be done? I think that that's what Goran is clearly saying he's doing.

I think that probably the area where I slightly disagree with the approach is that I don't think the approach should be zero liability for contracted parties. I agree it's minimization of liability, but I think there's risk in the entire ecosystem if there is no WHOIS. The risk is born across the Board, not just on the contracted parties side but at the users of WHOIS and how we use WHOIS to protect the Internet infrastructure and all of the things that we do.

So that's the only, probably, difference, but I agree with the approach, that getting clarity so that it can be done is extremely important and useful.

GORAN MARBY:

This is why this often – [I have to look at the text that Thomas points to, yes?] The ones who have the data have always a responsibility because they have the data. If they, for instance, don't secure access to the data and they put all the data in an open zone file somewhere and someone accesses, that is actually [illegal], not only to GDPR but according to many laws around the world because you have to build safe parameters around the actual data.

The other problem of course is that we think about WHOIS data as something that is unique, but the data is used for other purposes. It's good to have the name of a customer to be able to bill them. To be able to do that, the [inaudible] can call them. All this data is also used for other purposes. The WHOIS data is collected mostly for other purposes and then added into.

As you know, there's also businesses dimensions to this. Who wants to share data with who? So there's many things that come into the WHOIS data, but from the perspective of, if you don't make a decision, then you can't be liable, that is the ground that we stood on two years ago, that, if we can move away from the actual decision-making power from the individual contracted parties, they should not be liable for that. But there will always be risk. On the other hand, there are businesses risks to be in this industry anyway.

One thing that is often forgotten is the other side. GDPR is a virus, and one of the problems is that, if you, for instance, get access to this data, you are liable under GDPR. That means that the ones who give you data can actually be responsible for your misactions.

So one of the things in all of this is also, how do you treat the ones who get access to the data and [misbehave and abuse it]? For instance, there are apparently companies that downloaded a full WHOIS system before it was covered. They are under GDPR, regardless of which jurisdiction. If you use that data from someone who's downloaded it and using it not accordingly to the principles of GDPR, you are actually breaking GDPR [rules] and are liable today.

So don't think about it that it's only the contracted parties' house. It's actually about the responsibility around that data. That's one of the more interesting aspects of this law. If you have that data, you're under the law, regardless of how you got it. That is, I think, the next question.

To Thomas's point about who's going to do this, yes, I think that, over the last couple of months, I had most companies who are active in cloud computing, software engineering, or anything, who have now approached me at one point in time and said, "Hey, we can build this technical solution for you." Any big

company there is. I learn about companies like PVC, which I've never spoken to. So, if there is a technical solution to be build on the other end of this, you're probably going to see a lot of pitching from companies who think that they should provide that solution to us.

But, if the community decides on the unified access model, if we figure out a good technical solution for that one, then of course we're going to let that go through any ordinary procurement process before we reach that. But I think that already here there are people who come up with a perfect technical solution. But that's, yes, the technical solution because none of them that I've seen have fixed this small problem of the contracted parties' legal responsibilities. But I love salespeople, so I don't have a problem.

CLAUDIA SELLI: Thomas, and then I have Ria.

THOMAS RICKERT: Thanks, Claudia. I'm looking forward to learning more about this Strawberry Project and continuing our discussion maybe in a different forum than here in more granularity.

I actually wanted to change topics, if that's okay with you, because we had another couple of questions that we wanted to bring up. One of the questions would be with respect to the

CCWG-ACCT Work Stream 2 report and whether there's any update. I guess that the latest communication that we saw about this was in November 2018.

Just a quick status update. I might [catch you cold] with this, so maybe you don't have an immediate answer, but—

GORAN MARBY: Ask the Board. That is the proper question to ask the Board.

THOMAS RICKERT: Okay. I thought the Board had asked you to come up with a plan to operationalize, but that's fine. We can ask the Board.

CLAUDIA SELLI: Ria, I know you have a comment, and Russell, you.

RUSSELL: Very quick question, getting back to the Strawberry team. I know that the presentation is going to be given to the EPDP tomorrow. Do you know if that's going to include a timeline with it?

GORAN MARBY: We have an anticipation that we're going to ask the questions before the Montreal meeting. That is the anticipation, but there's a lot of things. First of all, we need to get the work done. Be nice

to the Strawberry team tomorrow. Don't ask them questions why they're doing this. I ordered them. Why do I do it? Because my Board ordered me. Sometimes we make things personal in this community and ask. So they are just there to do their work. So the idea is that, before Montreal, we're going to ask the questions. And long before. But also, hey, we are trying to create gold out of sand. It's not that easy.

The other thing is we can't guarantee [if we'll] get the answers back. For our team in Brussels, after that work is done, the big work is to actually make sure that the DPAs start answering the questions. They have been waiting for it for a while, but, as some of you might now, they seem to have other things to worry about as well when it comes to GDPR.

CLAUDIA SELLI: Susan?

SUSAN PAYNE: Thanks, Goran. Just a really quick question. I'm looking at the EPDP agenda for tomorrow, and I can't see when the Strawberry team is coming. So I wondered if you know that.

GORAN MARBY: I have absolutely no idea.

ALEX: Hi. It looks like it's at 9:00 A.M. It's very generically listed as a discussion about discussions with the European – I forget how it's phrased.

SUSAN PAYNE: [A] discussion on next steps with the DPAs?

ALEX: Next steps with the DPAs. I think that's it, at 9:00 A.M tomorrow, I'm Goran. I'm pretty sure.

GORAN MARBY: Don't ask them why they're called strawberries. It has to do with that I like to see John Crain as a strawberry.

CLAUDIA SELLI: Susan Kawaguchi?

SUSAN KAWAGUCHI: Hi. Actually, this is a question for Cyrus and not EPDP. The PPSAI implementation has been on hold for a long time. Actually, with the changes to the WHOIS record, all of the redactions, I can see this is more critical now to have this implemented and get the group working again, get the implementation on the schedule.

It's very difficult now, if you start looking at redacted WHOIs, to determine if it is a proxy, privacy, or redaction. If we just set the disclosure part of the PPSAI aside for now, as that evolves, we can work on that. But there's a [winds] in the recommendations from the PDP report that would be very helpful just to [simply implement], such as labeling clearly that this is a proxy or this is privacy service, this is the name of the company, this is how you contact, this is their process for finding out more information. Or just even this is a requirement to forward on an e-mail and make sure that the actual underlying registrant has that information.

I sent a full list out to the BC earlier today, but there's a lot of recommendations that do not have to do with the disclosure that could be implemented now. We had gotten pretty far down the track with the contract for the accreditation, and I think we should just move this forward so that, when the disclosure piece is figured out, we can also implement that.

CYRUS NAMAZI:

Thank you very much, Susan. Good morning, everyone. I thought I was going to get away without having to actually answer thing, but such was not the case.

On privacy proxy, we've been having this discussion with the community. I know it's been high on your list in particular. I appreciate that. I'm not sure if you've seen that we actually

reached out to the GNSO Council and stated our opinion on how we should continue with the implementation of it. As you stated, the IRT was actually far along in the process.

One of the key unknowns from our perspectives really, I think, touches back on what Thomas was talking about: the determination of roles and responsibilities, both for ICANN and the contracted parties and the entire ecosystem that actually touches the registration data. This is not a simple binary question of who's controller, who's processor. In addition to contracted parties, there is of course the ICANN organization. Then there is the orbit around which registration data actually is transferred through touch by other entities, like data escrow providers and beyond. This is a part a discussion that is ongoing. I think the project name for that is Ham Sandwich or something like that that he contracted parties and us under org. It is our belief that, until we actually have a clear outcome from those discussions, moving that policy implementation forward may end up being not very efficient because we may have to actually trek back and actually redo some of the steps. So we remain of the opinion that actually keeping the privacy proxy accreditation implementation on hold for the time being is the best course of action.

Now, I believe tomorrow there is a cross-community session on the impact of EPDP Phase 1 recommendations to all registration data policies and provisions. By my last count, I believe there's 14

policies that are being reviewed as a result of the policy recommendations from Phase 1. There's also a number of services that are not consensus policy. The WHOIS ARS accuracy reporting system is one of them. Cross-field validation is another one. There's a host of others. So all of these are being reviewed for the purpose of the impact of the policy to them. Privacy proxy, from my perspective, falls into that bucket.

SUSAN KUWAGUCHI:

Obviously, I disagree with maintaining a hold on this work. I could send you a list of the recommendations that came out of that report that would not be burdensome to the contracted parties to implement and would be very critical to users, to registrants, which is what we're all here for: again, the labeling, the terms of service – all of that.

You also mentioned the ARS. I'm also part of the [RDS] review team. Our report was a little bit stalled but it will be published soon. There's critical recommendations in that report on the ARS, so I would be very disappointed to see that ARS – I know Goran had asked a question about this in a letter to the Council. I can't remember where. The ARS is a critical mechanism to review the accuracy of data, which we all know is pretty abysmal. If it's public or not, that data needs to be accurate. The review team

has probably four or five recommendations coming in our report on ARS, so you'll see those soon.

GORAN MARBY: You're referring to the letter I sent to Keith to the Expedited PDP. I think that – is it tomorrow or today? The Cross-Community Working Group?

UNIDENTIFIED MALE: Tomorrow.

GORAN MARBY: So it points to where in the value chain a new policy doesn't replace other policies. How do we do that interaction between it? My stand, as you know, is that, if it's possible, leave all those balancing acts over to the community. The community, when they make policies, should be aware – and they are – about the implications of those policies. Instead of making that judgement, disagreeing or not disagreeing, I think that's proper for us to leave that to the community. Otherwise, we slide in very close to making policies, which we shouldn't do. So that's why we referred those questions to the Expedited PDP: so they can take in the consequences of that.

You saw a part of that when the Board had an opinion about thick and thin WHOIS or the purpose discussion from Phase 1, channeling that over to the continuous work in the Expedited PDP. Because, if there are different opinions about something in the community, it's very hard to make that balancing act. So that's why I sent the letter to Keith. Thank you.

CYRUS NAMAZI:

Susan, just to add to that, I wanted to clarify for you and all the people in the room that we're not really assigning value in terms of importance of one service or policy and whether they should continue or not. That is not the role of the org. If the community has decided through consensus policy or through our contracts that we are obligated to perform a service, we'll provide it.

In particular, for the WHOIS accuracy review, the ARS, the way we've done it, just for the benefit of people in the room, is that we actually contract with a third party to pull nearly 200,000 data points from the publicly available registration data, which, as you very likely know since May of last year has been not available, even [to] some of the larger registrars that continue to provide outside of the European Union territory. Access to registration data they do on a web-based access, which really negates the system that's in place to, in bulk, actually pull data from Port 43.

So the reason that we actually have decided we're not able to continue that service today, based on the current environment, is that we can't actually get access to the data because, in terms of our ability to get whitelisted, for instance, with a registrar, to be able to pull the full data, to be able to conduct the analysis today is not there. Again, it goes back to the roles and responsibilities and being able to clarify that and establish that before we go forward.

As Goran mentioned, the subject of WHOIS actually was a footnote in the EPDP Phase 1. This is why we went back to the GNSO Council: they said it should be reviewed. But it was not, from our perspective, clear whether the EPDP Phase 2 was going to take that on and the subject of accuracy as a whole. So we wanted to get that guidance from them.

SUSAN KUWAGUCHI:

I can understand the challenges right now, but just in reviewing the WHOIS records that I do on a daily basis and always have, you're seeing non-compliance with temp spec at the very least, with no countries listed. That would be an easy win for the ARS: just to look at those. But I just don't think we throw the baby out with the bathwater. Maybe the ARS – I think this is on then second phase discussion list. We don't want to lose that important process because, eventually, you probably will get access to this data.

That is what my guess is. At a certain level, at least. So it's critical to maintain that standard or try to maintain a standard of accuracy.

GORAN MARBY:

Again, it's a fair point. I will never disagree. Actually, I'm afraid of disagreeing with you. But do you understand our notion is that there are other ones who think differently within the community? In that case, we shouldn't make a judgement between those interests. It's better to move it out to the community for continued discussions because it's an unclear field. The principle I hope you agree with.

SUSAN KUWAGACHI:

I know we're over time here, but the statement you just made, Goran, is pretty interesting because, once a consensus policy comes out of a PDP, then the community does not have an ability to push that through and to implement it. You look back on all kinds of things here. All relating to WHOIS is my experience. I don't about other policies, but once ICANN org decides, "This is not going to move forward," I don't see a mechanism – I read the bylaws recently – to say, "No, no, no. The community said you need to move this forward."

Now, I have not seen ICANN org say, “Oh, we are not implementing this,” but stalling is effectively not implementing. We’ve got thick WHOIS, cross-validation ...

GORAN MARBY:

This is a longer discussion. I love to have it because it’s a principle discussion where I think my input on how to think about this could be valid. So you have to – I’m a little bit over time here. So the community makes policies, and the Board makes a decision, and the Board directs me to do something, and everything is fine. Then we have implementation. If you remember, one of the outcomes of the Hubba Bubba Project – no intellectual property lawyers present, I suppose – was that we realized that, if there is a lot of disagreements in the actual implementation process ... ICANN org previously was criticized because we came up with solutions in that part that nobody agreed with. And both sides disagreed with the implementation proposals. Nobody liked what we did. I had conversations with several of you at that time. It’s very hard to go through an implementation if the community and the actual implementation proposals don’t agree, even if this is not a policy. Spec Level 3B is one of those things. That’s not a policy but it’s sort of the same thing.

So we proposed and decided at the time to take something we called an impasse. If we, through the implementation, realize that

any proposal for the actual implementation has no agreement or there's no agreement in the implementation process by the community on how to solve this issue, we declare that an impasse and we take it back to the where it belongs – the GNSO Council – because you know as well as I do that sometimes that, in the hard work of the community, compromises are reached. It becomes a little bit hard for us to understand how to actually do the implementation. Most of the time, it works well.

I think that I'm doing the right thing here because we have changed our attitude when it came to that because we don't believe that we will come up with the perfect compromise that everybody hates. Distributing misery evenly should not be our job when it comes to this. I know that we changed it, but this is a longer discussion, and it really goes to the heart of what I think ICANN org should do, and maybe pointing to some past mistakes in this because everybody makes mistakes.

So, next time we have the [inaudible] meeting, instead of talking about going down the rabbit holes of how to interpret the law, we can spend some time on this one. I'm really willing to do that because, here, I'm really looking forward to your input and also explaining the basis of what ICANN is trying to do in a facilitation/implementation process. This is probably something we can't spend enough time talking about.

CLAUDIA SELLI: Thank you very much, Goran, also for the generosity of time and comments. We will be happy to continue the conversation next time. Thank you very much for being here with us.

GORAN MARBY: Can I also thank you for, I think, one of the best interactions I ever had with this group? Thank you very much. I appreciate this level of dialogue. I think we [proved] a lot. Thank you.

CLAUDIA SELLI: I know Janis has been kindly waiting in the back, so if you would like to come forward, thank you very much.

Thank you very much, Janis. Apologies for keeping you waiting. This is a usual dialogue that we have at this year's [geo] level. The idea is really to have an exchange with you based certainly on the questions that people have for you. But also, I don't know if you want to share any insight, anything that you have in mind, with this group to start with. Or if you prefer to go into more dialogue.

JANIS KARKLINS: Thank you very much for having me. It's always good to start the day with a dialogue. I don't think that it would be useful to waste time telling you what you already know. The process outline is

known. All the work that has been done for the moment has been done in public. So I would be very happy, probably, to answer questions, whatever you have, at this stage. None of us know where it is going; I hope to the good end; a workable solution at the end. For the moment, it is a work in progress. We tried different avenues. It seems that now we have found one to embark on, thanks to Thomas, who's here/present. So we will take it from there.

CLAUDIA SELL: Thank you, Janis. Thomas, please?

THOMAS RICKERT: I have a question for you, Janis. Thanks for being with us today. Now that you've been working with the EPDP team for a couple months, do you always regret your decision to be [inaudible]?

JANIS KARKLINS: Actually, I cannot please you. I do not regret it. It is big fun. Again, I see it as a community service. I really value the work that ICANN is doing, just thinking in terms of what system we're working on and then supporting and what would be if we fail. So that already gives you a certain perspective. Probably we do not appreciate that, working on a daily basis on small things that we're talking

about. But in reality, imagine one day without the Internet in the world. Hard to imagine. Take it from that perspective.

CLAUDIA SELLI: Margie?

MARGIE MILAM: Hi, Janis. It's Margie. We are really appreciative to have you lead our group on the EPDP. Yesterday with Thomas's approach, we made a lot of progress. I know you weren't present, but I just wanted to share that it was a positive engagement. We were able to raise issues, be constructive, in our dialogue and identify some areas of consensus and points that we were agreeing on. So it was a good day.

One of the things, I think, from the BC perspective, as we look back on what happened in Phase 1 and one of the things that we like to highlight for you, is the sensitivity around when we start pulling together recommendations and agreements, that we're sensitive to the dialogue across the entire team and not just certain parties because sometimes what will happen is some groups might be more quiet, if you will, during a telephone call or a face-to-face meeting. In the past, something would be seen as the agreement, but it actually was never really polled across each of the groups.

So what you'll see in the dialogue with the EPDP team is that frequently the BC and IPC is very much aligned with the GAC, ALAC, and SSAC. How you factor that into the consensus discussion is something we just want to call out and encourage you to reach out to [them] and say, "Make sure that every group is at least giving their perspective on whatever the issue is before the actual language starts being finalized."

I don't know, Alex, if you want to say anything.

JANIS KARKLINS:

When you think about dynamics in the room and discussions that we have, everyone has an equal opportunity to take the floor and outline concerns. No one is prevented from speaking. So if people do not use that advantage or possibility, the of course for me as a chair it's very difficult to sense if they're not speaking up. So that's Point #1. I would encourage everyone who is participating in the work on the team not to be shy and to say what they want to say on every topic.

Another point is, for me, consensus does not mean unanimity. Consensus in my understanding means that everyone can live with whatever is on the table. The best manifestation of consensus is that everyone screams equally that they do not like the outcome. But equally. If one screams, another says, "No, no. We're very happy." So it's not really the balancing point.

So we will try to get there, but we have also a bit of dynamic in the room, where some groups still feel this traumatic experience of the first phase with the extremely heavy workload and do not want to rush. Other groups clearly see the urgency in the matter. We need really to balance these two basically opposing trends in the group.

One way how I see it would be to introduce the notion of delegation, that we delegate certain tasks to a limited number of team members, that they work out solutions and come back to the team for endorsement and ideally propose a solution by a method of [certain] procedure that we do not spend time on.

This is something that I will propose also in our discussion tomorrow at the end of the session – how to proceed forward – because I think we need to look at probably a dozen if not a few dozen cases to identify trends in those cases. If we do it as a team together, that may take a bit of time that we do not have. But if we create sub-teams and let sub-teams examine those cases and then come back, of course with the overall review of those cases, and make presentations to the whole team, we may clearly save some time and progress and see those trends as we progress. So we'll see whether that will fly or not, but this is my thinking how to accelerate work.

Delegation is a normal method in every case. One person cannot do everything. If that person attempts to do everything, sooner or later the person fails. That's a known fact. So we'll see.

CLAUDIA SELLI: I have Steven and Brian.

STEVEN DELBIANCO: Hello, Janis, and welcome. The conversation yesterday revealed quite a bit on anguish in the EPDP if we were to do the deep dive if we were doing on Thomas's case on dozens of other cases. That seemed intimidating. I think the sense of the room was: let's continue to deep dive, because we learn a lot on a single deep dive, and, at the conclusion of that, determine whether to launch those parallel processes on dozens of other cases.

I'd encourage you to be open to, perhaps at the conclusion of the trademark case that Thomas launched, that we might have sufficient detail and maybe even sufficient consensus to present some of that to those who wrote the law at the commission, to present some of it to some of it to those who would enforce the law, for some level of reaction as to whether we are sufficiently detailed in how we lay things out. That could happen before you launch the parallel processes of dozens of other use cases. I know

it doesn't feel as if [we're] putting it in the right order, but I believe that we are desperate for more specific guidance.

On that point, Goran, in the open session that we just had, believes that, since the European Commission is represented on one of the three GAC reps, whenever we have a question about interpretation of the law, we have already asked that in the room and we are failing to use that asset by presenting Georgios with a specific question. And it's awkward for other members of the EPDP to fire questions into Georgios.

But, as the Chair, let's try that. Why not try? If we have questions of interpretation of the law, let's put it to Georgios. It's not fair to expect him to have an answer instantly. He can perhaps go back and get an answer, but that's an asset that you as Chair could probably use starting tomorrow morning. Thank you.

JANIS KARKLINS:

Actually, I have used it already before. I'm not saying it's a problem. The issue is that the commission does not necessarily represent the view of the European data protection authorities. They may be well-informed about the way of thinking of those bodies, but they're not authoritative representatives of those bodies. We need to get answers from those bodies.

So whether we will get a straight answer? I hope we will, but so far, I haven't seen any lawyer who would say yes or no definitively. They always say something like maybe, maybe not. I suspect that we will get something like that if it goes in the right direction, but it depends on one, two, three.

Therefore, we need to continue working on our assignment, that we do build the standard and work on building blocks. The deep dive is needed. I do not intend to curtail discussion on the case because, indeed, yesterday, discussion brought us closer to maybe consensus on a few issues and also revealed some other issues that need to be discussed further and get to consensus.

I think we need to look at the cases as well because that may give us additional information, but also that will reveal trends. Trends will be the one that will constitute the basis for the standard that we're working on.

I think that, as we progress, it will be like with languages. If you know one, it is much easier to learn another one. It may happen, but the 10th, 11th, and 12th case will be done in one hour because we will already see trends. Nevertheless, we will go through these real cases that need to be understood, examined, analyzed, and then a solution put forward for.

So I'm not that pessimistic that it would take an eternity. If we delegate those discussions to the smaller group, also making sure

that these are not the same sub-teams that discuss all the cases but we make people rotate so that they're always in a different setting so that they do not create [accomplices] in that smaller group, I think we are fine. We will get through that exercise in a reasonable time. And we will not get more than two meetings per week. Don't worry.

CLAUDIA SELLI: Brian and then Thomas.

BRIAN WINTERFELDT: I want to make one follow-on point to Margie's point, since we're often aligned with the interests and positions of SSAC and the GAC. I would note that those two groups in particular, especially when we're getting into maybe a new topic or one that they haven't prepared and discussed internally with their own group, may not be able to decide and speak on the fly. So I'd encourage you just not to mistake their silence for acquiescence to the general conversation. So sometimes they do need to come back before they're able to speak. So I'd make that point.

I also want to point out that sub-teams have been very effective within the EPDP. I remember one of the most effective meetings we had in Phase 1 was when we broke out into two sub-groups and were able to really focus on the issues without a lot of the

posturing that can come with being in a bigger group and being focused and very tuned in to one particular issue in a small group setting. So that has been productive and we definitely would support continuing that.

CLAUDIA SELLI: Thomas?

THOMAS RICKERT: Thanks very much, Claudia. With respect to our easy representative, Georgios, I'd like to take a slightly different look at it. I think we need to be quite cautious not to give the impression that, whenever the European Commission is at the table and doesn't object to things that we're doing, we have their blessing. I guess Purpose 2 is an ideal example for that. The GAC has not objected to that very recommendation. It has supported it during the consensus call, if memory doesn't fail me.

So I think that, yes, we should try to tap on that resource and ask Georgios questions, but we shouldn't put him into a difficult situation because, as you said, Janis, he's not a decision maker.

But, having said that, I think we – in particular you, Janis, as our Chair – might be able to take another crack at getting a communications channel open directly the European Commission. The group – I will unfortunately not be there

tomorrow – will discuss the Strawberry initiative tomorrow, and our group will certainly work with them in whatever shape or form. But I guess that the intention of the Strawberry team is somewhat different from the groundwork that we have to do, crafting policy and looking at all the legal implications.

I think I can sense by a willingness by the commission to liaise with us. I think there is a willingness even by the European Data Protection Board or even individual DPAs to talk to us if we have something concrete to address. I think we should come up with a smart way of operationalizing that. I'm happy to volunteer being part of that dialogue. It's been said a couple of times that the case study or the use case that I've suggested is the easiest possible disclosure scenario we can think of.

We will have a lot of legal challenges, and I think that asking a lawyer is a good thing. I happen to be in that profession, and I'm sure that lawyers hired by ICANN are happy to bill some hours for that work. But we will not get definitive answers out of external consultants, so the only way for us to get guidance is to [inaudible] straight and try to get guidance from them. I think we should set up a way of communicating with them in order to get that guidance.

JANIS KARKLINS: I agree because, in my eleven years of experience in multi-lateral diplomacy, I've never heard a straight answer from any legal counsel from any U.N. organization. Any time when delegates ask questions to legal counsel, the answer is such that basically we're as clever as we were after the answer. I hope this will not be the case in our deliberations, and I look forward to engage also with the representative legal committee that we created that has an important task in formulating legal questions for either Byrd & Byrd of the European data protection authorities.

I think that yesterday's discussion also already indicated one question that needs to be clarified, and that is whether registries/registrars should be liable to actions of data requesters. I think that this is a very valid point that Ashley raised during yesterday's conversation that needs to be clarified.

CLAUDIA SELLI: Thank you. Margie?

MARGIE MILAM: On a separate, and I guess following up on the European Commission's input, we've benefited by Goran's interaction. With the European Commission, we've received some letters that clarify some of the principals.

One of the things that I worry about as a member of the EPDP is that those letters and that input doesn't seem to be influencing the team very much. It strikes me that, if the European Commission has spoken specifically on the WHOIS, the UAM, that should be a very influential piece and direct the way that our policy work is done. So I would encourage you as Chair to probe in that area when we see things like that.

The other thing I wanted to point was that, when we started the EPDP, the Board resolution was that the policy was to remain as close to the existing WHOIS as possible but be compliant with GDPR. What you'll see in the discussions over time is a carving away from the WHOIS principles that aren't justified by GDPR. So a lot of the questions that I pose – you'll see on behalf of the BC that we've asked a lot of questions – is to seek clarity around what GDPR allows and doesn't allow and have that be our guide and not simply the perspective from a commercial standpoint of whether the WHOIS approach is one they want to do versus, is it allowed by GDPR? So I think you'll see that in the BC input. The questions are really geared to understanding the limits [in] the GDPR so that we know where the policy can go.

JANIS KARKLINS:

I agree, but let me offer you also a different perspective on that. One needs to accept that the life will not be any longer as it was

before GDPR. That's the fact. Of course, this is human nature to think, "Ooh, it was so good because we have done [with] Jesus Christ and it would be good to continue doing it also for the next millennium."

But then you can look to this same disruption situation from a different perspective and say, "This is an opportunity to innovate, to develop something new which is good for the business community but also which is good for data subjects," and then prevent them from being unnecessarily exposed in their data.

If you look from that perspective, maybe you also need to encourage the community to innovate and think, "This will not be like that. It will be much more restrictive. So let's think what can we do, what kind of business models we can start developing on based on that that WHOIS data is not available [for]." It will be available – no doubt about it – but in a very limited scale. As a result, let's innovate what we can do differently, not that we did when everything was publicly available without any limitations. Just a side thought.

CLAUDIA SELLI:

Jimson?

JIMSON OLUFUYE: Thank you, Claudia, and thanks, Chair. Really, at the pace we are going – I want to be very thorough – we can come up with something [inaudible], something new, that'd be long-lasting and that everybody would be happy with.

So what is your projection therefore in terms of when the EPDP 2 can be wrapped up?

JANIS KARKLINS: I must say that there is no full consensus on this thing. If you take a common-sense approach, then probably the target of the March 2020 meeting would be reasonable. Whether we will get there or not, I cannot tell you. But at least I would try to manage discussions that we would make [into] a full convergence by the date. Whether we'll succeed or not, it's hard to say. But, again, this is my personal view. There's no consensus in the group, but I think that one year is a very reasonable timespan to conclude the policy discussions.

JIMSON OLUFUYE: With your [inaudible], you always succeed, so I trust that you succeed.

JANIS KARKLINS: [inaudible] How do you say?

CLAUDIA SELLI: Last question because I'm mindful of the time. Please.

GREG SHATAN: Thank you. I just wanted to remark that I don't think anybody, since this exercise has begun, has actually thought that WHOIS would remain the way it was. I think that, to some extent, is a projection by some groups that want the opposite, which is that they want, under the guise of GDPR and EPDP, to accomplish long-held policy goals in opposition to WHOIS, in spite of the fact that WHOIS is essentially baked into the bylaws and has a lot of positive benefits for the entire ecosystem in terms of security, stability, and resiliency.

Many of us, or at least some of us, are lawyers, and we realize that, when laws change, things change. But at the same time, when you're trying to balance objectives, you try to comply and not move well past compliance in order to achieve objectives.

So there's a certain balance I hope to see in the EPDP Phase 2, and I know that it's a major task, especially to some people. They really like to fill the room with air. As you move forward, be aware that I think that there are decades-old policy objectives that people are looking at and say, "Finally, the ideal time to

accomplish,” even if they go well beyond any reasonable idea of compliance with GDPR.

But the idea that anybody is harkening back to the good old days? I don’t know anybody who actually felt that way. Only people who were accused of feeling that way. Thanks.

JANIS KARLINS: I fully agree with you, no question about it. So we will do as good a balancing act as we can. You have my word on that.

CLAUDIA SELLI: Thank you very much, Janis, for this very interesting exchange. We hope to have you in other meetings to continue this type of interactions and discussions. Thank you so much.

I think we are – do we have two or three minutes? Ria? ... Sure. But I just wanted to check with members whether there is any other issues that you would like to bring up before we close the meeting.

No. I don’t see anything, so we can adjourn the meeting. Thank you, everybody.

[END OF TRANSCRIPTION]