

**Adobe Connect Attendance: 9**

Ayden Férdeline (NCSG)  
Ben Butler (SSAC)  
Diane Plaut (IPC)  
Farzaneh Badii (NCSG)  
Kurt Pritz (Chair)  
Mark Svancarek (BC)  
Rafik Dammk (GNSO Council Liaison)  
Stephanie Perrin (NCSG)  
Volker Greimann (RrSG Alt)

**On audio only:**

Leon Sanchez

**Staff:**

Marika Konings  
Caitlin Tubergen  
Trang Nguyen (ICANN Org Liaison)  
Samantha Eisner  
Daniel Halloran  
Berry Cobb  
Terri Agnew

Terri Agnew: Welcome to the call to discuss Independent legal counsel to assist the EPDP on Wednesday, 10 October 2018 at 22:00 UTC for 60 minutes.

Mark Svancarek (BC):y

Farzaneh Badii (NCSG): Hello. It's great to start the day with Terri's welcome to adobe and end the same day with Terri's welcome to adobe :)

Farzaneh Badii (NCSG): ))) it was an exception today :)

Mark Svancarek (BC): ending?! Your day is too short!

Stephanie Perrin (NCSG): certainly shows you are both working long days!

Farzaneh Badii (NCSG): well ... it's getting dark here :) end of the day ...

Farzaneh Badii (NCSG): can we have two reps from stakeholder group here?

Farzaneh Badii (NCSG): if not I will leave . this is Steph's territory she might shoot me

Marika Konings: @Farzaneh - this is not a small team meeting :-)

Mark Svancarek (BC): no prob farz

Marika Konings: so this was open for any members interested

Farzaneh Badii (NCSG): okkk ... damn I thought I had a good reason ...

Mark Svancarek (BC): nice try

Mark Svancarek (BC): for an even shorter day

Stephanie Perrin (NCSG): the fun just never stops Farz....

Rafik Dammk: hello all

Farzaneh Badii (NCSG): I cant hear

Farzaneh Badii (NCSG): is it me

Ayden Férdeline (NCSG): i can hear

Mark Svancarek (BC): fading out

Terri Agnew:@Farzaneh, is audio working for you at this time?

Farzaneh Badii (NCSG):I just turned it up thank you Terri

Ayden Férdeline (NCSG):Well...

Ayden Férdeline (NCSG):... the course we received was not helpful.

Stephanie Perrin (NCSG):we are not doing training, we are doing legal drafting. Let us not have any illusions about that. Who goes into a legal drafting exercise without an advising counsel????

Volker Greimann (RrSG Alt):icann just saved 700+k per year and we worry about cost of legal training?

Kurt Pritz:ha

Farzaneh Badii (NCSG):how much did they spend for the lawsuit against EPAG?

Ayden Férdeline (NCSG):exactly Farzi

Ayden Férdeline (NCSG):perhaps we just weren't given an adequate budget...

Farzaneh Badii (NCSG):nope we were not

Farzaneh Badii (NCSG):I raised that but heard that the budget is not too strict

Ayden Férdeline (NCSG):@Volker wonder if they just paid out the contract, though... not sure any cost savings were achieved!

Farzaneh Badii (NCSG):we have to see if the policy we are talking about is legal!

Farzaneh Badii (NCSG):ccwg accountability experience was very good with external legal counsel. but this group is different... so I don't dare say anything especially considering our budget

Ayden Férdeline (NCSG):our budget is very slim relative to the cost of Review Teams. the RDS 2 RT has had four face-to-face meetings outside of ICANN meetings, i note, despite slim attendance on its calls and little traffic on its mailing lists.

Farzaneh Badii (NCSG):we had a question selection committee

Stephanie Perrin (NCSG):So this is arguably the biggest policy argument in the history of ICANN, and we are pinching pennies?

Farzaneh Badii (NCSG):well just lightweight ccwg model. lets get pro bono lawyers say we are poor spent our money on taking registrars to court

Ayden Férdeline (NCSG):how was the \$50k budget determined? it seems arbitrary to me

Ayden Férdeline (NCSG):and also unrealistic

Trang Nguyen (ICANN Org Liaison):@Stephanie, we provided a summary document of all of the advice and interactions with the EDPB and DPAs on 8 October. Perhaps Caitlin or Marika could provide a link to that document, which might be helpful in addressing your comment.

Stephanie Perrin (NCSG):Thank you Trang, That might be helpful.

Farzaneh Badii (NCSG):how does ICANN org decide on what questions ask and what advice it seeks?

Farzaneh Badii (NCSG):sorry I got distracted I will ask this later. dont want to sidetrack

Ayden Férdeline (NCSG):@Trang that document summarises the blog posts and letters we've already read, but it does not contain important details of the substance of the meetings that ICANN staff have had with DPAs. we need the staff notes from these meetings

Stephanie Perrin (NCSG):Can we not renew the Wilson X Y Z contract raised in the RDS group?

Trang Nguyen (ICANN Org Liaison):@Farzaneh, ICANN org asks the community to provide questions and those are the questions posed to the EDPB and DPAs.

Farzaneh Badii (NCSG):like disclosure vs access question. which term should we use? should we use disclosure or access? (just an example)

Farzaneh Badii (NCSG):I think EPDP leaders should pick the lawyers with consultation with EPDP members.

Farzaneh Badii (NCSG):I don't think CANN staff should select nor suggest law firms

Trang Nguyen (ICANN Org Liaison):@Ayden, the substance of the meetings that ICANN org have with DPAs are reported in Goran's blogs, which are published after each meeting. The DPAs also sent formal correspondence to ICANN org meetings at their discretion, which are all published.

Ayden Férdeline (NCSG):@Trang - that's exactly what I said, so I'm not sure what you think you accomplished in repeating that. I've read the blogs, and they lack substance.

Daniel Halloran (ICANN Org Liaison -Legal):[https://urldefense.proofpoint.com/v2/url?u=https-3A\\_\\_gnso.icann.org\\_sites\\_default\\_files\\_file\\_field-2Dfile-2Dattach\\_wsgr-2Dicann-2Dmemorandum-2D25sep17-2Den.pdf&d=DwIFaQ&c=FmY1u3Pj6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0Algn-H4xR2EBk&m=Rnnk8D2o1mPERlZMtBzPpgoUA1Z9rMlib655HiHjB-4&s=dr1138yhf9Ra-aXtHbVA8lqCiIT6L6fPXbfDegyJOHo&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A__gnso.icann.org_sites_default_files_file_field-2Dfile-2Dattach_wsgr-2Dicann-2Dmemorandum-2D25sep17-2Den.pdf&d=DwIFaQ&c=FmY1u3Pj6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0Algn-H4xR2EBk&m=Rnnk8D2o1mPERlZMtBzPpgoUA1Z9rMlib655HiHjB-4&s=dr1138yhf9Ra-aXtHbVA8lqCiIT6L6fPXbfDegyJOHo&e=)

Ayden Férdeline (NCSG):@Trang - Are you saying ICANN staff do not take comprehensive notes of the meetings that they have with DPAs and representatives of the EDPB? All that exists as a record are those blog posts?

Farzaneh Badii (NCSG):we should have the legal counsel to help us with legal terms so that we don't use a legal term in our documentation. they should also if needed on some topics attend the calls and answer questions and provide legal clarifications

Ayden Férdeline (NCSG):A pity we did not harness Peter Kimpian sooner - Stephanie has raised this good idea repeatedly since as recently as our first or second meeting

Farzaneh Badii (NCSG):I am gonna call in have bad audio at the office

Farzaneh Badii (NCSG):I made an example

Trang Nguyen (ICANN Org Liaison):@Ayden, the blogs report the substance of the conversation with the EDPB and DPAs. If you are asking whether there's more that's discussed in these meetings that are not reported in the blogs, the answer is "no."

Farzaneh Badii (NCSG):I will call in. no one is understanding me :)))

Ayden Férdeline (NCSG):@Trang: That's very concerning then. I have seen staff notes shared on the CCWG-IG list before from other meetings that ICANN org has, and they are actually comprehensive. It is a pity that those meeting with the EDPB and the DPAs are not taking better notes.

Farzaneh Badii (NCSG):we have two tasks for them: 1. questions clarifications 2. attendance in some of the meetings

Farzaneh Badii (NCSG):DPIA should not be done based on community output only!

Farzaneh Badii (NCSG):well we are past the stage of repealing argument etc. we have issue specific questions to sort out

Farzaneh Badii (NCSG):It won't be about our approach to policy

Diane Plaut (IPC):Thanks Dan - really helpful. it seems then that with the tremendous amount of work that has been done that the Temp Spec is ready then to be executed upon by the work that we are doing in the EPDP but we keep on coming up with the same blocking issues - structural components - which include the right mapping like Stephanie has explained, Policies in place and contractual changes to support the models that have been proposed. Hired counsel can look at the present structure of the ICANN By-Laws, the contract in place between registries/regitrars and help ICANN close the gaps contractually to provide them with the protections needed to comply with GDPR (and coming CA and other laws going forward) and to appropriately define the contracted parties and ICANN rights and responsibilities.

Berry Cobb:From a budget perspective, we in effect have at most \$168K without affecting other line items such as funds set aside for F2F.

Stephanie Perrin (NCSG):May we know what we spent on Wilson et al?

Ayden Férdeline (NCSG):@Berry have we exhausted our budget for external facilitation or does the \$168k need to cover this too?

Farzaneh Badii (NCSG):I don't think they should tell us which legal basis apply

Diane Plaut (IPC):I agree with Dan and Kurt that is why I think having outside counsel in the room I do not think is the answer

Stephanie Perrin (NCSG):I am trying to get us to stop having ridiculous conversations which are wasting our time.

Berry Cobb:Facilitation is 75% committed of the \$100k. Just in context, the amount allocated from the ICANN Board, was \$590K that includes prof services and EPDP travel

Ayden Férdeline (NCSG):@Diane I would agree too in ordinary circumstances, as it would be very inefficient having them on every call - but Stephanie made the good point that we really do have a deadline here and so it would not be having outside counsel on our calls for an indefinite period of time

Stephanie Perrin (NCSG):I have tried my best to recruit retired DPAs to come and join the group. NOT working so far.

Farzaneh Badii (NCSG):who asked for the lawyer be present in the room?

Stephanie Perrin (NCSG):For those of us who are working for free donating thousands of hours to ICANN, this is a wee bit insulting.

Farzaneh Badii (NCSG):well lawyers in other groups listened in and it was pretty good. but I did not suggest that

Farzaneh Badii (NCSG):in exceptional meetings might be needed

Farzaneh Badii (NCSG):yes that is what I also suggested too Kurt . policy doesnt break the law

Diane Plaut (IPC):That what companies are doing all over the world now: making assessments, creating policies, and creating Data Processing Ageements with third party providers and entities with whoe they deal

Farzaneh Badii (NCSG):I think staff can draft the statement of work based on our discussion today

Farzaneh Badii (NCSG):law firms should not be selected by ICANN org and staff.

Farzaneh Badii (NCSG):please do not even mention them

Ayden Férdeline (NCSG): We don't want Jones Day

Diane Plaut (IPC):Kurt I am happy to volunteer to help make suggestions I have done that with my company(ies) and clients.

Diane Plaut (IPC):We would still continue with our work on the policy the legal work would support the policy that the EPDP reocmmends

Farzaneh Badii (NCSG):Jones Day is primarily an IP law firm even their GDPR experts have worked on IP.

Diane Plaut (IPC):Jones Day is the largest general practice law firm in the world they certainly have privacy professionals but they are also the most expensive

Farzaneh Badii (NCSG):so yes policy that doesn't break the law

Ayden Férdeline (NCSG):Their IP expertise is fine; I have other issues with Jones Day, mainly the fact they represent ICANN org and not the broader interests of the ICANN community

Stephanie Perrin (NCSG):Ayden is right.

Farzaneh Badii (NCSG):sorry I have to leave which is not good but I have a violin lesson. important stuff ... I think we need a statement of work based on the discussion we had. it should be simple. aim legal clarification about policy recommendations , approach: through questions or exceptionally through meeting (as budget allows)

Diane Plaut (IPC):Yes, Kurt data mapping can be done by staff and lawyers simply interpret the data mapping a company tells them

Diane Plaut (IPC):I work closley with Ropes and Gray and I can ask them if they would consider offering their services at a discounted price

Ayden Férdeline (NCSG):May I suggest we use the same firm the RDS PDP WG used, as they have some background already

Stephanie Perrin (NCSG):I think we should strive for independent counsel.

Farzaneh Badii (NCSG):we have to talk about the law firm selection process later. bye all

Diane Plaut (IPC):I think that Farzaneh's idea too - to have a direct link to ICANN counsel to answer questions from our meetings is also important to move the policy process of the EPDP forward efficiently

Ayden Férdeline (NCSG):Will Stephanie be added to that email chain w/ Diane too? I am sure she would have some invaluable inputs to add too

Ayden Férdeline (NCSG):Thanks all

Diane Plaut (IPC):Thank you ICANN staff

Stephanie Perrin (NCSG):you too!

Daniel Halloran (ICANN Org Liaison -Legal):Thanks