
CR - Ethics and Conflicts of Interest

Monday, March 12, 2012 – 15:00 to 16:00

ICANN - San Jose, Costa Rica.

Ladies and gentlemen, if you take your seats, we are going to begin our program immediately.

Ladies and gentlemen, I would like to introduce ICANN Board of Directors member Cherine Chalaby.

CHERINE CHALABY: Good afternoon, everyone.

This next session, we would like to bring the community up-to-date with the work we're doing on conflict of interest and ethics.

With me here, we have two board members, and they are members of the BGC as well, Bill Graham and Ray Plzak, and as well as our General Counsel, J.J., otherwise known as John Jeffrey.

Okay. What's the agenda for this afternoon? Basically we want to review our plans and make you familiar with them. We want to update you on the work we are doing, specifically with outside reviews as well as our internal work. And then we want to pause and take questions from all of you.

Okay. So the first starting point goes back to where we were in Dakar.

J.J., can you move the slide?

We talked about conflicts and the work we were doing in Dakar, and we said we would like to enhance our conflict or interest policy to more clearly address the hard cases, and not only those that relate to actual conflict but also those related to perception of conflicts. And I think the most important thing here is to raise the bar to the highest possible standard so that there's no perception of conflict at all.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

We also like to enhance our Code of Conduct. And because of that, we have asked various firm to review our work. Now, rather than get into the detail myself, I'm going to pass over to John Jeffrey who is going to take us through the work we're trying to do.

John.

JOHN JEFFREY:

Thank you, Cherine.

We currently have three reviews that are under way. The first one is being conducted by ICANN's corporate law firm Jones Day, and we will have a speaker from Jones Day who will go into some detail about where they have gone with it following the brief presentation and introduction. They're working on a number of documents, including our conflicts-of-interest policy and a revision to that, Code of Conduct and employee handbooks. Some of those from the BGC have recently been posted on the Web site for comment.

Our second review is with an independent law firm, Cooley, a Washington, D.C.-based firm. Two of their partners are helping us in a review of ICANN's processes from a different perspective, not from being in the day-to-day corporate advice providing business to ICANN.

And they're comparing ICANN to some of the.

(scribes receiving double audio).

And then the third review is being conducted by an international expert group that will review ICANN's ethics and governance mechanisms and we'll have.

(scribes receiving audio from a conference call).

We believe we have seen so far relating to this program include the Board adopting in December new stricter rules for consideration of conflicts of the board relating to new gTLDs, and there's also been the



formation of the BGC subcommittee on conflicts and ethics, and that group is comprised of three independent directors that are without conflict, Cherine Chalaby, Bill Graham, and Ray Plzak, all sitting to my left. So they are now sitting on the subcommittee within the BGC that deals with conflicts and ethics and the oversight of these reviews.

We're also, as we have already mentioned, looking at revisions of the conflicts-of-interest policy, the Code of Conduct, and the expected standards of behavior. And you will remember that specific document is the document that's meant to be a communitywide document, which is available on the ICANN Web site as well.

And last, we've created a governance documents page where you can find all of these documents in one source. That's come already from a specific recommendation from the second review, from the Cooley review that said when they came as an independent group not that familiar with ICANN and looked at all of the information available on the ICANN Web site, it was much easier to find it if we'd put it in one place where they could access it. They gave us examples of reaching old versions of policies instead of being able to find the new ones if they were using a Google search.

So now we're going to go to the phase where we have specific updates on the work. And for that, we have our Jones Day lawyer on the phone, Lizanne Thomas.

LIZANNE THOMAS : Yes, you do, John. Can you hear me all right?

JOHN JEFFREY: Sure can. Thank you.

And Lizanne Thomas, we have a brief bio on the screen. She heads Jones Day's global corporate governance team. She participates in more than 100 board meetings per year as counsel to public companies. She is also a member of the Board of Directors of Krispy Kreme



Doughnuts and serves on the chair of their governance committee and Compensation Committee. We have also found working with Lizanne to be a great pleasure because of her vast experience in corporate governance policy.

So with that, Lizanne, I will let you introduce the work you are doing on your first review.

LIZANNE THOMAS :

Terrific, John. Thank you very much, and ladies and gentlemen, I am happy to be part of this discussion.

This is very early in our work to examine the corporate governance efforts of ICANN, and so while my cover page indicates that this includes recommendations, I think it would be fairer to say this will really constitute preliminary observation.

Let's start with the theme. Those who spend a lot of time in the corporate governance field, while we consider it important -- indeed, essential -- it's important to know it's not an end of itself. It's a tool. It's merely a tool that will facilitate good decision-making without self-industry.

One of the points I want to stress is in the context of conflicts and of governance you will frequently hear, quite properly, references to best practices. And here, interestingly, you might not hear me use that phrase. And one of the reasons why is I really think it's essential to understand that best practices is not a one-size-fits-all theme. As I have begun to be introduced to ICANN, it had not been my privilege to be introduced to you previously, but as I have begun to get to know the organization and the community, one of the things that I have realized is that all of these provisions very much need to be tailored to ICANN itself, taking into account not only how you have matured but where you are headed. And that's going to be a big theme of what we end up recommending and proposing in various steps.

So let's accept that it's an evolutionary process. Let's accept that we are going to establish what is best for ICANN itself, and know that it's going to continue to evolve over time.

Let's flip to the next page.

As a general matter, what we look for in excellent corporate governance are really three things. The first is having an excellent tone at the top.

We need to back up a couple of pages, whoever is putting those screens up. Right there.

Tone at the top, really 92 head to be a consistent tone and a devotion to integrity and ethics.

The second is transparency, that there be openness, communication, and true accountability for the decision-makers on various issues.

And then finally, something that I find to be a delicate and important issue for organizations throughout the world, whether they are corporate, for-profit, not-for-profit, public or private, is to establish a real clarity of role as between the Board and management. The clarity is needed I think because everybody is trying to earnestly contribute to the progress of the organization, but sometimes they're not abundantly clear on where lines of responsibility begin and end. So to that end, it's one of the things we are going to pay attention to as we move forward in these particular efforts.

The themes would be for board members their duty is to the company as a whole not a single constituency; to establish a culture of continuous improvement; and then to make sure we balance roles as between board and management, as I indicated before.

But before we get into defining some of the efforts that I think the company should undertake -- yes, we're on the right page with the

governance successes -- I think it's time to pause for a moment and allow ourselves to understand where ICANN can claim success.

There have been a number of things that ICANN has done through the course of its life that I think are really truly singular achievements. And this is in the rubric, and let me pause for a moment to say while governance is what I do, generally in the realm of public companies, I think it would be a great and huge mistake to think that what applies to the corporate world generally can simply be scooped up and applied to ICANN.

This is a unique organization with unique attributes and unique priorities that I think really need to be appreciated and incorporated into these policies as we continue to improve them over time.

So here are some of the things that I think we need to take credit for collectively that are already in place.

The first is that you already have a multistakeholder policy development process. I would actually tell you that I think the corporate world is going to move in that direction but is far, far, far behind ICANN in that regard.

The second is ICANN's extraordinary commitment to transparency. What I have seen in terms of the dialogue that takes place, it stands you in great rarity compared to other organizations, including multi-national organizations with respect to that kind of transparency.

Unprecedented community and stakeholder involvement, diversity of your Board contribution and skill set, and then real mechanisms for accountability and review.

You already have, as John just referenced, a number of existing governance policies and procedures already in place. Sometimes they have been a little bit hard to find, and so we wholly endorse the recommendation that came from one of the other supporting advisory

law firms to say maybe we need to put all of those in one place, and I'll talk more about that in a minute.

But in conclusion, with respect to where you can take credit, really take credit for the things that you have already done. The philosophy of this organization has already established a baseline from which we can develop improvements. And I think that's important. We are not trying to start at the very beginning here.

In terms of opportunities, where we might take these issues on governance and on conflicts, the goals that we have heard and hear on both stating and requesting feedback is that we look to achieve the highest standards and ethics and integrity, and secondly that we streamline and consolidate your policies, your procedures, make sure that we have them in a way that's accessible. If they're not accessible, frankly, they're not going to found, they're not going to applied. And then set up a mechanism that allow us to continue to make updates to reflect this maturing and changing organization.

So these were the areas where we saw opportunities for continuous improvement.

How does that turn into current potential action items? We have really focused on five initiatives right now. These are really ones that I think are accessible now. They have already been posted to a large extent for public comment. And here I'm just going to summarize them.

The purpose of my discussion today is to not get into the details of recommendations that we've made but, rather, to let you know what our approach has begun as and where we intend to take it.

So here are the first five items.

We have already proposed a certain amount of updates to your Board's conflict-of-interest policy.

We are suggesting, and I will come back to this in a minute that, you adopt corporate governance guidelines.

Third, to refresh your Board Code of Conduct.

Fourth, to refresh the communitywide expected standards of behavior.

And then finally, as you have heard reference before, to update your governance page on the ICANN Web site.

Singling out a couple of those to start with would go like this. The governance page on your Web site needs to be a singular, one-stop shop. If somebody wants to understand how decisions are made within ICANN, this would be where they would begin, and anything that you would click to would be current state of the art, this is how we govern ourselves, this is how we go about making decisions. Something that's easily accessible.

I will tell you that this is consistent with the corporate world and for a number of members of your constituencies out there, they're going to expect to see this and expect it to be state of the art. So we do think that's a current action item that doesn't bring into play really any policy issues. It's just making sure that you can immediately access it. And I would put that under the rubric, not that I like to use it often, of best practices. We indeed to have that and have that be immediately accessible.

The second one of these that I want to single out, going backwards up the list, are to suggest that you adopt some corporate governance guidelines. Those again have been posted for comment. While the concept of governance guidelines is something that we see take place with a number, again, of corporate organizations, we also see it with other multi-national organizations.

The purpose is to address items that are descriptive as well as policy in nature.

So, for example, the governance guidelines draft that we have submitted for your benefit covers such actions -- such items as the role of the board, articulating what that really is. A description and summary of the manner in which the board is surprised and how the board is selected. A description of how its meetings are conducted. A description of the performance and evaluation review that takes place with respect to the board. A description of succession planning for boards. And in addition, other such items as a description of how the board members may or may not be compensated, the committee function within the board, and then board education and updating as well for purposes of the policy of continuous improvement.

We've put up a draft of those governance guidelines. They are decidedly a first draft, and we look forward to receiving comment from the community on those.

The other three all are in the rubric of updates and revisions. The conflict-of-interest policy, the Code of Conduct, and standards of behavior.

The conflicts-of-interest policy now, as we have posted and proposed it, really sets forth procedures for disclosing and addressing conflicts of interest for all members, all covered persons, as it were: directors, liaisons, officers, key employees. Our goal here was to strengthen the disclosure piece of this policy, to strengthen its process description and how we would evaluate both actual and potential conflicts of interest.

I think the changes that we have made thus far are consistent with a lot of the discussion that I have heard take place over the course of these meetings, but it can always be improved, and we are looking forward to hearing more about that as we go through this process.

A quick example of the kinds of policies that we've built into this particular conflict-of-interest policy would be the concept that no conflicted director can vote on any matter for which the director is conflicted, but if invited, can participate in the discussion. I know that's

one of the topics that many of you very much want to discuss, and I think we're very open to hearing how that discussion is going to move forward.

In addition, one of the things that we want to do because of the importance of ICANN's function and the importance of these conflicts provisions, we want to strongly emphasize that there are consequences for a failure to comply, and we have developed those in that draft policy.

You will also see a Board Code of Conduct specific to the Board itself. This again is something, for those of you who live in the corporate world, expect to see something like this and we thought it appropriate to have something along those lines. So a Code of Conduct has been inserted for comment as well. The goal here is to make sure that there's a clear sense of purpose and duty, directors and liaisons as well, foster ICANN's mission and core values in an ethical manner.

So you can see that and get some comment on that.

And finally, the last one that's communitywide are ICANN's current expected standards of behavior which are designed to show how all parties involved in your multistakeholder process can know what's expected of you and how to conduct yourselves. This is something that's been in place for a while and continues, I think, to support the core values. But we have to tweak that a little bit to make all these documents internally consistent.

Now, saying we have tweaked makes it sound like I am speaking in terms of past tense and I want to make it very, very clear that this is an iterative and evolving process and we are looking forward to receiving comment from the community to make sure that our drafting effort really takes into account everything that we need to take into account.

Which allows me to turn to the final page. This is really just the beginning. One of the things that I think, particularly given that I am

speaking to this organization as a disembodied voice right now, I think it would be presumptuous of me to say to you that what we have presented to you is final and should be adopted as is. To my mind, it's very important that this be a collaborative --

JOHN JEFFREY:

Lizanne, we are having a little trouble hearing you. Is there any way to improve the audio?

Perhaps just talking a little bit slower and a little louder and see if that will help. Thank you. It could be the connection.

LIZANNE THOMAS :

(indiscernible) had been quite clear before. My apologies.

I am really at the last page of my presentation and want to say we consider this an ongoing process. We're just at the beginning and are looking forward to receiving comments from everyone.

There can possibly be some longer range and more significant governance changes that the community may be willing to consider, but once again, I think it's premature at this point for us to compose any of those. But I wanted you to understand that we're not remotely thinking that all we are about here are iterative changes. (Indiscernible) there are significant steps forward with respect to the governance provisions or the conflicts provisions that need to take place over time, we're very open to proposing and considering those.

John, at this point I will call it to a halt. I hope everyone was able to hear me clearly.

JOHN JEFFREY:

Thank you. It sounds like you are coming to an end. We are having more difficulty hearing you. We will stop at that point and perhaps we will deaden the line and see if we can pick it up a little bit better while we go over the next part.

LIZANNE THOMAS : That sounds fine, John. Thank you.

JOHN JEFFREY: Thank you. Thanks so much, Lizanne.

So let's go on to the next slide.

The second review is being done by another law firm. This is a review from a firm that's not familiar with ICANN, as we said. Joel Brenner, who is leading the effort for Cooley, was unable to join us tonight as he has a speaking engagement at the London School of Economics, but we do have a couple of things to summarize just in what they're looking at.

It's been confirmed that they will finalize their report in the next week and will publish it to the ICANN Web site for review by the Board Governance Committee and the community, and we'll put it in a place where it can receive comments.

They have conducted two reviews, which we believe both are now finished. The first review is just the initial review that we spoke about in Dakar where they had gone through, looked at where they could find documents on the ICANN Web site, and found that there were some problems. And they recommended that we improve the governance document page and centralize those things, and that recommendation was, in fact, adopted and that's been done.

The second review is a review of a comparison of ICANN to an international association or NGO and IGO and to a publicly-held U.S. corporation. And they have gone through those three points and are finalizing their report right now. That will be posted, as I said. So they also will be making recommendations based on the review and comparison against those three entities.

So that's part two of the review.

And then we'll go to the third review, where -- if Jermyn Brooks is on the line, and hopefully with a great connection, we can get him to speak a little bit about the group that he has formed, which is an international experts group, perhaps give a little bit of bio on the three panelists -- the three reviewers, and then we can, after that discussion, we can go to questions.

Do we have Jermyn on the phone?

JERMYN BROOKS: Thank you very much. If anyone can hear me in the meeting.

JOHN JEFFREY: Thank you, Jermyn. Please, go ahead.

JERMYN BROOKS: There are two previous stages to the work that we'll be doing, and our work is based on resolution at the board, looking at how policies on conflict of interest, ethics, confidentiality issues, and Code of Conduct can be improved. And with the same resolution it was resolved to form an international expert group following the work being done by the two legal teams with a very specific focus looking at ICANN's global function, and also international best practices. They will be treading on some of the same ground that we have heard the second legal team from Cooley will also be covering, perhaps with a slightly different perspective.

Now, the international expert group we put together from three people representing both different geographies but also slightly different expertise backgrounds. First of all, Mervyn King, a very well-known retired judge from South Africa who has become known, if you like, as the King of corporate governance. He, in fact, was responsible for various King reports which led to company's acts in South Africa and received a very high rating internationally.

He then worked very strongly with the global reporting initiative and became chair. He is now honorary chair, having moved on from that.



And there is another very interesting international initiative called the Integrated Reporting Initiative, and he is now chair of that particular initiative.

So I think we have, with him, a real expert, and also representing, to a large degree, the African continent.

The second person on the team is Aron Cramer, known to many in California as the president and CEO of Business for Social Responsibility not-for-profit organization, which is very committed to both developing social responsibility and sustainability in business, but himself representing, of course, a not-for-profit organization, is very familiar with both sides of that particular way of operating, the not-for-profit world as well as the business world.

My own background, Jermyn Brooks, is I had a career in public accounting, ended up both responsible for and running the merger between PriceWaterhouse and Coopers & Lybrand, and obviously had, through many years working in different departments and different countries with PriceWaterhouse and then with PriceWaterhouseCoopers, experience in giving advice to companies on a whole range of issues, including corporate governance.

Since retiring, I have had a very varied experience of both the NGO world, the nongovernmental organization world, also intergovernmental organizations, and a whole range of companies who asked for advice in the area of corporate governance, transparency, and in the main area of Transparency International, which is the NGO that I have been involved in for over ten years on how to deal with transparency and ethical issues, particularly in relation to bribery and corruption.

So that is the kind of background of the three people who we've put together to form this international expert group, and the idea is that we hope that we have sufficiently leading reputations in our area to give recommendations to the Board and management of ICANN, which will

give both international and expertise credibility to the recommendations that we come up with.

What we've suggested, and we're at the point of finalizing our contractual arrangements with ICANN, so we're right at the beginning of this process, we suggested that we form the work over the next couple of months in three phases. The first will be, of course, fact collecting, diagnosis of the issues to be resolved, and we're looking to complete that during March and early April.

Phase two will be a brainstorming effort on the development of recommendations. That will go throughout April and into early May.

And the third stage will be -- will take the form of presentations to ICANN's executive and the board. We feel that that's very important in terms of having greater understanding for our recommendations and ultimately hopefully gaining buy-in to those recommendations for the future of ICANN.

There will probably be two phases to those presentations. A draft of our recommendations is proposed to be put to the workshop of the Board in Amsterdam on the 7th to the 9th of May, and then final presentations to the board meeting in early June. And of course in the intermediate periods there will be discussions with the executive and taking feedback from the draft presentation which we'll have made in May.

So that is the overall process that we're looking at. And finally, I'd just like to raise a few words about the area we will be covering and the aim, if you like.

And from our perspective, the overall aim of the exercise is how to enhance the legitimacy of ICANN as a public interest organization. And you will all be very aware of the criticisms as well as, as Lizanne was pointing out, also the praise for some of the good work ICANN has done

in this area. But there is criticism there, so the overall aim is to enhance ICANN's legitimacy.

Specifically, we'll be looking at some of the same areas that Lizanne from Jones Day mentioned: How to improve the independence, transparency, and accountability of the board. We'll be looking at codes of conduct, and especially the conflict-of-interest policies of the board but also of the staff. And that will take us into the whole area of -- perhaps the fairly contentious area of board appointments and the processes of the Board Nominating Committee.

And then importantly, and something which I know has given rise to concerns in the board and in the executive, the area of what activities should be permitted both during and after board mandates as well as during and after employment of staff. And into that inevitably will come also some consideration of remuneration policies and how it is possible to bind both board members and staff members after the mandate, all the employment is finished, to certain patterns of behavior which are important for ICANN.

So at this stage, I'll stop at that point. I'm very happy to answer questions about our proposed approach. I think what we're really trying to do is to add both an international component in line with the very international nature of ICANN itself, and to be looking, if you like, beyond the field of legal best practice into best ethical standards and looking at codes of conduct from the point of view of maintaining the best possible perception of high standards, which of course is the key to acceptance and ultimately to the legitimacy of ICANN in this very important area.

John, I'll stop at that point, but I'm very happy to take questions.

I hope I was understandable, at least (garbled audio).

JOHN JEFFREY:

Thank you very much, Jermyn.

And, Liz, are you still on?

Oh, she's dropped? Or can we add -- Okay.

So we could go ahead and take questions, if it's okay with you, Mr. Chair.

CHERINE CHALABY:

Yes, I think. But before that, I think it would be wise to just summarize overall the timeline.

We mentioned the three stages. When should the community expect all of these reviews to be completed and when will the Board approve all of the recommendation coming through?

JOHN JEFFREY:

So all of the work is scheduled to be completed before the Prague meeting. That's the schedule that we have provided to the three groups.

In the first group, Jones Day, their work may, in fact, continue on beyond that as they are corporate counsel, so we will continue to improve corporate ethics and conflicts of interest and organizational issues that can be improved in that regard along the path.

As relates to the Cooley work, their reports will be published, and based on comments, this subcommittee would decide whether they would continue on and produce an additional report or whether that would be the end of their work.

And as for the ethics, the last group, the global experts, that group is currently scheduled, as Mr. Brooks indicated, to produce a report after consultation with the Board of Directors in Prague, or before Prague.

CHERINE CHALABY: I know time is limited but I will perhaps ask my colleagues if they want to say anything before we take questions.

Ray?

RAY PLZAK: Very quickly.

In addition to everything that's been outlined here, and as we said in the past, in our meeting in Dakar, for example, we take all this very seriously, but there are some other things we are doing besides the process things we're talking about here. And those are things to enhance the sensitivity of board members to conflicts and to further enhance the presence in our culture.

And one much those things we're doing is taking a real strong look at the training activities we already have in this area. And we recently had a Board Governance Committee meeting where we talked about enhancements we could be making in the training area as well.

CHERINE CHALABY: Thank you.

Bill.

BILL GRAHAM: Thanks, Cherine. I want to say for me this is a really critical issue. I think the multistakeholder model, and that is at stake here and that means I think it's important that we involve people who have direct knowledge and experience in the DNS area in all of our policy-making activities.

Some of those people will come from industry or otherwise derive benefit from the DNS, and that poses a challenge from the perspective of avoiding any perception of conflict of interest.

I think we can meet the challenge by creating robust mechanisms to provide the community with a level of comfort and confidence in our processes. But I think it's also important that the community as a whole think about its practices and what needs to be done.

However, for the moment, I think what's most important is that we understand what you think of the actions the board is planning to take and the mechanisms we've set up for the review so that we can continue to improve that.

Thanks.

CHERINE CHALABY:

Thank you.

Question.

JOHN JEFFREY:

And I understand Lizanne is back on now; is that right?

So if we could open up the mics so we have Lizanne and Jermyn available to answer questions if they are directed to them, that would be great.

Thank you.

MIKE O'CONNOR:

My name is Mikey O'Connor. I am a member of the business constituency, talking in my own bewildered capacity.

My reaction to this, I have also worked for several of the big accounting firms, the international firms, and my reaction to this presentation is that it's got to be an hourly fee's gold mine. This has got to be an incredibly expensive project with a lot of hours in it, incredibly complicated. Deliverables, work plans, schedules and so on.

And I suppose it's necessary, but in the interim let me offer you an ethics policy in one sentence that you can use in the interim.

When I worked for a very well-known international accounting firm, I was driven from one part of the engagement to another by a senior partner who told me this story. And I have used this in jobs where I have supervised tens of thousands of people. And I just offer it as an interim step where all of that work gets done.

Put in your mind, in whatever country you're from, the most brilliant investigative reporter that's on television.

In my country, in America, that would be Mike Wallace.

And the senior partner said, "Mikey, we use the Mike Wallace test. If you can stand up in front of my -- of a TV camera and be interviewed by Mike Wallace about your behavior and not look bad on international television, it's probably ethical. And if you imagine yourself being interviewed by this brilliant investigative reporter and you look terrible, it's probably not ethical."

And I would propose to you -- and I won't name any of the names, but you all know because that's the reason that you are here -- that some of the behaviors you are being triggered by didn't pass the Mike Wallace test and some of them did.

For example, I hear there are very stringent rules about accepting a drink on the part of the ICANN staff. And I would say, you know, there's a point at which accepting a Coca-Cola or a beer probably passes the Mike Wallace test, and there are other circumstances where they probably don't.

And so while all of that spectacular work is unfolding, you might consider something like that. Because I think it's really important. The first presenter did point out a notion, and I should use her words so that I don't confuse people any further. Hang on a minute. I wrote it down.

She said a consistent tone. And I think consistency of tone, when doing ethics, is really important. And I think those messages have to be really simple so that people can remember them. That's one of the beauties of the Mike Wallace test, is it's a very simple thing to describe.

My worry in all of this intergalactic work plan and structure is that you're going to wind up with something that's so complicated that nobody can remember what to do.

So that's my reaction.

>>

Thank you, my name is Andrea Glorioso and I work and speak on behalf of the European Commission.

For clarity at this point in time I am not speaking on behalf of the whole Governmental Advisory Committee but only on behalf of the European Commission.

We think that the board should be commended for the -- the board and the ICANN staff should be commended for the work that's been conducted. We are awaiting very eagerly for the results of this work. However, I think it's fair to also point out that the Board in its resolution of the 28th October 2011 in Dakar, and I read the resolution, said that ICANN's objective is to meet the following timeline. Research and analysis and initial review, fourth quarter 2011; public comment postings by January 2012; summaries provided to the Board Governance Committee for consideration and discussion in February 2012; Board approval in March 2012.

So as I understand correctly, nothing of this, the Board approval will not happen before Prague for sure.

So I think the community, certainly the European Commission, would expect and you mention the community will expect an explanation of why we do not have the decision by today.

And you will remember the Dakar meeting, you remember the Board took very precise commitment, in particular because the Governmental Advisory Committee made very specific request because there was a specific case, and there was a general perception that this issue had to be taken as a matter of priority.

Now, a delay of three months does not appear a (indiscernible) as a matter of priority. This is a distinction and I think should be clarified.

And second for clarification, the Commission would like to know whether the results of the reviews, the actual reviews, the text of the reviews will also be published. And I am asking this because it may be my error but I just checked, the public consultation page that was mentioned by the legal counsel of ICANN and all I can see there is the proposed modification to the legal text, but not the text of the review, which arguably has led to those modification.

I think if we need to -- if you want to have proper consultation and comments, you also need to explain why certain modifications have been made. And part of that is to provide the text of the reviews.

The ones that have been concluded and the ones that are going to be concluded, hopefully, we certainly hope for Prague.

Thank you.

PAUL FOODY:

Good afternoon. Paul Foody, speaking on my own behalf. There was a comment at the start by the lady from Jones Day that ICANN has a very high score in terms of transparency and I was wondering how that's possible when even at this stage I don't think ICANN has yet sent out an e-mail to the registrants. Now, 95% of ICANN's funding, I understand from ICANN sources, comes from those registrants. So how is it possible for ICANN to score a high transparency score when the simplest task has not been undertaken? Is there an answer at all?

JOHN JEFFREY: I think we've heard your complaint about that before, and I think the answer is it's much more difficult than you state to send a message to the registrants. ICANN clearly does not have the information of the -- or the name of every registrant, nor do we think it would be appropriate. If any of the Board members want to speak to that, I'm happy to be silent.

PAUL FOODY: Well, I recently received an e-mail saying that ICANN required my WHOIS data to be updated. Surely it's possible for the same sort of arrangement to be undertaken.

JOHN JEFFREY: I think there's a number of different forums relating to WHOIS information, and I would suggest that you could submit your comments to those forums.

PAUL FOODY: Okay. Finally, Rod Beckstrom this morning made a tremendous point of emphasizing public interest and public good. I wonder has ICANN yet established a definition for what public interest or public good might be.

JOHN JEFFREY: Well, ICANN is formed as a US California public benefit nonprofit. The public benefit aspect of that is defined under law. There's also been many discussions throughout ICANN forums about the intent of ICANN, it's goals and missions, and I think that answers much of your question, but if you'd like to submit that in writing, we'll be happy to try to answer it.

PAUL FOODY: Thank you.

CHRIS LA HATTE:

Hi. My name is Chris La Hatte, and I'm the ICANN ombudsman. So this is something more of a commercial for my services rather than a commentary on the rather interesting work which is being undertaken. Because, of course, it is my role when things don't happen according to those rules to have a look at them and make recommendations. And I'd remind members of the community that the ombudsman are specifically available to investigate those matters and that perhaps often, rather than write a blog which criticizes or start Twittering about something, there is a very specific method of complaining to someone who is independent and can investigate the matter and perhaps armed with the new rules which we're about to see, may well have more teeth.

So that's my advertisement for the services of the ombudsman. And if any of you want to come and see me, you know where I am, in the lobby of the main hotel. Thank you.

JANICE LANGE:

Janice Lange ICANN staff speaking on behalf of remote participant George Krikos. Will ICANN review and publish possible past Conflicts of Interest, incidents, or merely focus on the future. For example in 2006 there were minutes taken at a meeting with both Vint Cerf and Veni Markovski voted on the renewal of dot org, run by PIR owned by ISOC. However, Vint Cerf was a founding president of ISOC and Veni Markovski was an active board member of ISOC.

JOHN JEFFREY:

We can certainly submit that question to the reviewers to see if that's within the scope of their reviews. Cherine, did you want to call on Marilyn?

MARILYN CADE:

My name is Marilyn Cade. I would like to echo, I think, a few of the -- I think that I won't say I'm going to echo the words but I think some of the sentiments that Mikey O'Connor expressed but I'd like to start out by first of all noting that as the chair of the business constituency, although I'm not speaking for the business constituency, I am going to

note that the issue of ethics and Conflicts of Interest are a high priority to us. We're business people. We live with this in our day-to-day lives and if we do not behave in an ethical manner in our interactions with customers or clients, then we harm the nature of our relationship and put at risk the relationships that we have.

But the other strength, I think, that business brings to thinking about this is we understand that you have to be understandable when you explain the outcome you're trying to achieve. A highly complicated, complex multi-layered approach is not going to get us, in my personal view, where we want to go. Because people will be so focused on understanding the layer that they may be frozen in undertaking the very work they need to do.

I say this because in reading the documents, it's quite clear to me that the -- these standards we're trying to achieve apply to us as well. As members of the stakeholder group and as parties who are involved in developing policy. I am very enthused about the path we're on. And I want to compliment the work we're undertaking and express support for the work we're undertaking. But I do think -- and I really welcome this discussion and I think we each need to, within our own sphere of influence within ICANN, whether it is as a participant or a constituency or a stakeholder group or a Supporting Organization, we need to digest this and maybe come back for a further discussion about how it can be refined to be more understandable and to be less complex and complicated but achieve the goals we're trying to achieve.

I have one final comment to make and that is I disagree with those who say that we can have a board at ICANN that has no conflicts. I, in fact, think that we must bring informed participants on the Board and that will sometimes mean the Board members do have conflicts. But I think, and I think the Board is evidencing this, that there is a commitment to establishing effective safeguards to deal with those conflicts. Thank you.

>> Thank you, Marilyn.

(Applause)

PAUL FOODY: Paul Foody again. I wonder if anyone could explain the Board's reasons or ICANN's reasons for keeping the number of applications secret.

JOHN JEFFREY: Yeah, I think that's for a different forum, isn't it?

PAUL FOODY: Well, we're talking about a Conflict of Interest and ethics. Given the fact that a huge portion of the application fee will be nonrefundable if your application is rejected, is there not a conflict of interest of ICANN keeping secret something that are likely going to materially affect the chances of someone's application being approved.

JOHN JEFFREY: So I'm happy to point out that that was a question that was raised in a previous forum on new gTLDs and I believe it was answered there. My rough recollection of the answer that was provided earlier is that there might be an opportunity to misrepresent in some way the number based upon identification of that information before the end of the period. So I think the intent is to make sure that we're most clear about the information that's provided. The number of people that are in the system is merely an indication of those that have paid an initial small fee to get into the system, but it's not an indication of the number of applications that are present. And we don't expect that even the applications as they're entered that aren't paid for will be paid for until close to the end of the program. So it would be a misrepresentative number to provide it earlier.

But I'd like to go on from your question and make sure we're utilizing the experts that we have on the phone. I wonder if either Lizanne or Jermyn -- we have no other people at the mic for questions, so I wonder

if Lizanne or Jermyn have any comments, final comments or responses to the questions that they heard that they'd like to speak to.

JERMYN BROOKS: I'm very happy to --

JOHN JEFFREY: Go right ahead.

JERMYN BROOKS: The first speaker is concerned about number of hours presumably a great cost and certainly the review by the international expert will be (indiscernible) at high level and I think I pointed out through a short time frame of April and May so I think -- I would hope that that worry is taken away.

On the issue that several speakers raised which is a very important one about the -- the recommendations which are made resulting in a very complex rule book being understandable, not too complex, I think my starting point would be that we need to look at principles rather than coming out of the rule book and therefore tone at the top needs to be expressed in the form of saying easily understandable principles so one can measure behavior in individual cases against those principles rather than looking up rule number 79, is that completely applicable to this particular case that I find myself in. I think that's going to be much more helpful than trying to find a handbook which gives all the answers.

And finally, just commenting I agree very much with that, I think it's one of the last comments, you cannot completely avoid Conflicts of Interest. You can reduce situations by Conflicts of Interest arise and then you have to have a process to manage those which do arise in spite of having reduced the number which you are having to deal with. So I think it's a question of managing Conflicts of Interest, obviously managing it as far as possible in a transparent way and again following clearly understood principles and there I think the point which was also made by a speaker about training at the Board level as well as, of

course, staff will be very important. I think all of those elements will certainly be taken into account in the work that we do.

LIZANNE THOMAS:

This is Lizanne Thomas. I will only add a couple of points. I agree with Jermyn's points about attaching real clarity to this and then keeping it fresh by virtue of training and making sure that people understand how these eventual policies will work. So I wholly endorse his points in that regard.

With respect to the documents that have been posted for public comment, I do want to make clear that there are, I think, five documents that we have posted for public comment and all of those are the result of our work and our recommendations. There aren't any other items that we have in process at the moment, other than being prepared to receive some thoughts on this and to continue the dialogue with the other two advisers that ICANN has selected. So you do have a universe of changes there available for your comment at this point and that does constitute revisions that we would recommend at this point on behalf of Jones Day. But nothing else for you to review.

CHERINE CHALABY:

I think we have one last question.

JOHN JEFFREY:

And if you could be brief that would be great because I've been signaled that we're considerably over time.

ANDREA GLORIOSO:

Thank you. This is Andrea Glorioso from the European Commission. I speak on behalf of the European Commission. And I apologize for taking the mic again, but I admit I forgot to make this point which is I look around in this room and I compare the number of people in this room with the number of people in the previous session and I must say I'm negatively surprised there are so few people in this room. This is a reason for worrying. Both for the Board, in my view for ICANN staff, as

well as for the ICANN community. So I have two observations and two pleas, I would say.

One for the Board and the ICANN staff, please do make sure that there is outreach about what is being done on conflict of interest with the whole community. Otherwise you will receive certain observation from governments but perhaps not from other parts of the community which you need.

An observation to the so-called ICANN community, you cannot criticize governments for intervening in this process if you do not intervene yourself. Governments have a duty to make observations, to uphold certain basic principles to make sure that organizations such as ICANN perform to the highest standards so there can be transparency and independence. That is also, in our view, an obligation of the community. If the community does not fulfill that diverse set of obligations, governments will have to step in. We don't want to do that. But if we see a room with 10% of the seats occupied, what are we supposed to do? So I think there is a responsibility here also for the ICANN community, for all the constituencies to come in, to chime in, and to make their observations heard, whether they are positive or negative. Thank you.

[Applause]

JOHN JEFFREY:

I just wanted to make a quick comment that I think that's a very good point. I'm disappointed by the turnout, too. I see there's about 70 to 100 people in the room and I do hope that we'll be able to get more attention on it and we'll certainly take steps from the ICANN staff side to make sure that as we post these documents they're receiving appropriate focus and getting into the points where they could reach the communications that would be necessary to get more people involved.

CHERINE CHALABY: Okay. One quick question from Bertrand or comment and then I'll make a closing remark and we're finished.

BERTRAND DE LA CHAPELLE: My name is Bertrand de la Chapelle. I'm a member of the ICANN Board. It's not a question, it's a comment. I would like to come back to the remark that was made by Andrea. The way he interprets the number of people in this room is one possibility and he may be right and we need to be vigilant. However, there's another way to interpret this situation.

Is that there's a clear understanding or at least an element of progress which means that people have understood what I think is the strong signal that the Board wanted to send that we're taking this extremely seriously. We are under the scrutiny of the community and we welcome the scrutiny of the community because those issues have to be treated with the utmost importance and I would be tempted to interpret the number of people in this room beyond their diversity because there are not many that they are from the different groups. As just the testimony that at the moment the community and including the GAC and others is waiting to see whether we deliver, and we have to deliver. I think the presentations have made clear how important we consider that is. But I -- I would not necessarily interpret the number of people in this room as being only disaffection or disinterest because I don't think it's the case. I think the community cares about it, the Board cares about it, and I hope the following months and the rest will prove we have tackled those questions appropriately.

Thank you.

CHERINE CHALABY: Thank you, Bertrand. I'd like to thank everyone that contributed to this meeting. I'd like also to assure all of those that raised a question and suggestion we take this on board. In fact, on the Mike Wallace test, on the complication of the rules, let me assure you that this group here, that the subset of the BCG when we were doing and still doing our review of conflict on the gTLD, we were principle-based and we did

apply a similar test as the Mike Wallace test and I really think you were really spot on on your comment. And Marilyn, thank you for your comments about the rules should not be very complicated and very, very deep to the point that nobody understands them. We take that on board. I want to thank everybody and thank you for the speakers on the phone and thank you for the panel.

Thank you all, and this session is closed.