

Meeting with: Non-Commercial Users Constituency (NCUC) leadership

Date: 30 May 2018

Attendees: Goran Marby (ICANN CEO); Renata Aquino Ribeiro (NCUC Chair); David Olive (SVP, Policy Development Support); ICANN Policy support staff

High level notes [these are only intended to capture the high level themes raised during the discussion]:

TOPIC 1: GDPR/data privacy developments

- For the two GDPR-related cross community sessions at ICANN62, ICANN Org has emphasized the importance of them being representative of the community and their views.
- We recently received a letter from the European Data Protection Board endorsing the statement of the Article 29 Working Party: https://edpb.europa.eu/news/news/2018/european-data-protection-board-endorsed-statement-wp29-icannwhois_en
- Renata: The NCUC members have many questions about the GDPR, including about ICANN's request for a moratorium, how it plans to stay compliant while policy work goes on and the EPAG lawsuit.
- Goran: We need to get clarification from the DPAs as to what the law actually means. The DPAs have provided a lot of information but there are still areas of uncertainty, e.g. accreditation. The current situation is a compliance issue; we developed the "calzone" model that proposed a tiered access model which was accepted by the community and the Article 29 Working Party. Based on that model, the Board decided to adopt a Temporary Specification which now launches the necessary GNSO policy work. Over the past several months, a lot of work was done not just by ICANN Organization but also by and with the community. Nevertheless, all the Contracted Parties are independent data processors and make their own decisions about how to comply.
- Question: Did ICANN need to take legal action? Could it have not entered into discussions and/or sent a letter to clarify with the registrar? Goran: This is one of the areas where there is a clear difference of opinion as between ICANN Organization and the registrar; only a court can determine what is the correct view. We are trying to seek clarity so that the Contracted Parties and the community can know what the law means and its scope. We had noted the possibility of legal action some weeks ago. The legal action we took last week was to ask that the court clarify what is currently under discussion in the community, e.g. what data must be collected. We also have contracts and we need to stay within the bounds of our mission, which have WHOIS implications. We therefore need to perform our mission while complying with the law, until the community decides differently. Policy is set by the community, not ICANN Organization.
- Question: Do you foresee more legal action in the future? Goran: The most recent letter from the European Data Protection Board is encouraging.
- Question: Should ICANN Organization be legally responsible for the WHOIS system? We have asked the European Commission and the DPAs to work with us to see if and how that can be the case. If so, this can relieve the Contracted Parties of their responsibilities under GDPR. Unfortunately, this will not be a simple or quick discussion.
- WHOIS can be used for both positive and negative purposes, ranging from committing cybercrime to detecting it. Both sides of this discussion is part of the community discussion; we should be able to balance both the right to privacy and the right to information.

- NCUC has European and non-European members, and supports thinking about GDPR implications and data privacy issues globally.

Action Item:

- None

TOPIC 2: FY19 Budget

- Question: Has ICANN's budget increased because we have broadened our scope? Goran: We have had to clarify what our mission is about. This has been necessary due to legislative proposals that may impact our policy and technical work. GDPR is a good example. We therefore needed to change how we interacted with the public, including with political institutions and regulators.
- Question on Community Regional Outreach Program (CROP): NCUC participated in RightsCon, AfriNIC and APNIC recently. These events are important as they allow contact with many regional members and obtain guidance on important policy issues. How can there be greater transparency on the budget so that the right decisions can be made? Goran: We are very transparent in our budget planning and disclose many details that explain a number of aspects of the budget. To enable the community to digest the details, however, we provide a summary of the overall budget. For CROP, we needed to balance different interests and make difficult choices, so the decision was to focus on ICANN events. The most cost-cutting was actually internal to ICANN Organization. This actually allowed us to provide more support to the community, including though not limited to constituency travel.
- Question on Additional Budget Requests (ABRs): With the reduced envelope, will community outreach and work be affected? Goran: Discussions about a flattening budget started a while ago. As mentioned, internal cost cutting has already taken place. On hiring staff, these are decisions that were taken previously to enable staffing of current and then-new projects (e.g. implementing the new gTLD program), and we are now shouldering the cost of those hires and new projects. The community needs to continue to have discussions as to the importance of outreach, and prioritization in relation to the overall budget.

Action Item: None

TOPIC 3: Future of Civil Society within the ICANN Ecosystem and Ensuring Diversity in Policy Participation

- Question: What can civil society be leading or be more active in? Goran: Civil society is part of the multistakeholder model and anchors the diversity of the model. It should continue to be engaged both in overall ICANN governance discussions and in GNSO policy work. The multistakeholder model works best if different voices are able to come together and try to arrive at consensus. This is one reason why ICANN Organization does invest in supporting civil society, for instance, in FY19 the amount of community and travel support is actually increasing while that for staff travel is decreasing.
- Question: What can be some general pathways of increasing diversity in participation in ICANN policy work? Goran: we now have regional strategies in each of our regional teams and offices, as a first step, even with the budget constraints. Holding ICANN meetings in different locations

globally also facilitates outreach and awareness from different regions. All the various pieces need to be looked at together since ICANN has a globalization strategy that it is executing on.

- Renata: NCUC has several hundred members across the world and diversity is a key priority. They have tried to link several capacity building activities (e.g. policy writing training) to the objective of increasing diversity. Goran: Agree it is important to enhance diversity, and funding is one means that can help do so. It is expensive to hold meetings around the world, provide translations and travel. As up to 85% of ICANN's annual budget is more or less accounted for, we need to continue to work with the community on ways to prioritize and to see how important activities can be funded.

Action Item: None

Topic 4: Liability for Community Members' Participation in ICANN Policy Processes

- Question: Will ICANN Organization indemnify community members who may be legally liable due to their participation in ICANN policy processes? Goran: The Board is legally liable for all actions and decisions it takes. Community members may be viewed as agents of the Board but the Board remains responsible, as does Goran and his staff. The Board and the corporation has an obligation to comply with all laws, and this may be why some actions are sometimes viewed as conservative by the community.

Action Item: None