
ICANN85 Mumbai | CF – GNSO: NCSG Policy Committee Work Session (2 of 2)
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ANDREA GLANDON

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RAFIK DAMAK

Thanks, Andrea, and thanks, everyone, for joining us. So, this is our second session of the day and it will be, it's a Policy Committee session, but of course it's open to everyone, to all our members. And I think if you can share maybe the agenda and then I will, yeah. But yeah, I mean basically this is our second session and we try to cover for some of our interaction that will be for the Board since

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they asked us some questions and we sent them a set of questions so we should prepare for that meeting that will happen tomorrow. And also, I believe it's GNSO Council Agenda Review. Yeah, so we have, oh sorry, we have UDRP Independent Study and then Community Engagement I do believe because we have guests from ICANN; is it correct?

FARZANEH BADIEI

Yes.

RAFIK DAMAK

Yeah, okay. I think we can start and over to you Farzana.

FARZANEH BADIEI

Yeah, thank you. Hi, everyone. We are going to go quickly through the Board preparation. We are trying to be a little bit more creative.

So, next slide please, Andrea. Thank you. So, we are going to talk about the RDRS and Law Enforcement Authentication. We are going to talk specifically about their resolution in October which we sent a letter about and they gave us a response. But in this one I am suggesting that we do a live Human Rights Impact Assessment of their resolution and I will put the Google Doc in chat as well.

And I have shared it with the mailing list and we are going go through that and you tell me if this is a good idea and then we can talk to them about it. Then we are just going to talk about RIR governance and multi-stakeholder resilience which is not a

question as such that it can be a part of the conversation of their question on strategy and what are we prioritizing.

And we need to also focus on their questions. Their questions are like two which is like one is about this what is our strategy, what are we prioritizing and the other one is Review of Review which I think we can just give them a bunch of principles that we have.

And then we hopefully wrap up and then go to the UDRP independent study framing and our position because I have explained this before. I am going to explain it when we start it and then we talk to ICANN staff. This is a 90-minute meeting, isn't it, Andrea?

ANDREA GLANDON

Correct.

FARZANEH BADIEI

Yeah, this is perfect. I was really, really worried that we don't have time to talk about everything. So the timeline changes quite a bit then we talk about like the UDRP and then we have community engagement with Elena. Elena is ICANN Org actually. So, she's the Vice President for Government Affairs and they did a Public Comment to the EU which we want to go through, we want to understand their process and they also like explain what they do about DNS Abuse, what the community does about the DNS Abuse in the Public Comment.

But you know we want to tell them about our projects, what we do so that in the next iteration of their Public Comment to these consultations they also mention what we do.

You know I mentioned Human Rights in DNS Ops. Okay, so let's go to the next slide. So, this meeting is going to be tomorrow. Okay, what do we want from these Board bilaterals? We don't want just like conversation and then we are done with and then we go and then the next meeting we just sit down for another hour of conversations and see that none of our points are reflected anywhere in their work.

So, maybe we can advocate for some kind of like a standing approach to Human Rights respecting resolutions when matters engage registrant rights and end-user rights. And also like they keep like there are these things that efficiency and effectiveness, Human Rights commitments don't necessarily slow down operational work. They strengthen it by having accountable mechanisms from the outset. And then we will confirm the running order of the speakers for the three questions. And then we talk about their questions as well.

Okay, so let's go to the next slide. All right, so we are going to show them and we are going to send them an amended resolution that we suggest what sort of changes they can make in the resolution next time and what they should consider. And I'm putting this in the chat. And Andrea, if we could go, so the key message is that this is a template. It's not an exception. They can go through our

Human Rights template and they can think about, okay, does this resolution, does our rationale have Human Rights impact?

Okay, so next slide. Oh, okay, sorry. The previous one, it's okay. Okay. So, if you go to the Google Doc, we can see that. Okay. So, I'm glad that some of you are there. So, oh, we can actually put it up. Great. So, we can go through this. So, when the Board adopted this resolution, we want to show what sorts of rights are potentially engaged with this resolution. RDRS facilitates requests for non-public registration data.

So, what is potentially engaged? Privacy and data protection, freedom of expression, due process. So, and then we do an analysis of the rationale for them. So, the rationale that the Board provided in its resolution about continuity of access, registrar participation, system improvements, authentication, and kinds of fee structures, these are all other community members' concerns.

Access, registrar participation, system improvement. It does not reflect the NCSG and others' concern that we have said multiple times transparency and aggregate reporting, safeguards against misuse, proportionality. And when we come to their rationale, their rationale identifies benefits under a community impact, such as continuous access for requesters, progress on law enforcement validation, system integration, and user experience enhancement.

This means that they want the user, and who's the user? The requester is usually the intellectual property and law enforcement. So, it does not assess when they discuss their community impacts.

It does not assess the impact on registrant whose personal data may be requested, privacy and expression implications associated with increased or streamlined access.

And then the Board directs the CEO to encourage continued comprehensive RDRS usage. So, this is like one part of the community request. So, they are not shy from promoting one part of community requests, but they do not promote that, they do not say that RDRS does not create an entitlement to disclosure.

The requesters must use the system responsibly. It never says, like, encourage continued comprehensive responsible usage of the system. And it doesn't mention that registrars, that this kind of like access, this kind of data request system does not oblige the registrar to right away give the data. It should be in accordance with applicable law and fundamental rights balancing.

So, you see one part of the community, their interests and their requests are covered in this resolution, but whatever we have been saying throughout these years is just not reflected. And Human Rights assessment of outreach, I'm not going to go through it.

If we could go down a little bit, Andrea. So, overall Human Rights profile of this resolution, the rights are not reflected, community impact framing is access-oriented, registrants are excluded, outreach balance is without safeguard messaging, authentication conditioning, no transparency or oversight requirement, no

mandatory disclosure, a preserved structured request mechanism only and policy alignment window.

And so, now, forward-looking recommendations. So, we want to say that please reflect the full diversity of community concerns in the rationale in your resolution, include transparency and rights consideration, include balanced community impact analysis, recognizing registrants and end users as affected stakeholders, peer encouragement of usage with explicit acknowledgement that the RDRS does not create entitlement to disclosure, requests must be handled lawfully and proportionally, registrars retain independent assessment obligations, and condition authentication, maybe this obligation is not, okay. And frame outreach efforts in a manner that promotes responsible use and not merely increased use.

So, I went on and on about this. But this is, I think, how we should go over it, not to this length. So, I think that maybe we just go through overall Human Rights risk profile and give them a little bit of background and then tell them that the overall Human Rights risk profile of your resolution is this, and then recommend that they should reflect the full diversity of community concerns and stuff like that. So, now, maybe we can take questions for like a few minutes and read. Yes, go ahead.

ANDREA GLANDON

Stephanie Perrin has a question in the chat. Would you like me to read it?

FARZANEH BADIEI

I will read it. Did we mention in the Human Rights assessment something about the impact of fraudulent misrepresentation of a law enforcement agent on the end user?

We get so many scams from fraud. So, the danger of that is a real concern. We've been raising it, Stephanie, in different, even, especially in the practitioners group. The problem is that they are going to say, oh, no, but that's what the community should do and stuff like that. But I think that, like, if they want to go and promote the use of RDRS, they should at least say, we are promoting responsible use of RDRS.

RDRS is the system that triages the request. So, I think that, Stephanie, like your point, we can put it in our assessment and say that, because there can be fraudulent ones as well, we need you to say, promote it and encourage it, encourage a responsible use. And that's about it.

I just wanted to get your opinion on what do you think about this approach? Do you think we should take it? Like, rather than just doing a question, show them also, because if you remember a few meetings ago, Tripti said that, show us how to do Human Rights impact assessment. And we showed them. And also, like, we can

also, show them that community, like, they do not consider our voice while they consider others. Go ahead, Rafik.

RAFIK DAMAK

Thanks, Farzaneh. Just as more about logistics here. So, we have one hour. How long do you think we should take for this one? 20 minutes?

FARZANEH BADIEI

I'm thinking that, because they also have like two questions. And then we have three questions. So, I'm thinking that we just briefly, like if you agree, then we can just condense this and take like 10 minutes and tell them that and show them, like, the places that in the community impact of their rationale, they didn't consider at all our concerns. And just cover forward-looking recommendations and then send this to them after our meeting.

RAFIK DAMAK

Okay, yeah, I was going to say that we send that works, yeah. Thanks.

FARZANEH BADIEI

Okay, great. Kathy?

KATHY KLEIMAN

Yeah, quick question for you. First of all, this is amazing work, and you're laying out an amazing path. Is there any way to send it to

them, and I apologize if I missed it, and link it to the commitments they've already made, particularly when Avri was on the Board for their own Human Rights framework, that this is commitments they've already made, and really, you're talking about how to get them to do it on a consistent basis. Am I misreading?

FARZANEH BADIEI

No, no. We actually told them a few meetings ago that in the bylaws, ICANN is supposed to respect internationally recognized Human Rights, and if they could incorporate it in their resolutions, and they were like, yeah, show us how to do it. So, I think we should definitely link it. That's a really good comment. So, go ahead, Stephanie.

STEPHANIE PERRIN

Is it my turn?

FARZANEH BADIEI

Yes.

STEPHANIE PERRIN

Ah, thank you. Yeah, it seems to me that if they say, show us how to do it, I would be tempted to give them like a really detailed list of risks for the end user, because I mean, this is what never happens, right? They could call something an HR assessment, but they're not actually delineating all these separate risks, and further exposure to cybersecurity attack is certainly one of the risks.

It's kind of separate from the rights. I know I'm getting way, way down into the weeds here, and I should have commented when we were doing the HR Impact Assessment, but if we get a further opportunity, we should teach them how to use their risk assessments. Thanks.

FARZANEH BADIEI

Yeah, actually, yes, but this is just the first step. So, we didn't want to, like even this one, they say like, show us how to do it. So, we just like take step by step, but yes, they should. Eventually, they should have a paragraph or a chart in the resolution that does a Human Rights Impact Assessment of this resolution. You know, that is our goal, but now we want to just like show them how it works. And then, okay, so that's how that, Andrea, let's go to the slides.

So, we have two more questions. The other question is that, so the first one is a conversation. So, the second one is the ICP-2 and RIR governance. If you remember, they are, so the RIRs, the internet, original internet registries are reviewing their governance documents, their overarching governance documents, which curiously gives ICANN new powers, initiate the recognition, conduct Ad Hoc audits, appoint third parties or overwrite RIR objections.

They might disagree with our impression of the ICP-2, but also like, please, if you have doubts about how this is being framed, just let us know. So, question one is, is the Board concerned about the

accumulation of institutional authority that it has, that it could undermine the distributed governance model? And does the Board consider current consultation adequate multistakeholder input? I mean, they have done so much consultation.

So, we are just kind of like giving it to them like, that you've done a lot of consultation. The problem is that AFRINIC was not involved for a big part of this. So, this is why that question is there.

And then the question three is pattern of efficiency gains coming at cost of process integrity and participation breadth. So, in a sense, we are asking them that do you think you are getting, that you're gaining a lot of power to rule these RIRs? And that's what I think we can discuss. I mean, of course, they are going to tell us they are not concerned and everything is great. Go ahead, Rafik.

RAFIK DAMAK

Okay, thanks, Farzaneh. I think it's a good follow-up of the letter we sent last year to the Board. And one of the feedback, even the CEO was happy to respond that give them opportunity to clarify. But my question here is more, again, it's about logistics.

So, for the previous topic, can we try also to decide about the lead for each? So, to have a clarity who will speak tomorrow during the meeting. So, for previous one, I assume that will be you. And for this one, maybe we need to check who can take the lead and to present those questions.

FARZANEH BADIEI

Yeah, for this one, we need to, maybe you can take because you also wrote that letter and you're from Africa.

RAFIK DAMAK

Okay, thanks for the reminder. Yeah, sure. No.

FARZANEH BADIEI

Right. Okay, that was decided. Okay, so let's go to the next slide.

So, multi-stakeholder resilience, efficiency versus integrity. I think this question is perfect because it also goes, I did not write this question. I did not write this question. I think we can relate it to their question. And so, they say that they want to discuss with us their strategy. Andrea, can we put the questions that the Board has? Okay, so you see the Board has the question, has a question on ICANN's strategic plan.

They are saying that, what are your strategies? Let me, yeah, exactly. Okay, so they are launching this annual strategy review program. And let me send you this strategy. I think this is what they are reviewing, right? If I'm not mistaken.

From your side, what is the top emerging trend that may impact ICANN that you think the Board should consider? How is your group participating? Oh, no. From your presentation, what is the top emerging trend? Yeah, so what is the top emerging trend? We have been telling them what the top emerging trend is all the time. But the top emerging trend is actually our question that was on that slide, is a kind of like civil society, and generally people that who

work on like public interest, lack resources, and they cannot participate in these processes.

And the processes are focused on efficiency and effectiveness, so much so that they do not recognize efficiency, as well as like considering, including all the stakeholders, they do not assess their efficiency by considering inclusivity, which I think that is an important factor that we should tell them.

And in the strategy document that I showed you, that I sent you the link, they have four objectives. Evolve and promote ICANN's multi-stakeholder model to sustain its inclusive approach, enhance organizational excellence, collaborate with relevant stakeholders to evolve the internet's unique identifier system, strengthen the stability and security of Internet's Unique Identifier Systems.

So, they can argue that we are doing this at a very high level, this is why there is no mention of Human Rights or even DNS Abuse. But I am thinking that some of our priorities are enhancing multi-stakeholder model in terms of efficiency and effectiveness, should not be at the expense of participation, and should not be at the expense of coming up with Human Rights respecting PDPs and policies.

We don't want to rush policies, just because governments and other stakeholders believe that they should be like addressed so quickly. And our policies should be also evidence-based, they

should not be based on feelings of a few stakeholders. And these are a few of the things that I think we should mention.

Do you have any idea what are our other priorities? I think two things that our priorities are, our strategies are, is access to domain name registrants, access of end-users and registrants to domain names and online services. And the other one is, of course, Human Rights. And we can spell out privacy due process, we can come up with a paragraph and also sustaining multi-stakeholder processes without, by including civil society and supporting them. Kathy, go ahead.

KATHY KLEIMAN

And agreeing with everything you're saying, Farzi, and extending it to, we shouldn't have to have paid professional full-time people in the ICANN arena to participate. ICANN Org should be helping us distill things, and ICANN should be increasing and supporting the volunteer involvement in the multi-stakeholder process. And that, I think, runs to the kind of accessibility that you're talking about. Thanks.

FARZANEH BADIEI

Yeah, that's a really good point. It kind of goes under that kind of public interest groups should be able to participate without having to pay so much cost. Go ahead, Rafik.

RAFIK DAMAK

Hey, thanks, Farzaneh. So, I was just thinking because the whole context and what is going around, it's about the geopolitical part. One, I think it was mentioned about the regulation and all of that, but what I'm thinking, I want to talk about geopolitical, what's happening in the region close to us or other region, and how that impact ICANN and the community, because maybe it's not that highlighted in equal way, maybe trying to be diplomatic here. So, if something will arise, and how we do that.

FARZANEH BADIEI

Yeah, I think that's a really good point. Actually, to be honest, Rafik, I think we need to tell them, we are living in times of conflict and war, and we shouldn't shy away from telling them that a lot of these strategies are impacted by what is going on in the world. And I know that sometimes there's even not an acknowledgement of this fact.

So, we can start from that piece, actually. We can say that first, you can start acknowledging that there's an ongoing active war around the world and how those regions get affected, how their DNS gets affected. There was like an attack on a hosting company in Dubai. So, I mean, physical attack, I'm not being super secretive.

I understand that they might tell us, like, oh, no, that's not DNS. But we, I think, I like that the centerpiece should be on acknowledging that there are ongoing active wars going on. And also, Stephanie is saying that also their proactive engagement with external environment is only, and their consideration of changes in the

external environment only considers, like, law enforcement outreach and government engagement.

But we see they have a passive approach to civil society, though they are going to say that they have programs for civil society engagement. But we still put it on the record. We are going, time-wise, it's okay. We actually cannot cover the council agenda, but I'm going to wrap this up, and then we can go to Pedro and Kathy for the UDRP thing.

I think that's an important piece. They also want to talk about the Review of Reviews, and we just tell them that Review of Reviews should not, like, the mechanisms that they come up with should not take our seats away from GSO Council. I think we should just tell them that. That would be good. Rafik, go ahead.

RAFIK DAMAK

Yeah, for this one, I would be happy to respond to this question. I mean, basically, just that we are trying to follow the process, of course, that we don't have a representative there, but we try to get the observer to follow, and we will share our input based on what we heard, listened or heard this week.

Yeah, we are more for Continuous Improvement. That's something really for the groups to decide. That's something imposed from the top, and we might have our concern about how things will be related to the structural review, so we can flag those, I guess, if no objection.

FARZANEH BADIEI

Okay, great. Perfect. I think we can go to our next agenda item, which is UDRP independence study. I just wanted to give you a little bit of a background on this. There might be some kind of discussion at the Council on looking at the UDRP or coming up with a PDP and stuff like that. The timeline is quite flexible.

The thing is that we are going around and we are saying that we want an independence study commissioned by the Council. In order to do that, we need to be very convincing. That's why I thought I asked Kathy to tell us why we need an independence study, so that when that conversation comes up, we discuss at the Council. Go ahead, Kathy. I'm just going on.

KATHY KLEIMAN

I'm going to call up my slides, so if you want to keep talking for a second, Farzi, it'll be fine.

FARZANEH BADIEI

Perfect. Go ahead.

KATHY KLEIMAN

What I'm going to try to do is give you, first, Farzi, thank you, because I've been dying to talk to you guys about the UDRP, the Uniform Dispute Resolution Policy. These slides, I thought I had 15 minutes, so I'm going to be reading high-level parts of it, and then I can share the slides with whoever wants them.

We're going to talk about the history, the background, the problems with the current report that you've been given, and why we really, really, really need data and why it helped in the phase one, the first rights protection mechanism working group.

A lot in a short amount of time. But first, this presentation is very much for Benjamin, Bruna, Julf, Peter, and Tapani, our GNSO Councilors, because PDP 3, which Rafik helped to draft, gives you many of the decisions that used to be given to us as co-chairs and participants in the working groups. I'm not going to say if that's good or bad. It's just a fact.

So, you get to make decisions at the charter level that used to get passed to the working group. So, this is 27 years of history in under 10 minutes, okay? Also, as an old professor, I love actually looking at the people I'm talking to. So, if you're not looking at me, I promise I'm going to trip up. It's just the way it is.

Okay. So, come on. There we go. So, in 1999, we created the first consensus policy, if I can, and it was the UDRP. It was the Uniform Dispute Resolution Policy. We have never reviewed it, guys. It's the only major policy never yet reviewed, although we did add to it when the GDPR was passed. We had to change it a little bit. So, it's been slightly modified because we had to redact the data of the registrants, which is all public. But the basic substantive rules have never been reviewed and revised.

And as I just said, as Councilors in PDP 3.0, you are responsible now for the charter, for the questions and scope of review. Everybody online, tell me if I'm yelling too much because I'm too excited.

You even get to decide who can be on the committee, how it's constituted, how it's comprised. We used to have open committees. We had 150 people in the first review phase one, although we had about 30 and 40 active. But you can decide that it's much smaller. You can even choose the chair if you want.

Rafik, am I misrepresenting any of that? Okay. So, you were in the driver's seat. See my pretty picture, driver's seat. And so, I'm here to share with you some really hard-earned knowledge of hard-fought battles that go back to 1999, when the brand new NCUC, which was the only non-commercial at the time, stopped the UDRP in Santiago, Chile. I was there in August of 1999. And we said, this isn't fair. This isn't right. This isn't balanced. You're not allowed to screw up registrants for no good reason. That's not fair.

And then my reward for that is I got stuck on final drafting team of the UDRP for six weeks with a brand-new baby, and living and talking to the general Council of ICANN. There was only one staff member of ICANN at the time, the general Council, and putting in some of the protections that the Board had promised us, and some of the due process and fairness.

Then in 2016, for four years, I co-chaired the review of all rights protection mechanisms phase one, which was our review of the trademark clearinghouse and the uniform rapid suspension. So, I

bring you that knowledge of both having helped draft the UDRP and having done a different review of rights protection mechanisms.

So, after 25 years, it is fair and valid to ask, are the substantive and procedural rules and policies of the UDRP being followed? Because you should know, when we created the UDRP, we gave up the rights for gTLD registrants all over the world to be sued for their personal property, their digital asset, their domain name, and a court near their home and a language that they know pursuant to laws and rules that they are familiar with.

It was the only way we could get the UDRP to work. And in exchange, we got agreement that the registrants would not lose their domain names just because they didn't respond. A default is not supposed to be a loss. Registrants were supposed to be treated fairly. And it was supposed, if they had fair use, if they were engaged in free speech, if they were engaged in a legitimate use of a word or a name or a phrase, we repeat these things many, many, many times in lots of different ways, Delta Faucets, Delta Airlines, Delta, Delta, Delta as a fraternity or sorority.

These were promises made to the non-commercials. Further, in 2016, the GNSO Council, as part of the charter for all of the rights protection mechanisms, both the trademark clearinghouse and the uniform rampant suspension, which was phase one, and the UDRP for phase two, were promised us to be full, fair, and comprehensive. I wanted to do the UDRP first.

The UDRP is the foundation of everything. But we were told that in order to get the Applicant Guidebook out on time, we had to do the rights protection mechanisms specifically created for New gTLDs first, which were the uniform rampant suspension trademark clearinghouse. And even though they were brand new, we reviewed them.

So, I will send all of you the link to the charter from 2016, which people seem to be forgetting, which is that we promised a two-phased approach. And we promised that we would look carefully at the uniform dispute resolution policy, that it would be subject to a comprehensive review that it had not had, and that we would consider all the questions that had been gathered from the community, because we gathered questions about all of these rights protection mechanisms, including the UDRP.

And I want to share a few of them with you. I have two pages on this, but they include, are free speech and the rights of non-commercial registrants adequately protected in the existing policy? Should the term free speech and the rights of non-commercial registrants be expanded to better protect our rights under law, under the UN Declaration of Human Rights, under other Human Rights protections?

Are the critical concepts of fair use and fair dealing fully and accurately reflected in the UDRP? Are last names and geographic places protected so they're available for all of us to use under national law? I'm not making this up. This is in the charter, guys.

Smith, McDonald's, Capitol Hill Cafe, Old Town Deli, these are terms used all over in last names of millions of people.

And again, more about free speech and freedom of expression. This is to my Councilors; this is in the charter. So, please, please, please, let's go back to it.

So, in 2026, under the new PDP rules, you will be drafting the charter, you will be picking the questions, you will be choosing the scope of review, and you will be deciding whether we can use outside experts. And I need to tell you how valuable outside experts are. Because look around the room, look at how much time we're all spending already, but how many of us are specialists in international trademark law, and particularly the balance of international trademark law for free speech, fair use, freedom of expression, and Human Rights.

But there are people out there who for 25, 27 years, have been helping us as experts. They want to come in and help us, but you're going to have to open the door to allow us to bring them in when we need them. They can't be there for the whole time, they can't be there for a multi-year review, but they can come in when we need their expertise.

And other constituencies don't need them because they've got lawyers who specialize in this all the time. IPC has lawyers that specialize in this. But in order to give a full and fair review, we have to be allowed to bring outside experts in. And we'll talk about who

some of those are later. So, again, you guys, our Councilors are in the driver's seat.

Okay, so there's too much on this slide, but let me just tell you that there's precedent. We started the first review on the Trademark Clearinghouse with two groups of people, the IP people saying, we love the Trademark Clearinghouse, and the non-commercial people saying, we're really concerned about it, but the data is not public. So, we're scared of it, we don't understand it, we think it has a chilling effect.

And so, we were arguing, and then out from the heavens comes independent data given to us by the analysis group commissioned by ICANN. And it is a full and fair data analysis of the Trademark Clearinghouse. And suddenly, we stopped yelling at each other, and we started saying, we have data, is the Trademark Clearing House achieving the goals, the balance goals that we set out for it? It totally changed the discussion.

And as a co-chair, it was like manna from heaven. So, data-driven is good policy for ICANN, and it is good policy for our PDPs. And I cheer Farzi every time she talks about it. Farzi, I'm always cheering you. And with 100,000 gTLD UDRP complaints, not decisions, because they don't all go to decision, since 1999, it's vitally important that we do it today, even if we do just the last 10 years.

But WIPO, the World Intellectual Property Organization, has given you a report that they said is independent, and data is independent, but it's not independent. And they don't even try to

tell you it's data-driven, because it's not. The World Intellectual Property Organization, which has very close ties to the IPC as it should, and the Internet Commerce Association, where all of their members who are active in ICANN are members somewhere in the commercial stakeholder group, got together and talked to all their friends.

And so, I need to tell you about this, because they are trying to replace their questions, and they're trying to tell us they did a multi-stakeholder review. But they talked to their friends. They talked to panelists. We're talking about panelists paid for and appointed by WIPO. We're talking about brand owner representatives, and brand enforcement representatives, and attorneys who live and breathe the UDRP. But let me ask you, can WIPO's Internet Disputes Resolution section. This is a question, this is, you know, as I always alert my students, this is a question for you guys.

As an ICANN-accredited provider, can it conduct a full and fair review of itself? Yes? No? Who says yes? Who says no? Thank you. The Nos have it.

Structural separation concern, anyone? You know, I guess, you know. So, if WIPO implements the rules, it can't make them, right? Just as courts make the rules and can't implement the rules, but legislators make them. The GNSO needs to conduct the full and fair review of the policies. But it gets worse. WIPO and ICA are

marketing their report, and I was on a panel, and I heard it as a multi-stakeholder review that included civil society.

So, I went to the three, count them, three non-commercial users and academics they interviewed, and they were shocked. And I have their personal permission to share these quotes.

Professor Christine Farley at my law school, American University, I assume the invitation to the short meeting was in preparation for a fuller review to come and was surprised to hear the recent characterization of the result as the end of a multi-stakeholder review.

Professor Rebecca Tushnet at Harvard, no one would have thought, reading the invitation language, which was in the note, that this was their one chance to participate. During the conversation itself, the questions presented to us were general and exploratory, not framed as the sole or final opportunity for civil society participation in a UDRP review.

And Dr. Konstantinos Komaitis, who goes all the way back with us in the non-commercials, had the invitation made clear that our comments would be incorporated into a formal publication, or worse, used repeatedly in ICANN meetings over the following year to assert that WIPO had meaningfully consulted civil society. I would not have participated.

Okay, so we've been diving into the data, and I want to know who in this room and who online has participated in looking at uniform

dispute resolution decisions from 2024? I have, Ken has, I know Peter has, Benjamin has, Frank has, sorry, Wally [ph] has. Excellent. And we've been deep diving, and what does the UDRP data tell us? And here I'll quote Emmanuel Vitus, this analysis highlights structural concerns in process equity, privacy treatment, language accessibility, and the recognition of protest or non-commercial expression.

I have more, but we won't have time to read all of this. Emmanuel, who wrote a white paper, he was so concerned with what he saw, that key patterns, one, default decisions are treated as substantive rulings.

Two, Proxy and Privacy protections are penalized. Three, geographic and linguistic inequity, and this one is worth reading every one of his bullet points, but it's respondents from the global south have particular problems. And there's bundling of unrelated registrants, and five, neglect of non-commercial protest or watchdog functions.

So, I would love to open it up, but I know we don't have time for the discussion, because I'd love to hear other people's input, and please know we need to hear everyone's reflections on what they saw. But for me, the dismay was seeing that in 2025, sorry, not 1995, 2025, 97.5% of registrants could not respond. They defaulted, and the vast, vast, vast majority lost their domain names.

We should be asking, as NCSG and as GNSO and as the ICANN community, what we can do to help them before we expand into New gTLDs. And the news gets worse. Computer scientists have just used AI to study UDOP decisions from 2015 to 2025, and they just authorized this quote last night.

We found that defaulting registrants were 10 times less likely to win a dispute than respondents who participated, and that panelists provided little context for their decisions when ordering the transfer of defaulting respondents' domain names. We identified hundreds of disputes in which defaulting respondents lost while participating respondents won in cases with similar facts.

Guys, this is not good. We need data. So, again, our Councilors, you're in the driver's seat. Please, please, please ask, just like in 2016, that we be given an independent data study, right? After 100,000 decisions, we could easily get data-driven reviews that would lead to your creating good and comprehensive questions for the charter and for us having a good comprehensive mandate to go forward. We need a full and fair review.

And that's about it. So, back to you. Good luck, and thank you. Farzi, how'd I do?

FARZANEH BADIEI

Thank you. It was great. Thank you, Kathy. And so, we have nine more minutes until we have Elena here. And I just wanted to say that, so, for the Councilors, as we heard, we did ask the council to

commission independent studies more because it's not just a matter of ICA reports because the informal reports also, it was not a commissioned independent study.

That was GNSO council said that we should do. But there were also, the drafting team relied on third-party reports, which were not very fair and balanced. So, I think some of the things that Kathy said, we can use in order to support our advocacy for getting an independent study before the PDP starts. And we can say that this actually helps with the PDP to run more smoothly and to face less conflict and all that. Yes. So, thank you so much.

I wanted to go through the -- we have discussed some of these council agendas that this is like the last meeting of the council here. I wanted to discuss it. It's not on the -- I don't know if it's on the -- oh, yeah. Oh, I have to tell you why we have Elena.

So, let me just tell you a little bit about the agenda tomorrow for the council. I have covered this before, but we are going to talk about this Un-Adopting the SSAD recommendations. And Rafik had concerns about that. That's like, they are going to use a Small Team Plus, or we have not decided yet.

So, Rafik, I also remember that we mentioned maybe we can bring this up to the Board. Maybe we can discuss it as a kind of like how to sustain the multi-stakeholder model. So, we are going to discuss, I don't know if we are going to make a decision. Is Peter

here? So, we are going to discuss the, again, the Un-Adoption and having a dialogue with the Board.

And our position is that we, as much as possible, we don't want the council to be in charge of the whole thing and come up with policy. We want the policy development process. Yeah, we had like one slide for Un-Adoption, which I had in the other one. So, that's one thing that we are going to discuss. And I'm just telling you, I don't think we are going to make a decision right away. But I recorded Rafik's concern and we are going to take it to the council. Another thing that, yeah, go ahead, Rafik.

RAFIK DAMAK

Thanks, Farzi. Since that meeting, I think we have the discussion in the council and my understanding that you have three options that were shared in the council list.

So basically, what I see more concern is the first option, which is the preferred one, which we leave that to the IRT and then also the PSWG to come up with the language for the timeline. And the third one, I think the issue is that we don't have the proper process even that was discussed about the, I'm not sure if it's proper English, non-adopt or un-adopt, yeah, whatever.

So, because we don't have the process and they seem they don't want to, the Board, they don't want to make a decision that looks bad for them, I guess. Then the second, if I get this correctly, is to,

because they didn't adopt yet, so they don't adopt, non-adopt the SSAD and use that as for the supplemental report.

All of this is following some process. Still, in terms of supplemental report, which is the GNSO council will work on that and on that is what will be included. Because here, is it really about guidance and to add about response timeline language and authentication? It's just I'm not sure.

I can see maybe option two more or less, it's okay. But how the supplemental report will be done, it's kind of unclear for me. I think that's where maybe the challenge.

For what I said Saturday in general, it's more about the Board. It's about effectiveness, how things take long time to be approved and even now we un-adopt, non-adopt, whatever, adopt the recommendations and we kind of try to redo the work. And the other point that if there was concern, I'm sure that should have been really flagged in the beginning and that's why we had the ODP or whatever participation from ICANN or that really, they should flag it at the time when we were discussing. But I understand like maybe it was left not clear for by purpose, but just the outcome doesn't really look good. It's just I want to clarify.

FARZANEH BADIEI

Yeah, great. Thank you. So, basically, these three options, we are going to look for tomorrow's Board meeting, maybe we can also discuss it. And I just remembered that so for this, I'm going to get

back to the group about who's going to start answering the multi-stakeholder question. And then we can pass it on to you to discuss these concerns.

And the thing is that none of this, yes, Stephanie, they don't want to say reject. What we should be worried about is that down the road, they might actually start Un-Adopting recommendations that we actually find necessary. So, it's a very tricky situation.

And I also don't think that IRT should at all be involved with this matter because it's a policy-making matter and we've been quite clear about that. Go ahead, Kathy.

KATHY KLEIMAN

Absolutely agree, Farzi, that this is going to become another bite at the apple where anyone who doesn't get what they want comes back in through any mechanism they can to throw out the compromise in the policy development process.

So, I mean, the higher we can make the bar, like if the law changes, it changes. Like some of the work we've done, GDPR circumvented some of what we had done and gave clear guidelines. But Farzi, however high you can, I mean, there should be multi-stakeholder agreement to change something. We shouldn't be able to do it over a minority vote. So, if we have to roll back something, there should be massive agreement on it. Do you think we can make the standard really, really high or just feel free to go on if you want to?

FARZANEH BADIEI

Oh, we have it. We have it. So, they actually asked for like a process. The council came up with a process and it was up for Public Comment and we exactly said what you said, that the threshold has to be high and it should be under exceptional circumstances that you do this. But we will see what happens. I think that's all we are at time.

Let's go to the slides that we got. Okay. Oh, we have four more minutes. Is Elena here already?

ANDREA GLANDON

Yes, she is in the Zoom room.

FARZANEH BADIEI

Is next slide, did I put something there or? Yeah. So, these are the questions that we have for Elena. They submitted a Public Comment to the EU Fighting Online Fraud Action Plan. Have your say. And as a result of that, I thought maybe it would be good to have a conversation with them to tell them our work, understand how they do their work and continue the conversation. So, Elena, thank you very much for joining us. Is she here?

ELENA PLEXIDA

Hi Farzaneh, can you hear me okay?

FARZANEH BADIEI

Yes, great. So, thank you so much for joining us. We just like want to have like a conversation with NCSG on how you approach these

formal submissions, at what stage you gather community input and, in a sense, how can we help and how can we be active in providing you with feedback when you want to submit Public Comments. So, go ahead.

ELENA PLEXIDA

Okay. Hello, everyone. Hello, Farzaneh, again. Thank you for having me and thank you for inviting this conversation. I'm sorry I'm not there. My flight got cancelled due to the situation. My colleague Becky is there in the room with you. And so, before we get into the conversation or the questions as such, allow us just a small introduction, if you will. So, what is it that triggers a contribution to a public consultation from ICANN?

We engage and do draft up a contribution when we see a call for input or otherwise it might not be a formal call for input or anyway processes that policymakers have in place. When there is specific mention to the DNS or the multi-stakeholder model or even if there is no specific mention to the multi-stakeholder model, we see that something would be touching on the multi-stakeholder model and the ICANN community policymaking. So, that's the one side of things or when it has to do with how the global internet works as a, you know, technically works. That's when we decide to engage and send in something.

In that respect, our contributions, the content of our contributions is exactly that. Either it explains how the internet works, so policymakers just so that you know, it works in this and this and

that way or it explains things that have to do with the multi-stakeholder model such as so that just so that you know the ICANN community has in place policies about this and this and that. Therefore, our approach is in essence twofold, right?

Either let them know how the internet works so that they avoid putting in place things that might disturb that and it's not that we have not seen such examples. I have such examples to share with you or it is in the sense of enhancing and saying, okay, some things need to be addressed at the multi-stakeholder setting where you governments have committed that these things should be addressed.

In that context and with that in mind, we do not set up a consultation with the community to gather feedback when we are putting in place a contribution and that is because in our contributions, we do not advocate for Human Rights or we do not bring business interests side of things in it. In general, we don't bring in the different interests that the different parts of the ICANN community bring into the ICANN policy making, if you will, right?

Instead, what we're trying to do is inform the community of such processes, such proceedings when they're happening so that if they wish, they can also contribute on their own to bring in this interest if they wish to bring this interest into the policy making debate, if you will.

Yes, it is, of course, it is one of the core values. What I meant to say here is that we are not advocating for the interests that, if you will,

within an ICANN policy making process, different parts of the community would be bringing in.

Right, so I will hand it over to my colleague Becky, who's there with you in the room, to tell you what sorts of mechanisms we have in place at the moment, at least, and this is a thing in the making, of course, and can always be improved, to let the community know that things are happening or to let the community know that we have submitted this contribution, this or that. Becky, please.

BECKY MCGILLEY

Thanks, Elena. For our processes, as Elena was talking about, when we post our Public Comments, we always post them on the GE webpage. I would say that we don't really have the best mechanism for letting the community or anybody know when they're posted because we put them on the webpage and there's no, I mean, we can maybe look into it, but there's no way that it, you know, sends out emails or to let people know that we've contributed.

So, the way that we usually inform the community is when we do our, when we have webinars, when we do our geopolitical updates, when we do our updates during prep week, and again, when we do the contributions to external bodies, it's often pretty few and far between. You know, when there's an issue, we can go several months without posting, without contributing to Public Comments.

More recently, of course, because of WSIS+20, we were able to keep the community informed when people opted into the mailing list. We had a WSIS+20 outreach network. And so, on that mailing list, we not, sorry. Okay. So, we not only share, we shared every time we were posting our consultation. So, whether it was for the GDC or part of the review process, we informed the community through the mailing list.

And we currently have to close that mailing list. And we're in the works of opening up to let the community opt into, we're going to call it the Internet Governance Network. So, an IG kind of broad speaking mailing list. And the plan will be to share our submissions to external bodies through that mailing list.

And then we also, right, and then continue to update the community through our updates. But we also, you know, we do want feedback from everyone on what we can do more. So, for example, if you want us to come speak at any of your meetings, we're very open to that. We'll to provide updates. And it doesn't have to be associated with ICANN meetings or it can be.

So, please reach out to us. And we do have a government engagement email address where the team would get an email. So, if you have questions or comments, you can email us at ge@icann.org. So, and then, so also Elena mentioned like just the different ways that we inform the community. We have GAC reports, which lists out regionally, every government related event that we participate in.

And now we include a little bit of the topics that we're discussing, but this includes bilateral, like private bilateral meetings with governments, as well as public events. So, every single one is, that we engage with is listed on these GAC reports available on the GAC website.

Our government engagement strategy is available through the strategic plan, right? And that is our strategy on the one-year plan and the five-year plan. And we update that when the entire Org updates the strategy. And also, you can see it in the Operating Plan and Budget. It specifically has government engagement, functional activities and whatnot.

ELENA PLEXIDA

Thank you. And if I can finish off and then we get to the conversation. So, for instance, to get back to this particular contribution that we sent for the European commission call for evidence, we had also the registries group and the business constituency group that submitted separately comments.

Now, what else I wanted to say is overall, as Becky said, we have some mechanisms, we don't believe that the mechanisms are perfect. Things can be improved. Of course, like my personal opinion, that's, that's me. That's my personal opinion that the, we are getting better. For instance, we had the discussion group in the context of WSIS, that was because of the WSIS, right?

We had a discussion group with representatives from different parts of the community. Farzaneh was a member of this, of this discussion group. And I thought that was a really nice mechanism. Again, this is me because it gave us the opportunity. We had often touched base between us and we would discuss things that ICANN was considering to do or things that were here or there.

It was an exchange mechanism, which I found, which I found rather useful. Otherwise, as Becky said, we do upload things, but of course, people have to be looking at the web pages to know. I will stop here and very much looking forward to the discussion. Thank you.

FARZANEH BADIEI

Thank you very much, Elena and Becky. I go to Pedro. Pedro, go ahead.

PEDRO LANA

Thanks, Farzaneh. Pedro for the records. Just a small suggestion, we're talking about how to share it a little bit better. Maybe the ICANN newsletter, like we already have a lot of outreach and things that I would consider less important than what ICANN is positioning on different issues. So, I think that's a good addition there.

And if possible, maybe also sharing through the newsletter how ICANN is starting to research and write an opinion on a certain matter. And if any part of the community would like to share their

inputs, share their opinion, please email us at somethingsomething.icann.org. And that would be a way to start the conversation, even if you don't have a formal way of creating a dialogue on these matters.

BECKY MCGILLEY

Thank you. I think that's a really good idea, like using the ICANN newsletter to promote when we promote our publications. So, I will definitely be looking into that. We're also we have a goal now that we're hoping to produce something tangible out of the government engagement team at least every two months, whether it's a blog or facilitating webinars, hosting webinars, papers. So, definitely something to be shared through the newsletter as well.

FARZANEH BADIEI

Great. And I see Rafik's hand is up. Kathy's hand was up as well. Kathy, did you change your mic?

KATHY KLEIMAN

I had the same question as Pedro, and just encourage you to go out over every mechanism possible, because I didn't know that your page existed. So, thank you. Yeah.

FARZANEH BADIEI

Yeah. Great. Thank you. Go ahead, Rafik.

RAFIK DAMAK

Okay, thanks. Yeah, as Andrea clarified, it's the community digest, or the newsletter. But I think one more direct way, because the digest people can maybe miss or overlook is to, if you have urgent input or consultation, you can send to the SOAC chairs list.

I think many of the ICANN staff, they are using that. And that's one way really to flag for us, because we get it, it's clear that we have something urgent, or we need to pay attention, compared to just the newsletter. But that's just to say that if you need some input, but maybe it's more like how we can give input. I'm not saying you need to create something like what we have for Public Comment, but kind of more engagement, more internal engagement here. Like, I'm not sure, calls, meetings, or also like how we can submit the written comment.

So, we need to figure out a proper way so we can participate. But again, just send to that meeting list, everyone we know within the community, and we can decide if we need to respond or not.

FARZANEH BADIEI

Yeah. Elena, do you want to respond to that?

ELENA PLEXIDA

Yeah, Rafik, good points. All of them. I had never thought of the SOAC list, to be honest with you. And one thing that we're trying to achieve, I cannot promise, it has turned out to be challenging for us, is that we do not only let the community know that there is an opportunity for contribution, because a policymaker is asking for

something, but that we also are able to publish on the web page, and we will see how to make that more broadly known to the community, our contribution earlier in time so that people can see what we are thinking to submit before we actually submit it.

I just said that this has proven to be challenging. Yes, it has proven to be challenging. It is often that we submit at the deadline, and we don't know everything ourselves. Sometimes the deadlines are very short, sometimes they're quite long, and we haven't seen them until later in the week. We're not everywhere. We don't claim to know everything.

Also, some jurisdictions are challenging for us to find information. It's a two-way thing, I believe. Also, not only we should get better at letting you know when things are happening, but also if something comes to your attention, which might be the case, and we have not seen and you think it is relevant to the multi-stakeholder model overall, please bring that to our attention.

In general, we try to be a resource available to the community. As Becky said before, if you ever want to have a conversation with us, like this one that we're having now on different topics, of course, we're there and available to do that. We really appreciate that because we also hear from you and understand better. Thank you.

FARZANEH BADIEI

Wonderful. Also, I think that we can use the, you mentioned this, not that elaborate, but use the WSIS model and kind of replicate it,

but not to the extent that we were discussing to buy weekly and stuff like that.

It could be that we also brought external experts that had funding for exactly addressing this, and they were from civil society, like GNI, and also some of our members. They managed to get engaged with the process as ICANN, and I hope that their comments and feedback were pretty useful.

I think that we have that kind of model available here as well. Of course, we have a lower capacity, but we could have conversations, we can send you reports by our members that could be of use, so that when you want to discuss community work, you can also see what civil society has done.

We can also work with civil, you have a civil society engagement thing still? Adam is there? I think Adam is there. Okay. We also have -- there is an academic engagement as well. That guy has an Italian name.

ELENA PLEXIDA

Joe Catapano?

FARZANEH BADIEI

Yeah, so I think that maybe we can also talk to them, and then they can plug in the reports and community input and stuff like that to help, obviously, not to overwhelm you. Yeah, okay, great. This was really great. We are very grateful of your time, and it's a shame that

we couldn't meet in Mumbai, but yeah, next time. Okay, thank you so much, Becky and Elena.

ELENA PLEXIDA

Thank you so much for having us. See you next time, hopefully in person. Thank you.

FARZANEH BADIEI

Yes. All right, then. So, I want to go back to some of the council items. So, we only have ten minutes, but I want to discuss one thing with you that I saw that was very important. So, they put on the agenda. So, one agenda item is to vote for the chair of the PDP, and we don't have a problem. We absolutely love Paul McGrady, and we trust Julf and his SSC. It's not his, but like what they've done in SSC and stuff like that.

It's just like there was some kind of like glitches in how this chair was like nominated, and then like the SSC conversation and how council leadership handled it, that there was some sort of like conversation about that.

It's on the council mailing list, and Bruna has been very vocal about it. I don't think if she's -- it's very early for her. This meeting was very early for her, but if she's not here, she wanted to raise the question of process, but as I said, we are going to vote yes. At least, I am voting yes on Paul McGrady. I don't think any one of us is going to object. If you have any objections, please tell us now.

All right. Council members? Nope. Perfect. But it is possible that Bruna reads a statement. Okay, so another thing that I wanted to tell you, and then they are going to celebrate our GNSO accomplishments.

We have many great accomplishments, to be honest, but that's not what I want to discuss with you now. We discussed it on adoption. Oh, Benjamin, go ahead.

BENJAMIN AKINMOYEJE

Thank you, Fazaneh. Since we have Julf in our midst, I'm not saying he should speak in the capacity of himself as SSC, but also that we are the ones raising the issues about the process. I don't know if it's something appropriate for Julf to shed some light on it, but if he doesn't want to, he should just forget about it. But I was in that group discussions as an observer, and I don't see anything wrong with it, but maybe there was something missing. So, next time, one can look out for that. Thank you.

FARZANEH BADIEI

Julf, go ahead, please.

JULF HELSINGUS

Thanks. I think looking at it in the rear mirror, the biggest problem was really that council leadership only communicated with the standing selection committee through staff, and I think there was

a lot of information that got lost in that way, and had they actually directly talked to us, it would have gone so much smoother.

I think we had some concerns about the process. I don't think we have concerns about the result. So, at this point, I think it's water under the bridge, and we kind of have already discussed that we need to look at the standing selection committee procedures better. Thanks.

FARZANEH BADIEI

Yeah. So, yeah, we can discuss that, but that's a procedural thing that I think needs to be improved.

Okay, let's go to this. So, the other thing that I want to tell you, we discussed this, I don't know, there's this one that I think is kind of new, the GNSO prioritization methodology, and we discussed this in January, and we said that we don't want any kind of like ranking and scoring mechanism, and Tapani was quite vocal about it.

Tapani is here in the room, and they shared with us on the mailing list, a new one, which is all about scoring, and I didn't get, because it was recent, I didn't get to read it, but I'm very worried about how we do prioritization.

One of the reasons that we prioritize GNS abuse was that a bunch of stakeholders that thought this was really important and had a mandate to come and talk about it, they just like went ahead, I mean, it took them a long time, but they were just so vocal, and then they managed to prioritize it.

We want to prioritize Human Rights, we want to prioritize transfer policy, disputes, and stuff like that. Oh, yeah, what's going on? No, I'm going to go to Tapani first. Still can't wait. Tapani, please go ahead.

TAPANI TARVAINEN

Thank you, Farzi. I have not read in this list of possible scoring modes that just was posted today. I'll have it open, but as a general observation, basically every scoring system where people rank choices and then some mathematical operation is applied to it is susceptible to gaming.

That is, it's not usually or always to your advantage to vote honestly, as it were. Not all systems are equally bad, of course, in this regard, and as long as they have this, it's an advisory nature as they have as priority, and in addition, people understand the issues related to this gaming issue. So, it's not a surprise vote thing that we vote like that way, and then because we voted that way, we get the exact opposite result.

So, people should at least understand the system, and I will analyze this and comment on it later, but still, there's quite a lot of research on voting systems and ranking schemes starting from, say, the 16th century. When was Marquis de Condorcet doing this? But really, there is no really good system. Some are worse than others, and most importantly, everybody involved should understand the limitations and problems there.

FARZANEH BADIEI

Yeah, and the problem is that, yes, we can say, oh, we want that, this or not, like this ranking system and scoring is just advisory and stuff, but we see what happens in other spaces when there is like, okay, Andrea, catch my breath. Okay, so we can discuss that tomorrow.

Another thing that they are going to talk about is this accuracy thing. We discussed this. They are going to think about implementation of Recommendation 3, which was actually our recommendation, which was about how to raise awareness among registrants, why it's really important to keep their registration information updated, and that's about it.

Oh, we have an Open Mic tomorrow. I'm sorry, it's tomorrow, right? Open Mic tomorrow during this council session. I think it's around half an hour. Please, please, I think, Kathy, if you want to talk about the importance of independent studies, or if you have anything in mind that you want the council to pick up on, you need to come to the Open Mic and you need to talk to us. Yeah, and tell us what you think and what's on your radar. All right. I give you your one minute of your life back. Thank you, everybody.

ANDREA GLANDON

Thank you. You may stop the recording.

[END OF TRANSCRIPTION]