

**ICANN Costa Rica Meeting
Non-Commercial Users Stakeholder Group (NCSG) Meeting
- TRANSCRIPTION
Tuesday 13th March 2012 at 13:30 local time**

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Woman: ...on the line. Is there anyone on the line? Okay, thanks. So we have a pretty full agenda this afternoon. Let me just quickly review through that. We'll start with our reports from the constituencies on their morning discussions. Is there anyone in here from NPOC right now?

Man: No. Well...

Woman: No. Well, he'll - hopefully, he'll - yes, he'll be back. Okay. And then we will have our NCSG policy discussions. We've got a few - five issues we want to go through on the policy issues. And then we need to prepare for our discussion with the Board of Directors. And then we'll break at 1520 to go meet with the Board. They are in room (unintelligible) C which is in a different building, and we'll - so we'll have to pack up our stuff and walk over there and then meet with them and pack up our stuff when we're done and walked back over here. And there we'll be back over here at 1645 to finish up our meeting. And we can finalize our preparation for the GNSO meeting tomorrow. And then we break for the day at 1730, and so that's our general agenda for the day.

Okay. So let's get started. We'll start with the reports from the constituencies on their morning discussions. And Konstantinos, the chair of NCUC, can you give us the quick update on the morning discussions in NCUC meeting?

Konstantinos Komaitis: Sure. This morning NCUC had what I can safely call a fantastic policy discussion. I mean we touched a lot of issues and discussed (unintelligible) issues. There was a brief update from myself on the NCUC charter which will be placed out for the whole membership to review until the Costa Rica meeting, and there is going to be, hopefully, a vote within the next 40 days.

When it comes to policy, we discussed the issues that are before the Council and issues that are also of great concern to the membership, and in particular the issue of the special status of protection for the Olympic marks and the Red Cross names. We also discussed issues relating to the (unintelligible) review team report that was just being released and that there is a public comment period ending on the 18th. We also touched on (unintelligible) registrations as well as law enforcement agency issues.

And also we introduced and we touched upon the issue concerning how human rights fit within the ICANN ecosystem. Finally, we did some strategizing. We tried to identify those items that we feel NCUC should be focusing on. And we discussed - we started initial discussions about the event in - an NCUC event in Toronto which will follow the very successful summit in San Francisco. Thanks.

Woman: Thank you very much, Konstantinos. We've got a representative from the Not-for-Profit Operational - Operations Constituency -- NPOC, Klaus Stoll. So if you could give us a quick update on what transpired in this morning's NPOC meeting, appreciate it.

Klaus Stoll: Thank you very much. As you know that NPOC is a very new constituency, and the point what we are concentrating at - on this morning was to outreach in general to GNO community in Costa Rica, and I was actually very happy. We had a full room, and we had some very good presentations.

But what aspires out of the whole discussion, to make long thing short, is that NPOC, of course, wants to participate and will participate in the policy discussion as we did a statement two days ago regarding the (possibly outreach) results conflict the Red Cross and the Olympic Committee. But I think it's fair to say that one of our main intentions for the foreseeable future will be - besides contributing to the policies, will be to outreach to the GNOs, inform and educate GNOs, and then trying to engage those GNOs who are really interested in (unintelligible) in ICANN and as whatever part in their constituencies.

It's basically the state we are at the moment. And I just want to say that it is not surprising but always (unintelligible) how much interest the GNOs in general show in the topic of Internet governance. Thank you very much.

Woman: Thank you so much, Klaus. We appreciate it. So let's just delve right into the NCSG policy discussion for this afternoon, and we've got five main issues on the agenda -- new gTLD applicant and reserved names in new gTLDs which is the request from the Red Cross and the Olympic Committee. The third issue is law enforcement negotiation with registrars and the RAA. The fourth issue is the WHOIS privacy concerns. And finally, if we have time, some discussion on SOPA, PIPA, domain name take-downs, and DNS filtering issues generally.

Okay. So let's - we - I know at least in the NCUC meeting this morning, some of these issues have been discussed at a constituency level, and so for many people some of the groundwork has already been laid in terms of explaining what the issues are to others. But for others, this will be the first time that they will have heard about some of these issues today. So let's try to keep that in mind rather than always referring back - or referring back to this morning's discussion or something, because many people were not here or people were in different meetings this morning and so don't know what the others were discussing.

Okay. So let's start with the reserved names in new gTLDs, although our counselors really aren't here and we - except for Joy and Wendy and Rafik - and Rafik, so half of our counselors are here. God. Pretty sad. Anyway, okay.

So let's start with the - that issue. And Konstantinos, if I could ask you. I know you're probably tired of talking about this issue.

Konstantinos Komaitis: Yes.

Woman: But, you know, for 48 more hours, I think, if you could maybe bring us up to speed on this issue and where we are and what the issues are on the table for tomorrow, I'd really appreciate it.

Konstantinos Komaitis: Well, that's where it gets a little bit confusing now. The - Jeff, Jeff Neuman, who is the chair of the drafting team that was created for those issues, circulated yesterday a motion that - well, the text of the motion that the - it will be submitted to the Council for the vote. Now in between that time, and of course, it asks constituencies and stakeholder groups to come back to go back to him on that very motion and basically share, you know, the group's views on this text.

After the e-mail, however, there was some sort of a new development whereas both the IOC and the Red Cross said - were asked (unintelligible) to submit a list of the languages that they seek protection for. However, after an e-mail was received, they said that this list will not be introduced any longer, and they showed the languages will be what currently the applicant guidebook is saying, which I can find right now in order to share with everybody if you give me a brief, brief second.

Okay. What the proposal now too about the - you know, the issues of the languages will read is as follows, "The GAC has proposed that the IOC and RCRC names should be protected in multiple languages -- all translations of the listed names in languages used on the Internet. The lists of protected

names that the IOC and RC/RC have provided are illustrative and representative, not exhaustive."

So what I am not clear about right now is whether a new motion - a new text is going to be circulated. That's the part that I'm not really clear about. And I think also Jeff made a comment in the mailing list whether, you know, we need to propose a new language for that. So that's where we are right now. I think Joy wants to speak on that matter as well, so, you know.

Joy Liddicoat: Thanks. Just (unintelligible) background, I stated also a message from Greg as well from the drafting team, part of a range of options (unintelligible) recommendation 2, including something removing recommendation 2 because I think it's asking whether it's really - it's necessary given that without it the status quo is in fact (unintelligible) guidebook. So I guess what I'm - I'm saying that what I'm saying is that there still seems to be members of the drafting proposing amendments to the recommendation, and its final form is not yet clear.

Woman: Does anyone else want to jump the queue in on this?

Konstantinos Komaitis: (Unintelligible).

Woman: Okay. So we will come back to this one when we come back to specifics on voting. The next issue is new gTLD applicant support. And Avri, you've been active in those groups. Could you give us a quick update on where we are on that and the suggestions for a way forward, please?

Avri Doria: Sure. But first, there's no motion or anything dealing with this in front of the Council is there? I don't think so.

Konstantinos Komaitis: On what?

Avri Doria: No. Okay. So then I'll just give you a basic recap of where they are. So the JAS recommendations, as people know, were accepted and an application support program was created. The application support program both defines how the application happens and how the application for aid happens and basically talks about that basically anybody applying for aid has two applications that go in at the same time. In one, they're applying for support, and in one, they're applying for new gTLD.

They - all of the applications for support will be reviewed during the first round of the processing. If there's only one round, then the second round will be processing those applications of people that applied for support.

So there's a set of criteria by which one qualifies for support. There'll be a pile of money, and basically, they will have ranked if you - no, no, no, no, no, no, no. There will be a - he was making the jokes about the priority in applications. No, this is if you've applied for support, you're automatically in a later batch. And one doesn't need to go any further than that to find out what batch you're in.

There's really two reasons for that. One reason was that it gives them time to process the support application to find out whether you're going to get support. Two, that gives more time to do fundraising, it gives time that if there are any auctions for some of that money to get funded into - I mean to get funneled into support. At the moment, all the support fund has is \$2 million that the Board put in. At \$140,000 per application, that will only give 14 applications or something like that.

So what they will do is, basically, they will rank the support applicants. There'll be a certain threshold below which you don't qualify. If you don't qualify, your application is dead in the water. You don't get support. You don't even get a gTLD. You don't get considered for a gTLD. That's one of their game - anti-gaming mechanisms, that if you don't qualify for support, don't apply for it.

But then they softened it a little bit to make sure that those - if you just fell through because people thought that you didn't qualify because you couldn't afford to pay for supporting one, well then that wasn't an exclusion. But anyhow.

Then with basically happens is, at the end, they go through and say, "Okay, we can support this number." Those applications then funnel through to the regular application processing.

For the others that qualify but for whom there's not money, they've had an extra year to try and fund raise, maybe they've managed to get some more money or they can have a staggered payment over the course of the next year while the application is being funded or they can drop out and get most of the money they've spent up to that point -- get their 45 grand back. So that's pretty much the program.

The program will be administered by a Support Applicants Review Panel -- the SARP people are talking about. The SARP is looking, at the moment, through March 31 for people to be the ones that sort of do the evaluation of all these support applications. And it's based on the criteria that the JAS created and their documented. I'm not going to try and go through them because I would actually have to go to Rafik to remember them all. But anyhow, those people will do that.

One of the things that a lot of people have sort of informally decided that those of us that were on the JAS who wrote the criteria should basically not be the ones that become the SARP -- the panel that gives out the thing. That you sort of have a conflict that if you create the conditions and to make the judgment on the conditions that you've got some sort of conflict. So we're all available to give advice, etc., but we're not the deciders.

Okay. So those are two things. So I don't know that there's enough applicants for the SARP. You've got until March 31. I encourage anyone that thinks this is an interesting issue, an interesting problem, and wants to help to help with the application.

Especially looking for people that understand running a TLD, understanding how people game ICANN. The only way to really catch the gamers in this is to have experience gamers -- people who understand development, people who understand development economics and can actually look at the - a non-Marina Del Ray financial statement and understand what makes sense and what doesn't. And so you're not looking at it and saying, "What? You can't even afford a hamburger. How could you possibly run a gTLD?" So, basically, looking for people with a wide variety of ICANN-specific and development area economics, etc., specific talent to apply for the SARP. And what they're trying to do is make sort of small teams that handle just a small batch of applications.

Coming to the last point, we don't know how applications for support there'll be. One of the fundamental problems we've been having is outreach. Not only was outreach problematic for the whole gTLD application thing, how many people outside of the community (unintelligible) know about new gTLD applications?

You know, there hasn't been real outreach, but there's even then less outreach for the applicant support. And sort of there's one theory that said if there had been really good outreach about the new gTLD stuff and everybody in the world kind of knew about it -- not everybody in the world, I'm exaggerating -- but that it had gone way beyond our bounds, you might've actually already reached lots of people that said, "Really cool, I got something I want to do. Oh, I don't have the money." Okay, but in this case, they - those people probably haven't even been reached. So there's two weeks left to the application - to registering, and then there's another two weeks for a total of four weeks left to apply.

Outreach is also done but not necessarily. And one of the things that I've been appealing to just about every group I've spoken to on this is if you know people who should be applying, they're ISPs in a development area, they're a community organization in a development area that's concerned and having a gTLD would really assist them in doing their work and they've got the wherewithal to do it, there's not only the financial assistance, there are a group of knowledgeable volunteers that are willing to help them write the application and figure out the technical responses and so on, because part of the JAS was not only financial support but advisory support. So that's where we're at.

Woman: Let me just ask a quick question before I open up the queue on that. So who will be selecting the members of the SARP?

Avri Doria: I'm not completely positive, but what the ICANN staff told the GAC is that they would be working in cooperation with the JAS, but of course, you got the chair of the JAS sitting beside you to figure that - to figure out who. Now it could end up half of the JAS or a good part of the JAS, the At-Large part of the JAS, are also members of the At-Large working group that I'm currently chairing on new gTLDs. So there are people that'll help them. They did tell GAC that they would be coming to all of us for something to help them do it, but I don't know.

Woman: Okay. Thank you very much, Avri. I really appreciate that update. Let's open up the queue on this issue. For folks who are just coming into the room right now, we're talking about the new gTLD applicant support program. And Rafik, you're first in the queue.

Rafik Dammak: Thank you. It's Rafik for the transcript. (Unintelligible) my understanding that the (unintelligible) there is only ten applications. And for the people who - applicants who (unintelligible) is around 11, that's what (Kirk) and Khalil informed us in the - during the update in GNSO Council in the - Sunday.

I was (unintelligible) these days that they - maybe they will come to the JAS and the subgroup of JAS and (unintelligible). But they didn't send any information to (unintelligible).

Woman: It makes sense that they would come to that subgroup, because that's who they been interacting with. And since the application period doesn't end until the end of March, and everything's always done just-in-time a week late, I don't think it's surprising that they haven't talked to us yet.

Rafik Dammak: Yes. But every time they are talking to us, but I'm not aware of what's happening. And outreach, I (unintelligible) the problem to (Kirk) Sunday. That is not enough, because I sent some comments to that report sent by the Communications Team in ICANN that the focus on social media is not enough. And - but I didn't get a response. And I asked it again -- I want a response to my feedback.

For the SARP, applications are still open until the end of this month. So I encourage people. And I do agree that it's not the JAS members should be there. We need to avoid such conflicts of interest.

Avri Doria: If I could just add one comment to that. I'm hoping that there are more than ten now volunteers on the SARP, because I've been buttoning holing a lot of people. And if none of them have a volunteered yet, I'm depressed.

Rafik Dammak: We may expect more now, because the ICANN meeting that's - there is, like, even that team for the support applicants.

Woman: Great. Thank you very much. So we've started a queue on this. I've got Hugo and then Alan. And anyone else want to get in the queue on this? Okay. Go ahead, Hugo.

- Hugo: I completely (unintelligible) by which criteria you can accept or reject the applicant. If an applicant is (unintelligible) can apply again?
- Avri Doria: In this round, no. In future rounds, yes. The criteria for whether their application for a name can remain and they find other funding - actually, I think they've changed it and I believe they can go find other funding, but...
- Hugo: Why in this round, no?
- Avri Doria: Because there would be - you mean apply for financial support again? I'm not - I guess because the - why no? Because they didn't design it that way is really all I can say. In fact, that's been an actual issue with every single part of the new gTLD application. There is pretty much one pass through one part of the evaluation, and there's almost never a chance to go back through that evaluation process again. And so I think that's just the general nature of the program that ICANN defined, that you still may be able to apply for the TLD, but you'll have to find the money somewhere else. You won't be able to apply for that particular fund.
- Woman: Okay. Thank you very much. Alan?
- Alan: (Unintelligible). A question and a comment. My question is, are the people working on the evaluation of the applications for the subsidy, are they going to be only volunteers or are they going to be paid? I don't remember. I...
- Avri Doria: Yes. The...
- Alan: And then I - and then another comment.
- Avri Doria: Okay.
- Alan: I read the terms of reference of the qualifications and the tasks asked of the evaluators. And it's both in terms of expertise profile and both in terms of time

commencement, it is very demanding. And I - it looks to me like it's almost it could be as much as part-time over the period under consideration.

Avri Doria: Okay. On the - no. I was going to - I should've answered the first question while I still - I got the second one in mind and the first one slipped. Okay. They are volunteers. There is the possibility of if there is particular expertise that's not needed, they will pay for outside advice from a professional in the particular area.

There was a question of why not pay these people to do this as opposed to counting on volunteers where it's a half-time job, and I think within the ICANN context lots of people work half-time to full-time jobs for no money. And so far, only the Board has decided to reward itself with money. And that's all I can say about that one. I don't know. Beyond that, the volunteer - it's a volunteer organization. And for those that do it, it's very much an avocation, I believe, and - you know, or an insanity.

But I think the time is correct. I think it's a relatively short amount of time in terms of, you know, several weeks and several months. It's probably somewhat similar to a NomCom type of commitment where you're on, you're on, all of a sudden these you've got an intense plateau of work, and then it goes down. It's certainly not like being a chair of a stakeholder group or of council or of an AC or a board member. It's a lower level of work - oh, but board isn't volunteering more. I forgot. But it's a lower level of work than many of those things I would predict. But who knows.

Woman: Great. Thank you. Did anyone else want to get into the queue? Yes, please. Hugo.

Man: Yes, my name is (unintelligible). I would like to find out maybe from your own understanding why is the (unintelligible) of the applicants not being made available until a given date, and the given date is not at pronounced or precise? Because for me, I will be thinking (unintelligible) of the applicants

may be from a particular region and that is lacking some (unintelligible) other media experience to come from that (unintelligible) application. But now everything is just (unintelligible). You don't know who's applying for what. And the application (unintelligible) wanting to look very well before investing.

Avri Doria: Okay. I think that's a more general question than just the applicant support program. I think that one probably comes down to the level of competition and gaining within this. If somebody's all that you were applying for an interesting name that they haven't thought of and they had the money to be able to beat you in any auction and that you - the expectation is in the ICANN community that would happen.

So therefore the confidentiality of the applicants and the streams is being kept secret so that only those who genuinely come up with the idea themselves and go through the effort of applying for it are the ones. Because if I saw - if I was, you know, into exploiting and I saw that you were applying for something and I knew you had no money, boy, what a good idea for me to apply for it with all my money. So that's - I think that's the main reason for why they keep it quiet, is because they don't trust us to not unfairly compete with each other.

Woman: Thanks. Did anyone else have any questions or comments on the new gTLD applicant support issue? Okay. Thank you very much, Avri.

Avri Doria: Thank you.

Woman: Let's go onto the next issue on our agenda which is the law enforcement negotiations with the registrars and the RAA agreement. And I'm going to ask Wendy who's been following this issue very closely if she could give us sort of an update on that and the suggestions for how to go forward. Thank you.

Wendy Seltzer: Okay. So yes, but there are several things going on right now regarding law enforcement recommendations, Registrar Accreditation Agreement, WHOIS

review team report. So the Registrar Accreditation Agreement is being negotiated between registrars and ICANN with updates posted to a wiki. We can comment on that wiki, although it's not clear where those comments go or who is or if anyone is ever looking at them.

So - but as we've been pointing out, the negotiated RAA will have to come back to council for ratification. And council may or may not like what it sees if there's not better participation and transparency in the current negotiation process.

So substantively, we've been concerned about some of the requirements or potential requirements for WHOIS validation and the costs and burdens that those could impose on legitimate registrants, particularly on individuals on not-for-profit associations, on the registrants from developing countries -- all sorts, all places where the standard validation things for - that exist for credit card purchases and mail-back might not work well in this context.

We also have the problem of the - what if the legitimate registrants are blocked. The other big piece of that negotiation is what's going to be required - or as I see it, what's going to be required of privacy and proxy registration systems. ICANN tried - at the request of law enforcement is trying to require some certification or accreditation of providers of privacy and proxy services, trying to make its contractual tentacles reach further so that people can't use unaccredited or independent services to mask their information. And those are of great concern to those of us in protecting the privacy of individuals and organizations.

I had a productive meeting with the registrars constituency. They invited us in to talk. And they're interested in working with us and suggested that another place to focus -- yes, adding even more to our discussions -- would be, quote, best practices for disclosure, that they see a trend going towards requirements on privacy and proxy services that they disclose or review the registrants name when somebody comes in accusing them of wrongdoing.

So we might be able to help by set - helping with standards for when can a privacy or proxy service legitimately refused that request, what should they require before acceding to that request, how can they distinguish between legitimate law enforcement requests to help track down a criminal or spammer or an Internet miscreant versus an illegitimate request meant to silence speakers or squelch unpopular speech or uncover a dissident and go after them using non-Internet channels.

So I think that there are places for us to work with the registrars. And Joy, I'll note to you particularly they were very interested in the human rights framework as a way to help them and ICANN evaluate what they're being asked to agree to in this Registrar Accreditation Agreement.

Woman: Terrific. Thank you very much, Wendy. Let me open up the queue on this issue now. So if there's anyone who's got any questions or any comments on the issue of the law enforcement negotiations with the registrars, please raise your hand, let me know, get in the queue. Joy, please.

Joy Liddicoat: Thanks. And thanks, Wendy, for your excellent work on this topic. The only sort of comment I would make in relation to law enforcement is that I noticed in relation, for example, to the WHOIS a report that there seems to be this reference frequently to national legislation and compliance with a national legislation by the respective law enforcement agencies. And I mean it's quite clear that, for example, under international human rights standards such national laws have to only limits, for example, freedom of expression in very prescribed circumstances.

And so I have (unintelligible) reference to sort of un-compliance with national laws may be slightly problematic from the point of view of rights-compliant activities and rights-compliant law enforcement requests. And I'm not sure quite how that's resolved, but I just want to note that it's not necessarily an end of the situation in terms of that reference.

Wendy Seltzer: Thanks, Joy. And I think that's there - that is a concern. And in thinking about what we might offer in helping develop best practices, it might be going into more specifics of what does compliance with national law look like and how can we use the provisions in national law to protect people engaged in speech and where does even the national law have exceptions for - to disclose your obligations when necessary to protect speech.

Joy Liddicoat: Thanks. Yes, and it might also be requiring some sort of verification from law enforcement agencies that they are, in fact, meeting their human rights obligations. So I mean that's putting the onus on them to certify that rather than putting the onus registrars or others to do so.

Woman: Thank you very much, Joy. Anybody else want to get on the - in the queue on this issue? Okay. So we can move on to the next substantive issue on the agenda which is the WHOIS privacy concerns. And once again, I want to ask Wendy if she could - as someone who's been following this issue very closely for, what, nearly a decade now, if you could give us an update on this please?

Wendy Seltzer: Thanks. And apologies to those who heard the updates about - on it this morning or heard me at one of the public forum microphones or the Council microphone talking about WHOIS. I continue to be concerned that WHOIS is the wrong box for our privacy concerns and our law enforcement interests. But because it's the tool we have, that's where everybody engages in lots of fighting.

There - and right now, there - we have both the WHOIS task force - WHOIS a review team task force report on which we're grasping some bullet points as we speak in response and work that's coming out of the PDP before Council on some of the RAA work. There is a thick WHOIS motion before Council.

Briefly, we have been advocates for a long time that domain registrants, both individuals and organizations, are entitled to protect their legitimate privacy interests even when registering domain names and that the public display and disclosure obligations have to be balanced against that. We're seeing real pressure from law enforcement to make the WHOIS database more accurate and a better contact and tracking, and as Nelson calls it, surveillance point. And we need I think to come up with better ways to protect privacy there.

Now some of that may be helping to distinguish between the private and the public and, you know, get better, more accurate data if you don't insist that registrants publish at all. And if we can help to set up a real legitimate criteria for legitimate law enforcement access and that which is difficult because how do we identify the legitimate law enforcements, and how do we identify the legitimate access requests, and how do we do all of that without making it tremendously expensive and inconvenience for parties on any side of the debate.

But we're - my feeling is that we're going to be facing more and more demands that we do something about WHOIS, and that something is make it more accurate and more revealing about domain registrants. So we need some good privacy advocacy in response and need to engage the - I suggest that we work to engage the law enforcement in what their real concerns are and how we can help them address those without violating everyone's privacy all the time.

Woman: Great. Thank you very much for that, Wendy. Anyone want to get in the queue on the WHOIS issue? Yes please (James).

(James): Thank you Wendy, my good friend (Ray) on the WHOIS on the reading I've done so far, I was wondering is there any way of validating information on WHOIS, because at times (unintelligible) (pulling up) on some (unintelligible) (the men) or something (unintelligible) propose it and I want to really track it

down, it's (called that) most of the content there the (unintelligible) it doesn't have (fields) (unintelligible) you know a true (functions of) each contacts really. Is there any way or is there any plan to check some of this context?

(Wendy Seltzer): So you're raising the concern that WHOIS doesn't give good ways of contacting people, yes. Yes, so that is part of the - what's being studied in regards to validation of WHOIS data and it's also one of the concerns that the WHOIS Review Team report identified that could be separated from the pure accuracy of the data. If we focus on contact ability, perhaps we have a narrower more useful focus than on accuracy.

So that suggests turning some attention to what do we need to get to get out of the WHOIS database, including contact rather than accuracy.

Robin Gross: Great, thank you very much. Milton, I wanted to ask you if you could briefly go over the point you made yesterday at the microphone on WHOIS - I just think it's so relevant to this discussion and if we could, you know, focus on that for a minute I'd appreciate it.

Milton Mueller: Okay well there's always been kind of a false assumption that WHOIS is something that sort of normal consumers use to increase their trust in the Internet or to check up on the origin of Web sites, but the review team basically found that the ordinary Internet user doesn't really know what WHOIS is and rarely uses it. And this makes it clear that WHOIS is basically a mechanism for much more professional actors who are basically engaged in surveillance of Internet users.

That they're basically anybody from SPAM fighters to law enforcement agencies to trademark lawyers. They're all basically looking at WHOIS as a source of raw data for surveillance of Internet activity. And that's an important perspective to keep in mind because, you know, this linkage between consumer trust of the Internet and WHOIS data is really a very weak - much weaker connection than we thought it was.

And many a things, you know, that you might want to do to increase trust on the Internet might have to do with - rather put more emphasis on things like consumer protection and enforcement on certain services at the national level rather than, you know, going to all these lengths to make WHOIS data, you know, impose burdens on end users and registrars in order to make the data slightly more accurate. There's also the question whether ICANN should invest a lot of money in trying to make an integrated who is service available through its own Web site that is available in all languages.

If this is something that's used by specialized services, number one, they should probably be paying a lot of the costs of that and number two, it's likely that ICANN might be putting a lot of money into something that very few people would actually use. And so, you know, they're also talking about a massive education program to try to get consumers. So instead of drawing the obvious conclusion that consumers are not using WHOIS and maybe their assumptions about it are wrong, there saying, well now we have to spend a lot of money to educate people to use it the way we falsely assume that they should be using it in the first place. So it's kind of just something we need to be aware about.

Robin Gross: Thank you very much Milton. On this WHOIS issue, anyone else want to get in the queue, have something they want to add on this? Okay let's move on to the next issue on the agenda which is (so far) (picked an active) domain name, takedowns and general DNS filtering issues and whether or not or to what extent ICANN ought to put its toe in the water and weigh in on this so it would be a forum on which these issues are more thoroughly discussed and debated.

So one of the sessions that is organized by the ICANN staff at just about every ICANN meeting is the session on DNS abuse issues and there's a lot of - the staff organizes these sessions, they don't consult us in what the topics of these discussions should be or who the speaker should be but - so

what they do is they bring in this parade of law enforcement officials one after another to give a parade of horrors about why we need to clamp down on domain name system because of abuse of the Internet. And so there's been some - so at the ICANN meetings to sort of ask ICANN to get involved and to weigh in and do to something about this

And then there have been actual proposals in the real world if you will - national legislation, international treaties that are designed precisely to deal with this issue DNS - or arguably intended to deal with DNS abuse issues. And for example ACSO, PIPA, SOPA these are two pieces of US legislation but there are other countries have similar legislation in their countries that all try to sort of manage the way the DNS is architected in order to ensure there could be no trademark infringement on the Internet.

So while this - the problem if you will is something that ICANN often discusses and tries to get engaged in, we'd like to see some discussion - or would we like to see some discussion on some of the solutions that have been proposed in international treaties or national laws or other places that will have an impact on this issue. And also will have an impact on ICANN's ability to manage the security and stability of the DNS.

So there were a lot of - enormous number of papers and statements that were sent forth by Internet engineers for example, (Dave Crocker) and (Paul Vicksy) and just an enormous number of people who are engaged at ICANN, people who design the Internet about the problems with some of these proposals and how they would essentially break the Internet and the DNS system.

So it seems to me that there is some argument for why ICANN should care, why participants at ICANN who are interested in meeting the security and stability of the Internet might want to use this as a forum to discuss these measures and possible ways to help shape them in a way that could respect the rights of all parties. So I just kind of want to open this up and see - get

some views from the floor on whether or not or to what extent or in which direction they would like to see these kinds of discussions flow. Would anyone like to get in the queue on this? Yes (Carlos).

(Carlos): Hi Robin, just to give the information and maybe to give an example on how big a society and non-commercial issues can be affected by initiatives like this. Last week in Brazil we had a bill of law that was presented to our Congress that is somewhat translation of the SOPA deal of law in the US. And it was really interesting because - and folks here from the (CGIBR) can correct me, but this bill of law created given to - gave to Internet Steering Committee the confidence that - the possibility to label a Web site in Brazil as an infringing Web site.

And as soon as the Web site received this banner - this classification as an infringing Web site, it could be applied to all kinds of sanctions that's pretty much well known in SOPA and PIPA, including the blockage of research engines and methods of payment and stuff. So one idea here and then to bring back our very common issues of human rights in ICANN is maybe to use SOPA and PIPA as an example on how this issues goes much broader than simple back hold the ICANN universe and see how registries from the ccTLDs and suffering from this idea that you can cease domain names and that you can have certain authority in a specific country acting as a way to labeling Web sites as infringing ones.

Certainly this is an example of how human rights - we know that we practice this (button and locks) on human rights and ICANN, but certainly this is a good example. And we could use the network of NCUC to get examples from the ccTLDs from the countries in which civil society faces challenges such as this one that's just an example to give on this topic.

Robin Gross: Thank you very much for that (Carlos). Constantinos and then Evan.

Constantinos Roussos: Thank you very much Robin this is Constantinos (coming in please), I think we need to make a distinction here I mean basically we need to identify the various issues with this specific legislation. On the one hand you have the technical issues and how those takedowns affect the DNS and I think that's what ICANN is coming in as the administrator of the domain, so it's coming in ensuring that the domain name assistant runs smoothly. ICANN should actually engage in that debate and provide possibly start analyzing and researching the impact of these domain takedowns might have eventually on the technical stability of the Internet and the domain name system.

And of course I am not attacking myself, but all the paper seems to go towards the same direction that there is going to be a severe impact from DNS sake and how domain name gets the result etc., etc., this is the best issue. I think that's where ICANN needs, you know, that's the involvement of ICANN as far as I'm concerned. The second issue is the way it relates to the role of the law enforcement agencies that we saw over the past few years within ICANN.

I mean it was very interesting, there was a domain name takedown in the UK concerning an R&B Web site that provided some talent, but at the same time rather had blogs and actually it was proven that most of the songs that were provided through the Web site were actually given by the artist themselves, you know to promote themselves. Having said that, the domain name was taken down but what is very interesting about this process was the message that was displayed on that Web site by SOPA saying that even if you had visited the Web site you are liable for 30 years of imprisonment plus an unidentifiable fine.

And it was an intimidation basically that is for me extremely dangerous, you know, it is one thing to say that this domain name has been taken down because it promotes copyright and trademark infringement and the promotion of (unintelligible) but at the same time actually intimidating users into thinking

that even visiting this Web site makes them liable for me create a problem that - and that problem is that it gives law enforcement agencies are becoming legislators or becoming enforcers, you know, the separation of powers does not even exist any longer.

They're becoming the adjudicators and they're telling, this is what's going to happen to you and you might as well pay attention, because if you don't pay attention then we literally come and, you know, knock on your door and take you down and most probably arrest you. And the message communicated to the user should not be that, the message communicated to the user needs to be the copyright infringement is not a legal act, they need to exactly understand what copyright is all about.

So for me there's no (true) issues and I think that, you know, especially civil society has a huge role to play because as (Carlos) mentioned, there are huge human rights implications, needless to say that from detective messages like that are completely and utterly against basically legal standards and norms, thanks.

Robin Gross: Thank you Constantinos, I wanted to ask Evan who's the liaison from At-Large with the NCSG - if you could give us a quick comment on this. I know that you've personally been working on these issues and it is something that At-Large is concerned about. So if you could just quickly give us how - what At-Large's position is and suggestions moving forward on this.

Evan Leibovitch: This is Evan, I can talk personally and I can also talk sort of from ALAC, what's happening is weak on the subject is very little, it's only because ICANN seems resistant at most attempts to try and have a dialog about that topic here this week. So with or without the rest of the mechanism At-Large is probably going to have a dialog - going to have to continue a dialog and our issue is simply getting this on ICANN's radar at all.

There's lots of corners here that seem to be denying it as even an issue that ICANN has to deal with. Again, you know more about the internals of the GNSO than I do, but it seems like the GNSO is resisting a SOI dealing with this issue. And so At-Large is going to be tackling it on its own between now and Prague, but I don't think anything specific is going to come of it this week, if only because the debate hasn't filtered down to the regions and to the ALS's.

And so we've got this, you know, depending on what - how you want to call it, either very inclusive or very unyielding or both, but it's something that we want to try and do in order to get - there's going to be a lot of diversity on the issue, simply because of how widespread things are through At-Large. But there are a lot of people, myself included who see this as something that is dangerous to ICANN, that it can choose to close its eyes on but sooner or later, the parties that are ignoring it are going to get hit by it.

At the very least, one of the things we're looking at doing is making sure that registrants and end users are informed so that if they go to a TLD, at least from the end user point-of-view, they don't know if a TLD is a generic or a country code or this or that. When something goes wrong, something goes wrong and they don't know how to deal with it. They may filter something up to ICANN and then the response is, well that's a country code thing, okay we're done with it. And to the end user, they don't know the difference, they're just saying, I can't get there from here.

And anyway it's a larger issue, but this is definitely part of it. There's a lot of confusion, there's a lot of obfuscation going on when it comes to somebody trying to figure out why isn't this working the way I expect? And so that's sort of the approach that we're trying to take at least from our end.

Robin Gross: Thank you very much Evan, I really appreciate that. I've got Mary in the queue and anyone else? Maria, okay - Mary.

Mary Wong: Thanks Robin, this is Mary Wong and Evan I'm really glad, I think we all are that ALAC is, you know, spearheading something on this. I just wanted to clarify something about them - the GNSO that after the restructuring the GNSO Council can't just act on its own accord or form of group or something, it really is up to stakeholder groups or, you know, someone to bring it up to the Council. If there is going to be any sort of formal action, there's nothing to prevent individual groups, constituencies or stakeholder groups from collaborating and working on a recommendation. But any informal action has to be brought up to the Council, assuming that is what the community wants.

Evan Leibovitch: Yes and that at least for me looking from the outside in it's sort of, well if it's not a PDP, how do you put it through? And I don't know how much of a mechanism there is for non-PDP type initiatives going through, even if it's just information.

Robin Gross: All right, Maria.

Maria Farrell: Thank - hi sorry, Maria Farrell, I missed the beginning of the session and one thing just Constantinos was talking about that particularly egregious UK example where the Jewish and Organized Crime Agency read a dreadful message which had been crafted by industry and captured people's IP numbers and displayed them to them to intimidate them and say yes we have your IP number and you could be arrested for visiting this Web site.

It was very re-appalling, it opened (wide groups) which I'm involved on their board has written to SOPA to, you know, remind them that actually they're a law enforcement, not industry enforcement, etc. So, you know, we've done a bit of education on it and it's not being completely useless event. But I just want to say I mean I'm really badly sympathetic to the idea of pursuing this agenda within ICANN and - but also where email just the other day, you know, how I don't even quite know how to conceive of what are their hooks that we have generally on and, you know, where is our (unintelligible) and what can we hope to achieve here?

And so an it just - I'm sorry (unintelligible).com is a main issue and taking down names and changing the roots on and I realized, you know, I kind of think I'm quite knowledgeable about these things, but I actually didn't have a really clear understanding. You know, I felt quite stupid afterwards to be honest. However, and I think this is an opportunity for us to pursue a positive agenda and not always be reacting to, you know, defensively to things like the Olympics Committee.

And - but I'm not sure exactly what hooks up so I would love if there is some way we could, you know, figure out how to do that both to educate ourselves and also to, you know, constructively just change the terms o the debate around here and not be shot down so easily, other than the case (unintelligible) oh that's not our job. So some ignorance, but sympathy I'd really like to hear more about this.

Robin Gross: Thanks Maria, Wendy.

Wendy Seltzer: Thanks, let me try to think about how ICANN - how we within ICANN might address these issues and some of the constraints on ICANN addressing it. It includes the issue of what is a multi-stakeholder body to say about issues of national legislation and if we go beyond the technical coordination then, will we be sort of shot down or rained in by governments. Will we peak the GAC to get more engaged and heaven forbid find a consensus around, yes national governments should be able to legislate domain blocking to - when it supports the goals of national law.

Will we get more things like the Fox Paper on domain blocking that lays out lots of the ways that governments or others interested in blocking - ceasing domains should make sure they check all the right boxes actually to get it ceased. I'm still thinking about it too and I would like to be able to say things that are useful in opposition to SOPA etc. from the ICANN stance as well as from outside of ICANN where I am actively engaged in opposing them. And

I'm just not sure whether it's right for ICANN or ICANN's constituents or as opposed to all of those who come and participate in ICANN and then go jump outside of ICANN and say we oppose.

I think the technical community has done a terrific job of making technical papers, explaining why domain blocking fails as a technical matter that helps eventually - to fuel those debates, but they haven't done it with ICANN hats on.

Robin Gross: Did any - thanks so much for that Wendy, did anyone else have anything that they wanted to add? Yes Joy.

Joy Liddicoat: Thanks and thanks for raising this issue, Susan, you know ABC have been very concerned about the disproportionate nature of the proposals and legislation such as SOPA and this - it's not limited only to those specific, you know, demistick speakers of legislation, although they're obviously with the significant impact globally. Many countries are moving to develop legislation which would also allow them to interfere with the operation of on a variety of grounds. And we very much see that these two initiatives were already unique situation, that more will come and that (differently) a strategic look at ways to advocate around it as needed.

And also that I know the talks between discussing other forums that are also concerned about well what could ICANN's role be, how is it possible for those concerns to be brought to constituency groups that's within ICANN? So I guess I'm saying it by way to support the initiative in trying to explore ways appropriately within ICANNs (notes) and looking after issues, you know, coordinating policy within the global good and to think about - and to say that there are others who would like to reach out to these groups to support anything that we might do here.

Robin Gross: Thank you very much Joy, Milton.

Milton Mueller: Yes, I'm mindful of what Maria said trying to be proactive and constructive in leading, but unfortunately I just have another question that's kind of reactive and it is, what about that thought paper? You know, what is our take on that, where did that come from? Is that the staff being helpful and contributing or did the staff strain in the policy - did the staff have too much time on its hands and should be other things? I mean what - can somebody with more knowledge of where that came from fill me in on that or is that too petty of an issue to waste your time on?

Robin Gross: Maria.

Maria Farrell: Yes I think just stuff I heard in the bar last night, I mean it's - and (Patrick Jones) was telling me that the security teams, you know, ICANN security team's got pulled in to do a lot of support work trying to provide information and educate US Congress people and some and on the SOPA/PIPA thing and so they spent I think many weeks basically going along trying to teach them how the DNS works. And it's possible this might of come from that exercise, I'm not quite sure.

As it happens I think they did quite a bit of the Lord's work on that, you know, on trying to explain to these guys you're breaking the DNS. So they're supporting (Steve Crocker) and (Paul Vicksy) and those guys and plus - I don't know where this thing came from, but I'm going to digress for a moment and tell a really silly story, a number of years ago my uncle - one of my uncles' was the Irish Minister for Justice and he was - I was sitting down at the kitchen table one day and said look, here's this awful stuff the home office is doing about attention and interception surveillance, you can't believe they're doing this and this is why it's bad.

It's a terrible idea all the things they're doing and he's asking me more, oh it's interesting, what are they doing dreadful? How are they doing that? After a while I just turned and looked at him and said, "Michael, you just asking me how they're doing this stuff to find out how you can do it aren't you?" And he

goes yes, so I'm unfortunately giving more information was actually a way of, you know, not winning the argument just helping him figure out how to do it. There you go.

Robin Gross: Thank you Maria, anyone else want to speak to this topic? Okay so the next topic on our agenda is preparing for the - our discussion with the Board this afternoon and - which is in about 25 minutes I believe we have to break - let me just double check - no 15 minutes, excuse me. We have 15 minutes before we have to break, so we have 15 minutes to prepare for our meeting with the Board. And we've got - the Board asked us what topics we wanted to discuss and then also sent us a list of three topics that they wanted to discuss. So these will be the things that are on the agenda this afternoon with the Board.

So the issues that were proposed by the NCSG were two and first was how to protect ICANN's multi-stakeholder bottom-up policy development process. So, you know, this is really sort of these theoretical big picture, high level issues as opposed to, you know, some of the details of specific proposals that need to be put forward. But the real thrust of this is how do we know what is policy at ICANN and where this implementation of policy and how can we work better to protect the appropriate balance between the various constituencies and stakeholder groups for influencing policy development process.

How do we ensure that proper ICANN process follow in the - while we develop policy here, what is the appropriate role for governments and law enforcement in ICANN policy development? So this question, a lot of it comes from the kind -some of the requests that we've seen lately that sort of circumvent the policy development process and try to go straight to the Board or to the GAAP rather than participating in the bottom-up process. So I think that's one of the concerns that brought this forward.

I think another concern has to do with the, again the role of law enforcement - are they part of the GAC, are they, you know, we've had law enforcement want to join non-commercial users, I mean there's just this real growing presence of law enforcement agencies at ICANN. And is that appropriate and what's the right role for them here? I think these are some of the kinds of questions that we had wanted to - or this was the first question that we wanted to discuss with the Board.

The second is internationalizing ICANN - how do we increase participation from developing country actors? ICANN is so historically filled - the participation consists of people from the US, Canada, Europe, business communities and how do we really try to bring developing country participants - but not only just participants, but sort of the outlook and the different perspectives that people can have.

And again, not only to the participants but to the Board, to the staff - how do we really get an appropriate legal framework for ICANN. It's a global governance organization on the one hand, but on the other hand it's a private California corporation. And so, you know, how do we get these two concepts to work together in a way that works for the benefit of the Internet and Internet users. And considering the geo-political sensitivity in the broader relationship between the US government, ICANN en route.

So these were the two issues that were proposed by non - the to discuss and then the Board of Directors had three issues that they wanted to raise with us. First is a question that they've raised with all of the various stakeholder groups and communities this week that they wanted to get some community feedback from. And that is what will be in your view the medium turn impact of the new gTLD program on the structure of ICANN in general and the challenges it brings to GNSO, it's constituencies and policy development process. What are the potential issues and how do we anticipate them?

So that's sort of the Board's high level question and then they had two more concrete specific questions that they discussion topics that they wanted to raise. And first was the resolution of a conflict between the constituencies within the non-commercial stakeholder group and then the second is the views on the RAA that this is a more concrete issue that was currently working on here at ICANN. So these are - we've got basically five discussion topics on our agenda for the Board, it's a one hour meeting so I'm not sure how much we'll be able to dig deeply into these discussion topics, but that's where we are.

So let me open up the floor, we've got about ten minutes or so and see how people want to address these issues. I've got (Carlos) and then I've got Mary - anybody else want to get in the queue? Okay (Carlos).

(Carlos)

Thank you, I think we - one issue of the with relationship between we just simply should refer to the statement end of story and not discuss one minute or ten seconds more. And if something goes wrong afterwards, we can always go back. With respect - and now I apologize to everybody for the next two points if I'm getting boring, I really think that there's problem still of outreach and information and even if an academy has been proposed, I think it really needs to go back and say, look we need funds, we need programs, we need education to inform what is actually going on.

And from then maybe three or four whatever we can reach out and get integrated to the process. But we are still not doing the base work. And the third one and I'm sorry that I'm starting with that again, I also think we should tell the Board about the proposal from how to solve the situation with exception of we made a straightforward proposal. The point is, it's not so much about the proposal as the wording. It's about getting - I think I'm realistic if I'm saying we won't get very far on the first round, but at least we will shoot say for the second round.

We should aim and strike to get away from specific names, to specific group of people - the smaller the better. And get away from and all the dangers we were talking about in the last three days. And just if we can get the message through there needs to be a change - a paper change. That's all.

Robin Gross: Thank you very much Claus for that, I've got Mary and then Wendy. Anyone else want to get in the - and Evan. Okay Mary.

Mary Wong: A couple of quick suggestions - this is Mary Wong by the way. And I wonder if it will help it would be helpful to the discussion of the Board, and I think we've done this before, though I think the GNSO council is to have someone as the designated spokesperson for a particular question. We can frame it and so for example, we'd have one for each of them and I don't know, we're going to get to the resolution with (ENPAC), I mean I think we still kind of a problem how that's phrased but to the extent that that's going to be something we discuss.

I mean my suggestion for that would be probably appropriately they delete that part of the discussion because I don't think you were here when that discussion was held with the Board the last time. So that's one suggestion and of course the ones for the other topics. For the first topic on the multi-stakeholder model I think two things, one that might be helpful would be Robin as you started saying, you listed examples.

And I'm sure the Board knows all the examples, but I think whoever's leading the discussion, it would be helpful if you say hey look, here's why we have the consensus, here are two or three of the recent examples where whether it's perception ally reality, some of the community feels that the processes were bypassed, give specific examples.

And the second point I had on that was just on the - I'm not sure that I would want personally wants to do this that's fine but I'm not sure that would work to bring out the question of the appropriate role of law enforcement, because I

think all the Board's going to say is point to the operating of the GAC and the bylaws where they others and where reference is made to public authorities, whatever that means. So I'm not sure how that's going to advance anything. Rather I'll stick to the multi-stakeholder point and the bypassing of the for the first topic.

Robin Gross: Okay, thank you very much Mary. I've got Wendy and then Evan.

Wendy Seltzer: So I'm trying to get the question on email - maybe I'll pass for moment.

Robin Gross: Evan.

Evan Leibovitch: Actually that turns out to be very convenient because what I was going to say very nicely dog tails unto what Mary said and with the suggestion and this was to follow-up in conversations that we've been having with Board members, mainly informally or individually, but it's really come out. Not so much specifically about law enforcement but a general tendency towards bilateralism as opposed to stakeholderism (sic) and maybe if it's framed that way, in saying there's a lot of these one-on-one high level exclusive conversations going on as opposed to broad based community ones.

They're happening over law enforcement, they're happening over the Red Cross IOC thing - these are all the results of bilateral things. They sort of took hold because of the GAC scorecard and haven't let go. And so I don't know if maybe that's an approach to take that may get you a better, more constructive response out of them. And that dog tails over what we've been talking to them as well.

Robin Gross: Thank you very much, that's very helpful Evan. Wendy did you want to say something.

Wendy Seltzer: I think those are good, helpful ways of framing the question of keeping the multi-stakeholder model working effectively and I would be happy to be the designated respondent on views on the RAA.

Robin Gross: Okay, does anyone else want to get in the queue on this issue, the Board discussion has three minutes left - two minutes. Okay well let me just quickly ask (Claus) if you would be willing to address the issue - be the designated responder on the issue of any conflict to resolution of conflict between the constituencies - is that okay?

(Claus): No.

Robin Gross: I'm sorry, I didn't hear what you said actually.

(Claus): No but

Robin Gross: Alan's the appropriate person for that? Okay wonderful, thank you very much - so we've got that one taken care of. Wendy volunteered to be our designated responder on the views on the RAA. I can discuss the multi-stakeholder bottom-up policy development process, unless somebody else would like to volunteer for that. Okay and on the issue of internationalizing ICANN, yes we could volunteer Bill because I know this was an issue that he brought - that he wanted raised, so let's ask him if he'd be willing to be our respondent on that question.

And on the issue of the impact of the new GTL program in general, do we have anyone who would like to volunteer to be sort of our respondent on that issue? Avri K know you've been knee deep in new gTLD issues, would you be willing to take that one on and - if we get to it?

Avri Doria: I wasn't actually paying attention and I wasn't sure I was going to be there for the whole.

Woman: Yes Avri - say yes.

Robin Gross: Well let me go over what this question is again since you may want to respond to it, but so the issue is what would be the short to medium or medium term impact of the new gTLD program on the structure of ICANN in general? And the challenges it brings to the GNSO, it's constituencies and policy development process. What are the potential issues and how to anticipate them? I mean I think you're really the best person for that considering your history with the GNSO and you're so knee deep in gTLD policy.

Now would you like to be the designated respondent?

Avri Doria: I suppose I could, I was thinking of cutting out of the meeting early, but no - but okay.

Robin Gross: Thank you, thank you very much. Okay so we've got designated speakers on each one of these topics, let me just quickly say where we're going - remind everyone where we're going and when we're going to be back.

So I believe we're going over right now to and it's supposed to start in ten minutes and it's for one hour and then we come right back here for our final hour today and we're going to go over in much more concrete detail how our counselors are to vote tomorrow. Okay thank you all very much.

END