

**ICANN MEETING, SINGAPORE  
REGISTRIES STAKEHOLDER GROUP  
MEETING WITH THE ICANN BOARD  
TUESDAY, 21 JUNE 2011  
1:00 P.M. TO 2:00 P.M. (Local Time)**

**NOTE:** The following is the output of transcribing from an audio recording of the Registries Stakeholder Group meeting on Tuesday, 21 June 2011, held in conjunction with the ICANN meeting in Singapore. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

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>>PETER DENGATE THRUSH: Okay. Let's get this show on the road, people, if we can. It's a slightly different format, but the same rules apply. Can you identify yourself for the scribes and for the room when you speak?

Trying out a slightly different format. Instead of the CEO and the chair of the board presenting themselves for a grilling by any particular constituency, we've all come, I think, what it looks like for a canning. We're in the Canning room. But, David, can I just begin by saying thank you for putting together this list of questions. They're obviously very important. Just a high-level comment. You've got an opportunity here with all of the board to talk about anything you'd like, including any reaction to yesterday's program or anything else, if you want to. These are all detailed questions that I'm going to refer almost automatically to counsel. I don't think the board members are going to be able to help you with the detail of the temporary drafting group drafting a registry contract. I look at Cherine, and Cherine is not the expert on drafting the registry contract. And neither is any other board member. So we're happy to go through these just as a matter of focus. If you want a conversation with the whole board, some high-level strategic questions, if you have them, would be great. Otherwise, Kurt and J.J. are going to take over and sort of answer the questions for us, I think.

>>DAVID MAHER: As a matter of fact, we do have a more high-level set of questions, which, I think, are more appropriate for this meeting. We discussed this just before the break. And I'll just give you a very quick high-level listing of what we would like to talk about. And first is vertical integration question regarding the way this applies to both smaller registries and registries in general. Jeff Neuman is going to speak to that.

Second, is the announcement of the Saturday workshop of the board, the forthcoming workshop.

Third is the letter that -- well, it's the question of communication between the registry stakeholder group and the board and, particularly, with reference to the message that we sent back in March.

And then, fourth, question of the -- some of the changes in the intellectual property rights protection issues, the GAC influence on those.

And then, finally, the mechanisms of communication, which really has to do with the format of this meeting, which I must say appears to me just from the very beginning to be better than getting together for a very quick sort of elbow-to-elbow lunch. So, anyway, we're happy to be here and appreciate the board making themselves available to have a conversation with us.

>>PETER DENGATE THRUSH: Well, David, that looked like a great issue of issues. And I appreciate they're higher level of issues, which is more helpful for the rest of the board. Can I just check -- because I can't remember. Maybe the point you wanted to make. What was the March -- content of the March letter you wanted to talk about?

>>DAVID MAHER: Oh, well, that was a question of a notice of breach being sent to a registry, really, without any prior notice to the registry involved.

>>PETER DENGATE THRUSH: Okay. Well, unless there's more or objections, why don't we kick off on the first one, the vertical integration one. We think we've been reasonably clear about that. We think we've posted a proposal for comment about how the registries can transfer from one status to the other. We've adopted most of that, and there now is a process. What we've been clear is, I think, that the rules in relation to registry operators who are operating registry legacy TLDs and becoming registrars in that TLD space is something that causes some concern. But that the rest of it is reasonably clear and open to move forward. That's our understanding of the position. If we haven't got that right or if there's an aspect about that that you want to talk about, please let us know.

>>DAVID MAHER: I'll defer to my colleague, Jeff.

>>KEITH DRAZEK: Thank you, Peter. This is Keith Drazek. I'm here speaking in my capacity as alternate chair of the registry stakeholder group. Sort of what I'm going to go over here at a high level is an introduction following the conversations that we had in our morning session. And I'm not speaking as a VeriSign employee or from a VeriSign perspective at this point. I'm just sort of teeing up the conversation that we had in our stakeholder group and may ask others to jump in.

So on vertical integration and cross ownership, specifically, the removal of cross ownership restrictions for existing registries, yesterday's resolution on the new TLD program deferred a decision, by our understanding. And we may, you know -- if our understanding is incorrect, then we certainly can clarify that. But deferred the decision on a process for existing registries pending consultation with competition authorities. And, Peter, I heard you just say that it was really specific to a removal of the restrictions for their existing TLD as opposed to the new gTLDs that they may be interested in bidding for.

So, you know, we understand that the board didn't want to delay the vote on the new gTLD program yesterday or hold it up to sort of resolve this issue, particularly, in light of the recent letters from the Department of Justice and the E.U. But the uncertainty -- and, again, this may be clarified by your statement. But the uncertainty about this particular issue right now could have significant implications for new gTLD applicants, including existing registries that want to bid on new TLDs, new applicants who may want to partner with existing registries and, obviously, existing registries that want to sell their existing TLDs. And so the stakeholder group, the registry stakeholder group is very interested in the next steps on this issue, particularly the timeline, procedures, and definitions that would be used to determine possession and/or abuse of market power. So -- but your clarification, I think, may put some of our concerns to rest.

But I do want to give the opportunity for some of my colleagues, Vladimir and -- from TelNIC and Jeff, I think, maybe wanted to speak. Vladimir, if you wanted to -- is there a microphone?

>>VLADIMIR SHADRUNOV: My name is Vladimir Shadrinov. I represent Telnic, the registry for dot Tel. To better illustrate what Keith just said, I just wanted to show you what it looks like from the perspective of a sponsored TLD registry. So we are kind of small type of registry with 300,000 registrations. We have our certain place in the market. We serve our sponsored community.

So the question is: Does anyone really have any concerns whether we can use our market power in an inappropriate way? In fact, we were specifically mentioned in the Department of Justice letter as an example of a TLD where they see no issues with possible vertical integrations. For us, the ability to start operating as a registrar opens a number of important opportunities as we can build our distribution channel directly. As we are focused on serving our sponsored community, the only thing we're really interested in is starting operating as a

registrar for our own TLD. We do not have any interest in selling any other top-level domains. So the recent decision of the board and the modification of the process for removal of cross ownership restrictions, for us effectively means reversal of the position. And where we currently are is we don't have any certainty with regards to what will be the next steps and whether we can start planning our operations or not. We don't know how long this will take and what the next steps are.

>>PETER DENGATE THRUSH: I wonder if the way forward on this is just to put this on hold. We'll put the proposal up on the screen and have, if you like, a mini-tutorial on what it means and what we think it means and what we want it to say and what the lawyers say it says. And then we can ask questions around that. Sorry. So, if we can take the questions asked, we'll put it up and work through. And we've got the lawyers here, and we're getting it up on the screen. In the meantime, can we move to the next topic while I get some water?

>>Sure.

>>JEFF NEUMAN: So I know, Peter, you want to move on. I guess, just the general question, if you boil it down, is you've deferred the decision on whether to allow an existing registry to be a registrar in their own TLD. So I guess the simple question is deferred until when? What is the next steps?

I believe it said -- so, you know, we just don't want to make sure it gets lost and deferred and we're two years down road and it's still deferred. So what steps are you taking?

>>PETER DENGATE THRUSH: Good question. I don't know what the answer is. I mean, the issue for us was to work out what we could do yesterday. And so we've put that into a stasis. Your question is -- okay. Let's dress that. I'm not sure whether Kurt has a series of steps in mind for the next steps. Bertrand?

>>BERTRAND DE LA CHAPELLE: To answer briefly Jeff's question, I want to make a distinction here. When the decision of vertical integration was made after the one-way other way around Nairobi and then Palo Alto, the purpose of that decision was to address the new gTLD program, fundamentally and whether there should be vertical -- an obligation of vertical separation with exception of possible integration or whether there would be authorization of integration with possible exceptions of obligatory separation in the new gTLD. And the option was taken in Palo Alto to do a principle of allowing vertical integration, because most TLDs were going to come from the bottom up and be small at the beginning. So there would be less market power and there would be remediation policies afterwards.

What was not supposed to be addressed was the existing contracts. But it became obvious that there was a question of global competition environment. And it then required to address the issue of allowing the existing TLDs, who have separation, to move or not move depending on their market power to an integrated element.

What emerged in the last few weeks, especially after the letters and discussions in the community, is that there were actually two different issues. The existing contracts of the operating TLDs had provisions to not sell names in their own TLD but also, in some cases, to not have ownership in registrars at all, which we understood was causing a problem for the new gTLD program. It was not a matter of aligning the competition in the future. It was potentially preventing some existing operators to have a new activity that was integrated for the new gTLD program. And this is why the decision was taken to say we separate both, and we address the absolutely urgent one that needs to provide a fair and level playing field for those operators. And we defer the second one, because it actually raises different concerns that have not direct impact on the TLD -- new TLD program itself.

And, as the timing is concerned, the fact that the level of competition and the level playing field for the existing TLDs will happen only -- let's be honest -- when the new gTLDs are actually in the root and operating, leaves some time. And it was really a matter of avoiding to be caught and delayed on the new gTLD program that we made the separation. As for the timeline, I'll let Peter explain.

>>KEITH DRAZEK: Thank you, Bertrand. This is Keith Drazek again. And that makes a lot of sense. I think one further consideration on this particular topic -- and, Vladimir, feel free to jump in again. But, for a relatively small registry operator that is facing a future of a very crowded marketplace with several hundred new top-level domains, the question of having a secure, reliable, predictable sales channel is a very critical issue and does, I think, speak to the questions of being to have access to the market and to compete. And, if are new registry operators are vertically integrated and are able to distribute their own TLD, then a smaller existing registry shouldn't necessarily be prevented from doing so, provided, you know, understanding the market power or abuse of market power concerns. So I think that the question that Vladimir has raised is he needs to be able to understand what the next steps are down that process and make appropriate plans. So, anyway, I'll stop there.

>>PETER DENGATE THRUSH: Just having consulted -- just a bit of level setting. I understand you've actually had an hour and a half tutorial earlier with staff on the proposal and the suggestions. Let's not do that again. Let's not put the proposal up and work through it. Jeff, you've clarified what your question is. We parked. How are we going to unpark it? At this stage, the only answer we can give is, look, we got these letters as we were flying here to the meeting. We've reacted reasonably well, we think, under duress and short circumstances. We clearly need a process to move it forward. We haven't got one yet. It will be done in the usual way, collaborating and forming transparently and with further negotiations. I'm not sure we can tell any more than that, Jeff. So I think just watch the space. You had good communications with the staff on this issue. They will keep you posted. When we've got a reply, we'll let you know. Rita?

>>RITA RODIN JOHNSTON: So I think that it would be great if we could actually get some timing for this group from -- whether it's John in legal or Kurt or Rod. Because I'm still not sure it's entirely straight in my head. I think what we're saying is that every -- just to level set, right?

Every existing registry has a prohibition against being a registrar. So what the board was very clear, when we talked about vertical integration, was for new registries going forward, there can't be a competition issue because they don't even exist yet. So we want to be clear that every existing registry, even though you have this blanket prohibition -- and someone bring the cane out, if I'm misspeaking. Even though you have this blanket prohibition, to allow to you compete, which is the concern we heard, that you want to be able to compete in this next round. And now that we've launched it, you need to be able to go and say I can do whatever I want, registry or registrar, if I'm going to do a proposal in the next round. The board says okay, we get that. And, whether the formal amendment has been made or not, the intent has been for every new gTLD, every proposal, there should be no limitation on existing registries.

The question Vladimir is raising, I think, is what we've parked is what can do you in your own existing TLDs? So can biz become a registrar in biz? My understanding is that, again, we've had some basic discussions. I'm not an antitrust lawyer, and I haven't talked to Joe Sims about this. But, to me, every registry is a monopolist. So you have market power in dot biz because you're the only one that's entitled to run it. If we're looking the overall domain name market, I think there's really one monopolist that exists. So I think we need to push to get some sort of clarity on this. and there does need to be some sort of certainty. We've gotten this letter. I think that we do need to define a process. But I think we owe it to people in this room to give them some deadlines and say when is that going to be done?

>>ROD BECKSTROM: I'm not going to go deep in the ways. Rita, I think it's a good idea. Clearly, the letter has just come in in the last few days. There's a lot of information to absorb. Staff and the board, everyone has been incredibly busy with the resolutions on the new gTLDs and getting that program finalized. So we haven't yet developed a timeline, but that's a good idea. I also think -- I, you know, presume we'll have a discussion with the board. The board will probably want to be involved in those responses. And that changes the timeline, rather than if staff just hands -- anyway, we can have that discussion and start working on it.

>>RITA RODIN JOHNSTON: I hope the board is not going to play antitrust lawyer. Maybe they do. I am not on the board so it's not my issue here, but I do want to have a timetable just to give people certainty here.

>>PETER DENGATE THRUSH: I gave a high-level response which says we just got the material and can't do it yet.

You are not seriously suggesting that a group here in this room now sit down and try to do a timetable?

>>RITA RODIN JOHNSTON: Not even close, no. I am just telling you we owe these guys a timetable, and we should just get it to them. If it's about their existing gTLDs, we did get this letter. I don't believe this is incredibly complex. We had economic studies when we did vertical integration about monopoly, et cetera, et cetera. So what I am saying is --

>>PETER DENGATE THRUSH: You are basically repeating what I just said to Jeff and it sounds as if you were suggesting something different. And you are not suggesting anything different, I don't think, from what we just agreed we are going to do.

>>RITA RODIN JOHNSTON: Then maybe you misheard me. Did you guys understand what I said? All I want to do is get these guys a data and a schedule at some time soon so they have some certainty. It's a very simple request.

>>PETER DENGATE THRUSH: Mike.

We all agree.

>>MIKE SILBER: I think just possibly to give even some more comfort, to the extent it is possible, the reality is that this issue arose in September last year when we passed the resolution in Palo Alto relating to VI, and the issue was raised pretty much immediately thereafter. And to be honest, I don't think it's been getting the attention it deserves, but it's been brought to a head by the correspondence.

So I hear your pain. It's part of the reason for my voting as I did yesterday.

It's a major consideration, and in my view absolutely critical. Believe me, there are people who will still be on the board post Friday who will make sure that this is an absolute and extreme priority because I think that ensuring an appropriate level playing field with suitable consumer protections, but a pro-competitive environment, is absolutely essential. So it will be a high priority. I know staff regards it as a high priority but there will be board members on their backs making sure they follow up with it with suitable priority.

>>KEITH DRAZEK: Peter, may I?

>>PETER DENGATE THRUSH: Keith.

>>KEITH DRAZEK: Thank you very much for the information you have shared with us, and we certainly did not come into this meeting today expecting answers or timelines or anything like that. We just wanted to make sure you understood this was a topic of high priority for us as a stakeholder group. It took up the most of our

morning session in discussing what we were going to talk about with the board. And I want to let you know we appreciate your commitment to get back to us when we can but it is something that concerns several members if not the entire stakeholder group.

>>ROD BECKSTROM: On behalf of the organization, wasn't to say we got that message loud and clear. We understand this is of very serious importance to you, and we will accord it very high priority and start moving with it.

Thank you.

>>DAVID MAHER: the second -- Oh, Jonathan.

>>JONATHAN ROBINSON: Thanks, David. It's Jonathan Robinson. I just want to make a quick follow-up question and make sure it's absolutely clear because there the two processes. There's the one bigger process we just covered, but there is, as I understand it, a smaller, more technical process which is the removal of restrictions, for want of a better word, for the exist -- incumbent or existing TLD operators to operate vertically integrated in new TLDs.

And that, I understand, is simply a -- as in what Rita described is within the existing contracts, there is a prohibition, full stop, on any form of vertical integration.

Yet, as I understand it, those existing TLD operators will be able to operate vertically -- as vertically integrated entities in the brand-new TLDs.

So one is a mere technical step, and the other seems like a much -- Am I -- Does that nuance exist? Am I clear in understanding it correctly?

>>PETER DENGATE THRUSH: Perhaps the lawyer behind. Dan, are you able to discriminate between those two? I'm not sure I can.

>>DAN HALLORAN: No, I'm sorry, I actually don't understand, either, the distinction.

>>PETER DENGATE THRUSH: Put that question again?

>> I think I understand. Part of the process that ICANN staff came out with that was revised yesterday includes the ability for existing registries to get an amendment to their contract which would really limit the prohibition on integration to their one TLD as long as they agree with the code of conduct and some other things that are in there. So yes, that's been addressed.

>>PETER DENGATE THRUSH: THE second topic was the board's workshop on Saturday, and I'm not --



>> That's right.

>>PETER DENGATE THRUSH: What's the questions about the board workshop on Saturday?

>> Peter, the question is very simple. It's are you in any position to -- We have seen an announcement. It's a relatively brief announcement, and the simple question is are you in any position to discuss that any more at this stage?

>>STEVE CROCKER: Let me take that, Peter.

There's not a whole lot to say. I don't want to make a big deal about it. The essence of it is that we have a whole set of things that have come together at the same time. We obviously have the launch of the new gTLD program, we are going to have change in leadership in the board, we have got some brand-new members of the board and some very recent members of the board. And there was a -- after some discussion, a desire to take advantage of the fact that we are all here and that we should take that time to look ahead a little bit, sort of take a deep breath, focus on what the next set of challenges are because we have been so wrought up with the current set of challenges, and sort of gather ourselves together.

The next time that the board would be physically face to face that we would normally schedule is a retreat in the fall. And there was a sense that this was just an opportunity to grab the time and do that.

So we're going to go off and chat amongst ourselves, is the essence of it.

No formal decisions, no big announcements, and sort of use the time to adjust our internal communications principally.

>>PETER DENGATE THRUSH: Bruce.

>>BRUCE TONKIN: Yeah, I -- oops. I'd just add that we, over the last few years, have had a format of having a couple of board retreats during the year. And normally those board retreats are a chance to just sit back, look further ahead, make sure we are on the right strategic plan and things like that.

But the last couple of board retreats, the significant portion of them has been spending 75 minutes per line on the GAC responses.

So, you know, I'd just calling not trying to make a big deal about these things. It's just that we have been spending a lot of time on new gTLDs. We need to spend some time on other things.

>> That's helpful. Thank you very much.

>>PETER DENGATE THRUSH: Thanks.

>>DAVID MAHER: The next item is the question of notification of breach of agreement. And in this particular case where we sent a communication to the board back in March, we've had no reply to that. And it still seems to us to be an important issue.

In the interest of due process, that a registry that's accused of a fairly serious breach of regulation should get some notice before being -- before receiving a legal complaint.

>>PETER DENGATE THRUSH: Let's refer to the lawyers and General Counsel is with us. John, is there anything you are able to reply?

>>JOHN JEFFREY: Sure. We don't think there should have been any surprise in the instance of dot jobs. We don't really want to talk about the details of that but it's important to realize that there was an ongoing compliance investigation that then led to the breach letter.

So I understand the complaint. I have heard the complaint. I disagree with the premise in it.

So we do believe that the process that we currently have in compliance is that we engage, we communicate, we ask questions, and then we escalate to a breach only if that's the only thing that's available to us.

>>PETER DENGATE THRUSH: The obvious question is have we not responded to a letter from the registry constituency? And if so, we probably should, should we not?

>>JOHN JEFFREY: I am happy to do that in writing a little bit more formally than I just said it, but that's essentially the essence of what the response would be.

>>DAVID MAHER: I think in the interest of better communication, it would be helpful to have a written response in this instance. There was an unrelated but another case of a registrar that wound up between a rock and a hard place. A court order in a jurisdiction where the registrar resides and action taken by ICANN which, there's from my understanding, did not reflect the legal proceedings.

>>PETER DENGATE THRUSH: Chuck and then Bertrand.

>>CHUCK GOMES: Chuck Gomes.

I guess, John, I have a question for you.

I'm sure the parties involved in these two instances were aware of the issues going on, but I think one of the essences of our letter was wouldn't it be appropriate to

communicate that, hey, we're getting ready to do a breach letter before they actually see the breach letter? Even though you thought they may have been -- should have been aware that one was possibly coming, I don't think they were.

So all we're talking about is the relationships between ICANN and contracted parties.

And, you know, I think for the most part we all try to work together pretty well. And I would still maintain that it would have been a lot better to give a heads up that that's coming.

>>PETER DENGATE THRUSH: Quick reply, John, and then Bertrand.

>>JOHN JEFFREY: So I certainly understand the point, and I commit that from my office you won't have surprise letters come to you. But when we're engaged in a clarification around a contractual dispute, there may be instances where it is appropriate to send the letter after we've exhausted other possible ways to proceed forward. And ICANN certainly needs to preserve its right to do that under its agreement.

>>PETER DENGATE THRUSH: Great. Thanks, John.

Bertrand.

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

I want to take the opportunity to make a sort of broader, broader comment. I don't get into the actual procedure, but the general idea is that there is a sort of staged reaction when something is apparently having a problem, that there's a level of awareness and there are several steps.

One step I would like to highlight is the following. The structure of ICANN has the benefit of providing a structure which is the registry constituency that gathers the different actors, and as the new gTLD program will come, new actors will join this constituency and it's going to grow.

This constituency has a responsibility and has a role to promote and defend the interest of this community, which is absolutely normal, and that's what it is for.

I would like to highlight, as I tried to do in the session yesterday, that in the coming years, it is all the more important also that, as a constituency, you help the compliance mission. What I mean by that is it is also a joint responsibility and you -- I'm sure you do endorse it, but there's an element of if something indicates that a registry is behaving in a way that they shouldn't, I want to share with you that it is not only harming ICANN. It's also harming the registry constituency. It's harming the credibility of the process of adding other actors.

And so one of the steps is maybe to have an interaction that indicates to the registry constituency, listen, there's a problem. Could you please try to indicate to the one who is likely to be in breach that it should right this behavior. And if it doesn't, then there will be a problem.

I may be pushing the envelope a little bit far, but I think it is very important in the future that the constituencies within ICANN take a role of self-organizing, self-policing as a component of self-regulation.

So it's a message I wanted to share because it solves, in a certain way, the notion of no surprise, but it is also using peer pressure to help everybody work together.

>>PETER DENGATE THRUSH: Yes, Jonathan and then John.

>>JONATHAN ROBINSON: One quick response to Bertrand. I'm not sure I want to respond right now but I think it's a very interesting concept and it's something we should think about.

Just in response to John's earlier point, I think there was no question in the discussions that I was aware of or exposed to of any question of ICANN's ability to enforce its contracts. It was all about, in my view, style rather than substance. It was a question of the steps and the method. And so it's something, in the spirit of the whole communication -- although it's not strictly a board constituency issue, it's a board -- it's a constituency-participant communication with ICANN issue.

>>JOHN JEFFREY: I just wanted to add that I believe the registries -- all of the registries that we deal, with almost without exception, take the compliance processes very seriously. So we see very good action and very good communication across all issues that are faced on ICANN.

That's -- This group is an exemplary example of how to -- that's a bad phrase, an exemplary example. These are good actors; right? So I think most of the time there is no issue.

When there are issues and we have an escalation, though, I think we do have to preserve our right to take whatever action we think is necessary to cause enforcement to the agreements, and we think that's in the interest of this constituency.

So I have no issue at all with your raising the issue. I think it's the right thing to talk about, but I think we've gone back and looked at the processes that way followed in the instance that was brought to your -- in the two instances that were brought to your attention, and we believe in both of those instances, could things have been more perfect or better communicated? Probably. But we think we did follow a

significant set of processes around those to make sure we were doing the right thing.

>>PETER DENGATE THRUSH: Bertrand, the issue is really an interesting one. I would phrase the question slightly earlier in the process than the point at which you enter, and that is to ask the question is there a role for the registry in self-policing? Is there a role for the registry in collective action? And not, perhaps, to start where you were, to assume the discussion has been had and the conclusion was yes, because the obvious point that occurs to me is the safeguards for the smaller and the weaker. You obviously have a problem with any constituency becoming effectively a cartel dominated by the (indiscernible).

So there's risks. But a very good discussion for every constituency to have, which is what is our ability collectively to -- and what is our role in the self-regulatory model of regulating our own portion of the -- I think it's a very productive discussion.

Bertrand.

>>BERTRAND DE LA CHAPELLE: Just one very quick point, exactly in your direction.

One thing is the transparency of the work flow in the escalation of notification so that all the different steps are known. That's what John was mentioning.

The other point was exactly what the question formulated the way Peter has done that I think as a community we need to ask this. What is the portion of compliance that can be helped and facilitated by the community itself and not exclusively a burden of staff. Compliance will be an extremely important concept for the viability and the credibility of this. Compliance can be completely centralized, and you can adopt sort of a Chinese model with a controller behind everybody, and it means an incredible increase in staff, or it can be completely distributed where ICANN doesn't do anything and we believe self-policing can happen.

I think the model we are trying to put in place is the distribution of peer pressure and compliance mechanisms, both for the notification of misconduct and for the enforcement of the measures.

But Peter is right to formulate the question exactly the way did you. Should there be an ETS, to what extent.

>>PETER DENGATE THRUSH: I think if we have done enough -- sorry. Steve. Last one, and then we will move to the GAC role in IP policy-making.

>>STEVE CROCKER: I want to jump in with a reasonably strong statement here and expand and support the questions that have been asked and Bertrand's answer.

My perception, and I will speak personally because I feel quite deeply about this, but it can be posed in the form of a question as well. My feeling is that there is a mixture of both self-interest on the part of each registry and collective interest on the part of all the registries. And the collective interest is that the industry, the collection of registries in our whole business, be viewed in a very positive light. And the extent that it is not damages everybody.

So I think there is -- as I say, I am expressing an opinion but you can take it as a hypothesis that you can respond to, but I think there is a strong benefit to the industry as a whole, and hence to each of the -- almost all of the operators, that the industry be viewed positively and that the practices be positive and that there be quite a lot of trust.

And from that point of view, I think that the compliance is a shared effort in which the role of the ICANN staff should be relatively limited, not in the sense that they only have a limited amount of power but in the sense that they only need to operate, need to come into play in a limited number of times. That a great deal of the coherence and proper operation of the marketplace comes from the peer pressure and practices in the industry.

So I would hope that this constituency would take a leadership role in establishing good practices, and in a variety of ways, some of which might be formal and many of which might be quite informal, encourage good practices, particularly as the number of operators expands.

To the extent that we have to crank up an ever bigger and more expensive compliance staff is, in some sense, a measure of not having succeeded at developing a common set of ethics and appropriate set of processes and pressures and communications within the industry.

So let me say that at least from my point of view, the more vigorous and creative and proactive you guys can be about establishing the kind of marketplace -- I often say if you compare the wild west mentality where you have to have a six-shooter on your side before you can go to the store to the vast, vast amount of commerce that's carried on when soccer moms can put their kids in the mini van and go off to the mall without a care, those are just vastly different models.

And I think the latter is far preferable.

>>PETER DENGATE THRUSH: Well, vivid metaphor, Steve. Thank you.

Can we move on -- Thank you for that. Can we move on, then, or do you want to respond?

>>

>>DAVID MAHER: I think that's a good idea. Jeff, do you want to --

>>PETER DENGATE THRUSH: Again, what's the question behind the question? My note says you want to talk about intellectual property and the role of the GAC.

>>JEFF NEUMAN: This Jeff. I don't think it was phrased correctly initially, so that's kind of a side effect of the topic.

And I think we had a number of discussions over the last several ICANN meetings, and the last thing we wanted do was slow down the new gTLD process. So some of these things have not been raised up to your level simply for fear that it would slow things down.

But now that we're past that and we are moving forward, and you all have done an excellent job and thank you very much, we think maybe we can bring some of these issues to light.

And I'm sure this is not going to be the first that you have heard this, but the first thing a number of people have been talking about is now the GAC is sort of being seen as another avenue for those who are not happy with what happens in the policy process. I'm sure that's not the first time you are hearing that so it will be kind of interesting to get your take on it. And you, for the most part, have done an excellent job of counteracting that.

But we just wanted to really remind you all, from our viewpoint, that we don't believe that GAC advice should be a substitute for policy that's developed within the GNSO. It's obviously critical. It's a multistakeholder approach. But multistakeholder means multistakeholder. It doesn't just mean, as we hear from the GAC, yes, governments are important but they are not the only stakeholder.

And the third point, and then I will give some examples because these are all just generalities. Just a reminder that just like the GAC has it in the bylaws where if you go against their advice you have to go back to the GAC and explain your decisions, the same thing actually exists with the GNSO. It's not worded the same way, but if there is ever GNSO advice -- sorry, GNSO policy that has a supermajority within the GNSO and it goes to the board, if the board goes against that, which it has the discretion to do it, has the exact same obligations to go back to the GNSO -- actually, it's a little bit different. It has to go back to the GNSO to see if the GNSO can work it out themselves, and then the board can act on it. Which this whole new TLD process --

>>BRUCE TONKIN: It's actually stronger, Jeff, because it needs a supermajority of the board to turn it down. So it's actually stronger.

>>JEFF NEUMAN: Stronger than what I said. Right.

So I think that was kind of lost in this new gTLD process because of timelines and everyone was under a lot of pressure and everyone wanted to see it go forward.

You know, kind of an example that we saw, which was decided pretty much at the last minute, was the GAC had advised about having the IP claims go during general registration.

They didn't say the first 60 days. They said the whole time.

But that was a big change from what the GNSO policy process had decided. And it never came back to the GNSO as the board is going to disagree and say that, yes, we're going to require both IP claims and sunrise, and not only but we are going to have it during the first 60 days. That never really came back to the GNSO.

And I think, again, that's the type of thing that needs to go back to the GNSO as to the processes we have.

Another thing I've seen missing now, and I don't know how this got lost in the translation, but the GNSO policy process that was approved through the STI group and went up through the board said that there needed to be agreements with URS providers. There needed to be actual contracts. And from what I've heard this week, that's not going to be the case.

Now, I know the board never made a decision on that but if that advice is not going to be followed, that policy is not going to be followed, then that's one thing that does need to go back to the GNSO because there were concrete reasons why we had made that advice.

So those are kind of some examples.

>>PETER DENGATE THRUSH: Well, Jeff, what I don't want this discussion now to degenerate into is into a fight over any of those specific examples because you don't want that either, and you made a very good point and I thank you for that that you didn't raise those during the course of the process because you knew it would slow it down. So let's take the same attitude today. Let's not go down into fight in any one of those particular issues because it will slow us down today.

>>JEFF NEUMAN: Those were examples.

>>PETER DENGATE THRUSH: So let's use those as examples of a point, which is in this process we started to renegotiate some of these policy aspects with the GAC. And your concern would be if that was to become a precedent or any other kind of way of going forward.



I suppose my quick reaction is there's not likely to be another project like this. And I guess what we need to do is to make sure that if there is, that we don't fall into the trap.

Rita and then Bruce.

>>RITA RODIN JOHNSTON: I made a similar comment this morning with the business constituency. I think that the board, the SOs, everyone is overworked. This program was huge, and I think there were so many issues flying all over, whether it was letters at the last minute from various government groups or what have you.

One of the things that I think has become obvious, and we made some comments yesterday even at the board meeting, is the GAC is, somebody said it, woken up, and so they are becoming much more actively involved. And I think we see it with the JAS working group a little bit; right? Things are getting forwarded to the board but are they the proper point of impact route.

So a lot of things were happening here quickly, and I think we did get a little lax on policy across the organization.

One of the things that I think we need to try to do is before that sort of policy gets up to the board is have the GAC input. And I know the GAC doesn't like that. They are an advisory committee to the board. But I think this is something that this next board and the community maybe should look at. Because I think that worked when the GAC was set up. I am just going to advise the board over here, outside of the main process. But I think we can see with these substantive issues, that doesn't really work.

So I would color what Peter said, the board actually became -- it's not that we were negotiating with the GAC but we were trying to reach that consensus by here is the community on the one hand that has come to these compromises and now here is the GAC, and as you have probably heard all of us say many times, we are trying to balance all of that. And I would prefer seeing that happen before anything comes to the board. The board shouldn't be the ones negotiating the community position versus the GAC. And maybe that's a process point we could fix.

>>PETER DENGATE THRUSH: Just to agree with Rita and add to that, the times we felt strongest in that negotiation was when we could say there's GNSO policy on this and we aren't going to move. We didn't feel we needed to have any, on those occasions, almost any better argument. There usually was one. It was usually the reason why the GNSO had come to that position. But for us, we felt most secure in this whole process when we could fall back on that. So we don't want to undermine that.

Bruce.

>>BRUCE TONKIN: I think it's worth doing a bit of a postmortem on that new gTLD experience, and obviously now is not the time to try to achieve that.

But if you think about the history of with you you've got to in rights protection, to start with the actual PDP that started the new gTLD policy, the board didn't change that.

Between when that policy was published, which was in 2007, we heard calls from the intellectual property community particularly, repeatedly at the open mic, saying they didn't think rights protection mechanisms were sufficient. And the policy was pretty solid on that, other than saying there should be some mechanisms but didn't say what they were.

Then you know the history. The IRT developed some stuff. The board took that from the IRT, gave it to the GNSO to get their view on it. And then the GNSO gave the view back. But it didn't actually use a PDP throughout that to generate the trademark clearinghouse or to generate URS. None of those things actually went through a policy development process. So they're not actually legally, through our processes, GNSO policy. They are effectively advice.

So I guess we treated them as a little bit lighter weight. And then as Rita and others have said we were pushed into a thing, trying to achieve it and do it in a reasonable time frame.

But I think the postmortem of it is work out, perhaps what we should have done is gone back and say GNSO, use a PDP but get it done in three to four months, not three to four years on that particular topic. And then it would have gone through the right public comment processes. Because a lot of those things did not go through the policy development process, basically.

And I know you have been reforming that in the GNSO. But I think that's the key thing, is we blurred policy and implementation, and I certainly had the feeling that the board became the policy committee in the last six months.

Partly for reasons of time, as Peter said. But I also don't think we overturned any GNSO policy. But it is true that we went beyond just implementation. And we're all making process up on the fly in the last six months, including, you know, the GNSO itself in producing the STI reports.

>>PETER DENGATE THRUSH: Chuck and then Bertrand.

>>CHUCK GOMES: Thanks, Peter. So many times I've heard the GAC use as an excuse for getting involved in the process earlier, which I think we all want them to do, that they're an advisory group to the board. So the question I'm throwing out -- I'm not really looking for an answer here. But is -- should we change that so that they're an advisory group to the community and not just the board?

I don't think any of us take it as rigidly as they do. But I've heard them too many times say oh, we're an advisory group to the board. And that's hard. That becomes a hindrance to getting them involved sooner.

>>PETER DENGATE THRUSH: Chuck, can I give you my personal response? Because I'm going to be running out of opportunities to influence this debate. I think we change that structural -- fundamental structure thing extremely cautiously. You've been around as long as I have in terms of trying to get the balance of power right. So -- in all of these things. What we've got at the moment is a delicate balance with all the power structures arranged, including even the number of seats on the board and so forth. We've worked quite hard trying to capture the sense of the community. I have a real fear that shifting the GAC from being advisory to the board and the kind of control mechanism that we have via the bylaws, if we effectively unleash -- governments are really powerful. They're the most powerful entity in this entire structure. Taking the GAC and unleashing it against the registrar constituency and leashing it against the ccTLDs, none of those are a fair fight, in my view. They come with sovereign power. Collectively they come with collective sovereign power. And, at the end of the day, under the current bylaws, they have the situation that the advice has to be taken. So they would come -- I would think that, if you changed that, you would have to have a very, very careful rethink about the current safeguards and whether they're going to be adequate with the change.

So there's tradeoff between getting GAC advice early and getting it in a form that you can deal with it, including rejecting if you don't like it, if it's not right. That's a personal reaction. Worth exploring, but do it very carefully. Ray?

>>RAY PLZAK: Chuck, I was co-chair of the joint board/GAC working group. And I reported this this morning in our other sessions that the -- a lot of time was spent on trying to figure out ways in which to integrate the GAC better into the policy processes.

Peter, I agree with your philosophy, as you just stated it. So it's actually well-stated.

But the point is that the real need is to get GAC involved earlier in the policy process. It doesn't have to be advice. It needs to be prospective in those early stages. That's where things are being worked towards. Because, if you want GAC advice, there is a long process to the way they have to go through that. And it's not very timely. And it actually hinders the policy process, in that your policy process could be held hostage to them going back, conferring with the governments, getting approvals, and so forth. However, they are willing to work with the notion of perspective. Because perspective allows them to answer the questions, however, they're not answer it officially. They're answering it informally. And it's the information that you really need. So that, in the end, when you form a policy and as it comes up, the GAC advice in the end should and, most likely will, conform to what has been said.

I can speak from personal experience that in the regional Internet registries, that is the way they do a lot of business in that the individual governments in their regions participate in those meetings. Not officially, but they are there. And they provide perspective, and they actively contribute. So that is what we need to work more in to the GNSO policy process. They are eager to do this. And they're interested in trying to find the most effective way of doing that and are willing to -- you know, in a sense, tailor it to whatever it is they're working with.

>>PETER DENGATE THRUSH: Sounds productive, Ray. Bertrand?

>>BERTRAND DE LA CHAPELLE: The quick answer to Jeff's question is, at least on a personal basis -- and I think it is mostly shared by other board members -- we share exactly the concern you expressed in two dimensions. The first one -- and it has been something that we've tried to avoid. Not completely successfully, but we are very aware of this -- is to avoid transforming the policy development process of this organization in a sort of bilateral backbone between the GAC and the board. That's dangerous for everybody. It's bad for the model. It's bad for the GAC, and that's not the way it should work.

It ended up being that a little bit. The result is not so bad that it taints the result. But we were very careful to not go in that direction, and it's certainly not the direction it should go. First answer. Second answer is that the danger you mention, which is, basically, the attempt by some party who is not completely satisfied with the compromise that they've obtained in one of the internal process go the other route and try to activate or maybe instrumentalize GAC or some GAC actors to, basically, become a proxy for their own interests. And I want to say very, very directly that this is a point that I've personally raised. And it was really supported directly in the previous session today. Because this goes exactly in the same direction as what I was saying earlier regarding the responsibility of registries towards bad behavior, to responsibilities of interested parties that are not registries or registrars is to not circumvent the process. Otherwise, they diminish it.

And a certain point is I fully support what Ray was saying. I actually wanted to say it, and I'm glad he did as the chair of the joint working group.

The point element is that, when we talk about involving the GAC earlier in the process, it's not so much involving the GAC in the form of GAC advice. It's involving governments and parts of governments in identifying the dimensions of an issue as early as possible. And, in that respect, we need to understand that, when we talk about governments, those governments are just like super big cooperations. And, when you deal with different issues, if you want to talk about a technical issue, you're not asking the sales department to come to the technical meeting. So, when we talk about governments, the GAC is a relatively high level intervention that is very useful for final validation and for early warning, basically. And, interestingly enough, this is exactly what is happening now with the gTLD process. What we

need is to engage on a topic-by-topic basis other parts of governments when it's needed. The competition authorities, the privacy authorities and so on and extend a network of outreach to the organization to get their input as early as possible.

>>PETER DENGATE THRUSH: Let's go to Cherine. And then we've really got to close down, because we've got about 3 or 4 more minutes. Cherine?

>>CHERINE CHALABY: I just want to respond to Chuck's question at this time. I am where you are, Peter. I would not tamper with the multistakeholder model as designed now. But I think it can work much more efficiently, and it can work much more efficiently by earlier communication with the GAC, by shorter time frame for developing policy, by getting people in cross working groups. And I think we can -- we will make it work much more efficiently. But tampering with it and changing the role of the GAC from advice to the board to advice to the community would be something I would be very, very reluctant to do.

>>PETER DENGATE THRUSH: Jonathan, was there a comment or change?

>>JONATHAN ROBINSON: One very brief point, Peter. When Jeff set this last point off, he framed it very much in terms of policy and bylaws and so on. And I think that's largely correct, and we've discussed it adequately. One of the key points we discussed in our stakeholder group was also that this can impact implementation as well. So it's not only about principle. It's about practical implementation as well. If something gets changed at the last minute -- and it's fully understood why there was all of the good reason and all of the background, but some of this is not just about high principle. It's about actual down to earth practical implementation of those decisions as well.

>>PETER DENGATE THRUSH: Ching?

>>CHING CHIAO: Thanks, Peter. Let me just add a very quick comment from what Jonathan just said. I think it's the people, the person matters. For those who are sitting in this room, we've been here in this business and in this industry for quite a number of years. But you see government representatives. They got in. They probably they need to have rotation and some other job assignments. They come and go. So we really need to figure out the people, who are the right people to talk to?

>>PETER DENGATE THRUSH: Chuck, final word.

>>CHUCK GOMES: Real briefly. First of all, I want to thank you for the input on my -- on the GAC issue. It helps me get my thinking in order. So that was very much appreciated. But I also want to thank the whole board. Jeff cited a couple examples where maybe things would have been better to come back to the GNSO. But there are a lot more examples where the board took a stand based on -- and, Peter, you

referred to this earlier -- based on GNSO policy and based on input from the stakeholders. And I really compliment and thank you for that.

>>PETER DENGATE THRUSH: Thank you. And now Rod.

>>ROD BECKSTROM: Sure. I just -- I think, as many of noticed, yesterday the board approved the new gTLD program that so many of you have worked for so many years on and contributed to. And now we're in implementation phase, which started yesterday afternoon with the communications program. And what I just wanted to mention is, obviously, we're going to need your help and expertise in implementing this program as we move along. There's a couple of specific areas right now where we could use your assistance. One is the clearinghouse design. There's a lot of questions around that. And we really need your input and engagement on that effort. Secondly, the potential aid to needy applicants from developing countries. So working group between GNSO, obviously, and ALAC. We clearly want to see a program be developed that helps those applicants as much as possible, but which is also implementable. And, obviously, your business expertise and sense in running registries, you've got a greater experience set than anyone to know what the challenges are those new applicants might have. So, if -- we really hope that you could also engage in that process in assisting us. And there will be other program areas, as we're moving into the implementation phase, where we really would appreciate your help and your expertise. So thank you very much.

>>PETER DENGATE THRUSH: Thanks. And perhaps you could also put on your agendas for future -- the question that Bruce described as the post mortem. I think it would be very helpful at some stage. All good projects should have some post project review analysis. So, if you could schedule that with us at some stage. And some informal feedback later on from any of us about the format of this session would be useful as we try to improve methods of communication, which was going to be the last item, David, but we've run out of time for.

>>DAVID MAHER: You've expressed it very well. Just speaking personally, I think this has been a very effective way of having our regular consultation. And we will, of course, get back to you with any further refinements we might suggest. And we're very grateful to the board for spending time with us. This is always one of the best parts of the ICANN conference. So thank you again.

>>PETER DENGATE THRUSH: Thank you, David. Can I just -- before we get too excited about that, just recognize that we may not be able to do this every time under the number of time slots of the day divided by the number of constituency and groups we need to meet. We may only be able to do this every second meeting or two out of three times or something. Thank you for that feedback.

Let's call this meeting to a close. We'll ask the registries' representatives to leave because I see some of your colleagues from the registrar industry lining up for the next session. Thank you. Thank you all.

