Transcription ICANN61 San Juan
GNSO: IPC Meeting
Tuesday, 13 March 2018 at 15:15 AST
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The transcriptions of the calls are posted on the GNSO Master Calendar page http://gnso.icann.org/en/group-activities/calendar

Brian Winterfeldt: All right everyone. I think we are going to go ahead and get started. Apologies everyone for being a couple minutes late but our CSG Meeting with the Board ran a few minutes over and Göran grabbed me at the end of the meeting to have a little side conversation that I will share with you all later as well sharing some advice for us.

Have we started the recording?

Kiran Malancharuvil: Yes.

Brian Winterfeldt: Okay great. Good afternoon. Thank you all for joining us this afternoon for the Open IPC Meeting. During this meeting we will be discussing IPC policy positions and current priorities, GNSO Council activity and we'll welcome guests from Compliance, Consumer Safeguards, MSSI on GDPR and GDD on GDPR.

Let's start by going around introducing ourselves and our affiliation. If you're a newcomer, an ICANN fellow, a Next Gen participation, Leadership Program participation, or a Community Onboarding Program participant if you could please identify that in your introduction as well, we'd really appreciate it.

Maybe we can start with Nick in the corner.

Nick Wood: Nick Wood from Com Laude, representing Marques.

Mark Trachtenberg: Mark Trachtenberg, Shareholder at Greenberg Traurig.

Ken Taylor: Ken Taylor, Com Laude.

John McElwaine: John McElwaine, Nelson Mullins, IPC Treasurer.

Paul McGrady: Paul McGrady.

Kiran Malancharuvil: And your affiliation and your title.

Paul McGrady: Partner of Wintson & Strawn, GNSO Counselor for the IPC, member of the INT Board of something, and the…

Brian Winterfeldt: Directors

Paul McGrady: Directors and the chair of the Internet Committee for the INTA and I think that's all my official titles.

Heather Forrest: Heather Forrest, fewer titles than Paul, at University of Tasmania, GNSO Counselor and GNSO Council Chair.

Greg Shatan: Greg Shatan, IPC member, repertoire of the Jurisdiction Subgroup of the CCWG for enhancing ICANN's accountability, on the Board of Directors of the Internet Society of New York Chapter, alternate NARALO representative of the SSAC New York Chapter and working group (hussy) and many, many of those things and also I'm with a Law Firm of Moses & Singer, LLP in New York where I'm a partner.

Kiran Malancharuvil: Kiran Malancharuvil, IPC Secretary. We don't need all of your titles. Just your affiliation…

Brian Winterfeldt: And.

Kiran Malancharuvil: …and whether or not you're an IPC member or not. Thank you.

Greg Shatan: And Grand Vizier of the realm as well.

Flip Petillion: Flip Petillion, IPC member.

((Crosstalk))

Brian Scarpelli: Brian Scarpelli and IPC member and the Participation Coordinator. My affiliation is with a nonprofit trade association based in the U.S. called ACT, the App Association for Small Business Software Developers.

Patrick Charnley: Patrick Charnley, IFPI IPC member.

Brian Winterfeldt: Brian Winterfeldt, IPC President.

Vicky Sheckler: Vicky Sheckler, IPC Vice President.

Salvador Comacho: Salvador Comacho, CEO of Kalpa Proteccion Digital, domain names firm in Mexico and about to request my acceptance as IPC member.

Phil Marano: Phil Marano, IPC member.

David Thornton: David Thornton, Non-Exec Director of Nominet and Director of Name Account, Inc.

Dean Marks: Dean Marks, Coalition for Online Accountability, IPC member.

Bradley Silver: Bradley Silver, Time Warner, IPC member.

Dennis Prahl: Dennis Prahl, Ladas & Parry also representing AIPPI, your IPC member.

Luca Barbero: Luca Barbero, Studio Barbero, IPC member.

Brian Winterfeldt: Do folks in the audience want to step up to the mike and just introduce themselves or do we have a handheld mike?

Somayya Khan: Somayya Khan, Adams & Adams. And I'm also participating in ECOP Program and IPC member.

Brian Winterfeldt: Thank you.

Lauren Burkhart: Hi, Lauren Burkhart, first-time ICANN participant and Fellows Program Director of Arizona State University's Intellectual Property Program.

(Katherine Wilma):   (Katherine Wilma), founder of (Datsun), non-IPC member but representing quite some brands like Volkswagen and Audi.

Mark Kudlacik: Mark Kudlacik, CheckMark Network, IPC member.

Linda Valter: Linda Valter, Lakeshore Entertainment.

((Crosstalk))

Heather Forrest: And for the record, we have plenty of empty seats at the table so please do feel free to join us.

(Fernando Mateo):   (Fernando Mateo), Fellow newcomer from Brazil.

(Grace Leno):   (Grace Leno), Fellow Attorney, IP Attorney from Jamaica.

Man 2:   (Unintelligible) from Colombia, Fellow, coming soon IP Lawyer.

Susan Anthony: Susan Anthony, United States Patent and Trademark Office, not an IPC member.

Brian Winterfeldt: Great. Did we get to everybody? Susan, do you want to quickly introduce yourself?

Man 3:   Also online.

Man 4:   Also a lineup.

Man 3:   Have a real important (unintelligible).

((Crosstalk))

Susan Payne: Susan Payne, (Valideus) IPC member.

Brian Winterfeldt: Thank you. And anyone in remote participation would like to introduce themselves?

Petter Rindforth: Yes (Petter Rindforth here), IPC member.

Brian Winterfeldt: Thank you, anyone else in remote participation. All right David Taylor would you like to please introduce yourself?

David Taylor: Timing, David Taylor (unintelligible) Lovells. Thanks. And CCT Review Team I suppose I should say.

Brian Winterfeldt: And IPC member, correct.

David Taylor: Fully paid up.

Brian Winterfeldt: Fantastic. We'll double check that with the Treasurer.

All right, welcome everyone. Thank you so much for joining us today. We really appreciate it. We are – we have for those who are interested and who are newcomers we have lovely – that Karin is advertising for us, lovely one page front and back brochure that describes the Intellectual Property constituency. You have lovely pictures and information on our current leadership roster and a summary of our key priorities so please feel free to take those with you, get extra copies to give to friends. It's a very informative read.

And with that I'm going to jump into our agenda for today which is quite packed. Our first agenda item is a report from our esteemed counsellors and a review of current motions. Heather and Paul, take it away.

Paul McGrady: Hi, Paul McGrady here for the record. We already covered this in our closed meeting and so instead of rehashing it perhaps I can just say are there any questions from IPC members about what we discussed earlier?

Hearing none, nine minutes is contributed back to the agenda. Thank you.

Brian Winterfeldt: Just for the benefit of folks who were not in our closed meeting, could you give maybe just like a two minute summary of like the big issues that are going on right now?

Paul McGrady: It may be just as simple for us to pose to Council the agenda on the IPC List. Is that okay, except nonmembers won't get those?

Kiran Malancharuvil: And fellows (unintelligible) maybe just a little brief update (unintelligible).

Brian Winterfeldt: Sounds good. You were going to tell them.

((Crosstalk))

Brian Winterfeldt: No, I'm not. I'm actually just trying to keep us from wasting time spending – doing something that's redundant. But if you guys would like to do that we can do that. We can skip it Paul. Let's go to the next agenda item. Okay, thanks so much.

Our next agenda topic is a discussion of IPC policy positions and issues and public comments.

We have an open floor for two minutes to discuss the IPC priority policy petitions and what's happening on earlier in our closed meeting. We talked about GDPR and we talked about the impact on rights protection mechanisms. That might be something we want to continue here. Or we can opt to discuss the questions to our open meeting guests later today which we circulated on the list and everyone should have access to that Google doc that has those questions in it.

What do folks think?

All right, is – go ahead Dean.

Dean Marks: I'm so sorry. But these are questions that we're going to be asked about, the GDPR stuff? Is that what you're asking about? I got.

Brian Winterfeldt: So we have a series of guests that are going to be coming in this afternoon.

Dean Marks: Oh.

Brian Winterfeldt: And we had drafted questions for each of them. And those have been circulated to the list for review by membership.

Dean Marks: I must've missed it. Sorry.

Brian Winterfeldt: So no problem. There's a Google Doc that has all the questions in it for this afternoon's guests. So I didn't know if people wanted to walk through those or give input, if they would prefer to talk about specific policy issues and continue discussions from earlier today or, you know, to debrief from our public CSG Meeting with the Board. We have some open time on the agenda.

Dean Marks: Okay. And I'm just so sorry. Did you send those – that – the link with the Google Docs?

Kiran Malancharuvil: This is Kiran Malancharuvil, IPC Secretary. I just recirculated the Google Doc for the benefit…

Dean Marks: Okay.

Kiran Malancharuvil: …of this meeting.

Dean Marks: Thank you. Thank you.

Kiran Malancharuvil: Just a few minutes, it will be on top of everybody's inbox. So if you access your inbox just right now, it will be maybe in the last 10 to 15 minutes you receive an email from me that has the link to the Google Doc if you want to discuss that or whichever as Brian said. We – really we have nothing to say about GDPR? So unlike us.

Brian Winterfeldt: Greg, go ahead.

Greg Shatan: Greg Shatan for the record. I was just going to suggest in terms of taking a different tack, maybe see if Brian Scarpelli had any public comments that were in the hopper that we should discuss because we spend so much time discussing GDPR. I would hate to bring it up again. It's obviously the elephant in this current room but just thought that we might hear something about the flow.

Brian Scarpelli: Thank you. This is Brian Scarpelli speaking. And for people who aren't necessarily on the list too maybe, you know, I was just staring at our tracking spreadsheet that we circulate once a week for – just so everybody knows it. We try and make like a chart style breakdown of all the current comments that are open and request, you know, volunteers to formulate comments.

And in 2018 we've already filed I believe seven comments on a variety of topics including the GDPR but also on CCT Report, various accountability topics ranging from diversity to the role of the ombudsman.

And there are some future ones that were very recently announced under seven days ago that I – it would be really – I think it'd be great if we do get a consensus around a need for the IPC to file that we would including some topics that probably there's some views on. You know such as a proposed replenishment strategy for the ICANN Reserve Fund. That was just announced a draft project plan for Name Collision Analysis Project, Board Member Integrity Screening Process, some other topics.

Does that help? Yes. So look out for that. If you're not getting that weekly, the goal I set for myself is to send it around once a week on Mondays.

Brian Winterfeldt: Perfect, thanks so much.

Brian Scarpelli: You'll be able to drawn in some fellows or others in the audience here to join the IPC even, all are welcome to, right?

Kiran Malancharuvil: Yes.

Brian Winterfeldt: That's great Brian. Thank you so much and we really want to thank you and appreciate your hard work that's gone into really getting us organized and sending those weekly summaries. I know must be a lot of work. But I know I

find them very helpful and I think all of us do. And we really appreciate you keeping us organized.

Yes, round of applause. And keep doing a great job, we appreciate it.

So I prepared a short summary of I feel like are core issues flowing out of our meetings earlier today and unless folks want to talk about anything, I thought maybe I could run through those. I don't know if those will spark discussion or at least give us kind of an idea going into our afternoon meetings, what I think our priorities want to be as far as prioritizing questions for our guests who are coming in since some of these key policy topics are going to be what we'll be discussing with them in particular GDPR.

So the first one that I had put together was ensuring that an easily, implementable accreditation model will be developed and in place before the GDPR goes into effect on May 25th ensuring that any accreditation system will be easily accessible by brand owners and that obtaining a one-time accreditation will mean unfettered access to all nonpublic data elements without latency. I think that's something really important that we want to continue to push for.

And the second one, GDPR interim model, implementation and compliance, what will be considered a violation of the model and how will ICANN enforce it?

When we had meetings with the contracted party leadership in Washington a few weeks ago, they basically told us that they didn't intend on complying interim model and that they had their own attorneys giving them advice, what was best for their individual companies and that they were considering it sort of a suggestion.

We subsequently talked to ICANN Staff. And they told us that that is not how they envision it. They think it's something that contracted parties will need to comply with.

So I think putting that issue and continuing to ask for details on what part of the ICANN org is going to be responsible for compliance and what the compliance model will look like I think is something that we should continue to ask questions about and remind them that's important.

When we told ICANN Staff the fact that the contracted parties had told us that they weren't following the interim model they seemed kind of shocked and like that was new information to them, so for what that's worth.

The third sort of core issue that I identified was RPMs. We had a good discussion earlier today in our closed meeting about RPMs and the interplay with GDPR. I think that's something that we will want to continue talking about. And I think that might be something good to highlight for some of our guests today.

And the fourth sort of core issue that I identified from our meetings today were RPMs in general, URS issues, data collection, UDRP, kind of the continuing work in the RPM PDP that is ongoing.

Does anyone…?

Kiran Malancharuvil: Next is Greg and Paul's up.

Brian Winterfeldt: Great. Greg would you like to go?

Greg Shatan: Thanks. Greg Shatan for the record, thanks. That's a very helpful and concise look at the big issues.

Got me thinking a bit and thinking back also to things like the healthy domains initiative and voluntary standards and the like, wondering whether any of the registrars or others who are holding or registries who are holding Whois records would be interested in being compliant but less over compliant than the ICANN model makes them.

I assume that being – if ICANN's Compliance Department has their head set on straight maybe we need to ask this, if there are people who are even more over compliant than the ICANN model, that should be a compliance violation because that means they're hiding too much Whois or does it mean that they can do anything they want and not be out there.

But it should be to go back to the first idea is that if we could find some registrars or registries who might try a more – a model that isn't quite as overprotected and belt and suspenders as the ICANN model, it would be very interesting to see.

And then the last thing is if ICANN is a joint data controller would they prohibit that because then they would have liability if that registry or registrar missed and was under compliant.

Thanks.

Brian Winterfeldt: Thanks Greg. Those are really good points. And the over compliance is obviously a serious concern that's been highlighted in the IPCPC comments that were submitted on the draft interim model that was put out by ICANN. We continue to be very concerned about the global territoriality nature of the interim model. The lack of distinction between natural and persons and legal entities and some of the decisions that were made in there.

And I think your point is a really fair one which is it's already incredibly conservative and what happens if people decide to go even further and make even less data public.

We've already seen issues with GoDaddy making Port 43 go dark, masking data, creating a lightless program and they're sort of the sole aperture deciding who gets access. IP address by IP address and query volume as determined on a case-by-case basis as well.

So that's something that, you know, we feel like is a clear violation of the contracts. We're waiting to see what compliance does with that.

But it does beg the question, you know, will registries and registrars take a similar approach when it comes to compliance and potentially over comply and create additional barriers or mask additional data or other things that would be considered a violation of the interim model. And that's something that I think we should definitely highlight and make sure that's captured in our questions for our guests later today.

Paul.

Paul McGrady: Thanks. Paul McGrady for the record. So I think we have to play that issue pretty gently because what happens if a good acting registrar puts forward an access model. ICANN hasn't. So what if they put forward one that they think complies with GDPR. That would also technically not be a compliance with the model because the model doesn't have one, right.

And so we have to be a little bit careful that we don't draw the four corners around the interim model and say you have to be within those four corners because first of all we hate the model so why would we do that.

But secondly, there may be variations that actually are beneficial for us (unintelligible).

((Crosstalk))

Greg Shatan: Yes, that was my idea was to say that we could try to get people's – if they could move off the model in the direction that we would like and also make sure that they move off the model in the other direction, they get whacked.

Brian Winterfeldt: Okay those are very good points for us to be thinking about. Mark.

Mark Trachtenberg: Mark Trachtenberg for the record. When you talk about, you know, your discussions with compliance where they said they will enforce the interim model, just gets me thinking about, you know, what is the mechanism for implementation of the interim model and who makes a decision on how it will look because we've heard different things today.

First, we heard Göran saying that it was his decision. I have to decide what to do. And I'll make that decision. And then, you know, later the Board seemed to indicate that it was a Board decision. You know what will we do, what will we decide?

And so I think, you know, one, we want to know whose calling the shots and making the decisions because those are the people that we want to influence. But two, I think we want to have greater clarity on what the mechanism is for implementation because I think clearly we need to challenge that mechanism if we're going to stop this from happening.

Brian Winterfeldt: Yes, that's an excellent point. I mean we have heard Göran tell us multiple occasions that it's his decision and that he will be making that decision. And you're correct, that we've heard from the Board that they feel like it might be their decision.

And I think we asked some good questions earlier today that we didn't really get straight answers to which was sort of what is the procedural path forward. Are we looking at using the sort of emergency power that is vested in the Board?

And I believe they need at least a majority or super majority vote in order to put in place a contract provision in order to allow for compliance on something while the PDP process is ongoing.

And that would certainly not be in Göran's remit and would actually leave the decision making to the Board.

And I guess what to think about is are we better in the hands of the Board and having the Board voting and making decisions rather than the CEO deciding on his own?

Mark Trachtenberg: But I think we need to know and so I think that question has to go all the way to the top of the list because it kind of determines how we address all the other questions. We want to make sure we're addressing it to the right people who make the decision and also that we know how to challenge it.

Brian Winterfeldt: Yes. And also I think the compliance clarification is really important too to know who's going to be determining who's compliant and who isn't. And it's going to be the current Compliance Department. Is he going to be involved? I think those are some good clarifications for us today and try and get more guidance on.

Paul, go ahead.

Paul McGrady: Paul McGrady for the record. So just to address the issue of whether or not we're better off that the Board does it rather than staff, the Board has the ability to I think to implement emergency policies, right.

And if the staff does it on their own that's a completely different kind of animal. And so again we need to just think through what it is that we're pushing for because if we don't like the current model, I'm not sure that we want it etched in stone by the Board. We might be better off for it to be a staff driven thing.

Brian Winterfeldt: Thank you, excellent point Paul. Anyone else in the queue?

Kiran.

Kiran Malancharuvil: So this is Kiran. And I thought the way that we formulated the question to compliance, they actually account for some of the concerns that you have Paul.

So instead of telling them what should and shouldn't be considered a violation of the interim model and what should be enforced, we sort of asked them what they think a violation is and then we can sort of go from there and dropped maybe even an IPC response to their response to us making clear, you know, what we view the parameters as.

I think there's an opportunity for us to actually set that standard and not, you know, let them set it in response to our questions and concerns but rather, you know, we start the conversation. Because from what I understand that's ongoing right now and from what they said at the Board Meeting, they're not even really sure how it's going to be enforced. And what the, you know, what the squares are around enforcement and compliance.

So why not, you know, force out the question in such a way and then follow-up with them in order to be a part of that conversation so that we avoid the concerns that you have.

Brian Winterfeldt: Thank you Kiran, anyone else in the queue? Dean.

Dean Marks: Just want to say this somewhat goes to what Kiran circulated and then Paul's questions. I thought the follow-up questions that Susan Payne asked about some of the compliance, what the interim model in terms of data elements and access to elements and whether, you know, registrars can sort of sua

sponte add on additional requirements are really well taken. And so I hope they will be asked as well.

Brian Winterfeldt: Great, thank you Dean. Susan.

Susan Payne: I was just going to say I didn't want to take credit for those questions because they weren't mine. I just - I think they were ones that we were going to ask accurately. And I just was suggesting that we move them up (unintelligible) so when we're talking to compliance if we're not getting the kind of information we want that maybe the drilling down in the detail would be really useful. I don't want to take credit for them because I think they're great questions but they weren't from me.

Brian Winterfeldt: Thank you Susan. But we do appreciate your input and I think it's good to actually ask some of those questions at both and let's compare notes. See what the answers are that we get.

Others in the queue, okay, great. Do you folks want to take a minute or two since we have time to look at the questions document and see if anyone has any suggestions on edits or prioritization of what we have there for our guests this afternoon? Fine.

Kiran Malancharuvil: Bradley.

Brian Winterfeldt: Bradley, please, go ahead.

Bradley Silver: Thanks. Bradley Silver. I think it might be a good idea just to remind Jamie, she hasn't forgotten. But that about a year ago we come up with a set of proposals from the Joint IPC Registry and Stakeholder Group that might be worth following up on because I don't think anything was actually actioned, which we – which has been about a year and a half since we submitted that.

Some of them should be simple and some not so simple. But I think it's a good idea to put that back on the radar.

Brian Winterfeldt: Great. Would you like to volunteer to bring that question forward during the meeting?

Bradley Silver: Sure.

Brian Winterfeldt: Thank you so much, others in the queue. We have about 13 minutes before our first guests arrive. Dean.

Dean Marks: So sorry. I raise this as a question in terms of the ones to Theresa about the lack of transparency. Is it worth asking again and that could you please tell us what documents you have received so far from Article 29 because, you know, Göran just explained at that last meeting about we've put all these questions forward. They've given him the cookbook. We've let them know where there's consensus and where there's not consensus from the community. I mean I think Steve DelBianco did a really good job kind of pressing him as you did Brian.

But I'm not sure. And I may have missed it. Heard questions asked what guidance have you received so far.

Brian Winterfeldt: Yes. I think…

Dean Marks: I think it matters should we not.

Brian Winterfeldt: I think that's an excellent point. I do keep pushing on that topic. I feel like it's a little frustrating because we're being told, you know, talk to the Article 29 Working Party; talk to the DPA. That's the only way you're going to move the needle on the interim model or impacts on the Accreditation Program.

However, we don't – I'm frustrated a little bit because I feel like ICANN Staff is telling us we are being super transparent and open about our discussion with Article 29 except for there's no specifics on exactly who in the Article 29 Working Party that they're speaking to. I do understand that they're saying that documents that they're making public to us are also being made public to them. I can't imagine that there aren't cover letters and emails and, you know, in person discussions. We know in person discussions are taking place that go beyond, you know, the published documents that we're seeing.

So they sort of keep saying that they're really transparent. Again I reference the blogpost that came out last week that was supposed to be a community update on the discussions with the Article 29 Working Party with ICANN. And there was really almost no substance there whatsoever.

And so it is a little frustrating that we're being told all our hopes are going to depend on these discussions and it does feel like a little bit of a black box that we don't have visibility into.

One thing that I did glean from the conversation with – that we just walked away with the CSG and the Board, what Göran did indicate that when the advice was given that it would be public and that it would be shared with us in the same way they're sharing the cookbook and they're sharing the interim model publicly.

And that's being shared with the DPAs. To me that was sort of a bit of new information. That gave me a tiny bit of comfort because that means I'm sure there is feedback being given in the interim that we don't have visibility on.

But if sort of the advice if and when it comes, is going to be public, that helps a little bit. But I do think it's a point that we should keep pushing on.

And I also wonder whether we shouldn't be asking who specifically are you meeting with. Can you give us names or can you tell us, you know, what part

of the Article 29 Working Party? I feel like I'm not sure why we can't have access to those details.

Dean Marks: Thanks Brian. I agree to that. Just to respond quickly, I sort of feel the only specific guidance that we've been given and I'm curious whether IPC members agree with this or not, is it seems like they've - that ICANN org folks have said hey we've heard back from the DPAs that self-certification will not be acceptable. That's about the only specific thing I've heard.

Brian Winterfeldt: Well and eve that advice has been sort of not really – it's been couched I think in language that was conditionary like it was not, we've received definitive advice but that's off the table. We've heard that may not work. They don't seem to like it but we haven't been given sort of like definitive advice.

Patrick.

Patrick Charnley: Thanks. And, you know, we might to follow-up on the point that was made in the last session where Göran said that he had given specific names and contacts because I don't recall that happening.

Brian Winterfeldt: So I think what he's talking about is when we went on that exercise of drafting that paper on the fly, he gave us I think we had like two days to draft our paper for the Article 29 folks, he gave us a list of kind of everyone in the Article 29 Working Party and who all the people were. So that's where he's talking about where he's given us like those email addresses.

But we don't know specifically, you know, who they're engaging with, who they're talking to. Is it everyone? And that's sort of what I was talking about.

But I think that's what he was referring to. I don't' know if someone has something else. I think I saw Lori's hand and then I have Mark in the queue.

Lori Schulman: Lori Schulman for the transcript. I guess I want to clarify something because maybe I'm just tired. So when he says self-accreditation is he saying that where we need to come up with an accreditation model for third parties, not for ICANN, right. And this is a model that would be put into contracts presumably that would require a process.

So is the self-accreditation that ICANN is accrediting that it'll accredit others appropriately? I'm just a little confused about self-accreditation in terms of meaning.

Brian Winterfeldt: I think the idea of a Self-accreditation Program is that people would step forward and self-certify that they comply with a certain category and that they have a specific acceptable purpose for access to the data and it's without third party verification.

One of the things we also talked about in our discussions with the contracted parties was the idea of self-certification plus where there was true self-certification plus something extra. So some sort of, you know, light accreditation I guess rather than like a full Accreditation Program. It does seem like the whole idea of self-certification is really off the table right now. I think again based on what Dean was saying, we seem to be hearing from ICANN org that that's really not something that they think is going to work for the DPAs. It's also something that we've heard from the contracted parties that they think they won't accept. And some contracted parties told us again even ICANN said that they would accept self-certification, they wouldn't and that it requires subpoena.

So I don't know if that answers your question Lori.

Lori Schulman: It might because I still – I guess I got the sense when he was talking in the CSG Meeting today that even anything that we would put in as a regime – as a certification even made by a third party may in fact be self-certification under a broader ICANN umbrella. That's what confused me.

Like who's being certified, ICANN or the actual people who are acquiring data or both?

Brian Winterfeldt: So I think what you might be conflating Lori is the discussion, when I asked the question specifically with ICANN about their access to Whois data because one of the things that's very important and this is sort of a – is a little bit of an esoteric point but it's separate from third parties having access to data. But rather this is about the ICANN org itself having access to Whois data because the ICANN org uses Whois data for some of the work that they do. For example the SSAC uses the Whois data for some of their ongoing work.

My understanding is even the Compliance Department is a domain name tool client. And that they use domain tools in some of their compliance work.

So I think what I was asking was, was there a plan because it's not in the interim model for ICANN org to continue to have access to Whois data.

And their answer was, we're planning on basically going into the certification or Accreditation Program just like every other third party and we'd be applying for accreditation for access to that data for the reasons that we would need it for. Is that where the confusion stem from Lori?

Lori Schulman: Exact the clarifications. Thank you.

Brian Winterfeldt: Does that make sense? Okay. Dean.

Dean Marks: Yes, Dean, sorry.

Brian Winterfeldt: Oh.

Dean Marks: Oh I'm so sorry.

Brian Winterfeldt: Mark and then Dean, sorry, then Greg. Yes.

Mark Trachtenberg: Mark Trachtenberg for the record. I of course support your push to get Göran or ICANN to provide more specific information on their contacts with this, DPAs or the Working Group.

But I think we need to clarify that we want that information prior to the interim model being finalized because it doesn't help us very much to get all that information or documentation to the extent there is any afterwards and we can't do anything about it.

Brian Winterfeldt: Thank you. Who is next in the queue?

Kiran Malancharuvil: Dean.

Brian Winterfeldt: Dean.

Dean Marks: Just confirmation Brian that I think ICANN org does have the same challenges in getting access to the Whois information and that they do not have automatic access to the full complement of the data.

And the confirmation from that was, I was at the Board Technical Working Group where they presented the DARR Report and John Crain presented it. And he was discussing about how kind of cumbersome it was to get access to the Whois data that they needed to do the DARR research.

And so just, you know, somebody like John Crain would know and it was confirmation. So I just wanted to present that to the group.

Brian Winterfeldt: Great, thank you. Greg.

Greg Shatan: Thanks. Following up on Lori's comment, I agree with what the self-certification, you know it kind of sounds like that they're rejecting, is an honor system sort of, you know, thing.

But I wonder whether they would accept a self-regulatory certification such as INTA certifying trademark practitioners or one of the, you know, the Anti-counterfeiting Group or so on and so forth.

And the clarification is Göran I think made some mention of WIPO and I see Brian Beckham has just entered the room. Made some mention of WIPO as possibly being – having either information or maybe they would be certifying IT practitioners. I don't know. Just something to throw out there, is it's something in between some sort of body that has to be created from scratch and the honor system.

Brian Winterfeldt: Thanks Greg. Patrick.

Patrick Charnley: So I think that that could work in terms of what's being referred to as self-certification plus or proper accreditation system. And the concern would be I think that while that would work in the longer term, the chances of getting bodies like WIPO or other third parties to put in place that self-accreditation by May is really unlikely to happen.

So what's most concerning is what's going to happen in the interim I think.

Brian Winterfeldt: Thank you Patrick. Anyone else in the queue that I'm missing?

Kiran Malancharuvil: Greg. Oh he already went. Mark's already went.

Brian Winterfeldt: Vicky.

Vicky Sheckler: I would like to add I think a question and I think it's going to be the GDD and (OCRUM) if it's not already in there. What – I forget what it was. Forgive me

but I heard in a meeting with the Board. But I took as an action item that we have the opportunity to suggest to at least JJ some questions he might want to raise when he had the discussions with Article 29 Group next week.

And I'd like to be able to raise that with the appropriate people that are going to be with us today.

Brian Winterfeldt: Great Vicky, thank you.

Vicky Sheckler: It would be to dig down in proportionality and to make sure that the question isn't just the – is this model sufficient but how, you know, can you consider what the data is and what data should be public and what is the proportionality requirement there in terms of the utilities have the data public versus the (party)'s interest that might be implicated by that and having a fulsome discussion on that.

Kiran Malancharuvil: Would it be okay if we just called on you to ask your question rather than me trying to capture that into the Google doc? Thank you.

Brian Winterfeldt: Thank you Vicky. Jamie and Bryan, you want to join us up here at the table? Heather.

Dean Marks: Yes, please.

Jamie Hedlund: Brian. And how are you?

Brian Winterfeldt: (Unintelligible) positions and systems. That's the winning seat next to Vicky. Looks like you got the short straw Jamie.

((Crosstalk))

Brian Winterfeldt: That's true, you're between two Brian's, that's the best…

Jamie Hedlund: Yes.

Brian Winterfeldt: Best of all worlds.

Jamie Hedlund: I think I'm in the wrong room.

Brian Winterfeldt: Great, gentlemen. Thank you so much for joining us today. I want to welcome Jamie Hedlund, Senior Vice President for Compliance and Consumer Safeguard. And Bryan Schilling, Consumer Safeguards Director.

We really appreciate having you here today. We have a number of questions that we would love to ask you. But we don't know if there's any opening statements or questions you have for us to get things started.

Jamie Hedlund: Just thanks for having us and look forward to the dialogue.

Brian Winterfeldt: Great, thank you so much. I'd like to open it up for any questions.

Jamie Hedlund: If there are none we can...

Kiran Malancharuvil: Yes, we have some.

Brian Winterfeldt: We will – yes, we have a long list. Bradley, please go ahead.

Bradley Silver: Hi Jamie. So I wanted to know if you could give us any feedback, if there's been any progress or follow-up on the recommendations that the IPC Registry, Ad Hoc Working Group sent you guys last year. I know there was some which I guess, you know, might, you know, take a little time to implement.

But I think most of them if not all of them are still pretty relevant in terms of helping us understand what an actual complaint might look like and also getting some more granularity as to the kinds of complaints you're getting in

terms of, you know, the specific types of abuse and also those that aren't regarded as sufficient, you know, why they weren't sufficient.

Jamie Hedlund: Sure.

Bradley Silver: There's been a few things.

Jamie Hedlund: So we haven't done anything formally on that. And that's, you know, that's my bad. We should have followed more because those were – that was a really constructive list and I think were overtaken by events. I'm happy to take that back up and look at them individually.

Having said that, there are – some of the things that were on that list we have started to address. So one of them is on abuse complaints as I think Bryan will talk about in a little bit. We are in the midst of doing two things. One is trying to provide more transparency and looking how to provide more transparency around the complaints themselves and how we respond to them.

Bryan is also as he can explain looking – doing a sort of qualitative analysis of all the abuse complaints. And he's going to generate a paper which we will put out for public input to see, you know, how we should follow-up on that analysis.

And the last thing is that Maggie and her shop, she has increased the amount of transparency around reports including abuse complaints. There's a quarterly report, there's more granularity in the types of complaints that we've had. These were done in anticipation of the CCT Review Team recommendations but done before that Review Team even finished its work.

And so I'll end it at that. Bryan I don't know if you want to…

Bryan Schilling: Yes, thanks Jaime. To follow-up on Jamie's points, I did recently start a project of reviewing closed abuse complaints starting with going back to August of 2017 when the Compliance Team started putting more quantitative breakdown of abuse complaints that they were receiving into categories.

And in the five months that they've been reporting on a more granular level they received 353 abuse complaints or complaints that are alleging abuse that the complainant is marking as abusive activity.

And out of those 353 about 18 have been categorized as trademark or IP infringement, the others falling into other categories, ban phishing, regular fraud.

So in those five months we got about 5% of the abuse complaints that fall into that category.

So I'm starting to look at the details. Opening up each one of those complaints and really I don't have an agenda yet other than to see what other facts and details we can pull from it. And then provide to the community in a way that protects the integrity of the complaints process and private information and details about, you know, certain specifics in that regard.

So I welcome any thoughts or feedback on a strategy to look at these as well as any questions that you might have now that could help with my analysis of the details. Going back further (unintelligible).

Brian Winterfeldt: Dean and then – Lori and then Dean.

Lori Schulman: Lori Schulman for the record. Thank you Bryan and Jamie. For this analysis, I think it's very much needed. And you say you welcome feedback.

But I actually find it a little difficult to provide feedback without context. Do you have a grid you're using now? Do you have a framework you're using

now? You say you're looking at it but have you already started to sort data into certain kinds of buckets?

Have you – because I mean I could certainly think of things, you know, how many times a certain type of complaint has been launched, how many times it was filed in favor of one side or the other. I mean there's some basic analytics you can do on any pattern of decision making.

So if you had a grid that we could respond to that would be great. If you're asking us for a grid that's a project we could potentially take up in the IPC to help.

So either way it'd be nice to know how you would like us to react.

Bryan Schilling: Sure. At this point it's kind of an open investigation, a little bit of a don't know what you don't know yet.

But also looking at how the complaints come in. How are they potentially processed?

And one of the trends I've already started to see and if you look at the metrics the Compliance Team reports out is they tend to report out like I'm just kind of going from memory here so I might have the numbers wrong. But I think in August of 2017 it was 66 abuse complaints had been received and 42 had been closed very quickly with like in the first instance.

And what I've seen in some of that is within the complaints process the complaint needs to furnish evidence that they have, for example been in contact with the registrar's abuse complaints and then, you know, looking to see that this isn't the first place that a complaint comes to with ICANN. That they've at least attempted to address it with the registrar and often times that evidence isn't provided.

And what I've found initially is it's interesting that sometimes that is – that evidence is not being provided by what would be security related entities or law firms or other entities that would be more in this process of taking action.

So right now it's just a grid and a little bit. But if there are things that you would think you might see especially from an IPC perspective I would welcome that input.

And but right now, you know, just kind of generating an Excel spreadsheet that's looking at who is the complainant, what is the type of activity. Is the complainant an entity or an individual? Is it somebody who's a victim or somebody who's just complaining on something?

So these are some of the questions I'm looking at and but would welcome other thoughts in that regard.

Brian Winterfeldt: Great, thank you Bryan. Dean.

Dean Marks: Thank you Bryan and Brian. Dean Marks for the record, you were just speaking about in the timeline that you were looking at I think you said it was about 18 IPC related or IP related complaints.

And I was going to make a request if possible. I know from in my prior life when I was heading up content protection and antipiracy for MPAA I believe it was either in 2015 or 2016 we filed four complaints. And they were resolved in a way that we didn't think was satisfactory and we didn't really have much insight.

And we stopped really filing complaints because we thought it wasn't or a compliance request or what have you because we thought it was not a really good use of our time and resources.

It would help us if you were able to go back to look at those to sort of be able to analyze, you know, what happened with those, was certain inadequate information, was there more that should've been provided. Because I think at least as far as I know from at least my – the constituents from the Motion Picture Association I don't think we filed any in the last couple of years.

And so I'm thinking. I don't know if you have any input on that but because when we're talking about four more complaints if that would be possible for you to go back that far to look at them. I think that would be very useful for us. Thank you.

Bryan Schilling: Thanks Dean. I'm happy to go back further and we've talked about further. The thought was at least start with what we have quantified, also been respecting the confidentiality of the process.

So I don't intend to report out like who is the reporter's identity, what was the specific domain or who was the registrar. That being said, if an entity were to consent or say yes, please go back and look at those, we could do that and then see how we might be able to respond to that.

But definitely want to respect the integrity of the complaints process.

Brian Winterfeldt: Great, thank you. I'm sorry, I think you have remote question to read out.

Kiran Malancharuvil: Yes, thank you. Michael R. Graham has a question. Of the phishing and other misuse complaints I would presume a number rely on trademark misuse. Were these include in the 18 TM cases you cited?

Bryan Schilling: Could you just repeat the last part? I think I have it but concerning the 18.

Kiran Malancharuvil: Were these included in the 18 TM cases you cited.

Bryan Schilling: I don't know. The 18 is just based on the metrics that the Compliance Team has generated. So I might not have looked at those exact 18 yet over the past 5 months.

But I do think it's a fair point in some of the ones that I've noted. They might be categorized a certain way but yet if there are multiple types of abusive activity potentially occurring in that. So there might be additional higher metrics or looking at a complaint in multiple directions that could result in a different or multiple reading.

As you'll see if you look at the Compliance Team Incident Reports they have started doing that. It might be trademark and copyright infringement and fraud and malware. So if there are enough details in the complaint and they can mark it as such then it might have more than one type of abusive activity.

Brian Winterfeldt: Great, thank you. Vicky.

Vicky Sheckler: Thank you. I think you may have already answered my question. I've been told but I have not had a chance to investigate that we've gotten some inconsistent responses from compliance on certain issues. Again I haven't investigated so I don't know if it was a problem on our end or if we actually got inconsistent responses.

But I hope I'd be able follow with you and share that information. And I think you already said yes, that would you accept it.

Bryan Schilling: Yes.

Vicky Sheckler: Thank you so much.

Brian Winterfeldt: Great, thank you. David Taylor.

David Taylor: Thanks Brian, David Taylor for the record, hi Jamie, hi Bryan.   On the CCT Review Team which you mentioned before domain of abuse is certainly one of the most significant areas we've looked at and probably one way we're getting the most significant conclusions out hopefully. And we've sort of identified that there's the abuse in certain TLDs and certain registrars. And this is more sort of a concentrating effort should we say.

And there's only been a discussion with ICANN over many years about whether compliance has the powers to do what we want it to do and, you know, it's geared up and you in this role, etcetera. So I mean that's all good. We've seen a lot of positive things on that.

And one of the things we proposed in the infamous now I should call it, Recommendation D, is this DADRP, the data RP as I call it and that's the Domain Abuse DRP for going after the bad actors. It's something obviously which I'm quite partial to because hence why I proposed it. It's very much based. There's no magic to it. It's very much based on the PDDRP which is one thing we look at on the (IRT) back for trademarks and thought can we think of another way of keeping these letters all together and confuse everybody. That seemed the best way.

But, you know, the PDDRP is there. It was set up and it was at the time it was something to help ICANN Compliance to help ICANN as another means, another bow.

And there was certainly back in 2009 when I had all those discussions, that it was welcomed as it might be something which would be useful.

So that's where this one is being designed for that and it's been supported by IPC and INTA. And some sort of questioning from other areas. But I think it's sort of a five to four in the comments. It might be the one recommendation that isn't unanimous recommendation. We may a majority, minority, etcetera.

But I'm, you know, going into the detail on that. But really what I want to know from you is what's your thoughts of it? Because as I say, is it something which you're generally welcome as another means of going after the bad actors if you can't go after them for whatever reason. You may not have the terms, you know, RAA or whatever like that. But it's another means because we all want to get the bad actors down.

And I must admit sometimes when we have the discussions not with you but on CCT Review or anything like that where people are saying no we don't want this, I struggle to see why we don't want something which goes after the DNS abuse where it's clearly bad and we want to get it taken out but we can't. And people seem to like somehow it's staying there.

So really just to get your feeling back on that.

Jamie Hedlund: Sure. So full – this is Jamie. Full disclosure, I'm also on the CCT Review Team because the CEO really liked me and decided that I'd be good for it.

Anyway, there's – and in the discussion on – in the CCTRT on this DADRP, I have abstained because it goes to a potential accountability process. And it just didn't seem appropriate for ICANN Staff. You know and I am also a member to weigh-in on it.

And so I guess, you know, if the community thinks that this is something, you know, that we should have and that would add an extra measure and, you know, we need them against abuse and would be an effective one then I'm – you know we're all for it. And we would administer it and all the rest.

There are two things though, right. There's the investigatory method whether it's compliance or this thing. And then there are the contractual provisions that apply.

And the CCTRT made some creative recommendations on revising the contractual provisions. My personal view and this is only just a personal view is that some of those would probably go farther than a new mechanism alone. Both of them together might be, you know, might be terrific.

But, you know, we still are stuck with the contracts that we have to enforce. And that would be true whether it's us or an Independent Review Panel.

David Taylor: Yes, thanks Jamie. And certainly good point and I think the recommendations which are in there about the, you know, the (RAA) and changing that may well go further and be better. And that I'd fully agree with.

I think where it comes and it comes from almost back to GDPR here where we can talk about an interim model, in a way the DADRP could be something which is implemented quickly and is there in the meantime.

And then something which we then decide to abandon if it doesn't work, all of the contractual provisions are changed. But, you know, it's something which is not going to happen tomorrow or the year after. And if we end up changing these sort of things in three or four years' time, to leave three or four years of abuse just seems to me to be unaccepted so.

Brian Winterfeldt: Great, thank you so much. Quick question that I have, one of the ones we had put together before the meeting. GDPR as you know is the topic. And what? You know I know you're unfamiliar with it.

So one of the things we wanted to ask you about and we talked about this in private discussions but I wanted to talk about it a little bit as a group. You know we are very concerned once the interim model is put out by ICANN and adopted about the contracted parties actually following it.

In our discussions as I mentioned to you previously, the contracted parties indicated that they felt it was potentially optional. And that they might be

picking and choosing. And we've also seen other activities like contracted parties where they have decided to, you know, mask data elements or do things that, yes, yes, I know you just talked about that as well. And also, you know, have arbitrarily, you know, decided creating levels and things like that.

So we are very concerned about compliance and this new era that we're moving into. And so we would love to hear from you about what the thoughts are so far with ICANN for compliance. Will it be your department that'll be responsible for determining whether people are compliant and enforcing and what that might look like?

Jamie Hedlund: Sure. So thanks for the question. Obviously I don't know what the interim model is going to look like. But my understanding is that whatever it looks like it is going to be just like the contract and it's going to be somehow incorporated into the contract.

And like all the other, like everything else in the contract there – it has provisions that will be enforced. There – and, you know, there's not an optional model as far as we – I mean that's just not something that's being planned for. I think what would be helpful in reaffirming that is getting input from DPAs which will solidify the model and make it even more clear that there are no optional elements. That and compliance will enforce that just like we enforce the existing. And don't make any smart ass remarks. Likely any other provisions of the contracts.

Brian Winterfeldt: Thank you so much. And (unintelligible) comments, I'm going to call on Marc Trachtenberg.

Marc Trachtenberg: So you mentioned - I'm Marc Trachtenberg for the record. You mentioned that you would enforce provisions of the interim solution in the same way you would enforce any other obligations in the contract. And so this kind of goes to the heart of one of our questions which is how is this interim solution going to be implemented.

And so are you - is it your understanding that the interim solution will be in the form of changes to the existing contracts? And if so, on what basis would those changes be made?

Jamie Hedlund: Sure. So my understanding is that the decision -- how it gets implemented -- is not yet decided. There are three obvious options; one is a waiver form, one is a temporary specification, and another is - I'm actually, you know, doing amendments to the contracts. It seems like the latter is -- the last of those three -- is not really feasible given the time constraints, so it's going to be one of the two.

And whether it's, you know, whether it's some sort of waiver structure or a temporary specification, it will -- from a compliance perspective -- the impact will be the same.

Marc Trachtenberg: I mean as a practical matter, it seems that it really couldn't be a waiver because there would be affirmative obligations on the parties.

Jamie Hedlund: Again, you know, the powers that be are still discussing that and getting input from the community on that. I don't know what it's going to look like at the end.

Brian Winterfeldt: Thank you. Any other questions? Paul and then Greg.

Paul McGrady: So on the compliance issue, we've heard different things on this and I don't - you may just say, "We don't know yet," and that's a perfectly fine answer.

But is the failure of a contracted party to adopt the interim model in and of itself a contractual violation, or is there universe of other options out there that a contracted party could adopt, and from their point of view, be perfectly fine in compliance with GDPR and would not cause a compliance incident from my standpoint.

In other words, is it per se violation to not take whatever it is you guys are suggesting? Thanks.

Jamie Hedlund: So the way we are in compliance or planning it is that the interim final compliance model will have a number of elements and contracted parties will have to comply with all of those elements. If you don't comply with a single element, you are as likely to get a compliance action against you as if you don't comply with any of it.

So I don't know if that answers your questions, but it is not a menu -- the way the things are being planned out. It's not a menu from which they can select which ones they're going to comply with and which ones they're going to come up with some different approach. They need to comply with all the elements of the model.

Paul McGrady: Thank you.

Brian Winterfeldt: Greg?

Greg Shatan: Thanks. This is a variation on Paul's question. If they wanted to be closer to the current WHOIS model, if they felt that there were things that the law didn't require them to do, they wanted to be in essence what I'll call less-over compliant, would that also be a compliance violation? Is it a floor or is it an exact spec that they can either be more protective or less protective?

Clearly we don't want them going, you know, making WHOIS say entirely (unintelligible). But could they say just we don't want this new one, we'll keep going the way we were?

Jamie Hedlund: So again, we still don't know what it's going to look like. But I think your question goes to the applicability to the model and whether it applies just in

Europe or within the jurisdiction of where the GDPR would application or does it apply more broadly.

The model we're developing has at its basis -- or it's most basic level -- complying with the GDPR. If someone goes beyond that and the registrant and the registrar are, you know, all outside of EU jurisdiction and they comply with the existing WHOIS, then, I mean, I think generally that should be fine. The way the model is currently set is that contracted parties will have the option of applying the model only when they have to under the GDPR or globally.

So if you're not applying it globally, then you'd be able to, you know, presumably you would be able to comply with WHOIS as it is right now.

Greg Shatan: Just a quick follow-up. Let's say they are in the EU and they get advice that's less restrictive from their counsel. Could they have a less restrictive version of WHOIS?

Jamie Hedlund: You know, this is just me and I'm not, you know, in the general counsel's office, but I don't think so because we also have to comply with the GDPR. And what we are trying to create is something that is compliance with the GDPR as it applies to, you know, the areas where the GDPR applies.

Brian Winterfeldt: Great. Well I think we are actually out of time. I want to thank Jamie and Bryan for joining us today; really appreciate it. And look forward to continuing our dialogue and working with you.

Jamie Hedlund: All right, thanks a lot.

Bryan Schilling: Thanks so much.

Brian Winterfeldt: So our next guest is not here yet, so I think we'll just take a two minute break and hopefully Akram will be here in a moment. Akram has been located and will be joining us shortly. Thank you for your patience.

All right everyone, we're going to get started. Our esteemed guest Akram Atallah has joined us.

Akram Atallah: Sorry about keeping you waiting.

Brian Winterfeldt: No problem.

((Crosstalk))

Brian Winterfeldt: All right everyone, please take your seats. We're going to get started. We have a very tight schedule. We have another guest coming after Akram so we're going to lose our time.

Vicky Sheckler: This is Vicky Sheckler. Please sit down. Let's get going. Thank you.

Brian Winterfeldt: Okay you don't have to sit down but please stop talking. Thank you so much; appreciate it. Wow, tough crowd.

Akram, thank you so much for joining us today. We really appreciate it. We are going to jump right in with questions because we know you're on a tight schedule and we're time limited as well.

The first question we're going to ask is related to everyone's favorite topic -- GDPR. We, to be fair, asked the same question of Jamie and Bryan who were here prior to you, so it's sort of like there's a U.S. game where you ask questions and then you can pair the answers and see if they match up with your friends.

So one of the things that we're very concerned about going into our compliance, obviously we're trying to move the needle on the interim model that's adopted by ICANN. We're obviously very concerned also about having an accreditation program that functions when the compliance model is implemented so that data doesn't go dark.

But one of the things that we've heard is that there are potentially contracted parties who see the compliance model as a suggestion rather than something that they are obligated to maintain. And they told us that they have their own attorneys who are giving them their own advice and that they're going to sort of make their own decisions. That's one reason.

Another reason is they have all sort of coding that they need to do, and you heard probably all about this from their side that it takes months and months and months to implement coding changes. So even though you might tell them in a week or two what the interim model is going to be, there's no way they can implement it fast enough by May 25.

So with that sort of background, you can imagine we're already, you know, have serious concerns as you've seen in our comments we've submitted with the IPC and the BC on the interim model. We're not huge fans as far as feeling like there is potentially over-compliance.

But we do want to make sure whatever is ultimately rolled out is actually complied with. So we'd love to hear what ICANN's plan is and who is going to have responsibility for making sure that the contracts and the interim model are enforced within the organization.

Akram Atallah: Thank you Brian. That's a loaded question.

So as you know, we don't have actually a contractual plan already put in place. And so that's an issue that we gradually will.

But we are expecting that we will hear back from the DPAs on the current model and hoping that we will have at least some sign of you're on the right track, keep implementing or we don't like this or have you considered that -- some kind of a guidance to the current model.

In our conversations with them, we've articulated that basically, our contractual mechanisms do not allow us to force somebody to be not compliant with local law. And everybody understands that if unless your registrar views that situation that does not allow them to comply with local law, then the contract can't force them to that. And that's the issue that's in question, I guess, from your perspective is can we force them to comply with our rules.

If we get guidance from the DPAs that says, "Yes you're on the right track, this model will work," then absolutely. We can actually force the compliance.

If we don't get that clarity, then they will not get that clarity either and it then will become very hard for us to even ask them to all do implement one model. And so it's going to be very difficult.

We've articulated that to the DPA and they've actually did not push back. They understand that and they've appointed us to some of their DPAs having said previously that their goal is not to go and on Day 1 start enforcing the GDPR especially on organizations that have an implementation plan and they're meeting their schedule and they're going there.

And actually, one of the French DPA's statements were to accompany organizations in their journey to become compliant and not to actually enforce the compliance.

So if - our hope is that you will get some feedback from the DPAs that will guide us to an interim model that will work. Once that interim model will work, we will put the plan of implementation together and we will share it with them

as well. And hopefully we will get their approval over there -- agreement -- that we are on the right track and if we implement that we will be okay.

Now there is no guarantee to all of these things, but we've built a paper trail, I think, with the DPAs, engaging with them and everything so that we can defer to that, that we've done everything in good will to be compliance, and therefore will be okay. So that's really the approach that we're taking right now.

Brian Winterfeldt: Thank you so much. Anyone have any questions for Akram?

Vicky Sheckler: I do.

Brian Winterfeldt: Vicky, go ahead.

Vicky Sheckler: Hi Akram. Thank you so much for coming. Excuse me.

We heard from, you know, (J. Jaeger), General Counsel, earlier today that I think you're meeting again with (unintelligible) working party -- or some members of that party -- the week of March 26. And if I remember properly, we heard that within the cookbook, you've highlighted the areas of disagreement within the community.

We'd like to ask -- as I think you may have heard in some of the earlier discussions -- for ICANN, you know, to ask the questions about what is proportionality and what does Article 29 Working Group think about balancing the interest of the public in consumer safety, you know, enforcement, cyber security, blah, blah, blah, and having the registrant email public versus the limited impact that having a registrant email public might have on an individual registrant.

It would be great if you could comment on that and your ability to raise those questions with the DPA.

Akram Atallah: Yes and I think that John Jeffrey already mentioned that he will take the information that he got from that session and we will include it into the document that we will be discussing with the DPA. So I'm sure that - I'll make sure that we're all on the same page and we will bring that up as well.

I think it's important to realize that we are like - we got to a comfortable position is probably too much to say. But we put a model that we think is supportable. There are some points that are still debated. But I think that we've settled a lot of points that if you look back, you know, even eight months ago, we had no agreement on. So we've moved the ball quite far on getting a model that is implementable.

Now the issues that we are debating are a few -- a handful I would say. But we are very close to getting that. And if we get the DPA to give us a nod or give us a few questions or a few hints on where we should be going, I think we'll be in good shape.

And I understand that from the DPA's perspective, the more you go dark the better off it is. So for you, you're question of doing less is not going to be on their concern and we understand your point of view that we should ask them would that still - if they say it's okay, is showing the email address still okay. And we plan to do that so that's a given.

Vicky Sheckler: Thank you so much for that confirmation. We really appreciate it.

Brian Winterfeldt: Marc? And then we also have one question from Steve Metalitz so we need to be very quick because our next guests are already on their way.

Marc Trachtenberg: Fortunately I always speak quickly. Hey Akram, Mark Trachtenberg for the record.

You know, you were talking about, you know, we and we're going to go to the DPAs and we're talking to them. In your view, who is making the ultimate decision on what the interim model will be? Is it staff, basically (unintelligible), or is it the Board?

Akram Atallah: So I think that the way things will unfold is we will get the answers from the DPAs and then we will share that -- whatever we get -- in public, and we've been posting everything transparently.

I think like everything we do, if we get - once we finalize the model, we have to decide on an approach. So one of the approaches would be a waiver, or another approach would be a temporary spec -- a temporary spec policy. And either one would probably require the Board's approval. So we will share with the Board the rationale and all of that and the Board will probably make the final decision for sure.

Marc Trachtenberg: Thank you. Just one follow-up which is how would it be in the form of a waiver if there's affirmative obligations on the registrars or contracted parties?

Akram Atallah: So the waiver, we believe that's an easier and more better tool for compliance later on to have a temporary policy than actually a temporary spec than actually to have a waiver.

But the waiver would be a compliance waiver, so basically that if you follow this, we would not - because the contract is there. So it would be - if you follow this then we would not follow enforce compliance.

Brian Winterfeldt: Thank you very much. Andrea, do you want to read Steve's question for us?

Andrea Glandon: Thank you from Steve Metalitz. Akram, can you point us to the previous statements that DPA has appointed you to regarding limitations on enforcement on the GDPR on Day 1?

Akram Atallah: I actually just forwarded the email to Steve Metalitz - not Steve Metalitz; Steve DelBianco. So I'll forward it to Steve Metalitz as well. It's in French, but I'll highlight a couple of sentences that the DPA mentioned.

Vicky Sheckler: Send it to Flip. Flip can translate it for the IPC list.

Flip Petillion: I would be happy too. Akram, just a question. Is there a list of DPAs you're talking too? And if not, how do you choose a DPA that you want to talk too?

Akram Atallah: So we are trying to talk to the Article 29 Group; not to individual DPAs. And depending on what time the call is scheduled, we get different DPAs to talk to us.

                   The last call I was on we had the French DPA and we had - I don't want to misspeak but we can get you the DPAs that we've already engaged with. In Brussels, we talked to another set of DPAs. Let me not talk from memory. I'll get you a list of DPAs that we've engaged with.

                   But the idea is we're talking with the Article 29 and they have some DPAs to talk to us. The Brussels DPA is also engaged in that as well so (unintelligible) DPA.

Brian Winterfeldt: Great. Any other questions for Akram?

                   Since we have a few minutes since Theresa is not here yet, I wanted to ask you a question. I know that we have been discussing our concerns about not having an accreditation model in place. I know there's been a request made of the GAC to assist with potentially codes of conduct that could feed into the accreditation work.

                   There is a draft accreditation model that's being put together by parts of the IPC and other folks that I think will be published shortly, so we are trying to push that work forward.

Is there any way to get more ICANN support for that or is there any way to put some structure around it so that we can actually have something in place and make sure it's in place at the same time as the model is put out?

Akram Atallah: Yes, sure. We can - I'm sure Teresa would be very helpful in helping put this together and engaging with everybody.

We look at this in two parts; one is how do you qualify and accredit and who do you qualify and accredit, and what are the rules and all of this. And then what is a system that's going to actually be put in place for getting to the data at the second tier.

And we're working on the technical part. Right now, we started just working on the technical part. We have been working on an implementation of a protocol called (RDAP) that we had another seat from the IETF that said we should move to that. And contractually, all the contracted parties need to implement this.

So there is a pilot going on. And this implementation actually allows for the tiering of data, so if everybody implements, technically, we're all ready to implement tiering on WHOIS. But it's going to take some time to have everybody implement the same model.

So on the technical side, we've already had some work done. On the other side, we haven't started but I think that now, after what we've heard from the community, it's probably the right time to start flushing these issues out. So we will work on that to do in the coming weeks. Thanks.

Brian Winterfeldt: Great. Thank you so much Akram. We really appreciate your time and appreciate you joining us today and look forward to continuing our discussions with you. Thank you.

Akram Atallah: Thank you.

((Crosstalk))

Brian Winterfeldt: All right, now we are welcoming our next guest. We have Theresa Swinehart and John Jeffrey joining us.

((Crosstalk))

Brian Winterfeldt: Thank you so much for joining us today. I know we have a number of questions for you, but we're not sure if you'd like to start with any statements of questions for us before we begin, or would you like to…

John Jeffrey: Just go at it.

Brian Winterfeldt: You want to dive in?

Theresa Swinehart: Just to let you know, we're a little bit short on time. I think, (Mary), you have been kind enough to flag it, but we wanted to make sure to have the chance to meet with you.

Brian Winterfeldt: Sure, thank you so much. What time do you have to leave just so we can keep track of time?

Theresa Swinehart: Well it's close to the top of the hour, and shortly after that is possible. So we need to be also in the GAC for a discussion.

John Jeffrey: We just don't want to miss the discussion between the Board and the accreditation model discussion with the GAC. So that's why we're going to have to leave. I apologize.

Brian Winterfeldt: Perfect. Would anyone like to ask or start with the first question?

John Jeffrey: And then of course the other thing to add is we have an hour tomorrow in Ballroom A also that we're going to do from 9:30 to 10:30 where you can also ask additional questions.

Brian Winterfeldt: Fantastic, thank you. Kiran, go ahead.

Kiran Malancharuvil: Thank you for being here Theresa and J.J. The community updates regarding GDPR are infrequent and often incomplete, and in my opinion, fail the ICANN standards for accountability and transparency.

For example, we have no visibility into the content or the people involved in the meetings with the DPAs and Article 29 and European authorities. We have no notice of or ability to participate in these meetings.

There are calls with the community leadership while useful to communicate the views of individual constituency and stakeholder groups, they are not transparent. For example, you have it with the IPC and Brian is kind enough to let his constituency know what happened, but we don't have any visibility as to what is happening with the community discussions with other stakeholder groups and constituencies.

Can you speak to that and let us know what is being done to remedy that?

Theresa Swinehart: Sure, I can start out. So there's been multiple community discussions and obviously requests for community discussions. And so what we were trying to do -- given how rapidly much of this is moving and also the opportunity for discussions such as this one or with the business constituency or with other groups -- is to be as transparent as possible both with those that have requested Adobe Rooms and various other things. So Brian, I know that's occurred here. But also, with the regular update of blogs and information to get that out to everybody.

So given the rapid movement of these activities and multiple different moving parts, we found that providing an update with the blog as often as possible and also posting all the correspondence that we get, and then when we get requests to be supporting community discussions, also to be posting those. Hopefully that is hopeful given how quickly this is all moving.

John Jeffrey: And I'll just add on the DPA discussions, there have been two discussions; one was a face-to-face discussion, one was a telephone call. There have also been communications between our government affairs person in Brussels with various DPAs, no formal discussion has occurred.

And so I wish we could provide more information or that these would be formal notices or meetings in some way. But this is a little bit of a process where we're trying to engage in the best way that we possibly can in order to further the interest of the entire community. And we realize the problems with that, and I'd like another year to start over with all the attention we have on it not as opposed to what we were facing before.

So I think we've come a long way in terms of educating the DPAs about what ICANN is and what the space is. You also have done so too. And now we're at a different point where that engagement is at a different level where we hope it can provide some benefit and we can avoid having fragmented WHOIS when we get to May.

Brian Winterfeldt: Thank you. Additional questions? Steve.

Steve Metalitz: Thanks so much. Would you be able to comment on particularly on the third installment of the Hamilton Legal Advice that ICANN secured? And some of that Hamilton Advice, for example, said that they felt that maintaining the domain name registrant's name and physical address might be compliant with the GDPR and maintaining it in a publically available WHOIS, whether that legal advice has been presented to the DPA's Article 29 and whether either you're seeking or they plan to give any reaction to that? Thanks.

John Jeffrey: Yes. So all of the documents that we have that have been publically posted with the links to those and references to those have been provided to any of the DPAs that are willing to look at them. And we've submitted them around as part of the dialogue that they could read about ICANN.

I don't have a comment on that position. That was an independent legal position. We wanted to publish it as was. We didn't go in and argue points on it or accept or unaccept it. It was advice that was taken from community questions. And part of that was creating a good dialogue about that and making sure that we had that sort of documentation.

In terms of the model that we sent them with the cookbook that we sent them on Friday, an important thing to realize is that Section 2 of that is competing community views about the elements to propose to interim model. We wanted to do that in part because you asked us to in discussions that we were having with the community. We were asked, "Can you show where there are divergent views in the community? We know you are looking at this part of the model and thinking that this might be a good way to go based on the legal advice we had received, but we see that there could be some differences."

So we posed those questions very formally to the DPAs and we said to them before we sent that that we were going to do that and that we wanted them to consider those divergent views and help us to find the right path.

And I think - I know there's been a lot of dialogue today in some other meetings about does that mean, you know, they're never going to go past where you asked them. I don't think that's the kind of dialogue we're looking for, and we intend to continue to pursue the divergent path to try to get clarification of whether we can take either of those paths or whether we're limited to one.

Steve Metalitz: Thank you very much. I find that really helpful. Thanks for the clarification.

Brian Winterfeldt: I would love -- respecting that we're almost out of time -- I would love to ask you about the accreditation piece, and that's something I think you maybe overheard at the end with Akram, and he actually said that Theresa is coming next and she'd be a great person to ask, and John, you might have input as well.

You know, we are obviously very anxious about the fact that the calzone is sort of on the way to the oven and the accreditation piece is still in the kitchen, or a little nervous about having obviously an accreditation system that works for intellectual property owners and law enforcement and businesses.

Is there anything that we can do to work with you to put some kind of structure together so that we can make sure an interim model doesn't roll out without an accreditation process that we at least think will be acceptable to DPAs and contracted parties?

John Jeffrey: Do you want to start?

Theresa Swinehart: Sure I can start. The conversations here are exactly the kind of conversations we need to be having. In addition, if there's any specific ideas to send that in to the GDPR email address as well. And as we've mentioned, obviously, we anticipate this conversation to come up in the GAC for a discussion this afternoon.

This is actually where we need to be in the iterations in order to refine the discussions around that. And I'll let John add to this.

John Jeffrey: And we understand this is the hard thing to do still no matter where the models go. The accreditation piece is a critical element of that and we've been very clear about that with all of our discussions with anyone. That it's going to be very hard to have an accreditation model in place by May.

So one of the questions that we're asking is what happens then. Can we continue to have public WHOIS as it is, or is there some limits to that that we'll be permitted to present on that day if the accreditation models aren't in place? That's a critical element.

And I can tell you in my dialogue in the second conversation that we had we were very clear. It's a very important thing to ICANN, it's a very important thing to its community that we have clarity around what will happen in May, and that we do not want a fragmented WHOIS to where you wouldn't be able to access information that's critical to you.

Brian Winterfeldt: Great, thank you. I think you know that there is some work that's ongoing and we're hoping to publish some members of the IPC and other people have put together -- an accreditation model that's hoping to be published as soon as this evening. And we would look forward to the opportunity to work with you to try and figure out if there isn't something we can do to try and put some structure around that works so that we can maybe get different community members together -- an idea that was floated earlier today with Goran when he met with the CSG.

And I think that it might be really helpful and provide a lot of comfort, obviously. Like you mentioned, there's very strong public interest in making sure that that accreditation program is in place. And if we could work together to put a structure, I think it would be very helpful.

Susan, I think it will be the last quick question.

Susan Payne: Thank you very much; Susan Payne.

You've mentioned a couple of times this session that you're having with the GAC about the accreditation model. So those of us who are prepped in…

John Jeffrey: That's not quick correct. Can I correct that for the record?

Susan Payne: Yes.

John Jeffrey: So the GAC and the Board do their regular meeting like all the other community groups do. That meeting is coming up. There is not a specific meeting about the accreditation model but I assumed a question inside of that is going to be about the accreditation model. And that's why we don't want to be late to that because we don't want to miss the critical question. We want to make sure that it's answered well by the Board and that we're helpful them.

Susan Payne: Thank you. That answers it because I just wanted us to be able to find the recording of this session if we're not in there in person.

Brian Winterfeldt: Great. They've converted it to a public session.

                   Thank you so much. We really appreciate Theresa and John; we really appreciate you being here today. We look forward to continuing GDPR and other discussions and wish you luck with the GAC meeting.

John Jeffrey: And we look forward to your input on the accreditation model. Thank you so much.

Brian Winterfeldt: It's our pleasure. Thank you so much.

                   All right, we are actually going to take a short tea or coffee break for about 15 minutes. I'd like everyone to be back, if you can, by 5:20. We'll be starting our finance discussion with Xavier Calvez after our break. Thank you.

                   END