Transcription ICANN Toronto Meeting

Preparation of GNSO meeting with Board Meeting

Saturday 13 October 2012 at 12:30 local time

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Coordinator: This call is being recorded. Thank you, you may begin.

Stephane Van Gelder: Thank you very much. Welcome back everyone. So we now have a session preparing for our meeting with the board. We had some topics, suggested topics that was sent in by the book that we are going to put up on the screen in just a moment. And I can read those topics out for those and ask those people still having lunch in the back please to do so quietly. Thank you. So the topics are any additional input on the Whois policy review team final reports, topic one. This is from the board to us. We can also respond with topics of our own.

Input, any comments on the security, stability and resiliency of the DNS review team final report as we intend to vote on this at the Thursday board meeting. Any feedback on the responses of the call for input on the impact on the gTLD program on ICANN structure and processes, discussion on that to move this forward and the last topic, seeking inputs about whether the community sees a need for a policy with respect of the caring patents and policy development of contracts negotiations.

So what we've traditionally done in the past, first of all I should ask for the benefit of everybody that due to exceptional circumstances at this meeting, the GNSO counselor will not be meeting with the GAC and the CCNS councils. So traditionally these sessions help us prepare for those three meetings. We'll just be discussing our meeting with the board at this session. What we usually do is either identify the main points of what we might want to say on these topics or identify leaders for these topics, people that are willing to lead us into these discussions with these topics. And it's also useful to identify whether we have topics that we want to discuss and not included in this list.

So if we look at the first topic, are we clear what the board is looking for in terms of additional input? I'm looking around seeing if Ching is here because - no, sorry. Yes, you're - so the - do I need help? No, I don't need help. I'm just thinking which happens from time to time. So the idea there is to see if there are things that we admitted to mention or that we want to mention to the board and what remains an informal kind of setting, a conversational setting of anything official we send to them. Second we start with that or if you prefer, we can start with topics that we want to mention - take up with the board ourselves.

And we do have a couple of topics that were mentioned on the list but I've probably forgotten them so I probably do need help. So let me open it up for discussion then. I did see some hands but they've gone down so I don't know who put their hands up. Jeff?

Jeff Neuman: To start with the Whois policy review team final report, Margie has prepared kind of a matrix so follow up with stakeholder group constituency input on that. I'm not sure what in addition to that they want to hear from us, where we see an arbitrary difference and most other supporting organizations that we are incredibly diverse and diverse interests and while some things want to be seen by the non-commercial stakeholder group other things want to be seen by the business constituency in the registries and registrars. And other than

providing a matrix in our input in saying this is what we're submitting, I'd really like to hear just from them.

Oftentimes they seem to be one-sided things where the board just said okay, what are your thoughts and we never kind of get in the mind of the board members. And then when we ultimately see the outcome, we have no idea where that came from. So for these board topics and the last one in particular about declaring patents and policy development of other contract negotiations that's actually something that's good to have and that's how a lot of standard organizations do that. But there's got to be a reason why it's being brought up now and I'd like to know what that reason is.

Has someone in a contract or in a policy development process, has someone stepped in and said you can or can't do that because it's my patent and if you do that, you're going to pay some royalties? So again it is a very wise practice to have but to me a little suspicious that it's put on everybody's agenda for this meeting as if there's some sort of urgency that we have to discuss it.

I have some conspiracy theories that I will not air in an open microphone but that said, I do believe there is something that we're not being told about this and I'd like the board to tell us why it's on the agenda and why it's on not just our agenda but every or at least other stakeholder group - I haven't seen every agenda but when the board meets I might've seen the registry stakeholder group with the board and that topic was on there as well. So I don't know if anyone knows anything I don't, but Alan's got his hand up.

Alan Greenberg: Well if you're not aware that an unnamed company has done a patent application for how to transfer DNX find domains, which might be of relevance.

Jeff Neuman: That's one I knew about, not the one I was thinking about because it's clear there's some contract negotiations. So I don't - it would be nice to know, just

put it that way. And if the board can't disclose why it's an issue now I'm not sure we should be taking this up there. So many things that we have to discuss I'm not sure it's a high priority item unless we're told why it should be a high priority item.

Stephane Van Gelder: I agree. There are - there is some additional background to this that I won't share either but those had been confronted with and know about it. The reason why it's so difficult to talk about it at this stage is really because we don't know where this question is coming from. So I'm writing down our responses as we go through this session and I've written down that we might want to ask why this is on our agenda with the board and other people's agenda with the board. Marika?

Marika Konings: This is Marika. In relation to the first item policy (unintelligible) makes, it's well worth pointing out that we do have statement of interest where people are supposed to declare interest that they might have in policy development outcomes. So that might just be a reminder that there are certain things in place when it comes to policy development processes and that courageous people need to make in that regard, just a suggestion.

Jeff Neuman: I think that's important but I do think ultimately like any (aris) based organization it's more than that. It's actually a theory. It sounds like declaring of an interest but it's then in certain circumstances waving an interest you may have or offering what's called a ran license - if you're going to go through and suggest some sort of method of moving forward with a technical standard and people know it maybe on your intellectual property there is usually some sort of either waiver of those rights or a branding of a reasonable and non-discriminatory pricing for that so you would know upfront that if you're going to move forward with it, it would be expense royalty on your patent.

So it gets kind of complex and it is important as we move forward but I'm not sure of the urgency unless there's something behind that. On - switching gears, on the Whois topic, it says as we intend to vote on this at the Thursday

board meeting - sorry. I need help. Thank you, never mind. Is this on the agenda? It is on the agenda for the board meeting - for one of the board meetings I think the Whois a (unintelligible) topic. Is that the one that's today or for Thursday?

Marika Konings: Thursday. I think it's the 18 the Whois review team is on the agenda.

Jeff Neuman: So if we can ask upfront is there a resolution I'd like to know from the board what they are leaning towards doing because that will obviously save the discussion. Some of us feel that if you look at the matrix, some groups feel that everything could be implemented without a PDP. Some groups feel like nothing could be implemented without a PDP and then some are sort of in the middle, some are. So I think upfront f the board discloses what they are intending on doing I think that would save the discussion.

Stephane Van Gelder: Thanks, Jeff. Did you say Thursday's agenda?

Marika Konings: Yes.

Stephane Van Gelder: Right, thank you. And don't forget that (Brian) has led this effort. So (Brian), if anyone leads this topic I guess it should be you.

(Brian): Happy to accept that. We do actually have a SWAT on the agenda this afternoon to talk about Whois issues and I was going to present kind of where we were, sort of kind of jumping ahead which is probably fine. But Jeff did a good job of summarizing where we're at and I think we are a bit of encompassed. Margie did a great job bringing the charts together for us. I would really encourage everyone who hasn't had a chance to look at it.

It just went out yesterday. The most recent incentive included additional feedback from some of the community. I would encourage everyone to take a look at that but we are very, very far apart as I mentioned in sort of what we - what the different stakeholders consider to be policy and what the

stakeholders consider to be implementation. And so I think we do need to decide and maybe this discussion with the board can kind of help shape our and assess our sort of suggestion to figure out what they're looking for and where they're sort of at.

I feel like we have a couple of different options. I think we can go to them and frankly be honest about the fact that we have some urgent points of view and maybe share the charts that we have with them so they can get a flavor and idea of kind of where people are at.

We could work our (unintelligible) which might be ideal and sort of reminds me of some of our discussions earlier today about the CNSL and what all of us would like to see or we could leave it for individual constituencies to put their feedback to the board and not speak to the council. And perhaps if we get any feedback from the board and kind of a better understanding of where they're at, it might help us understand better how to spend our time and what we could be providing them that might be useful.

Stephane Van Gelder: Thanks (Brian). Certainly you as group leader could introduce what we've done because I think when the board asks these questions, we shouldn't assume that they actually know what we have done on it. So it's certainly useful for them to understand it, what happened with the initial discussion that we came to the conclusion that we should do a matrix outlining each group and constituencies used on this and this is where we are now so at least they know and then perhaps lead in with those questions that you just mentioned.

(Brian): I'm happy to do that and I'll definitely be prepared to kind of catch them up to date on what we've done so far as a council and then really pose those questions so we can determine best how to use council time, how to move forward.

Stephane Van Gelder: Thanks (Brian). So I have Yoav and Jon.

Yoav Keren: So I want to raise an issue that I think that we should talk about with the board. I think it's very significant. I'm quite sure that either everyone or most of us have seen the letter from the Article 29 (unintelligible) of European Commission and for me, the very puzzling reply for ICANN CEO to that letter. I believe this is of course - if someone hasn't seen this, this is about Whois verification. And what I believe that with this new data on our table, this clearly shows that this issue is very, very complicated as we registrars have been saying for a long time and I believe that this should be now put aside from the RAA negotiations.

And if there is anything - and this is my humble, personal opinion. I have discussed this with my stakeholder group. This is something that if there's anything that should go to a PDP, this is exactly one of the issues that should go to PDP because this is something that really is going to affect almost every stakeholder group in ICANN. So I think it's a very important issue that should be discussed.

Stephane Van Gelder: Thanks Yoav. So I can write down the Article 29 letter. We have to make sure that - what's the question that we're asking or the point that we're making and everyone on the council's fully aware of what the Article 29 letter said which was that there might be some infringement on data privacy laws in Europe with in common with the current recommendations that were part of the RAA negotiations. There has been a response. I don't know if everyone's aware of this.

Since then from the European Commission saying that although Article 29 is part of their ecosystem they are independent. So the European commission is looking at this issue. They explained that they are not able to provide a response within the timeframe of this meeting but that this is something that they are looking at so all that may be helpful to frame the discussion. I understand - I've written down the point of what's the - how would you like to call - what would you like to call this topic or how would you like to lead it?

Yoav Keren: Well maybe by asking whether this kind of pointer that should - this is a complicated issue and maybe not here but the board thinks we should go to a PDP on this specific issue.

Stephane Van Gelder: So that would be should we - the question would be should the PDP on what Whois verification or -

Yoav Keren: Yes, take if off and take it off the table if there aren't negotiations.

Stephane Van Gelder: Jon?

Jonathan Robinson: Two things. (Brian), for the conversation later with regard to Whois, I think it would be helpful if you could lead, talk a bit about how different people view implementation and policy development. Pretty clear looking at that grid. I know secrets of the BC almost think that there's maybe one out of all those that are thought to be pursued by PDP.

And as for their implementation issues, other constituencies have different points of view so where - what is the basis for the difference in terms of the definition of two words. The other thing is in talking to the board, I can't decide if the better approach is to get into the weeds or into the higher atmosphere in terms of trying to construct a meaningful discussion. I've seen both work and both fail and this instance with Whois. Should we raise the point of confusion or disagreement between implementation and policy development and see if we can get some insight as to how the board views these things as well or should we be directing them to the various bits that we've reported in the form that has been filed?

I don't know the answer to that question but I don't want to engage the board in ways that are without significant meaning at a time when we have so much significant - so many significant issues in front of us.

(Brian):   Those are both really helpful points. I definitely think we should keep it at head level. That's not a time to start going into the grid with the board and I think they kind of made clear they don't really want to engage in discussions of that level but I agree with you. I think it would be helpful to get some higher level direction from them and some other standing engagement on how to engage for the future on the point.

I think one of the things you brought up, I'm not sure I'm clear honestly on what the interpretation is between the different groups about what's policy implementation. It seems to me like maybe there's an honest disagreement about what's policy and what's implementation or maybe everyone at this point has figured out if you don't like something, you call it policy so at least you don't have to see it for four years.

So maybe frankly we need to have more discussion on the council about what we consider to be policy, what we consider to be implementation and how people are parsing it and are we really being sincere and honest or are we being political about what we call what? And honestly I'm very sincere in saying I don't have a clear picture on that.

Stephane Van Gelder: So I have no clue Jeff. Maguy?

Maguy Serad: I'm just responding to the comment that was made about the Article 29 working group and whether we should initiate a PDP. I think I'm not quite understanding the suggestion so I just want to clarify something. My understanding is that the Article 29 working group is telling us what is against the law in the European Union so running the PDP doesn't allow us to supersede the European Commission law.

We just - we have to take that as a parameter within which we make our - and I agree with the second suggestion which was just take the verification off the table during the RAA negotiations as being something that just shouldn't be done. In the community, this is not where I was going.

Yoav Keren: This is exactly - what I'm saying is that because of this legal issue, I'm not sure you probably read the answer of the ICANN CEO, that maybe a European registrar will be able to about so what does it mean. First of all, you're not going to resolve the full issue because that means criminals also move to register with the European registrar because then policy verification will not be part of European registrar and the whole competition, fair competition between registrars will be (unintelligible). So this has been a complicated issue that we have to talk about thoroughly. We just can't just take action quickly as a part of it. That's what I'm trying to say. So clearly not thinking that just the - if we do a PDP we won't take in the whole (unintelligible) because (unintelligible) is just the opposite.

Stephane Van Gelder: Thanks. And I'm not sure that we've been told that's against EU laws. I explained earlier on that EU has responded saying they've got their opinion and we're looking at it. So I guess we should wait until the EU actually says what's in the EU law book.

Maguy Serad: Just to distinguish, in the European Commission - you're not talking about EU - and what section of the commission was it, the council, the entire council or the (unintelligible)?

Stephane Van Gelder: Yes. I'll find the letter for you and tell you. So I have Jeff next please.

Jeff Neuman: Thanks. I just want to comment on - (Brian) had said that sometimes people say something's policy if you want to wait four years. You consider it to be opposite right if people say it's not policy so you can force the registry and registrars to actually implement it and so it kind of works both ways. I would take it from the registry standpoint we actually did take a very close look at each and every item separately.

Maguy Serad: And the way our kind of barometer of whether something was policy or something that - whether something needed to go to a PDP or not was

leading impact on contracts that we currently have and is this within the "ticket fence" because ultimately the way things are implemented are through the registries and the registrars. And there are certain things that cannot just be unitely imposed by ICANN whether it wants to or not because it's a party to an agreement. It's one party to an agreement.

So the fact that the ICANN board says we want the registries and registrars to do this, if it fall through the ticket fence it doesn't matter what the board says. It's irrelevant. It's a two party agreement. So if the registry did we went through each recommendation and said okay, does this impact what we do and is it within the ticket fence. If the answer is yes to that, then it falls within the PDP. If the answer was no, then we took the position that it does not need to go through a PDP.

So it wasn't really the question of policy versus implementation. It was a question of does this fall within our contract. So that is an important discussion and one that can't really be ignored. I'm not saying that the registry has got it all right and that can all be discussed. What I'm saying it's actually an approach that we took which I think is kind of neat given our unique position and (equist).

Stephane Van Gelder: Thanks. Margie, please.

Margie Milam: Yes. On the issue of policy versus implementation, I just wanted to let you guys know there's a session on Monday called the Community Guidance and Advice Process and there's going to be board members actually as panelists and they're going to go under real detail on that, kind of a global issue, when is it called, when is it not, what kind of process can be done and that sort of thing. So we are thinking of topics for the board meeting. If you're interested in that topic, you may not need it for the board meeting if you're going to attend this meeting on Monday.

Stephane Van Gelder: Thanks Margie. John?

Jonathan Robinson: The - I believe that one of the - as far as the Article 29 working group - I'm having a brain freeze. It's not uncommon. It's not just about verification but it's also about data retention which is equally heavily scrutinized in the European community.

Stephane Van Gelder: Thanks for that. I've come to the (unintelligible) too. So right now, the additional topic that we had it reads as far as what I've written down, in light of the Article 29 letter that involves the issue of Whois verification and I will add data retention be taken off the current RAA negotiations and dealt with as a PDP. That's what I've written down. Yoav, do you want to lead that? Is everybody comfortable with this? Perfect. Can we talk about the impact of the gTLDs. Thomas, you led that work. This is a question that's coming from the board. What are your thoughts?

Thomas Rickert: I'm more than happy to introduce the topic and lead on that. We have a section on that tomorrow which is using - taking trades side at 11:30 and we meet with the board in 13 hours. So I think the session tomorrow morning would help us shape the message that I should bring across. So I would propose that we keep this very short now and make the statement in the introduction in the way that I should present it, the time that as of now has come up for tomorrow's discussion.

Stephane Van Gelder: Sounds perfect, any fellow comments on this one? Okay. Then there's a topic on the security, stability and resiliency of the DNS. That review team final reports the board is telling us they intend to vote on this on Thursday. They are asking us if we have any additional input. Do we? That's going to be a good discussion. Jeff?

Jeff Neuman: So again it's kind of hard because it's a huge topic and when they say vote on this, what does that mean? Is it vote to accept the report and then work on - with the committee to implement or is it do they have specific implementation measures in mind and they are voting on those implementation measures?

But just saying you're going to vote on it, if it's just accepting a report then I'm an economist. But as an infrastructure provider obviously there are things that they could decide to implement as part of that would have an impact on us that I would have comments on.

So we're kind of caught and I don't know what they're voting on. Do they have the requirement to post their resolutions X days in advance or is it just something that sort of shows up that day? I don't think they do. I'm kind of asking that knowing the answer but it would help for them to tell us exactly what they mean when they say vote on it.

Stephane Van Gelder: Thank you. So I've written down what is the board looking at to vote on. That's a question we could ask them. Thomas?

Thomas Rickert: I would keep it a little bit - specify it a little bit - discuss it further. Knowing what they intend to vote on is one thing but I think what we should bring across is also the message that is it something that we feel should go back to the GNSO that they might to consult with us.

Jeff Neuman: Yes you could turn that around and say okay, great. We've seen the final report. We think it's a good one. Now you the board, what you expect to be the implementation mechanisms of things that are created in that report. You ask them what do you expect on these issues that will come to us if anything. They may come back to us and that might be okay too. There's a lot of things in that report that are very high level and kind of things that we call motherhood and apple pie, right? Really good stuff, really big, generalized, we should do better at this, this and this. It's great and if they adopt it, fantastic. But if they translate that to mean things that could affect the way we operate, then obviously those are the things that I'd like having registry if I'm going to be implementing it to have input into.

Stephane Van Gelder: Thanks. I'm still looking at just asking them for more information at this stage and I want to particularly lead this topic but we'll see (unintelligible) to

be honest. Are there any other topics that we want to look at discussing with the board? John?

Jonathan Robinson: It's not a topic. It's just in the spirit of perhaps continuing the brainstorming session into this session. So name space files a lawsuit in California seeking to join ICANN from granting top level domains for 118 names that they believe they have. In the spirit of full disclosure, I'll say that I'm involved with one of those names. But it brings to my mind the question of venue, legal venue with regard to ICANN and I look at Article 29 and this suggestion by ICANN that perhaps you registrars maybe carved out.

And I look at the history of the way things have been driven through California and the local laws only come into play once you've been found to be guilty of something. Is it possible that the - and now that ICANN has committed to do a matrix distributive organization of executives of various parts of the globe, are we looking at a change in the way the world relates legally to ICANN?

Stephane Van Gelder: You just a try a process and - which is - I understand - I've got you Marilyn. I understand the question you're asking. I'm just trying to understand how to ask it to them, how to word it. There is - I'm not sure (unintelligible) aware or (unintelligible) aware. There is a drive by the new CEO to turn ICANN to evolve ICANN into a matrix organization. Not everyone may know what a matrix organization is. It's a type of trust service used in corporate entities, in business entities to distribute management functions across the entire entity. It's something that the current CEO feels is better suited to ICANN's international matrix. So the question you're asking John is does that change the way people are going to see ICANN?

Jonathan Robinson: Yes. I was being more polite just by suggesting that there - is there an intended or unintended change in the way that the world will conduct its legal affairs with ICANN? That's all. it strikes me that there's a lot of pushing and pulling going on that here before particularly under the new gTLD program had not existed. And now that it does, what will the effect be?

Stephane Van Gelder: Thanks. I'll try and work that while Marilyn speaks.

Marilyn Cade: Thank you. Marilyn Cade. I think that the topic of legal jurisdiction for ICANN is actually not a gTLD - only a gTLD policy issue. Let me just kind of explain. And I also am aware that on the council list, there has been a little both raving a bit from rejection to it, at least one other counselor suggesting that. I would also say it's not right in the sense that the constituencies have not fully discussed it.

I can understand that there may be an interest in what thinking is available for public discussion with the board. This topic took three years and was studied heavily by the president's strategy committee with an expiration of breaking ICANN up, moving ICANN to other legal jurisdictions and a variety of other topics.

Perhaps other than that being an informational question, I would just say I think that there are much broader implications and discussions that are going on and I would be hesitant myself to see the topic taken up with the board that hasn't had further elaboration and studied within constituencies as well as an understanding of what might be going on elsewhere more broadly at ICANN, which of course we all also want to participate in.

Stephane Van Gelder: You want to respond John?

Jonathan Robinson: Are you kidding?

Stephane Van Gelder: So let's see the order of things. So we'll drop that off then. Any other topics?

Jonathan Robinson: In all seriousness I do believe that it is an issue that we ought to engage on if not publicly. We ought to as the council whether it's seek input or encourage the conversation in part of constituencies or in a quieter time with

the board or even the executives. But the fact is that the march of whether it's litigation or else is going to happen whether the constituencies address it or not. And the question is how will the courts deal with those suits and requests they come their way?

Stephane Van Gelder: I started to write down - we can't include this but continue to discuss it for five seconds. I started to write down in the light of the proposed change, the ICANN structure towards a matrix structure was there was a change and then I stopped. So it shows that it's difficult to merit exactly how to approach this. I agree with what Marilyn says but it is a topic that we probably do want to push further. If there's any suggestion on how to refine the approach maybe just between us first so that we can just - let me know what you want me to write. Thomas?

Thomas Rickert: I think I would at least use one counselor that brought up the topic earlier mainly with the idea of having an internal discussion about having multiple contracts in various jurisdictions and the various regions of the world. And I think that finally with your proposal to put that topic into the framework of the internationalization of ICANN. Since - this has been discussed quite controversially on the list and since I also feel that it's an important topic to discuss, why can't we just end that down as a subject for maybe the next telephone conference that we have so that we don't completely forget it because there's a quite pragmatic reason why I bring it up as this stage because ICANN is going to enter into hundreds of new contracts and relationships in the next year and a little bit further. And what we've seen with that task is that you can't have the data protection indication. They have fired this request for an asset to be combined into the union and that led to re-continuation requests that the board had to deal with. So if we just move forward with the contract as they're now in the applicant guidebook, potentially with addition for the RAA including law enforcement recommendation, we might end up having hundreds of (unintelligible) procedures that ICANN has to deal with followed by hundreds of reconsideration requests. And I think in order to manage or help manage

ICANN resources carefully that it is something that we should have a discussion about.

Stephane Van Gelder; Thanks Thomas. Just listening to what you were saying, I changed the text to in light of the proposed change of ICANN's structure towards the matrix structure and the need to identify towards - to move towards greater internationalization for ICANN, what's the leading impact for ICANN? Trying to stay as generic as I possibly can so maybe that is something that we can put on the agenda. Jeff?

Jeff Neuman: So I was the one just to respond to Thomas and as Marilyn indicated, I was the one who objected to that being a council level discussion because I don't see that being as a council discussion. I see it as a discussion of the registries and the stakeholder groups with ICANN and try to work out some sort of solution. I think bringing in the council is some sort of governing body and not - it's not really in the policy process now. I understand the concern. I completely sympathize with the concerns and frankly agree with them but again, I don't think the council's a place where you do that.

So if we went to ask the board that's great but I don't want the council to now think that there's all of a sudden going to be some rule for the council in determining the legal jurisdictions and the terms of the contract. That would be a harmful precedent. I also want to talk about another subject and I'm not quite sure how to put it but it's been kind of eating it so I'll bring it up and maybe someone can help call us into an idea. So there's been a group - and I'll call this a truly bottom up group that's been working on the trademark clearing house implementation.

Registries, new registries, registrars, some members of the community that have voluntarily joined these lists have been working on how we can implement the clearing house without changing the guidebook or any of the policies in how you actually implement it at the registry/registrar clearing house level. And it's been a large effort, a new style that this disclose has

been heavily involved in this and became one of the authors of something that's now known as the alternate clearing house tool proposal.

But I would venture to say that it is probably the only proposal that's supported by registries and registrars and actually others who have commented on it and has actually probably - and soon the ICANN proposals should be the alternate one whereas the infrastructure providers should really be the main one.

And there's - I'm not going to go into detail with that - in that about the proposal but just to say something about a letter I got and try to frame this. The letter that is grouped - a bottom up group got from staff. Basically it says they have some concerns about the model which is okay but they say that we have studied this and we have discussed this with our consultants, executive team and the board which came a little surprise to us because we were working kind of in our working group model.

And we know that the board would be educated about this alternate process we would've wanted to be in those discussions because frankly staff, ICANN staff, they're great but they're not the ones that could (unintelligible) and could defend the merits and positives and negatives about it. And also when you get a letter saying thank you for this bottom group that's working on and it concludes in saying unless you work with the model that we've proposed we don't really want to engage in any further discussions with you. Essentially it's the message which to us is a little disheartening.

Here we are working at our levels, working the bottom up process and all of a sudden before we even get a chance to work it up, staff has done what its done and now we're shot down which to me the whole issue is shouldn't they have waited for the bottom up process to do that before shooting everything down and actually given us the chance to listen to it? So the issue is for me - and it's kind of indicative of what's been happening - is you have things that are discussed at the bottom up.

But if staff or someone disagrees with what's coming up, there seems to be an effort from the top down to shoot it down and to me that's a problem. It's not fair. It's definitely discourages the whole bottom up process and it's not in line with what's being told to the world as to what ICANN is.

So with me, this is the example of the clearing house and how it's severely close to my heart because I choose to believe that the "alternate model" is actually better for all the stakeholder groups and is more in line with what they asked for. We have not been given much transparency into the arrangement of the clearing house with the providers and it's being very highly dictated top down.

So I'd like to have a conversation with the board that when things are working bottom up, let it work. Let it get through its process before you kind of come in and shoot it down. So maybe you could help me with that.

Stephane Van Gelder: So I've tried to help you by putting down the following sentences, alternative TMCH proposal formulated by bottom up group. This is very rough so it needs refining. Let's make sure this is given a fair chance of the proper hearing and see such ideas using the general turn of ideas rather than linking it specifically to that I think is what you meant so down before I get a chance to (unintelligible) properly. Is that basically what you're trying to say and probably needs refining.

Jeff Neuman: You say it which is better than I said it. It stems from one other point which is that you have to rely - I think I can do a better job in relying on the expertise it has within the community as opposed to trying to get its own consultants and others in a vacuum chamber if you will developing things. We as a community have the expertise and could help them do it but there seems to be a fear of well if I reach out to contracted parties it may look bad whereas I would argue had you reached out to certain contracted parties and people that know

technology, you may not have had the task nightmare, the digital arts nightmare.

And there's a bunch of other examples I could point out to where it would've been better to rely on the bottom up or ask for help when you need it and not be afraid to as long as everyone discloses their interests upfront and gets that out there, rely on this huge community of experts that you actually have.

Stephane Van Gelder: Thanks Jeff. Just to - there's a discussed item that I would have liked to have had with the board but probably can't have at GNSO level. Mainly it needs to be done with the groups at GNSO council level. It needs to be done with the groups but the stuff that you're mentioning leads me to at least say I feel there's more and more a need to have at least some measure of respect for the contracted parties in this environment and more and more the stuff that you're saying. But it's obviously something that I'm not speaking a share of what registrar (unintelligible).

There's something that leads to the exclusion of expertise which is probably bad for ICANN as a whole. So that's probably a good set for a discussion item for two of the groups, probably not at GSNO level but we can perhaps bear it in mind. So can I just go around? J. Scott you had your hand up. Jonathan, John, Wendy and Chuck was first.

Chuck Gomes: Thanks Stefan. First of all, I wouldn't focus on contracted parties. That's kind of a side point. It's all of us that are in this game as far as the multi stakeholder model. But I just wanted to suggest a possible way of starting this discussion with the board by asking the question at what point does the bottom up multi stakeholder process end and staff and board turn into top down because that's what happened that general question.

And then you can give the details of this particular incident because it's very important for ICANN to support the bottom up multi stakeholder model and yet they seem to switch in this case and in other cases. And it would be

helpful to understand when and why that changes the top down certain points. I think that's the general questions that sustains for a little more detail on the example.

Stephane Van Gelder: Thanks Chuck. I'm drafting as the discussion continues. J.Scott.

J. Scott Evans: I just wanted to echo some of what you said Jeff because with regards to the IRT, we never presented that to the board. And we asked four or five different times and there were a lot of comments made from board members publicly where they didn't understand concepts in things because it's not their field of expertise and they didn't get to ask questions to clear up their confusion of the members that had done the work and it just led to a whole lot of misunderstanding of wasted time. And so I would agree with you that the board needs to do better and this just sort of bleeds over Stefan into what you were talking about this morning, the brainstorming session.

It shows that it's not really structured a procedure that seems to be the overwhelming issue we need to resolve right now. It seems to me that whatever the structure the procedure is, it's working together in a collaborative manner to come up with positive solutions to resolve issues. And we've tried many different structures but we feel like I don't think have solved that problem and that needs to fundamentally be solved, whatever the structures or procedures that are in place and I think that's the question that needs to be asked first.

And then once you start answering that question the rest of it will fall into place like a house of cards but I would echo what Jeff said. I think the board has previously squandered opportunities to use experts like they do the security committee that they have and the other advisory committees they have. They don't use these other groups in the same way and it has caused things to linger longer than they probably should have.

Stephane Van Gelder: Thanks J. Scott. Jonathan?

Jonathan Robinson: Thanks Stefan. I guess I'm focusing on two things. The first of yours was your original point, at what point I think you raised which was one of expertise and we've raised this with the board before. And I think we should pick it up and continue to remind them of this. The last context in which it came up was the prospect of ridding the board or removing any issue of conflict of interest in the board and there was a danger we saw at the time. I think this came off from the registry stakeholder group at the time that the desire had submerged the board conflicts of interest in a reactive sense.

And the problem with that was it our view that the board needed industry based expertise in order to adequately deal with some of the issues it has to deal with. Clearly it has to be balanced by the appropriate governance criteria but nevertheless having the appropriate expertise to understand the industry properly which ICANN in effect seeks to regulate this by.

The second is from the point that J. Scott picked up and that is in particular on this one that we were talking about, this part of our work that's been done to try and improve and develop optimal models for operation of the trademark clearing house which after all is a centralized entity that we all need to work as effectively and efficiently as possible. I think we're trying to seek to focus the board's attention and what we really need from ICANN and ICANN staff is the facilitation of collaboration.

My workforce - what bothered me about it is that it's been somewhat characterized as the registry's model and in fact, the spirit in which the work is being conducted is actually to try and really develop best practice with an open mind and optimize the central facility on which we all rely on and that includes contracted parties, includes IPO owners, it includes anyone with invested interest in the overall success of the new gTLD program and all that that entails.

So my thoughts is that what we really need from the board and ICANN staff is to assist us to collaborate rather than to - which it sometimes fails - is it should hold us in particular invested interests or in those (unintelligible) space.

Stephane Van Gelder: Thanks Jonathan. So with that to the text and the light of Jeff, J's thought, comment to read when and why does ICANN - and Chuck's - when and why does ICANN's support for the bottom up development process turn into top down, please do not squander opportunities to use the expertise we have within this community by shooting down ideas as well as the bottom up process before they get a chance to (unintelligible) properly. Now still - it may still need - I will send this to the list afterwards as we usually do for final words or anything but it's difficult to do on the fly but that's general gist. I have four people in the queue and one minute so it's up to you how you want to run this but please keep it short. John, Wendy, Allen, Thomas.

Jonathan Robinson: The point to be made with the board is how it can better accept, better embrace the expertise and the effort from the bottom up. And I do believe that this informs what I view as an overzealous approach to conflict of interests that exclude expertise merely because of the appearance of a conflict when in fact it is that expertise - and I'm not just talking about from any constituency but from each constituency that could help inform smarter, better decisions on the part of the organization.

Stephane Van Gelder: As usual very eloquent, trying to change the text to how could we better embrace the opportunities given to us to use the expertise we have within this community to drive the true bottom up process. I'll continue on. I'm just trying to draw from your words. Wendy.

Wendy Seltzer: Thanks. Not to repeat things so we might ask the board as well what are they examining or what is the proper rule of a board of directors in a bottom up organization and where are the checks and balances?

Stephane Van Gelder: Adam.

Adam Peake: Thank you, two points. I generally support the concept that once policies and even implementations have been worked out and we not change them, in this case for the trademark clearing house, we have the people who have to implement having some inputs and to unilaterally toss it away before at least talking about it. I think it's (unintelligible) certainly in light of the fact that they have reopened the URS because of comments contractors have made. The contrast is interesting.

On a more global issue, the board currently has a comment period open on how can - and I'll give you my version of what they're asking - how can ACs and SOs jointly throw better documents over the wall to us? The ALAC answer that we're drafting says among other things that's the wrong model. We need engagement. We need dialogue. Dialogues people talking with each other, not at each other and not throwing documents over the wall. We need to engage, thank you.

Stephane Van Gelder: Thanks. So Thomas, Christine will have the last word. I'll have to ask you guys to be very quick sorry.

Thomas Rickert: Time is of the essence I know but nonetheless when we go to the board, I think we should clearly know what we expect of them. So are we asking them to reconsider what they've done in the TMTH discussion? Are we trying to avoid such things happening in the future because I think if we have a blurred view on what we expect them to do, we would just there, moan about things that didn't work properly in the past and we have complained in the past. And this TMTH thing has had a (unintelligible) the remarks that were made earlier about having been so competitive, about having been included have not been taken into account when dealing with the TMTH topic.

Likewise, I think we might split it but we can follow up on that on the list into separate sections, is it maybe that we would've expected the board to talk to

the GNSO council? We think that this is something that the council should've been involved, maybe not. But that is the positive recommendations that were originally made so would we need to talk - look at the implementation? That's how I was kind of talking to (unintelligible) about that.

Stephane Van Gelder: Sorry but Jeff's talking to me as well.

Thomas Rickert: So is that a point that we're trying to make on that suggestion?

Stephane Van Gelder: I can't answer that.

Thomas Rickert: Is it because the board has not picked up the offer made by the community to help with it? Is it that they have not disclosed the contract that they have not engaged in a timely manner on relating this? So I think a magnitude of issues, what the GSNO (unintelligible).

Stephane Van Gelder: Can I just suggest that the answer of the questions that you're asking should be in the question that we've written down. This now reads when and why does ICANN support the bottom up development process turn into top down, how can we embrace the opportunities given to us to use the expertise we have within this community to drive a true government process, run risks, seeing ideas stop before they get a chance to progress properly which is why the TMTH answers your questions and I think it opens up for opportunity to discuss the points that - more specific points that some might want to make. And as usual in these discussions, counselors are free to make those points as representatives of their groups. That's the way we use them to try and work on these discussions. Christina?

Christina Rodriguez: Thanks Stefan. I just wanted to note that to the extent of the council anticipates raising this topic to the board in kind of the macro sense that (unintelligible) is focusing on the TMTH. It sounded like folks might not be aware that there's actually a public comment period open on this very issue. How does the board community input and advice beyond the PDP process?

It just seems to me that it might be helpful and perhaps more productive that with the extent the issue is going to be raised, it's raised A, acknowledging that this is out there and B, to the extent that the request for comment asks for comment on specific planes that those could at least be integrated because the interaction with the council and the board is a relatively short period of time and I think it would be unfortunate if raising the topic received a response a little bit more polite in something like duh, this is out for public comment.

Stephane Van Gelder: Thank you. So we'll close it up there and I will send the topics to the list. I would encourage you all as usual to respond and identify those topics that we do want to move forward to the discussion and those that we either don't or want to modify. Thank you very much for this discussion. Operator, the discussion is now closed.

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