10 years of the BC Newsletter!

By Chris Chaplow and Jimson Olufuye

The last issue of our newsletter celebrated the 20th anniversary of the BC as a constituency within the Generic Names Supporting Organization (GNSO) of the Internet Corporation of Assigned Names and Numbers (ICANN). The physical celebration in Cancun, Mexico during ICANN67 regrettably could not happen due to COVID-19 pandemic.

This issue of the BC Newsletter celebrates another anniversary though virtually: 10 years of the BC Newsletter. The first edition was distributed at the Brussels meeting in June 2010.

The GNSO reorganisation the previous year brought changes for the BC. It initiated four executive committee members to manage the consistency allowing the two GNSO councilors to focus on policy. Previously, three councilors having carried out both roles. Chris Chaplow joined the Executive Committee as Vice Chair (Finance and Operations) shortly afterwards.

With a strong digital marketing background, Chris noticed the quality of material at ICANN was poor – the ICANN website looked so old, and Chris honestly thought it was a deliberate attempt to pay tribute to the internet pioneers! Printed collateral at ICANN meetings were non-existent save for a few photocopies. When the then Chair, Marilyn Cade, suggested a newsletter for the constituency Chris was excited about the project.

ICANN 68
VIRTUAL POLICY FORUM

22–25 June 2020

Welcome to ICANN68!

The ICANN68 Policy Forum, which was to be held in Kuala Lumpur, Malaysia, is now being held via remote participation only. The ICANN Board of Directors made the decision that ICANN68 would not proceed as an in-person meeting under the current "pandemic" conditions.

Instead, the Board has directed ICANN to explore additional community feedback and suggestions, in order to develop a meaningful and productive ICANN68 Policy Forum while we are unable to meet in person.

Inside the very first BC Newsletter, October 2010

The real credit also goes to two ladies: Chris's wife and photographer, Michelle Chaplow, who had captured the essence of the BC and ICANN at previous meetings, and Cheryl Gatward, graphic designer, who's innovative and on trend style had captured Chris's imagination. The previous project they had worked on together included a different kind of surfing; a two-year surf calendar for the Costa de la Luz, Andalucia.

Actually, the first edition was more brochure like, and contained many photos of BC members working hard at the previous meeting in Nairobi. Many of the features seen today were introduced in the second edition. Welcome to …. a Chair's welcome to the meeting city, an interesting and topical policy article by Steve DelBianco, Vice Chair for Policy Coordination. As an outreach vehicle, Chris believed non-members needed a good reason to keep the newsletter by their side. Hence the creation of centre spread ICANN Multi stakeholder Organizational Chart. "That was really hard work!" Cheryl recalls. "Both to research the names and roles, and then to lay it out graphically, its really complex!"

"The real legacy of the newsletter", Chris says, "is that it raised the bar for the design standard of outreach material whether printed or PDF, that is seen today at ICANN meetings."

As Jimson Olufuye was elected Vice-Chair, Finance and Operations in 2014, he kept the newsletter production running. In his words, "...the pace setting BC Newsletter has become the mouthpiece of the BC providing feedback to members, community and the public at large on our activities including extensive outreach efforts to small and large businesses around the world".

"Without contents, there would be no newsletter," said Jimson. The operations team appreciates all the contributors: Claudia Selli, Steve DelBianco, Barbara Wanner and the Outreach Team members including the Secretariat for all their contributions that have added value to the quality of the newsletter over the years.

Let's keep the momentum running for the next 10 years!

For more information regarding the BC, please visit our website at:
https://www.bizconst.org

BC Comment on draft PTI Strategic Plan FY21-24

The BC appreciates the opportunity to comment on the draft Public Technical Identifiers (PTI) Strategic Plan FY21-24 and we thank the team that put the document together.

It was a well crafted document aimed at aligning PTI operations with the ICANN FY21-25 Strategic Plan and ensuring that the PTI focuses on its mandate as the operator of the IANA function of ICANN.

Our comment would be quite light as follows:

1. As was done with the draft ICANN's Strategic Plan FY21-25 for Africa, we would suggest that a brief in the Introduction/Background be provided on the lessons learnt working with the preceding Interim Strategic Plan introduced after the successful IANA Stewardship Transition of 2016 with implication covered in the current draft for the next four years.

2. Considering that ICANN Strategic Plan FY21-25 is a five (5)-year plan, why is the draft PTI Strategic Plan constrained to four years? One year short of the Plan its aligns with. Perhaps an explanation of the rationale could be provided.

3. Has the impact of COVID-19 pandemic been factored into the Strategic Plan? If not, we recommend that this be done for a holistic view on the PTI operational horizon.

4. We observe that risks are listed against each strategy with no corresponding mitigating measures outlined. We recommend that this be included.

5. The PTI strengths and weaknesses are not mentioned. We recommend this be included as it would be relevant in assessing appropriateness of the scope of the strategies themselves and gauging PTI's capacity to implement.

Business Constituency (BC) Comment:
Second Security, Stability and Resiliency (SSR2) Review Team Draft Report

Public comment page at https://www.icann.org/public-comments/ssr2-rt-draft-report-2020-01-24-en

Thank you for the opportunity to comment on this important matter before the ICANN community.

The BC further thanks the volunteer efforts of the members of the SSR2 Review Team (RT) for their hard work and their dedication to the ongoing security, stability and resilience of the domain name system (DNS).

Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business

2. is competitive in the supply of registry and registrar and related services

3. is technically stable, secure and reliable.

Prelude to the report: Overarching comments

The BC supports the recommendations detailed in the report and, further to our longstanding advocacy for mitigating DNS abuse, is pleased to see that many of the RT's recommendations address this problem.

Before setting out its detailed comment on SSR2, the BC highlights here a number of overarching comments for the community, ICANN Org, and the ICANN Board:

• SSR1 recommendations must be fully implemented if SSR2 recommendations are to have full impact. It is mystifying as to why SSR1 recommendations – which were issued eight years ago in 2012 – have not been put into place, despite ICANN Org's claim to the contrary. (It would be helpful to understand why this is the case; for example, are more resources needed, or has ICANN deprioritized this work in favor of other areas?)

• DNS abuse must be taken seriously. The SSR2 RT has done a commendable job in tailoring recommendations to address abuse-

related issues. As the BC has oft advised (in a recent statement and even more recent letter to the ICANN Board), DNS abuse has become an acute issue, one that deserves the community's and ICANN's urgent attention. We therefore note the Review Team's observation (page 31) that "the publications, statements, and related actions by ICANN organization have consistently understated or omitted the impact of systemic abuse of the DNS and its use as a platform for launching systematic attacks on individual and organizational systems worldwide".

• Independent oversight of ICANN efforts cannot be abridged. The BC echoes here its input on the Third Accountability and Transparency Review Team (ATRT3) draft report, where it called specifically for the continuation of meaningful and frequent community review of ICANN actions. The BC believes this accountability mechanism will be critical to the long-term impact and success of the SSR2 RT's recommendations.

Click this link to continue reading this report online

ICANN Multistakeholder Organizational Chart

ICANN Board of Directors

Top row Left to Right: Göran Marby – President & CEO, Maarten Botterman – Chair (NomCom), León Sánchez – Vice Chair (At-Large), Harald Alvestrand (IETF Liaison), Becky Burr (GNSO), Ron da Silva (ASO), Sara Deutsch (NomCom), Chris Disspain (ccNSO), Avri Doria (NomCom), Lito Ibarra (NomCom)

2nd row Left to Right: Manal Ismail (GAC Liaison), Danko Jevtovic (NomCom), Merike Käo (SSAC Liaison), Akinori Maemura (ASO), Mandla Msimang (NomCom), Ihab Osman (NomCom), Kaveh Ranjbar (RSSAC Liaison), Nigel Roberts (ccNSO), Matthew Shears (GNSO), Tripti Sinha (NomCom)

Generic Names Supporting Organization (GNSO)
(see following page)
Keith Drazek (Chair)
Pam Little (V. Chair)
Rafik Dammak (V. Chair)

Country Code Names Supporting Organization (ccNSO)
Katrina Sataki (Chair)
Pablo Rodriguez (V. Chair)
Alejandra Reynoso (V. Chair)

Address Supporting Organization (ASO)
Axel Pawlik (Chair)
Paul Wilson (V. Chair)
Oscar Robles (V. Chair)

Empowered Community Administration
Maureen Hilyard (ALAC)
Axel Pawlik (ASO)
Stephen Deerhake (ccNSO)
Manal Ismail (GAC)
Keith Drazek (GNSO)

Government Advisory Committee (GAC)
Manal Ismail (Chair)
Vice Chairs:
Guiguemde Ragnimpinda Jacques Rodrigue, Jorge Cancio,
Luisa Paez, Olga Cavalli,
Pua Hunter

Security & Stability Advisory Committee (SSAC)
Rod Rasmussen (Chair)
Julie Hammer (V. Chair)

Root Server System Advisory Committee (RSSAC)
Fred Baker (Chair)
Brad Verd (V. Chair)

At-Large Advisory Committee (ALAC)
Maureen Hilyard (Chair)
Joanna Kulesza (V. Chair)
Jonathan Zuck (V. Chair)

Root Zone Evolution Review Committee (RZERC)
Duane Wessels (Chair)

Technical Liaison Group (TLG)
Christian Toche (ETSI)
Howard Benn (ETSI)
Reinhard Scholl (ITU-T)
Jie Zhang (ITU-T)
Wendy Seltzer (W3C)
Daniel Dardailler (W3C)
Warren Kumari (IAB)
Tim Wicinski (IAB)

Internet Engineering Task Force (IETF)
Harald Alverstand

Nominating Committee 2020
Jay Sudowski (Chair)
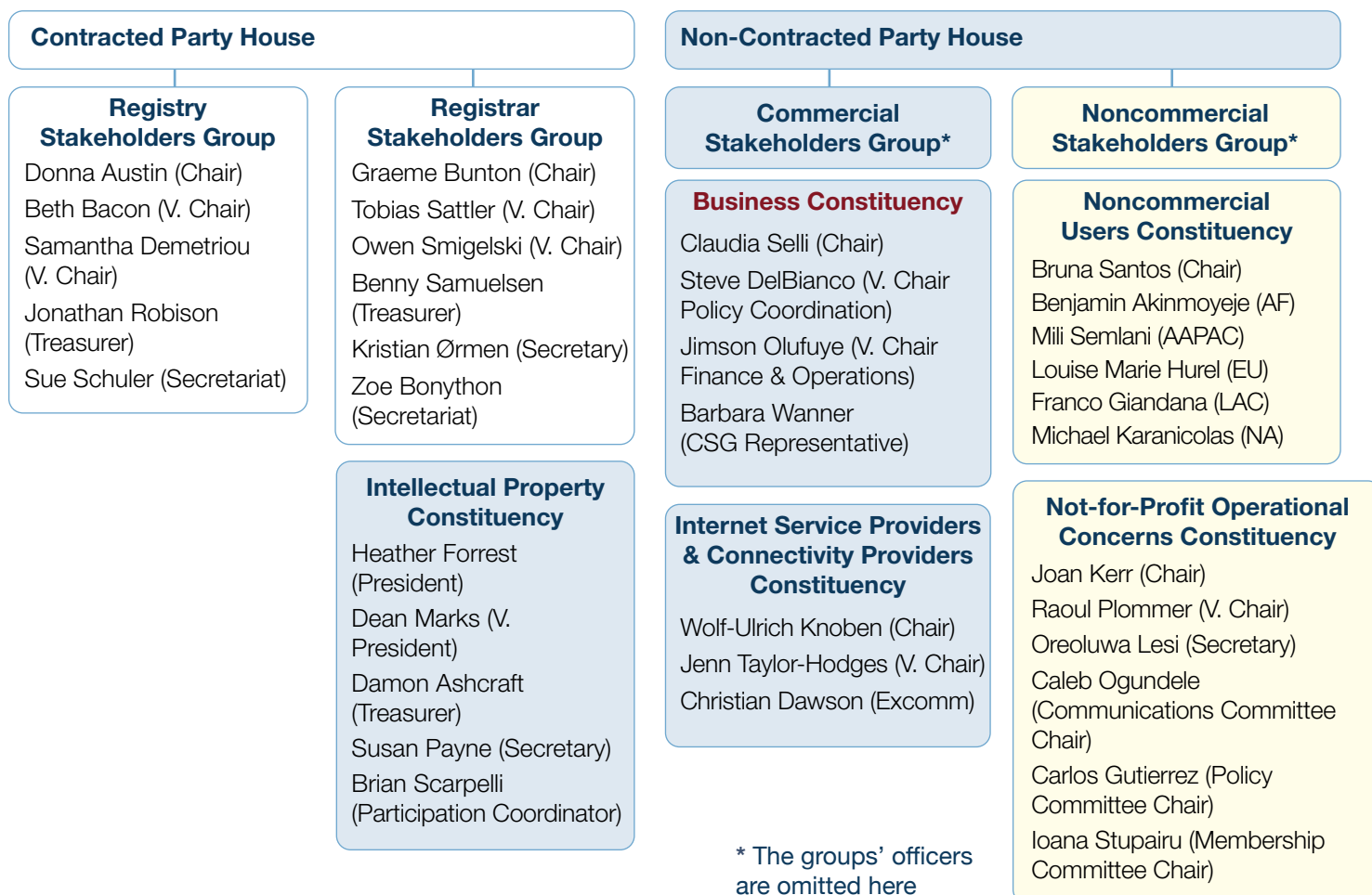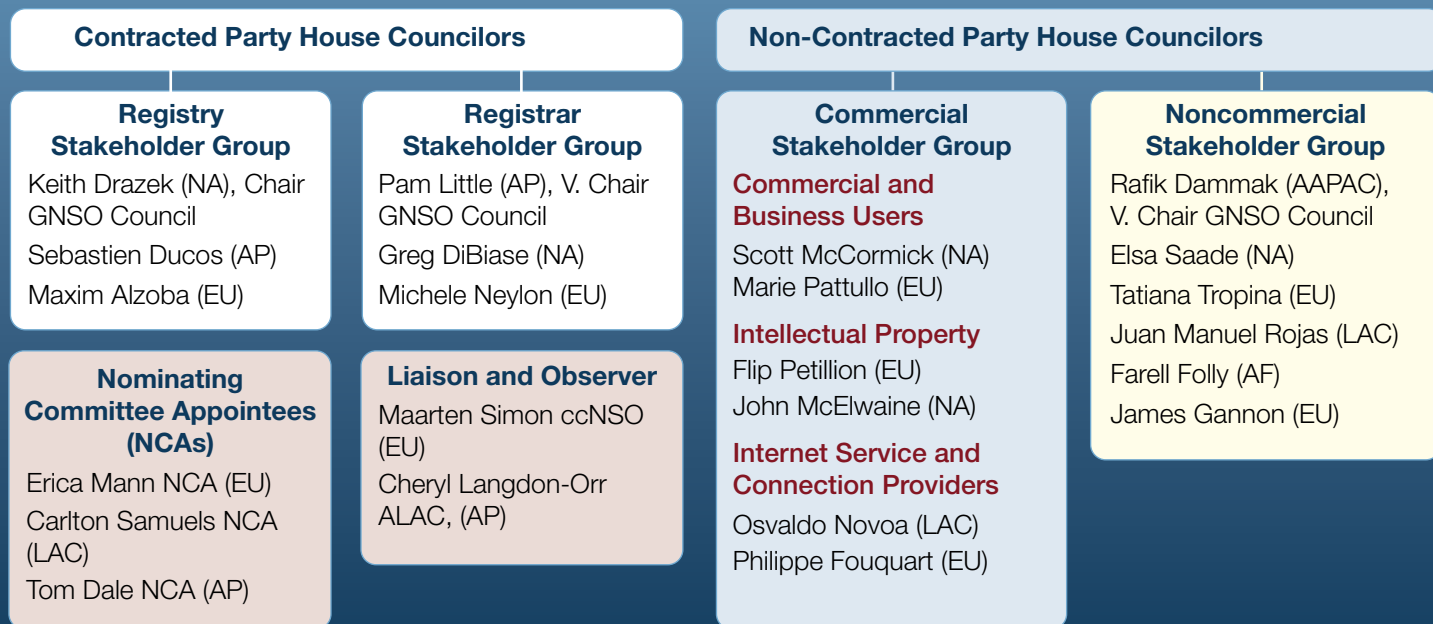Ole Jacobsen (Chair Elect)
Damon Ashcraft (Associate Chair)

Ombudsman
Herb Waye

Customer Standing Committee (CSC)
Lars-Johan Liman (CSC Chair)

GNSO Stakeholder Groups, Constituencies & Council

The GNSO Council is responsible for managing the policy development process of the GNSO.

Contracted Party House Councilors

Registry Stakeholder Group
Keith Drazek (NA), Chair GNSO Council

Sebastien Ducos (AP)

Maxim Alzoba (EU)

Registrar Stakeholder Group
Pam Little (AP), V. Chair GNSO Council

Greg DiBiase (NA)

Michele Neylon (EU)

Nominating Committee Appointees (NCAs)
Erica Mann NCA (EU)

Carlton Samuels NCA (LAC)

Tom Dale NCA (AP)

Liaison and Observer
Maarten Simon ccNSO (EU)

Cheryl Langdon-Orr ALAC, (AP)

Non-Contracted Party House Councilors

Commercial Stakeholder Group
Commercial and Business Users
Scott McCormick (NA)
Marie Pattullo (EU)

Intellectual Property
Flip Petillion (EU)
John McElwaine (NA)

Internet Service and Connection Providers
Osvaldo Novoa (LAC)
Philippe Fouquart (EU)

Noncommercial Stakeholder Group
Rafik Dammak (AAPAC), V. Chair GNSO Council

Elsa Saade (NA)

Tatiana Tropina (EU)

Juan Manuel Rojas (LAC)

Farell Folly (AF)

James Gannon (EU)

Contracted Party House

Registry Stakeholders Group
Donna Austin (Chair)

Beth Bacon (V. Chair)

Samantha Demetriou (V. Chair)

Jonathan Robison (Treasurer)

Sue Schuler (Secretariat)

Registrar Stakeholders Group
Graeme Bunton (Chair)

Tobias Sattler (V. Chair)

Owen Smigelski (V. Chair)

Benny Samuelsen (Treasurer)

Kristian Ørmen (Secretary)

Zoe Bonython (Secretariat)

Intellectual Property Constituency
Heather Forrest (President)

Dean Marks (V. President)

Damon Ashcraft (Treasurer)

Susan Payne (Secretary)

Brian Scarpelli (Participation Coordinator)

Non-Contracted Party House

Commercial Stakeholders Group*

Business Constituency
Claudia Selli (Chair)

Steve DelBianco (V. Chair Policy Coordination)

Jimson Olufuye (V. Chair Finance & Operations)

Barbara Wanner (CSG Representative)

Internet Service Providers & Connectivity Providers Constituency
Wolf-Ulrich Knoben (Chair)

Jenn Taylor-Hodges (V. Chair)

Christian Dawson (Excomm)

Noncommercial Stakeholders Group*

Noncommercial Users Constituency
Bruna Santos (Chair)

Benjamin Akinmoyeje (AF)

Mili Semlani (AAPAC)

Louise Marie Hurel (EU)

Franco Giandana (LAC)

Michael Karanicolas (NA)

Not-for-Profit Operational Concerns Constituency
Joan Kerr (Chair)

Raoul Plommer (V. Chair)

Oreoluwa Lesi (Secretary)

Caleb Ogundele (Communications Committee Chair)

Carlos Gutierrez (Policy Committee Chair)

Ioana Stupairu (Membership Committee Chair)

* The groups' officers are omitted here

Business Constituency (BC) Response:
Draft Addendum to the Expedited Policy Development Process (EPDP) Phase 2 Report

Overarching concerns (entered as response to final question)

The new policy is inadequate on the most basic level, making it unfit for purpose to "ensure compliance with the GDPR while maintaining the existing WHOIS system to the greatest extent possible."[1]

Accordingly, the BC will have a difficult time supporting the EPDP's proposed outcomes, for the following reasons:

• **GDPR has been consistently and inappropriately over-applied** to impact jurisdictions and data subjects outside the EU due to ICANN allowing "flexibility to Registry Operators and Registrars to choose to apply the requirements [of the GDPR] on a global basis where commercially reasonable to do so or where it is not technically feasible to limit application of the requirements to data governed by the

GDPR."[2] While this flexibility may have been necessary at the outset of ICANN's new Whois policy implementation to quickly pivot to address the GDPR, the EPDP team – chartered to review and tweak that policy – has proposed no remedies or adjustments that would "right-size" this unnecessary and overly broad application of the GDPR. Not only does this deny those with legitimate reasons access to data (data that is at the heart of maintaining internet security and stability and not meant to be covered by the GDPR), such over-application has blunted the potential outcomes of the EPDP and granted cover to bad actors online.

• **The EPDP team has failed to meet its charter obligations.** The team has consistently sought to block data access in nearly all scenarios, while failing to answer operational questions it was chartered to address. For example:

○ The Whois system has not been preserved "to the greatest extent possible" And, instead, the EPDP seemed to constantly seek the opposite outcome even where the GDPR and other laws supported otherwise.

○ Fundamental questions of data controllership and purpose for collection of data have not been answered, making policy output flawed, if not entirely useless under a GDPR analysis.

○ Fundamental GDPR tenets, such as application to natural persons only and not legal persons were ignored or deemed "out of scope", making policy output flawed under a GDPR analysis.

○ Common Whois use cases have not been properly identified or included in discussions to form the basis of

policy output.

○ There's been no commitment to prompt responses to volume data requests for cybersecurity needs or as otherwise necessary to perform basic counter-DNS abuse functions.

○ Many important issues pushed to Phase 2 of EPDP work were simply ignored or later argued to be "out of scope" and left unaddressed.

• **The Standardized System for Access and Disclosure (SSAD), as proposed by the EPDP, is not a useful system because the decision making is decentralized.** Rather, in operational reality, it's more of a ticketing system that eases the intake burden on data controllers (currently assumed to be Registry Operators and Registrars) but provides no real benefit to users. This is in contravention of guidance from the Data Protection Authority[3] and the European Commission[4] about their preferences for such a model that would, at a minimum, centralize the Whois system.

• **There is no remedy envisaged to address instances where legitimate data requests are being denied.** There needs to be set guidance on how legitimate and lawful requests are fulfilled. Many such requests are being unnecessarily denied today, and nothing about the proposed EPDP policy or SSAD would change that outcome. ICANN Org must be able to take compliance action to remedy situations where legitimate data requests are routinely being denied or outright ignored.

• **Expanded use cases for automation have been dismissed by the EPDP team and those omissions**

will hobble the SSAD. It is critical these use cases be immediately added as part of the SSAD if it is to meet global needs. Use cases include:

○ Law enforcement agency in same jurisdiction as contracted party

○ Request for city field (only)

○ Registration record contains no personal data and already has been disclosed

○ Registration record already has been disclosed under the same authorization assertions to a requestor of the same type

○ Cases of a "clear cut" trademark claim

○ When identifying the infrastructure involved in botnets, malware, phishing, and consumer fraud

○ Data subjects have consented to make their registration data public

○ Request for data from a UDRP/URS provider

○ Request for data from ICANN Contractual Compliance, in support of compliance-related investigations

• **The EPDP has overlooked Section 4.2 of Appendix A of the Temporary Specification, which states that:**

4.2. Notwithstanding Section 4.1 of this Appendix, Registrar and Registry Operator MUST provide reasonable access to Personal Data in Registration Data to a third party where the Article 29 Working Party/European Data Protection Board, court order of a relevant court of competent jurisdiction concerning the GDPR, applicable legislation or regulation has provided guidance that the provision of specified non-public elements of Registration Data to a specified class of third party for a specified purpose is lawful.

Registrar and Registry Operator MUST provide such reasonable access within 90 days of the date ICANN publishes any such guidance, unless legal requirements otherwise demand an earlier implementation.

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[1] https://www.icann.org/news/blog/data-protection-privacy-issues-update-more-details-published-on-icann-proposed-interim-model

[2] See ICANN's Temporary Specification for gTLD Registration Data:
https://www.icann.org/resources/pages/gtld-registration-data-specs-en

[3] See https://www.icann.org/resources/pages/h/en/system/files/correspondence/odonohue-to-marby-03may19-en.pdf

[4] See European Commissioner Thierry Breton's answer given on behalf of the Commission to a question from a Member of the European Parliament: https://www.europarl.europa.eu/doceo/document/E-9-2020-000826-ASW_EN.html#def1

The Benefits of BC Membership

The Business Constituency (BC) is the voice of commercial Internet users within ICANN – the Internet Corporation for Assigned Names and Numbers.

Business users rely on a stable and secure Internet and e-commerce experience, one that serves their users and customers on a global basis. Through your participation in ICANN, and in the Business Constituency, your company will make a difference on behalf of business.

BC members contribute as:

- participants on the BC e-mail list to learn about and debate issues
- participants on telephone conferences to reach consensus on key issues
- participants at physical meetings coincident with ICANN global meetings
- issue managers on specific topics
- bridges for information flow between other GNSO constituencies

The mission of the BC

The Constituency fully represents the views of the Internet business user community.

ICANN policy positions are consistent with the development of business via an Internet that is stable, secure and reliable while promoting consumer confidence.

ICANN policy positions derive from broad stakeholder participation in a common forum for suppliers and users.

BC Executive Committee

Chair
Claudia Selli

Vice Chair Policy Coordination
Steve Del Bianco

Vice Chair Finance & Operations
Jimson Olufuye

CSG Representative
Barbara Wanner

GNSO Councilor
Marie Pattullo

GNSO Councilor
Scott McCormick

Nominating Committee (NOMCOM members)

2020 Chair
Jay Sudowski

Large Business Seat
Paul Mitchell

Small Business Seat
Lawrence Olawale-Roberts

BC Secretariat:
Chantelle Doerksen

BC Credentials Committee:
Arinola Akinyemi (Chair), Andrew Mack, Adetola Sogbesan, John Berard, Lawrence Olawale-Roberts

BC Finance Sub Committee:
Jimson Olufuye (Chair), Chris Chaplow, Arinola Akinyemi, Tim Smith

Join the conversation on Twitter:
@BizConstituency

If you would like to become a member of the BC, please contact the BC Secretariat at:

info-bc@icann.org

or simply visit our website and register online:

www.bizconst.org