ICANN73 - Plenary Session: The Global Public Interest Framework: Is it Useful?

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ICANN73 | Virtual Community Forum - Plenary Session: The Global Public Interest Framework: Is it Useful?
Monday, March 7, 2022 - 14:30 to 16:00 AST

ANDREA GLANDON: This session will now begin. Please start the recording.

Recording in progress.

ANDREA GLANDON: Hello, and welcome to the ICANN73 Plenary Session: The Global Public Interest: Is it Useful?

My name is Andrea Glandon, and I am the remote participation manager. Please note that this session is being recorded and follows the ICANN Expected Standards of Behavior.

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I will read questions and comments aloud during the designated times for this session.

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To view the real-time transcription, click "Closed Captioning" in the Zoom toolbar. Now, please welcome session moderator Marita Moll.

You may begin.

MARITA MOLL: Thank you. Thank you and welcome, everyone. Thank you for coming to this Public Forum. My name is Marita Moll, and I am situated here in Ottawa, Canada. I'm a member of the At-Large Advisory Committee coming towards the end of my term, my

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four-year -- four years as a member of ALAC, and I'm representing the North American Regional At-Large Associate Organizations called NARALO in ICANN acronyms. I'm also the president of Telecommunities Canada which is an At-Large structure or ALS.

I kind of feel like I've been here forever at ICANN, but when I checked I realized I had only attended five actual ICANN meetings in person. And now this is the seventh ICANN virtual meeting. Sounds like a lot but it's barely out of infancy with respect to ICANN. And so I'm still a newcomer in ICANN terms, and this is all for you people out there who are newcomers or relative newcomers in this room -- I see there's a lot of people, 286 -- please know that you are not alone. We haven't all been here forever. And as is always said, there are no bad questions.

I'm going to describe this session. It's about the framework, the global public interest framework that can be used by the Board and the ICANN community to evaluate the global public interest in respect to a specific recommendation process or procedure. It is not -- This session is not about the global public interest in a global sense, which is a much wider discussion, which has been had and probably will again be had in the ICANN context.

In this case, we'll keep our discussion here within the framework which relies on the Articles of Incorporation and the bylaws and

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other types of founding documents. That is the boundary of our discussion here.

Now, we realize that not everyone is living and breathing this topic all the time and that it is necessary to offer a review of the framework. A recap of the session that was offered back in the ICANN72 preview week, which many of us attended and did a review of. And so we'll be doing that.

We'll be talking about the application of this framework, how it's been used to date, how it might be used in the future, how it can serve the needs of the Board and the needs of the community.

I would like to say we'll try not to go too deeply into the weeds here, and we will assume that this will not be the only opportunity to talk about this initiative and that it may not even be the most crucial.

This is one step in building an understanding of a complex tool, the possible utility and use of this tool in our deliberations at ICANN.

So it's an active learning session. Other discussions such as this, the community will decide if it's a useful tool or not, but we probably won't be deciding that today. We are exploring it today.

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One of the members of our design team said, and I thought this was a wonderful quote, the global public interest framework is a slow simmer-pot discussion that we'll not microwave our way out of. Thank you, Jonathan Frakes for that.

So this is a discussion, and it will take a while for everyone to really get up to speed on how this can be used.

We do have certain objectives for this session. We want to consider how the framework can be used by the Board and the community. We want to take a closer look at a use case. So one of the only ones that's only partially finished is the SSAD ODP. We'd like to consider whether or how the framework could or should be adjusted moving forward.

So that's the general introduction, a sort of global perspective of what we're hoping to achieve here. This session will begin with a recap by Ergys Ramaj, and then it will go on to Avri Doria who is our board member shepherd for this particular initiative. And then we'll go on to our community panelists.

Ergys is the vice president V.P. of public responsibility at ICANN, and he is coming to you with 18 years of professional experience in global technology policy, management, and public diplomacy roles.

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Avri -- many of you know Avri. She has been a member of the ICANN Board since 2017. She has been involved with ICANN and GNSO since 2005 when she was elected to the GNSO Council to represent the NCSG. In 2013 she served she served as a member of the Accountability and Transparency Review team, she has served as the chair of the GNSO Council as a NomCom appointee to the Council, and the NCSG Executive Committee. And I must say that in June 2014, Avri became the first-ever participant -- first-ever recipient of the ICANN multistakeholder Ethos Award.

So first I'm going to call upon Ergys Ramaj who is going to give you a general review of the global public interest framework.

Ergys, over to you.

ERGYS RAMAJ: Thank you, Marita, and hello, everyone. If we could please move over a couple slides. The next one, please. Thank you.

So I wanted to start with a bit of framing on the topic and provide some context on what it means to discuss the global public interest at ICANN and why this is actually an important conversation to have. This is one of those topics that goes back to the very early days of ICANN and mentions of the global public interest can be found in all of ICANN's primary governance

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documents from the Affirmation of Commitments to the Articles of Incorporation and the bylaws, as Marita mentioned.

The language in these documents makes it quite clear that the global public interest is linked to the mission of ICANN and that it is the community through the bottom-up process that determines what actually constitutes the public interest on a given issue and, of course, on a case-by-case basis.

A lot of the cross-community discussions and work that has taken place over the past five to six years have been quite helpful in moving the conversation forward. This includes sharing thoughts and experiences on what the concept means and also how it's understood in different regions and contexts.

The challenge, however, has always been in how to best operationalize the concept and put it into practice. So with this in mind, the Board decided to make the global public interest one of its operational priorities back in late 2019, and in consultation with the community, it crafted a proposed framework that could help address the public interest in a more systematic and predictable way.

Next slide, please.

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Historically, there have been no specific tools to help the community evaluate the relevant public interest on a specific issue.

The framework tries to change that by adding some structure and clarity around how it could be approached while making sure that it's all anchored and rooted in the ICANN bylaws.

It also helps the community to evaluate the relevant public interest for each consensus where the Board needs to understand it.

The focus here is really on context rather than defining the global public interest in abstract. It is a tool for the community to consider as it determines which decisions are in the public interest and in reaching that conclusion.

Importantly, the framework does not replace any existing processes. And I'm sure you'll hear this throughout the session. And it certainly is not meant to either preempt or predetermine the outcome of the bottom-up process.

Next slide, please.

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What you see here on this slide is a high-level overview of some of the key elements of the framework that help guide the process for determining the global public interest. So starting with the table at the top, the terms in the first column are meant to categorize the public interest considerations in the context of ICANN's work. These are the five broad categories that help align the considerations with the work and mission of ICANN.

As you can see on this slide, these buckets are ICANN's technical coordination, ICANN's role in the DNS marketplace, benefit to the Internet community, ICANN's global multistakeholder community and policy development processes, and last, but not least, ICANN's policies and practices.

Moving on to the terms in the second column, the specific global public interest categories, these either come directly or are derived from the bylaws. One important point here is that these specific categories are not meant to cover every public interest category. They only refer to those public interest categories that relate to ICANN's bylaws.

Now, the questions from the bottom table use language directly from the bylaws. The framework itself does not quote the bylaws in full, so when and if a community group (indiscernible) the full bylaws to help support their work.

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As you would likely hear more during this session, the framework is not being imposed on the community. It is, however, being suggested as a possible tool to help address the public interest, again, in a more proactive and structured way.

I will stop here, and I believe Avri is next. Thank you.

AVRI DORIA: I must unmute myself.

Thank you, Ergys. And thank you for inviting me to talk about this. Has become one of my favorite subjects over the last couple years.

Can we go to the slide I've got?

I want to start out by sort of addressing the first question which is: Is it useful? And then I will go through the points I have got there.

I don't know. The community will need to decide for itself at some point whether it's useful or not. In terms of the Board, it became apparent that it was necessary that we have a tool, you know, given that it's difficult to explicitly define "public interest." Yet,

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after WS2 and ATRT2, we needed to be able to indicate on each decision whether we believed that it was in the public interest.

Now, we have certainly talked about issues, read the recommendations, the advice, the comments, the letters, the hallway discussions or side chat discussions, et cetera, to try and make that determination. And every member of the Board made a determination. We discussed them. And at the end, if we agreed that it was in the public interest, we said so in the rationale but never went into great detail about why we thought it was, partially because we didn't have the language and we didn't have the tools or structure or methodology for doing that in, as Ergys said, a systematic, methodical way, a way that was reproducible, a way we could learn from and increase.

But when answering whether it useful, I said it was necessary for the Board. What we will need to determine over the course of this pilot and into the future is whether it's sufficient, whether what we've got at the moment as a pilot, as a proposed framework, is really sufficient to the task. And that's something that I find myself unable to answer at this point. I think it might be. But, you know, until we've run through the pilot, which will involve both the SSAD and the SubPro, it's very difficult to say, yes, it's sufficient.

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Now, one of the things that we've got is this combination of it's a requirement for the Board to determine whether something is in. But that determination has to come from the bottom up.

Now, we did not want to suggest, as Ergys said, yet another whole set of procedures for that. And when looking at it, really believe it very much matches the work that's being done in the PDPs where whether as a GNSO PDP or a ccNSO PDP, they have an obligation of determining what the consensus is, to go through all the issues, to talk through the issues, to come to resolutions, possibly have minority opinions. I'm actually not sure whether the ccNSO construct contains minority positions. I'm just learning about the ccNSO PDP process now because we've got ccNSO PDP recommendations. But there basically is.

But what was perhaps not clear is that when people were going through the PDP, they were talking about global public interest issues. You could look at the issues. And, in fact, that's part of what Ergys did in the SSAD ODA, looked at the conversations that were being had, looked at the discussions, looked at the comments. And basically you could see that these conversations could be mapped onto various categories of public interest, of global public interest.

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So the idea was that since the Board needed a tool, that we would basically start with that exercise of seeing if we could map what had been said, what had been determined, what had been written to the global public interest to basically help us.

Now, when it comes to -- you know, I have been asked: Is it mandatory? Absolutely not. And it isn't even mandatory for the Board yet until we decide that -- after the pilot, should we decide that.

At the moment, it is mandatory for the SSAD and SubPro. Though, determining global public interest and using our understanding of the bottom-up global public interest is, indeed, mandatory for the Board.

So as Ergys also said, how do we operationalize it? I view it and discuss it sort of as we have an implicit definition. And in the links to the articles, the bylaws, other historical documents, other historical context, we basically have a mapping between the various categories and such.

Now, the articles and the bylaws can be seen as a fundamental statement of -- sorry. I stopped and looked at comments and I distracted myself -- as a fundamental set of documents that do have consensus. They went through WS2. They've gone through

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analysis. Any change to them goes through a public comment, is evaluated at the end by the empowered community.

And so they basically can serve as a structure on which to base a determination. And as data has already said, if you look at those, you can sort of see that if you put a "will it" in front of a lot of the statements in the bylaws, you come up with some fairly good questions that you can look at and say, gee, does it do this? Does it do that? And I really recommend that people look at the full set of questions in the framework documentation as well.

So in terms of community involvement, there has "and we're doing this." There will be future webinars, there will be future discussions. After of each of the two pilot experiments, we need to do an evaluation. At the end of it all we need to do an evaluation that will include community outreach and eventually community comment.

As I said at the beginning, we did not want to change any of the PDP processes. We looked at something that could be perhaps used in the PDP processes but was really -- in terms of the Board, it was something that we would -- an analysis that we would apply to what had been discussed, what had been talked about and, as I say, in the recommendations, in the comments, and such.

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So I also want to say, and I thank Marita for indicating this at the beginning, but we're still early in this pilot. We've basically been through half of the first iteration. In other words, we have the ODP, considered it. We have an ODA statement that takes several of the categories, does an analysis, looks through the recommendations and all, and makes a determination that, indeed, there were issues discussed that were relevant to the global public interest.

There was comments, there was, you know, fulsome discussion, there were minority positions, and such, and that there is a body there that one can look at and say, yes, they did discuss it in an indirect way and certainly did not use this terminology. You know, so the Board now needs to take its next step we'll be taking after 73 of basically taking the ODA, taking any new comments that we receive about the ODA, looking over past comments, going into the text of the recommendations to determine whether using the tool as an aid we will be able to say, yes, this is in the global public interest, this has been discussed, or, you know, the other, that, no, we see global public interest issues with it, you know, and that, so since that is an obligation on the Board.

One of the things that we're looking for is that not only do you look at the ODA and its use of the tool but is there more that needs to be said? Are there categories that weren't looked into in the

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ODP that perhaps should have been? Are there categories that the Board should look into that need further discussion?

So if you contribute comments and if you use the language of the framework, it helps us in determining and doing that mapping. It sort of saves one step in the process of, well, they said this, this looks like it maps onto the categories but I'm not sure. If comment comes in that actually does map on them, then that happens us. So certainly it becomes useful to the Board. Don't know how useful it is for you, but it may help in organizing comments.

But we're also looking for if you do decide to experiment with it, use it in discussions, that you get feedback from us. Can it be improved? Obviously it can be improved. Everything can be improved. How can we improve it? How can we make it more useful? How can we make it perhaps be sufficient for the task? You know, so...

One thing, though, going back to the mandatory, the Board is not presupposing in any way that we can impose a framework on you, that we can impose a change to the way you do your advisory council or your supporting organization processes. You own those, and how you evolve them, use them, or whatever, is really something that is a bottom-up matter within your SO or AC. We're

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inviting you to participate in this tool, and we're hoping you do, but -- but it certainly isn't in any way a -- an expectation that you even should, and certainly no "must" to it at all. And I've been asked that a few times.

So I think I've probably talked enough. I'm willing to answer any questions or go into any level of depth on any of these bullets, but I'll turn it back to Marita and wait for questions.

Thank you.

MARITA MOLL: Thank you. Thank you very much, Avri. You're just a great person to explain what this is about, and you do that so well. It's been brought a long way, I guess, from where it started in '91, and I think there's still a way to go, but it certainly looks like it's a -- it's -- it's something the community wants to look at, to give it a fair chance, to see how we can work with it.

I'm really glad that you brought up at the very beginning this little piece, and this was discussed also as we were putting this session together, the determination of the global public interest shall be made by the multistakeholder community through an inclusive, bottom-up, multistakeholder community process. That's actually in the Articles of Incorporation. And I think it really

helped us to understand, that I understand it, that the framework is actually designed to ensure that those requirements are met in practice.

I guess you would agree with that, Avri. Do you feel comfortable with it? That it's designed to meet that?

AVRI DORIA: Yes, certainly. Nothing guarantees anything, but certainly to help us determine whether we think it was. So yes.

MARITA MOLL: I'm just wanting to give Andrea the opportunity to throw in, if you can pick out a couple of comments from the chat, Andrea, and read them out, ones you think might be really relevant right here. Is that possible?

ANDREA GLANDON: Sure. Let me read one question here. This is a general question: Does this relate in any way with the exploration of what GPI is that was being discussed around ICANN 55 Marrakech or is this a fresh start on the theme?

MARITA MOLL: Give that to Avri.

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AVRI DORIA: Yeah, and may need to go back to Ergys on that one because org and staff and Ergys and others have been working with the community for a long time to try and frame an explicit definition of what it was before I got involved with it. And this has been sort of evolved from that effort. But I'm not in a position to say it is exactly the same effort, but it's certainly an ongoing effort that having not achieved an explicit definition that had global consensus, you know, we started looking for a framework that would allow us to operationalize the considerations. Because as one comment that I did quickly see, that, you know, we all know what the global public interest is when we see it, but we don't all have the same view of what we're looking at.

And so the attempt to try to break it down into categories that are mapped to specific statements in the bylaws, and such is an attempt to -- there's still interpretation. There's still a certain amount of, you know, subjectivity in anything that's a social decision, but it's trying to sort of narrow down and give us a better understanding.

MARITA MOLL: Thanks. Thanks, Avri.

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I see a couple of hands up. I can't -- I can't let this go on too long as we have our community participants.   We'll have more questions at the end, but let's hear Martin Sutton. Is this for Avri specifically, Martin?

MARTIN SUTTON: For Avri and Ergys, maybe. But it was just trying to -- I haven't looked at this in great detail recently, but looking at the framework outline, there's a number of categories that are listed there. And there are some examples underneath which suggest things like will it preserve and enhance something, something, something. I just wondered whether there had been thoughts to at least start from a point where its public interest means that it will not and be explicit in being what something should not be. Because that's a really good starting point to at least be able to get to meaningful points that are less subjective rather than things about enhance. You know, should every policy process enhance something? Perhaps not. It could be in response to different requirements, regulatory requirements, so it may not actually be a positive enhancement in -- when we look at these things. But certainly as long as it does not do something adverse, is not insecure, is not something which would destabilize the Internet. Perhaps just phrasing it differently might be a useful starting point for some of those conversations about what does it

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actually mean and how do you manage that meaning through the policy development work.

Thank you.

AVRI DORIA: Should I reply?

MARITA MOLL: If you have something that's brief.

AVRI DORIA: I thank you for that, Martin. What we did in this document was just remove statements, copy statements from the bylaw's documents. I think what you've recommended may, indeed, be a very good, you know, step. I think one could add at the top of it all, you know, and avoid the obverse. But I think what you said was a very good step that, as we take it further, we could look at, you know, how we extend it to sort of avoid the negatives. Do-no-harm type of statements. So I like the suggestion, but it's certainly not in there now because they are quotes from the bylaws, and unless the bylaws said, "Do not do this," it's not in there.

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MARITA MOLL: Thank you, Avri. And it's nice to see that already we've come up with something that could be taken forward and looked at as the -- as the framework moves forward.

I'll take the one question from Griffin and then I'll go into the community participants section of this session.

Griffin, please go ahead.

GRIFFIN BARNETT: Sure, thanks very much, Marita. This is Griffin Barnett, I'm a member of the IPC but speaking personally. I guess my question again is to Avri here. You mentioned earlier that one of the things the Board takes into consideration are things like minority statements that have been expressed in the course of PDPs. And, you know, something that we saw in connection with the SSAD and a couple of the other recent PDPs relating to WHOIS issues is a number of minority statements, both from various parts of the GNSO and from other SOs and ACs. And I'm just wondering -- but, and again, those were ultimately approved through the GNSO process. I'm just wondering if you can speak a little bit further to how the Board sort of takes into consideration, you know, kind of the discrepancy, I guess, or how it would reconcile situations where there's a multitude of minority statements expressed that

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perhaps kind of undermines the view that, you know, certain things have achieved real consensus as that is defined in the GNSO procedures.

Thanks.

AVRI DORIA: Okay. Thanks.

I'm not going to go too far into that one because sort of have to go with the GNSO -- GNSO's determination of it finding consensus. But certainly they'll be taken into account. Were those issues taken into account? The Board is in an interesting position of, unlike all of the constituencies and stakeholder groups and SOs and ACs, we need to not take a particular view in the mind but basically to look across them all to see how it balances, to see how it works out, and to see how it compares to what our fiduciary and other responsibilities are. So they are definitely taken into account, definitely discussed quite a bit. And then through a lot of conversation, basically it comes to a -- to some sort of decision level.

More than that, it's hard to say, you know, as to what exactly will happen to them in the SSAD decision as it goes forward.

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MARITA MOLL: Okay. Thanks, Avri.

We're going to give Avri a break for a while and move on to our community participants, although I'm sure Avri will be back and participating in the questions as they come forward.

At the moment we have a pilot. We want to hear how the community is approaching this. We've already heard a couple of very relevant questions. The community did have input to the framework, as Ergys and Avri have said at the very beginning, when it was originally proposed. So now we're seeking reactions from our panelists and also we'll be asking for reactions from you in the room through the chat function.

Our panelists are Justine Chew, Paul McGrady, and Velimira Grau.

Now, Justin -- Justine is a former member of the At-Large Advisory Committee, that's ALAC, and at present holds a number of roles representing the At-Large community. For the purposes of this session, she -- she was the At-Large -- she's represented the At-Large Consolidated Policy Working Group Small Team lead on Subsequent Procedures. That's the famous Sub Pro Working Group. That's a role that followed her stint at the At-Large liaison in the GNSO Sub Pro Working Group.

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The At-Large has a weekly policy meeting called the CPWG, and there we would discuss all the time as some of these proposals came forward. So Justine was our small team lead.

Velimira is the European Commission's representative to the Governmental Advisory Committee, GAC; member of the European Commission's Internet governance team which follows the Internet Governance Forum, and she has previously worked on platform and telecom regulation.

Paul McGrady is the past chair of the Internet Trademark Association's Internet Committee and a former GNSO Councilor representing the Intellectual Property Constituency. Paul now serves the community as the NomCom appointee for the Non-Contracted Parties House. Paul is the author of three books on domain name and social media topics, and he enjoys a nationwide reputation as a go-to professional for legal work at the intersection of information technology and intellectual property.

We put together -- the design team put together a number of questions for the community panel, and I'm going to ask one of them to begin answering the question, and then I will -- I will give other community panel members an opportunity to enlarge on that if they wish to.

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My first question is TOR Justine: What challenges do you say -- do you see with applying the framework? And one of the reasons, I wanted to say, we're asking Justine this question is because she did actually use the framework already to respond to some Board questions re the At-Large comments on SubPro recommendations. So she has actually had a chance to work with it in real time.

Go ahead, Justine.

JUSTINE CHEW: Thank you, Marita. This is Justine Chew for the record.

Yeah, so as Marita alluded to -- okay. First thing I have to say is I'm a member of At-Large based in Kuala Lumpur. I am a member of the APRALO. But what I have to offer today at this session is purely my opinion. It is not necessarily endorsed by the ALAC or At-Large. And it's coming from the perspective of having looked at the GPI framework, global public interest framework, and process that is the subject of this session.

Okay. So as Marita alluded to, I did look at these two documents, the framework and the process, in addressing -- well, in -- in addressing ALAC's position on certain things with respect to Subsequent Procedures, and not so much forming it but going

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back to what are the public interest issues that concern ALAC when looking at certain topics within the Subsequent Procedures outputs.

Okay. And what I found in the process of doing that is that both the global public interest as well as the GPIF process document were quite useful, in fact, because both of them ends up, you know, breaking down, explaining, as well as applying the clauses in the ICANN's Articles of Incorporation, the Affirmation of Commitments, and also the core values stated in ICANN's bylaws. So these are the three ICANN governing documents. And they were useful in the sense that it broke down all this -- you know, all the jargons within those governing documents. Insofar as ICANN's role is concerned. It also, in terms of the five categories of public interest goals that Ergys and Avri spoke to a little earlier today. So it was useful because when you are reading, you know, governing documents like bylaws, it's a bit like reading legislation, you know. And I'm a lawyer so I'm kind of used to that, but it is very hard to digest and to apply things unless you have a context to it, right?

So I particularly found the GPIF and the process document particularly useful in that way, that, as I said, it breaks down the jargon within the governing documents and applies them accordingly, you know, where there is appropriate need.

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But I did find three difficulties in the process of doing this analysis.

The first one was that in the GPIF process document, the first question that is posed in the document is along the lines of: Does an issue warrant the use of a global public interest framework?

Now, I thought this was a bit strange because there isn't any clarity as to how this first question -- and it's a very important question, mind you, because if the answer is no, then the whole framework doesn't get applied at all.

So I didn't find any clarity as to how this question might be answered. So it's either a yes or a no, but it doesn't tell you how you go about answering that it's a yes or a no.

And in that situation, I was a bit concerned that what is there to say that an issue isn't just brushed off just simply because there was an erroneous conclusion that the GPIF wasn't warranted and shouldn't be applied? I found that a curious question. I'm a curious person by nature anyway.

The second difficulty I had was that the GPIF tools, as they clearly are now, directed clearly at the Board in terms of helping the Board make decisions about an issue. Typically these issues involve policy recommendations.

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So while it helps bring light to the community in terms of the categories of public interest goals that the Board is meant to consider, I don't see any incentive for the various communities to -- groups to actually apply it other than in the fashion that they advocate their respective positions or interests. And that doesn't actually help break down any silos when it comes to cross-community cooperation or discussions of issues.

And my apologies, if it wasn't meant to do that, then just take this comment as it is.

And the third difficulty I found -- and I will stop after this -- is that I also didn't find how it provided for when a decision has been made and implemented, how is that decision actually evaluated, right? So meaning to say, there isn't any mention as to what input or data should be collected in order to assess whether a decision that has been made, presumably in the public interest, was, in fact, in the public interest.

So I'll stop there. Thank you, Marita.

MARITA MOLL: Sorry. Just struggling with my -- yes, hello.

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Thank you, Justine, and your ever-inquiring mind. Those are really great, I think, little things you picked up for the designers of the framework to think about.

I got from what you said, you know, that you found the level of practicality really good. There was a way to apply it that didn't require too much backfill on your end.

But your questions about whether or not the -- the confusing question about whether or not the framework was warranted, were the tools directed at the Board, and what is the incentive for the community to use this and how is the decision evaluated, what kind of data is collected in order to establish, these are great questions I'm sure that will be taken back to think about.

And I want to give the other community members an opportunity to respond, if they want to.

Paul or Velimira, do you want to weigh in here? Or are you good?

VELIMIRA GRAU: Marita, I can start, if you wish. Apologies, I could not push this time the "raise the hand" button so apologies for this.

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So before starting, I just want to make preliminary remarks given that this is the first time that I'm taking the floor, but I will definitely not be long.

First, I just wanted to say that I will relay in my interventions, let's say, as faithfully as possible the message from my GAC colleagues on the subject. But I would like to make it clear that for the time being, we are right in the process of discussing the GPI framework. So my statements tonight may be personal and, therefore, nuanced by my own reading and understanding of the framework.

And then second, we start talking about difficulties. But I would like to use, first, today's opportunity to thank those ICANN colleagues who have been involved and worked on the GPI framework for what I imagine is an amount -- an enormous amount of work and effort put into it.

And for this now I go to the challenges. First, I would just like to note, compared to Justine, I would not have the experience of having tried to apply the framework. So I'm just making this remark, so this is accounted for in relation to the comments that I'm making.

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What I believe is difficult and may be further reflected upon is the balancing of the different general public interest considerations. Why?

First, I think if you look at the asset use case, this is very well illustrated when we were speaking about the public interest as considered throughout the different inputs but also in relation to the impact on the ICANN control.

I think that an important challenge related to balancing is actually to assure that the balance reaches the different parties, is effectively in the interest of the public for whose benefit, according to the bylaws ICANN selects.

I believe on that particular point, probably my reading is quite close to that of Justine in relation to what she referred as her third difficulty, which is about how a given general public interest issue or consideration has not only been considered and accounted for but also really addressed. And I think this is an important element.

And then there are a number of questions actually which I believe the framework leaves open, but I'm quite mindful of time. So actually I think I may come to those at a later stage. Thank you.

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MARITA MOLL: Thank you, Velimira.

                      Paul, do you want to add anything to that?

PAUL McGRADY: Just very briefly. This is Paul McGrady for the record.

                      And I'm sure we'll get into a bit more of this later. But in terms of its usefulness, it's one of these things, I guess, we have to wait and see what happens after it's applied to these two particular big items that are in front of us.

                      But one thing that the community does not need is any more mechanisms to second-guess outcomes and to take five, six, then bites at an apple, right?

                      So if this thing becomes just another way to take another over-time bite at an apple or to scream louder because your particular point of view didn't get its way, it won't be useful.

                      If, however, it merely becomes a check-box exercise, right, so that people who are involved in various community efforts say the right things and check the right check marks because they're afraid if they don't, then it won't make it past the particular

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council or won't make it past the Board, then it won't be useful then either because then it's just sort of a rote exercise. I bet we will talk more about this as the evening goes on.

But those were the sort of two things I took away from it as I was looking at it. We don't know yet if it's useful, like Avri says. But we do know it could be misapplied and actually maybe do some harm. So we just have to be careful about that and talk through it tonight and in the weeks ahead. Thanks.

MARITA MOLL: Thanks, Paul. I think the next question is going to you and you almost talked about that already it a little bit.

The question being: To what extent does framework serve ICANN community needs? How can it be clarified or improved? Over to you.

PAUL McGRADY: Yeah, to a certain extent, it's the same answer.

By the way, Paul McGrady, again, for the record.

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We don't know if it serves the needs until we see how it's applied, because it actually -- like I said, it could result in outcomes that most don't want to see happen.

On the other hand, you know, how can it be improved? It's in its essentially beta test, so we don't really know at this point how can it be improved. But I do think that those who are applying it in this first test run should be very careful that it's not used sort of to -- just as a convenient excuse to undo the will of the bottom-up stakeholder process. I think that's, you know, exceedingly important as they apply it.

I think it could be useful to the community generally. Obviously, you know, whenever you put together something that's meant to be persuasive -- I hope that council recommendations are persuasive when they go in. I hope that various advisory committee comments or advice are persuasive when we go in. We are all writing persuasively, right? The ICANN community is basically a writing exercise at the end of the day.

And so if we do know those things that the Board will be looking at -- if at the end of this beta test, the Board says, Yeah, pretty good, close enough, or Pretty good, here's two or three things we're going to add or one or two things we are going to take away, then taking that learning back to the negotiating exercise and

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then the persuasive document writing. You know, if it looks alien to the Board when they get it, they're going to be less open to it. If it looks like it's, oh, that's the way -- here are the things they're going to think about and the documents -- the persuasive documents answer those questions, that will smooth the process and we can maybe get some things unstuck that sometimes take a bit longer than everybody would hope to finish up.

So all that to say this, which is: Can it be improved? Sure. Do we know what those improvements are yet? No.

[Laughter]

But it's -- you know, it's very early days. So I'll stop there. Thank you.

MARITA MOLL: Thanks. Thanks, Paul. I guess it's a writing and research exercise, I would say.

[Laughter]

That's what we're constantly doing.

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Quick passover to Justine or Velimira to -- any response to Paul? Velimira. Go ahead.

VELIMIRA GRAU: Thank you. Thank you very much, Marita. And thank you, Paul, for sharing this with us.

Well, I found this actually very interesting question because there are several aspects into it. First, regarding the needs, I believe that the needs of the different parts of the community may defer and that also given the central part of the general public interest in ICANN's mission, I think that it might be useful for the relevant parts in ICANN, you know, to take the ownership of ensuring adherence of these different needs. And I believe that this is attempted to be done precisely with the current GPI framework piloting, at least it seems to me so.

Now in terms of improvement, I quite agree with Paul and especially based on the very helpful explanations of Avri that this is -- we are in early days. But I still believe that we can have a kind of perspective and forward-looking view and try to see what we may want from the framework or how we would see it. Personally, while going through the documents, for me, this might be available monitoring to and also accountable to for the Board as to what the different general public interest categories

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such as (indiscernible) the bylaws has been the most pertinent actually in the ICANN discussions.

I also find that the framework offers a very good context-based framing of the general public interest and from that perspective allows to overcome the difficulty that we might have as a community of finding a common overall definition of the general public interest. And I certainly believe that actually overcoming this difficulty is a very important step forward.

And I also think that at the same time the framework might need to be complemented or evolved towards a framework that might be, say, principles-based and left to be contextualized by the different parts of the ICANN community. I'm saying this because I believe that if we want to apply it across the community, it might be useful to have a look at how precisely this would fit further the existing processes, which I understand is part of the effort of having something which is not a burdensome process or procedure -- sorry, procedure for the community.

Also, I think that the framework should be used not only as a tool of a recommendation but throughout the policy development process and, in particular, when the GNSO Council assesses the recommendations in relation to a given PDP process.

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I believe at that moment; it would be important actually to balance the public interest considerations so that precisely to ensure that the general public interest has not been only considered but actually effective and taken into consideration.

I have already mentioned the balancing. I think definitely balancing is something difficult where we can try as a community to see how to better balance the different GPI perspectives.

Then I believe there are a number of questions on which I have heard some GAC colleagues coming back and asking for some clarification. So I think it's important for the community and possibly for all of us as we discuss on this to clear -- to hear more about these questions. So I will very briefly go through them. It will not take a lot of time.

So basically the first one is about the implications of the GPI framework on the given recommendation. What did the Board find that the recommendation does not serve the general public interest? And actually, does the framework allow for this evaluation in the first place? Because if you look at the very first step, which is basically to determine which recommendations may carry public interest considerations, the thing is what if, you know, a given recommendation or comment does not carry such public interest considerations? What do we do with it?

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And then does the GPI framework help the Board in restraining from taking a decision or endorsing the policy recommendation that might possibly not be in the general public interest?

Another question that I got when trying to approach my GAC colleagues was about the GAC advice. How precisely does GPI framework is applicable and considers the GAC advice?

Then Avri had mentioned the articles of incorporation and, you know, how basically the framework attempts to ensure that the general public interest has been determined throughout -- sorry, through a process that is multistakeholder, inclusive, and bottom-up. And here actually we also had some questioning about it because how do we avoid that the simple looking into, you know, who has participated in the process is actually equaling the fact that this was the case, that the processes, indeed, included bottom-up and multistakeholder. So we believe that it might be interesting to have a further look into this, although I fully appreciate Avri's very extensive response to this.

Many thanks, Marita. I hope I wasn't too long or have spoken too quickly.

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MARITA MOLL: Thank you, Velimira. I know these are all really, really -- really appreciate the extent to which the community participants have given this a great deal of thought. We are running short on time. I thought this was maybe going to enter -- end early. Not the case.

I'm going to give Justine a quick couple of minutes to see if she wants to weigh in. We have got two people who have been having their hands up for quite a long time. I know there are a line-up of questions in the chat.

So trying to balance all of this.

Justine, do you have anything at all to add to that?

JUSTINE CHEW: Yes, just 15 seconds. This is Justine Chew for the record.

I just wanted to say that I can understand Paul's hesitation for this tool. I don't see it at all as, you know, additional mechanisms for second bite of cherry or anything at all of that sort. It is meant to, the way I see it, to ensure inclusivity in all the decisions that, you know, the ICANN Board makes and implements to ICANN. And, yeah, it's also focusing on whether those decisions have had

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considerations of public interest, you know, from bottom-up process from across the community.

Thank you.

MARITA MOLL: Thank you, Justine.

I'm going to go to Hadia for a question. Go ahead, Hadia.

HADIA ELMINIAWI: Thank you, Marita. This is Hadia Elminiawi for the record, and I have two points. So Justine mentioned evaluation of decisions or evaluation of the outcome of the framework, and I was wondering if actually the decision-making tool can be used also for validation. And my opinion, it is difficult to use the decision tool in order also to evaluate the output of the decision tool. And I would think that maybe we could think of another tool that will help us evaluate the decision of the framework.

And then my next point is in relation to how could we improve the framework. Part of the improvement would definitely come from evaluating decisions.

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So if we get to know, after making the decision, if this was a right one or not, if the outcome was correct or not, this could help us in improving the framework. I stop here and thank you.

MARITA MOLL: Okay. Thank you, thank you, Hadia.

I'd like to give Benjamin a chance. Go ahead, Benjamin.

BENJAMIN AKINMOYEJE: Yeah, this is Benjamin, for the record.

I just wanted to ask, after reviewing the framework briefly, I wanted to know if the framework is only modifiable during the pilot stages, or would it always be modifiable when it's been implemented? Is it always going to be changing? Fully understanding that what we have said, that is GPI is strictly -- I mean is mostly contextual.

So, I mean, would it always be modified and what's going to be guiding those modifications? So that's just what I wanted to ask. Thank you.

MARITA MOLL: I think maybe we could turn to Avri for a quick response to that question.

Avri?

AVRI DORIA: To that question specifically, I don't expect us to modify it during the pilot. I expect it to be -- I mean, so many good suggestions have come through for ways to think about modifying it, and I won't get into those now but, you know -- but I don't see it as something that would be immutable, but I also don't see it as a thing that should change under people's feet, you know, constantly.

So, you know, I know that's a wishy-washy answer, but basically, yes, modifiable but not frequently and not when you're in the process of using it. And maybe Ergys, who is the modifier, you know, has a better reply than me.

ERGYS RAMAJ: Thank you, Avri. Ergys Ramaj for the record.

I think as one of the principles when we were putting this together is the framework can, indeed, evolve and be modified as

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experience is gained, and it's used. But as Avri said, that's not meant to be too frequently, and it's certainly not meant to be done in the middle of a process.

But absolutely, the point of it is to continue to evolve as the community, as the Board gain experience in using it.

MARITA MOLL: So this is what we call a living document, right?

I've got -- I'm going to take a question, Andrea is going to read out the question from Holly Raiche, and then I want to give Velimira a chance to respond to the question we gave her.

To tell you the truth, we had six questions on the line for the panelists, and we so far have got through two, but great discussion, folks, so let's keep it up.

Go ahead, Holly. Or Andrea reading Holly's question. Sorry.

ANDREA GLANDON: Yes, thank you. Is the public interest satisfied by an inclusive process or are there tests for public interest that are about outcomes?

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MARITA MOLL: Anybody want to take that on?

AVRI DORIA: Certainly inclusivity and the degree to which that worked was one of the considerations.

MARITA MOLL: Okay. Thanks, Holly. You know, I think we might just have -- Yeah.

PAUL McGRADY: Marita, if I can jump in.

MARITA MOLL: Yes, Paul.

PAUL McGRADY: My way of thinking of it is that there is a process component to this because ICANN's founding documents says there is a process, right? And it points us back to the bottoms-up, consensus-based process. It doesn't point us to GNSO Council PDP. That is one component of that. It doesn't point us back to, you know, a specific piece of advice from a particular advisory council. That's one part of that, right? But there is a process that the founding

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documents anticipate, and that is in the -- that is in this framework, right?

And so I think -- I don't want to speak for Holly, but I think part of her concern is that if it's only a process, if it's solely the process, then we can get involved in a check-box kind of approach to this and really miss the point or get something really wrong.

What you don't want to do is send something to the Board and have the Board go, "Who -- who did this?" Right? And so we want to avoid that outcome. So is it a process? Yes. Is it solely a process? I don't think so, and I don't think that the framework, you know, anticipates being solely process. And in truth, you know, interest -- you know, legitimate interests can get trampled procedurally as well as they can substantively. I mean, the outcomes are the same, right?

So to draw a distinction between process and substance, at the end of the day, I'm not sure that that really gets us where we want to go. But I understand what Holly is saying which is are we going to get bizarre outcomes by following a process that we check the box on paper. Holly, maybe that's what you were asking, maybe it's not but that's what I took from your question.

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And I think that this is where wisdom comes in, right? It's the human factor. And hopefully we -- as the Board applies the template, as other parts of the community look at it for learning, to see what we can do better in our -- in our processes as well, we'll avoid those -- those kinds of outcomes while also following, you know, a good process.

Thanks.

MARITA MOLL: Thanks, Paul.

I have to move on to give Velimira a chance to deal with the question, one of the questions that she prepared in preparation for this, although she may have already dealt with some of it.

The question was: Will this framework help the ICANN community evaluate the relevant GPI on a given issue?

Go ahead, Velimira.

VELIMIRA GRAU: Thank you. Thank you, Marita. Velimira Grau for the record.

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Listen, I'm really mindful of time with you so I will try really to be brief. Actually, I approached this question from two perspectives, because for me, there are two ways at looking at the question. The first one would be does the framework allow identifying the general public interest that is pertinent for a given issue? And I believe the response to this question is yes because the different types of categories and the four-step process set in the framework allow to identify the different types of GPI that are relevant for a given policy recommendation or comment or decision.

And then the second way to approach the question in my view is does the framework allow evaluating whether the relevant GPI that was identified has effectively been addressed? And here, on that particular point, I tend to think the framework could be further improved.

So this is -- this is a bit my response to this question, Marita. Thank you, and happy to hear what other panelists and attendants have to add.

MARITA MOLL: Okay. Thanks, Velimira.

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I'm going to turn to a question, and I believe Hadia has a question. Hadia, can you speak really slowly? As I think we lost some of what you said before. And please, keep it short so we can get a number of these in. Thank you.

HADIA ELMINIAWI: Thank you so much, Marita. This is Hadia for the record. And I was wondering if actually including all stakeholders in -- during the -- in a process would, by default, lead to an outcome that is in the public interest. And this is a question to our panelists. Thank you.

MARITA MOLL: Thank you. Thank you, Hadia.

Do we -- do we have someone on the panel, one person who would like to respond to that?

Or Avri, of course.

PAUL McGRADY: Is the question do we get better outcomes if we include more people? I mean, is that what it boils down to? Did I hear the question correctly? And by the way, this is Paul McGrady.

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HADIA ELMINIAWI: This is Hadia again for the record. So the question is if you actually include all stakeholders during the development of a certain process and -- or a certain policy and you consider all the interests of the stakeholders during the development of the policy, would you, by default, end up with a policy that is in the public interest because it actually considered all the interests of stakeholders?

PAUL McGRADY: So this is Paul McGrady, and I apologize for talking too much, but like Avri, this is one of my favorite subjects.

The short answer to that is that it's no guarantee, right? I think the outcomes, for example, from work track 5 in SubPro were broadly inclusive. Everybody was welcome. And I happen to think that they were -- those were good policy recommendations, right? But I've been involved in other things where there were cross-community work that was also broadly inclusive and I thought, boy, this is a blunder. I won't mention it tonight, but, you know, but I thought it was a blunder at the time and I still think it's a blunder, some of the stuff, right?

And so there's no -- And of course I'm not the decider of whether it was a good outcome. It's just personal opinion, right?

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So that being -- including everybody is no guarantee that -- that the outcomes are going to be in the public interest, but it seems to me that our chances are better if we're more inclusive. And so that's why I think when we -- when we see groups that are broad groups and people are invited in at the beginning and people can work out their problems early instead of saving them for later down the road with five, six, ten bites at the apple, not only do we get better outcomes, in my opinion, but we also get a whole lot less burnt-out volunteer workforce.

So my theory -- so the short answer from my point of view is I don't know, but I think it's the right thing to do for other reasons, even if it's not a guarantee of a particular, you know, super-duper outcome. Thanks.

MARITA MOLL: Thanks, Paul, there's been a number of responses to that in the chat. I know there's a couple -- there's a couple of questions Andrea has lined up.

Justine, one question here. Do you have a short answer to this, Justine: Will the ICANN community identification of convergence of recommendations with GPI be an asset or will it just be more work?

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JUSTINE CHEW: Yes, Marita. Thanks for the question. It's Justine Chew for the record.

The question you posed is what Paul has alluded to.

And in answer to your question, if I can, you know, paraphrase it to say that if all of the community starts using the GPI framework, will that actually help the Board make decisions or will it just create a bunch of work for the community who are already, you know, overworked as it is and close to burnout already? And I think my answer to the question would be both, really.

But certainly if, you know -- there is no doubt in my mind that getting different parts of the community to identify up front and work out any convergence -- possible convergence and recommendations as you suggest, and in doing so by considering the public interest angle, will definitely create more work and responsibility in the community by participants.

But if we want to consider how we do it, there could be ways of mitigating this extra work or creating less of a burden really for the participants.

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And, for example, you know, when we -- and I am speaking from a GNSO experience because that's typically the policy development process experience that I have. I haven't gotten any in ccNSO.

When the GNSO starts a PDP process, there's always -- there's a process that precedes it, talks about defining the issues, and then scoping out the issues, and so forth.

But what I found -- and speaking from my experience participating in the subsequent procedures PDP working group, the charter questions that are derived to guide the work of a particular PDP working group doesn't necessarily or explicitly address the question of global public interest in every particular aspect really.

So with the SubPro, there are obvious topics such as mandatory public commitments as well as voluntary registry commitments -- or registry voluntary commitments, RVCs and PICS, that have a very clear angle on public interest. There's no way you can deny it.

Another topic would be closed generics. I think that's one that participants have highlighted that public interest is definitely a key element of that.

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But in terms of the other topics, from my recollection, I don't remember having addressed specifically an angle of public interest in those. And perhaps one way to think about it is to -- when we craft the charter questions for a PDP is to consciously ask the question: How does this impact the public interest, right, the global public interest? And from that, when you go through the motions of the PDP deliberations, whoever who is participating in the PDP has that question in front of them within the charter and they have to consider it, so it comes up during the deliberations. And that's -- and that is a way of bringing up the issues up front.

Of course, it's better if you address it right before the PDP even starts and make sure it follows through the PDP process. And as Paul says, there is no guarantee. But at least it helps, and we have at least tried to ensure that public interest is always the main aspect of everything we consider.

So the output comes out of a PDP and goes through the GNSO Council approval mechanism, then it gets sent to the Board. But by the time it gets to the Board, the Board has some comfort that public interest issues have been raised, have been formulated by the community participants within the PDP. So I think that would be helpful. Thank you.

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MARITA MOLL: Thanks, Justine.

So put it up front rather than after the fact is always better. Probably common to most things, but that's a very good way of putting it.

I have two questions in the queue, and we only have ten minutes. Let's read the two questions, Andrea, one right after the other and see if we can put them together.

ANDREA GLANDON: Okay. Thank you. The first question from Michael Palage: Can ICANN share how this pilot -- how much this pilot has cost to build out including both internal and external costs?

Another question: Does the composition of the ICANN Board and the Board's decision-making procedures reflect the GPI? If not, is there a solution?

MARITA MOLL: Okay. Thanks, Andrea.

Well, Avri, you'd be the ones with the answer on that cost question.

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ERGYS RAMAJ: Thank you, Marita. This is Ergys for the record.

As far as cost, this has only been staff time and Board member time in terms of developing the content. There hasn't been any other resources that have been put into this other than just staff and Board member time.

MARITA MOLL: And the other part of that question was about the --

ANDREA GLANDON: Does the composition of the ICANN Board and the Board's -- yes...

AVRI DORIA: That's an interesting question for the NomCom and for all those who elect various members to the Board. I mean, that's not one I'm looking to apply this framework to, but others may want to and see if it's useful. But I can't answer that one.

MARITA MOLL: Okay. Thank you, Avri.
There's always going to be some that you can't answer. Answers will come up later.

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Okay. We only have a couple of minutes left. Does anybody on the panel want to expound on whether or not there's a wider use for this framework? The wider use, I guess, is the community use. Beyond that, not sure what we would really mean. But do people feel that this will be a good thing for the community to start participating in? I'll just put that one question to you, and we'll have to close it down.

PAUL McGRADY: So this is Paul McGrady. I think I've already answered this, which is in any writing project, know your audience. So there's definitely a wider use for this framework. Thanks.

MARITA MOLL: Velimira?

VELIMIRA GRAU: Yes. Thank you, Marita. I will try to be brief.

For me, yes. I think that there is a scope for broader use of the framework, and this is in terms of who, when, and how to us it, because I believe if the general public interest is to be weighed and if we want to take this seriously, then there should be a framework used throughout the community more consistently. And I believe that it depends how we implement mandatory. But

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I believe if we really wanted the bottom-up, inclusive part of the definition that we are using that we want to apply, then the only possibility is to have a framework that is applicable to all parts of it.

And then once you come up with the how, the given public interest or general public interest was taken into account by the given parts of the community, then you can weigh the different perspectives to a given general public interest. And this is how we would get it. So, yes, for me, this is what I would say.

MARITA MOLL: And, Justine, what are your thoughts on this?

JUSTINE CHEW: Justine Chew for the record, again. I'll be very brief.

I think in my first intervention, my answers would have suggested that the answer to this question is yes, I do believe there's a wider use for this framework. Thank you.

MARITA MOLL: Thank you, everyone. I just want to quickly go back to the objectives that we had established for this particular session. One of them was to consider how the framework could be used by the

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Board and community, and I think everyone would agree that we have definitely done that and with finesse.

Taking a closer look at the use case, the SSAD use case, we didn't do too much of that. But as Avri said, it's still in its initial phases. There's more work to do there.

And the third objective, consider whether or how the framework could or should be adjusted moving forward. I think there's been a number of excellent suggestions. I am dying to go back and look at everything that went on in the chat because, of course, I couldn't keep up with it.

My final thing I want to do is thank everyone very, very much, participants, people in the room and our community panelists, Avri, Ergys. Everyone has put a lot of work into this. I really think it was useful. I hope it was useful for all of you. And I wish you all an excellent rest of ICANN73.

ANDREA GLANDON: Thank you. You may stop the recording.

[END OF TRANSCRIPT]