
ICANN86 Seville | PF – Joint Session: CPH and NCSG
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ANDREA GLANDON

Only questions posted in the Zoom chat identified as a question will be read aloud during this session, as time permits, and when directed by the chair of this session. If you wish to speak, please raise your hand in Zoom or otherwise as directed. When speaking, please state your name for the record and speak clearly at a moderate pace. I will now turn it over to Rafik, Keith, and Owen. You may begin.

RAFIK DAMMAK

Thanks, Andrea, and thanks to everyone for making it for this meeting today. We know that it's conflicting with the GNSO Council public meeting, but here we are since this issue is for the Policy Forum. It's a good continuity of what we have previously of this regular interaction between the NCSG and the Contracted Party House. And I think lately we even have something intersessional related to DNS abuse to have more coordination with the members in that intersessional call.

For today, I think it's not surprising in terms of topics, and we hope that from our side, we share some points and hear from you, and have that interaction, and see also if there is any area for

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coordination and working together. So just to share those few words. Keith.

KEITH DRAZEK

Thank you very much, Rafik. Hi, everybody. My name is Keith Drazek. I'm the interim chair of the Registry Stakeholder Group, and we look forward to engaging with the NCSG on these topics. Thank you. Owen.

OWEN SMIGELSKI

Hello, everyone. I'm Owen Smigelski from the domain registrar Namecheap, and I am chair of the Registrar Stakeholder Group, and just would like to repeat the welcomes to everybody, and we can get on with the show.

So I think our first topic is DNS Abuse Mitigation PDP 1, Associated Domains Check. Is there anything on the next slide, Zoe? I don't recall. Nothing on the next slide. Okay. So I think I'm going to defer a little bit more to our participants in that to bring stuff up if there's anything of discussion to talk about what's going on, what's happening, thoughts moving forward, et cetera. So I will defer to all of those participants to form a queue and jump in, or if anybody else has any other thoughts or things they'd like to share. Dennis, go ahead.

DENNIS TAN

Thank you, Owen. Dennis for the registries and Verisign. So I think that this is a good point to reiterate the good spirit, good sentiment

that all groups participating in the PDP have shown that we're making good progress at a good pace, and groups are coming to the table to compromise and to make this work. And so with those who have witnessed those conversations happening this week, I think you can attest to that progress.

Separately, I just want to ask here today, repeat something, and reiterate our commitment to work on a recourse mechanism and think it's a worthy topic of conversation, and we support a dedicated PDP on that topic. It's one of the gaps flagged in the issue report. So there's the basis of that, so the work should be grounded on the DNS abuse mitigation actions going wrong and what are the appeal process that registrants can avail themselves in order to restore whatever damage that's been done. Right? So again, we're happy to start that work as soon as practical and get the groundwork done, develop, have those conversations so when the time comes to launch a PDP, there's much already discussed, policy development process already established, some guidelines, parameters in order to get into the work as soon as possible. And again, we're looking at developing a narrowly scoped, targeted PDP, so much of that work in order for that to happen needs to start before the PDP is approved and launched. Right? So again, happy to start that work, so reach out to me or any of our Contracted Party colleagues who are all here, and I'll leave it there. Back to you, Owen. Thank you.

OWEN SMIGELSKI

All right. Thanks, Dennis. It's Owen, for the record. Do we have anyone else who'd like to raise their hand to get in queue? Michaela.

MICHAELA
SHAPIRO

NAKAYAMA

Hello. Thank you. I did just join the Zoom, but I didn't raise my hand there, so sorry about that. Michaela, for the record. I had prepared a few slides of some of the things that were priority items for us that maybe would be fun to, maybe fun's not the right adjective, but that we could bring in here to maybe keep the conversation going. So if you don't mind indulging me a little bit there, that would be fantastic.

But also do want to, just kind of bouncing off Dennis as well, I'll get to a slide about remedy and recourse, but that's really, really appreciated to hear that that's something the registries are interested in, and just putting out there that we'd be really excited to work with you on that. So looking forward to it.

DENNIS TAN

And registrars as well.

MICHAELA
SHAPIRO

NAKAYAMA

And registrars. Sorry, I didn't want to presume. Perfect. Thank you. So next slide, please.

This is just in case you have been lucky enough to not be following this too closely, I thought I would give a very quick overview of

where we are. So the working group kicked off in March, earlier this year. We've had a number of in-person working meetings. I created this slide before. We actually had three meetings this week already, so we can keep adding the tally on there. And so far, we've gone through and have strawman language now for, I believe, all the way up to question nine of the charter. So we're moving very quickly, which is promising, and we will continue to be deliberating on our last in-person meeting tomorrow, and then on and on remotely. And in terms of just scene setting for long-term projections, right now the project plan aims for deliberations on the charter questions to be completed by November of this year, a draft to be published in February 2027, then with public comment in May, and a final report to be submitted to the GNSO Council by June 2027. So we're working against a fastly moving clock. Next slide, please.

So this is just, and I realize I typoed, it should actually be four key areas. These are the ones that I thought would be the most useful in this setting to bring up and would love for this to be interactive. Happy to be taking questions, comments, criticism, sighs, all the things on these. So these are the four that I wanted to bring up today. So next slide, please.

So here, and again, this is slightly dated because we've had more discussions on this since, but just wanted to say, the NCSG's position on the trigger for conducting an Associated Domain Check. We wanted to see something closer to the lines of a combination of contextual signals rather than solely one incident of actionable evidence. That being said, today, we already deliberated on some

language that I think could provide some more clarity on where we're seeing that trigger language go. And so maybe I'll even skip over this because I think the non-commercial side is quite happy with some of the language that proposed earlier today to caveat the is being used, or was being used, or will be used language. So yeah, I think we can skip on this one unless anyone has thoughts or feelings. I'll pause for a moment. Amazing. I'll take silence as consent. So next slide, please. And we can skip this one, sorry.

Cool. So the next big one for us is about the scope of investigation. So really honing in on how are we thinking and defining a reasonable investigation, which is the terminology that's being used right now in the charter. So our position as the NCSG is that this should be calibrated to the severity of the suspected abuse. We've put out a few things you could think about related to portfolio size or the registrar business model. And apologies, there's a small typo there, but language on data that may be used as part of the scope of the investigation, we could see that as being acceptable. But in terms of putting a should, a mandatory requirement of data that should be collected or reviewed, is not something that the Non-Commercial Stakeholder Group would like to see. And my sense is from the CPH side, that that could also be something that we could get behind but would be helpful. Maybe here I can pause, if folks have thoughts and feelings and want to come in on that element about whether there should be a requirement to generate new data or not, which the non-commercial side would like to not see. Maybe I'll pause there. Guys,

you're such a great audience. Thank you for agreeing with me on everything. I'll go to the next slide, please.

Awesome. So this was just to show this is what the strawman language was. And I don't want to read through all of that to bore you all, but really just again, going back to the things that we want to see in defining a reasonable investigation. So maybe we can go to the next slide because that's where we have suggested language that we would like to see in there.

OWEN SMIGELSKI

Michaela, real quick, because you said you're not in the Zoom. This is Owen. You're getting some support in the chat for that last slide there. So just want to let you know that there's at least two registrars that agree with you on that.

MICHAELA
SHAPIRO

NAKAYAMA

Oh, thank you. That's always nice to hear. So maybe if you don't mind, we could go to the next slide, because this is where we put almost like a track changes version. And again, this is more take it as a wish list than a must-have. So to use the language of the chair of the PDP, this is not a hill we're going to die on. But these are elements that we would like to see reflected in some capacity in the outcome of the PDP. So, making sure that this is narrowly scoped, that the ADC doesn't become a general audit of the registrant's broader portfolio, and really we're focusing on access and not requiring the access or generation of data that is not reasonably

available at the time of review, so having that time constraint there. And we put a few, again, what we think could be a scope of a reasonable investigation, and very happy to take any questions or comments or reactions on that. So I'll pause again here. Amazing. Thank you, guys. I'll go to the next slide. Oh, sorry, Owen.

OWEN SMIGELSKI

Sorry, I was doing my hand both ways here. So I just want to highlight, and not to critique or whatever, just when it says, "Identifying the same registrant or account," those are defined terms within the RAA. And my concern is if you limit it to just that, then if somebody isn't doing that, if it's a different account, if it's an actor or a party or a group or a... of the mafia or something. I don't know. I just want to make it a little more broader, just to make sure you can catch that and not be stuck in those defined terms. But otherwise, I totally understand the approach on that. Thanks.

MICHAELA
SHAPIRO

NAKAYAMA

No, I appreciate that. Does that resonate with others in the room? Reg, your hand is up.

REG LEVY

Thanks. Reg Levy from Tucows. And yeah, I have a similar concern about indicating that it has to be the same registrant or the same account. I know that for us, registrant is not necessarily the piece that we're going to be looking at. We may be looking at the reseller, and we may be able to see campaigns across resellers. And so that's

not going to-- I've been trying to keep the word registrant specifically out of this, because there's a lot of ways that we can perform a reasonable investigation, and once we start saying we should target X or we should target Y, first of all, that limits what we can do, and second of all, it just means that the form of the attack will start changing. And so reviewing those specific data points will no longer be relevant, and then we're stuck having to do that.

MICHAELA
SHAPIRO

NAKAYAMA Michaela again, for the record. No, really appreciate that input. And again, this is kind of working language, and I also wonder if perhaps that would also be helpful to be captured in the kind of implementation guidance rather than in the PDP outcome itself. So, very open to that as well as an option, but I think as long as the spirit of what we're trying to capture there is something that resonates, to me, that's progress. Yeah, go ahead, Owen.

OWEN SMIGELSKI

Thanks, Michaela. This is Owen Smigelski. As a former ICANN Compliance staff member for seven years, if you want something in the policy, please put it in the policy. Anything that's outside of the policy, like an advisory, is not binding, and sometimes it can be misinterpreted, misconstrued by reporters or the public, or Compliance can cite it and we can say, "Well, we don't care. We're compliant anyways." You can have notes in a policy, and that is binding upon the policy. An example is renewal reminders are supposed to be sent at approximately 30 days, and there's a note

in it that says that means, I think it's between 28 and 32 days is approximately. So if you send 33 days or 26 days, you're outside of that. So as much as you can get into the policy and leave interpretation outside of it, that would be good for Compliance, but also good for the registrar so that we know exactly what it is that we're having to do. Thanks. And Dennis has his hand up.

DENNIS TAN

Thank you, Owen. For clarification, and I'm not a subject matter expert, but when you say Compliance follows and enforces a policy, that is true, but the policy recommendation coming out of a PDP is not the same text that goes into the policy. So I just want to make that clarification that whatever text goes here is not necessarily translated or transposed into the actual consensus policy language.

OWEN SMIGELSKI

Sure. Thanks, Dennis. This is Owen again. Thanks for that clarification. Also just seeing what we had happen with X business days with regards to urgent requests, please put everything in the policy and not leave it to the implementation to decide what does X business days mean, or not less than X business days. Just to make sure that we can avoid those problems and everyone wanting to relitigate it later on down the road. As much clarity as we can get up front, I think that would avoid problems down the road and

make it easier to implement and get that into wording that ICANN can then make effective. Thanks.

DENNIS TAN

One more. Yeah. Thank you.

OWEN SMIGELSKI

Go ahead, Dennis.

DENNIS TAN

Yeah, and this is to Michaela. I think you alluded to that a little bit. The elements that you are adding here, I don't think in my reading changes the spirit of it, but it makes the whole policy text a little bit clunky, if you will. So since you are not changing the spirit but adding clarification, maybe that's the language, and you can expand on that in a request for addition in the implementation guidance. Right? What do we mean by be practical and proportionate? And maybe you can add the narrowly scoped, because I don't know within narrowly scoped and proportionate, how do you reconcile the two? I don't know. So just something to think about. Thank you.

MICHAELA
SHAPIRO

NAKAYAMA

Thank you. Michaela, for the record. And thank you both for that. That was very helpful. And I wonder, again, this was almost like a wish list of things that we would like to see, and so from looking at the chat and the input so far, I didn't imagine that all of the things

that are there would probably be integrated verbatim. I do wonder, though, if at least something around the language on not requiring to access or generate data that's not reasonably available. That language, I think so far would be great if that could stay. Similarly, the kind of ensuring that it's not a general audit or something around, I think that's partly what we're alluding to with the narrowly scoped. So if maybe that's the explanatory element, as you mentioned, Dennis, that could go in.

And going back to the comments on identifying the same registrant or account, I don't know if, just out of curiosity, would that be something that if we changed the terminology there, like around registrant or account, would that still be something that's of potential interest to the CPH, or is the entirety of that bullet point an issue?

OWEN SMIGELSKI

Since I was the one who flagged that, I'll just jump in here. This is Owen, for the record. I was just trying to avoid that terms from the RAA, because then it could be very strict, and as Reg pointed out, say it's five different people with 20 different accounts across three resellers. That might not be caught within that definition. And so you want to make sure you're broader. But I like the concept, I like the idea, I like the wording, and just avoid that specific definition. And then we have some more people in the queue. And you also had some support for the generate data, not unreasonably. There's

some support in the chat for you there as well, too. Brian, you've got your hand up.

BRIAN CIMBOLIC

Thanks, Owen. Hi, everyone. I just want to follow up on the proportionate point and the narrowly scoped point. Reasonable investigation should be narrowly scoped. That's generally fine, I think. However, the notion that a reasonable investigation must be narrowly scoped, I think, unnecessarily restricts a registrar. I think if a registrar wants to check a few data elements and it's still not finding anything, is it then prohibited from looking at further data elements within its control? I don't think that should be the case.

I think that we should allow for registrars to have robust practices for Associated Domain Checks, provided that it's consistent with applicable laws, including data privacy laws, consistent with its contract, but I don't think we want to have a policy that restricts a registrar from having a robust program for Associated Domain Checks, and I think that that addition would basically have that restriction. A registrar could be out of compliance with its ICANN agreement if it did too much in the Associated Domain Check, and I don't think that we want that to be the ultimate outcome of this policy.

OWEN SMIGELSKI

Brian, this is Owen. If I could jump in and push back on that a little bit. ICANN contractual compliance is getting very liberal with their

interpretation on some of what these requirements are. In fact, you won't be able to attend it, but the compliance session later we're having with the registrars, we're going to specifically talk about a case where they went way too broad, way outside of their remit.

So, while I appreciate that narrowly scoped might be too narrow, if it's just as broad as possible, then ICANN could, in theory, push back and say, "How come you didn't check this or that or everything? And we think it should have been done in this case," or something like that. So, want to make sure we put some guardrails on there so that it's not open to over-interpretation by compliance and the reporters and stuff like that.

BRIAN CIMBOLIC

If I could just respond briefly, because I get the intent, and I appreciate it, and I think if you say reasonably scoped, that can get you where you need to be because otherwise, a registrar with this language could find itself in a position having to answer to compliance for doing too much. And so I don't think what you want to do is over-correct. I get it that these things should be generally proportionate, but again, if a registrar thinks that it has available evidence here after it looked here and here first, I don't think it should be prohibited. I don't think it should be found to have violated its RAA if it continues that investigation.

OWEN SMIGELSKI

All right. Thanks, Brian. Reg, you've got your hand up.

REG LEVY

Thanks. Yeah, I think "should be narrowly scoped" may be better than "must." That accomplishes what you're looking for and hopefully threads the needle between what NCSG is looking for and the issues that Brian raised. Rather than being too critical here, I wanted to say that I appreciate the points from NCSG and strongly support the fact that calling out that it should be narrowly scoped is actually something reasonable, because what we are trying to guard against is in-depth mini audits, as you say. I also wanted to say that I really appreciate that you are calling out that it should not require us to generate additional data. I think from the get-go, we were looking for something that does not require that we create additional logs. We already have logs for a lot of what we do, and what we have should be sufficient.

OWEN SMIGELSKI

Thanks, Reg. Michaela, you have more? Or throw it back to you.

MICHAELA
SHAPIRO

NAKAYAMA

Hi. Yes. Michaela, for the record. Thank you all. This has been such a helpful conversation, and so I'm really excited to bring this back to the working group, so thank you all for the spirited discussion. I think I only have a couple more slides, and I can go quickly, so maybe the next slide. So really, this is about the kind of scope of the PDP, and this is a very minor kind of language suggestion, so maybe the next slide here.

Very minor change is what we are recommending in alignment with what I believe Natalie had put in the document with track changes, so just removing the "unless necessary and proportionate." That was just language that we were quite concerned with, and so I think we're in alignment, at least with the registrars. But wanted to put this out there to see if there are broader comments or questions from the broader CPH community on this.

OWEN SMIGELSKI

I like it.

MICHAELA
SHAPIRO

NAKAYAMA

Cool. Thanks. Fantastic. So maybe I'll go to the last slide then. And this is looking ahead, so getting really excited about what could come next on the PDP place kind of world, and going back to Dennis' suggestion before, again, the topic of access to remedy is one that the NCSG is very keen to see in the next round of PDPs, or not next, next next, because we have a couple more in the queue. But also open to having kind of conversations even ahead of that. Maybe there's more space for cross-community discussion and cross-constituency groups discussions on this topic in the meantime.

And secondly, the only thing that we really wanted to add, and I'll go to the next slide, please, because it's in yellow. It's a very short thing that we were thinking about adding on as a suggestion here about safeguards, and I know remedy and dispute and recourse

mechanisms is already there, so one other element that we want to add on is around safeguards, such as transparency reporting requirements when it comes to mainly the what happens when you do an Associated Domain Check, you've decided to do something.

It would be nice to be able to see how we could come up with a mechanism that isn't overly burdensome for the operators, but that still allows for some transparency around the what, the result of the ADC or what has happened. And if the result is also nothing, that's also great, too. It's more not to presume that there will be action at the end of the ADC. But yeah, sorry. I see there's a lot of discussion in the chat, so I'll stop there. And yeah, just really appreciate everyone's time, and if there's questions or comments on that last slide, happy to take it too.

OWEN SMIGELSKI

Thank you, Michaela. Does anybody have anything they'd like to join in or just stay with the chat? Dennis, go ahead.

DENNIS TAN

Thank you, Owen. So Michaela, just clarification, this is the former preliminary recommendation number seven, on which they were capturing ideas, right? But I think we already removed this preliminary recommendation of seven in lieu of a letter from each group and channeled those through the GNSO counselor.

MICHAELA SHAPIRO NAKAYAMA Yes. Michaela, for the record, yes. I apologize. This is slightly dated. It was before the meeting where we did that. So thank you for that clarification, Dennis. So yes, this will be our suggested addition to that separate thing, letter, whatever the outcome looks like. Thanks.

OWEN SMIGELSKI Okay. Anyone else on Michaela's slides? All right. Seeing nothing, we can move on. But just thank you, Michaela, for bringing that forth. Sometimes the hardest part of drafting is doing the first version, so it's good to see that, and certainly CPH and NCSG align on a lot of these things, so it's good to see that and share that, and we really do appreciate you bringing that forward. Okay. Does anybody have anything else they'd like to bring up about ADC PDP? Okay. Seeing nothing, I move on to the next slide. SRT. This is, I guess, me again leading.

So I think we had our all-day session on Sunday. We've had two of our three sessions. We'll have one more tomorrow. I think we're making some decent progress on that and the questions. Now probably everyone's heard about it, so I won't rehash everything here. But I'll just leave it open and see if anybody would like to bring forth something of collective interest to our various SGs. Manju.

MANJU CHEN Thank you, Owen. So I guess just to raise my hand and share NCSG's several perspectives on the thing we've discussed for the past few

days, especially because we had a day zero on Sunday. Anyways, we had a day zero, and then we were in that day zero mostly discussing authentication and authorization. I don't know if there's a need to—authentication is where you authenticate people, whoever deserves to request whatever data it's requesting, and authorization is when registrar makes the decision of disclosing or not disclosing the data to the requester.

And before I start sharing the viewpoints of NCSG, I guess it's important to clarify again, NCSG understands clearly the difference between authentication and authorization. But when we're asking that we do a lot more on how we authenticate people and what requirements we should consider when we are discussing authentication, when we raise concerns about maybe there should be more safeguard in place when we are doing authentication. We understand that authentication, for most parts, it should be a reference point. It's not a decision point when registrars are making the decision of disclosing or not.

But we also have to understand that there are existing players who take that as a decision point. Like we always say, as an ICANN, good players are here, bad players are out there. They don't follow whatever we discuss here. So, we are very aware of that in NCSG, and we just wanted to caution us of easily giving authentication to people who are not, should be authenticated. And we are definitely very eager to participate in more discussion of what requirements,

what safeguards should be in place when we are discussing authentication.

And there are also incidents of if you outsource authentication to some service providers, what if they get hacked? And there are incidents that happened that authentication providers get hacked. Should we consult them, invite them to share the experience, or is that something we have to consider when we are drafting our policy recommendations? That's something we want to raise for us to think about.

I guess another point is that we understand there's a lot to discuss, and we understand also there might be some points that actually fits better when we're discussing what requesters should be providing when they are requesting for data, and that should be maybe in another recommendation that we also are fully aware and we're willing to discuss that. So maybe that's, I guess, a starting point of sharing our position, and I'll welcome any other feedback or correct me if I'm wrong. Thank you.

OWEN SMIGELSKI

Thank you, Manju. Anyone else? Perfect. Great. Manju, you solved everything. Okay, seeing nothing else, I think we can move on to the next slide. Oh, we're here already. Hey, we're getting our work done fast. We should run all PDPs. Sorry. Sarah, go ahead.

SARAH WYLD

Thank you. This is Sarah. I want to agree with Manju that I think there is more thinking to be done around those criteria for the user authentication. I think we have a pretty good starting point in the Straw Person document, and we just need to really dig into those details, which we've now laid the groundwork for doing. So I think that's where we will be going, and I'm glad that we're going there together.

MANJU CHEN

Sorry, just maybe another point I forgot to raise. I think, like we also discussed, there are some points that should not be implementation and should be in policy. That's something we definitely urge us to keep in mind, that there's something we needed not to be liberated or whatever interpreted when it comes to implementation. There's something we will have to insist that stays in the policy and that's enforceable. Thank you.

OWEN SMIGELSKI

Thanks, Manju. Now that we're at AOB, anyone have any other business to bring up? Oh, wait, we're back on SSAD. Sorry, I didn't see the slide move. Oh, no, we're back to—Zoe's giving me whiplash over here. Okay, now we're on AOB. Anyone have any other business to bring up?

All right. Seeing none, I'd just like to, at least on behalf of the registrars, thank our colleagues at the NCSG for taking this time. I'm glad to see that we have this as a reoccurring meeting, each

ICANN meeting, just because I think we are aligned on a lot of these positions, and it's good for us to continue having these discussions and making sure that we can push forward things of mutual interest. And again, thank you. Keith?

KEITH DRAZEK

Yeah. Plus one from the Registry Stakeholder Group. We appreciate and enjoy these opportunities to engage with the NCSG, so thanks again.

RAFIK DAMMAK

Yeah, nothing else really to add. Yeah, it's always good to have this interaction, and I think, as usual, we'll have the next one in Bali, and hopefully we'll have other topics to discuss. Or maybe we'll keep discussing about those, but yeah. Thanks again.

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