

ICANN73 | Virtual Community Forum – At-Large Policy Session 3: Protecting the Rights of Registrants and End Users for a Secure and Stable DNS
Wednesday, March 9, 2022 – 12:30 to 14:00 AST

YESIM SAGLAM:

Hello and welcome to the At-Large Policy Session 3: Protecting the Rights of Registrants and End Users for a Secure and Stable DNS. My name is Yesim Saglam, and I'm the remote participation manager for this session.

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With that, I will hand the floor over to Hadia Elminiawi.

HADIA ELMINIAWI:

Thank you so much, and welcome all to the [second] At-Large policy session at ICANN73. My name is Hadia Elminiawi. I am an At-Large AFRALO member. Previously I was an ALAC AFRALO delegate to the NomCom. I was also an ALAC member. I participated in many PDPs, the most famous of which I would say is the EPDP on gTLD registration data. I’m also vice chair of the Middle East strategy working group.

So this session will highlight the importance of upholding the rights of registrants and interests of end users for a secure and stable Internet. We shall also try to explore the importance of upholding stakeholder’s rights for a secure and known future Internet and for policies that satisfy the public interest. Other possible outcomes of this session is a research paper on the topic.

As for the format of the session, the session will be composed of three roundtables. The first roundtable will discuss the interests of Internet users. The second roundtable will discuss the rights of registrants. And

the third roundtable will look into ICANN policies and how they uphold the rights of registrants and interests of users for a secure and stable Internet. So let's go to our next slide which is the first roundtable.

So the first roundtable is about Internet users' interests. We have four speakers. The bios of the speakers are linked to the agenda. However, speakers could briefly introduce themselves before speaking. Names are put in alphabetical order. So my first question goes to Leon Sanchez and it says, "According to ICANN bylaws, how do end users participate in ICANN work?"

LEON SANCHEZ:

Thank you, Hadia. This is Leon Sanchez. Thank you for inviting me to share this panel with you. Well, the ICANN bylaws of course incorporate means by which end users may participate in ICANN's multistakeholder model. The reference that I primarily think about, and I might be biased of course, is the At-Large organization. The At-Large organization is stated in the bylaws. And, well, of course it states that it is the home of end users. So through the At-Large organization, through the At-Large Advisory Committee, the interests of end users are shown and incorporated into the different activities that the ICANN community carries out.

But I would say that's not the only way that end users can participate in ICANN. Of course, there are other constituencies, other parts of the community. I would say that maybe if they are not primarily labeled, so

to speak, as being formed by end users, I would say that of course end users also converge in those parts of the community.

To give you an example, I can think of the Non-Commercial Stakeholder Group, I can think of the IPC, I can think of many other parts of the community. Even the GAC I would think that could in some portions of its work enable the participation of end users within the ICANN work.

Now of course having the At-Large formed or divided into RALOs, for those who are not familiar with the At-Large structure, the RALOs are the regional At-Large organizations which, of course, cover the five different regions by which ICANN is divided for regional purposes.

And even more at the base of the pyramid we have the ALSes which are the At-Large structures. So each ALS, of course, is able to reach out at a more local level to consult of course the views and the interests of local end users and then just exercise that bottom-up process that pertains to ICANN's multistakeholder model.

So from the bottom up again, these ALSes may consult the end users at their corresponding region. They then of course would raise this at a RALO level. And then the RALOs can have dialogues between different regions. And if they think that a certain topic may merit further discussion between RALOs and the ALAC, they can do so and raise the different issues.

So as you see, there is not a single channel by which end users may participate in ICANN. There are different avenues by which end users can contribute to this effort of having a secure, stable, and reliable

Internet and reliable domain name system. I hope that this is at least a good introduction as to how end users can participate within the ICANN environment.

HADIA ELMINIAWI:

Thank you, Leon. The bylaws also state, “ICANN ensures an open, transparent, and bottom-up multistakeholder policy development process that includes civil society and end users and that works to ascertain the global public interest.” So can individual users directly participate in PDPs based on this statement, and how could they do that?

LEON SANCHEZ:

Well, of course anyone can take part of a policy development from my point of view. All meetings are open, all meetings are inclusive. Of course, there might be some membership meetings that might require you to actually be a member of some constituency to actually take part of that. But generally speaking, the PDP process is quite open. So I wouldn't see any reason why an end user couldn't feed directly into the process of any PDP process.

And in the end, the PDP processes are in a good thought of how they can provide a better ecosystem or a better domain name system, and the end users would be of course those who benefit directly from or suffer from the outcome of a PDP. So again, I don't see why an end user wouldn't be able to feed directly into the process.

And I forgot to mention one other avenue by which end users could contribute. And forgive me for going back to the first question. But of course, different programs like the Fellowship program, the NextGen program, and other programs are certainly feasible avenues and ways by which end users and other members of the community from different stakeholders can participate and feed into the different processes that are taken within the ICANN multistakeholder model, Hadia.

HADIA ELMINIAWI:

Thank you so much, Leon. My next question is to Sarah, and it says, “Through At-Large the capable part of the user community can submit ideas and take positions. How can we define those positions?” And by defining those positions I mean, what elements do we need to consider when defining those positions? What do we need to factor in? Sarah, the floor is yours.

SARAH KIDEN:

Thank you, Hadia, for inviting me to this panel. My name is Sarah Kiden, and I’m an ALAC member from the African Regional At-Large Organization, that’s AFRALO.

In response to your question about how we can define our positions as the At-Large community, when you look at the ICANN registrant program called focusing on rights and responsibilities of registrants the goals actually align very well with what we do as the At-Large community. Things like educating registrants about their rights and

responsibilities. Things like identifying and raising awareness about issues and challenges that registrants are facing and ensuring that registrant perspectives are reflected in ICANN Org’s ongoing work.

The reason I say this is because we currently define policy positions through the consolidated policy working group, CPWG, that Jonathan and Olivier lead, and we have capacity building programs through the capacity building working group.

The part I feel that is missing though is that we still have the same people contributing to defining these positions. They are penholders. They are the same participants in various working groups and things like that. And yet when you look at the At-Large so to speak that Leon has just talked about, specifically I like looking at the newsletters from all the regions, you notice that a lot of work is being done by ALSes in their region.

So they are building capacity, they are creating awareness, they are partnering with global stakeholder engagement teams to deliver these programs. So why is it that we have people working on the ground but they are not able to get their policy...they are not contributing to defining policy positions.

I have some ideas if I reflect what I have observed. For example, while we are doing capacity building and creating awareness, we still have a bit of work to do. And I don’t think it’s actually a complex task. Part of it is building confidence in registrants, in end users and their members. Building confidence for them to know that their skills, that most

importantly their lived experiences as registrants or end users are what we actually need to define our policy position.

The other part is empowering or allowing end users to know that we don't all have to be penholders. There are many ways you can contribute to this process. It can be something as simple as bringing your editing or proofreading skills into a policy document or something like sharing a case study of a specific issue that happened and how you were able to solve it so that ALAC people can learn from it. So there are many things you can do.

And finally, I think I'll say that the good news is our community is willing. I don't want to name names, but we have leaders in our community that have helped and they continue to mentor other people to build their confidence to define these policy positions. And I'm sure my colleagues have a lot more to say, so I'll stop here for now. Thank you.

HADIA ELMINIAWI:

Thank you so much, Sarah, for your answer. And I would say necessary elements also to factor in would be the needs of the users, the values of the users. And here comes my question to Jonathan. It's about the means and tools that could help At-Large define Internet users interests. So, Jonathan, the floor is yours.

JONATHAN ZUCK:

Thanks, Hadia. Thanks for inviting me to be part of this session. I'm Jonathan Zuck, and I'm the co-chair of the Consolidated Policy Working Group within the At-Large. And so we're kind of responsible for establishing positions for evaluation by the ALAC and for coordinating the participation of At-Large volunteers in ICANN policy development processes such as working groups.

And so the question you asked is a very important one which is, how do we go about determining the interests of Internet end users? That is our remit, and it's not a simple one. Because if you think about it, the silent majority among the stakeholders is these Internet end users. And that silence is part of the challenge.

And so I think that we end up taking a multitiered approach to attempting to identify the interests of Internet end users. And so the first, and not to be overlooked, is logic. We all spend most of our days as individual Internet users making restaurant reservations, trying to do online banking, and things of that sort. And so we all have an innate awareness of what that exercise looks like, and so we can apply some logic to what would represent the interests of individual users.

What's difficult to assess sometimes though is a balance of interests, the prioritization of those interests. Particularly in the context of rights as you have in the title of the session. Because rights allow for a kind of an ideological approach to determining interests, and interests per se is more pragmatic but it requires a balance. And so that's when we have to employ some more sophisticated tools.

Our most fundamental tool is our structure itself. The ability to have an open line of communication down through the RALOs and the ALSes out to their members and back up again and have this sort of virtuous cycle is something that is a huge potential for end user interaction on the part of the At-Large community. I think it's a vehicle we have not used nearly enough and need to use much better and organize ourselves much better to use it. So there's room for growth there, but I think that's one of the most powerful tools at our disposal.

Another thing that we can do is surveys which tend to make use of that structure to get out to the people that have at least expressed interest in Internet governance issues. One such example of that was a survey we did with respect to geographic names. This is something where there's definitely a balance of interests, whether it's freedom of speech versus indigenous rights, etc., that make this a complicated question and why geographic names continues to be something that's hotly debated even after the conclusion of the subsequent procedures working group final report. And it's because there's a balance of interests in place.

And so we did a survey that was evangelized through our structure but hopefully went broader than our members and found that while there wasn't support for a complete blocking of geographic names, there was some concern about the take up of geographic names in an open round. We also discovered that our community was more interested in community interests than sovereign government interests, for

example. Another question of balance. And so that's when surveys can become very important.

The problem with this type of survey is it's kind of self-selecting. We're putting a survey out to the people who have already expressed an interest, etc. It's not really getting to the complete unknowing individual end user for their input.

And so a final tool and the one that we're going to get to use the least that's most expensive and most difficult is a professionally fielded end user survey to try to understand people's interests, needs, and priorities.

Our best example of that is a pilot we have for a survey related to IDNs and what the barriers are to the uptake of IDNs. We have a survey that's going in the field this spring particularly in the Hindi community of India—so that's why it's very much a pilot—to understand what the demand is for internationalized domain names. Those are domain names where the entire domain name is available in a non-Roman script such as Arabic or Chinese or Cyrillic.

And so what is the demand for those things and what has been the barrier to the uptake of the IDNs that we have now so that when we have a new round of applications for new TLDs and there are more IDNs, what can be done to make sure that those IDNs are successful? And so that's an example where we're really trying to delve into the interests of people that have previously not expressed any interest in Internet governance but because they have purchased a Cyrillic keyboard, for

example, they might have an interest in IDNs. And so we try to reach them through a professionally fielded survey.

So logic, interaction with our members, surveying through our so to speak, and then finally professional surveys are all tools at our disposal for trying to identify the ultimate interests of individual end users. I hope that's useful. Thanks, Hadia.

HADIA ELMINIAWI:

Thank you so much, Jonathan. Indeed, it is useful. And I must say I did attend some of the meetings related to the survey, and I think hopefully it's going to be a very helpful tool and a successful pilot.

So my next question is to Pari, and it's says, "What is the importance of safeguarding Internet users interests?" Why is it important to make sure Internet users who would like to contribute to the development of the Internet have the opportunity to do so? Pari, the floor is yours.

PARI ESFANDIARI:

Thank you very much. Thank you, Hadia, for inviting me. And welcome everybody. My name is Pari Esfandiari. I serve at the ALAC and at EURALO, and I hold leadership and advisory positions with APCO International, Pario, and Atlantic Council. And I'm president at the Global TechnoPolitics Forum.

As for the question of importance of safety and security of end users, it's no secret that now Internet has become part and parcel of every aspect of our lives as an essential component without which it's difficult

to function. And also, these changes have happened with a speed and a scope beyond our imagination over a very short period of time.

The opportunities and threats that these innovations offer were at full display during the pandemic where the Internet allowed us to function from distance not just as individuals but businesses, services, production, and the whole society.

Now the Ukraine invasion is highlighting the reality of cyberwar and the potential for the “splinternet” is becoming real. Earlier, Brexit and the U.S. election in [2016] demonstrated the manipulative power of AI and social media with serious concerns about the potential impact on values, [inaudible], and on democracy itself.

We know that every year cybercrime [inaudible] results in trillions of dollars of loss at the expense of businesses and individuals while the Internet also has enabled money laundering, child porno, human trafficking, and many other problems.

Yet the innovation continues. Smart and cognitive cities are appearing on the scene, and our social, commercial, political systems are becoming dependent on network of networks with concerns over the vulnerability of our critical systems and infrastructure.

Meanwhile, the centralized and alternative DNS services are also emerging which could undermine the hierarchical architecture of the DNS system with the potential for seriously disrupting the reliable functioning of the DNS and undermining its predictability and accessibility.

ICANN as the custodian of the Internet has been collaborating with the Internet community to ensure responsible experimentation and innovation in advancing the Internet as a useful, stable, and accessible medium of the public good. We should remember that the unprecedented Internet success and growth rests on the social contract with the end users and their trust in the Internet.

That trust we could only gain by being at the forefront of innovation—and I mean for ICANN and organizations such as ICANN—by continuing collaboration and by creative governance regulating, guiding, and directing it. And I'll stop on that point. Thank you, Hadia.

HADIA ELMINIAWI:

Thank you so much, Pari. And indeed, users' freedom to innovate is important for the success of the Internet. So my next question is actually to all panelists. So each one of you will take a minute to answer, please. It says, "With the understanding that rights are necessary to protect interests, is it possible/beneficial to translate Internet users' interests as they relate to ICANN into rights?" So I'll give you the floor first, Leon. Would you like to go ahead?

LEON SANCHEZ:

Sure, Hadia. Thank you. I think we need to be careful marking the difference between interests and rights. I've been an Internet users' rights advocate for quite a long time, and I think that if I'm understanding right the question is should we be pushing for

lawmakers to incorporate those interests related to what we do in ICANN into legislation that could translate into rights for users.

I think it's a discussion that is very interesting, but definitely not something we can exhaust in the very little time that we have today. I could give you a list of examples of how this could go right and also how this could go wrong. So again, I think we need to be careful when we compare interests with rights or try to translate users' interests into rights.

To be a little bit more concrete, I can tell you that most of what we do is already regulated because the law regulates conduct. It doesn't regulate needs. So that means that we have a regulation for pretty much everything we do online already. Of course, there are some areas in which the legislation needs to be adjusted to reality and to some situations that could fall outside the scope of a particular legislation. But then again, as I said, pretty much everything is already regulated.

So what we do in ICANN sometimes might be push for translating what we have as rights in the outside into a policy that can be implemented within the ICANN remit. And maybe some issues that are policy could be translated into rights sometimes. But I can think of a very recent example of how rights could break things in regard to policy in the ICANN context, and that is GDPR. So GDPR I think should be fixed so that it doesn't collide the way it has been colliding with the different topics that we are familiar with in the ICANN context.

So again, we need to be careful when we talk about user interests and user rights. How we can translate them into legislation or vice versa. So I think that will be my contribution [to this area].

HADIA ELMINIAWI:

Thank you so much, Leon. And I totally agree with you. We are just exploring this question. We don't really have time to discuss it thoroughly. It's the point is that interests can conflict, right? But interests can conflict and must be balanced. But rights are defined so that they do not conflict, so maybe that's the beneficial part. So I give the floor now to Sarah.

SARAH KIDEN:

Thank you, Hadia.

HADIA ELMINIAWI:

If you could be really brief, like 30 seconds if possible.

SARAH KIDEN:

Okay, thank you, Hadia. So I would say yes though I would [inaudible] a little bit. First, when you say rights it feels so legal and it may not attract many people like what the At-Large community seeks to do. So we should focus more on the community [based] aspect. I would say the target should be not to translate interests into rights per se but to generate enough interest for registrants and end users to participate and contribute to these processes. And by doing this you are literally

hitting two birds with one stone, if you will. So you're protecting registrants and enabling users who want to contribute to feel confident to do so. Thank you.

HADIA ELMINIAWI: Thank you, Sarah. And Jonathan?

JONATHAN ZUCK: Oh, I'm sorry. I didn't realize I was on this question. What was the question again?

HADIA ELMINIAWI: With the understanding that that rights are necessary to protect interests, is it possible/beneficial to translate Internet users' interests as they relate to ICANN into rights?

JONATHAN ZUCK: Well, that's an interesting question, and I don't think I have an easy answer for it because rights are something that are defined in a number of different ways and in a number of different fora. And I think that we sometimes conflate things too much. I think there are rights and there are interests, and there's a balance between them. Because sometimes we're looking to protect rights at the expense of someone's interests, and other times we're looking to protect someone's interests at the expense of someone else's rights. And that's a difficult and unfortunate

situation we find ourselves in sometimes. But I don't think conflating the two is necessarily a good idea.

HADIA ELMINIAWI: Thank you, Jonathan. And, Pari, the floor is yours, and 30 seconds and we'll wrap up this roundtable.

PARI ESFANDIARI: Thank you, Hadia. I will be quick. Again, as everybody said, it's the beginning of the discussion. It's a much deeper debate. And I agree that interests and rights can be separated. But generally I think that not just about ICANN but I think that Internet has become such an essential part of our lives that now we need to think about rights in a much deeper manner. And just as it is starting a conversation, I think from wants we are moving to needs and it's become an essentially service. And I think we could draw interesting lessons in governance from public utility regulations. But again, this is a much [inaudible] deeper discussion which we don't have time for it. It's just as an opening I'd like to mention that. Thank you very much.

HADIA ELMINIAWI: Thank you so much, and thank you to all of you. So quickly to wrap up, Leon mentioned Fellows and fellowship programs that could involve Internet users and allow them to participate. ICANN bylaws explicitly mention end users' participation in the multistakeholder model. Jonathan also referred to a means of knowing end users' interests

which are based on logic, interaction, and surveys. In relation to rights and interests, as all our panelists said, this is a deep and not an easy discussion that basically we have no time for now. So I thank you and I would like to quickly go to our second roundtable. If we could have the next slide, please.

So registrants' rights. For this roundtable we have four speakers. Again, the names are listed in alphabetical order. The bios can be found on the agenda. Speakers, of course, can briefly introduce themselves before they speak. So the first question goes to Becky, and it says, "What are the rights of registrants as incorporated in ICANN's bylaws?"

BECKY BARR:

Thank you very much to ALAC for hosting this panel. My name is Becky Burr. I am on the ICANN Board, and I think I've been involved in ICANN for just about as long as anyone has because I was at the U.S. Department of Commerce in 1998 when ICANN first came into being. So it's obviously a long-term passion of mine.

In terms of the rights of registrants that are incorporated into ICANN's bylaws, I think the very best place to start and probably to end is to look at the commitments and core values that appear in Section 1.2 of the bylaws. These determine the manner in which ICANN makes decisions within its remit.

And they reiterate the importance of preserving and enhancing the administration of the DNS for the purpose of maintaining operational stability and reliability, respecting creativity and innovation, employing

open and transparent bottom-up multistakeholder policy decision-making, applying decisions and drafting policies in a fair and consistent and neutral way, and remaining accountable.

That's for the commitments, and those commitments we've determined to be applicable in all cases and not compromisable. With respect to core values that include broad participation in the process depending on market mechanisms where feasible. Striving to achieve a reasonable balance between the interests of different stakeholders while also avoiding capture. And respecting internationally recognized human rights under applicable law.

And I think all of those things are intended to protect the rights of registrants as stakeholders in this ecosystem. Obviously, sometimes those are very similar to [like] of other stakeholders. And while Leon mentioned fixing GDPR, I think we should acknowledge, for example, that there are some places where the confidentiality of registrant information is fully and absolutely in service of human rights.

So political speech, for example. The ability to use the Internet to communicate including communicate dissent. All of those things are critical and a measure of privacy and confidentiality for those things is absolutely a registrant right and reflected in the ICANN bylaws as a human right. I notice Volker is suggesting that GDPR was the fix. I knew somebody would pick up on that.

So I just wanted to say that privacy is a fundamental human right under the law that applies to a lot of registrants and a very important right elsewhere. And so all of those things have to be balanced.

HADIA ELMINIAWI:

Thank you so much, Becky, for your answer. I would like to ask you, would different registrants require different rights, or can you have one set of rights that serves all registrants? How should this be?

BECKY BURR:

Well, I mean, for example, I think that commercial operations on the Internet are subject to various consumer protection laws and have to protect end users who are their customers in compliance with applicable law. Whereas human rights registrants, civil society enterprises are certainly not engaged in commercial activities and have different kinds of obligations. Obligations with respect to truthfulness and the like, but probably the consumer protection issues don't arise.

But I happen to think that the biggest protection for registrants is complying with the ICANN bylaws including the commitments and core values as we develop policies because it is the sanctity of—that's a big word and I don't mean it that way—but it's the integrity of the policy development process. And its adherence to those commitments and core values that will protect everyone's rights. And I do think they're flexible enough to protect everyone.

I also think, of course, lots of registrants are not really participating directly in the ICANN process. and I know this is going to be controversial, but I will just put out there that registries and registrars also are very interested in protecting the rights of registrants as well. So we do have that voice as well as the kinds of voices we hear in the business constituency and the intellectual property constituency as well.

HADIA ELMINIAWI:

Thank you so much, Becky. I will go to Brian now. Brian, to what extent are those rights considered at ICANN? And I know you have a slide I think. You have one slide?

BRIAN GUTTERMAN:

Yes, thanks, Hadia. I'm Brian Gutterman with ICANN Org. Thanks, Becky, for getting us going on these questions. I also saw that Milton has dropped a link to the registrant rights and responsibilities which are a part of the registrar accreditation agreement, the RAA. So I can talk a little bit about that.

But I just wanted to echo and agree with what Becky has stated about the way that registrant rights are part of the larger ICANN bylaws and commitments and core values. So I applaud what she said there.

Those same commitments and core values, to talk about the multistakeholder policy development process, and I think it's important to remember that there are many examples of bottom-up

community developed policies that actually have the protections for registrants in mind.

To name a few, there's the WDRP which is the WHOIS data reminder policy. Which at its core just really reminds registrants to keep their contact information up-to-date which allows them to have an open dialogue, which is important, with their registrar so they know how to find each other.

The ERRP is another example, the expired registration recovery policy. This policy sometimes allows registrants to recover their domain names should they forget to renew them, depending on the situation.

The transfer policy, an important policy that's being discussed right now in a PDP actually. But that's the policy that allows registrants to have a choice to transfer the domain name from one registrar to another.

So within these policies I think the rights of registrants and protecting registrants are there. And of course, the RAA, this is the contract between ICANN-accredited registrars and ICANN. In there are the registrant rights and responsibilities. They have been built into that agreement.

And the rights include access to information for the registrant from the registrar regarding things like registering, managing, transferring, renewing, and restoring domain name registrations.

So I think those are a few good examples. Again, I'm happy to be here. Thank you for the invitation from ALAC. One of the programs I work on, the registrant program, what we do is we try and educate registrants. But another important thing is to—and I think it was Sarah in the last roundtable who brought up the registrant program—we want to help foster dialogue to raise awareness about issues and challenges that registrants face. So I think this is part of what this panel is doing. And so I'm looking forward to listening to the perspectives of everybody and to the audience. So thank you.

HADIA ELMINIAWI: Thank you again, Brian. If you could quickly tell us a little bit more about the registrant education program.

BRIAN GUTTERMAN: Sure. And I'll drop some links in the chat.

HADIA ELMINIAWI: Okay, great.

BRIAN GUTTERMAN: But, yeah, the registrant program, our aims again as I mentioned are, number one, to educate registrants about things like their rights and responsibilities and the ICANN policies that impact them. Which are some of the ones I just mentioned. For example, again, WDRP, the

ERRP, the transfer policy, as well as the UDRP and the URS. Registrants have rights there when it comes to trademark disputes and such.

And again also too we want to raise awareness within the community. We want to foster dialogue. We really welcome discussions like this where registrant issues and challenges can be addressed. And we always look forward to gathering feedback from all parts of the community about what we can do better, things that we can work on to further educate registrants. Listening to what registrars have to say about this too about how we can help educate their customers.

So that's a little bit about the program, and I'll drop some links in the chat.

HADIA ELMINIAWI:

Thank you, Brian. And I'll go to Yesim. I think we have a question. We'll take it quickly.

YESIM SAGLAM:

Thank you, Hadia. The question is from Chokri Ben Romdhane. He asks, "Did registrants consider their rights governed their agreements signed with other actors or by ICANN bylaws?"

HADIA ELMINIAWI:

Could we go back to the slides, and I will ask our speakers to try to respond to Chokri while also responding to the questions. So now we have Milton, and it says could you please shed light. My question to you,

Milton, would be, “Could you please shed light on current rights protection mechanisms?” And also if you would like to respond to Chokri, please go ahead.

MILTON MUELLER: Okay. Can everybody hear me?

HADIA ELMINIAWI: Yes, loud and clear.

MILTON MUELLER: Good. I am Milton Mueller. I’m with the Non-Commercial Stakeholder Group. NCSG is unfortunately by default the chief advocate of individual rights in the ICANN context. That is, we have from the beginning been concerned about the tendency for interests to override rights of individual domain name registrants.

So a bit of background here. You are having what is in essence a political philosophy discussion about the nature of rights. And as an academic I know that there are thousands of analyses of this going back a couple of centuries. I’m adopting a liberal natural rights perspective on this which I think is pretty much in line with the fundamental constitution and the human rights instruments of international law as well as Europe and the United States and several other nations.

So rights are categorical claims. If they are fundamental rights, they are not balanced against other interests. They're like walls or barriers that say you can't sacrifice this to other people's interests.

So the interest in question for us today is, as Hadia asked, how do ICANN policies affect the actual exercise of these natural rights in the context of domain name? And there are three fundamental rights that I think are constantly being negotiated. One is privacy. The other is free expression. And the third is property rights. That is to say the ability of registrants to exercise the property right that they have in their registration.

Now we can say with great confidence that ICANN failed to protect registrant rights in privacy. And fortunately, the GDPR forced them to do so. And I don't quite understand why anybody would be calling for undoing that, but it simply is not going to happen.

There are indeed third-party interests in exposing some of that private data, and that is again in terms of due process rights. That is a fairly easy problem to handle. You have some kind of a disclosure process which we're trying to create which will make sure that the people who want to disclose the private information have a legitimate interest in doing so. And we're trying to do that in the context of the EPDP, as Hadia knows well.

ICANN also did a very bad job with protecting free expression rights during the new TLD round. In effect, we had governments basically asking for the power to veto names based solely on their feeling that

they didn't like that name or they didn't like the person using the name. And this I think ICANN kind of muddled through in a not very satisfactory manner.

But in the accountability reforms that came along with the transition, ICANN did try to say that it would not engage in content regulation. And this is in the core values and commitments that Becky was referring to. Although again, the language was so hemmed in with qualifications that it is in danger of becoming meaningless.

Now on property rights, ICANN has done a fairly good job. First of all, we do have to recognize that trademark owners have property rights in names and that there are uses of domain names that violate those rights. So ICANN has created the UDRP which facilitates the enforcement of those rights while at the same time recognizing a free expression right of domain name registrants to use names in good faith for noncommercial purposes.

And then the transfer mechanisms that ICANN has in its RAA are in effect giving and strengthening the property rights of registrants to control a name and not have it taken out from under them in certain ways or the ability to facilitate competition by keeping a name when they go from one registrar to another.

So I would say, are current rights protection mechanism adequate? I would say that they are a little bit weak in the free expression category. That in the privacy category they are doing well but not because of ICANN. More because of the external pressure from the European

Union. And in terms of property rights, I think we're doing a pretty good job.

That's all from me.

HADIA ELMINIAWI:

Thank you, Milton. You have highlighted three main rights: privacy, free expression, property rights. In relation to free expression, my understanding and you mentioned that as well, ICANN does not get involved in content regulation. My question to you, but I don't think we have the time for that now, but my question would be what other rules or things does ICANN need to state in order to prove that it actually protects free expression. But I don't know. It's a big debate. I don't think we have the time for it now.

So the next question—and I see Alberto. Alberto, maybe we will go to Tijani and then take your question. So, Tijani, going forward what does ICANN...in your opinion, are current rights protection mechanisms adequate to maintain a secure and stable Internet? Tijani? Tijani, if you're speaking, we can't hear you. The question to you is, in your opinion, are current rights protection mechanisms adequate to maintain a secure and stable Internet?" Is Tijani still with us?

YESIM SAGLAM:

Hadia, one second please. I'm just checking.

HADIA ELMINIAWI: All right, so maybe we can take Alberto’s question now before until we see if Tijani is still with us. Alberto, go ahead. So maybe let’s go to our final question which says, “Going forward what does ICANN need to do to further enhance registrants inclusion in ICANN work?” I go to you, Becky.

BECKY BURR: Thank you, Hadia. This is a hard question because it takes time and resources to participate in the ICANN model and to make voices heard. I think that NCSG, the business constituency, and other parts of the ICANN community do. ALAC because end users, also registrants, are all speaking with voices that can reflect some of the [inaudible] here.

But I think the discussion that we were having in the DNS abuse plenary was actually a very important place to think about registrant inclusion as we go forward. I don’t, frankly, see that there will be lots and lots of registrants who participate in ICANN—we obviously do have some—just because of the resource and time demand that’s related to it. But to the extent that we can make our policies and our processes open and available and easy to use, and easy to use remotely, that will help enhance registrant inclusion.

And I think as we move back to meetings that involve a face-to-face component and as we move back to work that involves a face-to-face component, we need to strive to ensure that we are also continuously improving the opportunities for remote access and remote participation. So I think as we go forward and we move into hybrid

meetings—and by hybrid meetings I mean not only big ICANN meetings but smaller policy sessions and the like—that will help. And also, clear communication about what issues are on the table will also help registrants understand what’s going on and understand whether they are in fact possibly affected by this and want to participate in the discussion itself.

HADIA ELMINIAWI: Thank you, Becky. I go to Brian.

BRIAN GUTTERMAN: Yes, thank you.

HADIA ELMINIAWI: Do you have any thoughts?

BRIAN GUTTERMAN: Thank you, Hadia, yeah. And I’ll be quick. I know we have the next roundtable. While acknowledging and agreeing to the general roadblocks and challenges that we all face to participate actively within the community, I think ICANN Org always welcomes and we recognize registrants as essential parts of the ecosystem and of the multistakeholder model, and registrants, domain name holders.

And when I say this is prospective domain name holders, current domain name holders, former domain name holders can always engage and provide their perspectives by joining policy processes at

ICANN, participating in public comments, attending ICANN meetings, of course, and joining policy development work to provide the perspectives of real registrants in those processes.

And speaking on behalf of ICANN Org, we always welcome feedback on this question. I look forward to others' thoughts about how we can have more registrant participation at ICANN. We're always striving to improve this. Thank you.

HADIA ELMINIAWI: Thank you, Brian. Milton, any thoughts?

MILTON MUELLER: I would just say that I'm a little bit...you're talking about the registrant inclusion, is that right?

HADIA ELMINIAWI: Yeah, enhancing.

MILTON MUELLER: So again coming at this from the standpoint of somebody who studies political and economic processes, Becky is unfortunately right. And individual domain name registrant's economic stake in the domain name policymaking is very small usually. They have one or two domains. Maybe they have a bunch of domains, but fundamentally their investment is in the thousands of dollars.

Whereas committing the time to participate like crazy people like me and Hadia do in an EPDP over a period of years and spending three or four hours a week or more, that is a cost commitment that most domain name registrants are simply not going to make. So we do need to keep the doors open. We need to have the constituencies and stakeholder groups out there actively recruiting stakeholders. But fundamentally, any expectation that you're going to get mass participation in ICANN processes would be unrealistic.

HADIA ELMINIAWI:

Thank you so much, Milton. So registrants' rights are incorporated in ICANN's bylaws, Article 1.2, commitments and values. Enhancing registrants' inclusion is not an easy task. Their stakes are small. However, remote participation, keeping the door open for them, and inviting registrants to be part of it should be a continuous task. And then pointing out some specific rights, Milton talked about privacy, free expression, and property rights.

Now let's go to the third roundtable. The third roundtable, this is about ICANN policies and how these policies uphold rights of registrants and interests of end users. So the first question would be—we have three speakers. Names are listed in alphabetical order. The bios are linked to the agenda. And speakers could definitely introduce briefly introduce themselves before they speak.

So the first question goes to Holly, and it says, "Please pick any ICANN policy that has either concluded or is still under development and

discuss how the policy uphold the interests of users and registrants and the impact of this on the DNS ecosystem.” Holly, the floor is yours. And I believe you have a few slides.

HOLLY RAICHE: Yes, I do. Thank you. While we’re waiting for my slides....

HADIA ELMINIAWI: Here they are.

HOLLY RAICHE: Thank you. Thank you, Hadia. The policy that I have chosen to look at in terms of protecting, and I’m very careful to use the term interests here, I’m talking about interests that become rights to the extent that those interests are incorporated in a code which can be enforceable. So we’ll talk about interests [please].

I’m looking particularly at the transfer policy. Now there are many aspects to the transfer which I don’t have time to discuss. I’m looking particularly at a transfer between a registrant and a registrar. The first question I ask myself or we are being asked to think about is, what are in fact the those interests? I’ve identified I think three interests that may or may not be enforceable.

The first from a registrant point of view—that would be the holder of a registered domain name—would be choice. That is the ability to move from one registrar to another for whatever reason—price, service,

whatever you want for a reason, you move. But in the process of moving the actual process to be used confirms two things. Number one, that you are the requester, that you are entitled to make the request, that you are moving to a registrar that you want to move to and not somewhere else. I'm going to talk a little bit about that process just to illustrate how a process tries to protect that interest.

The interest from an end user perspective is really about security. And that is that in fact if you go to your trusted domain name, joesmithtools.co.au or whatever, that that's where you wind up and you're not a fraudulent site or a criminal site.

Post GDPR there is another, and I will use the term interest because in this context it is whether or not it's enforceable. It would be the right of a registrant to protect the privacy of their data such that it's no longer on a publicly available WHOIS database as it used to be. Okay, the next slide, please.

In explaining how those interests are incorporated into a rule, a policy, there are two terms. One is AuthInfo Code. This is the code that is given by a registrar to the registrant to say you are in fact the person that's entitled to that name, and it is used to identify that registrant. The next is the form of authorization, the FOA. This has been used to confirm that in fact a request has been made of that requester. Those are, if you will, the safeguards put in place so that the interests of the parties that I've identified will happen.

Now prior to the GDPR part of the process meant that the gaining registrar, the registrar that I have gone to and said, “I would like your service, please. I’d like to move to your service.” The gaining registrar actually used a form of authorization to say, “Okay, I’m just confirming this.”

I’ll go through the process. it’s a very complicated one. I’ve tried to make it very simple and maybe made it too simple. But post-GDPR we lose some of that ability. So this is really a how is it that the interests that I’ve identified are nevertheless still preserved. So could I go to the next slide, please?

Okay, I’m sorry you can’t read this. The slide should have been bigger, but never mind. On the left you’ve got the process that was put in place probably around 10 years ago to make sure that the interests that I identified are carried through. And that is that the registrant is in fact the person requesting. They go to the registrar they are requesting to go to. And that the losing registrar is identified.

So the process on the left is how these interests were protected. So starting from the top, the registrant goes to the gaining registrar and says, “I want your service.” What used to happen was the gaining registrar would then go to the WHOIS database, check on the bona fides. Yep, that’s the person. Yep, they actually have that name.

Okay, fine. I’ll get back to the registrar and say, “Okay, I’m confirming your request.” Then the gaining registrar notifies the registry, and the registry then says, “Okay, I’m going to send notices to two people.” First

of all, I'd like to send a notice back to—we're now at Point 5—the notice of pending transfer to both registrars, the gaining and the losing, to say, "I've had a check. This is all above board. The person says they are who they are, and I'm going to transfer."

The losing registrar then realizes, "Oh, my gosh. I've just lost a customer." And then the losing registrar says to the registrant, "So you really do want to transfer, don't you?" Okay, registrant says, "Yes, I do." Transfer complete.

And it's achieved two things. It's achieved the ability to transfer. It's achieved the ability to transfer in ways that guarantee insofar as possible that the person who wanted to transfer has been able to do so in a way that confirms their identity, the identity of the gaining and losing registrar. And the interests of the end user insofar as it's been a secure transfer also have their interests upheld.

Post-GDPR it's slightly different. And what has had to be crafted is a way to continue the security of that transfer and the security of knowing that the person who wants to transfer goes to the place they want to go to. How do you do that when you can't check the WHOIS database?

So what's been proposed in the ongoing discussion is the registered name holder, the registrant, goes to the gaining registrar. "I want a transfer." The gaining registrar can no longer check who that person is. So they've got to say, "I'm sorry, but you're going to have to enter your data again, and you're going to have to use your AuthInfo because we don't have now the gaining FOA."

HADIA ELMINIAWI: Holly, could you please try wrap up?

HOLLY RAICHE: I will. This is the....

HADIA ELMINIAWI: Thank you.

HOLLY RAICHE: ...just about final slide. The final process then means that you're using the AuthInfo Code as a form of identity. You only get losing FOA that the losing registrar says, "Okay, this request has been made. Are you sure you want to make it?" And again the registrant then says either, Yes, I want to make the transfer" or "All of this has happened without my authorization. Stop the process."

Again the safety has been insofar as possible secured. Could I have the next slide, please? And it's the final slide. Could I have the next slide, please?

So these are the issues from the perspective of the end user and the registrant. Is this still a safe process? Can the AuthInfo Code be considered as secure? Who should hold it? What are the minimum notification requirements to continue that the process is a genuine one? And is the final check which is the losing FOA goes to the registrant to say, did you really authorize this and are you okay to transfer? And if

not, what can you do? And right now we're also looking at the transfer lock period.

So all of those issues that are the final questions are how now you....

HADIA ELMINIAWI: Thank you so much, Holly.

HOLLY RAICHE: Okay.

HADIA ELMINIAWI: I think we all got the idea, and transfer policy, choice, security, and privacy are definitely all important. If we could go back to the agenda, and I will pose this same question to Edmon. Edmon, please try to be brief. I'm sorry for that.

EDMON CHUNG: Yeah, thank you, Hadia. I will try to make up some time. And thank you, Holly, for teeing this off, really diving deeper into transfer policy. But I guess there are other policies like what Alan mentioned in the chat and Brian from ICANN mentioned. The expired registration recovery policy, the domain lifecycle really. And I think I don't know enough about law to say whether this is right or not, right or interest, but the policy does determine the right of the registrants to redeem their domain if it lapses, right? I mean, in my sense that's kind of a right.

But I focused a little bit more on IDNs, internationalized domain names. Which is a current active PDP, a policy development currently happening. And focusing on...well, actually earlier Hadia asked a question, can different registrants have different rights? Here we have a situation maybe, again I don't know the term right and law good enough, but I'll explain.

Variants, IDN variants is a very interesting aspect. And a worse way but an analogical way to think about it is that certain languages, unlike alphabetical based languages which we have capital letters and small letters in the domain name and they work the same. But in the sense of ideographical language like Chinese, there is simplified Chinese and traditional Chinese. And they technically become different domain names, but only through policy could we make them the same. And therefore the registrant can actually have the right to utilize both the simplified Chinese domain name and the traditional Chinese domain name.

And how this affects the security and stability of the Internet also is the kind of trust. When people actually use the domain names, they may be typing it in the simplified version. They may be typing in the traditional Chinese version, and they would consider them to be the same. And if they don't work the same or if they don't work, then it dilutes the trust.

And just as a, in terms of the numbers, actually the statistic is that 1 in 20 Internet users actually use a variant TLD in Chinese. That's the level of importance. And I think policy itself would determine whether the

registrant would have a right to utilize its IDN variants and also whether it would be free in some ways.

And one may say, hey, why would you register one domain and get two, get another one for free? You might look at it that way, but certainly it's not because the Chinese is greedy. It's because it's important to the security and stability and the trust of the domain name system for those users and for the registrants to be able to serve the end users to that.

Another good example is a single-character TLD. It may not be allowed in a Latin-based or numeric situation, but for Chinese, for example, the situation is different. A single character essentially is a word. It's a word like Asia. It's a word like a car or anything. And so the type of rights or the type of ways that the policy actually is put in place would affect the end registrant or the end users on how they interact with the domain name system.

So I think I just want to illustrate that. That's also a reason why end users should participate. But as Milton mentioned, only crazy people like myself and others would be in that perspective. Of course, I also am blessed to also work in the industry, although some of these policies I participate as a person.

So to wrap up, I think there are many different policies. IDN is one of them that I wanted to highlight that there are components where registrants and end user rights and interests have impact. But also other things coming up also, the accuracy—what is that called? The WHOIS accuracy data group also would have certain privacy

considerations as well. So many different policies would have that aspect, and I think hopefully I highlighted some of the user parts of it.

HADIA ELMINIAWI:

Thank you so much, Edmon. And definitely the IDN EPDP for gTLDs is a good example. It does show how registrants' rights affect Internet users' interests definitely and how this policy would benefit both hopefully.

Charles, I go to you. And my question is, "Please provide some general thoughts on the future of registrants and Internet users' interests and how they will continue to provide a secure and known future Internet." And I will also give you one more question related to the public interest. The question says, "The public interest can be defined as the wellbeing of the public. And since ICANN's community involves all stakeholders, would taking all stakeholders' interests into consideration during the development of a process by default translate into an ICANN policy that satisfies the public interest?" So, Charles, the floor is yours.

CHARLES MOK:

Okay, thank you, Hadia. I'm Charles Mok. I was a former APRALO chair. And I really want to take some high-level comments on some of the [words] that you mentioned in your question. You mentioned about rights. Many previous speakers have commented on that. But you also mentioned about the future Internet and being secure and stable.

When we think about, I think many of us were talking about some of what I think are more like the narrow sense of registrants' rights and users' rights. I do realize that ICANN policies do have in the bylaws and so on very defined registrants' rights and responsibilities. I guess after all, registrants are like the customers or direct contacts or having a direct or even indirect contractual relationship with ICANN. So that's understandable.

But when it comes to end users, it's really not so clear. Leon mentioned in the beginning that there are ways of participation at At-Large, RALOs, and ALS and other constituents and so on. That is participation. Participation may not necessarily be—well, it can be part of the people's right, the users' right. But not everyone exercises it. I think that's exactly what Jonathan mentioned as talking about the silent majority. And Milton talked about those people who are crazy, but what about those people who are not crazy? They deserve as much rights as anybody else.

So what came to my mind when I was thinking about this was, is there any bill of rights for users in the ICANN process? End users of the Internet as far as ICANN policies may affect them, their use of the Internet or domain names. They may not even own any domains, but they are users which affects things that some of the rights [inaudible]. For example, like Milton mentioned about privacy, free expression, and property rights. The ways that ICANN's policies may be affecting the rights of these people, is there a necessity to develop such a bill of rights?

I'll give you one example that I had recently actually for more than two or almost three years that I have been looking at. It's a series of [inaudible] websites that put out a lot of personal data on a number of websites around the world. And they keep moving around. When people complained about them violating local laws or whatever or maybe GDPR and they got shut down from on jurisdiction and then they moved to another TLD. And they ended up in Russia.

So the rights of the users in terms of their security, their privacy is obviously violated, and what about that. The bad actors here might actually [inaudible] back. So what can ICANN do?

So the people who are affected, first of all, some of them may not even know that they are affected. And even if they do, they have no idea about what rights they have in terms of trying to get this content off the Internet and so on.

So as a sort of not really a conclusion but I want to point out a worry that I really believe that the situation will get increasingly geopolitical. Governments will come in and tell ICANN what to do and what TLDs need to do. And in some cases, TLDs may listen to the government more than they will listen to ICANN or even if they have any policy. So sometimes even in good intentions some governments may come to ICANN and ask them to do certain things, like Ukraine recently did.

So what is the process that we can have to protect the user? Now ICANN will have to be the referee, but what are the processes and values that

they're going to be basing everything on? And I just worry that it's going to get more and more complicated and political.

The final question, I'll try to answer your additional question as well about public interest and how we can use the...I think I actually addressed some of that in my previous answers. But I think in order to really protect the public interest, we need to really take a harder look at how to protect or understand the rights of those people who are not really represented or they didn't participate. Make a distinction between representation and participation.

For those people particularly that are not participating in the process and they will not participate or maybe they're unable to or for many different reasons. How are we going to come up with a way that we can understand or define the kind of rights that they really should enjoy? And then set out the processes within ICANN to really enforce those rights being taken up by the registrar, the registrant, and so on.

So I think that is an issue that we need to take a deeper look as the whole world gets more complicated and more political. And I'll close with that.

HADIA ELMINIAWI:

Thank you so much, Charles. And I would point out two things that he said. It's not only about the interests of users, but it is also about their rights in relation to security and privacy. And I think this distinction is very important. Also, talking about both registrants and end users, I

think also you said understanding the rights of those who did not participate is also key and very important.

So I would put those two notes and end our session with it. We are at the top of the hour. I thank you so much for being with us. Thank you to our panelists. It was a great discussion. Thank you to all attendees. Thank you for being with us today, and see you next time in our next policy discussion. Thank you.

[END OF TRANSCRIPTION]