

Transcription ICANN Toronto Meeting

Registrar Non Committee / Policy Meeting

Tuesday 16 October 2012 at 10:45 local time

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Coordinator: Excuse me, the conference is now being recorded. If you have any objections you may disconnect at this time.

Matt Serlin: Sixteen-October, the time is 10:50 am local, continuing session RSG NomComm Discussion.

((Crosstalk))

Man: Please come to the table everyone. We are ready to resume.

((Crosstalk))

Matt Serlin: Okay folks, we're going to get started back here in the room while Adam's got his own boom mic sitting in front of him.

Adam Peake: That's right. I'm like a boss now. This is - don't mess with me.

Matt Serlin: It's going to be music night come a little early, is that what you're gearing up for?

((Crosstalk))

Matt Serlin: ...you figure, you know...

Adam Peake: Well this is my city, right? I mean...

Matt Serlin: Yeah.

Adam Peake: ...if you have an RSG meeting in your home time this should be a rule you get...

Matt Serlin: Yeah.

Adam Peake: ...the special microphone.

Matt Serlin: You get the special microphone if we host an ICANN meeting in your hometown. I like it. Okay so we're going to get started here. I don't know if we need to pause to start the recording, (Tim), but - we're good? Great. We're good to go.

So we've got the NomComm folks here in the room for a discussion. We've got - I think there's slides already? Yeah, they are. Wow. Okay blinded now. Thanks, Volker, it's cool.

And - hello? Vonda, I will turn things over to you. And we do have a slide presentation but I think the...

Vonda Scartezini: Yeah.

Matt Serlin: ...just going to use a couple and have a conversation.

Vonda Scartezini: Thank you. We are here with also our colleagues from 2013. And I'll give them the opportunity to talk also. My intention here is like AT&T (demands)

each year just to show up what was the recommendations we got from Registries, Registrars, Business Constituency the last year.

And of course ask you if there is any other change or you need to add some issues on that or change any of those recommendations. And if you do that please send to the next (unintelligible) that is (euros) behind.

And what I'd like to just show you is that the way we make the matching metrics based on the requirements. And we received from you and from the others. And basis is our internal analysis for each candidate. And the external analysis for a company that we hired to analyze profiles more detail.

So those are the matchings for this late of this three candidates for the Board together. And when they match all the requirements fulfill it's excellent. When one of them are not in the top of this list for that specific requirement is well qualified. And it will have some - for instance in the time availability and this kind of thing maybe not retired people so have all the time available for the position. So we can consider them qualified.

So multilingual is also one thing that one candidate just speaks English. So those are the requirements in this (unintelligible) are the GNSO requirements for their Board. So those are - one person that was selected for non vote position just match in that way this all requirements that we received from all of you.

So that's it. And you also made a lot of recommendations for ethical issues, logistic issues and new process and (unintelligible) it's all published in the attending ATRT. This year we have published everything from the first moment and update every timeline and until today. So we have all published in our Web page.

So I would like to give some a few minutes to Hiro. That's the new (unintelligible) to talk with you. Hiro, please.

((Crosstalk))

Hiro Hotta: Thank you.

Vonda Scartezini: Thank you.

((Crosstalk))

Hiro Hotta: Okay musical chairs. Yeah, good morning (unintelligible) my name - I come from ISOC Finland and I'm the new - I'm the Chair for the new NomComm - NomComm 2013.

I don't have very much to say at this stage because we're just starting our work on Friday - working Friday and Saturday here. And I have something to ask you for that is to say we are really dependent on the candidate pool and we would like to have many candidates to choose from obviously.

And I would like to ask your help in getting good candidates - all of you certainly know people of whom you think that they could make good Board directors or good people in the various countries or on the ALAC. So please tell them to apply.

The Website of the 2013 Nom Comm will be up pretty soon with all the instructions and advice on how to apply. When we start our work here we will take a look at the recommendations that were handed to us or will be handed to us from the 2012 Nominating Committee.

Of course there is a great overlap actually between these two committees. We have, what, 11 people. So we take a look at the recommendations and see how - whether and what and how they will incorporate it in the Rules Procedure of our committee.

The other thing is that we also have to take a look at the timeline because this coming year meetings - the ICANN meetings are historically late; that is to say April meeting and then the summer meeting and probably also the (ETM) so we'll start.

And thank you for your attention. Thank you.

Matt Serlin: Great, thank you. So I think with that we'll - we've got about 15 minutes we'll take some Q&A, yeah, if you're okay with that. I'll start a queue so I've got Stéphane, James and we'll go from there. Stéphane.

Stéphane van Gelder: Yeah, thanks, Matt. Thanks, Hiro and (Vanda). Obviously look forward to working with you both and the other members of the committee in the coming year as the Registrar representatives for this group.

Just wanted to briefly say that we've heard some criticism of the NomComm over the recent days and weeks. And it's been a topic of conversation, obviously, for us in this group. I don't want to delve into that specifically; I don't think this is necessarily the right time.

But just to say that I look forward to, within the committee, having a look at those criticism and hopefully trying to - I don't want to say address them but just having a look at whether they are worthwhile and whether there should be changes. So I hope the committee, as a whole, is in that frame of mind so that we can move this process forward and improve it. Thanks.

Vonda Scartezini: Well first of all everybody read this great (unintelligible) but there is a lot of issues there that (unintelligible). But the main issue is we understand that when the NomComm itself is attacked in some way it's contaminated the organization not only NomComm so we address all the issues to the Board to the BCG.

And we are - working with them and even - I talk with Fadi too. So we're going to have a meeting this week with them just to say what they want to do that. Because it's not - NomComm is independence group and there is no reason for the NomComm to go out and just, you know, feed this kind of bad information around.

And of course there is damage to ICANN. And certainly is - I would say the (unintelligible) from the communication had from ITU. So there is a lot of - and many others asking but the reality is for the organization to take a move not from a group itself to react. It was something that is personal issue.

So - but we do give those recommendations that I mentioned here. It's a long list of recommendations. And it starts with the ethical issues from Board members and inside the NomComm - members of the committee of NomComm. The relationship with others in - outside it's mostly - but in the ethical point of view is most about the way to proceed when you talk with the people.

And mostly about the process and logistics because also impacts all this - the work of NomComm. But we do not recognize ourselves neither as a junior or neither as corrupt or any other word that was used there.

It's - but we do believe that the organization itself needs to make a move and protect themselves about this kind of attack. Certainly not in free, and I don't know why but it's not acceptable that an internal member just go out and, you know, and start to criticize itself - (himself) and all the other colleagues and the whole organization without really a point.

A lot of main points that is in some way circulate around it's very important to get feedback because that is not going to the (unintelligible) and use bad words that we do that. Okay. Next one.

Matt Serlin: Okay, James.

James Bladel: So kind of a similar question. You know, I didn't even know about this article or even really care until I think that the response to the GNSO Council question, which I thought was a legitimate question and I felt that the NomComm response was to close down. Now Registrars are not strangers to being attacked in the media, in ICANN, in public forums, but, you know, everywhere.

And I think our response and also individual - as individual businesses our response is there any truth to it? Do I need to prove this person wrong? Do I need to take a, you know, do some self examination and make some corrections? But I think the only wrong answer in that situation is to say nothing. And I think that's kind of - was my perception of the weekend session.

The good news is I know that Stéphane is coming on board and I know that he's a very energetic and capable person. And I also see that the chair elect is a former colleague from the Accountability and Transparency Review Team, Cheryl Langdon-Orr.

So my question is, to everyone here, what is the accountability mechanism for the NomComm? Is there one? Is it - does it undergo periodic reviews? Does it have to - okay so help me because I don't know what - how that all works.

Vonda Scartezini: Well what is NomComm is for that. It's NomComm is there to select the people from many positions. ATRT just suggested that - recommended that we put this more transparent and account to the community what we are doing there and who we are selecting there.

And this also depend on the people sitting there so everybody's involved in sending best people to sit there also. And so it's all about to have best people

sitting there and to be able to select the best people and publish that and publish why we are selecting this and not that.

Why - that is the idea of matching metrics just to show that each person should match the requirement that we heard from the community. And community is SOs and the IACs.

Cheryl Langdon-Orr: Cheryl Langdon-Orr I've got to say the transcript record. I'm very aware at the time and I would just, Stéphane, if you wouldn't mind - no I don't need to sit - to specifically answer your question.

Yes, there is bylaw mandated periodic review of the Nominating Committee. That was done in the year before and the year of Adam's chairmanship so that was Adam Peake and that was done, if memory serves, would be running around the 2009 period.

That was the opportunity for the ICANN community to make suggestions for the very first time about NomComm. NomComm has very, very particular rarities in our community because of it's - by necessary - isolation and confidentiality.

But it has been reviewed once. It will be reviewed again. And as you know we heard more about the NomComm in the ATRT then almost any other part of the organization.

So what strikes me - and this is just off the top of my head is has been reviewed, needs to be reviewed again. ATRT made recommendations that Adam certainly started to implement. That's continued on. But this is an opportunity. And I'm sure, with the right planning and the right team, we'll be doing that.

Vonda Scartezini: Yeah and all the recommendations are there to be implemented. After this year we selected many points to do that.

James Bladel: Thank you.

Matt Serlin: Thank you, Vonda. Thank you, Cheryl. Any other questions or - Volker, are there any other questions online?

Okay if not thank you all for coming in and spending the time. Clearly, you know, there is a lot of focus and attention being paid to the NomComm so we're looking forward to moving forward. And again happy to have Stéphane on the team. Apologies to those of you that will now have to work with him but...

((Crosstalk))

Matt Serlin: Yeah. And really thank you for coming in and speaking with us.

Woman: Thank you.

Vonda Scartezini: And for the time.

Matt Serlin: Stéphane, I guess we're letting you stay in the room?

Stéphane van Gelder: Sorry?

Matt Serlin: I said I guess we're letting you stay in the room. I see Kurt in the room already and I think he's up next. I don't know if he's ready to go now or if he wants to take his five minutes. We're five minutes early now?

Kurt Pritz: (Unintelligible).

Matt Serlin: No slides. He can have the outer atmosphere behind him if he'd like. That's kind of cool.

Man: So actually my schedule showed we were going to start at 11:00. I don't know if we should wait for Akram to show up if the real schedule was 11:15. Let me see if - I just saw him in the hallway.

Matt Serlin: Yeah, we can pause a couple minutes.

Kurt Pritz: Well I'd rather - we're going to check on the situation here.

Matt Serlin: Okay. Wendy, do you have (Cassie) online? Could you see if Akram's in the - that room?

((Crosstalk))

Man: Get some juice while I'm here.

((Crosstalk))

Matt Serlin: Actually had a schedule so it must be - we're behind schedule. Okay great so Akram is on his way and so, yeah, as Kurt just kind of said to me this is always kind of an informal Q&A. We've got some topics - obviously the RAA and things like that. So I will actually start to take a queue if folks have specific things, questions or topics or things that they want to have addressed by either Kurt or Akram will start a queue as we wait for Akram to join us.

Okay no queue. Michele is going to start off in the queue; he always gets us going.

((Crosstalk))

Michele Neylon: Good morning, Kurt.

Kurt Pritz: Good morning, Michele.

Michele Neylon: How are you?

Kurt Pritz: Good.

Michele Neylon: Good. One of the questions that we didn't get a chance to address yesterday during the RAA update session was one with respect to process and procedure. The question that a couple people were asking was the current rather broken backwards process with respect to the Whois opt-out thing for Registrars - how is that - to change that or to create a new one with respect to the new RAA is how would that where would that come from?

Is that something that's simply negotiated? Is that a PDP? How - where does it come from?

Kurt Pritz: I think it - to answer a different question - I think it has to be fixed in two ways; one is expand it from Whois to data and the other is to make the conditions upon which a Registrar can be exempted from the contract requirements more clear.

So now it requires an actual controversy, which means you kind of have to be in the pokey here. You know, there - and where we've invoked that twice in the past it's been that there's been some clear indications from law enforcement, like in the case of DotTell, that the rules they had were contrary to the law.

And so we have to have some mechanism in advance of, you know, an actual police action being taken. So I think that's the content that has to be derived. And then we have to talk about whether we could decide to - so I think if we wrote that and then the agreement is posted for public comment, you know, that gives the - this is Kurt Pritz speaking on behalf of himself - that would give the imprimatur of, you know, across constituency endorsement of that.

In other words we're going to post this agreement when we have it for public comment, right? People are going to comment and then, you know, realistically speaking we're going to argue about whether the GNSO actually has to vote or not or if they do vote what the effect of that is.

But that discussion is going to also involve what we draft as this new procedure for exemption from data retention requirements. And so that discussion, I think, would then allow the Board to say this process or this process is - can be approved as-is.

Otherwise, you're right, you know, the exemption from Whois due to conflicts with laws, you know, came from a policy development. It was a full-blown PDP.

Michele Neylon: So basically we're looking at maybe is making it a contract appendix or something along those lines.

Kurt Pritz: Well that's what I think we should try for because then we'd have clarity over what the content is and agree to it. And then, you know, we'll let others debate whether, you know, what can be included as a contract term.

Matt Serlin: Okay, I've got James in the queue. James.

James Bladel: Hi Kurt. So just some more thinking about this - this opt-out mechanism and how that would have to be constructed. I know a lot of folks probably think of us as a US registrar but I think our lawyers would tell you we're a multinational registrar now so...

((Crosstalk))

James Bladel: No. I'm in Iowa but...

((Crosstalk))

James Bladel: I know, yeah. No in particular we subscribe to the so-called - and Michele and Volker are experts on this and I'm going to stumble around a little bit - but we subscribe to the safe harbor provisions of the EU data privacy regulations so that we can compete on a equal playing field for European customers in Europe where some of our entities and some of our systems, data processing systems, exist.

So I guess my question is we would consider ourselves eligible for an opt-out if we were in any - given any indication that we would lose that safe harbor provision that we've worked so hard to attain and that competitive playing field that we're looking to establish.

So, you know, I think - I want to just ask, is this the course that ICANN wants to be on with this particular issue? Is this - because I'm concerned that we may be solving one problem and creating three.

Kurt Pritz: That's right. So it's not an opt-out, right, there's certain requirements that have to be met before there can be an exemption. And, you know, your second question is beyond the scope of my paltry education. I don't know about - I don't know how safe harbors work - I don't...

James Bladel: And I don't either necessarily. I know that we worked very hard to get it. And we certainly wouldn't want to lose it. And that's about the extent of my knowledge as well. So my question, I think, is this where we're going with this particular - is this the course that we're on? Because I think we need to prepare for that.

Kurt Pritz: Yeah, so I don't know. I know that registrars have been, you know, keeping Whois data and other kinds of data for years and years and years and nobody's been barred from that yet or had (juris) action taken from them so we just - I think we need to take - have a procedure in place so when that - a registrar or registry faces the likelihood of some action being taken by police

or government that they can, you know, work with them to ensure that they comply with the local laws. You know, I don't know how that hooks into safe harbors or other rules.

((Crosstalk))

Hiro Hotta: ...to look into it and get our legal department to come back with some advice on that.

James Bladel: Sure, absolutely. And I would make all of our folks available to you to help if you have any questions.

Matt Serlin: Yeah, I would say that this whole notion of, you know, the opt-out process and what that does to the registrar market is absolutely one of the sort of front-of-mind topics for this group clearly. I've got Jeff and Michele in the queue for now. Jeff...

Kurt Pritz: And so I would change our lexicon from opt-out, which will fire people up, to something else.

Jeff Eckhaus: Okay thanks. So one of the issues - and I'm going to sort of bring this back to everyone's favorite topic, Kurt, is the RAA. And one of the issues that we have put forward - and for those of who didn't attend the sessions on the RAA is a sort of streamlined accreditation for new TLDs because I'm sure, as most of the registrars are aware, it's a somewhat painful process to get your accreditation for each TLD once you start - once you want to start selling that TLD.

So I think - what I'm asking is not, you know, as a negotiated point, a back and forth, but what sort of, you know, ICANN, your guys point of view, on this about streamlining it? And is this something that you see - I think we see it as a positive. Is it something that you see as well, something that, you know, that you would like to move forward on?

And, you know, we can negotiate the details in the negotiation sessions but I'm sort of looking as like you're, you know, back up you have 50,000, you know, feet point of view on this topic and the importance of it and, you know, is ICANN, you know, planning on, you know, I guess operational readiness for this because if we get the agreement in place by December or around that time, which is, you know, sort of the mandate that we've had that - or will you be ready for it if it's something that you're planning on for - are you waiting to see if it's in the agreement.

Akram Atallah: So we - I'm looking at every way possible to streamline our processes. So we're not interested in making anything more difficult than it has to be so that's for sure. And if things can be simplified we will look at that. But definitely it's going to be whatever that agreement specifies we're going to - what we're going to implement.

So that's (unintelligible) to understand what we need to do is through the RAA. Then we're looking at actually facilitating a tool on the Web that also gets everybody to kind of not having to do things unnecessarily multiple times so that you can actually somehow exchange some documents, have common application, whatever we can agree on.

And we need to do some - specify some (unintelligible), you know, so that we can implement it. But before we do that we need to know what's in the RAA so to know what we're going to implement. But it is on the list of projects for IT to do before we get into all of the - or right after we get into all of the delegations so.

Jeff Eckhaus: And thanks because I think that's something that has been - I won't say lost in the process because there's so many things going on with new TLDs. But I think one of the things people - I won't say neglect to remember but registrars are required to sell the TLDs.

And if it's difficult for us to become accredited then that becomes a gating item and it slows down the whole process. And it's something that needs to be thought of because we wouldn't want, you know, registries sign, you know, they click off the agreement, they sign it, they're delegated and then suddenly like okay now nobody can sell it.

So that's something I think needs to be thought of and should be something - I guess something immediate. And I think - I know myself and other registrars here would be happy to consult with you if you need working on streamlining that process and some of the items, you know, it could say - I won't say the problems we've had in the past because they're not problems in getting accredited but how - what information we could provide to you to help streamline this process and make it faster.

Kurt Pritz: Yeah, thanks, Jeff. So I, you know, I do just want to make the point that there has been a sort of informal group that's been working on streamlining the onboarding process. And I think Rob Golding has been involved in it. I know Michele has previously, (Tim), I don't know if you have some...

(Tim): (Unintelligible).

((Crosstalk))

Kurt Pritz: Yeah, if you want to that'd be great.

(Tim): We do actually have a team developing a tool. And right now it's - well it's going - it's anticipated that it will sit - it can be accessed through (Radar). But we envision something along the lines of - well the access through your login in some form.

But it will provide for, you know, multiple TLDs and, you know, we're looking at how we can support that and support the communication with the registries. But it's definitely not something that's just being ignored.

Matt Serlin: Great, thanks, (Tim). So I've got Michele and James and I've got Tom Barrett, good. I was just about to make the point that we're - oh, yeah, go ahead Akram.

Akram Atallah: So today the market is different. Today registrar applies or tries to get an agreement through the registry to sell their (ware). I think that we need to be careful because as the market changes and there are so many registries we need to be able to also think of the other way around which means now the registry could be going to registrars and saying could you sell my (wares).

So the initiation of the process could come from the opposite direction. So we need to be very open minded as we design this to make sure that it covers all the different new cases that might be at play also.

Matt Serlin: Right, yeah. So I've got Tom in the queue. And also I do want to make the point that, you know, I would encourage members that are not just at the head of the table to raise their hands and this is a good opportunity; we have both Kurt and Akram here. So, sorry Tom, I've got Michele, James and then, Tom...

((Crosstalk))

Matt Serlin: Okay. I've got...

((Crosstalk))

Matt Serlin: Tom, Michele, James. Tom, go ahead.

Tom Barrett: Hi, Tom Barrett from EnCirca. I asked a question yesterday regarding patents that apply to Whois verification and I actually did not get an answer back from anyone from ICANN. But the question is if it's found that the Whois verification that we're contracted to do does violate some of these patents or

at least is challenged by the patent holders what help can we expect from ICANN to either negotiate a license for those patents or to indemnify us from any potential infringement?

Akram Atallah: So let's - let me be a little bit more pragmatic on this issue. I understand that we need to get involved in these details and understand how the - what patents are out there and be able to put this in our agreement.

But it's also important to understand that these are not fundamental technologies that we're talking about. There are always ways - these are all implementation patents, if there any, and there's always better ways to, you know, not better ways but maybe other ways to implement these kind of functions.

So I don't see that as big of a risk as maybe you're worried about. But we will look into it and see what we can do to contractually protect everybody.

Matt Serlin: Yeah, hold on. I'll get you in the queue. You're good - your mic's still on. sorry, that's why I'm...

((Crosstalk))

Matt Serlin: I've got James, Michele and Yoav.

James Bladel: I think Jeff wanted a quick follow up on that as well so...

Jeff Eckhaus: Yeah, just a quick follow up is that I completely agree that, yeah, there are different processes and different methods. And, you know, as registrars we're pretty innovative and can think of different ways to do it.

What I think we're worried about is sort of being teed up for lawsuits; that somebody might say hey here's the process and then, yeah, we say hey ours is different but that sets us up having to go through the analysis, through the

lawsuits. And what we're saying is we don't want to be put in that position where we have to fight those lawsuits. We agree, we might have our own methods but we don't want to be put into that position and I think that's the issue that most of us have.

Matt Serlin: Yoav, go ahead.

Yoav Keren: Yeah, just also for this (unintelligible) maybe to run kind of your own review on the patents with your law firm. I actually understand what, you know, what's - how relevant they are. And that we'll all know about it before we have (unintelligible) in the RAA.

Kurt Pritz: Yeah, we're going to do that. We're going to...

((Crosstalk))

Matt Serlin: Great. I've got James and Michele so far. James, go ahead.

James Bladel: Actually the other guys I think kind of took that thread - the direction that I was going to take it and probably said it a little bit better than me. As we get into more and more of these prescriptive technical procedural or operational requirements we're going to run into this issue of intellectual property. And I think that it's just part and parcel of, you know, this industry going in that direction.

I guess the other thing when I thought I was at the end of the queue was to put out to the rest of the folks that we've been negotiating this RAA now for a year. And I think mostly - in accordance with the wishes and the sentiments of what we're hearing from registrars and what we're seeing the discussions on the group and the mailing list. I know we've had some lively interactions.

I guess my only request is now is a really great opportunity with Kurt here if you want to take some shots at the negotiating team where we dropped the

ball, where we misrepresented or where you feel like we went away - went astray from what you were looking for and now is your opportunity to do that or if you want to, you know, pat us on the back I guess we'll take that as well but that never happens.

So, you know, I just - I'm surprised it's so quiet because we've had such lively and animated discussions about these things on the mailing list. Thanks.

Matt Serlin: Yeah, hold on, Stéphane, sorry. I got Michele and then you're up.

Stéphane van Gelder: I normally go before him.

Matt Serlin: I'm sorry?

Stéphane van Gelder: I normally go before him.

Matt Serlin: Michele.

Michele Neylon: Stéphane, I would love to say we'll miss you but I'm not sure if that would be true. No just - I'm going back again to the Article 29 Working Party letter it's just from the updates and the interactions I have a very strong suspicion that a lot of ICANN staff - and please don't take this in - badly - as you're Americans and you're not Europeans you don't really understand the difference between what the Article 29 Working Party is, what it represents and that it is not the GAC.

There are 27 member states within the European Union. The Article 29 Working Party represents the 27 privacy - data privacy commissioners or whatever the local term is for them - for each member state, including my state, which is Ireland, which does not have a GAC member.

So if I hear ICANN saying that they're going to go back to the GAC I will probably explode or implode or something because I do not have a

representative. There are other member states within the European Union that don't. And there - and the dynamics within the GAC are such that the European states, while they have a voice it may not be the strongest.

And from the perspective of a registrar based within the European Union there is no way on this Earth that I will sign a new RAA with obligations that put me in breach of Irish law unless you provide a clear and simple method for me to protect myself under European law. And I don't know about the other European registrars here whether they share this sentiment but I'd be surprised if they didn't. Thanks.

Akram Atallah: Thank you. I mean, let's remember we're not trying to get an RAA that nobody wants to sign so we'll just agree on that. We're incorporating into getting an RAA that works for everybody. At the same time we have - we're trying to make sure that we get the (unintelligible) representation that it deserves.

And you guys do a lot of good work out there; you do everything that's possible yet you have a bad wrap. So, you know, there are certain things that we can do to improve the reputation as well as continue doing business and without, you know, burdening the registrants, if you want, with a lot more cost. So I think that's our goal is to achieve the best of everything.

And as Fadi keeps saying it's a equal multistakeholder model where we want to get everybody as fair of a share as possible in moving forward constructively so.

Matt Serlin: Thanks Akram. I've got Stéphane and Yoav in the queue. Anyone else?
Okay, Stéphane.

Stéphane van Gelder: Yeah, thanks, Matt. Just taking a queue on what James said earlier on I'd start - I'd like to just congratulate the registrar negotiating team. I think they've

done an excellent job so just perhaps a round of applause for them because they've really been working very hard to defend our interests.

And so I just want to say that I think Akram (unintelligible) the community has been getting from the signals. You heard the GNSO on Saturday - I don't know if you were in the room - but members of your (unintelligible) what you did. This has been a topic of discussion yesterday in the RAA session as well. It's a topic here.

I don't want to add to what's been said but I really do think that things are being said very clearly including, you know, let's stop the negotiations here, you - we've gone a long way, we've got very far. Other solutions are open to us. I think it really does require some listening on both sides so that we can get to closure on this.

Matt Serlin: Yoav.

Yoav Keren: Yeah, excuse me for continuing to talk on the Article 29. I've heard this issue twice during our GNSO Council discussions but both of you, Akram and Kurt, you were not there so I kind of want to echo Michele said.

Look, the way I see it - and this is personally - you know, the Whois verification (unintelligible) problem is something that is important for many stakeholder groups and (unintelligible) even for many of us here in the registrar (unintelligible).

You know, personally from our company being brand protection so - registrars, so, yeah we're interested that this issue will be resolved. Saying that the letter from the EU just shows you that this is a very, very complicated issue.

It seems to me that law enforcement, the GAC and ICANN got (unintelligible) most of what they were initially asking when we started negotiations.

(Unintelligible) on most issues. I think our group in general was very cooperative. We had - I don't know if you understand that, you know, James said that, we had very, very serious discussions on this internally. And I think we were able to come up with some type of consensus.

So this seems as an issue that is not resolved. And they put many of the registrars in a really problematic position. By the way I haven't - didn't get a review on that. It seems to me that, for example, also in Israel it's kind of the same status as in the EU so we might be also in a similar problem.

I think that the solution that was - that ICANN kind of proposed in the letter as a reply to the Article 29 just creates a set of new problems, which is initially the fact that if you actually do that and you allow an opt-out for European registrars than (unintelligible) you don't get what you wanted in Whois notification because bottom line, you know, this whole thing is intended to, you know, try and stop cyber crime.

So what will the cyber criminals do? Just move to a European registrar. On the other hand you will also provide, you know, other people are not saying that but this whole thing has a cost; it will have patent things will also have a cost. So this will provide an advantage - a competitive advantage to European registrars. So I'm sure this is not what ICANN intends to do.

Saying all this, for me, it's clear that if there is an issue on the table that - to go to a PDP - this is the one. Being on the GNSO we deal with a lot of processes, a lot of different things. From time to time we deal with, you know, real matter. This is one of them. This is something you heard in NCUC.

You hear other groups in the, you know, the stakeholder model saying, you know, we have different issues with this so I know - I understand where, you know, you as ICANN staff are coming from and want to see the results. But let's make sure that this thing doesn't blow up in our face. And it's better to be careful here.

And I assure you, you know, being on the GNSO I will be the first one to push that this will be the fastest PDP that we can have. But we'll have input from everyone. And just (unintelligible) I don't know if you're aware we had - James and Michele were leading a group that had a very fast PDP that was on fake - what was it - not fake - the IRTP - sorry, the IRTP.

So it was - and it was (unintelligible) to other PDPs. So I would seriously ask you and of course we're asking the Board also to consider this as an option. Thank you.

Matt Serlin: Thanks, Yoav. Kurt, Akram, did you want to respond or...

Akram Atallah: I understand what's being said. And we'll, you know, we do want to get the RAA done as soon as possible. We will - we're always willing to talk and listen. And so if we come to that crossroads of where we have to send things to get them done then we will make that decision then.

Again I think that we're too close right now to actually start backtracking so that's where I think I am right now. And we need to kind of get together and discuss how to move forward so...

Matt Serlin: Yeah, go ahead, James.

James Bladel: I agree with you. I mean, we're so close to the end - I agree with you. But I want to be careful; the difference between adding new things at the 11th hour versus taking things out - I think you can always take things out. You know, and it's sunk work but - I agree. But I see your point about changing course dramatically.

But I think that things can be omitted or moved to a different venue like a PDP without really affecting the overall progress that you've made to date. I

think it's when we want to - like add new things that we run into the problem you describe.

Matt Serlin: Yeah, and I think you just see, you know, just amongst this group the different opinions and the complex challenges that, you know, issues like Whois validation and data retention, like we've been saying, are absolutely complex. So I've got Ben and I've got Volker in the queue. Go ahead, Ben.

Ben Edelman: Cheers, Matt. I think, I mean, we've spoken about this a great deal. And of course many people in this room are working to get the contract negotiations done. And I don't think it's without doubt that most registrars in this room will move to the new agreement and will comply and will try and strive to make this a better place.

But the question remains that there's a subset of registrars at the bottom where we're actually increasing the gap between how we verify registrants and how they operate. And having new contracts in place is all well and good but you need to be able to enforce those registrars that continuously break the rules. And we all know who they are. And I don't understand why we have to continuously push to achieve greater standards yet you allow those at the bottom continuously slip.

So it's a matter of better compliance and we had (Maggie) earlier but that didn't really talk much about the people who continuously break the rules and continuously profit from this.

So it's all well and good all of us sitting in here saying once we get the contract done that's great but it needs a firm commitment from you to handle those registrars in the bottom tier that continuously make all of us look bad.

Man: So I'm new to this contractual relationship and just a point of clarification. I was talking about all of the prior - all of the registrars that are staying on all the contracts.

Man: Not all of it.

Man: ...popular belief. I'm not talking about all of them on the 2006 - is it 2006? 2001. But quite a few of them on there. We all know who they are. Everyone in this room knows who they are. So I mean something should be done about it.

Man: So those expire after five years but, you know, your point's well taken So I think there's 50 to 70 registrars still under the old agreement. But there's - represent very few registrants, you know, just a very small number. So what are the - but I understand abuses can take place without registrants.

Man: And this is one of the issues that we have that we need some better tools to you know escalate issues like that and be able to put - meet remediation as well as termination in the contracts, be able to close it in case anything like this happens. We understand the challenge and we, you know, we're not happy to have to live with certain things.

Man: Yeah, and I think the negotiations the registrar team has been willingly been put in, you know, enhance enforcement capabilities into the contract. So it's a (vent) point that we're able to weed out those registrars that simply aren't living up to their obligations. I've got Volker and (Macaley) and (Tom) in the queue.

Volker Greimann: Volker speaking. I have three points to make. One is the issue that we just discusses that we recognize. I can direct a negotiation team as well to recognize the problem but there are registrars on the different RAAs at the moment and we're looking to fix that proposed RAA which includes, from our side, a suggestion to have continuous renewal and update functions that once all registrars are under this new agreement, new terms, new obligations can be entered into that agreement without having everybody to sign a new agreement once the old agreement runs out.

So everybody's at the same level and we're also looking at a way to make this agreement effective on our registrars once this becomes a final version. We're still not sure how to do that but we're working on that. That's one of the final open topics on that.

We got in (U.S.) comments for the so-called opt-out. I wouldn't call it that because it's not a full opt-out or it's just a way to be able to comply with the local laws so we would still be forced to implement better retention as far as the local law allows.

So the costs will probably be close to the same for this implementation for European registrar and I do not think that the increased volume of revenue from added registrations that come to us from people that flee the other registrars that do not - that have stricter regulations will make up for the increase in the (unintelligible) complaints we have to treat.

Man: Thanks, Volker. I've got (Macalely) and (Tom). (Macalely).

(Macalely): Thanks. Just going back again to the compliance enforcement. Basically the enforcement of the contract - one of the issues we're very very conscious of is if ICANN wants to track down name.com, GoDaddy, (black knives), P-Systems) and a bunch of us, it's pretty easy. We're easy targets. We're there, we're easy to find. I know some of us more than others.

One of the things that shocks me and disturbs me is when ICANN compliance tells us that you still have registrars who aren't paying their fees. This is negligence. If we provide services to customers, if they do not pay their bills they get cut off. This is a binary decision. It's very very simple. If you don't pay, you don't get the service.

How is it possible that ICANN executives can tell us with a straight face that you still have registrars who do not pay their fees? That it wants to impose a

new contract with new more stringent obligations yet you're incapable of actually collecting the fees from all the registrars. I would love to know how that is possible.

Man: Right. So we went - I can tell you about the past about two years ago we went to an operation where we had a list of registrars that weren't paying their fees and we ticked each one off the list and they all got (accredited) or we collected on every single one of them. So I'm surprised that's going on.

(Macaley): Well, in the case of the ones that were ticked off as it were, I mean, in many respects it was kind of a (company) tactic as in you go off to the money to remove registrars that you had other issues with. I mean, in one case for example looking at the ones from two or three years back one registrar in question that I'm aware of, got accredited and they never paid a single dime.

I mean, it wasn't a case of them missing one or two quarters or one bill, it was literally I got a stack of invoices from ICANN for that registrar because the deck collection agency got confused and thought we were that registrar. And, I mean, it was literally a stack of invoices this thick.

But (Maggie's) right in her update this morning that again there was a registrar being removed for non-payment. And based on the kind of thing that we'd seen in the past then I would assume - and of course you can correct me - but it wasn't the case of the missing one or two invoices, it was a larger number which is why I have deep concerns with this new RAA that you expect me to sign when you're not going to actually impose the obligations on all registrars equally but you will quite happily impose it on those of us you can find easily.

So you'll be able to score little brownie points going hey we're got a compliance action against these registrars but then much more serious issues aren't being dealt with.

In Prague for example we saw statistics for compliance where a certain group of registrars in a certain geographic region where the cause of the largest number of complaints yet ICANN has never sent compliant staff physically to visit those registrars which makes absolutely no sense to me.

I know for a fact if there was an issue with ourselves somebody from ICANN's Brussels office would turn up at my door if they weren't getting answers yet...I mean come on, we know that. That's fine by me. You know, if you're going to impose a stronger contract you need to be able to enforce it equally across the board, not just picking on easy targets.

Man: So our intention is not to pick on the good will of the good registrars and that doesn't make sense for us. Actually we want to do the right thing for them (trust me) and that's what we want to do and there's no ifs or buts about it.

So I answer (unintelligible) to that. My understanding is that is not the case that isn't that gap that you're highlighting. If that is the case that's happened we will look into it and who will make sure I'll work with (Tim) on this, make sure that we get a regular report maybe and we need to figure out how to make the report public on maybe not the names but maybe the numbers of, you know, who's paying, who's not paying or number of registrars so that is actually a transparent issue and not a comeback.

One of the concerns I have is - and I'm not sure that's the case but I remember hearing that somebody that doesn't pay you go to - you do a breach with them and then they pay and so you have to start all over again. There is no way to say well, you're not paying a regular basis therefore there is a breach and therefore we can terminate.

I don't know if that's exactly how it works but these are the kind of things that we look for to be able to improve so that we can help you clean up this mess. So I'll let them do the details.

Man: Well, first of all we do have a beta tool that we were using with the old finance system that tracked, you know, past due and the steady decline in you know how many were 90 days past due or more and you know as Kurt mentioned earlier we had already gone through a significant process of cleaning out the long-standing past due registrars up to a point where everybody was saying well, all compliance does is collect money so we're damned if we do and we're damned if we don't, you know?

You're saying we've got to get everybody kicked off who doesn't pay and other people say that's just - see what compliance - what ICANN is all about is the money. But I don't think what you heard this morning was that this registrar was terminated for non-payment. It was terminated or was breached because of failure to invoke or to comply with UDRP and in the process they had some past due money so that was included.

But that's you know as Akram says there's still this one, two, three process. You know, you'll get 30 days past due, you know, 60 days past due, each step is an escalation in the compliance efforts.

You know, the case that you're talking about is history. That's - yeah, you saw that and that's been fixed, that's been addressed. So, you know, (Macaley), if you keep bringing that same example up, you know, it doesn't - you've raised it before with me.

(Macaley): I've raised it before but I haven't said a word about it in a long time but it's only been this morning when she said somebody had been suspended for non-payment that's just triggered.

Man: I guess I'm just saying there's always going to be someone triggered for non-payment because they're always constantly aging payments. You know, you can't check a registrar off because of 30 days past due or we wouldn't have any registrars.

Man: It's a fair point. I think and I'll - and not that I'm speaking for (Macaley) but I think part of the frustration is when we see that an action has been taken against a registrar for other things and we see, oh by the way, they were also delinquent on their payments to us sitting in this room and of course I don't know everyone's payment history but I have to assume we are all paying our bills appropriately on time and things like that. It just, you know, shows that it's troubling for us.

Akram Atallah: I agree with 100%. I think the issue here is not lowering the bar to the least common denominator. It's raising the bar to the highest common denominator. That's what we're aiming to do. We, you know, everybody knows that compliance has been improving its methods and its processes and things are going to get better.

We are working at automating a lot of the things that take a lot of the (band) results of teams that are starting to look at proactive measures to improve the way we perform and we work together. They're still chasing issues and we want to get beyond that so that we can put proactive measures instead of the advertisers.

So would improving things I think that (Maggie) and team are doing a great job now catching up on things. We're Setting up some systems that will help them gain (unintelligible) and I think that we're moving in the right direction.

Man: Oh, yeah. (Tim), Go ahead.

(Tim): I just wanted to follow up on that. In addition our finance team is in the process of developing you know much more customer friendly, you know, electronic billing and credit card acceptance and online, you know?

And so that alone I think will help also with this process because one of the problems we have is that our old system, we had to mail or we had to send physical copies of the bills out and in some parts of the world they never get

there, you know, and so then we would have to make manual exceptions to take their invoices, scan them and send them to them by email.

Now we're going to automate that so we haven't solved a much more robust finance system and that's one of the things that's going to permit us to do. So I think that not just looking at the compliance end but at the front end if we make it easier for people to get their bills and to pay them we're going to have much better compliance with it.

Man: Okay. We're going to wrap things up with Mr. Barrett and (Tom) will have our last question for the session. (Tom).

Tom Barrett: Well, I'm going to come back to the RAA negotiations. You made a comment we're so close so let's keep going down this path. And we are close when you consider there were 14 issues and we barely have reached agreement on 12 of them or at least the negotiating team has reached agreement on 12 of them.

But the one that's left especially who is verification, the open issues are not details. They are pretty macro or macro level. Whether or not we do verification posts or pre-resolution, whether or not we do email and phone or one or the other and it seems to me that even if we can reach agreement on those there are a lot more details that need to be worked out and we're not close on those details at all.

And so I would echo James' comment that 12 out of 14 is close and we should do some triage and decide if those last two should be PDP or if we can work them out at a later time. But if we want to put this bed because we are so close, we should go where we have agreement.

Man: Thanks, (Tom). So I think with that let's go ahead and thank (Kurt Nocrum) for making time to day. I know you guys have all sorts of time constraints and

pulls during the day so I appreciate you coming in always and having this interaction. So round of applause for them.

Man: Thank you for having us today. We hope we will be talking about (unintelligible). Thanks.

Man: Now it's time for lunch....for those of you...tell you that (unintelligible) brought in today. We have (unintelligible) in the back room presented by TW professional Web. So for those of you that want to stay in the room and lunch there is in the back of the room I'm having session so we're break for (unintelligible) back here in this room at 1:00. Thank you all.

Man: Operator, you can stop the recording.

END