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I will now hand the floor over to NCSG Chair, Rafiq Dammak. You may begin.

RAFIK DAMMAK

Okay. Thanks, Andrea. Thanks for everyone for making it here today. And starting with this first session about the new gTLDs and human rights, it's kind of continuation of our efforts to bring that dimension about human rights and to cover that through different

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policies. Here it's about the next round for gTLD and we will try to show maybe possible risk and so on from that standpoint.

Before handing over to Farzaneh who will present and manage the session, I want just to highlight for those who will speak here, I mean, outside to speak closely to the mic because there are some sound issues. That's the only way to be sure that those who are joining us remotely would be able to hear us. And with that, handing over to, Farzaneh.

FARZANEH BADIEI

Thank you so much, Rafik. Hello everybody and welcome to this session. So, when the new gTLD, the Next Round was being discussed and there was the policy development process, we didn't have the human rights check that we now have for that process. So, we can't do that like retroactively, to go back and do a human rights check for the process. So, at NCSG, we thought that it would be good to look over, what sort of human rights impact could possibly be for the new gTLD applications and the process and how can we respond to it? Next slide.

So, today I have Avri Doria with us, who is going to be our agent provocateur, and she's going to tell us a few names. And then we'll see if allowing them to be new gTLDs or not, or restricting human rights. And I just want to be clear about one thing, that there might be no human rights affected in some cases, or there might be some human rights affected.

And then we also have Sebastien Ducos from Unstoppable Domain and Alexander Urbelis from ENS who can like tell us a little bit about like what they think could be the potential human rights impact if there are any. Or any other impact if they think that there are no human rights impact, other impact and concerns that this. So, let me just give you a little bit of background.

Like for example, when .gay was submitted in 2012, there are like a few countries that objected to it. Same goes for like .sex and also like there was .islam that there were many concerns about it and there was like also in their public interest commitments, they had very restrictive registration policy and so in the end it didn't get anywhere. Next slide.

So, for example, when we see some kind of restrictions, like for example, these new gTLDs came about like .doctor proposed that they just want to be for medical doctors. And there was like a lot of outcry that like there are other kinds of doctors and then also like you get their licenses. Why do you do we think that maybe a human rights check is needed for this one access? How does it impact access if you can just register a domain name in .doctor if you are a doctor? Expression, market choice, and does rejecting this application suppress legitimate speech? So, these are the questions and the examples that I'm giving you. Next slide.

We have many more interesting ones. So, also there might be some kind of data protection problems, some privacy approaches that the new registrars would not do fundamental rights balancing. Or

when they are mitigating DNS abuse, they over mitigate or under mitigate. So, next slide.

So, we are just going to talk about like a few of like these controversial ones. We are going to talk about public interest commitments and how that and kind of like getting like the license and credentials of people have an effect on data protection. And also like you know generally data protection practices of these new registries that are going to be on the market because I am expecting that there are going to be thick registries some of them. And then also like what can we do about it? Like can we encourage them to be transparent and stuff? And next slide.

So, why does this matter? Because, well, there are going to be many new entrants and as I said, the scale of expansion might be a lot and they might not be very familiar with policy development processes. Next slide. And these are like the things that I mentioned like DNS abuse response, content takedown, data protection problems, and transparency reporting which at the moment only few of these registries and registrars do. But if we see that there are many more, maybe we want more transparency reporting. Next slide.

Okay, so these are like some of the questions that we have, but I'm going to go to Avri now and I'm going to, and I'm going to ask Avri to kind of like set the scene and make this more interesting than I did.

AVRI DORIA

Thank you. I'm not sure I can make it more interesting, but I'll try. Okay, let me start out with, in 2012 I was part of the team that was applying for .gay and there was a couple other applicants for that. There was also an applicant for .lgbt. LGBT was a fortunate one. It sort of sailed through because it had absolutely no competition. It was lucky.

Most of the issues we had at that time had to do with competition. There were several .gay applicants. We were a community. They weren't. We couldn't pass the community, you know, verification. We couldn't get enough points. Tried several times and such. Of course, there was always a sort of residual, you know anti-gay sentiment around, that's always been with us. And I'm not a terribly optimistic person, I expect it always will be with us to some degree. It was nothing like today.

Today the hatred of gay, the hatred of LGBT, especially T if you look at what's going on to trans around the world has exploded. It has been deemed propaganda. Being gay is something people get arrested for now. Then, you know, they may have gotten beat up at a bar, but there wasn't this effort in so many countries to make it illegal, to make it something for which people are imprisoned, to make it something that is really difficult to have on your record. It's not only as it was back then that if you appeared for a job interview when you looked gay-ish, then maybe it would hurt your chances. Now, if any trace of it can be found in your paperwork, and we have

more paperwork than we had, we have more traceability than we had, then, you know, you're really in quite a bad situation.

So, this time I expect more trouble than last time. Last time, yes, there were a couple countries and there was early warning, and those countries were saying, you know, gay is against God, you know, we don't want to see anything like that. Now it is actually an imprisonable offense. In fact, in many countries, even advocating for LGBT rights is considered an imprisonable crime. So, the situation is very different.

I expect that we will see, you know, objections on the basis of sort of the limited -- let me get the name right, I should remember it quite clearly, but the limited public interest, which is really quite an ironic name. But the limited public interest basically allows for an objection on something that somebody considers morally objectionable.

Now at the moment if you have a law in the country you reside in that says it is a crime to either be gay or advocate for gay, then you can expect a certain amount of limited public interest. And then when you look at how one would defend against that, we really don't give those applicants much of a leg to stand on. You know, yes, we have a general statement about human rights, but we don't have anything that really would allow one to say, you know, that this is an infringement on human rights because it is against the law. And remember, when you're looking at human rights, and you're looking at proportionality, you're also looking at legality.

So, if many countries consider something illegal, you know, including some of, you know, the more powerful and more prominent countries than that, you go beyond that, you look at what's happening in many countries to people -- you know, at the moment the main target seems to be the trans folk, you know, and the people that are cisgendered. In fact, in some places, cis women or cisgender is considered an insult because how can you be cis? There is just one. The rest is all gone. The rest is all criminal. So, registering as something like that, being found to have registered, being, you know, a sponsor of something like that also becomes a problem. So, I'm not really sure.

I'm sitting here as someone that was part of, you know, gay application for a domain name and I'm really wondering what kind of risk should I have? You know, someone come to me for consulting and sort of say, "Hey, you know, we want to apply for, oh, you know, I wrote down some possible, we want to apply for gender theory, you know, .gender theory," well, that's a crime in some countries. You know, "We want to apply for .queer," you know, that's a crime in many countries.

So, how do you take an application like that forward? How do you apply? And if you are brave enough to apply for it, because you happen to reside in one of the dwindling number of countries that does not consider it a crime, you know, how does that affect the rest of your application? So, I don't know if I went through any of

the questions, but basically when I was asked to talk -- I hadn't been thinking about this much.

If you watch me around ICANN, I've been into all sorts of other things since I lost, you know, being part of the .gay application and sort of hung up my professional gay, you know, attitude and just became a you know regular participant, a regular such. But when Farzaneh asked me to take a look at it and come and speak on it and I started looking at the laws that we face, the dangers that we face and such, if we put in applications. And I started to looking for, how would an application defend itself and if you get through how would a gTLD that was in any of those baskets, you know, in any of the intersectionality baskets, that word may be even enough to get one in trouble, how would you deal with it? How could you deal with it?

And so, I come here with those kinds of questions before me as we approach this. And I must admit, I wasn't really paying attention until Farzaneh asked me to please pay attention and come and talk about it. It was just something I had put behind me. But in today's situation with what is happening to LGBT people around the world, there is a risk and I really got to say, I really don't know how they can handle it. And I don't know how ICANN can even help in handling it.

Because even if we make it something that you have a human rights defense, you know, and we really don't have human rights as a defense in our bylaws. We certainly don't even have human rights

mentioned in the AGB. I went looking the other day and see if we had bothered to put human rights in the AGB anywhere, and it's not. And if you ask one of the AI bots, the AI kids, to sort of say, "Hey, what do you do about human rights with these applications?" They say, "Well, it's in the bylaws." Human rights is in the bylaws, but of course, if you look at our bylaws, we have a very sort of shaky foundation on human rights.

So, I see an open issue here and I see an open issue for defense of LGBT populations that may indeed want to partake in our new gTLD, but at the moment, my recommendation was stay away. Unless you're very, very careful and very, very protected and you come from a country that does not imprison you for being an advocate. Because you don't have to be gay to apply for one of these things, but you will be an advocate. If you apply for a gTLD you will be an advocate which automatically makes you criminal in many countries. I think I'll stop there. I don't know if I said what you were looking for me to say.

FARZANEH BADIEI

Absolutely. Actually, we are thinking about now the human rights of the applicants at stake, which is something I'd say I did not cover in these slides, but that's why we have you. Sebastien has his hand up. So, Alex, do you want to go first and then we go to Sebastien?

I have these questions just for your attention, but I have also other questions from Alex and Sebastien about, do you anticipate other

human rights issues arising? And should applicants need to be ready to address these concerns and stuff? But Alex, go ahead.

ALEXANDER URBELIS

Yeah, I want to address what Avri was saying and I think she's right on in many ways here because these are things that we should have learned, I think, from the 2012 round, and we may not necessarily have learned them. So, if you think about this from a human rights perspective, and one thing I do in addition to being the general counsel of the Ethereum Name Service, or ENS, I've also for the last six years been on the technology advisory board for human rights first. So human rights is definitely something that's very near and dear to my heart and something I also practice what I preach.

One of the things I do as a lawyer here in New York is represent, I don't know if you can hear, I'm definitely in New York because the sirens are going off in the back here. I've been representing ICE detainees pro bono in habeas petitions with some great success as well.

But going back to the registration info here, I think what's really critical to understand is that registration data is actually very autobiographical. It's basically autobiography by another name. And when a registry is identity-based, like Avri mentioned .gay, but also .faith, .health is one of them as well, the WHOIS record for that particular registration in that TLD can essentially become a

confession depending upon whatever the local laws are wherever you are.

So, the act of registration itself reveals something about the registrant that may be protected under data protection law and could be really, and this is what Avri noted, is potentially dangerous under certain types of legal regimes. And what I think that people don't really recognize is that you know nobody thinks of WHOIS as a human rights issue until somebody in a country where homosexuality is criminalized, registers a domain under .gay and then that data is requested by a governmental agency, you know, that is a very big problem. And that's, I think, the issue that Avri was really talking about here.

And getting at these questions, well, like how do we address this? Well, I mean, thinking about and baking human rights into the AGB would have been, I think, a great start. But perhaps something like string level risk classifications at the application stage itself. So, for proposed gTLD implies something about your personal identity, implies something about your health status, maybe something about like your HIV status, perhaps your political affiliation, your sexual orientation, certain religious beliefs, you know, whether it's Islam, Judaism, whatever it is, you know, both sides of this are very much under attack at the moment, the registry agreement should have some kind of mandate for enhanced data protections for the registrants in that TLD.

I mean, that's one way of thinking about this very practically and very simply, but I'll pass it back to you, Farzaneh and over to Sebastien.

FARZANEH BADIEI

Yeah, wonderful. That's a really great suggestion because there is an effort to work on a disclosure of sensitive WHOIS data, to law enforcement at ICANN. I mean, it's the triage of requests. It's not that they directly hand in there. But still, I think considering the new gTLD applications, we need to focus on which new gTLDs could potentially need an enhanced privacy protection and data protection for their registrants. So that's great. That's a great action item. And yeah, I go to Sebastien now. Sebastien Ducos, which I did say Ducos.

SEBASTIEN DUCOS

You said Ducos when you know exactly -- Sebastien Ducos. So first, this disclosure, the very reason I'm in this room is because human rights are important to me too, but I'm going to have to play a bit of devil's advocate here.

I don't question at all the backlash that happened 12 years ago in public comments on .gay, I read them too. I'm not sure that that is the reason why the community priority wasn't one. And what I mean by that is, I don't know that this was a problem within the ICANN process.

In the case of .gay if I remember well because I wasn't directly part of it, but I was helping one of the partners in the application, the community priority couldn't be demonstrated because .gay wasn't able to demonstrate a wide enough representation of the different gay associations worldwide. It had a very, very strong footprint in North America, but it was difficult to demonstrate that outside just because there hadn't been the buying from different communities. And part of the reason for that was what you're saying, is that there was very few people outside of North America ready to raise their hands and say, "Hey, I want to support this." Which is part of the problem, but I don't know that it's an ICANN problem in itself.

I don't know that it's within the house problem. I think that there was a lot of people that were feeling very, very awkward for not being able to grant that priority and we're finding it very, very difficult to justify. But indeed, looking at the process the way it was, the reality was .gay represented a lot of gay people in North America, not the rest of the world. So, why should we give you the keys rather than anybody else? That was sort of the answer.

The same, in a way, even though that was politicized differently, the same happened with Islam which happened to have an applicant that was -- even though coming from Turkey, was in fine coming from Iran, and there was a fear from the non-Shia community, let's say, that this Islam might be taken over by a specific part of the Islamic community. Again, I think that in this particular case, ICANN preferred sort of moving away and not taking any risk. In the end, the TLD was a word, if I remember well,

even if it didn't go very far, but there was a lot of backlash behind it.

The other point that I wanted to make, and again, not my personal choice, but that's the way we work in this community, is indeed, ICANN has you, and it's part of the pick, respecting the law of the land. And if a .gay is not allowed in a country because it's viewed as a vehicle to promotion of ideas that are illegal, sadly enough, you can't operate in that country. And there is nothing that can be done in present ICANN form to force it.

It's in a way there to obviously protect ICANN and the applicants and the registry operator from doing anything that is illegal and they shouldn't. At the same time, indeed, in terms of human rights, global human rights, you'll find your position where you're playing the lay of the land, which is not always in your favor and not in the way progressive, in the way I would like to see, but that's the way it happens.

And I don't quite know not only if there is something that we can or should do, because indeed, as you said, Avri and Alex repeated, it's having a tag on you, having a domain name and a TLD that carries that sort of message can put you in danger in parts of the world. It technically doesn't impede you from getting it, but it can put you in danger. And I'm not sure that anything in the ICANN process and the advocacy that we can do is going to change that, sadly enough.

So, I want to make sure that whilst we can have opinions and we want to change things, we need to make sure that also in this

context of ICANN, is there something that ICANN is not doing right that we can help with? Do we need to better the process or not? And one of the first things that everybody has said first is indeed the human rights aspect, even though it's in the bylaws, the human rights aspect of this process of application today isn't existent. There is nothing in the application that says you need to have a human rights thought, let alone assessment, let alone a report when you're doing your application.

And I'd say even worse, because we've reinforced the systems of PICs and RVCs, which was 12 years ago, not something that was enforceable, now it is very much, I don't see why anybody would volunteer to do one because they're ready to shoot themselves in the foot. They're putting themselves in danger by committing to something that nobody asked them to commit.

I can see some applications where it would make sense because they're specifically there to defend human rights, but for most Africans, I would say don't do it. They behave in a way that is humane and follows human rights, 100%, but don't commit to it in a way that is legally binding if nobody asks you to. I'm not a lawyer, but it seems like a first step. Those are my comments.

FARZANEH BADIEI

Yeah, great. Thank you, Sebastien. We need to provide counter arguments. I mean, these are really valid concerns. One thing that I wanted to say, and you mentioned it, like okay, so when there was this community objection and then the new gTLD did not get

approved because of the community, also, the community could be discriminatory. I don't think we should go with how the community feels.

And in some cases, even the independent review panel said that no, ICANN Board should delegate this, but ICANN Board decided that in some cases, that no, I'm not going to do it because my community objects it. And I think that we need other mechanisms and I don't know if we came up with other mechanisms in the new gTLD application in the second round that could mitigate this, a risk of the community stopping something that is totally legitimate. Alex, you wanted to say something.

ALEXANDER URBELIS

Yeah, sure. I wanted to build on what Sebastien was saying and respond to this question as to, well, what can we do here? And while we're on the subject of communities and community priority evaluation, you know, I think, and in particular, the scoring thresholds are somewhat problematic because they can actually exclude legitimate communities.

In our prior comments, in ENS's prior public comments that we submitted to ICANN, we recommended actually lowering the CPE threshold from 12 out of 15 to 10 out of 15 with no zeros in any category. Because the current threshold, if you look at it, really, it probably favors well-resourced applicants who can actually produce extensive documentation about what a quote-unquote community is. And that's over and above actual communities that

might actually lack the bureaucratic infrastructure to, in fact, prove who they are. So, I think that's something that we should really think about in the context of the decisions that we're making about how to evaluate community priority and what it is to be a community.

I think adjacent to that, you have this issue of closed generics as well. I think that's somewhat human rights focused, or at least that's some human rights implications as well, it prevents monopolization of common terms, that makes sense, but it also raises the question of who decides what a generic is.

So .doctor, .lawyer, .bank, you know, those are generic generics, so to speak, right? Those feel generic, but then what about .crypto? What about .dow? These things are becoming less and less clear whether or not they're very specific, whether or not they're generic, whether they should be open to the public or not.

And then, finally, another point that I'd want to make here is that, and this goes back to Avri's initial issues here, that if we're talking about high-risk TLDs, high-risk strings, high-risk applications, et cetera, and then you have registrations in these particularly high-risk TLDs once they're delegated into the root, I think there are additional things that we can do to protect the registrants. And this could occur at the registration level as not necessarily a PIC, but it could also be part of the registration agreement itself.

We could do things like we could route government access requests through some kind of due process gateway so that there wouldn't

be any direct disclosure to a requesting government. If a government of a particular nation or of any nation, in fact, we may not want to discriminate on the basis of nations either, but if a government is requesting information, requests could go through some kind of independent evaluation body. It could sit within ICANN or it could be an external body as well, and they could apply some kind of harm assessment before any data is actually released, and these particular TLDs that are high risk. Not every single TLD.

And the test could be something like, well, does disclosure create a credible risk of persecution or prosecution or physical harm to the registrar? I mean, these are basic issues about human safety that we should be asking ourselves here.

Another thing to think about is, well, what about some kind of notification with a safe harbor delay as well? So, before any compelled disclosure of information responding to legal process, the registrant could be notified and given a window to transfer, to delete, to challenge the legal process as well. And if the request originates from a jurisdiction where the underlying identity trait at said issue is criminalized, being gay, being Jewish, et cetera, disclosure could be presumptively denied without some kind of valid court order as well.

Just like any other tech company out there, you don't have to respond to everything, but you do have to respond to legal process. And I think that the issue to really think about is, you know, look, if the string tells you, or rather, if the string tells the world who you

are, the registration data shouldn't tell a government where you are. That should be a guiding star principle. So back to you, Farzaneh.

FARZANEH BADIEI

Thank you, Alex. So basically, at ICANN, there is this pilot project, it's called RDRS, that triages the requests that they get from law enforcement and others to the registrars. And one of the things with being a non-commercial stakeholder group, we've been trying to get is to see that there's some kind of like fundamental rights balancing when the registrar gets the request.

Some registrars have to do this fundamental rights balancing because, you know, according to GDPR or the jurisdiction that they are in, they have to do a fundamental rights balancing, but most don't have to. And if they do, it's because of a best practice or because, you know, day one, they see that as a good thing for their business.

And we've been trying. Like at the end of the day, if there is going to be some kind of, like ICANN becoming this RDRS provider, at some point we might actually push for having fundamental rights balancing in the contract. They have told us, like ICANN world and others have told us that this might not be the best route and it might not happen. But the thing is that, the problem is that now with the arrival of all these new entrants, we have to go back, go one by one and talk to them and say, when you get these requests, do fundamental rights balancing. So that is a real issue, but we are

working on it. And I think that we can first start by having the best practices for registry and registrar for disclosing sensitive information.

And it's not just law enforcement. It's also intellectual property. We have had cases of brand owners that were coordinating with the nation states in oppressing people and would go after people who were criticizing them, taking down their domain and getting their sensitive information. So, that's another risk that we have identified. Sorry, I talked a lot. Avri, go ahead.

AVRI DORIA

Okay, thanks. First, just want to step back a little bit. At no point was I trying to re-litigate in any sense 2012. I look at 2012 now as sort of a picnic, as sort of a happy place for whatever problems we had back then. They're trivial compared to what we are now and that's what I want to not lose sight of.

I like the fact that lots of things are talked about, about these are ways we could deal with it. You know, we have created special types of applications for endangered industries, we've created for governments, for sectors at risk, you know, law and such. And perhaps we need to start looking at, you know, how do we protect the endangered applicant?

If we want to say as ICANN that now we really just want to deal with the ones that are squeaky legal by all countries, and we don't want to take any risks because ICANN, you know, in truth, is probably the

most risk adverse organization I've ever stepped foot into. However, if we want to move away from that and sort of say, no, we want to support at risk populations in some way, then many of the things that have just been talked about here might be, obviously, there's probably precious little that can be done this time, other than put a big sign up on our door saying, if you're LGBT, stay away. We can't support you. We can't protect you. You are not our business.

We're in the business of supporting people unlike you and perhaps that's the most risk adverse way for ICANN to deal with its current liability is just say, no, LGBT people do not belong applying for gTLDs. It's not that we don't want them. They might be nice people. They might be nice companies, but we have absolutely no method of protecting them, nor do we care. Thanks.

FARZANEH BADIEI

Yeah, Avri. So, yes. So, unfortunately, we haven't been proactive and unfortunately, the human rights voice is very much just a non-commercial stakeholder group. But I think that this is like something that you need to also like raise during our human rights town hall, which is going to happen tomorrow. And also, another thing, like I think that we should raise it with the board as well.

It's true that there's no mention of human rights in the application, the new gTLD application, but we need to proactively think about these things. Sebastien, go ahead.

SEBASTIEN DUCOS

Yeah, so two things. First of all, about the data disclosures and responding to law enforcement request and these sorts of things, I want to acknowledge the work that that you've done at NCSG, but also the general reaction here at ICANN on all these things.

We have been for years in the context of GDPR in general, about balancing tests, about making sure that disclosure doesn't happen nilly-willy, that indeed that the requests come from jurisdictions that we can recognize, that we are protecting our registrants, all these things. I'm not saying that they're taking that seriously by all registrars the world around, but at least within this community, within ICANN, this is something that has been repeated for years in a very loud voice.

To the point where the representation of law enforcement here, the PSWG from the GAC, when they say we want to talk about urgent disclosure and we want you to look in the urgent processes in order to disclose, they don't say, "We want the disclosure." They say, "We want an answer on your position about the disclosure that we're requesting." We're happy, not delighted, but happy to hear no I can't disclose as long as you tell me quickly that you're not going to disclose for X, Y, and Z reason. You don't even have to justify. But if you say, "No, I can't do it," they prefer hearing that than nothing at all. And this is almost what they're fighting for. If you can disclose, fine, can you please? If you can't disclose, at least tell me fast.

And I think that this is a good sign that it is understood by all here that the registrar, the holder of the data, the data processor, to speak, GDPR, are very much still given the reins on the decision. Partly because ICANN doesn't want to have that responsibility, as Avri said because it's risk-averse. But also, because I believe that we're having that conversation for 10 years, we're actually starting to make a point.

The second point I wanted to make was about protecting the registrants. Whilst there is no requirement to have human rights in your application, I think and I would suggest that an application, for example, .gay which happens to be a TLD, so there won't be any new application for it, but should --

AVRI DORIA .queer could happen.

SEBASTIEN DUCOS Excuse me?

AVRI DORIA .queer could happen.

SEBASTIEN DUCOS .queer could happen. Sorry, TLD. Absolutely. I would then suggest, because there's also at ICANN this idea that if you're an open, if you're a generic TLD, you need to treat all registrars the same way,

which doesn't mean that it's an open door to any registrar that wants to operate with you.

One condition to be a registrar accredited with my TLD could very well be that you enter and respect a human rights charter and, for example, not that you don't disclose data when legally and due process have been followed in the jurisdiction that you operate in because you have to follow the law, but that indeed that you have processes to protect the human rights of your applicants. That you have balancing tests regardless of the fact that you might be or not in a GDPR jurisdiction, et cetera.

These are things that a TLD operator can ask of their registrars and say, "If you're not ready to obey by my rules, you don't get to be accredited as my registrar." That is absolutely completely possible and, in these cases, I would strongly advocate for that to be done, but that's for the registry operator or the applicant at the time of the application to put that in place. Thanks.

FARZANEH BADIEI

Yeah, actually that's a really good way of like going to the next point. So, we can see that, like if the registry could provide some protection, some human rights protection, but we can also see if the picks, what is it called, like voluntary, it's now voluntary public interest commitments, those picks that they choose, whether they are human rights aligned or whether they also like contribute to human rights.

I was thinking that at these, yeah, so these RVCs, what was it? Registry Voluntary Commitment, that's what it is. So, I was wondering if these RVCs could somehow bring that kind of like human rights aspect, if we could like talk to the applicants and also like do like a little bit of a human rights impact assessment on these RVCs. I don't know if they are confidential when they are submitted. I'm not familiar with that.

SEBASTIEN DUCOS

No, no, they will definitely be part of the public, part of the application. You don't get to see it until revealed, but there are public information and in fine it should be in the contract. The whole purpose of an RVC is that it ends up in the contract so again, public.

FARZANEH BADIEI

Yeah. So, am I dreaming? Is this a possibility? Can we do some kind of like human rights check on these RVCs, especially because they can be about content, they can be about like restricting people access and they could have human rights implications? So, there are two things here.

One is doing a human rights impact assessment on these RVCs and another is to encourage these new applicants to have human rights respecting RVCs which Sebastien said they are not going to do it, but it depends on the nature of the registry as well, I guess. Yeah, Alex go ahead.

ALEXANDER URBELIS

Yeah, I think that the issue of RVCs and PICs is kind of interesting. There's definitely human rights implications here. I mean, they're essentially the mechanisms through which a registry operator, that is, would make promises about how they're going to operate, right? But to my mind, I think there's an enforceability gap here because ICANN really can only enforce these PICs through some kind of compliance proceeding.

So, if enforcement is complaint-driven, then it's necessarily going to be reactive. There's no proactive monitoring. So, if a PIC in an application says, this TLD is going to serve whatever community, community X, and then there's no enforcement mechanism to actually, you know, make sure that in fact happens, what are we doing if the registry operator simply ignores that particular commitment in order to serve this particular community, right?

So, content-based PICs then, you know, will raise some kind of expression concerns as well. So, if you have a registry, for example, .faith that commits to, you know, prohibiting blasphemous content, for example, well, what is blasphemy in this particular context when we live in this global world? What is blasphemous at that particular point?

Same thing now when we've seen this very much since the pandemic, six years ago, right, so what about .health? What if .health commits to prohibiting medical misinformation? Well, who decides what medical misinformation is at this particular time in

history? The U.S. government has got one view. The medical profession has got a completely different one. So, these aren't necessarily technical questions anymore. These are essentially consequential questions about democratic governance that we have to raise now because when we're at the application phase, that's when we're developing the architecture of these particular systems that we're going to be building and living in for the next however over many years.

FARZANEH BADIEI

Absolutely. I totally agree. So, just to point that a few years ago, they were talking about like enforcing these RVCs if they were like content related and the enforcement has to come from ICANN. And ICANN does not allow content regulation quite pretty clearly. So, what happened was that, so even if they have content restriction, ICANN cannot, so nobody can go to ICANN and say this registry does not follow its PICs. So, that is kind of like a little bit better, but still not very good.

But at the same time, another thing, so we had like a PICs dispute resolution kind of like initiative at ICANN and then the number of disputes that they received was really minimal. I have to go and check. I don't know if that mechanism still exists for the new ones, but that kind of like failed as well to kind of enforce these PICs. Which for us PICs were very concerning because they were like promising some kind of like you know identification and stuff like

that, that were not really privacy protected and restricting content and stuff like that. So, go ahead Sebastien, we have?

SEBASTIEN DUCOS

Yeah, so I just wanted to make sure everybody is clear on that. So, the PICs are a series of public interest commitments that are finite, described in the applicant guidebook. It's a number of questions that you have to answer yes, no to. Am I going to follow this? Am I going to follow that? There's some of those that you can't go around. Am I going to follow the law? Yes. There's no acceptable no answer to this. These are all, by definition, enforceable by ICANN in the sense that they wouldn't be in the list if they weren't. These have been picked specifically because they are enforceable and enforced.

Alex, you're absolutely right. Most of the time it's on complaints. It's more of a question of bandwidth from compliance than anything else. They work a lot on complaints, but these things are -- I audited two and I've been a registry and a registrar. You get audited on average every 33 years, or sometimes on a specific topic, everybody's audited on a specific topic. But they look at these things, and you have to justify having processes in place, justify what you've done, actions, and so on and so forth.

The RBCs are a lot more complicated because that's sort of an open window where, again, you're going to raise your hand and commit to something. And there were long, long, long discussions on enforceability because it was agreed by all that if you put

something, it needs to be enforceable. ICANN can't enforce anything just on any topic. One, don't have the capacity and two, don't have the mandate, particularly on content.

There were for a long time, ideas floated saying, well, if ICANN can't, then you need to go and designate a third party that could. ICANN will then vet that that third party is indeed legitimate and will take compliance on that third party. If the third party says you're good, ICANN will want one question. The discussion afterwards particularly from ICANN, is how do I judge who's legitimate and who's not and et cetera?

Those RVCs, to a certain extent, I would even be more worried about not their enforceability, but the fact that ICANN is liable to reject a number of them. You may want to do good. You may want to commit to doing things that you believe are going to be good to your registrants, and ICANN may tell you that that is not valid because there's no way for them to enforce it. Yeah, that was my point. Thanks.

FARZANEH BADIEI

Yeah, and that's okay with us. We don't want any even like good content restriction because we don't want ICANN to be the content regulator as commercial stakeholder group is very eager to do so.

Okay, so we only have four minutes and I wanted to make this point that even if there are laws that you have to abide by, the human rights standards are global. Prosecuting people, murdering them,

taking away their freedom of speech and hampering their security and there are many countries that have finger-chopping laws. And I don't think that our standards should be a global human rights standard and we shouldn't just say, "Oh, this just law of the land so we can't do anything about it." Well, maybe I'm dreaming, but I think that globally we have a responsibility to protect people wherever. Any last comments? It was a good session for an early morning. Oh yeah, go ahead, Alex.

ALEXANDER URBELIS

Yeah, sure. I mean, I think as a parting comment here, I think that we should remember that we're part of this ICANN process and we built the system, the DNS, this amazing protocol, because we believe the internet should not be governed by any single power. and that belief still holds and I think the work that we're doing here really kind of reinvigorates the spirit of that particular notion. The work ahead is not to necessarily reinvent this model, it's to finish building it and I think we've got a long way to go, but we're also closer than we think.

FARZANEH BADIEI

Yeah, absolutely, that's very true. And we will follow back on it's true that we don't have human rights language in the guidebook, but I think that we can have more of these conversations and talk to the potential applicants, but also like talk to the board and see

what we can do to bring a human rights respecting environment to ICANN and the registries and registrants. Go ahead, Sebastien.

SEBASTIEN DUCOS

Wrong way. Sorry. We don't have it in this round. We are going through a process that is now, and we need to push it, to be cyclical. We will have rounds, we should have rounds every year and a half, two years, not wait 10 years. It'll be part of the discipline that we'll need to have as a community not to change the rules so widely each time that it takes 10 years for the next round to appear.

But enforcing things such as things that exist already in the bylaws and say, hey, the application should also have something about human rights, that is not impossible. I think it's a fight that we need to start having now. Everybody's concentrated on the application phase, but nobody should completely lose sight that there will be a next round. So, this is a fight, a topic, a debate that we need to keep on having to make sure that if we miss this round, next round has some mandate on it.

FARZANEH BADIEI

Yeah, and your point about like, you know, we should start now and it's in the bylaws, the respect for internationally recognized human rights. So, we have ways and as Petra says in chat, we also had victory a few years ago. The board vetted the restriction of content within RVCs and we raised awareness about this and then the

board came to the conclusion that it was a violation of its bylaws if they enforce content restriction.

So, we can come up with various plans and I know Avri is very pessimistic about this, but hopefully we can bring some sort of human rights respecting environment for the registries and the registrants and the end user everywhere in the world. Thank you so much for attending.

And we are going to have a town hall on human rights. If you have any points that you want to raise that you didn't raise here or anything else, any human rights issue that you see at ICANN and its policies, please attend the town hall. Thank you so much everybody.

ALEXANDER URBELIS

Bye everyone.

RAFIK DAMMAK

Thanks, everyone, and this session is closed.

FARZANEH BADIEI

Thank you.

ANDREA GLANDON

Thank you. Please stop the recording.

[END OF TRANSCRIPTION]