BUENOS AIRES – Joint Meeting of the NCSG with the ICANN Board
Tuesday, June 23, 2015 – 16:45 to 17:45
ICANN – Buenos Aires, Argentina

STEVE CROCKER: Welcome, everybody. This is a meeting of the noncommercial stakeholder group with the board. As you can see, we have a different format than we've had before. This is an experiment. It's been working pretty well, actually, today.

So around the table here we have some board members and some NCSG members.

From the board, Cherine, Asha, Mike, Rinalia. I mean Ray. It is getting late in the day.

[Laughter]

Wolfgang, Jonne, George, Markus, and I'll try to be pretty quiet. We have a -- we also have Fadi.

Rafik, the meeting is yours.

RAFIK DAMMAK: Thanks, Steve.

Thanks for this opportunity again to have this discussion between the board and the NCSG, and we welcome this new format and we try to send you the question and topics one month before the meeting and

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

it's good to get also your feedback beforehand so we can understand what are the expectations.

We did some kind of reordering of the topics and we will try to focus on the two -- two first, which one is about the public interest commitment, and then to move to gTLD auction proceeds.

Depending how much time we spend on these topics, we will try to cover the other three issues that we have in mind.

So in terms of -- if we start about the public interest commitment, if just maybe try to read the kind of question we asked at you and to -- for the audience to understand where we are coming from.

So I mean on the topic of public interest commitment, our first question is: How does the board feel that the PICs interact with the existing bottom-up policymaking at ICANN, and does the board feel that there may be a conflict between the PICs and multistakeholder policy development?

And then how does the board plan to enforce PICs, specifically in the case where there may not be community agreement over the action contained in the PICs, and when will the community be given the opportunity to review the PICs process in a bottom-up manner?

So...

STEVE CROCKER: Sorry. My attention was elsewhere.

What -- what -- what are we doing?

RAFIK DAMMAK: I mean, yeah. I mean, we presented this question we sent to you, just to give the audience the background, and my understanding that you have a kind of lead discussion from the board about this.

STEVE CROCKER: So I apologize.

Frame the question that you want us to respond to.

What's the --

RAFIK DAMMAK: Okay. So I read the question about the topic of public interest commitment that we sent you a few weeks ago, and my understanding is that you have -- my understanding, it is Cherine that is covering this issue about the public interest commitment and maybe he can respond to this question.

STEVE CROCKER: Ah. Thank you.

CHERINE CHALABY: Okay. I will kick off this and then perhaps Fadi or Akram or Allen, who is here, can respond.

So what's the origin of the PICs?

The origin is that we got advice from the GAC to introduce some safeguards, and we thought that one way of implementing that GAC advice is to perhaps introduce some -- some of those safeguards into the contracts in the form of PICs, and we went to a public comment and asked people to voluntarily come up with PICs, which they did, and then those then became part of the contract.

So once they've been identified on a voluntary basis, they become enforceable in the contract.

Is this against the bottom-up policymaking?

That's a question, right?

It's a difficult one because you would hope that they were in the original applicant guidebook when the program was launched, but as we know, not everything was covered in the applicant guidebook, and as issues came up, we seek the community input of how to resolve the safeguard and the advice of the GAC.

If you recall also, more recently -- because we, the board, we don't want to be involved in policymaking at all. So more recently, the GAC and ALAC have raised a further issue regarding sensitive strings, in particularly, and they wanted more safeguards to be in place. And what we -- what we did is actually create an environment of bringing together all the parties from the community for them to decide what they can do about resolving this problem.

Our role was a facilitator, not a decision-maker.

Now, the fact that the whole community came together and -- the whole not in numbers, but at least representatives from the registries, registrars, members from BC, from the GAC, from -- not everybody -- that indicates that it's a good way for the community for the multistakeholder to work in finding a solution.

So the question is, it's not as straightforward as it sounds on this, because there was an issue and the issue was solved through the community and with the community voluntary approach to that solution.

Akram or Fadi, do you want to add a little bit more to that?

AKRAM ATALLAH: Thank you, Cherine. Thank you, Rafik.

So just to be clear, I think that every step of the way when we developed the PICs, we put these up for public comment and we gathered the comments and then we put the -- our implementation to the GAC in a letter for them to see how we're going to implement these PICs, and after all of that, the PICs were finalized and the program moved forward.

On the enforcement of the PICs, I think we went and replied to your request with an explanation of how the PICs would be enforced.

The -- the community -- I don't know what you mean by the community review. Is that how we -- how compliance is handling the PICs where you want the community to review?

RAFIK DAMMAK: Okay. I think it's about the process. To review the process.

AKRAM ATALLAH: Yeah. And we delivered that and we presented multiple explanations of the process, and we will be more than happy to, you know, sit down and go over that again.

CHERINE CHALABY: Maybe I can add a little bit more color to this.

I mentioned those meetings about the PICs with members of the community and the issue of enforcement came out and it was discussed and two ideas were explored.

One of them is proactive monitoring of the PICs, and the other one is a fast track for responding to complaints.

On the proactive monitoring, it was -- it was agreed not to pursue that further because -- and I'm going to read here because it's -- the words are chosen. "Such monitoring would be difficult and expensive to implement and is unlikely to generate reliable data from which meaningful conclusion can be drawn; and (b), such monitoring will almost inevitably draw ICANN in to make a judgment about Web site content."

However, on the fast track, our compliance team has worked very hard and has come up with a creative idea where ICANN compliance

commits to acknowledge complaints submitted by governments and consumer protection agencies within two business days, and ICANN further commits that complaints that appear to be well-founded will be handled expediently, regardless of the source of the complaint, and also commit to expedite processing of complaints based on factors such as the severity of the alleged breach and the harm that may result.

So this is -- this is where we are in terms of sort of enforcement of the PICs at this stage.

RAFIK DAMMAK: Okay. Thanks, Cherine.

When you said about consultation with the community, I'm not sure that we were involved there, and I think you have meetings in Singapore that we were not invited, so we didn't participate in -- with any input in that process.

CHERINE CHALABY: You probably didn't, and that is right, but quite a big gathering got together, so fair enough. Point taken.

RAFIK DAMMAK: So I mean that's fine. I think that the point is we have a process so all participants can participate.

But let's maybe try to get more question or intervention from those at the table but also in the audience, so who wants to ask a question?

Yes, James, please go ahead.

JAMES GANNON: So I think one of the -- sorry. James Gannon.

So I think one of the points that we're probably trying to get to is that while we acknowledge that there may have been some community involvement up to this point, is that it may not have been to the depth that we feel is required, and that going forward from this point now, we feel that the community should be much more involved at a more basic level in issues like this and that we don't -- both we don't undermine the multistakeholder model, but also that we reinforce and not just kind of continue as we're going. We reinforce the bottom-up policymaking process at ICANN and we don't want to be perceived to be undermining that in any way, and it's important that we get very in-depth community involvement in issues like this.

CHERINE CHALABY: Agreed.

RAFIK DAMMAK: Nice to have a violent agreement.

Okay. Any other questions?

ICANN | 53
Buenos Aires

I think for those in the audience how they can participate, there is -- there is a mic. Okay.

Well, so -- but maybe if we can hear from other board members what they think about this issue, it can be helpful, too.

Chris?

CHRIS DISSPAIN: I -- so I'm -- I mean, everything that Cherine said is -- I agree, and with Akram.

I'm still not completely clear what -- and it's been -- almost entirely my fault, I'm sure, but I'm not clear what you're saying.

I think what you're saying is that you don't think that the whole PIC issue was dealt with in -- properly, under the multi- -- under the model. Is that right?

That's what you're saying. Okay. Cool.

So from the very beginning or laterally? Because I don't -- I'm not clear why it wasn't. I mean, I think as Akram said, it went out for full public comment. Everything was open for comment.

Isn't that right, Akram? I'm not dreaming?

So what I'm not clear about is what would you have had us do that would have been better, apart from pointing?

Ah, Robin.

ROBIN GROSS: Hi. This is --

BILL DRAKE: I'm sorry. Is there a roaming mic, so that people in the audience --

CHRIS DISSPAIN: I don't know.

UNKNOWN SPEAKER: It's coming.

CHRIS DISSPAIN: It's coming. Although Robin is now sitting, so that's okay.

ROBIN GROSS: Not for long.

                            My name is Robin Gross with IP Justice.

                            So my concern is, if you want these policies, if you think you need these policies, why didn't you follow the bylaws and go through a proper policy development process in order to achieve them?

                            I mean, I understand you're saying "We put it out for public comment," but that's not exactly the proper process, and I know I've been trying to get engaged in this conversation, sent some emails to board members asking to include me in these conversations and haven't

gotten any response, and I'm not the only NCSG member that this happened to, so I return to my previous point.

If you want these policies and you think we need to do them, why not initiate a proper policy development process as per the bylaws? Thank you.

CHRIS DISSPAIN: So thank you, Robin. If -- can I -- may I respond?

RAFIK DAMMAK: Yes, Chris.

CHRIS DISSPAIN: Thank you. So I understand. So let me make sure that I'm clear what that would mean.

What happened -- if I get this wrong, I'm sure someone will correct me.

What happened was that we received advice -- so post the launch of the process, of the new gTLD process, we received advice from the GAC about certain names that they felt fell into a certain category and they provided us with advice. What we then did was to work out a way of dealing with that that we thought might work and then go out for public comment.

What I think you're saying is we should have stopped the launch of the new gTLDs and gone back to the GNSO with the GAC advice and said, "Work this out through your mechanisms."

ROBIN GROSS: Well, I don't think I'm necessarily the one saying it. I think ICANN bylaws --

CHRIS DISSPAIN: Well, no, what you just said.

ROBIN GROSS: -- say that. I think ICANN's bylaws require it to initiate and develop policy through these proper processes --

CHRIS DISSPAIN: Yeah.

ROBIN GROSS: -- so I'm sorry if that creates a little bit of a problem for people who are eager to rush to market, but does that mean we should violate the bylaws?

CHRIS DISSPAIN: So I'm not arguing with you. I'm just trying to get clear that that's what you mean. Okay.

ROBIN GROSS: Well, actually, no, that's your characterization of what that would mean.

CHRIS DISSPAIN: What's your characterization of what it would mean?

ROBIN GROSS: We never really got a chance to explore that.

                        I would say let's start with looking at the bylaws and see what the bylaws require for the proper policy development process, and if it says when the board thinks something else should happen, perhaps because of GAC advice, perhaps for another reason, you send it back down and you work it out through the proper process.

CHRIS DISSPAIN: Yes. So that's effectively what I -- what I think I just said. Cool. Thank you. I understand now.

RAFIK DAMMAK: Okay. Thanks, Chris, for the clarification, and I don't think we are in disagreement here about moving to a more appropriate process, and I think David wants to add something.

ROBIN GROSS: I'm just wondering what the answer is for my question. Why wasn't the bylaws process followed?

CHRIS DISSPAIN: So I think there is assumption in there that it wasn't. I'm not commenting on whether it was or it wasn't. But there is an assumption in there that it wasn't. So I need to go and look in careful detail before I would be prepared to say that it was or it wasn't.

RAFIK DAMMAK: Okay. Thanks, Chris. David?

DAVID CAKE: David Cake, NCSG and so forth. I think the question that Robin is talking about, was the PIC process done appropriately. We can all agree it is perhaps in a different manner than we would have done had we developed it with less time pressure and so on.

Well, had it been developed, I'm not going to comment on whether or not we were part of that. But we are now in a position where what exactly that policy even is, is a bit unclear in terms of things like enforcement mechanisms. We are in a position where we have public interest commitments that contain -- commit gTLDs to policies that went -- individual gTLDs to PICs to policies that have not gone through any sort of public-related process and many of us think in some cases contain things that are actively against the public interest and actively rejected by consensus policy.

How do we get ourselves -- I mean, let's turn around. How -- Do the board have suggestions as to how we should get ourselves out of what seems like one of the biggest policy messes ICANN has managed to get itself into?

RAFIK DAMMAK: Okay. I see Wolfgang here who wants to respond.

WOLFGANG KLEINWACHTER: David, it would be helpful if you could give us some concrete cases so that we can have a more concrete discussion rather than an abstract discussion.   It would also be helpful if you would see any discrimination in the process so that we can identify exactly what the problem is because I think from the point of view of the board, we tried to avoid everything which looks like discrimination. And we want to be as open and multistakeholder as possible. But it is very good if you have concerns that you are very specific.

What are the concrete misuse of the public interest things? And where is the discrimination factor?

DAVID CAKE: The example where I say -- it's something that I don't -- that I think has already been rejected is the, I think, several free to the globally protected marks list, which a lot of us would say is not a good -- not particularly good in any way. It doesn't represent the public interest.

But the main point is that as an example, there are things that are in the PICs that no one -- and then enshrined in a position where it's supposed to be a public interest commitment that ICANN is supposed to enforce, yet no one really -- it seems to be why are we enforcing things that one registrar just sort of -- because they said they would

ICANN | 53
Buenos Aires

enforce it, sorry, registry, even if no one else thinks it is a good idea. We are in a very odd position basically.

Why are we enforcing -- why is ICANN in a position where it's enforcing things that ICANN or the community did not in any way make as part of the policy process. I think we're in a position is all, and I'm not sure where we should go forward. And I don't even know -- I don't think anyone knows how we should go forward, basically.

RAFIK DAMMAK: Okay. I think Fadi wants to respond to this.

FADI CHEHADE: First of all, thank you.

David, thank you for your very, very thoughtful engagement on this. And I know that you mean every word you said on this. But let me be clear on behalf of ICANN and the board here. We did not implement the PICs thinking this is policy and we're just going to do it.   We actually had a very clear understanding in the guidebook that if we receive advice from the GAC, we are to implement it.

If we don't like the advice, we need to get into consultation with the GAC, so that's what we did. Now, when we went to the next step to implement the advice, we did -- we made the board look to this and the board went forward with implementing the PICs because we did not think this requires policy development. It is an implementation issue. That's it. It's as simple as that.

Now, we are clearly having a discussion post-mortem now in saying: Should this have been a policy or should it be implementation? As you remember, in fact, it was your community that helped us get into the GNSO, into a debate as to what are the lines between policy. And that work is ongoing and will hopefully lead us to better clarity and hopefully as we move forward, we don't find ourselves with these frustrations: Did the board really implement policy on the floor, or did we sincerely believe this is implementation?

I can assure you, we believe this does not require policy. It is GAC advice that came. We implemented it in good faith. And many of us were involved in that effort, including many in your community.

But now in retrospect when we think about it, the question is should this have been pushed back to the policy environment?

So I hope that the effort your community has started will guide us in the future.

And I exhort everyone to just move on. There was no -- let's learn from this. Let's make sure in the future we don't find ourselves in this position again because neither we are happy, nor you are happy, obviously. I mean, we don't want to be in that position. We want to do the right thing with you. I hope this is helpful, but I'm being very candid.

DAVID CAKE: Thank you. That is a very candid reply. And I understand that the -- I mean, this policy and implementation thing was an area of great

ICANN | 53
Buenos Aires

confusion at the time. Looking back on it, it is probably a bit clearer to all of us.

But, I mean, I actually -- there is a real question of how do we move on. And I don't have an answer, and I don't think the board does yet. It's something we do need to discuss.

RAFIK DAMMAK: Okay. Thanks, David.

If there is no further comment or question here, maybe we can move to the next item. Okay. I think we will get one question.

BRET SCHAEFER: Is it on? Thank you. Bret Schaefer. I'm just kind of curious as to the -- you mentioned that you received advice from the GAC and you acted upon that. Did the board take a step back and consider what they define "public interest" to be and if there are any limitations on that? And if they receive advice in the future, are there any constraints on future PICs? Thank you.

FADI CHEHADE: Chris, do you want to get that or should I?

Thank you, Bret, for this good question.

And, yes, the board -- when we look at any advice, especially advice coming from the GAC, we obviously make part of our decision-making: Is this in the public interest? There is no question about it. This is

anchored in everything we do. And we're right now about to start a process with the community to understand better the definition of that so that as we make decisions, we clearly point to that rationale of public interest. So we are about to start that as a result of some of your input and the community input.

But I can assure you that we did think through that. That's why for example we encouraged the registries through a voluntary process in addition to the GAC process, and that worked quite well. So we have both public interest commitments coming in a voluntary way, not being necessarily top down but rather from the community. And we have ones that respond to the GAC advice.

And I think, frankly, so far so good with the PICs. I know we are talking about the process. But from a substance standpoint, the PICs are working well. They're not perfect. I think we will do better on the next round, I hope. But they're working as best as we can given how we moved quickly to respond to the advice. But I can assure you, Bret, we did look at that.

BRET SCHAEFER: It doesn't sound like you thought it through because you said you are developing -- excuse me. You said you are developing a definition right now.

FADI CHEHADE: We're developing right now processes on how best to embed public interest into as many decisions as we make. Not just us, by the way,

ICANN | 53
Buenos Aires

also you in the community. We need to make sure we are all aligned when we said "public interest," which is, as you know, a pretty broad term. What is that within ICANN? And how does each part of the community carry its responsibility around that including the board and including everyone?

So I'm hoping this is an exercise of maturity, of growth. ICANN has been rooted in the public interest from day one. Will continue to be. We're just maturing and growing our common understanding of how we implement it.

And I hope we -- and we need everyone's help on that including I'm sure yours, Bret, on this, please.

RAFIK DAMMAK: Thank you, Fadi. Chris wants to respond.

CHRIS DISSPAIN: Just a comment. The GAC thinks that its advice is in the public interest. You think that its advice is not in the public interest. You think that we've implemented the GAC's advice. The GAC thinks we haven't implemented their advice. So we must be doing our job properly because you are both equally unhappy.

BILL DRAKE: Thank you. That's one way of thinking about it, Chris.

I guess it just speaks to the general point of why do we need to go through this exercise, at least in my view, that Fadi has referred to trying to get clearer about the meaning of the "public interest" because it does seem that we've created a process where post hoc things can be added in and the criteria for determining what can be added in is not necessarily precise enough to provide really clean, elegant guidance. Therefore, you have the possibility that political demands, bargaining pressure, whatever else, becomes as much of a factor in shaping what goes into a PIC as any really clean-based rationales.

So you could get some PICs that maybe have things that some of us would like, like, for example, with regard to closed generics, right?

Then you could get other PICs that have, like, trademark stuff that we go, Hey, whoa, why is that in there? What makes that is a public interest thing?

And since we don't have any shared concept of what is that public interest standard we're meeting, there's no basis for us to say yes to this one and not to that one. You know what I mean?

So we find ourselves in a situation where we've got a category that is so expansive as to allow arbitrary sorts of claims being made and manipulations, and we don't want that. We want something that is much more, you know, precise so we know the guidance is being followed and we know on what basis something is included and something's not. That's all.

We may not have made that entirely -- that might not sound pretty in the way we framed it. But that's the basic concern, that we follow a rules-based approach here. And I think now I've got Steve's interest.

STEVE CROCKER: Probably against my better judgment I'm going to get into this dialectic here. I'm trying to extract the elements of this.

I'm going to put this in very stark, simplistic terms and ask you to help me why we haven't got the following picture.

The GAC takes the position that everything it says -- because that's its job -- is in the public interest. Noncommercial Stakeholder Group says we're involved in public interest. Therefore, everything that comes out of the GAC must go through the Noncommercial Stakeholder Group and, hence, must become a policy development process automatically. 100%. No wiggle room at all for anything that comes out of the GAC because it's all in public interest and, therefore, it belongs in the NCSG.   And, therefore, it belongs in the policy development process. I'm just trying to put the pieces together cleanly.

BILL DRAKE: Yeah, that wasn't entirely clean, Steve.

[Laughter]

I don't think we were asserting that everything has to go through NCSG or that we're the singular arbiter of the public interest. I think

we're saying simply that the criteria for determining what can or cannot be included is not terribly clear. And ergo you get different kinds of things --

STEVE CROCKER: Are there any lines you would want to draw? Are there any things that you could give us examples, that the GAC could give us advice that you would say, Oh, that's not a problem. Go ahead and implement?

FADI CHEHADE: Excuse me. I need to intervene. Steve, we are -- we are literally about to start a process to answer your question with the community. We're doing that. So I think your question is right. But we are about to engage the whole community. Nora Abusitta is leading an effort to get our community together to answer this question, so there is more clarity on how we all interpret this very broad -- and I second what Bill said and his help on this.

And we will be working with everyone including this important community to ensure that we get through this. I just want to maybe put this...

BILL DRAKE: Can I just add one slight concern about this? And that is the notion that the GAC does believe that everything it says defines the public interest. That is for some of us a highly problematic concept and

ICANN | 53
Buenos Aires

really speaks to the need for us to have a coherent conversation about this thing.

So we're not claiming at all that we have some singular purchase on the term. We're only saying we need to have a collective framework and a clear set of guidelines we're following when we do things.

RAFIK DAMMAK: Okay. Thanks. So we have a queue here. So David, and I think there is time maybe to move on to the next item.

Let's see if anyone wants to add something.

STEPHANIE PERRIN: Thank you. For the record, Stephanie Perrin. Bill has certainly summed this up in a way that makes it a little more clear.

I'm going to make it less clear because despite all the work that we've done on policy and implementation, I don't think it's a given that getting a definition for what's in the public interest or what consumer protection is, is necessarily going to help us on a case-by-case basis.

These are still often policy decisions. We had a very interesting discussion on policy decisions with respect to contracts in the GNSO the other day.

It is my position that every contract is a policy instrument. And in some cases that policy, if it hasn't been set, then there's some kind of process that has to trigger the multistakeholder policy development.

And heaven forbid that it is a PDP every time. But we need to at least acknowledge when we are following a set policy and when we are striking out in new ground and making a decision when the contract's let. I think that may be something I just want to put on the table. Thank you.

RAFIK DAMMAK: Okay. Thanks, Stephanie.

I'm not sure. James, I think you wanted to add something?

Okay. So I guess it is better maybe to move to the next item as we spend more than 30 minutes here.

And so the next one I think we didn't talk about it at all, which is about new gTLD auction proceeds. And what we tried to ask here is what -- if the board has any plan to -- does the board plan to accept the community's suggestions via, for example, the cross-community working group that is being chartered by GNSO and other SOs and ACs? And will the board, for example, unilaterally decide the uses of the sequestered funds? In that case, what will be the board's basis for such decision? And what input will the board be soliciting apart from the cross-community working group to be initiated?

I'm not sure who is the lead discussant from the board. Is it you, Chris?

CHRIS DISSPAIN: I think it's Steve's thing.

STEVE CROCKER: I think there's -- no matter how many -- how long we've tried to be clear about all of this, I think there persists a certain amount of confusion. We sequestered -- sequestered is not the right term. We fenced off the auction proceeds with the very explicit purpose of making sure that they did not get diverted or consumed or entangled in our regular business operations and preserved the option -- preserved the -- the path for deciding what to do with it. Regrettably, I think some people interpreted that as therefore the Board was going to make a decision about it. That's exactly wrong. We -- the Board has preserved the community's option for determining what to do with it.

That process has now gotten started. In other words, the session last -- yesterday, there will be a session again tomorrow, and ideally there will be an extended process of thinking through the broad set of issues about where such funds might be applied, what kind of -- sort of the principles of what to do from a content point of view. There will be a fundamentally parallel discussion about what the mechanisms are, start a foundation or some other process or whatever. And there's a number of broad issues about the fact that it's one-time money, sort of what -- what kind of -- I mean, I could fill in an awful lot of options, but I don't want to be caught in the position of, by suggesting any particular option, that therefore that's a decision.

I think it's very important for the process to be deliberate and full so that ideas are put on the table, have a lot of time for discussion before

ICANN | 53
Buenos Aires

decisions are made. And so that's the process that's -- that has just now begun.

There is no timetable, yet. There are no decisions made about it except that the money is preserved and the accounting is very clear and all of that is documented. And I'm looking forward to it. I mean, any one of us, I suspect, could figure out a useful set of things to do with those funds, at least each of us might think about it. But that's not the prerogative of any one of us. And so we're going to organize the process.

There's a set of negatives to keep in mind. I'll tick them off. As I said, it's one-time money, so if it's put in someplace that is -- has a long tail associated with it, you start something and then you've got to finish it and you need more money, that's a dangerous position to be in. So that's one negative.

Another negative is that it gets used in lieu of our regular budget. So this is a more subtle but I think very important thing, that if we use it as kind of a Hamburger Helper for doing the things that we couldn't do with our regular budget, then we have basically violated the discipline of our budgeting process. So that's a different negative. Not everybody might agree with that.

Another negative is we go way outside of anything that is reasonable for ICANN to do, go outside of our general mandate. So that's a tricky business there. What's within our mandate but outside of our regular budgeting process, and it poses a bit of a challenge.

Another negative is, we are not careful about who makes the decisions and who benefits from it, conflict of interest issues. And in fact, there are multiple conflict of interest issues because you have some set of people who determine the process, some people who determine what the uses ought to be, some set of people who will make specific decisions about who -- who gets the money, and you'll have people who benefit from the money in one fashion or another. So that's another set of negatives.

So we want to set up some guardrails around this process. I haven't said a word about whether it goes to this purpose or that purpose or that purpose, just some broad ideas to keep in mind as we go forward.

Within that space there are an awful lot of things that will, I'm sure, come forth, and I loved Holly Raiche's response that World War III start here because I'm sure there will be a lot of contention about all of this. That's where we are. And we could see all of this coming quite some time ago. We purposefully did not start the process or encourage the process to be started last year because there was no clarity about the general magnitude of the money. There is now some clarity. $58 million sitting in the account. More to come. But it won't be ten times as much. So, you know, can't have -- you can't make a precise budget, but at least now you can sort of fit the mechanisms and fit the processes to the rough magnitude that we're going to be dealing with. And there was a further discussion whether we should have started this a few months earlier at the beginning of the year when we knew the amount of money. There was an internal discussion that suggested that the community is overloaded. Why don't we put this

ICANN | 53
Buenos Aires

off and then all of a sudden there was a lot of pushback saying hey, how come we're not doing anything about it. So we're underway. So that becomes just a workload question, and I think we're -- you know, we're inescapably going forth and that will be an additional burden on top of the -- of the community. But that's fine. I mean, it's just a question of appetite for work. And if people want to focus on figuring out what to do with this magnitude of money, that's perfectly reasonable.

So that's, I think -- I think I've covered essentially all of the things that are part of the mindset that I have. As you might imagine, I've had any number of suggestions come to me. Some of them have been very pointed. We have a good case for this, you should consider our needs. Followed two weeks later by, when can we pick up the check? Said wait, wait, wait, we haven't begun the process yet.

I guess one other thing that is not a negative exactly, although it could be phrased that way, are there good uses of the funds that are not -- that are within our mandate and are perfectly appropriate but that are not represented by regular ICANN attendees? Examples are research into new technologies, bolstering the quality of the software that runs DNS. Those are two possibilities, and there may be others. And so the question of inclusiveness leads to a challenge of whether or not the cross-community working group idea, which is intended to be inclusive, is inclusive enough. I'll stop at that point.

RAFIK DAMMAK: Okay. Thanks, Chris. James.

JAMES GANNON: Hi, James Gannon. Okay. So two quick points. So I'm going to briefly address one thing about the inclusiveness of the CCWG process. So I'm very, very new to NCUC and NCSG and I've been with the internal ICANN community for possibly five months, but before that I spent about nine months on the IANA stewardship cross-community working group as an independent from ICANN, and I had no affiliation with any internal group and I found it to be very open and inclusive process for somebody who was entirely outside of the ICANN community. So while I respect where you're coming from, I think that the process is possibly more inclusive than may be perceived. So that was just one quick point.

So the Board obviously has special considerations that it believes must be taken accounted for with the funds. But I think the community has -- I won't classify it as a fear but a concern that the Board may act at the end of the process after the CCWG has completed its work and might be slightly prescriptive in its approach. I think the community will be very interested in the Board getting involved in the work of the CCWG on the ground level. And I know on the -- particularly on the CCWG and the CWG, you know, we have Chris on mailing lists and calls every week. You know, the Board has been very active. And I think if we have that reflected in the work of the CCWG for the gTLD auction proceeds that possibly some of the concerns of the Board could be mitigated in participating in the process.

So I suppose the question would be, do you feel that it's going to be more appropriate to come in at the end of the process with a set of criteria and considerations that may not have been met or is the Board willing to get involved in the actual community process on the CCWG and work in a collaborative manner with the community along the way?

RAFIK DAMMAK: Okay, thank you, James. Bill, you want to add something.

BILL DRAKE: Yes, but it's on a slightly different point so I don't know if anyone wants to address James' before I -- okay. Just as a general matter, I like this format better than the one we used to use. At the same time, we're still in the dynamic where we pose questions to you and you respond, and the framing of that perhaps makes it sound like we're interrogating for specific points, et cetera. We're really trying to have a dialogue and find out how have you guys been thinking about this issue so far. We know that the CCWG process has not started yet. We know that everything is open. We know that there's been no commitments made. So we're just trying to tease out and hear from you, because this is the first opportunity to know, you know, what the character of the dialogue has been amongst you.

Now, one of the things I thought that was interesting yesterday was when we tried to sort of -- you were there in that session, I don't know if all the Board members were there in the high interest session, but

when we tried to talk about what principle -- not, you know, whose favorite topic should we fund or whatever else, but what principles would we follow in determining what's kind of in scope or out of scope. Have people been talking about this in terms -- I mean, are you guys thinking of this in terms of any kind of use of the funds should be directly related to strengthening, enhancing the DNS and access to the DNS and, you know, tight on ICANN's remit or has there been discussion about perhaps widening the optic and thinking about how these funds could be used in ways that would enrich the larger ecosystem? This is one of the questions that I'm -- I'm curious about personally.

STEVE CROCKER: And the answer is that we've been told that even discussing whether or not we should have that discussion is viewed by some as the Board is overreaching its remit and trying to push, so the answer is no. The discussion of what principles, what general directions and so forth is part of the open discussion that is underway.

BILL DRAKE: So there's not been an internal discussion on any of these kinds of points within the Board?

STEVE CROCKER: No. No.

RAFIK DAMMAK: Okay. So --

STEVE CROCKER: If we had reached a general direction, and we said we're going to use it for, say, strengthening DNS or we're going to use it for improving access somewhere, we would have said so. We would have said so explicitly, and we would have, you know, brought it forth in some form, probably a resolution. And we would have gotten our head handed to us, but we would have been forthright about it. But we didn't do any of that. I mean, it's just -- it's just -- we're waiting for that dialogue to begin.

RAFIK DAMMAK: Okay. Thanks, Chris. James, I think you want to intervene.

JAMES GANNON: Yeah, I was just wondering -- I'm just being selfish. Would anybody from the Board or Fadi be able to speak to my question about the Board's involvement with the CCWG at a basic level?

UNKNOWN SPEAKER: Okay, yes. Fadi was asking me to reply.

STEVE CROCKER: What's the question here?

CHRIS DISSPAIN: James, are you asking about the Board involvement in the CCWG process, is that right? Okay.

STEVE CROCKER: So --

CHRIS DISSPAIN: The accountability one, yes.

STEVE CROCKER: Oh --

JAMES GANNON: No, on the gTLD auction proceeds.

CHRIS DISSPAIN: Oh, I'm sorry. Your question is, is the Board going to be engaged in the -- if there's a cross-community working group on gTLD proceeds, is the Board going to be engaged as part of the community.

JAMES GANNON: Yes. So essentially instead of coming in at the end with a set of special considerations bringing --

CHRIS DISSPAIN: Well, certainly from my point of view I would expect that to be the case, yes, absolutely.

FADI CHEHADE: And we'd need to do that largely to make sure that whatever the community produces is in line with our responsibilities on areas such as, you know, distribution of funds and things of that sort. So we have also some fiduciary responsibilities that we need to insert into the process to make sure that the outcome -- so you don't do all the work and at the end we say whoops, sorry, this does not fit with what is feasible for us. So absolutely. And I think it's healthy for us to be involved, not to lead, not to direct, but to insert our input as well.

RAFIK DAMMAK: Thanks, Fadi. Cherine?

CHERINE CHALABY: Yes, and I want to support Fadi. You've got to remember that the Board is part of the community, okay? And the community is driving this, this working -- this work. We will participate in due course when the time is right, when asked, not at the end, hopefully in the beginning, and contributing with ideas and thought. But we're not going -- it's not going to be top-down and we're not going to make the decision. So that's a community decision, and we'd love to participate and give our input, okay? But as Fadi said, there is some fiduciary responsibility. We want to make sure that those are, you know, fulfilled. But other than that, no, we are part of the community, individually or collectively as a board.

RAFIK DAMMAK: Okay thanks. Oh, Avri, you want to say something.

AVRI DORIA: Yeah, Avri Doria. Member of NCSG. This has actually been one of my sort of issues for a long time that's really bothered me and perhaps some other things, and that's that you all don't participate as much. And you have a little lately.   Now, I really don't expect you to participate as Board members, but as people who have taken your Board hats off and actually participate.   Not only so that you've learned what we all think, but that you've had a chance to become part of the conversation. You've had a chance to share the ideas, to go back and forth, to be disagreed with in public in a good one-on-one, and so on, without the sort of oh, my word, if I disagree with the Board now then they'll never do what I've asked.

So I really like the fact that you're finally getting to the point where you're saying hey, guys, we're community, too, and we'd like to be in your groups. Because I think that would be excellent. I'd love to see it. As long as you take your hats off when you're doing it.

[Applause]

CHERINE CHALABY: Couldn't agree more.

FADI CHEHADE: Yes. And frankly, we should commend Avri because she's one of the few people in the community who's publicly saying this to the rest of

the community. And she's enlightened me on this and she's enlightening the community that we are a part of the community. We're not this ivory tower outsiders who show up and make decisions in a vacuum and leave. So I thank you, Avri, for bringing this up, and I think we're all hearing you and I hope we do more of this. Can you expand your theory to staff, or does that not work?

RAFIK DAMMAK: Okay. Yes, please.

SAM LANFRANCO: Sam Lanfranco from NPOC. I endorse what Avri just said, even though it will sound like it's going in the other direction. It's not meant to go in the other direction, and that's that the next topic of the Board's fiduciary responsibility. I have served on boards and one thing that has bothered me about the gTLD auction proceeds is the fact and the opportunity for the private auction to take place and be settled privately, and has the Board received legal advice that says that is not contrary to the fiduciary responsibilities of the Board? I don't know the answer to that question, but I'm just curious because in other settings that would look very, very uncertain.

RAFIK DAMMAK: Okay. Thanks, Sam. So Fadi, you want to respond to this?

FADI CHEHADE: Well, I --

ICANN | 53
Buenos Aires

RAFIK DAMMAK: Akram?

AKRAM ATALLAH: So I don't think we have a -- we have ever said that we encourage parties to go to auctions outside of ICANN. We have -- what we have said is that we encourage other parties to settle their differences among themselves. These are two different aspects of -- these are not necessarily the same thing. But we -- but we have not gotten any legal advice on that matter, if that's the question. Thank you.

RAFIK DAMMAK: Okay. Yes, Avri.

AVRI DORIA: This is Avri again. When I wasn't paying attention, I realized that Fadi was asking me a question. So someone pointed out to me and I came back. Could I expand my notion of that -- of the community to the staff. Instinctively I'd like to say yes. The problem is, one has to be certain that staff can be free to voice their opinions freely without jeopardizing their jobs. And we have to be in an extremely trusting environment and an extremely open environment for the staff to be able to do that. So my instinct is to say, of course. But I really have a caution in saying is, you know, I want to be sure that they -- I'm not worried about the Board. The Board voices their own opinions in the thing and the worst that's going to happen is another Board member

is going to get mad at them. But, you know, big deal. But for a staff member, when their livelihood and family support is dependent on it, I want to say yes, but I'm not secure enough to say this -- this company is ready for it yet.

RAFIK DAMMAK: Okay. I think we have two minutes left, so if you want to add something, ask a question. Sounds like everyone want to leave -- oh, Wolfgang.

WOLFGANG KLEINWACHTER: Yeah, I just wanted to raise the issue which was not on the agenda but which I think will create some problems for the future. We have now the review of the GNSO, the draft, and I would encourage this community to read this review very carefully and to make comments. But go beyond just commenting on the review but to start an own process of thinking. Why always wait for an external review and for guidance from the top that they will settle your problem. Start to discuss your own problems. What you have is the review and how do you think the future should be organized. This is an invitation to start the process. Probably not today but tomorrow. This will keep us busy the next couple of years, but you have always to start a long march with a first step.

RAFIK DAMMAK: Yes, Bill.

BILL DRAKE: Thank you, Wolfgang. I think it's fair to say that -- and this is reflected in the non-contracted parties' house letter to the Board after the meeting in Washington, DC, that there is a widespread feeling, although the feeling sometimes points in different directions, among a number of parties that there are some fundamental institutional structural questions that need to be looked at. And if you are suggesting that the community go ahead and take the initiative to do some framing of these issues and put some stuff on the table in front of you, I think we could probably mobilize some people to do that. I think that it would be a welcomed opportunity. I think we do need to start to think about the evolution in light of the new gTLD program and all the registries coming in, but not just that. There are other arguments or other positions one could take as well about the ways in which interests are organized and aggregated and structured in the ICANN framework.

So I welcome the invitation and I think we should do this.

RAFIK DAMMAK: Okay. Yes, Ray.

RAY PLZAK: In regard to your last comment, you've always had the capability of doing that, and the path to make that most effective is to do it bottom-up through the GNSO.

ICANN | 53
Buenos Aires

In other words, don't put something together from the standpoint of the NCSG other than what you already can do through the process that allows you to amend your charter. But if you want to change other things with regards to the structure inside the GNSO, that has to be a bottom-up process through the GNSO. Inside the NCSG you've got the ability to change your charter and go directly to the board with that, and so those paths are open. They've always been there. It's just a matter of taking the initiative and doing it.

And so I, for one, would welcome to see that happen, and I would be glad to sit down and help.

BILL DRAKE: Okay. Thanks, Ray, but I actually understood Wolfgang to be saying something a little bit broader, that he was inviting us to address issues beyond simply NCSG. You're saying that we should only do it within the context of a GNSO process.

RAY PLZAK: No, I'm not saying that. I'm saying within the NCSG you've got much more control over that. What I'm saying is if you're talking about the broader structure of the GNSO --

BILL DRAKE: Right.

ICANN | 53
Buenos Aires

RAY PLZAK: -- you need to work inside the GNSO to work that forward. That's one thing that Wolfgang and I agree on.

BILL DRAKE: Okay. It sounded a little different to me. Thanks.

RAFIK DAMMAK: Okay. I think we should --

UNKNOWN SPEAKER: (Off microphone.)

RAFIK DAMMAK: Yes. Out of time and I think people want to leave, so I want to thank everyone for attending today. Maybe, Steve, you want to add something?

STEVE CROCKER: I see Fadi does.

RAFIK DAMMAK: Oh, yeah.

FADI CHEHADE: Rafik, this is just a proposal for you all to take and discuss amongst you, but the business constituency approached us and the board to give voice during this session to their various parts, and we tested it

today for the first time and it went very well, so we had -- you know, the different parts of the business constituency had their own questions addressed --

STEVE CROCKER: Small clarification. I think what you mean is different parts of the --

FADI CHEHADE: Different parts --

STEVE CROCKER: -- commercial stakeholder group which includes the business constituency --

FADI CHEHADE: Business constituency, ISPs --

STEVE CROCKER: -- the ISPs and the intellectual property.

FADI CHEHADE: Yeah.

STEVE CROCKER: They subdivided the time.

FADI CHEHADE: Yeah. It's just something that we offer you so at least we're clear that we're not offering one group something we didn't the other. If it makes sense for you all to have this session split into NCUC session and an NPOC session, we're fine with it. It's your call. But it worked well for at least that other group.

I'm just sharing it with you as part of improving the -- the setup and the setting as you can see also by this table.

RAFIK DAMMAK: I mean, for NCSG, we work really at stakeholder group level and we do take the input from the both part and we -- I mean, at the end, both side asked question here so we try to work as a stakeholder group.

RUDI VANSNICK: If I may just respond to Fadi's proposal, Rudi Vansnick for NPOC. I think, indeed, it would be a good idea also to have two different angles of the views that are on the table so that we are able to express ourself also in ways that we are identifying the issues that we are discovering from our communities, too.

I think it would be a nice idea for this eventually for Dublin so that we can prepare ourselves also in having our community giving us food for thought so that we can come up with questions that are not handled in a global perspective.

RAFIK DAMMAK: So Fadi, I think Avri want to say something about this.

AVRI DORIA: If I can on that topic -- this is Avri speaking again -- we also have members who are not members of either constituency, so it becomes a real problem. I mean, we really try to be a stakeholder -- we really try to be a stakeholder group with multiple constituencies and people who don't have to join any. So I would really find it quite problematic.

STEVE CROCKER: Yeah. So good comment, Fadi, but agreeing sort of with Avri. At least from where I was sitting, we took an agnostic view and tried to understand what each group wanted and be flexible, particularly as we're running an experiment, and decided to plant more than one flower. Not a thousand, but a few. Okay.

RAFIK DAMMAK: Thanks. Thanks, everyone.

STEVE CROCKER: Thank you, everybody. Feedback.

[Applause]

Send comments.

[END OF TRANSCRIPTION]