

Transcription ICANN Toronto Meeting
Registration Accreditation Agreement Meeting
Saturday 13 October 2012 at 13:30 local time

Note: The following is the output of transcribing from an audio. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

- Coordinator: Welcome, and thank you for standing by. Today's conference is now being recorded. If you have any objection you may disconnect at this time. Sir you may proceed when you're ready.
- Man: Okay, thank you. And for the record this is the Registration and Accreditation agreement, and we are recording.
- Man: So if the councilor's can have their seat. I'm going to take Matt - yes I'm going to just kind of start this because I know there's such a short amount of time. And Stephane's not on the road, but Matt you are here correct?
- Matt Serlin: That is correct. I am here.
- Man: Okay, so why don't we start with presentation. Matt's going to - Matt Serlin -- the chair of the registrar stakeholder group -- is going to.
- Margie Milam: Yes we're kind of sharing the presentation so Steph and...
- Man: Okay.
- Woman: ...and Matt will.

Man: So Margie Milam and Matt will be sharing this presentation as you heard. So why don't we get it kicked off so we can, you know, have a good discussion afterwards.

Margie Milam: Okay. Hi everyone. We have several members of the negotiating team here, a few from staff and a few on the registrar's side. And unfortunately (Kurt) and Jon aren't able to be here, but hopefully we'll be able to answer whatever questions that we get through the discussion. And we've prepared these slides. We didn't have time to share them with the registrar's before hand, so we have to apologize. But what we'll do is we'll go slide by slide and have an interactive discussion.

Samantha Eisner: Hi everyone, I'm Sam Eisner. I'm junior council with ICAAN. I'm part of the negotiating team. With the REA negotiations - since Prague we have had six negotiation sessions between ICANN and the registrars. That also includes two full days of face-to-face meetings in DC. One of those days we invited representatives from the GAC and law enforcement to attend, and it was actually a very productive session. We identified a lot of progress on the law enforcements recommendations in that session.

As a result -- and as you may have seen in a summary that was posted in advance of the Toronto meeting -- all 12 of the law enforcement recommendations have been addressed in whole or in part, we're really calling this 11-1/2 out of 12. And we'll get a little bit into the half where we have some issues remaining. But as you all know there are other items on the table in addition to the law enforcement recommendations, there are some (unintelligible) from registrar's, there's some (unintelligible) from ICANN, as well as incorporation of the existing GNSO drafting team recommendations that have been in place for awhile. And those really call up some complex and challenging issues.

And so we are continuing the discussion on the GNSO (unintelligible), the registrar, and ICANN recommendations, that's really where the focus of a lot of our work between ICANN and the registrar team will be in the next couple months. Matt.

Man: Maybe we should have switched.

Matt Serlin: Yes thanks Sam. Just one quick point. The face to face session, the GAC and the law enforcement folks were present, not participating in negotiation, but present in terms of getting feedback about, specifically about the who is verification, and the data retention piece. So that was kind of separate from the actual negotiations between staff and the registrar.

Stephane van Gelder: Matt, just say who you are for the transcript please.

Matt Serlin: Matt Serlin.

Samantha Eisner: So the negotiations since Prague have really been focused on two key issues. We highlighted these issues in Prague, and they were really the subject of REA session update that we held in Prague. Two main issues were, who is verification and data retention?

And the progress that we've made on those to date - the who is verification at this point is really where the half issue comes in. We have reached a point where the registrars have agreement on providing verification of the data in a post resolution phase. So that is (unintelligible) resolved, then the registrars will take steps to complete the verification items that are called for.

The area of difference that we have, and the law enforcement recommendation or clarifications that we've received from law enforcement since then, law enforcement is willing to accept a post resolution verification scenario, but area really calling for verification of two items of data in that post resolution phase, so that's e-mail and phone number. And what is on the

table from the registrar's today is e-mail and or phone number at the registrar's election. And so that and or is really where that half goes. And so that's a place where it think we could agree between us there's not a lot of negotiation more that we can do on this point. It is where it is and we're going to have to come to an agreement on what we're going to put out about it.

We have had some ideas raised about other ways to make this countable for law enforcement, and that would include some sort of pilot program for a pre-resolution world. And so we may be exploring some sort of table top exercise, or how to get that table top in place. And so that's one of the ways we might move forward with that. Matt, did you want to speak to viewer's verifications?

Matt Serlin: Yes, this is Matt Serlin, again. Sorry, thanks Sam. Yes it's a good summary. I think Sam is correct in that, you know, the registrar's stakeholder group has pretty broad base support for post resolution and phone or e-mail validation. And really what we're hoping to accomplish during the week here and in Toronto, is to get additional feedback from a community. You know, since Prague we've been having these conversations. And then just in the past couple weeks there've been some developments, we talked earlier about the article 29 letter. So I'm really hoping to be able to get additional feedback from the community and then come back with staff and continue to work on these.

Samantha Eisner: In terms of data retention, if you recall where we were in Prague, we had a law enforcement recommendation on the table for a blanket two year retention period for all the types of data that they were requesting registrars to attain. And where we've moved since then is an agreement on a (unintelligible) retention schedule. So there, some items would be subject to a two year retention schedule, but some of the more sensitive data would be subject to retention for only six months from the time of creation, and it would not be the longer period of two years after the life of the registration. And that was developed so that we could try to encompass more of the data retention

and privacy laws around the world, and really have kind of an even play field for the registrars who are on this.

Where we've moved from, from there is that we recognize that there are still the possibility -- as evidence with the article 29 letter that's come up -- that there may be registrars whose local laws still prohibit them from retaining data in accordance with even this six month schedule. And so where we've really moved, and where we thought some assistance from the GAC -- and we're trying to work through the GAC on this topic -- is identifying an exception process for when the retention schedules would place the registrar in violation of local laws.

As you may recall there is process in place called the who is complex, or law policy, I think it has a little bit of different name. But it is a process whereby if there is a who is proceeding that's initiated against the registrar or registry that that registrar or registry could then go through a process where they would bring in data protection authorities, and bring that to ICANN's attention, and then could apply for a waiver, and there's a process for governmental involvement in that.

And so where we've come to is we have a proposal to actually modify that policy to make it a broader application and applicable for this data retention issue as well, and also identify the trigger so that a registrar or registry would not actually have to be found in violation of law before they could avail themselves of the procedure. So we don't want to force our contracted parties to be in violation of law before they can seek relief from that. And so that's where we're trying to get some input from the GAC on what might be acceptable to them, because these are laws that the GAC representatives are responsible for enforcing. And so that's really the process that we're going down to come to a solution on this point.

Stephane van Gelder: Thanks. Can I stop you there? I've got a couple of questions, Jeff and Wendy.

Jeff Neuman: Just so I understand, and I appreciate the last point that you said that a registrar -- or registry for that matter -- shouldn't be in violation of national law before they apply to have this exemption or waiver. But you still said there still has to be an active proceeding on that, or just to clarify?

Samantha Eisner: Yes that's what we're exploring, because in light of all, you know, these changes we want to change the trigger points so you don't have to have an active proceeding against a registry or registrar, that somehow there'd be a trigger, you know, before that if there's a concern. But that's where we're trying to seek GAC guidance to figure out how you would go about, and what would be the appropriate time, and how do you get that information analyzed. And then the other kind of modification is, is right now that policy only applies to who is, it would also need to be expanded for data retention, because some of the concerns might be data retention issues as opposed to publication and who is.

Jeff Neuman: Yes, so just to add to that, like the second point is, I mean I think we now know there's a letter out there from the working party and we were talking about it. So I think that should automatically start, even though the contract's not final yet, I mean you should start that process now for that, you know, for the verification. So there's been some members here that have said, you know, maybe you should just remove the whole verification from the registrar accreditation agreement at this point. Go through your process to determine whatever impact it would put a registrar in violation. As opposed to now it almost seems like we're going forward, we're putting it in the contract, and then you guys can work it out later, but the default is it's in the contract. I think now you almost have that kind of expression of concern from the working party. And so I don't know what feedback you're seeking from us, but it seems to be little bit backwards.

Stephane van Gelder: Do you want to respond, or do I move on?

Samantha Eisner: I think that we'll keep this as a topic of discussion throughout this meeting. I know that there has been a lot of attention on the article 29 letter. And, you know, we have provided a response to the article 29 letter regarding how we're trying to move forward with the creation of this process, but I think this is also somewhere where we have to bring the GAC in and make - there is some verification from a position, not to confuse verification of who has information, but there is some verification of positions that also has to occur. Before we would just say this is something that's not appropriate for the negotiations. As we stand today we're moving forward with negotiations on this topic that we're aware of all the issues, and it's something that we really may have to take into consideration if in our future, if we learn something in the future that should change our position.

Stephane van Gelder: Thanks. Wendy next.

Wendy Seltzer: Thanks. Since we're talking about 11 or 11-1/2 out of 12, I would ask, you know, isn't this a point at which we could declare consensus, and move on, and drop the continuous remaining half, because there's considerable community concern with it not just concern among the negotiation parties? And that if the community could be helpful as a voice in response. I know the non-commercials have been trying for a long time to engage with the process, find some way to demonstrate their support for positions, are appearing through the registers to say, we're really close and the way to get closer is to drop some of the outrageous demands from law enforcement, not to force the registrars over. And so that would be my high level comment.

And some of the more specifics I think -- as what Sam and Jeff were mentioning -- we need to really close the loophole or bug of the who has conflicts with national law policy that makes registrar puts themselves in jeopardy under their national laws in order to get a ruling that they don't have to comply. They should - and if it's something that their law enforcement agencies can't help them to address -- because some of these agencies are constitutionally forbidden from issuing advisory opinions -- then it's for ICANN

to be more flexible in it's process of what it accepts as a demonstration, that there is a legal problem here. And so further happy to talk through that further, and it think we've seen seem real problems with evoking that procedure already, so we need to expand this not just beyond to the data retention as well as who is.

Stephane van Gelder: Thanks Wendy any response?

Woman: In terms of that (unintelligible) issue that you mentioned Wendy, I think that there is a point where -- I think the registrars would agree with us that -- we're having a path of diminishing returns and continuing conversations on certain topics. You know, we focused a lot on the who is verification for a very long time. And, you know, we've made some very significant progress I think, and, you know, we're going to have to be realistic about the amount of progress we can continue to make on that before we get a version posted.

Stephane van Gelder: Marika, you have a question online.

Marika Konings: This is Marika. I have a question Adobe connect from (Rueben Scoll), he asks on the registrar proposal of verifying e-mail and or phone, would the verification status be shown as been (unintelligible), as in a phone was verified but e-mail, was not or both e-mail and phone number verified?

Matt Serlin: The short answer is we haven't had a discussion about change to who is out, but to reflect any sort of verified status of any domain names.

Stephane van Gelder: Thanks Matt. I have Yoav have next

Yoav Keren: Yes I just want to refer to the comment you made earlier regarding your (unintelligible) to the article 29 letter. And it looks to me that the way you're trying to find around it creates a whole set of new problems. And one of them is very clear is that this whole issue of (unintelligible) verification coming from law enforcement, is in order to stop criminal activity online, which I think

(unintelligible). But the problem is the solution is a work around, and European registrars can opt out, so first of all you see more and more cyber crime moving to registrars, just being done through registrars in Europe, because (unintelligible) happened there.

And by the way I personally in our discussions said that I really don't understand how this will resolve the issue if we don't have new verification on ccTLDs, and I've kind of always been surprised with the fact that GAC is pushing very strongly on ccTLDs to do this, but don't do it in ccTLDs in their own countries. So there's a whole set of problems - and oh there's another issue is that there's going to be a change in the competitive landscape between registrars, because there's going to be a defense between being in a European registrar to a non-European , I don't know maybe we'll all decide to become European's at that point. But this is clearly a problematic issue.

Stephane van Gelder: Thank you. Jon.

Jonathan Robinson: I have the same questions that Yoav has, although in my mind I formed them in a less pejorative way. By creating these kinds of carve outs how will the registrars deal with what seems to be the emergence of competitive advantages for some over others? Has that been a part of the conversation?

Woman: Creating some sort of better playing field, or even playing field for registrars has been one of the key focuses I think of the negotiations. That's one of the main reasons we've been entertain suggestions such as the (unintelligible) retention schedule. But we needed to come to a place where we had not only consistent obligations but consistent enforceable obligations in cross registrars. We've learned that if we went to a two year across the board we'd have so many people coming to us for carve outs that we would have no way to actually enforce that, as well as it could make it fairly meaningless in terms of having a big two year retention schedule.

So the same concerns, we take those into account as we're considering the article 29 issue. Again it's a fairly new issues to have been raised, and these are things that we're really trying to consider, and work through, and get input, not only of this community, but also bring in the GAC. We think that there may be some importation information that we can learn about it, and really understand the scope so that we don't create a provision that is hard for us to enforce.

Stephane van Gelder: Thank you. Milton.

Milton Mueller: Well this is very surprising to hear that the article 29 issue was a new issue. Because when I was on the council six years ago we were talking about the same thing. And the who is conflicts of law policy was one of the things that we produced at that time. And that's my - I have a minor question, kind of a procedural question and then a higher level comment.

The minor question is, when you talk, the staff member was talking about, we were talking about modifying the policy. And I'm wondering does that mean the GAC is making a policy and not the GNSO? And are there any procedural issues about that? You know, we've just been talking about the role of the GNSO, and the council, and I think I made the point that one of the problems with the role of the GNSO is that whenever it's in somebody's interest to circumvent or short circuit that process they seem to seize it. And is this another case of this or am I not understanding what is being discussed between the GAC and the staff? And my more high level point is, you know, we hear all this talk lately about.

Stephane van Gelder: Milton may I suggest you let them answer the first question?

Milton Mueller: Okay sure yes.

Margie Milam: Yes the second comment on - this is Margie. The reasons why we essentially went the GAC was if you remember in Prague there was this discussion

already of it wasn't bleed or wasn't on the table at the moment, but privacy concerns, and we heard from the GAC that, you know, when they made, they endorsed the recommendations that they consulted, you know, that they essentially spoke for the privacy side and for the law enforcement side, and they balanced those interests. And so they encouraged us to go to them to help understand how the privacy obligations, you know, relate to say the law enforcement in a request.

But setting that aside if we get to a point where, you know, modify with the GAC info, we didn't mean to suggest that we wouldn't be consulting the GNSO, we would obviously go through some process where there would be, you know, consultation, and public comment, all that, because, you know, GNSO's a very important part of that. It's just that this just sort of came out of the request from Prague where ether GAC's essentially indicated that they're the experts in their laws, and they're the ones that, you know, that's kind of their (unintelligible) on how you balance these public policy issues.

Stephane van Gelder: Thanks Margie. Back to you Milton.

Milton Mueller: Yes I think it's totally appropriate for you to be consulting the GAC and for them to be giving you advice about these issues. But that actually leads into my next point which is, when the governments in the GAC say that they represent both the privacy and the non-privacy interest, I don't think that's actually true. And I think that's one of the structural problems with the GAC, that you don't actually have the privacy officers in there alongside the law enforcement officers. And each government kind of has an interest depending on their local political completion they will push one to the expense of the other. I certainly know this is the case in the US, in terms of how we are represented in the GAC. And that's the higher level point, is that we hear all this talk now about the dangers of the governmental takeover of the internet and how our bottom up multi-cycled or institutions are here to protect us or to save us from, you know, government.

But what we see happening here in this case, in a kind of minor way, but the potential is much worse, is governments can circumvent their national laws via ICANN. And don't tell me that governments don't have an interest in circumventing their national laws at some point or another, because I'm talking as someone who comes from the land warrantless wiretap. So we know that there are agencies within the government who find it convenient to ignore procedural checks and balances. And if they can do this for the GAC they will, this is just a fact of politics and of life. So I'd be very careful with the way we handle this. And again if nothing else just stick to what is supposed to be the policy making procedure, and if we're going to change a policy then let's make sure it goes through the GNSO.

Stephane van Gelder: Thanks Milton.

Woman: Just to clarify, it's actually not a policy, it is a procedure that was based on recommendations. We did use a wrong word in the slide, so just to make sure of that one.

Stephane van Gelder: So if there are no further questions on this did you want to - have you finished the presentation?

Man: No there's - on this topic, yes it think we can move on.

Samantha Eisner: So this is kind of an overview of what we've done so far. We've made a lot of progress in key areas. First we identified language for the creation of an abuse point of contact with the registrar we're maintaining. We still have some discussion to go on the authentication of law enforcement agencies who may be seeking to use some of the heightened procedures within and out of each point of contact, but we're very close on that.

We have started work to create a proxy accreditation program. We have a session schedule here in Toronto to get some community input on the beginning of that work. We're working with - some staff is working along with

some representatives identified by the registrar stakeholder group, to try to put together some sort of straw man with some base proposals, but then we would start taking it out for community work. So this won't be an internally creaked process, we're just trying to get some baseline suggestions out first. But the session here in Toronto will server as the first time for community to give us some input of how we should start considering the straw man proposal work.

There is additional registrar information that registrars have agreed to provide to ICANN. Many of the items that the registrar have already on their accreditation application, they have agreed to maintain updates for ICANN on those, and some of that information will actually be posted publicly either on the registrars Web site or on the internet site.

We have some enhanced complaisance remedies now in the agreement. So whereas we had a very kind of lightweight suspension, or not a light weight, but a very hard to trigger suspension right in the agreement prior, we now have the, we're moving towards the ability to have suspension as a component of our compliance remedy so that we don't always have to go to the extent of termination, and really have an opportunity to work with registrars to bring them into compliance with our agreements, and some of the suspensions rights can be consistent breeches.

But we also have new grounds for termination that we've started negotiating into the agreement including consistent material breeches, that didn't exist before. One of the main points of negation that we still have a lot to talk about on are the process for how we're going to continue future negotiations or future amends to the RAA. We have started talking about that I think we still have a long way to go on that one.

We have started negotiating, we have come very close on language addressing cyber squatting by registrars. We have streamline arbitration language so that we can try to work against some of the delays that we've

seen in the arbitration process as it currently exists in the agreement so we can get to a more speedy resolution for both ICANN and the registrar. And we've also made some progress on additional technical specs to include such as our registrar agreement to support GNSO (unintelligible) if it's requested by the registrar and they're working with registries to support GNSO (unintelligible) Matt.

Matt Serlin: Yes, thanks Sam. The only one that I kind of want to touch on, and just kind of reiterate what Sam said, is the creation of the proxy privacy accreditation program. You know, as Sam pointed out there's a handful of registrars that are starting to work with staff on this sort of creation of a straw man and what that would look like. But ultimately we think, you know, that's a really good example of another complex policy issue that, and it's our hope and desire that that comes through the GNSO policy development process. And ultimately it gets created in that arena as opposed to, in the contractual arena where we essentially have agreed to, you know, be bound by whatever program is created through that. So other than that I think Sam summed up everything else on there.

Stephane van Gelder: Thanks Matt. I have Jeff and Tim.

Jeff Neuman: I think Matt kind of covered what I was going to say, in a sense and that is also in line with the registries. In our statement on who is reviewed team report it talked about the creation of a proxy, accreditation, I think that's what you're responding to. It's the registry's view that absolutely have to go through a PDP. Anything being discussed, that's completely within the picket fence, that is exactly the type of thing that we all envisioned going through our PDP course.

Any registrar that wants to voluntarily adopt can always do that, but what worries me is that when you talk about a proxy accreditation program, accreditation usually has implicit in that standards. And standards would have implicit things like when a registrar would have to reveal the name of a

registrant. You know, so you have all those details and then in order to maintain that accreditation you a registrar would have to do XY and Z in this timeframe.

All of that is really naturally there's nothing that fits better in the PDP process than that, that's exactly, you know, what was envisioned that type of thing. So I think it's okay, it seems like you're responding to law enforcement requests and others, but that is the poster child of what most go through a PDP unless voluntarily adopted by registrars. So I do have a concern about that, and inline with the registries statement that is something that absolutely should go through a PDP.

Stephane van Gelder: Thanks Jeff. Tim.

Tim Cole: Yes this is Tim Cole from ICANN. I just wanted to mention that on the schedule, on Wednesday from 1:30 to 2:45 there is a workshop on this topic, and it's going to be seeking input from the community about the issue that Jeff raised, and other issues about how such a program might be designed and how should it be developed. So I encourage people to attend if you can on Wednesday at 1 o'clock. Let me make sure I got the time right, 1:30.

Stephane van Gelder: Thanks Tim. Do you want to continue?

Samantha Eisner: So here's where a lot of work now has to focus. We have continued discussions going on regarding some other who is obligations. One of the things that was requested was an SLA on who is availability, and so we have an SLA on the table and we have some dissuasion to occur about that. The IDM protocols to the extent that they can be incorporated into their registrar accreditation agreement. Also an agreement on how registrars would transition to (unintelligible) who is in the event that protocol is implemented and adopted.

One of the big areas that I know we talked about in Prague -- and I know Jeff this is a big one for you -- the issue of revocation of the REA model in a change marketplace. ICANN has requested in the negotiations -- it's one of our negotiation points -- that there should be some mechanism included in the contract that allows us as a whole, as a community to address a change marketplace. We're still actually a very young market, but now we're moving to the point where we have new ccTLDs coming in, we're moving in to place a vertical integration of registries and registrars. And we don't know what the registry, registrar, or domain registration is going to look like in five years.

And we want - we think it's the responsible thing to do to have a conversation about what we can do together to make ICANN, and to make our contracts responsive to a change marketplace. And so that's why we put this revocation language in there. As it exists now in the ICANN draft -- not in anything that's been agreed to by the registrars -- we have a sunset period written in, we have an acknowledgment that there might be a replacement and having a replacement scenario. Any of the registrars who are on the version of the RAA could transition to that new scenario, so I would think that would have a requirements rule in that. We're not seeking to be punitive within this, we're seeking to be responsive. So that's really where ICANN stands on this. And I don't know Matt is this a good time for me to stop before I go on with the rest of this slide.

Matt Serlin: Yes, thanks Sam. I guess - this is Matt. I guess I would just say, you know, out of all the remaining items that we still have, this probably is one that there is the most deepest division between the stakeholder group and staff. I mean it just is not something that our stakeholder group and the members of it will live with. And so it is kind of an issue that is remains open, and is definite on the path, the critical path to being able to warp this up, because there is such a deep division between what staff has put in, and our version of what we think should be there, which it shouldn't be there at all.

Stephane van Gelder: I have Jeff and Chuck.

Jeff Neuman: Thanks (unintelligible), Samantha knew I would kind of pipe up. Obviously I agree with Matt. My question for ICANN staff is, it seems like everything else in here on this list came from some recommendation or some discussion from the community except for this item, seems like this item was just solely generated within ICANN staff.

And while I sympathize with the fact that we don't know how the market is going to look like in five years, you can't expect live business -- some of them begin public companies -- to put in a provision that essentially gives ICANN the unilateral right to revoke. Even with all your protections investors and companies will not see it the way you see it, but will see it as a large in inherit risk. And those public companies, as soon as you put that language in the agreement you can make their stock tumble, all right.

This has got ramifications well beyond. So my strong recommendation is drop it. It didn't come from the community. As much as I think, you know, you have sort of the right intention of, you know, we don't know where this is going to go. This agreement will renew every five years or whatever, and at that point in time that's when you introduce changes and you can go through that process.

It's not, you know, it's not all of a sudden one day the market's going to completely shift and oh no. This is going to be gradual and over time if what you say is going to happen will happen. And I would not spend the time now worrying about the doomsday scenario. There's no possible acceptable outcome of that provision with the registrars and also registries, because we fought it tooth and nail when it was attempted to be put in the registry agreement.

Really this one came out of nowhere, it didn't come from the community, and I think of all the other things in there, you know, at least you could tie everyone of the other things to the community. I will say transition restful who

is worries me, as it does with, you know, in the registry agreements because you're asking people to contractually sign on to something that hasn't been developed yet, and we don't fully understand the business requirements of it and the ramifications. So those are the two I kind of have an issue with.

Stephane van Gelder: Thanks Jeff. Sam do you want to respond or? No. Chuck's next, then it's you Thomas.

Chuck Gomes: Thanks Stephane. I understand the need for being, having flexibility for dealing with changes in the marketplace because it will change. But why such an extreme position as a unilateral revocation clause? Any attorney in his right mind would never sign up to one of those. And yet this is another example of ICANN -- the corporation -- being unwilling to assume even the slightest risk, and all the risk has flowed down to the participants in the community. That just doesn't make seen to have a revocation clause to deal with flexibility in the marketplace. There can be transition clauses to deal with things like that, but such an extreme clause just doesn't make sense.

Stephane van Gelder: So Margie did you want to just respond?

Margie Milam: Yes, a little bit more background on the verification clause as well. In part there's also a registrar asked to have a presumption of renewal, and then there's this concern on the staff side that if there's essentially automatic renewal type of concept, does that mean that this is a perpetual thing that we can never get out of? And so in some sense there needs to be a way of dealing with that if that is a continued ask on the registrar's side, and so this is one way of dealing with that.

Stephane van Gelder: Thanks. Thomas.

Thomas Rickert: Thank you Stephane. I would like to add maybe a different facet to that discussion surrounding the revocation clause. If ICANN is thinking about competition and choice, it's also choice in registrars. And if we talk about

being globally inclusive, we need to talk about emerging markets. You see very few ICANN accredited registrars in many, many countries, and most of, I think if you count them in most of the countries we don't even have one. And if you burden potential investors with the risk of a revocation I think that would have a detrimental effect on, stimulate the creation of new players in this (unintelligible).

Stephane van Gelder: Thanks Thomas. Jonathon.

Jonathan Robinson: Well that's an interesting supplementary, I'll give it, that Thomas placed. And I mean, you know, in many ways what's been said is adequate, it's just I feel it's very important to add weight to that agreement. I also feel very, very strongly that a unilateral revocation. And I think I can understand that there's some concern about the presumption of renewal, but my understanding of presumption of is, you know, that that can be revoked on the basis of a failure to perform under the contract.

So I think you have some protections in that respect and so, you know, I find it very difficult. And particularly I think I should endorse the issue of in relation to any form of external investment in the business, and being forced to as a part of that due diligence process disclosed contractual basis on which this business is founded and operated. And to then have to expose that ultimately that kind of condition exists there would substantially weaken ones ability to raise capital in debt all equity market. So it's a concern.

Samantha Eisner: So as Margie was alluding to, another component for ICANN of this revocation discussion it's not just the presumption of renewal, but also having the correct mechanisms in place to amend the agreement if needed. And so that's another area where we think that improvements are needed if we are to come to a point where we would reconsider how we had revocation clause put in.

So if we're in a perpetual cycle of renewal we need to make sure that we have the flexibility of ease of amendment where we don't have to go through protective processes, to get to amendment, etcetera. And so, you know, ease of amendment to reflect changes in marketplace would be another place where we think that it's necessary to really have some movement within the agreement. And, you know, I think that we can all agree that the amendment processes that we follow to date in 2009 and (unintelligible) negotiations that we've had this year are not really the most efficient ways to get movement and change. So we'd like to really consider how we can get this to a better place.

Stephane van Gelder: Thanks. (Mackenna) - I've got (Mackenna), Jeff, and Marika with an online question. And we are running close to time so please keep your comments short, okay thank you.

(Mackenna): Thanks Stephane. And may I say it's a great honor to be able to see for your last GNSO council meeting, you know, with Stephane leaving us this week, at the end of an era in some respects. Just there are a couple of things here. And I'm sitting here, I'm not a lawyer, I listen to these things, I sign contracts a lot. What's coming from ICANN staff on this entire thing around the renewal, (unintelligible) renewal all this, leaves me scratching my head, getting very, very confused. And I fire off e-mails to my lawyer, and my lawyer is getting more confused.

I can understand that ICANN would not like to have a situation where once a registrar becomes accredited there's absolutely no way on this earth for that accreditation to disappear. But if you, you know, if you actually enforce the contract against us, and of course there's no reason why that would be the situation. This entire thing about being (unintelligible) unilaterally remove the entire REA at the drop of a hat, is just the oddest concept I've ever heard of. I mean surely in other instances if one of the two entities is party to a contract and ceases to exist, then the contract pretty much disappears. I mean I let

the lawyers about more and (unintelligible) and use nice words and everything.

But from my perspective as a non-lawyer I find this entire thing just completely non-sensible. We sign contracts with registries where this is not an issue. I don't understand why ICANN is making something which they've handled badly in the past, taking it to a level of dis-functionality, that just leaves me with a massive headache and total confusion, thank you.

Stephane van Gelder: Thank you (Mackenna), and thank you for the kind words. Do you want to respond, or shall I go to Jeff? Jeff.

Jeff Neuman: I think Jonathon said some of what I was going to say. I don't see that the quid pro quo for a presumption of renewal be the revocation. Presumption of renewal could be based on meeting certain standards. And I know that, you know, there could be audits done. There's plenty of mechanisms within the contract to make sure that a registrars holding up to it's obligations. So you're presuming that it's renewed if the registrar's doing veering it's supposed to be doing.

What you're saying is you want a revocation clause that basically says, even if the registrar's doing veering right you want the right to just completely terminated, and then maybe come up with some alternate model. I just don't see at this point in time that that is a path that's really worth perusing at this point. I think, you know, you have things in the agreement, you have consensus policy process, you have an amendment process that's going to be put in here. There are plenty of other avenues to address these types of issues, but to just say that a revocation right because you don't know what's going to happen, it's not good enough.

And again I've yet to hear members of the community voice out any support for this, I've only heard negative things. And in fact the only people I've heard in favor of this is ICANN staff. I could be wrong, and if there's anyone in the

community that agrees then they should speak up. But otherwise this is just ICANN staff driven, and it's really unfair this kind of monopolistic quasi regulatory model, where you as the quasi regulator have this power over the registrars where even the rest of the community is telling you, we don't see this as a high priority issue. At that point if you're not getting support from the community for it, you probably should not exert your power over the registrars to make them try to agree to something that nobody in the community supports.

Stephane van Gelder: Thanks Jeff. You're getting some clear messages, I don't know if they're coming through in anyway, but I mean they're quite clear. But obviously I can't say that, so I'll just move onto the next question which comes from Marika.

Marika Konings: (Unintelligible) two questions on behalf of (Steve Matana). First question is, has a comparison been made, updated between the current text and the GNSO (unintelligible) team high and medium priority issues? And the second question is, what is a timetable for releasing the draft agreement? The negotiations have been underway for one year and the revision process is approaching the four year mark.

Woman: Just to be clear we haven't published a new REA, the draft that was published back, before Prague is essentially the last version that was published, so there's nothing new since Prague on that. What we published were a series of summary documents. And I think we'll move to the next slide on the timeline, and maybe we'll skip (unintelligible).

Stephane van Gelder: I hadn't realized that. How many more slides do you have, because we got three minutes left?

Samantha Eisner: We can skip the next slide. The next slide was just merely explaining what the documents we posted, but not something we need to go through. You can

look at it later. We have a slide actually on a proposed timeline so it's kind of responsive to (Steve)'s question, will help wrap this up.

So this as a caveat has not been bedded with the registrars. We have been actively discussing with (Faddy) our new CEO who is very interested in negotiations, and also very interested to see this brought to a close in a swift and efficient manner. He has tasked us with seeing what we can do to bring the negotiations to a close and get a revised REA posted for public comment by the end of December. And so we're going to try to work with the registrars to get that done, and hopefully they have the time in the next couple months to do that with us.

So we, you know, the timeline that we posted here is post and revised REA for public comment in December 2012, revised the REA to account for comments if necessary in February 2012 and hopefully get to approval in March or April.

Stephane van Gelder: You mean 13 right?

Samantha Eisner: Yes, 13. Yes February 2013, exactly.

Stephane van Gelder: Thanks. Jeff.

Jeff Neuman: So, thanks Samantha. And I know you may not be able to answer this, but when you say you post revised REA for public comment I'm assuming or -- I shouldn't assume - but will that be the version that's mutually agreed between the registrars and ICANN, or will it be an ICANN version indicating where there's still disagreement?

What I don't want to see happen, what I thought was a little bit of a blind side was the fact that when you posted the last version you posted the ICANN version as opposed to, you know, so there were things in there that hadn't been mutually agreed. So I guess mine's more of a question than a comment.

When you post this in December 2012 I'd like to see the REA that's mutually agreed, and then if you wanted to do a separate memo attached to it saying here's extra things ICANN still wants in there, and here's the reasons registrars don't want them, or vice versa. As opposed to - because once you post that version you create the expectation that that's going to be the final version, and I think that may not be the right expectation so. Thanks.

Samantha Eisner: So just to confirm. Our goal is to post a negotiated REA. When we post an REA for public comment that we put out to say this is what we're putting out for public comment, and we try to be very clear when we posted it in June that it was not a final or negotiated version, but when we're looking at December in our minds we are trying to post a negotiated REA, or else all the time we've spent on this is just not worthwhile.

Stephane van Gelder: Thanks, so I have Alan and Matt. Matt you'll have the closing remarks, and then we'll have to stop. Alan please be short.

Alan Greenberg: I'm very short. Question for Sam, having lived through the dogs breakfast of the approval of the 2009 REA, when you say post file REA for approval, approval by whom?

Samantha Eisner: I think that that's still a matter for us to have some discussions with the registrars on before we decide that here. I don't Margie if you have other comments on that.

Margie Milam: Yes we need to discuss that further.

Alan Greenberg: I hope we won't end up with situation where the GNSO is again given something as a (unintelligible) to rubber stamp which doesn't sit real well here.

Stephane van Gelder: Thanks Alan. Matt can you close this off?

Matt Serlin: Thanks Stephane. Yes I'm usually pretty good about having the last word. You know I just want reiterate what Sam said and that, you know, from the registrar standpoint, you know, we have spent a lot of time, we understand that, you know, the community, you know, wants this to be wrapped up, staff wants it to be wrapped up, we want it to be wrapped up.

But, you know, I just want to echo that the points here there is substantial differences, you know, I just want to be clear in that, you know, part of the discussion with staff going forward will be, you know, if we can't come to agreement on those major issue for us, you know, is it time to -- as someone suggested earlier -- take those out of the contract discussion process. And then so if we can get that kind of progress between now and December I think that's a great kind of aspiration time, thanks.

Stephane van Gelder: All right, thank you very much everyone for this very good discussion. We'll close this off now. Operator please end this session. We will start immediately with the IRTP part C session. I'm looking around to see if James and Avri are - yes James I see, and Avri I don't, but - Avri's there (unintelligible). So we'll give the tech guys the usual three minutes to switch over and then start again.

Coordinator: Thank you for your attendance. You may disconnect at this time.

END