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CR – BOARD / Registrar Stakeholder Group  
Tuesday, March 13, 2012 – 14:15 to 15:15  
ICANN - San Jose, Costa Rica.

GRAHAM CHYNOWETH: All right. I guess I will try to call this session to order here.

BRUCE TONKIN: Hold on. Stephane is the chair of the GNSO. We are listening to the chair of the registrars.

GRAHAM CHYNOWETH: Thank you, Bruce. First of all, thanks for having us. There are several issues we wanted to go over with you guys today. The first -- And, hopefully, we will have a dialogue. I don't know if you guys have any questions for us. We will be happy to answer any of those.

But the first one was Jeff who is going to speak a little bit about some questions we had or a desire for more information about issues related to vertical integration.

Jeff, do you want to speak to that?

JEFF ECKHAUS: Thanks, everybody. This is Jeff Eckhaus from Demand Media and a long-time proponent of vertical integration and very happy on the road we are going with.

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And what I wanted to bring up, I know that ICANN has actually just listed an update, I believe it was today, to the registries' request about allowing existing -- registries to sell -- to become registrars in their existing TLDs. And one of the items that we wanted to discuss for the board, and hopefully to talk about stat, is that when that process comes forward, that we have a level playing field and that the existing registries, even though they have an existing contract, what we are hoping for is that -- I don't know what that process is to make sure that the terms and the conditions that are in the new agreement, that us as existing registrars who want to become registries must sign, that we are all on the same level playing field going forward so that they could not, I guess you could say, pick and choose or cherry pick, or whatever term you want, the most favorable terms from the two agreements and consolidate that into one amended agreement. So it is something we are concerned with.

We are happy for them to be able to move ahead and to sell, and we want everyone to be able to have true vertical integration. The most important thing for us as registrars is that everyone works on a level playing field.

I don't know if the process has been put into place yet on how -- you know, how that process will move forward for existing registries. But maybe we could ask, you know, consideration that you could have some registrars either work as advisers or to consult with us on it because we know -- because we're aware of what it takes to be a registrar and what the issues are. And, hopefully, we can advise you.

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We are not saying we want a hand and saying we want to try to control it, but just to give some advice and bounce some ideas off of us to make sure and to make everyone happy before something is put down and then we see it for the first time and then everyone is up in arms over it.

So, hopefully, I'm sort of reaching out in advance that we can have those discussions as this process moves forward.

As everyone knows, we want everything to stay on the current timelines, nothing to be delayed, everything to be smoothly. And, hopefully, this would be a good first step towards making that happen.

ROD BECKSTROM:

If I may just on behalf of the organization, we appreciate that input and that offer to be of assistance. Thank you.

GRAHAM CHYNOWETH:

Thanks. I think the next thing that we thought would go into is -- hopefully, some of you guys have been able to participate in some of the sessions where Mason has provided an update regarding the RAA negotiations and our perspective of how those are going.

But I thought it would be at this time useful for us to get Mason to speak to that a little bit and also maybe even some of the progress that we feel we have made during the week this week.

Thanks, Mason, if you want to take it from there.

MASON COLE:

Thank you, Gray.

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Hello, everybody. My name is Mason Cole. I'm a U-S- based representative on the GNSO Council for registrars. I'm also a member of the negotiating team for the registrars in our work to negotiate amendments to the Registrar Accreditation Agreement. And allow me, just if I may, to provide you a short update on where things are.

So in the way of background, as you may remember, in 2009 registrars were --

BRUCE TONKIN: Just want to speak a bit closer to the mic.

MASON COLE: Sure, sorry. In 2009, a new Registrar Accreditation Agreement came into existence. Most of the accredited registrars are currently operating under that agreement. But the community felt that there was an opportunity to take another look at the agreement and see if there was additional amendments to make.

In the end, there were lots of suggestions. There were 83 discrete proposed policy requests, and that doesn't include overlaps where there was the same request made by two different parts of the community.

In 2010, the drafting team put out its final report, and registrars started organizing for the approaching negotiation. And part of that was consultation with the law enforcement community.

The law enforcement community made 12 requests of registrars, some of which appear to be fairly easy, some of which are extraordinarily complicated.

And we began a consultation process with them to better understand their desired outcomes from the proposed amendments and also to confer with them about operationally how we would put those amendments into place -- or execute those amendments in our business operations.

So we had two consultations with law enforcement. One was in Washington, D.C. in late 2010. Another was in Brussels in 2011. The session in Brussels was inclusive of several members of the GAC, and we had an extensive discussion of each proposed amendment. And then we reported the results of those discussions to the board, to the GAC, and to the GNSO in the San Francisco meeting this time last year.

And then obviously late last year in Dakar, the board issued its directive to the registrars and the staff to open negotiations. And we did so immediately following the Dakar meetings.

One of our first orders of business was to sort out the proposals. The drafting team assigned high-, medium-, and low-priority labels to each of those things with the law enforcement requests being in the high-priority category. So the focus of the negotiation has generally been on the law enforcement requests and the high-priority items.

On the registrar side, we have several requests of our own. Namely, the biggest one is to have a predictable process by which we can anticipate further changes to the agreement.

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So when we entered negotiations, the registrars assigned a negotiating team and a legal advisor to the process. ICANN staff did the same.

We've met -- I keep losing track -- I want to say, five times, I believe it is five separate times in person, in Los Angeles or Washington, D.C., and then numerous other sessions by telephone.

And there's been a great deal of work put in both by sides to refine the agreement and make sure that we arrive at a contract that's able to be executed properly by us.

We also had separate discussions with the law enforcement community and the GAC as a way to make sure that we understood the precise, hoped-for results of their proposed amendments. And I can report that that was a very productive session. That was in Washington, D.C. in February.

So some of the issues have been fairly challenging. As you might guess, what appear to be even simple issues can sometimes carry complexity with them. European Union privacy and data law is a good example of that. North American registrars are not used to operating in that kind of business environment. As Jeff mentioned just a moment ago about level playing fields, no matter where a registrar's business is located, we still have the same obligations under the contract. And so we have to balance out competing laws and regulations as much as we can.

Another challenge is the fact that registrars are a diverse group. And by "diverse" I mean geographically diverse, we're diverse by business model, and that requires us to come to consensus inside our own group.

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We don't always agree on the same issue. So we have to negotiate with ourselves, so to speak, at times to make sure when we do go back to ICANN staff with feedback on an amendment, that we're all on the same page.

Another thing -- and I know this was brought up earlier by Bruce -- is that we want to make sure that when we act -- when we act on the contract, that we're not acting on something that impacts the entire community without consulting with the community at some appropriate level.

There are parts of the agreement that would affect us as a contracted party only, and those are easily accommodated by negotiation. Things like WHOIS validation, which is one of the law enforcement requests, impacts the entire community.

And so yesterday we had our first consultation -- community-wide consultation on some manner by which WHOIS could be validated.

So the negotiating sessions themselves have been contentious at times but otherwise collaborative and, I believe, conducted in good faith by both sides. As I mentioned, there has just been a tremendous amount of back and forth and lots of work going into the process.

So in terms of timing, I want to get across to the board that arriving -- our highest priority, and I hope staff's highest priority as well, is arriving at an agreement that is a quality agreement. So we are moving with all available speed, but we don't want to sacrifice quality simply to get it done in a hurry. So the end result needs to be a high-quality agreement.

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So what happens next? On March 1st, staff reported to the community the status of the negotiations. We started our collaboration community-wide on the verification issue yesterday. We will conclude our negotiations for the issues that are currently in play. The agreement will be posted for comment. And then we'll -- for the remainder of the proposed -- they are really policy proposals, other than just contract amendments, for the remainder of the proposals, we'll make decisions about how to put those into play as well.

Bruce?

BRUCE TONKIN:

Thanks, Mason. I guess one of the questions we'll get from the GAC, and I think the GNSO got that question, and the board will get the question in the next hour or so, you've laid out the steps. And the next step is to publish a draft and to get comments on it.

What's your expectation from the registrars' perspective on timing? Like, are you talking having something for community comment next month? By June? By December? What are some expectations?

MASON COLE:

Neither staff nor the registrars have committed to a timeline. My personal perspective is it will be a matter of weeks.

BRUCE TONKIN:

Any other directors have any questions on that process? Bertrand?



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BERTRAND DE LA CHAPELLE: Thank you. Let's cross fingers and hope that this is going to be the case.

MASON COLE: Our fingers are crossed too.

BERTRAND DE LA CHAPELLE: Steve Crocker has proposed, for a completely different matter, the ATRT implementation, a new tool that allows to track not the implementation but the shift in the expectation of when a task is finished. And it is a very interesting thing to track how the expected deadlines are actually moving forward. So I just keep my fingers crossed.

I have three questions. The first one is: Do I understand correctly that the main stumbling blocks or the main problems in this negotiation is mostly about the law enforcement requirements? Or are there other elements that are also a matter of tension?

MASON COLE: There are other elements under discussion.

BERTRAND DE LA CHAPELLE: Can you be just a little bit more explicit?

MASON COLE: Yes. If you will allow me to pull up the document, I will be glad to tell you.

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BERTRAND DE LA CHAPELLE: Just in broad terms, as an overview, not to get into the details, but as a board member, I want to have a sense of whether it's very narrow or whether there are just a few other buckets of very specific issues.

MASON COLE: Yeah. Other folks on the negotiating team may want to contribute to this. There's a section of requests that the registrars have asked for as well. Some deal in a minor way with WHOIS. Like I said, the biggest issue is a predictable method by which to amend the agreement. I can't -- I'm not going to remember the rest right now.

BERTRAND DE LA CHAPELLE: If I understand correctly, there are concrete issues and meta issues regarding the process?

MASON COLE: I'm sorry, concrete and --

BERTRAND DE LA CHAPELLE: Concrete issues like WHOIS, law requirements, law enforcement requirements but also a meta issue about the process --

MASON COLE: Yes.

BERTRAND DE LA CHAPELLE: -- and how the process is being --

MASON COLE: Correct.

BRUCE TONKIN: Probably the best way of distinguishing it, Bertrand, is there are policy issues like WHOIS and then there is contractual issues about how compliance will work, how renewal will work, that sort of thing, essentially contractual terms.

BERTRAND DE LA CHAPELLE: I would say the distinction between -- if I understand correctly, again, the distinction between how compliance would work and how renewal or renegotiation would work are two different types of process issues. And I think it is important to keep that in mind whenever we discuss any kind of process like this, particularly because -- and I know it's not a sentiment that is shared among the registrar constituency. I get bashed every time I formulate this like death.

But the fact that in the end it takes the form of a contract doesn't mean that it is just a contract between two parties. I know there's no agreement. Let's not get into details, but I wanted to reiterate that for the record.

Second thing quickly, without getting into the inner workings, you mentioned the diversity of your constituency, which is a very brought and diverse constituency. Do you encounter a deep problem within our constituency of divergence of views and interests? And what makes you believe, if that is the case, that this will be overcome in the -- because it

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is one thing to have a group that is very cohesive and negotiates with another group that has very cohesive views.

If you are divided and there is a big difference between your own group, how can you overcome this?

JEFF ECKHAUS:

I will respond to that. Yes, there are different groups within -- even within -- I'm a member of the negotiating team myself. And even within the negotiating team, we have different people with different business models and in different countries.

But at the end, we do report all this back to the stakeholder group, what are the issues we are having. But at the end of the day, we realize this is a two-party contract that we all have to work on and it is our business. And we sort of have to put some of the individual things that we want aside and look at it and say, This is going to be important for us as a whole. This is going to -- look at it, how it will work for everyone, and try to be as inclusive as possible.

We are not going to be able to make every single group happy, but we are going to try and put it so that even though you might not like it, it will not do damage to you as a registrar. So it might not be your favorite piece and you might say, "I wouldn't want that in the negotiation or in the contract, but I can live with it."

So we are trying to reach that level -- sorry, that baseline that everyone can live with. Everyone has to realize it is a negotiation, even among the group. So before we negotiate with ICANN, we have to negotiate

with ourselves and just say, What can we all live with? And then we move forward from there.

And then we have to negotiation with ICANN and see if we can get that point. And if they don't like it, then we have to go back to the group.

As you can see, it is not the most -- being able to expedite this and say, "We need to have it done by this date" is not always easy because of this sort of multi-step process.

GRAHAM CHYNOWETH: And I have one more comment in response to that. We had a fantastic session. There is two ways -- this is the first time the group has met since the negotiating team have been working -- the entire stakeholder group had met since the negotiating team had started working on the negotiations.

We had a two-hour session on Monday in which the group came together. And kind of two things could have come out of that: One, the orientation that the negotiating team had taken with respect to all the update items that were in that document, they could have gotten significant resistance from members of the stakeholder group who said, Listen, negotiating team, you have gone out further than we felt it.

BERTRAND DE LA CHAPELLE: That's the difficult situation of a negotiating team.

GRAHAM CHYNOWETH: However, I personally was very heartened that that did not happen.



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It is one thing that gives me hope for Mason's comments about the fact that we feel as though all the work -- the significant amount of work both on the negotiating team and within the registrar group to discuss these issues has yielded the ability to take steps and take action and I think that that should be underscored for you guys that we are working hard to achieve effectiveness.

And I think that that's the collective effort of the group on Sunday, to talk to these issues and support a lot of what the recommendation -- the negotiating team has been doing as evidence of that.

**BERTRAND DE LA CHAPELLE:** Let me drill down, if I'm allowed, a little bit on that element. And understand that what we are trying to do is to position the role of the board at the right arm's length, so not meddling in but at the same time not letting processes go on their course to be in a position in the end of having to intervene in a way we don't want.

Another way to interpret what you just say is actually less heart warming because it could mean that actually the negotiating team has not made enough efforts in the other direction to be criticized by its own base. It is very easy to be a negotiating team and not be criticized by your own base if you actually don't go in the direction of too much of the other side. The role of the negotiating team is to be criticized by your base. And that works for the other side.

I mean, any law enforcement agency that negotiates in this environment with you and is not criticized by his own base for having been too lenient and too cooperative is wrong. So the message I just

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wanted to share is we have, as the board, an oversight function which is not to get into the details of the agreement but to make sure that the parties are actually moving as fast as possible towards the locus of convergence.

And the last question I just wanted to throw in, on a certain number of the presentations yesterday, regarding WHOIS in particular and law enforcement agencies, there is a huge money factor in there, which is a cost factor. My understanding -- And I thank Bruce actually for a private discussion not that long ago to make me understand that the business model of a lot of registrars, is at best zero revenue -- final revenue on the sale of the domains themselves and the money comes afterwards. So basically it is a loss leader.

If it is a loss leader, it is perfectly understandable that there is tremendous resistance on any cent that is added in terms of cost. So my question is have you ever inside the discussions and within the community At-Large put the money question in play, i.e., the overall price of the domain names? I know it is a very touchy subject, but we cannot let that element be the only obstacle. Just my contribution.

JEFF ECKHAUS:

If I could make just one response, Bertrand. To your question about the criticism from our own, when you said that, I think there were about five or six smiles from other registrars in the back laughing because I know as a member of the negotiating team, we have received a tremendous amount of feedback, both positive and negative, and criticism from our own stakeholder group.

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Trust me, that's one good thing about our group, is that I think there are no wallflowers and scared to discuss what their real feelings are. So we do get a lot of feedback in both ways, and we do take that into account.

And as the negotiating team, we are very sensitive to the point of saying, Okay, this is what I may think but we need to make sure the group is okay because we cannot move forward until everyone in the group is okay with it and we get everyone's opinions on it. It's very important to us.

MASON COLE:

If I may add to that, life as a registrar is full of criticism. So we get plenty.

But I agree with Jeff. I believe we have been self-critical. We have sought out assertively criticism from our own group to make sure we are not going too far afield of what we owe our own stakeholder group.

You had a question about cost. Yes, cost has been brought up. And there will be added costs. Some of those costs will flow through to registrants. These policies carry operational burdens that we will be responsible for in some manner.

BRUCE TONKIN:

Okay. I think I might give another director a go. Any other board directors have any questions on the RAA? Okay.

Did you have any questions for us on another topic?



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GRAHAM CHYNOWETH: Yeah, I guess it is more of a brief on the development of our relationships and the work that we're trying to do to create effective process.

I recall in Dakar that Steve was talking about, you know, the need for effective process and that we have certainly internalized that.

One of the things that we have been trying to do is to ensure that we have the best communication possible with the LEA and members of the GAC. Kind of in furtherance -- because we think it is a challenge in a certain sense, the structure of the negotiations, because we are negotiating with ICANN and then ICANN is working to collaborate to ensure that the needs and the desires of law enforcement are fairly represented.

So we're working -- in addition to the indirect method of dealing with ICANN, we are also working to directly engage members of the GAC and law enforcement. And I think that we've been successful in that. To at least a certain extent, we were able to have -- collaborate with them on the workshop we did on verification, and we were able to have a face-to-face meeting with law enforcement to kind of go through some of the requests that they had and also discuss some of the additional nuances and thoughts that they've had about the requests that they're making.

They had a meeting in Brussels which they thought through more about the issues related to verification and collection of information. And we were able to talk about that.

You know, I also think in the context of the law enforcement agency relationships and registrars, I was -- it was very interesting to note today we had the compliance team come and speak with us about the -- the number of complaints that they receive. And for the first time, we got a list of all of the complaints, not just ones related to WHOIS but all the complaints that have come into ICANN regarding registrars -- and regarding issues related to registrations.

One of the things that was incredibly striking was that over the last -- between October and February, there were 16,778 issues that were raised and only three of them came from law enforcement. So to me, I was very surprised at that; and I've been kind of noodling on what that means.

And one interpretation, I think, that I certainly feel that relates directly to the LEA relationship with registrars is that we do have a good relationship local law enforcement. So while there certainly may be tensions in the ICANN context about registrars and law enforcement or agreement on various issues, you know, I think the lack of number there could be an indication that -- or could be evidence of the local bilateral work that I know that I do all the time with law enforcement. So that's one positive note, that even though here at these meetings there may be friction outside of these meetings, there could be a lot of collaboration.

But I also think in general it is just interesting to note that that number was so small. Three out of 16,000 was, I guess, surprising to me. And I think it is interesting to talk about, interesting to opine and understand what that means. I'm not sure I do. But I think it is certainly something

worthy thinking about given that there's 4,200 related to customer service and only three related to law enforcement were -- I guess, was surprising to me.

So I guess that's kind of an update on the work we've been doing to engage with LEA.

Does anyone else have any comments on kind of the work to engage the GAC members or the LEA?

YOAV KEREN:

Actually, I wanted to comment also on what Bertrand asked. I believe that the market is going to change significantly, our market, once verification is going to be there.

It's in different levels, so cost can affect us as registrars, but will certainly affect the registrants and -- but that's not the only issue.

There is people who are talking about issues of freedom of speech, all kinds of issues that can arise out of this change in policy.

So what we feel -- and I think I just want to stress something, and Mason already kind of mentioned it -- is that this is something that we cannot decide on only as registrars. This is something that has to get the community response.

And so if we're talking about how fast we can -- we can go forward, I think this is something that needs to go in some way to a policy or some discussion in the entire ICANN community and not only in the RAA process negotiations. Okay?

So -- and just to stress a specific point that I'm worried about, or I'm still puzzled about, is: Once this is going to happen, it's going to happen at the gTLD space, but what is going to happen at the ccTLD space?

So if we're going to take this entire market through a very significant change and the only thing this is going to do is just push all these problems to the ccTLDs which many of them might not follow the same rules, then we did nothing. We just maybe -- it would be too hard to say "ruin the market," but change it significantly, maybe did some harm, and the problem will not be resolved.

So the only -- the main point I'm trying to say here, this is something that we all need to be very careful in how we -- we do it and get into the details, because details in this case really matter.

Oh, I didn't mention that my name is Yoav Keren and I'm from Domain The Net.

BRUCE TONKIN:

Just a comment or an observation I would make in the way even you're communicating it at the moment. But you've obviously got a very strong focus on the law enforcement requirements, and that -- as I think Mason was saying, that's what's been prioritized in the discussion between the registrars and the staff.

I attended the GNSO Council meeting, or GNSO meeting, on Monday -- Saturday -- I'll get the day right -- and, you know, clearly from there, there was people from other constituencies of the GNSO, such as the commercial stakeholders group, that also had some areas that they were asking for. In fact, Bertrand more or less asked for that as well.

And it's kind of indicative to me that no one could even answer what they were.

So that tends to imply you're not putting a lot of focus on it.

My question would be: What outreach are you doing to the other parts of the GNSO to communicate with them about some of their asks? Because I'm not really seeing that happening. And I think the downside of that is that when the final agreement's published, they're going to go, "Hey, you didn't take any of our considerations into account," and you may get pushback from other parts of the GNSO.

So just interested to know how you are engaging or planning to engage with the other parts of the GNSO and give some of their sort of priority items, so to speak, some consideration.

MASON COLE:

Okay. It's a good question, Bruce. I think the answer -- the best answer is that staff and registrars committed to updating the community as a whole throughout this process. The comprehensive update was given on March 1. There certainly will be others. And I think registrars -- and I don't want to speak for staff, but I wouldn't be surprised if they felt the same, but I know that we already anticipate that there will be some level of discomfort in the community if someone's amendment didn't get in.

And, you know, we -- in order to get the work done most efficiently, we were -- we did find ourselves in a situation where we had to prioritize.

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Now, you know, that's certainly not to say that there -- the other issues won't be addressed. I believe they will.

But I just don't think capacity -- in capacity terms, it would be very hard to get everything accommodated in one session.

BRUCE TONKIN:

Then I think a lot of what you're talking about there is communication, because sometimes there's an overlap between the law enforcement requests and requests from the other parts of the GNSO. They might use different language, but they both have the same objective. And some of the stuff that you've negotiated to whatever the solution that you might negotiate, then I think you've got a communication issue of saying, "How does that solution help address one of their requests."

I mean, it's very important that you don't just rely on a document that's probably geared more to the GAC and the LEA and not think about communicating with other parts of the GNSO.

MASON COLE:

You make a very good suggestion.

Bertrand?

BERTRAND DE LA CHAPELLE:

Just a corollary. The registrars are in a very-rock-and-a-hard-place type of situation because you are the front to the users, you are the interaction with your own registry that provide you the elements. There's the law enforcement desire to access the data. Whatever.

We understand all this.

The challenge is that because of this particular situation, it's becoming a benchmark for a lot of other actors regarding whether ICANN functions or not as a whole, and what I'm extremely concerned with is the kind of spiraling that has actually been influential in some of the delays in the new gTLD program itself, regarding the lack of trust, the concerns. Justified or not is not the point.

But for instance, within the GAC the concerns of the law enforcement agencies was a looming concern that has been growing progressively, and because it took time to address it in a way that expressed goodwill in a sufficiently visible manner -- let me put it this way -- it triggered a backlash in terms of lack of trust and resentment and desire to add more and more and more requests.

I just want to share this at this moment because we are at a particular instance where the registrar constituency is diverse and some of the registrars will have a very important role in the new gTLD program because of the capacity of vertical integration and their migration up the value chain in an extremely important role that will be much more business interesting and so on.

So the reason why I mention this is because this means that it behooves you to have a particular responsibility at that point to send the right signal to the right people and to do whatever is needed to really deliver, even if it's painful. And I don't get into what you have to agree to.

There is a need to deliver within the time line that we are talking about. If it's a few weeks, as you said, it needs to really be the target.

Because otherwise, the board will be in an absolutely untenable situation where the pressure will come from everywhere because we don't deliver. We are completely in a situation where this process is not in our hands.

And if you don't want, and if the GNSO doesn't want, a situation where the board puts its fingers in the end in something, there are moments where it needs to be done, and now is the time.

I know that Steve Crocker said that in Dakar. Things have progressed since Dakar, clearly, but now is the time.

MASON COLE: Bertrand, I think we can all assure you that we're very well aware of everything you just said.

GRAHAM CHYNOWETH: Stephane, did you have a comment?

STEPHANE VAN GELDER: So let me try and put my foot in it, if I can.

>> (Speaker is off microphone.)

STEPHANE VAN GELDER: I probably should. Probably be safer.



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Bertrand, your comments, the comments that you've just made, we've been hearing. I just want to take this to a larger discussion, if I may, from your comments, because we've heard this on a number of things: The signals that we should be sending are signals of results, and if we don't, the board will have to come in top-down and do something about it.

I would just caution -- although I understand the good intentions that you have in saying this on this specific issue -- and once again, I'm not talking about this specific issue -- I would caution that the model itself that we are all defending, in love with, happy to deal with every day and to continue fighting for, is one where community-driven bottom-up consensus work is crucial.

So that work sometimes doesn't happen as fast as we'd like. We've all seen instances of that.

But I do get worried when we get repeated messages of "Either you do this in a timely manner -- i.e., very fast -- or we will do something about it and force you to do it."

I'm not saying that's what you've just said, but the message is, if we're talking about messages, that message also could be construed as being slightly against the bottom-up model.

So I just -- I think it's really important that we all defend that model, because to me -- and I think we all agree on this -- it is the best and most flexible model for the Internet governance that we seek.

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GRAHAM CHYNOWETH: We actually -- yeah, that was -- we had three topics to cover, and that is the --

Oh. Steve. I see a hand.

STEVE CROCKER: So I very, very well appreciate the emphasis that you put on this, Stephane, and the -- it's not the desire or the intention of the board to be confrontational or to be threatening.

And many of us -- and particularly me -- have grown up in the multistakeholder business and in consensus and bottoms-up and so forth.

We do not want to be in the business of interceding, and if we felt compelled to intercede, it would not be to substitute ourselves for and say, you know, "We're going to make these decisions." It would be to -- in the sense of, "We're from the board and we're here to help you." It would be to sort of help you understand why things are stuck.

The syndrome that concerns us is when the consensus process doesn't reach a conclusion and just ends, either because there's some dysfunctionality or perhaps because there's some gaming where it's just not advantageous to one party and they're able to stall it.

The ideal is that as part of the consensus process, as part of all of this, that not only do you have the inclusiveness, but you also -- and when I say "you," I mean not just this group but every group -- also internalizes the notion that it's important to get to an answer somewhere and that it's not okay to remain stalled.

And if that internal drive -- if that sense is included as part of the internal ethic, then the issue of the board, you know, coming on and saying, you know, "We're going to take over from you" will not arise.

And I think, you know, we have quite common cause in all of this, and I would say at worst, we're sort of in an evolutionary growing phase to learn how to be effective at this process, as well as inclusive, and -- but there's certainly no desire to engage in a power struggle.

GRAHAM CHYNOWETH:

Thanks. I saw another hand from the gallery here.

Elliot.

ELLIOT NOSS:

Yeah. I think especially, Bertrand, I would note that, sadly, comments like the ones you've just made don't stay inside these walls and they make -- and I know it's not your intention, but they make reaching a deal that much more difficult.

Because what they do is they put the other side -- we've heard this numerous times. I can't tell you how many times Steve's resolution from last time was played back to us. What we hear numerous times is, "You better do what we want or they will make you. They said they would. They told you they have to do this."

So I do appreciate the intention, but please understand that it really, really does make things more difficult.

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GRAHAM CHYNOWETH: Bertrand?

BERTRAND DE LA CHAPELLE: If I may, thank you.

Thank you, Elliot, for that.

One point to Stephane, which is: Consensus-driven doesn't mean, as Steve said, that you have to wait until consensus arrives. Consensus-driven means that there are moments where there is a need to find something.

And to Elliot, your argument is absolutely fair, and in order to allow this statement to be fair if it goes out, I will add exactly the same thing on the law enforcement side.

It is the responsibility of the law enforcement agencies to have a proportionate request and make the requests that are appropriate to the goals that are pursued and not to try to leverage an instrument in some cases for the purposes that it was not intended for.

The session yesterday was extremely useful, and if anything, it allowed people in the room -- and certainly me -- to understand much better the distinction of what should be done around the WHOIS and what should be done around the collection and access of other types of information.

That is something that should not be conflated systematically, and inasmuch as in any negotiating side there are conflicting interests, on any negotiations there are extremists and a middle ground. And what I've said for the registrar constituency is equally valuable and I have no problem repeating it to any law enforcement or any GAC member or

former colleague of mine in that respect. Now is the time for the law enforcement agencies and the registrar community to find an agreement on the documents and the elements that are proportionate and to start discussions on other things that are useful for the whole community.

And if this is not clear enough, I'm willing to get any kind of input to help me clarify it and make the negotiations useful on both sides.

It is not a one side's pressure. It is a message on both sides. It's purely personal. I don't pretend to speak on behalf of the board here, although I believe a lot of my colleagues share my position. It is a pressure on both sides to size the discussion so that you can reach quickly something that shows progress and then continue the discussion on the other topics.

BRUCE TONKIN: Thanks, Bertrand.

JOYCE LIN: Could I say something?

BRUCE TONKIN: Anything else? Any other --

JOYCE LIN: This is Joyce Lin.

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GRAHAM CHYNOWETH: Did I hear someone on the phone, maybe?

JOYCE LIN: Yes. Joyce Lin 007names.

GRAHAM CHYNOWETH: Could you please speak up? I cannot hear you.

JOYCE LIN: Joyce Lin, 007names.com.

Can you hear me?

GRAHAM CHYNOWETH: Sort of.

JOYCE LIN: Okay. I just wanted to point out one statement that the gentleman --

GRAHAM CHYNOWETH: I'm sorry. Could you please identify yourself? We didn't hear your name. I'm sorry.

JOYCE LIN: Joyce Lin. Joyce Lin, L-i-n.

GRAHAM CHYNOWETH: She's a registrar.

BRUCE TONKIN: Yeah. That's right. Joyce Lin is a registrar. She's on the phone with a question.

Please go ahead, Joyce.

JOYCE LIN: Yes. I just wanted to point out that the statement that the gentleman just said. He said that the registrar collect the information. I would rather put it this way: We do not collect information. Registrants provide information to us. There is a slight difference there, because if we collect, that means that, okay, we're going to need your ID -- driver's license or passport -- before you can do business with us, so we can verify that. Then that's we collect.

But right now, most registrars, the models for domain name registrants are they provide us the information. And by being provided by the -- from the registrants, we really have very little control on that information.

I just wanted to point that out.

GRAHAM CHYNOWETH: Thank you. Volker.

VOLKER GREIMANN: Maybe just to -- I'm Volker Greimann with Key-Systems. I'm on the NT. Maybe just to add a little point to the points raised by Bertrand and

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Steve, where the term "stalling" or "not moving ahead" were concerned.

The current draft versions of the agreement are going ahead every week. There's progress. There's no sign of stalling. We're working very hard, both staff and the registrars, to get an agreement. Sorry. My -- I have a bit of a cold. We've worked very hard to get an agreement. We are making progress. We are trying our best to incorporate what the -- to interpret what the law enforcement agencies want, because that's not always very clear from the requests. And the interpretations between staff and registrars are a bit different sometimes because of what they hear.

I just wanted to say there's no point in saying that there's any sign of stalling or lack of progress. There is progress. It might be slower than we desire it to be, but this is not like the vertical integration working group where in the end no result is forthcoming. We already have very substantial results in many issues. The language has been written and it's very close to completion on many important issues.

We do not have a final result yet and we expect to achieve that within the next few -- I would say two or three months. Weeks, perhaps.

BRUCE TONKIN:

Ray?

RAY PLZAK:

Thank you, Bruce.



You know, I've been sitting here listening to this back-and-forth and, you know, the next thing I do is think you guys are in agreement with each other, and I think you both under- -- both understand the sense of urgency, understand the consequences of things not getting done. You know, I'm waiting for you now to get up and stand face-to-face and kill each other over your agreement.

So I think we all understand and we're all right there, and so I think the reason that we have this going on is that there's frustration that's being felt, but in the end, I'm confident that something's going to happen and I think that everybody appreciates the sense of urgency. I think everybody appreciates the consequences of things not moving along.

And so I want to commend you on the work that you're doing, and so I'm not going to speak for Bertrand, but I think that he's just trying to impart his personal feelings with regards to the sense of urgency as well.

GRAHAM CHYNOWETH:

Thank you. I think it's -- certainly it's wonderful, I know, for the people that are working very hard on the negotiating team.

I'm not on it. I'm just chairing the SG. But these guys are working incredibly hard. And so to get that kind of response where it's recognized, that effort, as opposed to, you know -- we feel an incredible sense of urgency, but to get that kind of support is really wonderful and I'm sure appreciated by the folks that are working that hard.

Any other comments? You had a -- you had a comment you wanted to mention?

ROD BECKSTROM:

Yeah. Just very briefly, I mean, building on what Ray said, obviously there have been enormous efforts on both sides. I mean, this is obviously a long-term issue. I mean, since I came to ICANN, you know, almost three years ago, law enforcement was urging me that something had to be done. We also -- I want to -- just a couple of things.

Number one, I think this is the most earnest and in-depth negotiations, at least that I know of, in ICANN's history on the topic. Certainly in the last three years.

Secondly, I really appreciate the fact that more law enforcement parties are at the table, and -- you know, and INTERPOL and some of their partners, as well as other law enforcement groups that have traditionally been involved, which I think enriches the discussion and is really important for ICANN's credibility, particularly at a time when there's questions about, you know, how to most effectively engage governments in our model here, as opposed to alternatives somewhere else.

So just want -- wanted to comment on that. I know there's extremely hard efforts and -- and clearly as I'm soon leaving ICANN, it's one area where I hope, you know, that you all have success, and hopefully sooner rather than later, but I think -- I think you know just how important it is.

So thanks for the hard work and good luck. You know, continue to push to the middle ground, you know. And I hope that -- that -- that we can continue to assist in our way.

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Because in some ways, the staff is in the middle, trying to help get to a successful conclusion. So thanks for your constructive engagement with the team. Thanks.

GRAHAM CHYNOWETH:           Stephane?

STEPHANE VAN GELDER:       Thanks. I think we've still got a few minutes left, perhaps.

I just wanted to approach another topic.

I was in your discussion -- the board's discussion, sorry -- with the registries a few moments ago, and I just wanted to say the registries mentioned the importance of having some industry knowledge on the board. I think they did so very eloquently. I won't repeat their messages, obviously. But I just wanted to say that I think the message they gave the board is an important one.

I do feel that -- and the response from the board that I heard when I was in the room was very positive towards balance and the need for both industry knowledge and obviously knowledge outside of the industry.

I just wanted to reiterate that. Because I do think it's an -- once again, if we're talking about messages to the outside community, one of the aspects that makes this -- the board a dynamic and rich board and one that is able to drive the whole community and this whole process forward is also going to be industry knowledge.

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And I think, you know, all our discussions today have shown that, that there's an element of industry knowledge that's needed and there's also an element of -- of outside scrutiny that is needed.

So I think both of those, if they are balanced -- and we don't consider that one is bad against the other -- is probably a good result for us as a community.

Thank you.

GRAHAM CHYNOWETH: Mason?

MASON COLE: Just to echo a bit on what Stephane said and to offer a bit of experience that might illustrate that.

In our discussions with the GAC about the RAA amendments, I believe that we learned that various levels of familiarity with registrar operations contributed to the difficulty of the GAC understanding where our problems were.

So in this last session that we had in Washington, D.C. with members of the GAC -- I think I speak for the rest of the negotiating team -- it was far more productive, because we were able to finally help them understand what it's like to operate a registrar.

And they even asked at that point, "Would you be willing to conduct a seminar for us on registrar operations, so that we would understand where your problems are?"

Because if you're not sufficiently educated about the difficulties of an ask, say, in a RAA amendment, you don't understand why -- why things get gummed up as they do.

So perhaps we could do the same for the board, if the board would find that useful, or otherwise help out with the board's understanding of what it's like to be a registrar.

Anyway, the registrars, I think, are willing to contribute more to that solution, if that's desired.

ROD BECKSTROM:

And I can offer on what it's like to be the CEO.

But I want to thank both of you for your comments and just say I totally agree. I mean, the expertise that the stakeholder groups and constituencies bring to the table in the multistakeholder model is what makes it rich and is what leads to better policies and better programs.

So thank you.

GRAHAM CHYNOWETH:

Yeah. I guess we'll -- with that, thanks. Everyone, thanks for the time, thanks for inviting us, and we look to chatting with you in the halls and seeing you next time.

BRUCE TONKIN:

Thank you, Gray. Thank you on behalf of the board.