Board with Non-Commercial Stakeholders Group
26 June 2012
Open Session – ICANN 44 Prague

NCSG Meeting with Board

Tuesday, 26 June 2012

ICANN Meeting

Prague, Czech Republic

>>STEVE CROCKER: All right. Let's get assembled here.

All right. I'm all connected up.

Welcome. This is the time that the ICANN board is privileged to meet with the noncommercial stakeholders group. This is part of a regime that we put in place a while ago to set up an environment where, instead of only having social interactions, we could get into real substance, even though the time is compressed, and it's been working out pretty well.

Just a word about the room arrangement. This is classroom style which is not ideal in terms of interaction, and particularly in terms of sight lines with each other, but has higher capacity than a "U" shape, and we are sitting in this configuration by design, not by -- not just by happenstance, and I'm told we're going to experiment with the "U" shape in Toronto and then we'll take some feedback on how all this is working.

So it's a slowly evolving process and feedback is very welcome.

This group is small enough that I'm sure that you'd say, "Well, why not?" But we've had this room filled in other sessions today.

It's really your session, and so I'll turn it over to you.

I would recommend that we do a quick walk-through of the agenda, just to see the scope of what we have, and then come back to the beginning and lead off.

Board members to my right, noncommercial stakeholders people to the left, and a mixture in the audience here. Your show.

>>ROBIN GROSS: Thank you.

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My name is Robin Gross. I'm the chair of the noncommercial stakeholder group, and we had -- we proposed three topics for the board, and the board proposed one topic back to us specifically, and then there's several that were for all the stakeholder groups.

The first topic that we should discuss was the topic that the board proposed to us specifically, which -- and I will just read the question. "Both at the Senegal and Costa Rica meetings, we heard reports from you on NCSG's organizational matters. We recognize that there are ongoing discussions on various administrative issues, including any issues with your two constituencies, NCUC and NPOC. Can you provide a status update on your organizational efforts, including progress approving new members?"

Well, I'll be happy to open it up with this one. It should just take a few minutes. We've made a lot of progress in the last --

>>STEVE CROCKER: So -- with apologies.

>>ROBIN GROSS: I'm sorry.

>>STEVE CROCKER: What I was thinking is we could just show the screen, the agenda, the whole set, and then come back. If you want to start that, that's fine.

>>ROBIN GROSS: Okay.

>>STEVE CROCKER: But just to see the -- so everybody has a sense of where we --

>>ROBIN GROSS: Of what the questions were before we --

>>STEVE CROCKER: Yeah. On both sides. Just a quick --

>>ROBIN GROSS: Okay. And so the three topics that we proposed to talk about is first developing a human rights impact assessment for ICANN policy development processes.

The second topic is including privacy concerns in law enforcement discussions and including privacy commissioners among law enforcement perspectives in ICANN policy discussions.

And the third issue that we raised was globalizing ICANN and outreach to developing countries and underserved communities.

And then there were some topics that the board sent to everyone.

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First is the RAA negotiations.

Secondarily, the WHOIS report. In particular, what aspect do they think should be subject to policy work within the GNSO versus left to staff to implement.

A question for the GNSO Council, for stakeholder groups, and at-large.

And the next question that the board is asking is on batching. What are your views on having a single batch, and do you believe there is anything approaching consensus? What is the acceptable time frame in which to do a single batch? Is there anything to be -- if there is to be batching to do, do you believe there is consensus that a method other than digital archery should be used?

And then the last question was on budget and ops plan cycle.

So we've got a lot of issues to discuss today, so I think we should just go through them.

So the first -- the first issue is the issue on the NCSG organization matters and memberships, and I think we've got a really positive message on that in the sense that we've approved a lot of new members. We've got a brand-new online application form so people can join via the Web site. It just goes all into a database. That was something we were very excited about.

Now, we did -- we had one little hiccup where we had a member of the intellectual property constituency, the lobbyist for the International Olympic Committee, who has tried to join the noncommercial stakeholder group via several noncommercial organizations, and we've had to reject him as an ineligible representative for these organizations since he's a member of the intellectual property constituency.

But these noncommercial organizations are welcome to join as soon as they can -- as soon as they bring forth a name -- a representative who isn't a member of the intellectual property constituency to vote in the NCSG.

So that really, I think, was our only hiccup, but I don't think it's really a big problem and I think we've got a pretty good working relationship.

We're able to review these applications and -- now, and go through them, so I want to turn it over to Alain, who is the chair of NPOC?

>>ALAIN BERRANGER: Good afternoon. Thank you very much, Robin.

Yes, there's probably been more noise than this deserves, so let me say that, you know, we're developing a new form online. It's been used three times, and there's

already lessons learned from it, and we got feedback from the applicants and we're now working on fixing that up.

 There is some legacy administrative issue in terms of the -- you know, the exact moment of -- and the exact status of application.

 So we're working on it, and as I said, the only glitch is the one that Robin referred to and that's in the hands of the ombudsman because we have a disagreement.

 And you can't expect not to have disagreements. You can't always agree to everything.

 So -- and this one went to the ombudsman not because of the people at this table. I recommended to my potential applicant not to go to Steve, and -- but, you know, we're not a -- we're a democracy and he's allowed to do that. He's allowed not to take my advice.

 Now, however, we do disagree on the fundamentals of it, and it slipped out of our hands before we could resolve it in-house. So, yeah, we -- in Costa Rica, we said we'd develop a new stakeholders collaboration spirit and this is happening. Thank you.

 >>ROBIN GROSS: Thank you.

 >>STEVE CROCKER: Good. I have an interesting question, and Ray does too.

 Let me start with Ray, and I'll come back to my own question.

 >>RAY PLZAK: Thank you, Steve.

 I remember as the charter was being developed -- excuse me.

 I say as I remember as the charter was being developed all the discussions that went around this and how much work that you all put into developing this process, and -- you know, and as the organization got started and moving along, I think that you've made tremendous progress, and so I think that, you know, as the organization matures, things will be even much, much more smoother.

 So I really want to take this moment to thank you guys for the effort that you're putting into this and to make it work as smooth as possible. So thank you very much.

 >>ROBIN GROSS: Thank you. I really appreciate that.

And I think it's also worth pointing out that we do -- have developed these mechanisms such that when there are these glitches or hiccups, that we've got processes to work through them. We've got an appeals process in our charter, such that if somebody doesn't like the decision that was made by the executive committee, they can appeal that decision to the membership.

And so, you know, we -- I think we do have means of continuing to refine and work through these issues as they come forward. Thank you.

>>STEVE CROCKER: That's great.

So the question that comes to my mind is: So now we have the noncommercial stakeholders group and we have two constituencies within it. Might there be any other constituencies on the horizon?

>>ROBIN GROSS: Well, there was the -- there is the consumer -- candidate consumer constituency which has not yet matured into a full-fledged constituency, so that one is percolating.

There hasn't been a whole lot that has happened with that particular constituency yet, but I don't think -- you know, I don't think there's any reason to think that that one or other ones won't grow out of it.

I think we've just all been pretty focused on trying to get the NCSG working and get those mechanisms in place first.

>>STEVE CROCKER: Uh-huh. Good.

Ray?

>>RAY PLZAK: I'm just curious, Robin, with regards to that. Did you hand them the new constituency process and are they working on that?

>>ROBIN GROSS: I'm sorry. What was the question?

>>RAY PLZAK: Did you hand them the document on the new constituency process of all the things that they need to do?

>>ROBIN GROSS: Did I hand who?

>>STEVE CROCKER: Do you have one?

>>ROBIN GROSS: Oh.

>>RAY PLZAK: Well, no. You have one. Did you hand to the candidate constituency -- are they organized enough that you could hand them this process document?

>>ROBIN GROSS: No, but that's a good idea.

>>STEVE CROCKER: And Avri looks like she wants to get in here, even.

>>ROBIN GROSS: Avri.

>>AVRI DORIA: Yeah. If I can help with an answer to that, I basically went and joined that candidate constituency in order to offer them any possible help, if possible, because I'm -- just like I believed in, you know, let a thousand flowers bloom for TLDs, I believe in let at least a dozen constituencies bloom for the NCSG.

So I actually went and joined.

Unfortunately, it doesn't seem to be moving, but certainly the whole process is known. It was discussed.

I actually joined their list, and such, saying, "Anything I can do to help you become a constituency, let me do it," but we haven't gotten anywhere.

So at the moment, it's fairly moribund, but if I could find any other group of people that wants to be a constituency, I'll help them.

>>STEVE CROCKER: So rather than a sort of flat, dead memo of how to create a new constituency and have it joined, we have a live active process called dot Avri that --

[Laughter]

>>AVRI DORIA: Can I have that? Can I have that?

[Laughter]

>>RAY PLZAK: If it's not a dead memo, the board approved the process, so if you think your (indiscernible) does it bad, that's another point.

>>AVRI DORIA: And if I can add, the process is actually listed on the NCSG's Wiki page, with the other charters as, you know, "Here's a pointer to your memo." So it's there.

>>STEVE CROCKER: Good. Thank you.

Is there more to say? I'm inclined, you will appreciate with your legal background, to make sure that I hear from some other party, and I guess I already have heard from two, so maybe that's sufficient, but are there any other points of view involved here?

>>ROBIN GROSS: Yes.

>>DAVID CAKE: I just wanted to say really briefly, in our NCUC meeting this morning, we've still got charter revisions and discussed updates to our Web site to help people join and so on.

The process is ongoing. It's still not finished as there's always work to do.

>>STEVE CROCKER: Good. And your name for the record here?

>>DAVID CAKE: Sorry. David Cake.

>>STEVE CROCKER: Thank you.

>>ROBIN GROSS: So shall we move on to the next issue?

>>STEVE CROCKER: Yes.

>>ROBIN GROSS: Great. Let's just sort of go back and forth between an issue you proposed and an issue we proposed.

The issue -- the first issue that we proposed was developing a human rights impact assessment for ICANN policy development processes, and for this particular discussion topic, I wanted to turn the floor over to Joy Liddicoat, one of our GNSO Councillors, to speak on.

Joy?

>>JOY LIDDICOAT: Thank you. Joy Liddicoat, for the record.

And really, this is just an opportunity to follow up the conversation we began in Costa Rica, to just advise the board members on the work that's been going on in the NCSG, the discussions we've been having, and to extend a couple of invitations to the board for the board to consider about practical things they might want to engage in on this topic.

Following the Costa Rica discussion, there's been some lively debate amongst NCSG members about human rights and, you know, bearing in mind that for some this is a

new topic and that ICANN has a very limited and quite specific role in the technical area.

Very much the consensus emerging from the NCSG at the moment is that ICANN is not a human rights-making body, it must not make human rights policy, or tempt to do so, but nonetheless, it must, in its global public policy role, make policy that is consistent with human rights, and that there are opportunities to assist ICANN policy and the community in these -- through their policy development processes, where rights assessments are part of the policy development processes.

So having reached that point, and also having raised the issue, the GNSO Council then raised the issue with the GAC, and having received a cautious, if not -- a cautious reception to that idea, we've been thinking about how to take this idea forward.

And the purpose of this would be basically to try and increase understanding about the different approaches to rights within ICANN public policy, and also the impact, the effect of ICANN policy on rights, to improve knowledge about how the human rights approach applies to the specific technical role that ICANN has, and also to reach out to other constituencies that have -- and other constituency groups that have an interest in this topic.

Our specific items under discussion, in light of the new gTLD round and the applications which have been now released, is to offer during the public comment period to submit a public comment that would outline some of the human rights issues that might be relevant in relation to applications as a group, and some in particular by way of example, and taking account of the limited public policy objection procedures within ICANN to the applicant guidebook. To offer this as an input which might assist consideration of applications in general.

And we are currently discussing a draft on that and are looking toward that end.

The second thing we've been discussing is to encourage the board, in particular, to think about seeking advice on ICANN becoming a member of the Global Network Initiative, which is an initiative to encourage private sector corporations that are not-for-profit or profit to align their corporate policies and practice with human rights principles.

A number of major Internet-related corporations are currently participating in the Global Network Initiative or are observers to it, and governments, including the U.S. Government, the United Kingdom, and others are encouraging corporations to consider this, and we would offer that as a suggestion to the board to seek some advice on.

And finally, just an invitation that we would like to extend to the ICANN board to participate in an Internet governance-related workshop on the ICANN human rights policy which I'd like Carlos Afonso if he would just perhaps speak briefly about.

Carlos?

>>CARLOS AFONSO: Thanks, Joy. This is Carlos Afonso from Getulio Vargas Foundation in Brazil.

So the idea of setting up a workshop in the IGF was to make those topics that Joy has just mentioned in some way to -- I would say to foster some discussions on some of those.

We have been going for a very interesting, I would say, momentum for the discussion of principles of Internet governance, and certainly openness has been one of the principles that has been pretty much discussed, and that matters certainly for the ICANN policy -- public policymaking. And the idea of the work was to bring together, of course in a multistakeholder fashion, different perspectives on those topics. Like in the recent years we have the new gTLDs programs and the discussion on free speech and the assessment that has been made on morality and public order.

We have now the discussion on DNS filtering, a number of national legislations from all over the world, so those are just examples on topics that will be addressed -- could be addressed in human rights perspectives and we would like to invite the board to join us in the discussion in Azerbaijan in our workshop dedicated to that.

I think that's it.

>>STEVE CROCKER: I'd like to ask a question about this.

Yet a -- you know, in terms of general formulation, it's sort of on the surface attractive to add an impact assessment to the policy development process.

It's in the same spirit as, say, adding an environmental impact statement for development projects in the physical world, and I had the privilege of being the first area director for security in the IETF as it was building up its management structure, and one of the things that I was able to achieve relatively quickly was making sure that there was a section on security impact added to every RFC that came along.

So I'm sort of positively biased in favor of such things, but then when I think a bit further, I think so what are examples of policy development processes that would be affected by a human rights impact statement?

That is, what kind of issues are there?

And to what extent are there ways of engaging?

That is, that are -- how relevant -- I mean, there are lots of human rights problems that are very, very big serious issues. What isn't a hundred percent clear to me is where in our policy development processes we would move into areas that would be connected to the big human rights things.

And it's tempting to ask for a quick tutorial here, but probably the more useful way to use our time would be if there is any papers or articles that fill in the gaps underneath that or sort of bring this to life.

It would be interesting. It's -- if there's not enough connection, then it's -- then, you know, as attractive as it might sound, then it's kind of just extra freight without much value. And if there is a way, then it would be helpful to I think make it compelling for people to be able to engage.

Bertrand is obviously engaged.

[Laughter]

>>BERTRAND DE LA CHAPELLE: Thank you, Steve.

I think we're touching here one of the very core elements of the multistakeholder model.

What you are requesting, the first formulation, human rights impact assessment, is sounding like a request that has been made to a government authority that is doing it without consultation, if you see what I mean.

You get a government agency that is developing a policy and then there's a request that in the course of their development internally, an impact assessment has been made.

The second element shows that this is exactly the purpose of the structures that ICANN has, so that this can be included in the discussion itself.

Let me explain.

This is an illustration, for instance, of the distinction between the role of at-large and ALAC and the role of the noncommercial stakeholder constituencies. In particular, NCUC and others.

Taking care about the impact on privacy, for instance, or taking care about the impact on freedom of expression regarding decisions that will potentially be taken in the future regarding seizure of domain names or blocking or responsibility of registries and registrars in responding to a takedown notice is typically something that is taking place within the structure of ICANN during the development of policies because the constituencies are there.

And so there are two elements in your question.

One is that the assessment is part or should be part of the policy development process because those stakeholders are in.

And second, in the case of the role of privacy commissioner, this is a fundamental issue of making sure that the different actors from governmental perspectives are present.

And I do support, on a personal basis, the fact that when we talk about law enforcement requirements, it is indispensable to have the privacy commissioners also involved.

How they can be involved at the moment is delicate, because in many cases they are independent authorities and so they cannot come as a sort of baggage of the GAC, whereas sometimes law enforcement agencies come.

And so in terms of process, the question you're asking is actually addressing an issue that is the structure of ICANN, the type of constituencies that exist.

What is the representation of independent authorities in those processes? It can be privacy commissioners, it can be competition authorities, actors who are not normally engaged in ICANN in general but that in the course of the new gTLD program and all the consequences actually are players that we need to think about and outreach to.

So I wouldn't support necessarily the notion of an impact assessment as an external process; recommend that this dimension is clearly taken into account when the policy is developed by the stakeholders inside; and three, make a thread that could feed into the discussion we'll have on the impact of the structure regarding the representation of independent agencies and other actors dealing with human rights in the processes that ICANN is following.

 >>JOY LIDDICOAT: Thank you. Joy Liddicoat for the report. Thank you, Steve, for your comments, and Bertrand as well. I think for your perspectives, and to be clear, we aren't asking ICANN to carry out human rights impact assessments. We aren't

suggesting that the board should initiate some new process outside the policy development processes.

 Rather what we've been working on is how to develop an input into those policy development processes which would focus more specifically on this particular thread and this particular aspect, which has had somewhat of a disparate focus across a range of rights issues, privacy, freedom of expression, and in order to give some richness and depth to that.

 So we see this as very much focusing on inputs rather than additional work -- well, at least in terms of a separate impact assessment. And we propose sort of a practical way to assist that is to generate one ourselves, that can be used as an input.

 And in terms of your question, Steve, I think the best way to demonstrate the relevance is to start doing those -- doing that in particular policy development processes and that's exactly what our plan is.

 We're not going to have a human rights tutorial. But if you would like one, please, of course. But, rather, I think your point is very well made. Let's just roll up our sleeves and look at the particular issues causing concern. And they won't be the full range of issues, but they will cover things such as freedom of association, the use of personal information of registrant data and access and use thereof. So that can be a continued conversation.

 >>STEVE CROCKER: Good. I like the "roll up the sleeves." I'm a little leery about just doing one.

 The whole reason -- so we can be quite straightforward here, the whole reason for doing such things is if the impact statement raises issues or is negative, then it's supposed to -- the whole point of it is it is supposed to have the effect of pushing back and causing a modification, not just sort of noting that it's negative and everything goes through blindly, it is actually supposed to have some impact.

 That implies that there's a role for that, that there's an agreement for the legitimacy of the process and with the values underneath it all, which is okay but let's get those values up and visible and sort of an agreement of what the terms of engagement ought to be. And the process of just doing one sort of jumps over that process and sort of makes it so without having had that discussion. I'm not opposed to having such a thing. It is a good kind of mechanism. Just want to sort of think it through and see whether we're sort of exceeding our scope and reaching for more than -- we got a lot of problems with what we try to do and what our role is in the world.

 And it would be great to solve world peace, world hunger, and all of that and wipe out diseases. But it's hard to connect all of this up with high leverage.

Anyway, I'm running on.

More? Maybe it is time to move on to -- yeah.

>>ROBIN GROSS: Okay. Thank you. The first question that the board raised -- is raising with all the groups is on the RAA negotiations. And I just want to turn the floor over to Wendy Seltzer, our GNSO Councillor to give views on that.

>>STEVE CROCKER: Good. Where is Wendy? Oh, there she is.

>>WENDY SELTZER: Thank you. Yes. I apologize for coming in late. I was talking with the registrars just before this.

So as we discussed with them, registrants, noncommercial registrants particularly, depend on the terms of the Registrar Accreditation Agreement to set the terms under which they can acquire domain names. So even though we are not a party to the contract, we have strong concerns about it and the current draft that staff has proposed raises serious concerns for privacy and freedom of expression and the stability of online speech because it places those at the risk of improper verification or validation, of delay, risks of domain loss through the failure of one of those steps and risk of privacy breach to the data retention requirements and collection requirements that are being proposed there.

So our specific concerns, we raised some of them at the microphone in the Monday session. We will put those into writing. We're also planning to reach out to privacy and data protection commissioners to ask that part of law enforcement, which is also engaged in consumer protection, to help the staff and board to recognize the important privacy concerns here.

And I think those concerns attach, at the moment that validation or verification is required. I heard that some of my comments might have been interpreted as conceding that validation/verification would happen. I do not accept that as an outcome for this negotiation. I do not agree that registrants should be required to verify an offline identity in connection with the registration of a domain name. And I believe it's important to the ability of individuals in noncommercial organizations to communicate on the Internet with stable locations for their online speech, that they be able to obtain domain names quickly and with a minimum of fuss. The Registrar Accreditation Agreement currently requires that they pay for the domain name before it resolves, but that we believe is the only requirement that should be in place.

 >>STEVE CROCKER: So there's a question of sort of core values and principles underneath, sort of separate or before one argues about the cost of implementation or the feasibility of the implementation.

 What is the state of play of that debate, if you will, about whether in principle one should be accountable and identifiable or whether in principle one should be capable of being anonymous and sort of hidden from view, if you will, but still able to operate?

 And I apologize if there is bias in the way I've phrased it. I was trying not to do that, although I never know quite where -- how the words get interpreted.

 But this is -- this is sort of -- I'm pretty sure there is sort of vigorous views, strongly held views on both sides. And this becomes a societal as well as some practical issues about where you draw the line of privacy versus identity.

 As an American and having grown up in the U.S., I'm familiar not in a highly trained legal sense but familiar with the general background that we have. And so very strong First Amendment that guarantees the right to speak. But so far as I understand it, doesn't guarantee the right to speak anonymously. So then there's -- at least that would be the area where there would be some debate. And you are shaking your head.

 >>ROBIN GROSS: Wendy?

 >>WENDY SELTZER: In fact --

 >>ROBIN GROSS: Professor, Wendy.

 >>WENDY SELTZER: Thanks. In fact, in the United States, the U.S. Supreme Court has said that the right to speak anonymously is a component of the First Amendment right to freedom of expression.

 >>STEVE CROCKER: Okay. I stand corrected.

 >>WENDY SELTZER: I'll be happy to send pointers to the McIntyre case and some others. As Joy points out next to me, this is a core human right. We may not have the First Amendment outside the United States but we also have different fears, or citizens may have different fears. They may not trust their law enforcement and with good reason. They may not trust the governments who are demanding information of them.

And as we try to protect global human rights or at least try to be respectful of global human rights, we should take care that we are not putting registrants in danger by forcing them to expose information.

>>STEVE CROCKER: I have heard even in the U.S. there are very, very rare occasions where some people actually don't trust the law enforcement.

[Laughter]

Gonzalo?

>>GONZALO NAVARRO: Just a comment, coming from a country where the misuse of information was a serious issue for our citizens.

I think that as a complement -- as an addition of what Wendy was mentioning is that it is not just about anonymity on the Internet but it is about the wrong use of the information that some organizations can collect. And that's the key or the core element that we, in my opinion, we shall have in mind when we are dealing with these issues. Thank you.

>>STEVE CROCKER: Yeah. Like spam, like buy more from us plus all kinds of other things.

>>GONZALO NAVARRO: And many other things.

>>STEVE CROCKER: So where does that leave us on this?

>>ROBIN GROSS: Okay. Does anyone else want to speak to this issue? All right. Shall we move on to the next issue?

Okay. The next issue that we propose speaking about was including the privacy concerns and law enforcement discussions and including privacy commissioners among law enforcement perspectives in the ICANN policy discussion.

And for this topic, I wanted to start -- kick off the discussion with Avri Doria. There you are. Thank you.

>>AVRI DORIA: Yeah, thank you. And this is one that I'm really quite glad to see that the NCSG has taken up as a topic, too, because I've been pushing on it for a while.

What basically happens a lot in all these discussions is that people quite justifiably go and talk to the law enforcement agencies to get their perspectives on things. But in any of our countries, we find that there is almost always a data protection officer

of some sort in some committee. Even within the U.S., we have them in several departments. We now even have a Presidential commission that's looking into privacy concerns.

 So any time we are talking to law enforcement, we are only getting half of a nation's story.

 So at ICANN, when ICANN staff goes out and works with law enforcement, they're only getting half of the story. And it's been very disturbing in a sense to have ICANN working really hard and coming back with what they think is authoritative information from a government when they've really only gotten half of the information from that government.

 So one of the things that I think should actually be a rule is that ICANN should never talk to a law enforcement agent unless they are at least virtually handcuffed to their data protection privacy equivalent from the country because unless you're listening to one in the presence of the other, you are not getting the full story.

 And I know that ICANN has said they have problems finding them. And I admit, for example, in order to find the U.S. one was a challenge until I did find them. There are at least three of them. And in other countries. We're certainly willing to help ICANN find these officers.

 I know you're getting the privacy perspective from those of us in civil society. We're constantly bringing it up. But, you know, we understand that we are advocates. But when you are talking to the government officers, you are no longer talk to be an advocate. You are talking to someone who has official responsibility for protecting privacy and data protection within that country. So that was the point I wanted to put on the table.

 >>STEVE CROCKER: You can dive in first.

 >>ROBIN GROSS: Thank you.

 Is there any questions on that?

 >>BRUCE TONKIN: Just a comment, I guess. I guess the board is really responding partly to advice from the Government Advisory Committee and what they have undertaken to us is that they coordinate amongst their parties in their home countries and then they come to us with advice and it is they who endorse these law enforcement recommendations and advise the board to take them into account.

 So I guess there is two aspects of that. One is members of the noncommercial constituencies go back and talk in your home countries with your GAC reps and

encourage your privacy commissioners within your countries to talk to your GAC rep is one suggestion.

Another thing I find interesting, I was just looking at the GAC Web site and looking at the GAC observers. And quite a few of the observers related into the telecommunications industry, so African Telecommunications Union, Commonwealth Telecommunications Organization. There is quite a few, if you would like, technical-type bodies in there. But there is also INTERPOL and -- and then there is World Intellectual Property Organization. Those are obviously two groups that have a very specific interest. WIPO has an intellectual property interest, and INTERPOL has a police interest.

But perhaps thinking what is an appropriate international organization that represents privacy interests and encourage it to join as a observer.

>> Council of Europe.

>>BRUCE TONKIN: Council of Europe is in that category?

Actually look at the GAC part of the process and get the right observers in there but also get your privacy bodies within your countries to communicate with your GAC representative and maybe send them copies of policies that we're working on and encourage to talk to their GAC representative on that. We are no the directly interacting with law enforcement. We are -- well, I guess some bits of the staff are. But the board is really just taking advice from the GAC.

>>STEVE CROCKER: Before calling on Bertrand, let me enlarge the view just a little bit.

Bruce, I've got a slightly different perspective on this. The law enforcement community had been pushing its agenda on us for quite some time and recently have been working through the GAC and sort of raising the temperature level a bit.

But, Avri, the way you described it, I think, at least to my -- from my perspective is not exactly the sequence that has taken place. We didn't go out looking for advice from law enforcement as one of the things on our checklist and failed to go looking for advice from privacy offices because it wasn't on our checklist. At least that's not my perspective of things.

I think that -- And, again, what I've seen is that the law enforcement community came and said, We care about this. And from that point of view, the door is wide open for the privacy community organized however the privacy community chooses to be organized, to also present itself. We are actually an open multistakeholder group, of course.

And if there's any trouble with that community getting organized, I would advocate that dot Avri be invoked to get them organized. So that clearly gives you an opportunity to respond before Bertrand.

>>AVRI DORIA: Thank you. And forgive me, Bertrand. And couple things. I accept the advice, first of all, that we should go out and we should find organizations and encourage them to join up, to become observers of the GAC. I think that's a great suggestion, and we'll follow it to the extent that I can.

I think, though -- and forgive me if I described the sequence of events incorrectly. But -- in terms of ICANN going out and outreaching but then having inreached.

I think what I would like to suggest is knowing, though, that these governments do have a privacy department, do have privacy officers, I think it is incumbent upon ICANN, once one side of the story has come to you to do outreach in the other and certainly calling on Avri and others, too -- although I would love to have dot Avri, coming to Avri and others saying Help us reach them, help us get them.

We are going to have a meeting in two weeks' time with law enforcement, and it would be really good if you could point us to some data protection that we could bring in.

I think it is incumbent on ICANN to make sure it get both sides of the story. Yes, bottom-up has to push up. But sometimes as a board and as a corporation that's doing things, you have to do outreach to get the part of the story you know is there, you are just not hearing it. So that would be my response.

>>STEVE CROCKER: I worry a little bit about us telling the GAC how to -- what the nature of their advice has to be --

>>AVRI DORIA: I wasn't talking of the GAC.

>>STEVE CROCKER: -- and telling them about not giving us advice on privacy.

But Bertrand, Gonzalo, Chris or the other order if you want. But, anyway, Bertrand.

>>BERTRAND DE LA CHAPELLE: I would actually go relatively in the direction that Avri has just raised. With a great caution of not betraying any confidentiality of the discussions within the GAC that led to the transmission of those law enforcement requirements, what I can share is that there has been discussion within the GAC on whether the recommendations of the law enforcement agencies should be transmitted and endorsed. I won't get into detail. That made a huge difference.

Let's be honest, at the moment the interaction in the Registrar Accreditation Agreement discussions are not between the GAC and the registrars. It is between the law enforcement agencies and the registrars. This is a major distinction. They have de facto -- I don't say it is bad -- they have de facto become a stakeholder part of the discussion.

In many cases, the position of the law enforcement agencies and the privacy commissioners within the given country are naturally opposite. And in transmitting the request of the law enforcement agencies, only one side of the story was actually transmitted in many cases.

And as a policy facilitation structure -- not policy-making structure, but facilitation structure, ICANN has a duty -- and I fully endorse what Avri is saying here -- has a duty to make sure that the different perspectives are present in the debate.

And connecting with what I said before, there are actors that are known. Wolfgang mentioned the Council of Europe. As far as Europe is concerned, there is the Article 29 working party.

There is a gathering of data protection commissioners everywhere. It is an informal network, but it is a network. Kathy Kleiman in the forum the other day explicitly mentioned the efforts they have made to bring the privacy commissioners in this. It is difficult because they don't necessarily know exactly how it works in ICANN.

But, it is essential that when something is being developed, the different sides of the story are part of the discussion. And it is part of the responsibility of the constituencies, not only of the board or the staff, to take the actors that you are interacting regularly with, take them by the hand and say, "come, there is something that's being discussed here." And if you have a problem -- if there is a need to convey towards the different authorities that this part of the discussion needs to be there, we can help.

But it is also for the community to make sure that all the viewpoints are there. So it is a fine balance, but whenever there is a dimension again that has a human right, it can be freedom of expression or it can be privacy. There are, as Avri said, public authorities that are dealing with that. And they are not necessarily government under the general label. When we say "government," it covers parliamentarians, independent authorities, ministries, sometimes different ministries in one country. The different parties need to be around the table, and there is a proactive exercise to make sure that these types of actors are involved and not only law enforcement and trademark protection agencies.

>>CHRIS DISSPAIN: Me next, I think, and then Gonzalo. Is that right, Steve? Yep, okay.

So I agree with what Bertrand just said. And I think the suggestions for civil society to go and get privacy people, et cetera, are all good. But -- and -- and if this happened in Australia, if law enforcement -- and it happens actually quite a lot. If law enforcement came to AuDA and when law enforcement comes to AuDA and says, We want you to do this. Our response is: Have you engaged our privacy commissioner in this?

So I don't see a reason why the board cannot ask the GAC to confirm -- to confirm that the law enforcement representatives that are here have engaged the relevant privacy commissioners in their countries prior to or during them coming with their requests.

I'm not saying you shouldn't encourage the privacy people to be here, but actually it is a perfectly legitimate request for us to say: Could you please confirm that the Australian government, Australian law enforcement is involved in this thing? Australian government has, in fact, confirmed law enforcement that they have checked with the privacy people.

And I think we should do that. Thank you.

>>ROBIN GROSS: Okay, yes, Gonzalo.

>>GONZALO NAVARRO: I'm going to be really brief because Bertrand and Chris made my point. I would like to (audio problem) what Avri was saying before.

It is really important to bring these people to the table. And it is my perception that some members of the GAC are just listening to one side of the story. And I'm not sure -- and it is really a good suggestion to ask the GAC or representatives to bring their own privacy organizations, institutions to the table in order to know how the opinion -- for example, I will be thrilled to hear agency of Chile talking about this. It is going to be impossible because it doesn't exist. But that's many cases in Latin America. Thank you.

>>ROBIN GROSS: Yeah. If I can sort of respond to what I have been hearing. I think you're absolutely right, that we need to be reaching out more to the privacy commissioners and bringing them in and getting them involved. And one of the things that we want to do in this area is contact Article 29 working group and have them take a look at the RAA documents and ask them, does this comply with your understanding of European privacy rights?

So I think that would be one example of the kinds of ways that we could do this. But I also wanted to point out that in the financial year '13 budget that was proposed, it listed a series of issues that the community decided to support. And one of them in

the budget was to make support for law enforcement engagement with the community a priority. And so what I would say is if this is a priority pour putting money into the budget, make sure some of that goes not only to police and military organizations but also the privacy commissioners and bringing those folks into the meeting as well. So that was all I wanted to respond to on that.

 I hear we have got Carlos over here.

 >>CARLOS AFONSO: Thanks. Carlos Afonso from CGI.BR. I am following a discussion in the LACNIC community regarding recent noise coming from the FBI and DEA for the inappropriate structure of the IPv6 protocol which would not allow them to have reasonable traceability of people in IPv6 communication.

 And going as far as some of them proposing a synergy packet structure for IPv6 so they can properly catch everyone behind an IPv6 Internet, for instance. How would ICANN deal with that? You would just call the FBI and get their advice or what?

 >>ROBIN GROSS: Yes, Thomas.

 >>THOMAS NARTEN: So Thomas Narten here who happens to know a little bit about IPv6. I guess I have heard a little bit about this proposal, but my guess is it is another one of these pretty half-baked attempts to say there is a problem with IPv6 that doesn't exist with IPv4. And if you actually look more closely, there is not a lot of substance there. I mean, I would be happy to have that conversation offline or with you further.

 From the ICANN perspective, it is unclear to me that ICANN would be asked to do anything because it is not clear that ICANN has scope in this particular topic area. More likely the IETF would be engaged if there was real substance here, if they wanted to make a technical change or perhaps the registries if there was some aspect related to address allocation, though, I would not expect that to be the case and so forth. Thanks.

 >>ROBIN GROSS: David, did you want to --

 >> DAVID CAKE: I wanted to very briefly say -- David Cake. I wanted to very briefly say that we had an NCUC meeting this morning. We did actually resolve that we are going to reach out to privacy organizations. We're drafting a letter. We have quite a few people in our constituency or our networks that have some expertise in this area. And I am sure we will both be reaching out to them and trying to advise them how best to engage in the (audio problem) that is ICANN -^-.

 I realize we aren't the only people in that conversation, but we have actually made a resolve that we will be doing things in the next week.

>>ROBIN GROSS: Great, thank you. Okay. So let's move on to the next issue that was suggested by the board, which was the WHOIS report. The board asks in particular what aspect should be subject to policy work within the GNSO versus left to staff to implement? Questions for the GNSO Council or stakeholder groups at-large?

 I wanted to ask Wendy. What do you think about the WHOIS report?

 >>STEVE CROCKER: Excuse me. I'm sorry. I keep forgetting that I'm mic'd up here.

 We have a little time problem in that we are supposed to be with the GAC at 4:45 in their room, so there are transportation issues.

 Let's do this briefly and then just bring it to a close with apologies.

 >>ROBIN GROSS: Okay. Thank you.

 >>WENDY SELTZER: Thank you. I can do it very briefly. There are serious problems with the WHOIS review team report. We do not think any of it should be implemented. Anything that you're thinking might be implemented should go to GNSO for policy development process. It's policy, not implementation.

 >>STEVE CROCKER: But we understand that. But which part should be implemented by staff and which part should be run through the policy process? I'm being somewhat facetious process here.

 >>CHRIS DISSPAIN: Who's "we"? That's an actual position.

 >>WENDY SELTZER: This is a NCSG position.

 >>CHRIS DISSPAIN: Thank you.

 >>STEVE CROCKER: I haven't looked, but I presume you are putting that into the public comment process with vigor.

 >>WENDY SELTZER: We have put in comments, and we shall put in reply comments.

 >>STEVE CROCKER: Good.

 >>ROBIN GROSS: Do we have time to discuss one more issue briefly?

 >>STEVE CROCKER: Sure. Pick one.

>>ROBIN GROSS: Okay. The globalization issue.

>>STEVE CROCKER: The globalization issue.

>>ROBIN GROSS: How to make ICANN more global. And I wanted to ask Bill if he could -- Bill Drake, our GNSO Councillor, if he could weigh in on this topic briefly.

>>WILLIAM DRAKE: If the board -- Bill Drake. If the board needs to go, I don't see the point of trying to start this conversation at this time. I would only say just real briefly that we did discuss a number of different points of particular relevance that we hope can be taken up on the new gTLD program. We share the concern expressed by a lot of other parties including the GAC about the poor showing from developing countries and we would love to see some sort of a report about what kind of outreach was done to developing country prospective participants in the top-level space.

And on the point about the broader relationships that we don't really have time to talk about here, the geopolitical relationships, we talked in San Jose about the work of the Board Relationships Committee. And we hope at some point we can continue the conversation and find out how we can participate and interface with that committee and its work more effectively and also talk about development at some point.

But, obviously, there is no time to do any of these things now.

>>STEVE CROCKER: So thank you very much. So there are two points there that you raised. And one of them is fundamentally assessment or looking back at what happened in the gTLD outreach in the past and the results of that. That's worth doing. It will pay off primarily as the second round is put together sometime not in the immediate future but down whatever it is, couple years.

The other, of course, is much more lively, urgent and working with the board Global Relations Committee I think is exactly the right thing for getting that input in. I would encourage that, and I see Gonzalo shaking his head yes and as the chair of the board Global Relations Committee. Thank you.

Thank you all very much.

>>ROBIN GROSS: Thank you for having us.