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BEIJING – Second Accountability and Transparency Review Team (ATRT 2)
Wednesday, April 10, 2013 – 11:00 to 12:30
ICANN – Beijing, People's Republic of China

BRIAN CUTE: We're going to begin in a minute. Alice, are we live, streaming? Thank you.

Okay. Good morning. Welcome to the second accountability and transparency review team. My name is Brian Cute. I am the chair of ATRT 2. I'm here with some of the members of the review team. Welcome to everybody in the room and online. We're looking forward to the next hour and a half of interaction and listening to your questions and listening to the community.

Could we go to the next slide.

Just pausing for the next slide. Oh, it's behind me? Where is it? Oh. Okay, is that it? Okay.

The accountability and transparency review team 2 arises under the Affirmation of Commitments. Paragraph 9.1 of the Affirmation of Commitments specifically provides our charter, our scope of work. And it ties in to ICANN's overall accountability and transparency commitments to the global community.

The ATRT 2 is beginning as defined under the Affirmation of Commitments three years after the first accountability and review team made its recommendations to the ICANN board on December 31st, 2010.

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The members of the ATRT 2 are listed on your screen. In addition to myself, Alan Greenberg serves as vice chair; Avri Doria serves as a vice chair; and Lise Fuhr serves as a vice chair.

While all of the members of the ATRT 2 come from different parts of the community, in our early discussions and in our work, we think it's important to let you know that we understand that, to deliver effective and viable recommendations to ICANN, we need to do our work as objectively and independently as possible. While we come from many parts of the community and we understand the ICANN community, some of us through a single lens, some of us through multiple lenses, our job is to give an objective assessment of ICANN's implementation of recommendations of the prior review teams and provide additional recommendations with respect to ATRT so that ICANN can continue on its path of improving accountability and transparency in the organization and for the community.

As a group, our work commenced in February. We had a conference call. We had a first face-to-face in Los Angeles, and we had a face-to-face meeting here in Beijing. Both of those interactions were primarily getting initial input from ICANN, from ICANN staff, and organizing our work and our work streams. And I'll walk you through that a bit before we open up for questions.

Some of the highlights in the meeting in Los Angeles was a meeting with ICANN staff and with Fadi Chehade, the CEO of ICANN, who provided his own initial overview and insights as to the implementation by ICANN of recommendations, as to his view of accountability and transparency and

his commitment to support this effort fully as we move forward. And those comments were very well-received.

We, in terms of our work, intend to provide draft recommendations to the community by October 2013. We need to provide a final report to the ICANN board with recommendations by the 31st of December this year. And we need to give the public and the community ample opportunity to consider what we are recommending, give us feedback that will hopefully shape the recommendations. So our mode of operation is open and transparent. Our rule is default open. Our meetings, our calls are open to the public. Our e-mails are open to the public. We allow for silent observers on calls and meetings. We have records and transcripts, summaries and transcripts of the meetings. We are putting up a public community Wiki where our documents and drafts will be visible. And we're trying to build on practices of the prior review teams so that everything we do is open and transparent.

You can find all of our work on the ICANN Web site under ATRT 2. We do allow, when necessary, for closed sessions under Chatham House Rule. We will endeavor to use that as little as possible only when necessary. But that is our mode of operation. As a review team, that's important.

In the early stages we've identified four work streams. So our task under the Affirmation of Commitments under paragraph 9.1, we need to review ICANN's implementation of ATRT 1's recommendations, plus make any accountability and transparency recommendations of our own on December 31st of this year. We need to review ICANN's implementation of the security, stability, and resiliency review team's

recommendations. We need to assess and review ICANN's implementation of the WHOIS team's recommendations. And we have a fourth work stream, which is to consider the extent to which assessments and actions undertaken by ICANN have been successful in ensuring that ICANN is acting transparently, is accountable for its decision making, and acts in the public interest. These are the four clearly identified and organized work streams that we're beginning to undertake. And we're looking forward to hearing from the public as to how we can inform, collect data, make assessments, and begin the work towards recommendations.

So, in terms of community input, which is absolutely critical to our work, we have a public comment period open. We put out a long list of questions to the community. We had that published just prior to the Beijing meeting. We recognize that is a suboptimal practice for ICANN community participants. And, in recognizing that, we have left the comment period open for the full 21 days after the Beijing meeting is complete to provide an ample opportunity for the community to give us immediate input at the beginning of our work.

One thing I'd like to observe about the list of questions, it's fairly lengthy. And what I'd like to stress is that any input, any response at this time is welcome. It's important for us to successfully gather data at this early phase. And, if you look at the questionnaire and you just don't have the time to answer all the questions but there's one or two where you have some useful data to provide to us, please do that. Please give us whatever you have at this stage knowing that we're going to come back to the community a number of times between now and December to give you another opportunity to give us input. But please give us

whatever input you have at this point in time, whether it's a full response to those questions or just a few. And those questions are focused on the impact of the prior reviews and will provide us some data in your view of ICANN's implementation of those prior recommendations.

We'll have follow-on outreach sessions. In Durban we will have structured meetings with all the ACs, SOs, and organizations that make up ICANN. We will get to you in advance with the questions or points that we would like to focus the discussion around. And that will be part of our data collection as well. So you'll be seeing us again in Durban in a structured way. And, as I said, in October e will have a draft report for public comment.

We have e-mail addresses on the Web site for you to send information to the ATRT 2. There will be four separate e-mails for each work stream. To the extent that you want to focus your comments on a particular area, that's welcome as well. And we also are going to have an e-mail for confidential submissions to the ATRT 2 that would be visible only to ATRT 2 members. We felt it was important to have this vehicle available to the extent that anybody wished to put some input into our process. I would note that a preference of the author identifying themselves to the input, it's our preference for that. If it were to be anonymized, we would accept it. And we will take those inputs and factor them into our work as we move forward. But that avenue is available as well for inputs.

So, with that, this is your time. We have a microphone here. At this early stage, to the extent that you have the questions that we put out

for public comment in front of you, please feel free to speak to those providing us your early assessments or any other observations that you have about ICANN's implementation of prior recommendations, ICANN's accountability and transparency practices. And, importantly, what do you think we should be focusing on? We have paragraph 9.1 of the Affirmation of Commitments which provides our scope of work. But we really want to hear from the community now.

ATRT 1 delivered some focused recommendations, as did the other review teams. But, clearly, there are other areas that we hear from the community are important in terms of accountability and transparency. Please tell us what you think we should be focusing on as well at this early stage of our work. Sure. Avri.

AVRI DORIA: I just -- I wanted to add one point on the use of the Chatham House Rules. You said, basically, that we reserve that opportunity. Should we ever do that, we will be documenting that we did it and the why that we did it. So that, at the very least, we will at least put that much out. So it won't be used without being transparent about its use and the reasons for it.

BRIAN CUTE: Thank you, Avri.

So this is an open session. We have the balance of the time. We have a microphone. We want to hear from you. Please, if anybody has any questions or inputs or thoughts, the microphone is yours.

STEVE DEL BIANCO: Thanks. Steve del Bianco with NetChoice. I've looked at the questions on page 3 with respect to the GAC, and it strikes to me as bold and appropriate to assess what the community knows about the GAC. But I did think that the notion of asking us are we aware of the process under which the GAC members are appointed would be the one aspect of the GAC I have the least interest in. I'd be much more interested to know more about the agencies they come from and the ministries they come from and the perspective that has and maybe where that fits in to their particular government's hierarchy of decision making. Because I find that entire world to be a complete mystery between the ones who are running the ccTLD, the ministry of IT. Maybe there's a ministry of commerce. And it's -- it's very confusing to me to understand which part of the government a GAC member represents. And that would be more interesting than how they were appointed.

BRIAN CUTE: Thank you.

JIM PRENDERGAST: Hi. Jim Prendergast. Thanks, for volunteering, Brian, to be the chair yet again. Some people may question your sanity for taking this on again. But I certainly do appreciate it, having followed the ATRT the first go around.

Also very encouraged by the start to the process where you wound you up with two vice chairs -- sorry, three. I thought that was a great signal of the collaboration amongst the group. So very encouraged by that.

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I guess question 5, "Please indicate your view of the level which the board makes necessary care on GAC advice," I don't have any sense of how that happens.

So I'm wondering has the ATRT heard about the board process of considering GAC advice? I mean, we see the communiques and three months later we see a letter back from the board. Do we know what happens in between?

BRIAN CUTE: The answer is a non-answer. The answer is that's what we have to explore. So there were recommendations made by ATRT 1. So the inputs that we need from the community, from the board, from the GAC, we will be meeting with them and asking those questions. We're in the data collection mode. So, if you put your finger on an area where you think there's not accountability and transparency or some opaqueness, the task now is identify that area. How do we collect data to make an objective and independent assessment of what that process is, and is it meeting the standard of accountability and transparency that we expect?

JIM PRENDERGAST: Yeah, I think this is a great question. And the importance of question number 5, how the board responds to GAC advice, will take on astronomical proportions in about 48 hours.

BRIAN CUTE: Thank you. Alan.

ALAN GREENBERG: Thank you. As Brian said, it's an intimidating and long list of questions. Perhaps more to the point, some questions are targeted at some people much more than others. So we didn't try to put labels on each question of who we want to answer it. If you have insight and something to contribute to it, answer the question. If it's one that is a complete black box, understandably, ignore it. If it's a complete black box and you think you should have an idea, that alone is a good statement.

BRIAN CUTE: Olivier.

BILL MANNING: Bill Manning. None, it says. Oh, Olivier.

OLIVIER CREPIN-LEBLOND: Sorry, Bill. Thought you changed names, Bill.

BILL MANNING: Sorry about that.

OLIVIER CREPIN-LEBLOND: Just to add, there are many different points of view in this community. And I think the work of this committee is to gather all the different points of view. Because, depending on which point of view you're -- which side you're looking at the overall picture, you might see a bit

more than your neighbors. So this is one of the work of the committee at the moment.

BRIAN CUTE: Thank you. Bill.

BILL MANNING: Okay. So the question I have has to do with the GAC selection. I have interacted with the GAC on occasion over the last few years. And it seems relatively small in comparison with the number of governments that actually exist. And it would be interesting to know how ICANN and the existing GAC intends to do outreach to currently unrepresented or underrepresented governments to get a more inclusive view in the GAC.

BRIAN CUTE: Thank you, Bill. So let me share a bit on some of our discussion in the face-to-face meetings here in Beijing that ties into that thought. There already has been a healthy discussion in ATRT 2 about the effectiveness of a GAC within the context of ATRT 1's recommendations and how will we assess that? But also clear discussion and recognition of the external environment that exists today on the heels of WCIT. There's a clear understanding that there's an environment out there. And so, to your point, how does the board or the GAC do effective outreach to grow the number of GAC participants, which goes to the effectiveness of the GAC, is already being discussed. There's been some discussion on the review team about is there anything within our activities that could be used to assist in outreach or awareness. We're clearly aware of what our scope of work is. We are to assess and review and make

recommendations.   But, to your point, there's a healthy discussion already on that point.   It is -- from an accountability and transparency standpoint, it's clearly a board issue in terms of how ICANN board and perhaps senior staff conduct outreach.   The GAC representatives and how many there are is an element of the GAC's part of that issue.   But thank you for the input.   It's something that we're focused on.

BILL MANNING: Excuse me.   Why would the board be involved in this?   I would think that this would be an internal GAC activity to try to grow its membership as opposed to the board recruiting governments to join.

BRIAN CUTE: If you're talking about recruiting governments to join, I understand the framing of your question.   I heard the word "outreach," and I was keying on the word "outreach."   And Fadi is currently engaged in lots of outreach with lots of governments and encouraging those governments to come and participate in the GAC.   So I misunderstood your question a bit.   I was keying in on that word "outreach." Thank you for the framing. Steve.

STEVE CROCKER: Bill, the practical aspects are that staff, particularly senior management and particularly the CEO, does have, actually, a fair number of interactions with governments in various settings.   And one of the messages is please do participate in the GAC.   So there is some positive cooperative efforts to that.   The GAC itself doesn't have the machinery to do that kind of outreach.   I mean, each -- the individual government

representatives might have neighbors that they talk to, but they don't have a separate source of energy to go after that.

BRIAN CUTE: So, again, this is your session. Any and all questions, observations to a prior point, too, in terms of how we approach the input. Opinions are important, as Olivier noted. And the community has a wide array of opinions. Observations are important. Any input is welcome. But, as I've noted in prior sessions, too, facts are critical. All input is welcome. But, in terms of assessing the implementation, facts are going to be critical. So please provide those along as well. Mikey.

MIKEY O'CONNOR: Hi, my name is Mikey O'Connor. I'm addressing the question about the policy development process. And I have -- I don't really have facts, but I've got a bunch of diagrams that describe the working group process in the GNSO. There's sort of an ideal version and a current version and a bunch of related issues that I would be happy to share with the group and expand on. It's kind of hard to do it on the fly in front of a microphone. But are you all planning to dig in to the working group process at all? Is that part of the thought of that particular question?

BRIAN CUTE: Thank you for that, Mikey. And, yes, the PDP, which is an element of one of the paragraphs of 9.1, has been the focus of discussion. I think I'm sensing a signal from the review team that that's an area where we'll spend some focus and perhaps develop some recommendations. The working groups are important parts of that structure and that

dynamic. So I would think that that type of input would be very useful for us to evolve our thinking. So that's very welcome.

Just to provide some other thoughts and early discussions, and perhaps that will stir some questions, one issue that the team has focused on already is the issue of metrics.

ATRT 1, other than some implementation deadlines or dates for implementation in our recommendations did not develop metrics, which are useful tools, obviously, to measure how the organization is doing in implementing recommendations. That has been a point of discussion with the group so far. I think a recognition that more needs to be done on that front this time.

For ATRT 1, there was a consideration that it was better for the organization to develop the metrics than perhaps the ATRT 1 who were not necessarily experts in that subject area. But, in interacting with Fadi in Los Angeles, as he has done often, being very open and candid, identified the fact that, with the exception of hitting certain dates, that full metrics have not been developed. And Fadi made a commitment to this review team that metrics would be developed for the recommendations of the prior team. So we have that commitment from him. We do recognize as a critical aspect, though, for our recommendations going forward. That's one area that's under discussion and would love to hear from the community on that front. Anybody else on the review team in terms of issues of early focus? Oh, please.

RINALIA ABDUL RAHIM: Rinalia Abdul Rahim, from the at-large advisory committee.

I have a question. Currently, there is a survey on ICANN's reputation and image. And I was wondering whether the input from that survey will be brought into the ATRT 2's consideration or whether you are providing guidance in terms of what kind of input that particular survey should be garnering. Thank you.

BRIAN CUTE: Steve, do you have any background on the survey to offer just for context?

STEVE CROCKER: There is a survey. I don't have the next layer of detail to share. Sally owns that. And I'm sure, if we ask, we can find out what went into it, what came out of it. The rest of the question, I think, is what are we going to do about it and how are we going to respond or suggest anything?

And so probably we want to get a look at that, and then we can have some thought about the rest of that.

BRIAN CUTE: Sure. Thank you. Alan.

ALAN GREENBERG: The survey won't be completed for a couple months. But, given that one of the things we're looking at is ICANN and how it's viewed, I don't think we can ignore it. Exactly what we'll do with it is a different matter.

STEVE CROCKER: As I said, I'm not fully up to speed. You're saying it was not done? I thought there was output from it already. But I could be wrong.

ALAN GREENBERG: We were told by the writers that this was a preliminary view of it and there was still more work to be done.

STEVE CROCKER: That would triangulate between my thinking that there was output and it not being done. Yeah, good.

BRIAN CUTE: Denise.

DENISE MICHEL: There was a session in the auditorium today at 12:30 to provide some initial information about a reputational survey that was conducted by ICANN. And so there will be public information on that.

BRIAN CUTE: Thank you.

OLIVIER CREPIN-LEBLOND: This is Olivier here. Denise, I was wondering whether the survey was completed or was it still ongoing.

BRIAN CUTE: Rinalia?

RINALIA ABDUL RAHIM: Thank you. The ALAC received a briefing about this survey. Like Alan said, the initial phase involving about 41 interviews had been completed. That is supposed to be a directional input. And the company that had been engaged will continue with further and more quantitative information gathering. So it will continue for the next few months, and I would expect that the results will be reported at the upcoming ICANN meetings. Thank you.

BRIAN CUTE: Thank you. And, in terms of your question, the review team will welcome any inputs. What we ask is that the community, in thinking about providing inputs, reference paragraph 9.1 of the Affirmation of Commitments, which presents the scope of our work. And inputs, obviously, that tie to that are what we can use in our assessment. Inputs that are outside of that scope of work are outside of that scope of work.

So I guess a question to you would be, taking a look at that survey, does it provide data, opinion, about accountability and transparency? Does it tie to the Affirmation of Commitments? By all means, please.

RINALIA ABDUL RAHIM: As I recall, there were eight specific areas. And one, explicitly, was on transparency and possibly also accountability. What I'm saying is that

there needs to be a bit of an alignment in terms of input gathering so that you get maximum input.

BRIAN CUTE: Thank you. We'll look forward to that. So we have the issue of effectiveness of the GAC. We have metrics in early discussion. We, as a team, are discussing in terms of touchstones for our work accountability and transparency and legitimacy as touchstones that would be themes we look to in all the assessments and implementation and recommendations. The other thing we need to look at is the overall review process.

How have these review processes worked? Have they been useful? Have they been well managed? Could they be improved? That's an important area, and we need to weigh in not just with respect to what the other review teams have to say on that point but the community.

So I'd like to invite any observations now about the overall review processes. How have you perceived them? Have they been available? Have they been open? Is there more that could be done to make it more effective and useful to the community? I'd welcome any inputs on that front. Observations, positive or negative, about what's happened in the past.

THERESA SWINEHART: Hi, Theresa Swinehart. Sorry, I couldn't help it.

So I think the review processes are incredibly important, and the Affirmation of Commitments is incredibly important. But in the broader

Internet ecosystem, if I can use that terminology, I don't think people are aware of it. And I don't think people are aware of the significance of it.

It's a multistakeholder process. It involves governments. It's a very, very unique process.

But I think we need to get the word out about the significance of it.

So how one does that, I don't know, but I just wanted to flag it as an important element.

BRIAN CUTE: Thank you, Theresa.

MIKEY O'CONNOR: Mikey O'Connor again.

The WHOIS RT -- WHOIS isn't one of my mainstream issues and I don't follow it really closely, but there seems to be some turbulence, at least in the hallways, about the way that the recommendations that were made by that team were then adopted or not.

And so if I were in your shoes as a committee, I'd at least put that on the list of things to take a look at, is sort of the process by which the rest of the recommendations from the various review teams turn into implementation tasks. Probably don't want to limit it to WHOIS, but the WHOIS one generated more chatter in the hallways for me.

BRIAN CUTE: Yeah, thank you.

And to that point, we are going to be interacting with former members of the former review teams to get their views, but we can't stop there. We need to talk to the Board, we need to talk to the community. So to the extent there are views in the hallway that provide us some data or perception on that, that needs to come into the process as well.

Thanks.

Any other observations or questions about the review process as a whole or any of the prior review teams?

Again, this is with a view toward improving accountability and transparency and transparency, and positive or negative.

If I were talking to you, Mikey, I would say feel free to tell us we did a lousy job at this point, and why. How is our process serving the community?

The point that Theresa made about people out there don't know about this. That's something we've recognized. We've had the conversation about outreach.

Again this, review team has a specific tasks and has to stay within its focus, but that disconnect between the outside world, knowing that ICANN as an organization has this type of process, is something we recognize needs to be addressed.

Mikey.

MIKEY O'CONNOR: This is Mikey again.

I sort of want to come at this a different way. The way you're framing this is fine, but at the same time, it would be great to acknowledge the really great work that was done by all three of those teams.

You know, I've been to a bunch of these public sessions with the committees usually at the end, and it's usually a group of exhausted folks who have put together pretty amazing reports and done amazingly good work.

And so if there would be a way to structure your information gathering to allow people to also point out the positive side, I think that would be good.

You know, if you ask the question, "Tell us what's wrong," people will do that.

If you ask the question, "Well, tell us what's wrong and right," you'll get a different set of stuff.

BRIAN CUTE: Thank you. We will do that.

And to your point about asking what went right, we've already had some interaction with staff who is reporting on implementation of prior recommendations who have said, look, we implemented this and along the way we recognized X that could be done better and started that.

And that's really useful input because it's not just the black-and-white "Did you implement recommendation 13?"   It's a dynamic within the

organization. So yes to the positive input, and it's even more important than just provide us positive input because this is a dynamic and evolving and improving process.

Thank you.

Avri.

AVRI DORIA: Two points I wanted to make. One is I actually -- at least we tried to make the questions relatively neutral and ask people on a scale of X to -- you know, one to ten how you viewed the work.

So if it came through as why did it go wrong, I think, then, perhaps we phrased the questions wrong. But perhaps, you know, it's just a way of reading.

The other thing is, and it's something I actually want to thank people for, one of my favorite questions here is on the last page, is which questions did we forget to put on here?

And then a second part of that is how would you answer them?

So, indeed, in terms of -- to everyone who has basically come up with a question that we either didn't get right or a question that's missing, that is a wonderful thing to add to your responses. And then those are questions that can be followed up further.

But, please, when you add those questions, also answer them.

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BRIAN CUTE: Thank you, Avri.

                       Alan.

ALAN GREENBERG: Thank you. I'm going to make a statement that Brian has made to the review committee a few times, and it's that all of -- many of the people on the committee have a long history at ICANN. We have our own views. We have a lot of baggage.

                       To the extent possible, our position has to be reasonably impartial. And we need input.

                       You should not assume because your stakeholder group has a person on the committee who knows all of the woes from the perspective of your stakeholder group that you don't have to provide any input. That person really is not in a position to plea the cases of their stakeholder group or of the source organization, and we do need input from everyone if you want it to be considered fairly.

                       Thank you.

BRIAN CUTE: So another issue that we've discussed in our early goings is the public interest. And this is probably my second attempt to provoke Steve DelBianco out of his seat, metrics being the first. But the issue of the public interest and what does that mean is in front of us.

                       The first ATRT 1 did not come up with a definition of the public interest. It was that team's conclusion that that was not a useful thing to do.

But that question is before us again. We understand it's an important term. We understand it's a term that threads meaning through all of these things, and that's something that we will take on as well, in addition to the metrics issue.

Anything else from the team members from your own perspectives? Issues that you think are worth bringing to the surface now?

Oliver.

OLIVIER CREPIN-LEBLOND: Thank you, Brian. I think one of the points that this team has really been thinking a lot about is especially the issue that was mentioned about outreach. How to get that input from not only the people that are sitting in this room or the people that are attending this meeting but everyone even outside the walls here.

So if you do have suggestions, we are very, very looking forward to hear them and to listen to them.

We've been accused -- we as an organization, ICANN has been accused of looking too much at its own self from within, and it's also very important to find out what's the point of view outside these walls.

So if you have suggestions, please send them to us.

BRIAN CUTE: I'd like to make another observation, too. And it came up, the NCUC invited us to meet with them and so we did, and someone pointed out

that the review teams themselves are maybe the only example in this entire ecosystem of all stakeholders on equal footing working together.

We have government representatives, we have industry, we have civil society. And these teams work on an equal-footing basis, collegially, and that's remarkable. And we were asked to somehow capture that and express that.

It hadn't occurred to me until that person made that point. It really is true, that's how these teams work.

So we intend in addressing how effective other review processes note that and the importance of that.

The other thing I want to stress to everybody in the room, I am disappointed by the number of people that are in this room. My organization is involved in the new gTLD process. We are as busy as everybody outside this room.

All of us who participate in ICANN who care passionately about this organization should be in this room.

This is a disappointment for me.

This process matters. Please take this message outside of this room. Steve.

STEVE DELBIANCO: Thanks, Brian. Steve DelBianco with Net Choice.

Public interest sure got my May attention. Mission accomplished. And don't be disappointed. We did two panels in here today and had scarcely any more.

I wanted to ask you about the public interest definition because I just re-read the document and there's nothing in there yet saying that you're going to endeavor to help define or constrain public interest for the purpose of this.

So do you need us to provide input at adding that to your terms of reference or to actually address it?

What stage are you in about taking on that definition?

BRIAN CUTE: We're at the stage that the issue has been identified. Some people think there would be utility in a definition and others do not. And that's exactly where we are, and I know that this conversation will continue as we go forward.

The terms of reference and methodology document from the review team's point of view has been pretty much massaged to a near final state, but we will take input. We will take suggestions.

And if there is a consensus on the group that there's some articulation of public interest that would be useful, that will happen.

So the input would be welcome.

STEVE DELBIANCO: I think it's particularly appropriate, the affirmation that generates this whole review team does put a modifier in front of public interest. It calls it the global public interest, even though in our charter -- bylaws and articles, public interest appears 12 times in total without ever identifying whether it's constrained to the DNS or something broader than that.

So we'll try that from the business constituency, of suggesting it ought to be part of it, and then look forward to having input later on.

Thank you.

BRIAN CUTE: Thank you.

Joy.

JOY LIDDICOAT: Thanks. Joy Liddicoat for the record.

Just a couple of reflections. One is just following up on the point about public interest.

Despite being a public law specialist for 25 years, I really would encourage you not to attempt to define public interest. Not only because I think perhaps it isn't the best use of the review time, but I think by its nature, it changes.

I think perhaps a better approach is to review some concrete steps that have been taken by ICANN in its various processes to actually

implement and articulate and pick up public interest issues, and the new Applicant Guidebook is one.

The independent objector has just issued a number of comments in relation to the public interest objection component of the new gTLDs.

I think there's a body of knowledge that's continuing to grow around that topic, and my statement will be focused, perhaps, more on that rather than continuing to define.

The other point was just in relation to letting others know outside ICANN about this process. And I just wonder, I mean, there are a number of Internet governance-related forums happening over the span of the review team's work. Whether one might want to engage in a consultation during those, I'm not sure. But certainly those are processes by which information can be shared about the review, about how to participate in the review, and to foster and encourage more distribution of knowledge.

So again, just a practical discussion about how to perhaps bring in some of those networks.

Thanks.

BRIAN CUTE: Thank you, Joy.

And to that point, there, again, has been some discussion. Even in building our calendar. We've got the IGF on our calendar as a potential place where we could meet or advance the work of the review team.

This notion of outreach is squarely before us, and the balance that we're trying to understand is the charter of this review team is under 9.1 to assess, review, and make recommendations. It's not clearly within our charter to engage in some form of outreach.

And even that being said, there's been some discussion recognizing that, you know, ICANN senior staff, Fadi, ICANN Board in its own way engages in outreach. And if this review team were to take such steps, we certainly wouldn't want to do anything that interferes or steps on those appropriate efforts.

So we're trying to think through that balance. We understand our scope of work, what we're supposed to do and stick to our knitting, but at the same time there may be ways that we can expose to the broader community from whom we're trying to get input about ICANN's accountability and transparency.

So if you have further thoughts about that, we're hope to hear those as well.

JOY LIDDICOAT: Sure. Thanks, Brian. And there is a process by which ICANN is starting to open some new offices and some new places. Perhaps, you know, some indication from the review team to staff that this might be a useful way to engage around some discussion and those amongst staff about bringing people in.

Again, not so much that the review team might need to do that work if it's outside its scope, but for some innovation and creativity from how to generate inputs from staff or outside.

Thanks.

BRIAN CUTE: Thank you.

Yes.

PAUL FOODY: Good morning, gentlemen. Paul Foody. I wasn't going to bother getting up saying anything, but you did ask if I think you're doing an awful job to get up and say you're doing an awful job.

I get as bored of telling you guys to send the registrants an e-mail as you get of hearing me saying it. You talk about the guys in this room being a disgrace and indicating a total lack of concern about accountability and transparency, but the truth is the guys outside, they've got what they want. They're not interested in accountability and transparency. And what would accountability look like anyway?

Suppose this whole gTLD thing was determined to be a complete ripoff, for want of a better word? What would the accountability look like?

You guys have developed the Internet. You run the Internet. You guys are untouchable as the guys on Wall Street who cautioned all that problem five years ago and have had no ramifications whatsoever.

So don't condemn those guys out there because, you know, they're demonstrating what all of us know, that you guys can do what on earth you want and get away with it.

Now, on a positive note, you ask how you can engage your registrants and the public at large.

I registered a couple of domains yesterday, and nowhere in the registration process was it made clear what ICANN's role is. I went through the whole thing, I ticked that box saying yes, I understand the terms and conditions. Did I bother reading it? No. Does anyone bother reading it? No.

If you do read it, you'll see that you probably don't understand it anyway because it's all in legalese.

So I've registered a domain. I'm paying 25 cents per domain to ICANN. I have absolutely no idea, other than my own awareness of ICANN, that ICANN is involved at all. How difficult would it be for registrars when you register a domain to put a page explaining who ICANN is, to explaining the commitment that you're entering into.

We talk about the registrants' rights and responsibilities. The rights, you know, is great. I'd love to know what the rights are. There don't seem to be many of them if we don't even get an e-mail from ICANN every time you decide to change the playing field.

But as regards the responsibilities, you know, if you were asking registrants to be responsible, write to them. Tell them exactly what you're expecting of them. Send them an e-mail. Even get -- saying ICANN would like to be able to contact you. Would you like to be able to receive an e-mail from ICANN? This could materially affect your domain name.

You know, who is going to say no?

BRIAN CUTE: Thank you.

CAITLIN TUBERGEN: This is Caitlin Tubergen reading a question on behalf of remote participant Ron Wickersham.

Is it within the scope of the ATRT to examine accountability with regard to the representation of noncommercial points of view being perhaps marginalized by the current structure of ICANN?

AVRI DORIA: Thank you, Ron, for the question.

I think that if the question is phrased in terms of in what way is it relevant to the accountability of ICANN to the noncommercial viewpoint, that the question does become relevant.

BRIAN CUTE: Thank you.

PATRICK JONES: Patrick Jones from ICANN staff.

When I looked at the questions that you have out here today, one of the areas that might be missing is does the review team intend to look at the types of documents that are put to the community for input, and at

what stage in document development that it's necessary to go out to the community for input.

You posted quite a lot of documents for the community before this meeting and before every ICANN meeting, and is it really necessary for all of those to go out at that stage? So it may be helpful for the review team to look at that.

BRIAN CUTE: Thank you, Patrick.   And there are elements at the high level of accountability and transparency that go to the ability of the community to comprehend what it's seeing, whether it's a question of excess volume, whether it's a question of clarity. The ability of the community member or public to comprehend what it is being provided is an element that we will assess in our work.

Thank you.

MARK McFADDEN: Hi, Mark McFadden. I am taking Avri up on one of her offers here and that is are there other questions that you should be looking into that you're not.

And one of the areas of accountability and transparency that I think the ATRT 2 should actually look into, and I know David will say to me please don't go there, but the numbers part of the organization is something that doesn't get any attention. And it is a particularly opaque part of the organization. I would challenge any of you -- well, except for David and Steve -- I would charge any of you to actually explain the

relationships between the RIRs, the NRO and ICANN. It's a very, very difficult thing first it understand and, second, to explain to a normal human being.

So I think in terms of transparency, and also accountability, the relationship between the Address Supporting Organization, the address council, the NRO, and in general, ought to be something that should be on your agenda.

They've just recently gone through a review process. That review process has been completed, and one of the things in terms of metrics that you could look at is has transparency actually been improved as a result of that review activity.

One of the things you could also look at is in terms of accountability, what are the mechanisms by which general ICANN participants can participate in the work of the Address Supporting Organization, whether it's here at ICANN meetings or in general.

So I suggest to put that on your plate, a look at what the relationship is between the Address Supporting Organization and ICANN at large and whether or not ATRT 2 feels like there's been an improvement made in their accountability and transparency.

BRIAN CUTE: Thank you very much for the discussions and for the focus on metrics. Very welcome.

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Again, inputs that tie to our scope of work under paragraph 9.1 are fair game, and that's what we're looking to hear from the community, so thank you for that input.

Another difficult-to-measure metric that's been brought up in the first L.A. meeting, but perhaps equally as important, is the issue of culture. Culture of the organization. That was asked of Fadi in Los Angeles in terms of the culture of the organization with respect to accountability and transparency.

Former members -- or I should say members of the review team have articulated in the way if I were to walk in the halls of Los Angeles on any given day and tap someone on the shoulder, what would they say to me about how their work in front of them ties into accountability and transparency? What is their awareness level, how active are they in their understanding and integrating it into their work and the people they work with.

Difficult metrics to perhaps measure with, but this aspect is as important if not more than any other. Inputs along those lines are welcome as well.

Any other thoughts from the review team members?

Yes, please, David.

DAVID CONRAD: Mark, with regard to the IP addressing world outside of ICANN, that is a topic we have discussed internally within the review team, and it is on one of the master lists of agenda items that we are looking into.

BRIAN CUTE: Oliver.

OLIVIER CREPIN-LEBLOND: Thank you, Brian. With regards to the availability of documents and the input processes into the policy processes, the public consultation process, of course the ATRT 1 had made some recommendations. Those had been carried out, or some of them have been carried out.

                               The ATRT 2 is going to look at those, and there is a specific work stream on that. So there certainly will be some focus on this.

BRIAN CUTE: Yeah, if I can elaborate on that one, too, it's an important one, public input.

                               So ATRT 1 made a recommendation that ICANN should institute a comment and reply-comment period and restructure the public input process.

                               The reason we made that recommendation is -- there are multiple reasons. One of the fundamental challenges we identified in terms of perception within the community was this notion of a black box; that the ICANN Board represented a black box in terms of decision-making; that inputs came in from the community processes, from the community, that input came in from the ICANN staff, and little was known or visible about the decision that came out on the other end, or there was some opaqueness about some of the inputs from ICANN staff.

Those were the issues we identified.

In order to attack the perception and potential real problem of the black box, restructuring the public comment period we felt was important.

The institution of a comment period and reply-comment period was important for these reasons: It forces the community, if it's used correctly, to provide an adversarial constructed base of argumentation about a given issue. It provides a broader basis of rationale to be considered by the Board on a given question so that when you provide comments -- let's use vertical integration as an example. Something we went through. Sorry, Mikey. We provide comments on that.

You provide your view. Opposing parties provide their view. The reply comment cycle is intended to give you an opportunity to explain to the Board why the views of your opposing party are not well founded to give the Board the rationale it can rely on to make a fully informed decision and one that reflect the input of the community.

It tied into discussions and recommendations we had about Board resolutions, what should be in a Board resolution.

The Board needs to articulate not just the decision it made and the process that it went through, but it needs to point to the arguments that it found persuasive upon which it best rests its decision.

We also recommended that it was very important that the Board not just point to the inputs that influenced its decision but also those that it rejected. That as a matter of practice, this shows to the community we've heard you, we've heard your arguments. We've decided X. Here's why.

We've heard the other and we reject it for this reason.

These types of practices begin the process of signaling to you that you have been heard and begins to lift the veil on the black box. That's the purpose.

What we understand or have heard, I should say, is that the reply comment cycle is not being used appropriately by the community. Comments are not being submitted that take the opportunity to take the counter arguments and to key construct them and provide the Board with the rationale as to why your position is better founded than the counter view.

This is critical to get the benefit out of this new public input process.

Now we don't know why, we haven't assessed yet why the reply comments are not being used appropriately. It could be that the ICANN staff as communicated clearly to the community and the community just doesn't care or is lazy or waits for the reply. This could be a host of reasons.

This is where we need input. But what I want to underscore is this was a very important recommendation from ATRT 1 that is not delivering the potential benefit. So this is something we need to get at. And we welcome all input.

BRIAN CUTE: Milton?

MILTON MUELLER: Yes, Brian. That was a beautiful description of how the regulatory process is supposed to work where they get comments, they get reply comments. And they digest them. And they issue decisions saying which ones they accepted. I was just struck, while you were saying all that, that I had never seen anything like that in the ICANN context. Not a single decision, I think, has the -- they don't issue formal rule makings in the way that, let's say, your typical regulatory institution in the U.S. that I'm familiar with would. So that's part of the problem.

But I think the problem is actually more fundamental. If a U.S. regulatory institution does not do that, they can be challenged in court and their decision can be overruled. There is no effective accountability mechanism such as that that would require the board to do so.

Indeed, I've been familiar just in the last 18 months or so with situations in which the board has actually -- or the council have issued decisions before the comments are even finished. And, again, there's no penalty.

I don't believe in it's just a community. The community will do things if they get rewarded for doing them. So, if you can show that they didn't follow any kind of an analysis of the comments and that actually has an impact because a decision is reversed because of that, then the community will file comments. It will mean a lot more to do so. So that's my -- and, by the way, this doesn't include anything about independent review or reconsideration or ombudsman stuff. I just wondered if that was -- whether you thought it was encapsulated by other things or --

BRIAN CUTE: Actually, all of those things are encapsulated in ATRT 1. So the general question of implementation of ATRT 1, you should find it there. That would be the proper place to home it. If something's missing there, let us know.

Just a follow-up to your point, though, Milton -- and well-taken. In Boston, when we met face-to-face and talked about this issue, we -- Peter Dengate Thrush, who was a member of the review team, put a board resolution up on the wall and walked us through the elements that were in fairly recent board resolutions at that time.

We then the next day put, just by way of example, a Federal Communications Commission decision up on the wall to show that structure of here's my decision; here are the arguments I've heard; here's what I've accepted and why; here's what I've rejected and why, to demonstrate the meaning of what we thought the benefit could be.

But I will say that, when Peter put a board resolution up on the wall, there were some members in the room who were not aware that, actually, ICANN at that time was putting as much into their resolutions as we thought. So, to your statement that you've never seen anything like that in an ICANN board resolution, my question back would be: Can you validate that and, can you bring to us recent resolutions that are falling sort of that mark for us to assess? Thank you. Bruce.

BRUCE TONKIN: Thank you, Brian. I agree with Milton's comment that people will use forums if they think it adds value. And I think what I see happening with reply comment -- I think Steve was mentioning this earlier as well. The

other things we heard yesterday as a board member from the different constituencies in the GNSO in particular is they felt they didn't have enough time to consult with their communities to put a comment in during the first period. So what ends up happening in the reply comment is often new material that different constituencies have put in. So that's one issue.

And then I think the second issue is that the whole process is a little disconnected from the other parts of our process. So we have different modes. We have a mode where we're here face-to-face and we're interacting. And then we have a mode where we might be using reply comment, which is, if you like, an old way of doing things. It's sort of a written correspondence world; whereas, many people use online chats and Twitters and a whole lot of other mediums that we don't seem to be using at ICANN. Maybe we need to have focused periods of discussion where we open the chatroom for a certain period of time and we encourage parties to communicate. I think we should be using some other ideas.

But, if all the real policy discussion is perceived to happen face-to-face at these ICANN meetings, people don't see the comment period as being particularly relevant. Because I think, really, my opportunity is to influence people while I'm here, to influence staff, to influence board members. And that's how a lot of people work. They don't use the public comments. Because I think the best way is to turn up to our regular meetings three times a year, and that's where they get that work done. So you never see that documented anywhere, because they're doing it verbally and they're doing it in these sessions.

So I think one of the things that would help in the reply -- or in this one medium would be to pull information into it and, actually, to say this was the outcome of the open mic session at ICANN and post it into that forum. So you can actually see it as a continuous piece of information. Or, if the staff would give initial feedback after the first round and say, in summary, this is the stuff we think makes sense, this is stuff we don't think makes sense, then people would be more likely to engage in the reply comment period, I think. Just some ideas. But at the moment I can see why it doesn't work, because it's disconnected from where people think real decisions are made.

BRIAN CUTE: Thank you, Bruce. Steve.

STEVE delBIANCO: Steve delBianco for the business constituency. The reason it doesn't work for the business constituency has nothing to do with Bruce's reasons. Those were all good reasons. But for the B.C. none of us are in the business of the DNS. We use the DNS for our business. So we're all volunteers. And we actually embrace the idea of an initial comment followed by a reply. It was a great innovation from your first team. But we quickly found we were overwhelmed with the quantity of parallel comments. And 21 days for the initial comment wasn't enough time to get approvals. It takes me two weeks to get an approval from members of the business constituency. That's 14 of the 21 days. I can't do it. So we started drifting our initial comments into the reply period. And that's just not fair. I realize that. Because others have endeavored to get their initial comment in, and here I am submitting the B.C.

comments two weeks later. So the three plus three weeks is too tight for the total comment, if you have 10 parallel comment processes. So, either we slow everything down to stretch it out, right, or put fewer things out at a time. Because we can't make it work that way.

BRIAN CUTE: Thank you.

BERTRAND DE LA CHAPELLE: Good morning, Bertrand De La Chapelle, ICANN Board.

One thing on this discussion about reply and public comments that I think is missing in the current interaction mode of ICANN is actually interaction. Let me explain.

The public comment is, basically, someone throwing a comment at a reception box. This reception box is then studied and filtered by the staff to make a summary of comments. But there is very little interaction between the different commenters as would be the case on a mailing list or on a working group. What I'm missing absolutely dearly on all of the electronic tools for the whole community -- I'm not talking about the mailing list for working groups -- is this notion of thread. If somebody makes a public comment and there's a response to this public comment lower down the thread, you actually have a mechanism that is not a dialogue. It's not something where you can correct, come back and say what I meant is this or that. It's not the idea of creating an open mailing list for everybody.

But, in a forum like this one when we have the physical meetings, people can piggyback and say what so and so said, I agree with or I don't, which you cannot do on the public forum.

So my understanding of the better contribution in terms of reply is not to have a second go at throwing something in the box. It's having an ongoing discussion beyond the work of working groups. Because the moment it is brought to the larger public and then you see threads emerging, some will gather real interaction, the others there are so rapidly.

Today I spend a tremendous amount of time, as most of you must have, on the public comments regarding closed generics, which is a wonderful public comment period. The comments are very valuable. It's an immense amount of material to look at, because everybody is talking in parallel. It's just like a series of speeches one after the other, and it's very difficult to see the threads.

BRIAN CUTE: Thank you.

MARIKA KONINGS: Hi, this is Marika Konings from ICANN staff making comments from the perspective of GNSO working groups and public comments.

One observation is that, on the one hand, we have requests for more time. But, on the other hand, we have a lot of pressure as well to make things move faster. So, as you make recommendations in this area, I would really like you to take that into consideration. Because it's really

hard to balance that where we want policy development to go fast, get recommendations up to the board, but at the same time people want or need more time to provide comments, which is a very important part of the process as well.

Another point I wanted to make is that you may want to look as well at there are different categories of public comments. For example the way it works for GNSO working groups, when they put out a report for public comment, staff does provide a summary. But we don't typically do an analysis. Because we really see that as the role for the working group. What we do provide for the working group then is a public comment review tool. So we break out all the different comments, indicate who provided them, put a box in there that notes the working group response and also indicates what action the working group took on the basis of their review of that comment. And that is something we then include as well in the initial or final report to really demonstrate how the working group was considering those comments and how they were received. So I see the value of having response and reply, but that may be very relevant in issues where the staff is going to take a decision or the board or you want to have a dialogue. But, for working groups that need to review those comments, you may want to look for another mechanism. And often we look as well for forums here to have that interaction. And the comments are more taken back and then reviewed in a more quiet fashion. But still responses are provided and are visible. And on occasions where we know who the commenter is, if there are questions or further dialogue is needed, the working group will reach out to that group or that person to have that discussion.

BRIAN CUTE: Thanks. Very useful input. Olivier.

OLIVIER CREPIN-LEBLOND: Thank you, Brian. Since the implementation of the new system of public comments, there have been several sessions that have taken place discussing the actual implementation of the public comment system. I remember I think in Prague there was one. There must have been some others before that. And this team will be looking at the input that was gathered and that was discussed at those times. It would be interesting to hear more suggestions for possible solutions to the problem we have here. I think we're quite aware of the fact that to gather more input, one might need more time. But needing more time might also delay processes that might run out of time to implement. So there certainly is a tradeoff. And it doesn't seem to be a single solution that could be implemented.

BRIAN CUTE: Thank you.

                               So we have 15 minutes left in this session. Again, open mic, open ideas. Any input is welcome, suggestions on what we should focus on in terms of our work.

PAUL FOODY: Hi, Paul Foody again. As regards public comments, you've got a great repository of information there. Has anyone studied that to see how many of the people contributing public comments applied for TLDs, new gTLDs in the first round?

BRIAN CUTE: This team hasn't, but could consider that.

PAUL FOODY: So you would look into seeing -- because that would give you some sort of idea, a metric as to the incestuous nature of this whole process. Okay? Because there are very, very -- you know, this is the largest meeting that ICANN has had. It's 2,600 people. We're in a country where in the last year another 40 million people have started using the Internet. The dot CN domain registry is the fastest growing registry out of any registries. China is registering dot com domains daily. And yet 2,600 people in a city the size of Beijing, and you're celebrating that.

                           Quite honestly, I'd be looking at it the other way around. I'd be saying why is it that we're not filling out, you know, the national stadium here? Thank you.

BRIAN CUTE: Thank you.

BERTRAND DE LA CHAPELLE: Bertrand De La Chapelle. I would love to make a policy development process in a stadium. That would be fun.

                           As there's space for additional comment, one thing that came up in the discussion earlier this morning regarding policy versus implementation and that connects, basically, to what was just discussed before, is how the workflow of community interaction -- and I insist again on the word

"interaction" -- community interaction functions from the beginning of the moment an issue emerges to the moment it is fully in the implementation phase.   The reason why it is important in multistakeholder processes is because we tend to forget, although we are confronted with the reality all the time, that the very nature of multistakeholder processes is that they do take longer and they must take longer.

I often take the analogy that, just like parliamentary process go much slower than dictatorship -- and I think it's a value -- multistakeholder takes even longer than parliamentary process.

And one of the challenges in ICANN -- and it touches upon the accountability -- is that an issue really comes on the agenda only when it has matured, matured, matured until everybody agrees it's urgent. This is not the way it should be brought onto the agenda. If it is really bottom-up, the notion of birds of a feather that is used intensively in the IGF, the notion of exploratory meetings where somebody plans to flag and say this is an interesting topic, anybody who is attracted by the pheromone of this topic can go to this meeting and just shape out and interact with the other actors is another way.

We really need to enhance the early stages of issue identification and issue framing. And the only way to do this is to provide in the spaces of the physical meetings, which are the moments where we are all face-to-face, small windows for people to pitch ideas to start discussions, to raise awareness on something, and then provide a possibility for issues to grow inside the structure.

There was a discussion this morning of saying we have a constituency day. Instead of spending ages discussing whether the organization should be constituency-based or issue-based, why not have an issue day where discussion is in open rooms, no panels, no nothing. It's just a workshop on a topic that is not yet in a PDP. Something that says this is an important issue. Everybody who is interested about this issue comes and interacts.

And the second element is more generally regarding the difference between this ATRT and the previous one. The accountability and transparency review team one insisted, rightfully so, on the accountability mechanisms particularly for the board and so on.

I am not sure that we have gone far enough in developing the whole accountability framework. There was a discussion this morning, and Jeanette in Zurich made the analogy between the legislative and executive functions and judiciary function. Without getting into detail, ICANN has not developed a complete appeal system, a complete dispute resolution mechanism that has a querying from the top to the daily issues that are at stake.

So, if pushing the analogy -- the PDPs are the legislative part. If pushing the analogy, the staff implementation like IANA and new gTLD program and so on are the executive or administrative part, the part that is all the dispute resolution mechanism needs to be looked at into a coherent model and especially when there is a clear distinction between, for instance, a peer reconsideration on substance and a peer reconsideration on process, which is today something we don't distinguish enough.

BRIAN CUTE: Thank you very much. And, to hit a couple touch points along the way, tying your comments to our work, recommendation 6 from ATRT 1, policy versus executive function over implementation is something we'll clearly look at. The PDP process is something that we're very likely to look at. And there was in ATRT 1 a discussion about a potential review mechanism, which to some degree plays into your framing there about a holistic system. So thank you for that.

PAUL FOODY: Yeah, Paul Foody again.

Accounts -- this comes down to a dialogue. It comes down to ICANN talking to people who may be not a part of ICANN but whom you purport to serve. I get up in front of this mic. I've been getting up in front of this mic for four years. I've been speaking to you, attempting to interact with you. If you look back at all the comments I've made at public comment, the only response I get from ICANN is flip.

Now, whether or not that is a complete dismissal or whether or not you're agreeing totally with what I'm saying only you have no way of accommodating my views, I don't know. But a dialogue would be a pleasant thing. If you want people to come to these meetings and tell you what they think, you've got to be prepared to listen. And you've got to be prepared to respond to them and say why what they're saying is wrong. Thank you.

BRIAN CUTE: Thank you.

PAUL FOODY: Exactly.

BRIAN CUTE: Anything else? Mike.

MIKE SILBER: I'll take the last remark as a personal challenge. Mike Silber here. Mr. Foody, I've tried to engage you a number of times. I've spoken to you about data privacy laws in a number of countries. We've spoken about anti-spam provisions and why it would be ineffective for ICANN to engage in a bulk mailing campaign. At the same time, the suggestion has been made to you over and over that, as an individual, you're welcome to your opinions.   But, as ICANN, we have working methodologies.   And that working methodology, when it comes to generic top-level domains and new gTLD policy, is to engage in work through the GNSO. So, as much as your comments in the public forum alert us to a potential problem, in terms of actual practical work and making practical suggestions, that's work that needs to be done in a collegiate manner building rough consensus in the constituency that's tasked with building policy on that specific issue.

This is not an American courtroom where we will take the appeal of the best actor or the best looking lawyer and, if you make a good speech at the public forum, we're going to suddenly overrule work done and hard work done by dozens, sometimes hundreds of people over a long period

of time simply because you make a compelling argument. What we're expecting you to do is go and engage those people. You make good points. But go and engage them and work through a policy process that comes up with practical suggestions. Because, otherwise, we're going to get, again, criticized for top-down behavior, for executive action which doesn't take into account the bottom-up process.

So my view is -- and this has been said to you numerous times from the first meeting when you arrived and raised these complaints -- work on the issue within the GNSO. The board will not simply overrule, at the whim of one individual, the hard work and good work that's been done by people. Are there floors, are there concerns, are there issues? Absolutely.

Now, I think it's a valid issue for the ATRT to look at is how do the concerns of an individual or groups of individuals who may not be ICANN insiders and might not have a clue how to work collegiately with others in the community, how do they have a voice?

My view is maybe they need to grow up and learn how to work collegiately rather than just standing here petulantly demanding that their demands are adhered to.

BRIAN CUTE: Thank you.

PAUL FOODY: Paul Foody. May I reply to that?

BRIAN CUTE: The mic is yours.

PAUL FOODY: Thank you very much. First of all, I'd like to thank Mike. I do appreciate his dialogue. But to say that four years after being asked to send an e-mail to every domain registrant from which you get 95% of your funding is unreasonable, that it's spam, I mean, that is the worst reflection on ICANN there possibly is. You've got a problem. The problem is that you're not connecting with your ground base, the 95% who give you your funding.

And yet four years on, you still do not have a mechanism to e-mail, to contact those people directly. Most domain name registrants don't even have a clue what ICANN is and what it does.

That is a problem. Four years on you haven't started addressing it, at least not until now.

BRIAN CUTE: Thank you. Steve.

STEVE CROCKER: So I'll try to give you a direct response that's quite simple. That's outside of the rules. It's absolutely against the rules for us to do that. And it's well-documented and well-litigated. And it's very straightforward, which is why I might suggest that, no matter how often you repeat it, you're not likely to get any traction on it. We are obliged to stay here and listen politely, and we do. But we are prohibited from going further than that because it's not actionable.

PAUL FOODY: Back in Nairobi Antony van Couvering offered to send an email on behalf of the registrars to all their domain name registrants. And he was actively discouraged by Peter Dengate Thrush at the time. Now, that would have been a process -- that was back in 2010 --

STEVE CROCKER: So just to be -- let me make the point again. The rules prohibit ICANN from contacting the registrants directly. The relationship with the registrants is through the registrars. The registrars are extremely firm in wanting that relationship to be between them and the -- and their registrants. And that is a very, very deeply embedded into the system. Whether it's Antony van Couvering or whether it's ICANN staff or whatever, there's no mechanism available that does not cross that line. If you want to challenge whether or not that line should exist, that's a whole different discussion. But it has to be in the context of what the rules are.

PAUL FOODY: How do I go about challenging whether that line should exist?

STEVE CROCKER: A lot of different ways. But I suppose you could go to the registrars and say that you think that there's a better way for the system to work and that you want to undo their primary relationship with their registrants.

EN

PAUL FOODY: I think, as a registrant, I believe that I have a right to be informed. And ICANN takes my money -- it takes the money of registrants, and it has a duty to those registrants to communicate with them. And, if there is some rule that prevents you communicating with them, that doesn't seem to stop you e-mailing me about WHOIS data. Why should it stop --

STEVE CROCKER: Something dropped right by your foot.

PAUL FOODY: Why should it be such a problem with regard to this, which is a much, much more important matter?

STEVE CROCKER: That was ICANN communicating with a registrant, I think.

Look, so I listened very carefully to what you said, and the transcript is up here. And let me deconstruct it.

You refer to a registrant having a right to know what's going on. There is plenty of mechanism for the registrant to find out whenever he wants. There's plenty of information that's communicated. You can challenge whether or not it's sufficient or not. But then to move directly from that to say, therefore, ICANN must send e-mail is a step that is not directly connected and that you've made that conclusion. But that conclusion is not warranted.

PAUL FOODY: Well, I think the fact that we, you know, are here and the number of people who are engaged in this topic is such a relatively tiny number is evidence of the fact that the message is not getting out there. People are not aware of what's going on. And that is a failing.

What I'm saying is you have within your resources here a perfect opportunity to contact every domain name registrant. And, you know, the fact you're not using that because of whatever rule or, you know, whatever excuse you're making, it's not -- it's not sufficient.

STEVE CROCKER: So, to borrow a somewhat famous line, yes, we could do that. But it would be wrong.

PAUL FOODY: I beg to differ. Thank you.

BRIAN CUTE: We are just about out of time. We have two people In the queue. By all means, Mikey. And then we'll wrap it up.

BERTRAND DE LA CHAPELLE: Just one comment on this very interesting exchange, surprisingly enough, if everybody reads the transcript, we may discover that there's much more agreement on the overall objective of engagement and that the disagreement is merely on the appropriate method.

And the key question is how to reach out better to registrants who, by the way, do not have yet in the structure of constituencies of ICANN a

specific constituency or house or whatever, which I always personally found extremely strange. But this is not only about registrants. It's also about the general public and the auto mechanisms and so on.

So, if we can take one thing out of this is that this goes into the debate about engagement. And I would like to feed this into an operational mode, which is how can registrars and registries be part of the engagement process to allow the registrants to understand better what ICANN is about? If I reformulate correctly what Mr. Foody was asking, as an objective.

I agree with Steve wholeheartedly that the solution he proposes that ICANN sends an e-mail is the wrong one.

BRIAN CUTE: Thank you. And last input.

MIKEY O'CONNOR: This is Mikey O'Connor. Just to respond on another dimension, one of the reasons there aren't 10 million people here is because it's really expensive to get here. It takes a lot of resources to participate in this.

You know, as an ISP, I'm kind of unusual in the ISP constituency or community because most ISPs go why do I care about coming to an ICANN meeting? For the most part, it's not terribly important to my primary business. The only time I care is if something breaks. And then a bunch of us will show up.

But, you know, the holes in the logic are vast. And, you know, I agree with Bertrand, you know, one way to do this would be to lower the

barrier to participation, et cetera, et cetera. But you know, Foody's logic has got giant, huge, massive holes in it. It's pretty tiresome to listen to, as many of you probably know. There you go. Sorry to be so grouchy, Paul. But I've heard your story so many times it's like, come on, come up with a new story.

PAUL FOODY:

How many people are on Adobe Connect right now? How many Chinese people living in Beijing are here? No. It's not a lot of money to be here. People are not alert to the fact they should be here, and that's our job.

BRIAN CUTE:

Thank you. And thank you all for coming. We look forward to your inputs. Please provide inputs with respect to the public comment questions that are outstanding. We look forward to interacting with you as we advance our work in Durban and beyond. Thank you very much for your time.