

COMMUNIQUE

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SPECIAL POINTS OF INTEREST:

- A new door opened to the international privacy community in Marrakesh
- Four diverse resolutions adopted at closed session
- Closed session discussions on AI and Robotics

MESSAGE FROM THE CHAIR

Having returned from Marrakesh, I have been reflecting on the stimulating discussions and challenging content that emerged during our gathering.

The Closed Session had two fascinating panels on emerging fields: Robotics /Artificial Intelligence and Encryption. Both were moderated by Professor Ian Kerr of Canada. Technology of this sort challenges the way we conceive of and currently regulate personal information.

The field of social robotics involves the anthropomorphic design of machines to engender, or manipulate, the trust of the user. The devices are likely to be used to assist with the care of the elderly and others. They are, in effect, all-seeing, all-remembering house guests. As such they pose challenges for a consent model of data collection and present challenges for security.

We heard that a mark of machine learning is the unpredictability of the outcome of a data processing function. This presents a particular challenge when it comes to responsibility and accountability for automated decision making. The algorithm used to arrive at a conclusion is not known and is in fact unknowable by the designer or user.

Encryption poses different but significant challenges for law enforcement agencies and others with lawful authority to intercept communications. Through encryption, those agencies are left without the technical means to act on their lawful authority.

No satisfactory response to this challenge has yet been identified. We heard that most industry and technical experts do not favour the introduction of selective vulnerability to cryptographic programmes, to enable properly authorised law

enforcement access. The concern is that such solutions introduce complexity, and complexity reduces security for everyone. Nor are commercially available products likely to prevent bad actors from “going dark”, given that many of those most motivated to protect their communications from law enforcement and intelligence agencies have the capability to access or develop their own strong crypto.



The Conference [communique](#) summarises key aspects of the event.

Four [resolutions](#) were adopted on privacy metrics, human rights defenders, enforcement cooperation (2016) and privacy education.

The Open Session is the responsibility of the host, and this year provided a stimulating and diverse range of topics including privacy and sustainable development, cultural determinism and digital education.

Shortly after the Conference I travelled to Tunisia, where I had been invited as ICDPPC Chair to participate in the International Telecommunications Union's (ITU) pre-conference [Global Standards Symposium](#) (GSS). The ITU is a part of the UN that has been going for more than 100 years. They are keen to establish links with the ICDPPC, and chose Security Privacy and Trust in Standardisation as their theme for the pre-conference. These connections are valuable for a number of reasons – not least due to the hundreds of ITU industry members from the large international carriers, like Orange and Vodafone, and platforms like AliBaba and Google - in addition to UN Member states.

The ICDPPC offers delegates an unparalleled opportunity to engage directly with others working in privacy and data protection. I enjoyed re-establishing connections with colleagues from around the world. Many of us will also keep in contact by email, but there is no denying the value in face-to-face interactions to build understanding and a richer communication. The conference also provided a welcome opportunity to meet new delegates and regulators from an increasingly diverse range of nations.

I look forward very much to meeting colleagues from across the globe again next year in Hong Kong (25-29 September 2017) to continue our discussions.

John Edwards — New Zealand Privacy Commissioner and Chair of the ICDPPC Executive Committee

EXECUTIVE COMMITTEE: HIGHLIGHTS OF OCTOBER MEETINGS

The tradition has emerged of holding the last meeting of an outgoing Executive Committee the evening before the closed session and to hold the first meeting of the newly elected Committee after the completion of the 2nd day of the closed session. The tradition continued this year and accordingly the two Executive Committees each met in October.

16 October: The outgoing Committee met for almost an hour to:

- Reconsider the observer accreditation application submitted by the US Department of Justice in light of new information.
- Promote efforts to seek consensus on the Privacy Education Resolution.
- Prepare for discussion on future membership and size of Conference.

18 October: The newly elected Committee met briefly for 20 minutes to:

- Agree to form a subcommittee for assessing 2018 hosting proposals.
- Agree general scheduling of meetings for 2016/17.

A photograph of the new Committee was taken to mark the occasion.



Photo credit: Blair Stewart (empty chair)

UPDATED ENFORCEMENT COOPERATION HANDBOOK PRESENTED IN MARRAKESH

An International Enforcement Cooperation Handbook is a non-prescriptive, practical resource aimed at enhancing and supporting international enforcement cooperation. It was co-drafted by the UK ICO and Canadian OPC during 2015, and developed further based on input from participants who attended the enforcement cooperation meetings in Ottawa and Manchester. An updated version was presented in Marrakesh this year.

The intent of the handbook is to provide:

- A non-exhaustive list of issues an authority may face in preparing for, and engaging in, enforcement cooperation;
- Potential models, approaches and solutions that authorities may consider implementing to address such issues; and
- Factors to consider in determining what, if any, proposed strategies may be appropriate in specific circumstances.

Some of the recent additions include:

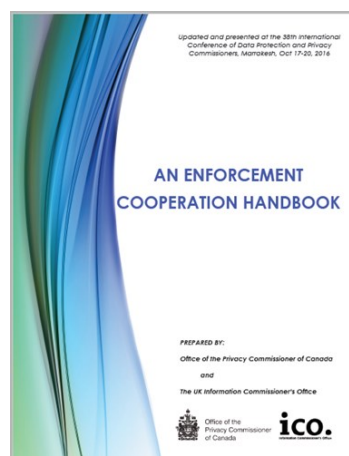
- Further clarification in relation to the sharing of personal data, noting that

in many cases personal data will not need to be shared.

- Additional practical considerations, such as language barriers, evidentiary requirements and transferring information securely.
- A sample template for authorities' internal tracking of their considerations when pursuing international cooperation/coordination.

These changes reflect the growing cooperation experience of the privacy enforcing community and should enhance the value of the tool. The document can be downloaded from the [ICDPPC web-site](#).

By Adam Stevens,
ICO



The updated handbook reflects the growing cooperation of the privacy enforcement community

A NEW DOOR OPENED TO THE INTERNATIONAL PRIVACY COMMUNITY IN MARRAKESH

For the first time, an Arabic, Muslim and continental African country was the gathering place for the international privacy community. In October 2016, at the epic city Marrakesh, one of the imperial cities of Morocco, more than 500 delegates from 70 different countries attended the open session of the 38th edition of the International Conference.



During the 38th Conference participants representing regulators, NGOs, academics and private corporations had access to world-class scholars in privacy and personal data protection. Top thinkers shared their vision on hot topics that will influence privacy and personal data use in the coming years:

1. Privacy and personal data protection as a driver for sustainable development;
2. Adequacy, localization and cultural determinism;
3. Oversight and accountability principles for government access to data;
4. Technology and science trends: what impact on privacy?
5. Digital education.

Complementary breakout sessions paved the way for participants to comprehend the impact on their daily work of some new developments such as “the privacy shield agreement” and “risk assessment in enabling companies’ accountability”.

In parallel to the instructive sessions mentioned above, the host offered diverse social events: a dinner at the historical Suleiman Palace and another one in tents under the open sky simulating a night in the desert. Three additional city tours allowed attendees to visit the Museum of Photography, the ancient school



Medersa ben Youssef, the Mouassine Museum, the famous Majorelle Gardens, the Bahia Palace, the tombs of the Saadians Dynasty and the old Jewish district, Mellah.

Thanks to these activities, participants at the 38th Conference followed the path of 10 million tourists who visit Morocco each year to discover a country known and recognised for its gastronomy, history, architecture, cultural heritage and the openness and hospitality of its people.

CNDP would like to thank the members of the Executive Committee, panellists, participants and partners.

Each one of you contributed to the smooth running and success of the 38th Conference in Marrakech. I hope that this spirit of collaboration will prevail in the future and that the door, which opened in Marrakech to welcome new members from Armenia, Cape Verde, Ivory Coast, Mali and Philippines, will be opened wider in future editions of the conference.

By Lahoussine Aniss, CNDP

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ROBOTICS AND AI CLOSED SESSION DISCUSSION

A highlight for many participants at the closed session was the session on Robotics and Artificial Intelligence. A whopping 96% of participants who replied to the Secretariat's satisfaction survey agreed or strongly agreed that the topic was interesting with a highly creditable 85% felt that they had learned something that they'd be able to use back in the office.

Professor Ian Kerr of Canada did an excellent job of moderating while his presentation and those of both Nadia Magnenat Thalmann and Mireille Hildebrandt were both informative and stimulating. Ian and Nadia's presentations gave plenty to think about and reflect upon in relation to robots whereas Mireille's slides were so jam packed with useful AI insights that I was nearly mobbed during the coffee break by delegates asking whether her slides would be made available. (All three presentations can be found on the Conference [web-site](#).)

The Chair made a brief summary of the topic in the Conference communiqué:

"... [T]hese rapidly developing technologies pose a number of new challenges for data protection. Both Robotics and Artificial Intelligence are intended to simulate human characteristics as they perform functions to assist users. The field of social robotics, which involves the anthropomorphic design of machines to engage, or manipulate the trust of the user is likely to lead to the widespread use of the devices to assist with the care of the elderly and others.

"These devices are equipped with numerous sensors, are likely to be connected online, and are in effect all seeing, all remembering in house guests. As such they pose challenges for a consent model of data collection and present challenges for security

"Artificial Intelligence, or machine learning poses challenges that we are only just beginning to understand. Conference members were told that that a mark of machine learning, is the unpredictability of the outcome of a data processing function. This feature was described as 'unpredictability by design' and presents a particular challenge when it comes to responsibility or accounta-

bility for automated decision making, when the algorithm used to arrive at a conclusion is not known and is in fact unknowable by the designer or user of the application. Initial bias reflected in coding or sample selection used in a machine learning process can taint the algorithmic outcome, but with no transparency as to the mechanism by which the programme has produced its results or conclusions."

After the three formal lectures and a break for lunch, Ian Kerr challenged delegates with 6 policy questions. They have no easy or immediate answers and I expect we'll still be debating them for some years to come. It may be useful to enter the questions into the record for everyone to ponder – perhaps readers might wish to pose some of them as a question for DPA staff to explore!

1. What new mechanisms will be required for privacy protection in a world populated by social robots?
2. Can a robot or AI infringe privacy if there is no human intervention or oversight?
3. Will unpredictability/opacity due to machine learning require DPAs to revise accountability mechanisms? How should this be achieved?
4. What can "purpose limitation" do to ensure reliable AI systems that do not disclose beyond our reasonable expectations?
5. How can a special regime for "sensitive data" (gender, ethnicity, religion) contribute to reduce unlawful bias?
6. How can the "right not to be subject to automated decisions" and the "right to an explanation" survive in an AI-saturated environment?

Delegates were invited to jot down their preliminary, informal and anonymous thoughts in relation to those questions and generally in relation to privacy priorities in relation to robotics and AI. The responses were supposed to be handed in at the end of the session although unfortunately only 20 of the 180+ delegates remembered to do so! So we're limited in the amount of useful analysis that can be undertaken on the responses but for the information of future generations we've transcribed those responses and uploaded them to the [website](#).

Given how challenging the questions are to answer we may need to resort to setting a computer to answer the questions using unpredictable machine learning and see what they come up with.

Blair Stewart, ICDPPC Secretariat



A highlight for many participants at the closed session was the session on Robotics and Artificial Intelligence.

FOUR DIVERSE RESOLUTIONS ADOPTED AT CLOSED SESSION

The 38th Conference adopted four resolutions each with a quite distinctive focus: human rights defenders, metrics, education and enforcement.

This note briefly surveys the resolutions: we'll return to some of the resolutions in more depth in future issues.

The [resolution on human rights defenders](#) recognises that privacy activists are an essential feature of an informed and active civil society. Such people may, for example, spread knowledge of data protection rights and privacy issues, take cases of violations to DPAs or the courts and may petition legislatures to reform laws or protest intrusive state or company practices. In human rights terminology such people are increasingly known as 'human rights defenders'. The resolution highlights the need to support human rights defenders with reference to the relevant UN Declaration. The resolution anticipates that future conferences will further consider the issues affecting human rights defenders in the context of privacy and data protection.

The [resolution on developing new metrics of data protection regulation](#) highlights that the evidence base which is currently available in the area of privacy is uneven. The gaps in the available statistics on which to measure trends, problems and the effectiveness of regulatory interventions is a serious problem in an era where evidence is supposed to drive policy making and public bodies are expected to produce measureable results. The resolution pledges the Conference to play a part in helping to develop internationally comparable metrics in relation to data protection and privacy and to support the efforts of other international partners such as OECD to make progress in this area.



The [resolution for the adoption of an international competency framework on privacy education](#) supports the inclusion of data protection education in school curricula. It builds upon the work led by CNIL over several years through a Conference working group on digital education. The resolution was subject to some debate in the conference corridors and closed session with concern expressed that the resolution was perhaps too prescriptive and insufficiently universal. Although the resolution was finally adopted by consensus the FTC abstained on the basis that "the resolution adopts a single international framework without recognizing that other approaches reflecting the diversity of privacy laws and cultural values that exist around the world could also achieve the common aim of promoting digital education".

The [resolution on international enforcement cooperation \(2016\)](#) continues efforts reflected in a series of conference resolutions over several years to encourage efforts directed to cooperation in cross-border enforcement. Further action is anticipated in 2017 through a working group to be established.

The 38th Conference adopted four resolutions each with a quite distinctive focus.

ON THIS DAY OF PRIVACY HISTORY

The month of November has seen a number of notable instruments adopted over the years that paved the way for progress:

- APEC privacy framework was approved by APEC ministers in 2005
- American Convention on Human Rights adopted in San José, Costa Rica in 1969
- APPA Forum adopted a citation system for privacy case notes in 2005
- Council of Europe Cybercrime Convention opened for signature in 2001

The Secretariat maintains a list of [notable dates in privacy history](#) on the website. However we still don't have listing for most countries that participate in the Conference. Do not wait – let the Secretariat know of an historical privacy event from your jurisdiction.



MEET OUR NEW MEMBERS

Five new members from Africa, Asia and Europe joined the Conference in Marrakech.



The new members are:

- Armenia Personal Data Protection Agency (PDPA) is a part of the Ministry of Justice of the Republic of Armenia. PDPA regulates the law on personal data protection in the Republic of Armenia and has jurisdiction over the entire public and private sectors. This law implements the Council of Europe Convention No 108 and Protocol No 181 and the EU Directive (1995).



Armenia is the 73rd European DPA to become a member.

Website: <http://www.moj.am/en>.

- Cape Verde National Commission of Data Protection administers the National Commission of Data Protection law and has jurisdiction over the entire public and private sectors. This law implements the ECOWAS supplementary Act (2010).



The CNPD was created by law in 2013 and members took office in April 2015.

Cape Verde is the 8th African DPA to join the conference.

Website: <http://www.cnpd.cv/>.

- Cote d'Ivoire Telecommunications/ ICT Regulatory Body (ARTCI) is responsible for personal data protection and administers Law No. 2013-450 of 19 June 2013. This law implements the OECD guidelines (1980), Council of Europe Convention No 108, UN Guidelines (1990) and the Economic Community of West African States treaty (1975).

ARTCI was established in March 2012.



Cote d'Ivoire is the 9th African DPA to become a member.

- Mali Personal Data Protection Authority regulates the law on the protection of personal data and has jurisdiction over the entire public and private sectors.



Mali is the 10th African DPA to join the conference.

Website: <http://apdp.ml/>.

- Philippines National Privacy Commission regulates the Data Privacy Act of 2012 and has the jurisdiction over the entire public and private sectors. This law implements the EU directive (1995) and the APEC Privacy Framework (2005).

NATIONAL PRIVACY COMMISSION

The NPC was established in March 2016. Philippines is the 4th Asian DPA to become a member.

Website: <http://www.gov.ph/tag/national-privacy-commission/>.

Five new members accredited from Africa, Asia and Europe joined the Conference in Marrakech.

BLOGGING ABOUT THE CONFERENCE

Want to read what about other's experiences of the event? Here are a few blog entries we've tracked down:

Giovanni Buttarelli, the European Data Protection Supervisor, was inspired by the location to open his blog post with:

The ancient city of Marrakech was founded by the Almoravid dynasty at the beginning of the 11th century, as a centre for trade and craftsmanship. One century later, another mythical city, Timbuktu, was founded for similar reasons, in what is now known as the sub-Saharan state of Mali. As the location of the 38th International Privacy Conference, Marrakech aimed to set a precedent once again, this time through opening up the doors to privacy beyond the western world.

In this historical setting, the topic for discussion in the closed session was one of the most forward-looking ever seen at an International Privacy Conference: the implications of artificial intelligence, machine learning and robotics for privacy and data protection...

Read more at https://secure.edps.europa.eu/EDPSWEB/edps/site/mySite/The_38th_International_Privacy_Conference

The New Zealand Privacy Commissioner and ICDPPC Chair, John Edwards, in his blog written for a domestic audience explained the structure of the Conference, the resolutions adopted, presentations delivered and less prosaically ended:

As more African and Asian nations develop their own responses to the borderless nature of the data economy, our conference will need to accommodate a greater variety of legal and cultural traditions.



And long may it be so, as the diversity takes us out of our comfort zones, and exposes us to new ideas and experiences, such as a conference dinner in a tent under the stars in the desert - a scene which could have been lifted from The Arabian Nights and which left all delegates with an indelible memory of a very special occasion.

The Chair's blog (and 2 associated blog posts) available at: <https://privacy.org.nz/blog/a-commissioner-abroad-part-2-marrakech/>

Hannah McClausland of the UK ICO blogged about her impressions of the conference, and several colleagues, at the ICO international blog site at: <https://ico.org.uk/about-the-ico/news-and-events/icos-blog-on-its-international-work/>

One of the invited presenters to the closed session discussion of encryption was Amie Stepanovich. Amie wrote a blog post in 'AccessNow' site. The post's title 'A missed opportunity in Morocco' hints that a critical eye is being cast over our event and was, in her view, found wanting in part. The outsider's view is of particular interest lest we become complacent about what we seek to achieve in our premier meeting of the year and in our ongoing work.

To read more go to: <https://www.accessnow.org/missed-opportunity-morocco/>

Submit your views on the Newsletter survey

NEWSLETTER SURVEY: HAVE YOUR SAY

The Secretariat is seeking feedback on the newsletter which it has been publishing since December 2014.

Tell us what you enjoy reading the most or what you would want us to include in the newsletter.

Submit your views by completing a short survey at <https://www.surveymonkey.com/r/7NNVP2J>



A BUSY SCHEDULE OF SIDE MEETINGS & EVENTS

The Moroccan CNDP provided meeting rooms and set aside two half days (on Tuesday and Thursday) for side events to be held on the fringes on the Conference.

The opportunity was taken up by a considerable number of privacy networks, civil society groups, businesses and think tanks.

Here are a selection of short reports with links to more information.



Demonstrating Compliance to Regulators

Two self-funded research projects were launched, with findings to be released in 2018. The first project investigates the capacity of an organisation's Privacy Officer/DPO to demonstrate compliance to regulators by means of presenting appropriate technical and organisational measures, with supporting evidence mapped to legal rules. The second project explores the value and workability of 'process certifications' for regulators, which enables organisations to demonstrate capacity to comply with monthly certifications generated by third-party monitors.

More information at www.nymity.com.



Data Protection in the International System of Human Rights

The side event jointly organised by Morocco's CNDP and GIZ tackled the role of data protection in the international system of human rights. Facilitated by Hansjürgen Garstka, the former Berlin Data Protection Commissioner, six speakers with a broad range of professional and regional backgrounds shared their experiences. The Council of Europe's Eva Souhrada-Kirchmayer outlined the legal situation in Europe, Fordham University's Joel Reidenberg illustrated the significance of the concept of

privacy in the constitutional framework of the US. Other contributions covered the perspectives of Morocco, Japan and transnational IT firms.



Technology, Challenges and Effective Governance

The Future of Privacy Forum and the Information Accountability Foundation facilitated a conversation that examined accountability as a means to facilitate effective governance when consent is not fully effective in doing so. The session featured business leaders and regulators who spoke on why an update of the accountability commentary is necessary, the challenges to accountability in emerging regimes and the need for effective oversight of mechanisms that go beyond consent.



Connected Thinking: Better enforcement outcomes through sharing methodologies and expertise in connected privacy networks

The session enabled authorities from around the world to understand the latest developments in the GPEN community. 2017 is planned to feature further rollout of GPEN's Network of Networks project and the first ever GPEN Enforcement Practitioners' Event, which are both attempts to join up the valuable enforcement practitioners' expertise from different networks globally. More information about GPEN [here](#).



Data Protection: an asset for the Francophone world

Some 30 participants discussed the control of surveillance activities of intelligence services in African countries where control mechanisms are sometimes non-existent or deficient. African data protection laws are often adopted in the context of digital strategies and are a tool for competitive differentiation in

Several privacy networks, civil society groups, businesses and think tanks met in Marrakesh

trade. The meeting emphasised data protection as a fundamental right and recommended raising awareness among citizens on how data protection works. The opportunity to meet and network was welcomed.



AUTORITEIT
PERSOONSGEGEVENS



Cooperation between European DPAs

From 2015, PHAEDRA's main goal is to identify, develop and recommend measures for improving practical co-operation between European Data Protection Authorities. The second workshop of the PHAEDRA II project was organized alongside the 38th Conference.

During the PHAEDRA II project meetings one issue gained special significance: *trust*. Therefore during 2 hours of discussion the notion of trust in establishing efficient cooperation between DPAs was often underlined. Is cooperation at all possible without first building trust?

More information on www.phaedra-project.eu.



Common Thread Network (CTN) meeting

The Commonwealth Nations' Data Protection and Privacy Network met for its second annual meeting at the ICDPPC in Marrakesh. During the meeting, members reflected on the network's recent key achievements including the recognition by the Commonwealth Heads of Government of the role of the CTN to facilitate information sharing and capacity building, the launch of a website and growing membership. In 2017, the Network will continue solidify its capacity building through the sharing of best practices, the review of a model law on data protection and closer assistance to new members.

More information on www.commonthreadnetwork.org.

Privacy Bridges: broader and bolder

The Dutch DPA organised an event to take stock of the state of play of the implementation of its Privacy Bridges project. The event explored the possibilities of broadening the scope of the project to other continents to give it a global effect. Participants decided to use existing networks to showcase project results and agreed to focus on 1 or 2 bridges (transparency and user control being most promising) not only to address current technologies but should take into account future changes. Participants emphasised the need to work with existing networks and for the project to be transparent.



Accelerating MEA Digital Transformation

The objective of the Microsoft side event was to discuss in detail the opportunity of Data Privacy in the context of a world embracing Digital Transformation. We brought together DPA representatives, legal experts, industry, data privacy experts and advocates, engineers to have a constructive dialog on the opportunities and challenges ahead. There was a clear consensus that multi-stakeholder dialog must continue, that while policy could drive innovation, policy should focus on outcome and provide space for engineers and privacy experts to innovate.

*A selection of
shorts reports
on side events
held in
Marrakesh*



The Role of Risk Assessment and Transparency in Enabling Organizational Accountability in the Digital Economy

Many insights were exchanged and there was substantial consensus between regulators and businesses at CIPL's side meeting on transparency and risk assessment. Both concepts can become slogans, but lively discussion probed deeper to seek a

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better understanding of their role in building organisational accountability in practice. This applies not only in the innovative world of the digital economy, but also in the real world of consumers who rarely have time or inclination to read lengthy and complex notices or think about the risks they are facing.

A fuller note of the event is available [here](#).



Privacy Shield: Industry training & DPA liaison workshop

The two Privacy Shield side events proved useful opportunities to explain how the new Framework operates in practice, address stakeholder questions and discuss concretely how US and EU authorities can best cooperate in implementation. Representatives from industry and DPAs from around the world attended the open briefing, while the EU DPA workshop featured participants from ten EU DPAs, the US FTC, European Commission and US Department of Commerce.



DCAF
a centre for security,
development and
the rule of law

Personal data protection in the security and defence sector

DCAF, in cooperation with the Moroccan CNDP, organized a side-event concerning the security and defence sector that addressed key questions such as how to reconcile security requirements with the right to privacy and the role of oversight bodies. It was attended by experts and practitioners from North Africa as well as from several countries and organizations worldwide.



DNA databases and privacy

This event was organised by GeneWatch UK and chaired by the UN Special Rapporteur on the Right to Privacy. GeneWatch UK described the development and expansion of forensic DNA databases around the world and introduced the Forensic Genetics Policy Initiative, a civil society-led project which aims to set international human rights standards for DNA databases, following a consultation process. The audience discussed privacy issues associated with forensic DNA databases and genetic data collected for medical research.

More information: www.dnapolicyinitiative.org

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NEWS

Please share the
newsletter with
other staff.

Note the Secretariat's email has changed— contact us now at ExCoSecretariat@icdppc.org