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NCUC Meeting
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Also found on page: http://gnso.icann.org/en/group-activities/calendar

Rafik Dammak: ((Foreign language spoken)) So I was talking in - trying to talk in (unintelligible) it's not that easy. So my name is Rafik Dammak, or you can just call me Rafik. I'm from Tunisia living in Japan. Things happen. I am the Chair of the NCUC, which is stands for the Non-Commercial User Constituency. And we are one of the group that represents civil society in ICANN. So we have individuals, organizations, non for profit association and also many activists.

And that's why in our agenda in the beginning, we will have like 20, 30 minutes where I try to make some introduction and give an overview about NCUC because we have the chance to get two of our co-founders here. Professor (Mueller) from Georgia Tech and Kathy Kleinman. So there are the two co-founder of NCUC I think in 1999. Yes. Long time ago. I was still in high school at that time. Yes. It is I am young. I know that much but (unintelligible).

So in the beginning we will try maybe - we don't have that much time to go - to do a personal introduction but please, when you talk, state your name and your affiliation so, because we have the transcript and remote participation so people trying to follow us know who is talking. Maybe we can ask first, like (unintelligible) Kathy just really give short kind of - how you'd say, history about NCUC, just to explain why we got NCUC and why it matters in ICANN space. Who wants to start? Okay, yes, Kathy.

Kathy Kleinman: Hi. Kathy Kleinman, from the United States co-founder of Noncommercial Users Constituency. Back when we were founding ICANN, we had this huge experiment and frankly no one thought it would work, called the multi stakeholder model. And it was the idea that we could come around the table and represent different views and come to decisions together on what the policy should be in the domain name system. And one of the critical views that I saw, that Milton shared was that noncommercial communication online needed to be represented. When the National Science Foundation were in the NFF Net and other early internet. The networks were set up for education speech, for research speech. There are people in this room who go back far deeper and longer that I do and can talk about this if we want to go into the history.

But education, research, personal speech, political speech, not a lot, if any commercial speech. And in the early 90s and mid-90s, commercial speech came online in a big way. And so did attorneys and people who legitimately wanted to represent intellectual property rights. But in founding ICANN, we really thought there was a place for a constituency, now part of a stakeholder group, to represent noncommercial speech. And talk about free speech and freedom of expression, privacy, due process, things that we thought should really be considered in domain name. Dispute policies and other types of domain name registration and take down policies that we were going to set up. And I'm glad to see everyone around. It was a tiny group that met in Santiago, Chile in 1999 to sign the charter and I don't think anyone would've believed what would be happening today. Thank you so much.

Rafik Dammak: Okay, thanks Kathy. Milton?

Milton Mueller: Well I think Kathy did fine exposition of the history. I just would say that within the GNSO today, we have two houses, we have a contracted party house which represents the domain name Industry and then we have the so-called non-contracted party or basically the users house which we are in. And in 2009 or thereabouts, ICANN, after marginalizing us for many years, agreed to reform the GNSO in a way that balanced commercial and noncommercial interests and that's been a very important step forward in the process of creating a truly affective multi-stakeholder organization.

And because we are not making money on the domain name system, we are relying more heavily on volunteers and so we really appreciate your participation. Not just by showing up but insofar as you can get involved in issues and really learn the ins and outs of the policy choices that need to be made. It's very important and very helpful. And it will take time for anybody doing that to get up to speed on these complicated issues but certainly feel free to consult with me and any of the old timers who can help you understand these issues and what's going on.

Rafik Dammak: Okay. Thanks Milton. So this is just what kind of, maybe to give the history or background, why we are here. But the question maybe that you may have, why you should join NCUC and I think the best way is to maybe to get some briefing about what we are doing currently. In particular, in terms of policy, and maybe here I think I can pass to Omar, maybe he can give some insight why it matters a lot to join NCUC and to participate in policy making.

Omar Kaminski: Hi, good morning my name is Omar, I'm a member of the NCUC and a member as well of the (unintelligible) counselor (unintelligible) the noncommercial stakeholder group. Quite a few of you were in the fellowship morning meeting today and I spoke very briefly about why it's important for civil society actors to be involved in GTLD policy development. Yes, there's a

bunch of stuff going on right now, going like, some really big (neg up) PDPs. One Rafik mentioned this morning is the GTLD registration directory services, that's an overhaul of the Who Is System. Got a PDP that's going to begin called the Rights Protection Mechanisms Review and that has to do with, sort of, balancing the rights of trademark holders as opposed to other legitimate uses of domain name registration.

There's also a subsequent round for new GTLDs that is going to kick off and there's a PDP that is beginning to discuss that. It is important for noncommercial interests to be represented in those because noncommercial institutions, civil society actors have a need for privacy, freedom of expression, make sure they can do that using their own space on the internet with their own domain names being registered. It's also important when we're developing these policies that we make sure that transaction costs involved and the implementing these policies are not shifted away from those who benefit from them to noncommercial actors. And this is something we've worked on in the past.

This was recently apparent, for example, because some of you might have heard that there's internationalized domain names now, so there's the domain names and characters other than Latin. For example, Arabic characters, there's very likely going to be internationalized registration data service which would change that registrants submit their contact information. We will also in the future be able to submit that in your own local languages with scripts. There is a question, for example, on whether this needs to be translated and or transliterated. So that's folks who do not speak those languages and cannot read them have open access to this information.

This is a very interesting example of some actors who wanted to shift transaction costs away from themselves, make sure that other people pay for the translation and the transliteration and sort of like have those who are using their local language and script pay for this, which some of us felt was unfair. We figured those who are looking up the information need to make the

effort, put in the time, the funds if needed to get this done. So it's really about protecting registrant privacy when they're registering domain names and making sure that they have the ability to express themselves freely without being punished for it and to make sure that they are not unfairly given a burden of paying for the implementation of policies that are not to their own benefits.

Those are just maybe some of the issues that we deal with. I've been involved GTLD policy development for about four years now, there are other who've been involved since, for about a decade before I even knew what ICANN was. So yes, Milton, Kathy, Robin, Audrey, Wendy, there's a bunch of people in here, Maria sitting back there. So they could probably do a much better job, oh and Wolfgang, hi. I didn't notice you without the beard, sorry. So yes, please step in and add whatever you think is appropriate, thanks.

Rafik Dammak: Okay, thanks Omar. Maybe we can give some time for the people here to ask some questions. So I mean, if you want you can ask in English but feel free to do it in Arabic, in French. I will try to do my best to be the interpreter and translator today. For other language, also I think we have several people, like even Persian, German and different areas, so please feel free to ask your question, if you want some clarification. Don't be shy guys, so who want to ask? Yes, Kathy.

Kathy Kleinman: Rafik will we be talking about some of the individual policies that we're working on and some of the new policy development processes in a little more detail? That might help with some questions.

Rafik Dammak: Yes Kathy, that's the second part after this. I mean for the first part it's really kind of introduction overview because we have many newcomer, to give them space - I mean, we introduce what NCUC is, some historical background to what we are doing and then maybe if they want to ask, and then we can go really to more deeply in substance about the policy topic.

So I wanted to give chance for now for our newcomers who they want to ask question. Even in Arabic, French, English, please do so, don't be shy. Don't worry. Nobody? Okay. So nobody want to take my offer.

So if there is no question, we can move to the next part of our agenda. So this is what, I mean, kind of topics of interest for this ICANN meeting, 55 in (unintelligible) and also thinking model (unintelligible) ICANN meeting. So we go several new domain policies starting, quite important. There is also the ongoing - okay I will repeat myself. Please if you are in Morocco drink green tea, not coffee.

So we have that comfortability, I think you will solve several (unintelligible) but we want to, for this time, really to plan the next step, which that's called the work stream two. And also there is starting discussion on about global interest. So we are going to try here to get maybe some overview about those policies. To explain what is happening, why it matters, to kind of - to prepare for the next step. And we will start with overview of several new working groups. The one about registration data service, the one maybe, if we start from the right, protection mechanism and the new (unintelligible) rounds.

So maybe we can start with (unintelligible) or this registration data services with you Stephane?

Stephane Van Gelder: Sure.

Rafik Dammak: Yes sir.

(Neilsen Uber):   Can I make a small suggestion or an ask. It's because the (Gock) Working Group And Human Rights in International Law is starting at 11. And with this agenda setting the human rights work presentation might get across with that. We might miss people who are interested in his work so maybe we can move that topic up. Thank you.

Rafik Dammak: Okay so you are asking to switch the item, starting with Human Rights now. Doesn't look - that's an offer that I can refuse. Okay. So I mean - because I know to Kathy that she has to go somewhere. Okay we can start with Human Rights?

Kathy Kleinman: Sure.

(Neilsen Uber):   Okay, I'll keep it very short. I'm very sorry for this.

Rafik Dammak: And present yourself and your association.

(Neilsen Uber):   So hello, I'm (Neilsen Uber) and I'm chairing the cross community working party on ICANN's social and corporate responsibility to respect human rights. We had quite a great session yesterday at which some of you were, but not as much as here and I'm really happy to see so many members of the NCUC here.

There have been quite some developments in the human rights work. Part of it is in the cross community working group announcing ICANN's accountability where we manage to get text into bi-laws in which ICANN will make a commitment to support human rights. Which is I think a great progress that we've made. In work stream two, we will be developing a framework for interpretation of that. So I would really call for people to - who are interested in human rights to both join the cross community working party but also the group that will be set up in work stream two. There will be soon a call for volunteers for that on the cross community working group list and I will forward that to the NCUC and NCSG list to see that we can get as much people as possible.

As well we're working in the cross community working party on developing a human rights impact assessment. We're mapping cases where ICANN is positively or adversely impacting human rights so your work and input there are very much appreciated. You can find the work at ICANNHumanRights.net

and I think that was (unintelligible) update on the work there. Thank you for (unintelligible).

Rafik Dammak: Okay, thanks (Neil). So maybe now - if there is any question? Someone want? No?

Kathy Kleinman: I've got a microphone down here.

Rafik Dammak: Yes, yes. Thanks Kathy to remind me. So we have also - let's see, what they call it, moving mic so if you want to ask questions, we can give you the mic. So any question here? I know that it's quite early in the morning maybe but don't be shy guys you know? Oh my.

Maria Farrell: Hi I'm Maria Farrell for the record. Just for people who are new to this, what are the cases that you guys have been mapping where ICANN is positively or negatively impacting human rights?

(Neilsen Uber): Thank you Maria for that great question. So without getting to technical, the cross community working party has been divided up in five sub groups because there were so many different people who were interested in doing work and sub group one has been working on visualizing human rights and making an initial scan. And they have a great table in which different rights and impacts have been mapped.

This is a preliminary mapping and the table is available from a presentation yesterday but I can also share it on the list. And it maps freedom of expression, right to privacy but also social and economic rights, due process, freedom of association. This is by no means a end all list because we will use the human rights impact assessment to thoroughly analyze all ICANN's processes, operations and policies to see in which rights ICANN is touching upon so that we do not do it based on preference but we'll have a almost academic approach to making that analysis. And we think that that will also support the work in work stream two so that we will first clearly map what

rights, policies, procedures and operations we're talking about before thinking about what frameworks could be applicable.

Rafik Dammak: Thanks (Neil). Any other question here? So (Neil) can you please share your contact with anybody who is interested to join the Cross Community Working Parties so.

(Neilsen Uber): Yes, everyone can sign up at ICANNHumanRights.net. There is the (mating) list there. And always feel free to ask questions, make suggestions or approach me or Tatyana or Matt or...

(Woman): (Unintelligible).

(Neilsen Uber): Oh yes, so maybe the people who are active in the Cross Community Working Party can raise their hands? Great. And then so feel free to approach any of these people and they'll be happy to introduce you and answer you any questions you might have.

Rafik Dammak: Okay, thanks (Neil). So let's okay, let's go back to the (unintelligible) items. So this your presentation I think Kathy. So (unintelligible).

Woman: (Unintelligible).

Rafik Dammak: (Miriam). (Miriam), she's our ah..

Kathy Kleinman: Okay. Could I have? It's on. Okay. I'm going to stand up because I can't see everybody. And I threw together some quick slides, nothing fancy. But in ICANN we love to use a lot of acronyms and there are too many of them and just so you know, even though I've been here for 15, I don't know, 16 years, there's always new acronyms and I'm always asking someone, what does that mean? So don't feel shy about asking what somethings means.

So RPMs. Can we have the next slide please? So on Wednesday the Names Council is going to vote and likely approve something called The Charter for Proposed PDP to review all rights protection mechanisms and all GTLDs and the new working group will start. So Rights Protection Mechanism is RPM, Policy Development Process is PDP and Working Group is WG. So you're going to see it called the - nope, not yet (Miriam) - can we go back?

You're going to see it called the RPM PDP or The RMP PDP WG. And that's what we'll be on meeting schedules and things like that if you're trying to follow what this group is doing. So if you're looking at the schedule on Thursday at four o'clock, there will be - no, Wednesday at four o'clock, they're in. Actually this group hasn't started, there will be something called the RDF working group, which will be talking about privacy.

So just look for the acronyms, button hole one of us and say which one it is or if there's a working group you want to follow, ask one of us and we'll tell you what the acronyms are. Okay next slide (Miriam).

So what is an RPM? What is a Rights Protection Mechanism? Over the years at ICANN, we've created a number of mechanisms to protect trademark holders, trademark owners at the very top level. Not within a web page, because ICANN does not have control over content on web pages but it turns out domain names from the very beginning have conflicted with trademarks. Who owns the word Delta? Who owns the word American? Who owns the word orange. And there are trademarks on all these of course, many trademarks. So the very first consensus policy out the door with the uniform dispute resolution policy or the UDRP. And it's the world's first completely online dispute form. And it's not quite an arbitration form, because you can take it to court also. But it will yank domain names if they're found to have been registered in bad faith, vis-a-vis a trademark owner.

These apply to dot com, dot org, dot net and all the new top level domains. And it was designed because international court were trying to handle an

international dispute. It's expensive and hard and this was designed to be cheap and easy. But it wasn't cheap and easy enough. So when the new top level domains were being created, all these new ones. That dot media, dot technology, dot computer, the brand holders, the intellectual property attorney said they needed more protection. And they pushed two things. I'm actually going to go to the bottom of the list first. The trademark clearing house, so the TMCH. A centralized repository of national trademarks that's used when we launch new top level domains. So a lot of domain names, not all of them, but a lot of new top level domains will open up - that is very noisy. A lot of new top level domains will have kind of a prelaunch period for trademark owners. It's actually required in almost all of them.

And so you have to put your national mark into the trademark clearing house and then you use that and all the registry is kind of compared against what's in the trademark clearing house. And then you can have your pre-registration and the new top level domains. So if you have the trademark on Haagan Daaz, which is a coined fanciful term, it's a made up trademark. It's a made up a word. So Haagan Daaz, if you put it in the trademark clearing house. If you have a dot ice cream, which we don't have yet, you can pre-register Haagan Daaz.ice cream. And they'll check the trademark clearing house, see that you're there and allow you to pre-register.

But the brand owners wanted much more. They wanted a faster, quicker domain name dispute process for new, top level domains and they got it. It's called The Uniform Rapid Suspension. We negotiated it heavily, Robin, raise your hand. Is Konstantinos here? Is Wendy here? There are people in this room that sweated, blood, sweat and tears for I don't know, two or three months on this. Really negotiating it, trying to make it fair and balanced. It only exists for new top level domains, we're trying to keep it there. But it is kind of a faster way, if you register - somebody give me a really famous mark.

Woman: Apple.

Kathy Kleinman: Which one?

Woman: Apple.

Kathy Kleinman: Apple. So if you register Apple.computer and you're not Apple computer, you're going to get taken down really fast in the URS process. Next slide. Sure.

Woman: Isn't the - like Apple computer, isn't this should be like in the balances and checks that should be in the initial registration process? Like, you're not giving someone the domain name unless they give what proof of that. I'm sorry, I'm a newcomer. So I don't kindly don't understand what situation that will provide the need for the dispute resolution. Like, I know that for example, if you are a non for profit organization. In order to, let's say, have a domain name in dot (unintelligible), for example in Sudan, you have to provide registration saying that you are not for profit organization or that you're an organization. So I cannot visualize a situation where we need the dispute if you can explain on that or?

Kathy Kleinman: It's a very good questions. So if I understand it correctly, what it is is how could anybody who's not Apple possibly register a dot computer? And because certain country codes pre-screen for, you know, connection. For actual connection to the country. A lot of top level domains are open and we've been encouraged them to be open. Which means that you don't have to show anything before you register and the reason why is that there are a lot of unincorporated associations or a lot of new groups or a lot of small businesses, there are a lot of entrepreneurs, everyone is labeling their club, their organization, their business, their product, their service. And to have to prove something before you do that would create a hurdle in the real world that doesn't exist in the real world.

                  So dot com, you don't have to show anything. So you make up - or dot org. So a few years ago, well 20 years ago to be exact, we made up a group

called the Domain Name Rights Coalition and registered DNRC.org. We didn't exist until that moment, but at that moment we existed and that domain name became the representation of that organization.

If someone had asked me to prove something, I couldn't have because we would only be incorporated later. So the idea is how do you keep it open but still protect the existing trademark owners and that's again, where the trademark clearing house came from. (Miriam) can we go back to the last slide.

Where the trademark clearing house came from is kind of that balance idea. Where we didn't want Apple to be able to block the word Apple in all new top level domains. There would be very legitimate uses, Apple Records pre-existed Apple computer. Beatles, you know, all the Beatles records. And lots of apples will come and there are growers. So we didn't want to block the registration of anything that had the word apple or Haagan Daaz, but we did want to open it up - we did want to give them kind of a right of first refusal. And that's where Apple computer will get Apple.com. I'm sorry - Apple computer will get Apple.computer. Does that answer your question? You may or may not agree with the reasoning but that's the reasoning. Go ahead.

(Joreza):   Hell everyone, I'm (Joreza) from Jordan. I would like to ask about the Uniform Dispute Resolution Policy. This regulation concerning that user registration of domain name against the trademark (unintelligible). So I don't know why this regulation do not provide resolutions for that dispute between domain name owner and other privatized owner. Like trade name owner, like person's names, it's just between a trademark and domain names.

Kathy Kleinman: Yes.

(Joreza):   Yes.

Kathy Kleinman: Because what you could prove, you could prove a federally registered mark in any country. But other things, common law marks are more difficult, trade secrets are of course impossible to prove because they're secret. So other types of documents. Does that make sense? A federally registered trademark with something tangible that you can hold, that you can present electronically and otherwise.

And I'm going to sit down actually and keep talking but I'm going to pass the mic over to this section. Because you guys don't have microphone capability. So if anyone has a question, could you pass the mic and then you guys are on line to.

Rafik Dammak: Thanks Kathy. Next slide please.

Kathy Kleinman: Okay. And we're almost finished. Oh.

Rafik Dammak: Kathy we got question, if you don't mind.

Kathy Kleinman: Go ahead.

Rafik Dammak: Yes, please go ahead, don't worry.

(Anap): Thanks. Hi I'm (Anap) from Morocco and I have a question actually about, she go to the last slide please. Yes. Thanks. So for graph for the Uniform Dispute Resolution Policy, I'm newcomer so I don't know a lot of about but I'd like to know for example, how do you deal for dispute of between different countries. So suppose that for example there's someone having naming its company Apple in the U.S. and another one naming it after in Russia. And they have laws and jurisdictions so how do you deal with that? Maybe you have answered it before but like I said, I'm a newcomer so I don't have really a lot of knowledge about that. Thanks.

Kathy Kleinman: It's a good question. It's a great question. You could write a paper dissertation on this question, it's a very good question. But that's one of the reasons we created this kind of virtual online forum. Because if you went to one country or another country it would be tied up in the court system. There are various groups that provide this dispute process but one of them is called the World Intellectual Property Organization and they train an appoint panelist who are supposed to know a lot about international law.

And so they're going to look and see, do you have a trademark in Russia, do you have a trademark in the U.S., do you have a trademark in South Africa. They'll look at this and they'll be evaluating the rights. Also, why did you register the domain name? Is it for a new organization? Is it for a new idea? Why did you register it? They're weighing all of this and they're very much trying to take into account international consideration.

Do they always get it right, no. But they're trying really hard. Okay next slide. And then I'm almost done because I know we have lots, lots more to do. Next slide please. So in this new right protection mechanism policy development process working group, we are going to be looking at questions that include our free speech and the rights of noncommercial registrants adequately protected in the existing policies. Are the appeals adequate? (Unintelligible) or not because none of them exist but in the URS they are, they exist. Are they adequate?

We came up with a great term in the old days. You've all heard of cybersquatting, which is sitting a domain name registrant sitting on a trademark in a domain name, someone else's trademark. We came up with a really bad term, called Reverse Domain Name Hijacking, but it's really cyber bullying. Is it trademark owner over using their trademark to hurt registrants. Maybe somebody who's critiquing them or criticizing them, are they trying to drive that out?

It's a really interesting thing, we never thought that the UDRP would actually have findings of reverse domain name hijacking and they have findings all the time now. There's a trademark claims period which is the use of the trademark clearing house so they create a chilling effect. A new top level domain name registration, these are all questions we're going to be spending months, maybe years delving into.

Next slide (Miriam).

Woman: (Unintelligible).

Kathy Kleinman: But - and I just wanted add and then to (unintelligible), and I just want to add, but the main question of all this is should be creating more rights for trademark holders at all levels? That's really why this is being created. Are the rights are of trademark owners protected sufficiently is really the question that's driving this process. And that's it, thanks. Oh there is one more slide with contact information.

(Babne Berwa): (Babne Berwa) and I'm just curious. I didn't quite understand the cyber bullying point you made about, it was domain hijacking, which is pressurizing registrant. Could you give me an instance maybe, because it's not clear in my head. I mean, what counts - if you have an example just for clarity? Thank you.

Kathy Kleinman: Sure. If Apple computer went after the apple growers of Seattle, which they would never do, and said that they couldn't use the word Apple, that would be cyber bullying. And chances are, so if we had a dot fruits top level domain, which we don't, and the apple growers had apples. Fruit. And I'm picking on Apple because they're actually really, really good. They don't send cease and decease letters, it's actually really, really good. But if Apple went after, you know, Apples.fruits and it was the Seattle apple growers, which Seattle grows a huge amount of apples in the United States. Then the World Intellectual Property Organizations Panelist, may well find reverse domain name

hijacking. Hey, you know it's a generic word, you know these people are using it in a generic way. That's the simplest example. There's - as you know, there's a million grays in the middle.

(Aidan Sutherland):   Hi Kathy, (Aiden Sutherland) for the record. I was wondering, and this is more of a historical question perhaps. Why has the cost of these mechanisms, like that of the trademark clearing house, been passed on to the trademark holder who has possibly been the victim here. After all, the intellectual property may have been stolen. So I understand that to many large organizations, the costs involved it may be negligible. But for - yes, apologies - but for smaller organizations, this could be more of a burden. So I was wondering what your thoughts are there and why the cost is passed on to the trademark holder.

Kathy Kleinman: (Aiden) it's an excellent question. I have to tell you I haven't thought about it in a long time. And so let me think about it and get back to you because this goes back, you know 15 years when we're working on this. But there was a decision, this is a user pays choice and also the use of the trademark owner to use the forum. They can choose to file before something called the NAF, The National Arbitration Forum or the World Intellectual Property Organization. So it is different. Different than courts perhaps where everybody pays their own fees. Thanks.

(Aiden Sutherland):   Thank you.

Man: Hello. I want to ask why there is no (unintelligible) process in the Universe Dispute Resolution Policy because I think the losing party of the arbitration claim, under (unintelligible) can appeal, can challenge the arbitration decision in front of (unintelligible) court. In this case, we may have two inconsistent decisions from national court and panel decision concerning the same domain name. So I think (WIPO) and ICANN should cooperate to establish a new appeal process for domain name disputes.

Kathy Kleinman: I agree. Are you going to come join the working group with me?

Rafik Dammak: Okay, thank Kathy. And so just maybe a reminder, please state your name and your affiliation when you speak in the mic. Okay, so Kathy you want to add something or we can take more.

Kathy Kleinman: Nope. Last slide is up inviting you to join us and giving you my email address.

Rafik Dammak: Thanks Kathy,. Any other questions? Yes, (Matty).

(Matthew): I'm (Matthew) (unintelligible). I know there was a case for dot Halal and dot Islam, new TLDs, between the regulatory of the United Arab emirates and a Turkish company in which, as far as we know, the case - the claim was dismissed. The United Arab emirates claim was dismissed and the Turkish company should be the owner of these new TLDs but again, as far as I know. The process is still stuck. I want to know if you have any updates in this and what is the reason that such cases are stopped despite that the decision is made in favor of the party?

Kathy Kleinman: You're talking about a case involving dot Islam?

(Matthew): Dot Islam and dot Halal.

Kathy Kleinman: Okay. We're outside - you'll hear a famous word in ICANN, I hate to invoke it, a famous phrase which is we're out of scope. Stephane loves that phrase. What it means is that top level domains and disputes between applicants of top level domains is an entirely different process. That was created under the applicant guidebook and in fact I should - you're pointing out something I really should have pointed out, which is that the right protection mechanism PDP working group is dealing with second level domains.

And so you're talking about disputes among applicants at the top level, that's handled by ICANN pursuant to the applicant guidebook. I'm happy to walk

you through the different processes there. I'm not an expert on the dispute you're talking about but that is taken up at the ICANN general counsel level and the ICANN board level in the ICANN, in the Global Domain Names division. That's considered a different type of dispute even though it sounds very similar, it's considered a different type of dispute than we're creating the rules for here.

Rafik Dammak: Okay, thanks Kathy. Maybe just if, for our newcomer you can clarify what you mean by second level domain.

Kathy Kleinman: Okay. Second level domain. And sorry my email address is in light blue but Kathy@KathyKleinman.com - what's the second level domain name? Anybody?

Second level is actually Kathy Kleinman. So it's the second level under dot com. So the domain names that we're talking about, and the right protection mechanism would be Apple.computer or DNRC.org, DNRC is the second level, Apple is the second level and here Kathy Kleinman is the second level. And then we set up an email at Kathy@kathyKleinman.com. At my domain name so you can route email to me via my domain name.

Rafik Dammak: Okay, thanks Kathy.

Kathy Kleinman: Good question.

Rafik Dammak: Yes. I mean, also I have another question. So the third level doesn't - is not end, I mean, this process, the DRP and so on.

Kathy Kleinman: There's been talk about that. There's certainly interest in that. You can see some of the difficulties that might exist but there are actually groups that set up registries at the second level. One example is CO.com So if you wanted to get Sony.co.com, you could, because CO.com is operating as a registry. Currently third level domains, to the best of my knowledge, are not covered

by the UDRP and the URS but you can bet somebody's going to be asking for that.

Rafik Dammak: Okay. Thanks Kathy. So let's try to see if there are any questions. Okay. Okay so Kathy, maybe if I ask here, thanks for this introduction, it's quite, to give this historical background. I think the historical background really matter in ICANN because policy happened for many years and this is one of the difficulties if you are a newcomer, it's hard to understand what happened like five or ten years ago or six years ago. So this is quite useful. And I think with the contact you can share any material that help people maybe to read and so on.

Also, I'm not sure if KK, Konstantino is not here. He wrote a whole book about the UDRP and so on. I mean, Konstantino is one of our members and he made his DAC about those matters. So there are some materials that can really be useful for you. From there, so what do you see as the future? What are the next step? If I am a newcomer, which I'm not. So what can I do here? How I can help? What I should need? What are the steps that I need to take to be really effective if I want to participate in this process? What kind of skill maybe I should bring?

Kathy Kleinman: It's a good question and it's really a question that applies to all of the working groups. So the first thing that you bring is an interest. You know, is this something that really lights your fire? Does it get you passionate to talk about freedom of expression and domain names. Have you had people who were harassed or had cease and decease letters because they were using the same word someone else was using in a domain name.

I did. That's what got me charged up about this years ago was watching people get -- new businesses and new organizations -- get harassed. So do you have an interest? That's the first and most important thing. Second, do you have some, you know, do you have skills. Like do you happen to know something about intellectual property. Do you know something about drafting

legislation? Do you know something about advocacy? That's not as important as having the interest. But if you have that, you can hit the ground running even more quickly.

But mostly just find somebody who's going to be involved around the table? Who knows they're going to be involved in the rights protection mechanism working group, could you raise your hand? Really? High. Really high Robin. Really high, Omar. Raise your - so look at all these people with their hands up in the air and Wendy's hiding. And find one of us during the break, make sure you get one of our cards, write to us. We're creating - we've gotten smarter in our old age now and we create groups within the noncommercial users constituency to work together so that if we have to research something, we can share it. We're working together, we'd love to have you and then we join the working group kind of on that. Rafik did that answer your question?

Rafik Dammak: As a newcomer? Yes. Yes I think it's quite important - I mean thanks Kathy for all these years being involved in ICANN and working hard to defend us at the end. And it's quite important for us to hear, to share the knowledge and to be involved with it, because having discussion with many new folks here, this is one of the difficulties, the challenge. People want to do things but they don't know how, so thanks for this.

Kathy Kleinman: Rafik, let me actually put it in a different way which is, it would be wonderful for new people to join. Those of us who have been here a long time are tired. Robin's nodding her head. We've been doing a lot of work for many years and we'd much - we would love to teach. We would love to share, we would love to teach and we'll be - it would be our pleasure and our honor. So we're hoping you'd come in because we can't do this for the next 15, 20, 50 years. But maybe you can and the people you train can, we have to carry on the legacy together.

Rafik Dammak: Thanks Kathy. I think if anyone wants to say something.

(Stephanie Parrin):   Ah yes, (Stephanie Parrin) for the record. ((foreign language)) You name it, we have it. So ((foreign language)). The second thing I wanted to say was that we are trying to develop a program of mentorship that really works for new people. We want you to join. We want to help you join. If you have suggestions about what would really help you do the rather intimidating job of understanding ICANN quickly, we don't want to just send you to the website. We know the website's a nightmare and it's all in English, so please give us suggestions. We're trying to get a support network and system that we will then suggest to staff. So ((foreign language)).

Rafik Dammak: Thanks (Stephanie), I love the Canadian accent.

Man: (Unintelligible).

(Innis):   Yes thanks. I just would like to give a suggestion, if you asked for one suggestion and I'm going to talk in Arabic so that Rafik works a little bit for translation. ((Foreign language)).

Rafik Dammak: So, (Innis) that was suggesting that there should be more effort to translate the content in the website. So for now they are using kind of automated translation which is quite weak. Not enough but it's something quite important to (unintelligible) but to give to get more. I would say, more content translated and I understand why (Innis) is asking because (Innis) is kind of active on Wikipedia and so on that's why. Yes.

Man: ((Foreign language)) end user. ((Foreign language)).

Rafik Dammak: Okay, so this interesting question. So what's the difference between a noncommercial user and end user? Who wants to take this challenge? Yes, Omar.

Omar Kaminski: Hi. Well in terms of internet end users, you can think of them in terms of both commercial and noncommercial end users because, well for example you

have tons of e commerce online right? You have people who provide services online and people who benefit from those services and so those are, in that context, commercial end users. They might at other times be noncommercial end users, the same people but another aspect that we like to look at here is how do you actually define a user?

We also like to look at registrants in the NCUC. So one of - I mean, for me at least, when I'm working on policy working groups, I like to represent the interest of noncommercial domain name registrants. People who register domain names for noncommercial reasons. Some of the constituencies in the commercials stakeholder group, for example a business constituencies, they represent the interests of people who registered domain names for commercial reasons. And the interests of the two groups may overlap at times, they may conflict at times but at least they are both represented in the GNSO. Our job is to really look at the noncommercial - people who register domain names for noncommercial reasons. People who use the internet for noncommercial reasons. I hope that makes the answer a little clearer.

Rafik Dammak: Okay just to check, do you want me to translate this? No? The whole thing? Oh god. Okay let's take an answer, from maybe from Robin.

Robin Gross: Thank you. This is Robin Gross for the record. That was a really great answer (Omar) and I just want to add to it. I wanted to let folks know that pretty much everyone is a noncommercial user of the internet in some aspect of their life. I mean we all use the internet in order to do our business and to work but we also use the internet when we're not working. For noncommercial purposes. Maybe we want to put up a website where we can have a political discussion or send, put up pictures of our grandkids to share with family and all of these uses are noncommercial uses.

So don't let the fact that there's overlap in our lives between - well sometimes we use the internet for commercial user purposes and sometimes we use it for noncommercial purposes, sort of. You know, confuse you into thinking

maybe you don't belong here because what this constituency is about is taking those specific noncommercial uses and saying these are - we're going to focus on those and we're going to try to protect those. It doesn't mean that we're never have a commercial interest. It just means that what we're doing here, what we're focusing on here is protecting the noncommercial uses, the free speech and privacy and political discussion and development and these kinds of issues. Thank you.

Rafik Dammak: Okay, sometimes be careful what you want to for. Okay. So ((foreign language)) Please next time, make short answer. I'm not a professional interpreter so. Okay. So if there is no other question, maybe we can take like 10 minute break so then we can move to the next part of the (unintelligible) Yes, (Aksen).

(Aksen Tumeli): (Aksen Tumeli) for the records. Coming back to the same question, I was thinking of that make me - when I register a domain name for my company, which is a business right? Does that make me a commercial user? Or just a health and nonprofit and I register a domain for that's nonprofit, that mean I'm using it as noncommercial user?

Rafik Dammak: Thanks (Aksen), I think Wendy and them will want to respond to this. Wendy do you want to start?

Wendy Seltzer: Wendy Seltzer. I think we see that many people are parts of multiple constituencies and have multiple interests. In some cases you may be acting as a noncommercial user and registrant and in other cases, you the same person may be acting in a commercial manner.

Omar Kaminski: Yes, Wendy said what I was going to say. (Unintelligible) I would not categorize you as a person to say that you are a commercial user or a noncommercial user. You have a domain name registered for commercial purposes and you have a domain name registered for noncommercial purposes. You're free to register domain names for whatever reasons you

believe. You don't really need to be put into a bucket and labeled one way or another.

Rafik Dammak: Okay. So any other questions? So let's take 10 minute break for the coffee and then we come back to continue our agenda. So please be on time, okay? I am a Tunisian but I am living in Japan so really I take care of the time.

Man: Dictator

Rafik Dammak: To behave then okay, well.

Kathy Kleinman: During the meeting, you can't just be wishy washy.

Rafik Dammak: Yes. Guys, I'm sorry to call you again. Please take your seat. We will start soon, we still have several agenda item to go through. And if you have any question you can ask after that so.

Okay, so we are coming back to - so let me check first. Is the recording isn't going or not?

Man: Yes.

Rafik Dammak: Okay thanks. So we are - we will back to the agenda items about and how topic of interest in terms of policy and then we will go to another new PDP, Policy Development Process. About something that it was discussed it for years and years in ICANN which is the Who Is. And for this time it's called The Registration Data Service. It can maybe can be misleading somehow but. So there is a new working group and (Stephanie Parrin) will explain - will give us some briefing, some context and explain why it matters. How people can participate, what we should do and so on, how we can participate (unintelligible). Okay.

(Stephanie Parrin):   Okay, (Stephanie Parrin) for the record. I'll try to be brief but basically the policy issue that I'd like to discuss today, the RDS, has been the subject of a, well I would say, a 17 year battle at ICANN between the proponents of civil society who are looking for protection of personal information and for the defense of the right to freedom of association and free speech, which involves privacy protection and confidentiality. And those who want more and more registration data to be available in a public record freely. So that's the basic argument and the original Who Is discussions started as soon as ICANN was created. There have been several Who Is reviews. I actually jointed ICANN because my background is in data protection.

I was a government person for many years, worked on data protection, legislation, and oversight in the office of the privacy commissioner. And Kathy Kleinman, who unfortunately has gone to another session, drafted me to come in on the expert working group, which reviewed this starting in 2013. They promised us that we would solve this problem in three months and it took a year and a half and I have to defend to the end of it because once again, we wound up with an impasse between those who wanted privacy and those who wanted all you can eat data.

So ((foreign language)). I will try to avoid acronyms. So basically after the EDWG presented its report to the board on whether or not a new registration data service was desirable and required, they basically sat on it for a year and a half, had some consultation with the GNSO, which is the policy development committee and created a new charter and a PDP, or Policy Development Procedure. And we now have a new working group which people are still welcome to join, either as an observer or as a participant. There's over 120 people on the group right now so it promises to be interesting and at least as many acting as observers. And we have the same fundamental question that need to be answered. And the same difficulties you may have observed, if you're a newcomer, and I'm kind of speaking to newcomers here because most of the people who've been here for a while know about the Who Is site.

One of the problems with ICANN work is that it is very horizontal in its application. You have to understand the technical to do the policy and vice a versa. And yet it is divided into silos which are working simultaneously. So even the Who Is has several simultaneous things happening which are having a policy influence on this process and we haven't got an agreed policy yet. So it's quite complex.

There are three from a data protection perspective. There are three fundamental issues with registration data. And you'll notice I'm talking about registration data not just the Who Is service because from a data protections perspective the question is, if I register a domain name, which is after all ICANN's business, it's only business, what data am I required to give to the registrar? That's all dictated by ICANN in the contract. What data are they required to retain and escrow? And what data are they required to release in the Who Is, or whatever we call the new version of who is.

And those are the fundamental questions. And unfortunately, some of the Who Is work has been scoped into, okay we're only talking about the disclosure instrument as we say in data protection language, the Who Is. But whereas in fact, some of the data we're collecting is not acceptable from a data protection perspective. If you look at the 2013 RAA, which was deemed out of scope for the EWG process, you will find that there is a lot of data that the registrars are required to retain for law enforcement purposes.

Well, that's a big fight in the data protection world. You don't get to just keep data hanging around in case it might be useful for potential investigations. That is precluded in many areas' constitutional law or charter. It's precluded in the European charter of fundamental rights. And so that's not a question that we can just consider out of scope when we look at the disclosure instrument. The data shouldn't be there to disclose in the first place from the perspective of many people.

And that data, in case you're wondering, in case you don't want to look up the RAA, that includes details like the e-mail traffic between a registrar and someone purchasing a domain name. All of their financial transactions and the instrument that they're using, be it bitcoin or cash or credit card, the credit card data.

So that's very sensitive information and the registrars retain it. We don't disclose it in the WhoIs, even though some would like that disclosed in the WhoIs, but, nevertheless, it's there.

So this PDP is up and running. I think we're on meeting 4 or 5, but we would welcome anybody who wishes to join.

Yes?

Woman: Just wondering about the question about regional aspects of data and the whole WhoIs history. There was a big discussion on the GNSO working session about the difference between registries and registrars. I believe it was (unintelligible) said you can't wear a tuxedo to a pool party. So there are some forms of organizing that as it also relates, of course, to regional aspects, for example, names of streets being different in many countries and so on.

So how does - how has that played in the whole data protection aspect? Has that influenced in any way, or do some countries that are - are some countries open to more data exposure than others?

Woman: That's a very good question, Stephanie, again. And Rafik as one may not get too far down into the gory details, which I have a tendency to do, taking great amounts of time. But the problem, when you look at the WhoIs issue globally, some countries don't have the same accuracy in addresses. The 2013 RAA is trying to standardize those addresses and get greater accuracy.

Well, in Canada, for instance, we have a system now. It used to be very vague in the rural areas. We now have numbers on streets, and it's all geomapped. There is no longer any issue about finding an address in Canada. I can't run away, in other words. Whereas in countries in Africa, you might be looking at a very rough description that the local post office would understand. This is why some countries' law enforcement are not satisfied with address as a way of tracking people down or phone number, depending on how their phone system works.

So those countries might, indeed, be pushing for a biometric identification of individuals when they register a domain name. Those of us in more developed countries are not at all keen on biometric identification. You shouldn't have to do that for a $10 domain name.

So you can imagine the - this is why we have this big impasse. There isn't a consistent addressing issue. When the EWG was working on this problem, the folks from the international postal union, which is the UN Agency, one of the first, came in to talk to us about some of the address challenges.

I should have said that there are various parties that are in different sides of this issues. Obviously, in the non-commercial usage group, we tend to be on the civil liberties side. The intellectual property constituency, which is in our house as well, they're more on we want the data to track down copyright violation and trademark violation. And it's good to remember that while we talk about law enforcement in this context, intellectual property owners do not have the same ability that police agencies do to come in and demand data with or without a proper authority.

Again, we're tend to be U.S. based in the United States, so we talk about warrants and subpoenas. Some countries you don't need a warrant if you're the police agency. You just go in and you ask for it. So harmonizing on these instruments and the due process is inherently intrinsically difficult. And it's a talent of our expert here on the cybercrime convention, I would say, on the

Budapest Convention, but I was around for the early days. That thing hasn't worked.

If you talk to law enforcement agents, they will tell you don't tell me to go get an MLAP while I'm going country to country, mutual legal assistance duty authority under an MLAP to go into another jurisdiction and find the perpetrator. And, of course, the Internet is inherently global, so I don't wish to sound like I don't have sympathy for the police agencies. I do; however, it's up to them to figure out an instrument that works rather than insist that ICANN create a dumping ground for data that they can fish in. That would be my position on this.

Yes? Wolfgang?

Wolfgang Kleinwachter: First of all, thank you for all the work you are doing in this field. This is really incredible, valuable for everybody. (Unintelligible) in an empty space. So that means we have global environment which is more and more occupied by discussion on privacy. So we have to - after the safe harbor decision by the European court, the new privacy negotiations between the Americans and the Europeans, we have now this privacy and Rapporteur in the Human Rights Council. And we have to (unintelligible) with this FBI case.

What is your experiences? And does it affect the future work of ICANN, all these discussions? Or do you continue more or less what you have in the past? Are you still waiting for all this outside development for your work? Thank you.

Woman: Thanks very much, Wolfgang. That's a great question. There have, indeed, while we've been discussing this, there has been a number of really important decisions in the high courts. Certainly, (Strems) versus Facebook was a very good case in Europe. We now have a new regulation in place in Europe. We have a potentially new association of data protection authorities in Europe, a board.

It should change things. I don't think it has percolated through the ICANN as yet. I have been told that, well, everything's fine now that we have the new replacement for safe harbor. I would suggest that that's not the case. The new replacement for safe harbor still doesn't give people enforceable rights in the United States, the way they have them in data protection countries. And it doesn't solve our integer (unintelligible) issues.

So we're getting there, maybe. As I said earlier, one of the problems with looking at WhoIs, is there are simultaneous processes going on. And we just wrapped up a review of the implementation of the WhoIs conflicts with law procedure. One of the craziest policies I've ever seen whereby if a registrar in, for instance, Europe has reason to believe that putting things in the WhoIs violates data protection law, they have to apply to ICANN for permission to basically have a waiver of the WhoIs requirements in the contract to comply with their own law.

And the trigger than ICANN will accept is not a legal interpretation from lawyers. It's an enforceable order from a data commissioner. Well, by that time, you've paid a fine and had your servers seized if you're not lucky. Furthermore, if you're an Irish data protection - or rather registrar, you get the waiver. The guy down the street -- your competition, of course -- has to go through the same process. Well, obviously, hopefully it's the same law applying to law.

But this is how ICANN has operated in this regard. I mean, I love ICANN or I wouldn't be here. But that is just unbelievably stupid. And many of us railed in vain during this procedure. It just went through. I can point you to it on the Website. We're not further ahead than we were before.

It will be up to me as a GNSO counselor to propose that we throw out the policy, because until the policy is gone, we're stuck with the implementation

that we've got. That's a bit of an arcane answer. So that was only a month or two again, Wolfgang, so I'm not optimistic.

Believe me, I shrieked at them regularly about all of these decisions in vain; so did (Chris Wilkinson). We have two dissents on the final report; didn't do any good.

Man: Stephanie, maybe - okay. You can respond to the question and you can take more? Sorry. Just we take this - you understand the question, take more. Because I think we maybe need to give some for people to digest.

(Stephanie Parrin): For those not following the FBI versus Apple, the FBI have taken an extremely high profile case where a number of people were shot. The perpetrators of this terrorist attack are dead. But there is an interesting phone that they would like to have Apple crack open. And so they have asked Apple to create software that will allow them to bypass the password protection system on that phone.

Apple has decided to dig in its heels and fight this. And there are a number of amicus briefs, and I think there is going to be a collection of really good amicus briefs. I would urge you a full disclosure. I'm a member of the Epic Advisory Board, so I would point you to the Epic site because I'm sure they'll have a good inventory of all of these cases in the amicus briefs.

Whether this is a substantive difference between what's happening now and what Apple used to do quietly before, there has been a huge out roar - not an out roar, an uproar, or an outcry about after the Snowden revelations of the cooperation between tech companies and U.S. Government.

So I think personally there is quite a bit of theatre going on here, because I believe they did this kind of thing in the past. And I know that BlackBerry in Canada got many black eyes for doing this for the Indian Government. So what can I say? Nevertheless, it's an important case to follow. It's kind of like

the Calea fight that happened way, way back in the early '90s, might even be late '80s, when Calea started regarding law enforcement access to telecommunications. But this is, of course, at the device level.

And if it happens to the phone, which is basically your personal data center now, then some of us are worried about what's going to happen in the home on your kitchen, rather, and all the internal monitoring devices.

Thanks.

Man: Thanks, Stephanie. I think there was a lot of information from you now today. So I guess people need some to digest. I think the best way is really to ask questions. If you miss something, if you want some clarification, it's a good time to do so. Don't be shy, as we said. You (unintelligible) in English and clarification.

Man: Can I also just say only - I'm one of the last chairs now of this working group. So I'm trying to remain a little bit more neutral about the direction of the policy, I guess. But this is very important. We've got a two-hour session tomorrow afternoon for the six. I think there will be some interesting - we left plenty of time for discussion and questions there as well. So if you want to ask in a broader context, please do.

It is a huge working group. It's already got hundreds of people on it. It's got a huge amount of work to do. We are always interested in people who have interesting and useful skills in this area joining an experience. We really, particularly need people who've got real experience dealing with privacy situations.

(Stephanie Parrin): If I might add to that, this is a group where there is an observer list. You can sign up to be an observer -- ideal for newcomers -- watch for a while and then if you really feel like jumping into the pool, you can switch from being an

observer to being a participant. So it's a good way to get over the learning curve.

There will be weekly one-and-a-half hour meetings. You get - as an observer, you get to see the transcripts; you'll be on the mailing list. So that's a good way to get your feet wet. Don't hesitate to come up to me and ask questions.

Yes? In the back?

(Kadu Derehy): Hello, everyone. So my name is (Kadu Derehy). I'm from Tunisia and I'm a law student. So I would like to make a remark about Apple. I think it's really a great case to talk about. But since it's about data encryption, which is one of the most important battle now.

But my question is about policy development that ICANN elaborated. It's a great process. And I want to know from the historical process of it, how did team end up like that? And did we import it, not only just online but we import it to offline on more of a scale, the offline scale, not just online scale? Thank you.

(Stephanie Parrin): Yes. I'm not quite sure I understand your question. It's more or less out of scope for ICANN actually, this whole case. Will it have implications for offline world? You'd need to give me an example, because the way I'm thinking of the world, there is not going to be much offline. But then I have a surveillance mentality, perhaps.

Yes. Go ahead, please.

(Kadu Derehy): Sorry. Maybe I didn't phrase well my question. I was more talking about the model that I can create at the multi-stakeholder and mostly about the policy development process that (unintelligible). So I was wondering, maybe we can transfer that model to even the offline world since it's based on consensus. That's what my question is because we're always finding - it's not just an

online problem. It's rather - is an offline, I mean. The (unintelligible) government approach that we want to get rid of it.

(Stephanie Parrin):   Milton would like to answer that one.

Woman: I'd like to try it too.

Milton Mueller: So yes. First of all, the ICANN multi-stakeholder process is not actually based on consensus in the strict sense of the word. We get outvoted all the time. And we're told that if we don't agree, it doesn't matter all the time. So what we really have here - and one of the problems is, in fact, the invasion of ICANN by the intergovernmental system.

So right now there is a high-level ministerial going on where the governments all segregate themselves from the rest of us, and they get special reports and special treatment. You saw the registration desk. They had a special channel there for the ministerial, because those are high-level people, and we're kind of low-level, I guess.

So that's one problem. The real problem is with some of these issues, it's law enforcement policy. Ideally, law enforcement would be a full participant in the multi-stakeholder process; however, they have formed what's called a public safety working group. And instead of being integrated with the GNSO policy-making process, they have made themselves a part of the GAC, so that they're not actually talking directly to us most of the time; they're talking to other governments.

And then the governments give advice, which may contradict what we're coming up with in the so-called, bottom-up process. And then the board soft of has to decide who do they listen to: us or law enforcement?

In terms of how the offline world works, I think what you're seeing is more ICANN's hold into that model, rather than the offline world being pulled into

our model. I don't want to sound discouraging, but I think it's a good question to pay attention to that kind of thing. And we would like to move it in the other direction.

Kathy Kleinman: This is Kathy Kleinman. I agree with what Milton said, but I also disagree with what he said. And we've been doing this for years.

There is some evidence that the multi-stakeholder model is moving outside of ICANN. And I think that's what you're suggesting. So the multi-stakeholder model was created because other bodies didn't have the technical expertise as well as some of the other expertise in the domain name system and IP addresses and other things. So we kind of created the multi-stakeholder model as a way that might work. No one was sure whether it would.

I should tell you that in the United States now, the Department of Commerce is using the multi-stakeholder model as an experience to come up with rules just in the United States to bring diverse stakeholders together. They're doing it on drones, rules for drones, the robotic devices. It turns out that it's a new way of creating policy that might work internationally as well. And so we may be creating kind of a new form. Again, they're testing it out in the United States at some level.

Man: So we have Tatyana, Bill and (Marillia).

Woman: You started a great conversation.

(Kadu Derehy): It's not a (unintelligible) question, but it's maybe a suggestion of the NextGen. I mean, I would have liked to see more of like training program on that. I'm new to stakeholders. And when we actually put young people exposed to IG problems and we tell them try to save it. And the multi-stakeholder process, I would like to see that, I mean, as a training for young people mostly. So thank you.

Man: Okay. So we get the queue here. So guys, we have Tatyana, Bill, (Marillia) and then Amr. Yes, Tatyana?

Tatyana: Yes. I (unintelligible) sound discouraging but with my background which includes cybercrimes, cyber secretary and law enforcement. I wonder if that sometimes multi-stakeholder model shouldn't be there because it can be misused and abused. Like let's say about legal development, criminal law and law enforcement. I believe that in terms of policy making for criminal law and criminal law enforcement, we always have to make it multi-stakeholder. The law is in place already, like criminal and criminal procedural law. It was meant to be flexible. It should be strictly safeguarded. And what we see now when these two models are overlapping, law enforcement agencies are basically asking, for example, for private entities to regulate quantum takedown, which can go to private censorship with no limits whatsoever. And they insist that they're doing it at the multi-stakeholder model, which I believe is not acceptable at all but should be strict frameworks when it comes to the law enforcement exactly.

                In policy making, yes, I believe it should be as much inclusive as it possibly can be and they're working in this direction. And I believe that these models have been transferred, but when it comes to enforcement, I would be very careful in advising multi-stakeholder here.

                Thanks.

Bill Drake: Hello. I'm Bill Drake. So Kathy since she agrees and disagrees with Milton, I'll do the same since we also have been doing it with him for 26 years, so why not.

                So just two points quickly. One: I think we have to be careful when talking about some multi-stakeholder model in a singular way. This makes me crazy when I can staff - take to doing this and put out all these kind of things that

represent the ICANN model as the living embodiment of the single and sole truth.

There are many forms of multi-stakeholder cooperation. And it depends - the roles of the actors vary in terms of whether they're just involved in agenda setting versus actual negotiation, et cetera, whether it's a consultation process or they actually get to make decisions, whether you're talking about a case where they self-represent but they're not on equal footing versus self-represent that they are versus joining a delegation of - that's government led.

I mean there are a lot of different forms. So let's just unpack that a little bit. But it does apply broader and beyond the ICANN world, first one.

Second point is here's the one that I'll get in an argument with Milton, to try to liven things up. One of the problems that we've heard voiced a lot by certain members of the GAC and, obviously, Brazil, France and others have raised this quite a lot in the course of this meeting. And I think it's a reasonable point to say this. While we talk about equal footing and so on, we have not truly thought through fully what that means with regard to states in an equal footing model.

Where does the proper authority of governments and the ways in which they operate begin and end? What are the precise modalities for their inclusion and so on? All of these things are actually still quite squishy. And given that there are governments that are highly prone to view multi-stakeholders and multi-stakeholder cooperation -- I know some people don't like them -- as essentially a cover for the dominance of certain countries companies and actors, that's something of a problem.

So I think one of the things we have to (flirt) out more fully is reaching some sort of a shared understanding about exactly how states fit into a truly multi-stakeholder model, because we have, in a way, sort of developed multi-stakeholder as an alternative to the inter-governmental approach that they're

all used to without sort of taking the extra step of saying, well, so, then, exactly how do they play. And just telling them, well, you have a limited role; that freaks them out.

We're struggling with this in this meeting. And I just want to say it's a live issue and they - I wouldn't simply dismiss their concerns, although I don't share them. They're - I can understand why they have them and we have to find a way to deal with them.

Rafik Dammak: Okay. Thanks, Bill. So (Marillia) and then Amr.

(Marillia Masia):   Thank you, Rafik. This is (Marillia Masia) speaking. Good morning, everyone. This is a very interesting question, and I think that's one of the things that we need to take into account is that when we start participating in Internet governance through ICANN, I think it's very natural that we see ICANN as the only model, but that's Bill highlighted, there are many different models out there.

ICANN was not the one to invent the multi-stakeholder way or cooperation. If you took at Brazil, for instance, CVIBR, which is the Internet - the steering committee for the Internet in Brazil, it existed three years before ICANN, and it was already multi-stakeholder. If you look around, there are many organizations that have different ways of embodying multi-stakeholder is. And if you look at the idea it's a (unintelligible) and equal footing organization, we don't have the fast tracks. We don't have the differentiation that we have here in ICANN. But it's not decision-making space. It's a space for discussion.

If you look at the ITS, for instance, it's led by the technical community. Other actors can participate, but there is a clear leadership of the technical community in the ITS. If you look at ICANN, it's multi-stakeholder but its model of multi-stakeholder, which is private led. So it's very clear when we look at ICANN, we'd start develop policy contrary to the ideas.

We see that the GNSO, which is the main body to develop (unintelligible) ICANN. Half of it is commercial interests that are contracted with ICANN. Half of it are parties that are not contracted with ICANN, but it also has some commercial interests. And only a quarter of the GNSO is a dedicator, is a space for non-commercial interests.

So when we look at the main body that develops policy in ICANN, we see that commercial interests, they predominate a lot, and it does not mean that they are a (unintelligible). There are very different decisions and positions (unintelligible) from just saying this is a private led organization and we need to understand what it is in order to be able to operate. So my rating from ICANN is even though - of course, each actor wants to carve more space in the organization. It's a role for governments as well.

But I still see ICANN much more as a private led organization, and I do not feel the power grab that Milton and others feel in practice. I think that if he's feeling - we'll still be a private led organization. What I think is that multi-stakeholder is in its different ways of manifesting itself. It is a tool. We need to use it when it's useful. And we need to understand each actor should be more predominant in that particular discussion.

It doesn't mean that all the actors should not participate. But depending on the space and maybe depending on the topic, a particular actor could lead away if we talk about different (unintelligible) security stuff. There is a real push that is very important for other actors to participate in (some) security discussions, but it's understandable that government still has a more predominant role, specifically when we talk about piece of security.

So there is no way that we can talk about a model itself. We need to look at the different spaces that we want to operate and (unintelligible) that can be useful to us in decision making. But it's not always that we will resort to it. And we can use it in different ways.

Thanks.

Rafik Dammak: Thanks, (Marillia). I just want to add something, too. Understand that it's an interesting discussion. We have Amr, and as much as they want to add something, but as a moderator or chair here, I would like to remind you that we come back to the topic, which is about RDS because we want really to discuss how we can get involved and what we need to do there. We still have other policy issues. I understand it's critical, interesting, many (unintelligible) for this. But we need to come back to the main discussion.

Don't worry. I'm giving you a time. But let's start with Amr. And, you, please be brief and let's close this item.

Woman: Rafik, can I ask a question?

Rafik Dammak: Yes.

Woman: And it's actually a question to the people in the room, which is I was wondering who here has an interest in data protection, an interest in privacy. And we're going to go around and get your names. And an interest in participating. I don't want to volunteer you. But an interest in participating and would be interested in talking, because I'm also on the RDS, the Registration Directory Services, another one of those acronyms that doesn't come easily.

So who would be interested? And I'm going to come around and grab your names and e-mail addresses. And we'll put you in a group and we'll keep talking about it.

Woman: Make sure you clarify about confidentiality for free speech.

Rafik Dammak: So I see like Arm and Kathy. So we have Amr and please be brief. And then gentleman there and I think (Renata) wants to add something. So, yes, Amr.

Amr: Thanks, Rafik. I will try to make this brief, but there are two points I wanted to address. First the question by (Kadu) on sort of getting training or coaching on what is involved in the policy development process.

I just wanted to point out that every time a new working group is being formed, GNSO staff hold what they call, I believe, an open house newcomer session where they go over how the policy development process works. They go over what GNSO working group guidelines are, how the working groups work and how different actors get involved and how consensus is reached and so forth.

So I would encourage you to sign up for one of those whenever a new working group is being formed. But also as a member of the NextGen program, in Dublin I presented to the NextGen program and explained how the PDP, the policy development process, works. I hope you have a similar session set up here. If not, I would ask Deborah to set something up, so you can go ahead and do that.

My second point -- and I'll try to keep this brief -- I rarely ever disagree with Milton, but I do today. I do not believe -- and I said this during the fellowship morning session -- I do not believe that civil society input is sidelined or ignored over the past few years...

Milton Mueller: I don't say that.

Amr: Oh, I'm sorry. I thought you said...

Milton Mueller: There was no consensus model. And we have been overridden. Consensus means consensus.

Amr: You did say that we're outvoted all the time.

Milton Mueller: I said we have been, just to be clear about that. I'm not promoting this idea that we are victimized and we always lose. But I'm saying if you believe that things happen by consensus here, you need to know that it doesn't.

Rafik Dammak: Okay. Thanks, Milton, for this reality check.

Amr: Okay. Got practical examples...

Rafik Dammak: I'm sorry. I want to be authoritarian here, some dictatorship. So we have folks; they want to talk. And also we (unintelligible).

Man: Rafik, just a command for Amr because they asked for NextGen. I can answer if it's okay.

Rafik Dammak: Okay. Quickly.

Amr: We have just a session tomorrow with someone called Carlos Reyes about policy. I don't know if it's what you were talking about (unintelligible). But we have something about policy tomorrow. Or we don't need to (unintelligible). Thanks.

Rafik Dammak: You want to say something, no? Okay. We'll pass on. Don't want to say. Okay. Sorry, guys.

So we were talking about RDS and get investment and Kathy (unintelligible) to correct your name, so re-chair for that.

So if you don't have any more question about this issue, we will move onto another working group that is just starting which is about the new gTLD subsequent procedures. This is a continuation of what happened before for the new gTLD program, and this is more starting with a review and so on and maybe changing the existing policy.

I think maybe for here, (Marillia) can make some briefing, because she's following closely what's happening in that working group. (Marillia)?

(Marillia Masia): Sure, Rafik. Thank you. I was not very aware that I would be doing this briefing now, so if you can bear with me for a second. Okay. There we go. Thank you, Rafik.

So we discussed this in some fashion today. I just gave an overview about that yesterday in the session on human rights and ICANN. And actually we had several processes that are related to (unintelligible) of these coming on the table right now. We have two of them that I believe are more important, because they would generate policy in the end, which are two working groups that had been created in the GNSO.

One of them is about the new gTLD subsequent procedures that we'll review all the last round and make suggestions for improving the forthcoming rounds of calls for new gTLDs. The second one has not started yet, but we are about to approve the charter of the working group, so it is about to start, which is a working group to discuss and develop a new policy review, the policy and rights protection mechanism that you have heard from Kathy before.

So these are the two main issues related to new gTLDs and policy development. But these are not the only processes that are discussing new gTLD related stuff.

We have also very interesting discussion on auction proceeds. So as you know, in the first round, some new gTLDs to an auction when there was more than one applicant. And there is a bulk of money that has been set aside from the auction proceeds. And now the community will have the chance to discuss how they want this money to be spent and which part this money should be applied to, which is public this money should be applied to.

So this will be a very interesting discussion. And it's coming this year. There is a drafting team that is working at charter for this discussion. And, of course, there is another process that is related to a new gTLD review. There are several reviews of the new gTLD program that are being conducted by ICANN staff. These reviews are taking place in many different areas of the new gTLD program from trademark clearing house review, the program implementation review, security and stability and so on.

From this review processes, I think that two of them are very important, which is one called a competition consumer trust and consumer choice. The group to review this aspect has been formed. And it should be very important because it will try to understand if the new gTLDs have, indeed, fostered competition in the DNS market, and that is being collected for that. ICANN staff has been commissioned on several studies and collecting metrics to try to assess how is the acceptance of these new gTLDs and if they have, indeed, fostered competition.

So all these different processes are taking place in parallel, so it should be hard to keep track of them. But they will have feedback effects in one another. So we will need to be aware of what is taking place in all of them.

But for now, I think that where we should focus our attention and our work may be a good place, an important place to start is the working group on new gTLD subsequent procedures because it will look back at the first round. It will clarify or amend policies that the GNSO developed in 2007 for the new gTLDs. It will develop new policies. It will look at the implementation of the new gTLDs and propose changes for the future.

So everything that we have in place now that has been consolidated in the applicant guidebook will be review and perfection and improved for the future. Why this is important? What is the status of the working group first? The working group had just two calls, so we are very much in the beginning of our work. This means that if you want to be involved and be on board, this is a

very good moment to start because discussions have just begun. You have not missed much.

Of course, there are background documents that you will need to study in order to be up to speed. But after studying these documents, we will be all on the same page. So it's a good moment to join. We have just chosen our leadership. (Abridoria) is one of the NCSG people that will be highly involved, because he's one of our leaders in this working group.

And we had two calls just to determine how we are going to work on the frequency of the calls. And our next task will be to look at the questions that have been proposed in the charter of this working group, the questions that we will need to look at and try to define how are we going to tackle them, because as you can imagine, this will be a very large PDP because of the number of issues that are going to be discussed.

And we will need to tackle these issues rationally somehow. So we need to divide these issues into clusters and form subgroups inside the working group to deal with these different issues. Right now these questions have been clustered into 5 different topics, so there is some kind of organization, but the working group revises organization and see if it makes sense or not.

I think that's from a non-commercial standpoint. I just would like to highlight to you some of the questions that we will be looking at in this particular working track for subgroups. In track 1, for instance, we will talk about community engagement in the application system; how we can facilitate the engagement of the community. We will talk about ways to simplify the application system, which is very important for non-commercial interests.

The application fees, how we can make sure that they are more accessible, especially for the developing world. So as you see, there is a whole bulk of procedural issues, due process, economic conditions to participate in the DNS markets that will be discussed in the first cluster.

In the second one, there is a broad range of issues mostly related to contractual implementation, to regulatory issues related to the protection of second-level domains and et cetera. So we will be talking about public interests. We will be talking about close generics, rights protection mechanisms for the second level. So it will be a cluster very much related to contracts. And I think that there will be issues related to freedom of expression when we talk about the public interest commitment; for instance, that will be (unintelligible) in cluster 2.

In cluster 3, I think it will be an interesting one for us as well. One of the first questions in cluster 3, for instance, is the applicant's freedom of expression. So we're going to examine whether GAC advised, for instance, or community processes or reserved names have impacted or not in the freedom of expression applicants. So I'm sure that many of us will be interested on that.

We will review the (unintelligible) of community applications, how communities have access to the application for new gTLDs or not, the process of objection, accountability mechanisms in the process. I know many of us are interested on accountability discussions. So freedom of expression, freedom of association, due process are all issues that will be touched upon.

Group 4 - cluster 4 will be a smaller one. It will be devoted to internationalized domain names. If you have a particular interest on this topic, that will be a good subgroup to be part of. And group 5 will be related to technical and operational concerns with relation to the new gTLDs, so security and (instability) when we create new gTLDs. And this is something that will be analyzed.

So I would say overall that clusters 1, 2 and 3 would be the ones where our main concerns won't lie and it would be interesting for us to divide ourselves into main areas of interest and make sure that the subgroups will be covered and that will be people participating.

As I mentioned, many of us in the GNSO will be involved in this policy development process because it will be a very broad one and a massive one in terms of work. If you want to be involved and get up to speed, just talk to one of the counselors. I am following this one closely.

So if you're interested, you can come to me. It can be your focal point for the moment. I know that other counselors are interested as well. But you can just write to me. I can send you an e-mail. Just approach me after this meeting and I can get your e-mail. And we can work together.

The working group, the one on privacy, is open to participants and observers. If you can participate as an observer for some time and see how you want to participate and get acquainted with the group would be nice. And then you can move on and become a full member, but it's open to anyone that is interested.

Thank you, Rafik.

Rafik Dammak: Thanks, (Marillia), for this briefing. Okay. Let's take some questions. Yes, please.

(Sadit Al Hagim): Hello, everyone. I'm (Sadit Al Hagim) from Morocco. I'm part of the (unintelligible) program. So every time I ask a question which has some political aspect, the answer I get is that ICANN only has to do with IP addresses and names. So it's a task that each PDP, it affects governments and political environments.

So my question is like an extension to the first point that was raised by Bill. And also a question addressed to (Marillia).

So I get back to the multi-stakeholder model, but I focus on the new gTLD program. So for me, I see multi-stakeholder model is far from the

(unintelligible) stakeholder model. So all the country or the stakeholder, they don't have equal influence.

So my question is: Do countries, organization or stakeholders have the same amount of influence power over policy development (unintelligible) et cetera. For example, let's say that a new gTLD is demanded by, for example, a part of a country, let's say in the (unintelligible) people with a territorial and border problem. So how does ICANN go about resolving this kind of (unintelligible) without losing multi-stakeholder model?

A question to (Marillia Masia): How does this new gTLD program solve these kind of problems?

Thank you.

(Marillia Masia): Thank you very much. I think your question is very good because I think for many people ICANN is an organization that is part of the technical management of the Internet. And it's a technical organization. I do agree with that. We need to be very careful when we look at ICANN, not to transfer discussions but should be taking place elsewhere to the ICANN environment.

So when we talk about problems related to content, for instance, it's very important that we take these issues to the floor where they should be discussed. It's not the role of ICANN to be involved in conference management. And we need to draw these lines very, very clearly so we make sure that we do not expend ICANN's mission.

Having said that, I think that you do have a point that we cannot neatly separate the technical from the political. Technical has political implications. The technical decisions that we made have political implications. And that is the start of things that we are discussing. But I think that (unintelligible) that this is a political face depends on the space that you are participating as well.

If you have a chance to see it - I know that meetings - the committee that deals with security issues related to the DNS, they are closed. But if they were open and if you sat there, I am sure that their discussions are much more technical than the discussions that we have here. So I think that it depends.

There are parts of the community that have a view that your organization is very technical because the role that they perform here is a very technical role. When you sit at NCSE a non-commercial meeting, I think that is very natural that this political concerns will pop up more easily because we are coming from the standpoint of the non-commercial side of the (amuser) of you and me, and we are talking about rights and how these technical decisions may be impacting rights.

So I think at this (politization) of the discussion is something very natural. In order to make sure that the different stakeholders have the same voice, I think that - as I said, I see ICANN as private led organization. It's like this since its inception. When you would look at the GNSO, we see that there is a contracted party, which are the registries and registrars that have a contract with ICANN.

When you look at the non-contract side, it's divided into a commercial interest, non-commercial interest. I think that non-commercial side of ICANN is a smaller one. It does not mean that we do not have influence over policy. I think that we are doing a very good role in terms of influencing and making sure that policy development takes into account not only commercial interests from the contracted (house) or commercial interest from the BC from the Internet service providers or copyright and trademark owners.
I think that we are doing a good job in influencing the way that policy is shaped. But I think that the best way to do that is to be very good on technical and legal terms on the comments that you watch to the public comment period, for instance. If you have counselors that can voice the concerns in a firm and good way in the GNSO council.

So it's by quality of our comments and our participation that we are able to influence policy more. I think that is a very important point here. And, of course, ICANN has a role to make sure that all stakeholders can participate in more equal footing by, for instance, doing the fellowship program, by doing the NextGen, by making sure that the non-commercial side of ICANN gets supports in terms of traveling funds to be able to participate in the meeting, by making sure that translation is available to include communities that are not English speakers.

We saw today that translation services is not only a concern for parts of the community like (unintelligible). I think it is very important that the policy development activities of ICANN, they become more and more percolated by translation of different documents that are relevant.

So there is work to be done, both on the side of the community and the side of ICANN. But I think that the best way to do it is to keep our contributions the best as possible in terms of quality. But I'm sure that others have other views to add to that.

Rafik Dammak: Yes. Thanks, (Marillia). Okay. Kathy, do you want to add something?

Kathy Kleinman: No. I wanted to ask a question.

Rafik Dammak: Okay.

Kathy Kleinman: I wanted to ask whose part of the new gTLD working group in this room? I was just wondering. Okay. Cool. Now I know who to bother. Thank you.

Rafik Dammak: Thanks, Kathy. Yes, (Renata).

(Renata): Can I just add something? Great answer, (Marillia). And I think the real challenge is always to figure out what is the brush-off answer and what is

actually the answer that you're looking for regarding policy. That answer - ICANN is a names and number organization. ICANN is not about intellectual property. You get many, many, many times.

The real processes, the real structures behind ICANN that built policies are definitely something that you want to look into and want to understand, and also the other brush-off, which is not within our scope, you will get that one repeatedly. But there are fields of action that you can identify and that you should participate in to understand policy development processes and how you could act on them.

And for NextGen, that is specifically challenging because you get this broad picture of ICANN and you don't really realize what are the structures behind it. It takes time but you definitely will be able to get it and even maybe find room to create new ones.

Rafik Dammak: Okay. Thanks, (Renata). Any comment or question here? Okay. So I guess there is nothing else to be added here. I think we are done with the three kind of topic of interest about GNSO policies.

And then we move now to ICANN accountability track. We are not ready to do kind of report here of what's happening in CCWG but more to think about next steps; in particular, the Work Stream 2. And I saw that maybe you can cover 2 issues about the DIDP and human rights work for DIDP admin is not. She disappeared, but hopefully we can cover that when she comes back.

So we can talk about human rights work. And Tatyana maybe to give us some briefing to explain what's going on there.

Tatyana: So you want me to concentrate on the Work Stream 2. I want myself to do this as well because I believe that news already provides an overview what has been achieved in the CCWG accountability work.

But before I go to Work Stream 2, I have to make a kind of short explanation was in there (unintelligible) of the Work Stream 1. So we have a bylaw language which concerns ICANN's commitment to human rights as a part of ICANN's core values. But this bylaw is dormant. It will not be operational before the framework of interpretation of this commitment is adopted.

So what does it mean for Work Stream 2? We have to come up with a whole human rights framework to see the implications which ICANN operations and mission and core values have on human rights. Which human rights are especially relevant in this sense?

And then they have to come with the framework which will interpret this commitment which will operation (unintelligible) commitment and then these below will finally become active. So what has been done on the NCUC side?

Of course, we will be volunteering for the Work Stream 2. And I also invite you to do the same and maybe in the same way as (Marillia) told about new gTLDs.

Just from my personal experience, when I first came to CCWG account group, I didn't become a participant. I first became an observer to see if I can contribute, how I can contribute and if it's interesting for me. So I can encourage you to join as a mailing list observer and see if you're interested in this work, if you can contribute and how you can contribute. And every little helps counts for us.

Sometimes you really just need a force of numbers to outnumber people who are voting for something which looks ridiculous for us in human rights. So if you're interested and you want to provide your support, provide us your support for numbers even if you're not able, have no time to contribute from the content point, it would be great if you have people who are following the discussion and can intervene if we need the support.

I do believe that we have very interesting work ahead of us. Because as you know, ICANN is not like any corporation. It's kind of unique in its mission, in its core values, in what it's doing. So basically by participating in the Work Stream 2, you can make history because there is no framework like this has been developed before. And I believe that we have very interesting community exercise ahead of us. And we have a different stakeholder, different community members who are ready to participate.

So if you join, you expose yourself in so much diversity of the views there. So it is going to be interesting. I cannot promise that it's not going to be painful; sometimes it is. But, yes, it is going to be interesting. And since I volunteered, I thought that maybe (unintelligible) can add something about this. Maybe I missed something because he's also an active participant in this group in terms of human rights, commitments, developments.

Thanks.

Woman:		They think I can also ask (unintelligible) something if he has something to add.

Man:		(Unintelligible).

Matt:		You have five messages for the record. So Tatyana has given a great overview. I think it might be just interesting to - I'd like to just talk about human rights but also talk about Work Stream 2 just a little bit more broadly, if that's okay, just so that everybody has a full sense of the issues that are there because it's a bit of an assumption that now we've got Work Stream 1 out of the way and the transition is moving forward, and we don't have to worry about these other issues. But there are some critical ones of which human rights is one.

Some of the difficulties that we have in dealing with human rights really is in terms of which protocols and which rights are applicable to ICANN. And so parts of the development of the framework of interpretation that will happen in

Work Stream 2 will be very much about trying to figure out which ones do apply and how do they apply and in what capacity and where do they apply? From an organizational perspective or from a policy development perspective?

So there is a whole range of issues that actually -- it's not just a matter of talking about human rights but it's a matter of talking about how they apply. For example, how do the (unintelligible) principles on human rights and business apply? So the discussion is likely to be quite protracted and quite interesting and at times difficult because of varying interests in ICANN on these issues. So this is something that I encourage people to get involved in.

I did want to just -- if Rafik doesn't mind because I know we're focusing on the DIDP and also on human rights -- but just to list the other issues in Work Stream 2. Because in case people aren't aware, there is a diversity of issues including some very important ones that I'd just like to walk through or just read.

So in addition to human rights, there is also supporting - this is the list. So diversity in ICANN is an issue that is going to be looked at. Staff accountability, a very important one, is also going to be looked at. Accountability supporting organizations and advisory committees, and that's another one that's of incredible importance to us.

Improving ICANN's transparency. We can talk about the DIDP, but it's also importantly interactions with governments. Improvements to the whistle blower policy. Transparency of board deliberations. Clarifying and developing the framework of interpretation for human rights.

One that we've kind of (unintelligible) I think is addressing jurisdiction-related issues. That's also in Work Stream 2. And finally, considering enhancements to the ombudsman's role and function. So there is something for everyone

there. And I encourage you all to dive into those or some of those issues. I think that will be wonderful.

Thanks. Thanks, Rafik.

Rafik Dammak: Okay. Thanks, Matt. I think Milton wants to add something here.

Milton Mueller: Yes. I'm afraid that we're getting really into the weeds about these policy initiatives which is, in some sense, necessary. But at the same time we're probably leaving behind some of the newer people in this room.

((Crosstalk))

Milton Mueller: Right. So maybe - I think one way to deal with that is to ask just in an interactive form the people who are here: How many would want to, let's say, get involved in what Tatyana just described, the Work Stream 2 human rights framework of interpretation, is it?

Tatyana: They now call it human rights framework, which I find much better than framework of interpretation.

Man: So that's the kind of thing that even I don't know the proper name for it. And so, like, could somebody stick up their hand and say, you know, kind of - based on what I've heard, I'm vaguely interested in working on that and them we could follow up with them maybe in breakout sessions or something or (unintelligible).

Man: Okay, thanks (unintelligible) queue. We have (Marillia), (Bill), and (unintelligible). So...

Man: And if somebody could keep track of who's actually raising their hand and ask them their names and things like this?

Man: Okay.

Woman: Raising my hand to Milton's question - not want to speak, thanks.

Man: Okay, so, (Bill), you raised your hand.

Bill Drake: I was raising my hand (unintelligible).

Man: Okay. Do you want to say something or just do all the raising your hand? Okay. No, okay, thanks.

                So what you are saying (unintelligible) here exactly (unintelligible) wants to do some breakout now or just asking people how - if they want to get involved with?

Man: (Unintelligible).

Man: Yes, asking you, yes.

Man: I would propose that we have a list of these people and we decide now what we're going to do to follow up. I don't have a specific proposal as to how we follow up. Breakout session here is one idea and e-mail follow-up is another.

                So others might have other - okay, so - (unintelligible). That's kind of...

Tatyana: Sorry, it's just a human rights decision. If you're interested in human rights, even not in the Work Stream 2, there would be a working session of cross-community or work (unintelligible) of human rights. We can stop (unintelligible) by NCUC.

                Just drop by the - they're not using many acronyms; we are very friendly. So you can just drop by and see what they're doing and decide for yourself. And it's even - it's (unintelligible) - sorry.

Man: (Unintelligible).

Tatyana: It's Wednesday. Yes, it's fine.

Man: Okay, it's tomorrow morning. Okay.

Woman: (Unintelligible).

Man: I think okay. Okay, sorry. Thanks. So, Milton, if you are suggesting if you want to take this, I think everyone, when he bring an idea, the best way to execute is that you follow up, you can make a list and you can get the name of who's interested to - for a follow-up later.

                        So...

Man: Alright then. Can I ask everybody who raised their hand to get the microphone, spell out their name, and I will make a list, starting with this gentleman.

(Halafom Obraha):   Thank you so much. (Unintelligible). My name is (Halafom Obraha) from Ethiopia.

Man: (Hana).

(Halafom Obraha):   (Halafom Obraha). H...

((Crosstalk))

(Halafom Obraha):   H-a-l-a-f-o-m. Yes.

Man: Okay.

((Crosstalk))

(Padmini Padewa):   (Padmini Padewa) -- (unintelligible) Society. Thank you.

Man: Yes, so I think (unintelligible) to get the names. So please just raise your hand and the gentlemen, he will count you and - write your name. So, yes, I mean, the issue here, I think, is when we talk a lot about any (unintelligible) ICANN, we - quickly, we are drawn by all the acronyms and all details -- what can be overwhelming for everyone, even for those who are here for a long time.

                So the aim is - was really to get briefing and that's why we get different volunteers to do so and to extend to give people time to digest. Some stopped working as expected; we can improve for the next time and that we will - what we will do is continuous improvement. For the other item, if there is no more comment about human rights or question, we may move to the next part.

                I don't recall what the IDP exactly stand for, but what I see here that - is (unintelligible) is about the transparency and document disclosure in ICANN. And so I know that (Padmini) is somewhat, how to say, kind of really passionate about this topic and she will give us really kind of short brief to explain what's - what are the issue around disclosures, document, and what this has to do with the work about accountability.

(Padmini Padewa):   Thank you, (Rafik). This is (Padmini Padewa) for the record. I am a student of the law from India and I work for the Center for Internet and Society at the moment.

                So my work there has revolved a lot around the question of transparency within ICANN. And one of the mechanisms that (unintelligible) in this regard is something called the DIDP, which stands for the Documentary Information Disclosure Policy. To quote from their own website, they say that this policy

promises to ensure that information contained in documents concerning ICANN's operational activities and within ICANN's possession, custody or control is made available to the public unless there is a compelling reason for confidentiality.

Now it sounds very nice and it sounds like it's every other country's information disclosure law, but there are certain loopholes within this existing policy. And it has about 12 clauses that exclude - that provide conditions where your request can be excluded. So I'll be going quickly over the work that I have done and I have been - I've received a lot of helpful comments in this regard from (Farzie), (Correll), (Brett), (Michael), (Robin), (unintelligible), (Aiden), (Rafik).

A lot of people have extend into this. So to quickly go over my experience of the DIDP process, I have both filed more than (unintelligible) DIDP requests on behalf of the Center for Internet and Society. And some research that I did was read through every single one of these documents that was available on ICANN's website and their - the responses as well as the requests allowed just anybody to access.

So I did a quick data analysis of where responses that were available and the statistics were very interesting. So to take you through this, as of 1 March, 2016, there were 102 responses that ICANN had made to the DIDP through DIDP request. Of those, only 11, or about 10%, were responded to fully where the relevant documents were provided or the person was directed to, you know, the right resources.

About 35 of those 102 requests, or approximately 34%, were completely, flat-out denied. Like, there was no information given -- anything relevant to the questions that were asked. Interestingly, there was this middle ground of 56 out of 102 requests, or approximately 55% of the requests were submitted were ICANN provide a lot of links to documents that are already publically available, yet, they might deny the point that you want information on.

So, for example, a filed a DIDP on the compliance or the process, and I asked simply for a - for documents that reveal - that indicate what actions are taken in case that abuse of process was discovered for registrars and registries through the compliance mechanism, and that was denied to me. And there are 12 huge, vast non-disclosure grounds. And to me, any work that has to be done on the DIDP needs to scrutinize this particular issue first - - the grounds on which information is denied.

So to that effect, there are about five issues that we think are - become relevant for Work Stream 2. The first one is timeline so the DIDP process under the bylaws specifies that the information must be responded to within 30 days. However, there's a lot of random extensions of that timeline that happen and there's no clear penalty for the same.

To do a comparison, with India's right to information law, if the 30-day period is extended, then the officer who's supposed to provide you that information loses one day of his salary for every day that the information is delayed. So it has nothing similar happening in ICANN, but it's just a thought I was flagging out. The second thing that we thought was relevant was having an independent body to get response - having independent oversight when these requests are being processed.

So somebody who has both the expertise, the sort of - an external detached third-person viewpoint, and the power to affect suggestions should also be involved in the document processing process - sorry about that. But - so that - and there is good and valid third-party intervention and good justification for when these requests are denied.

Another thing that I found particularly difficult was an appeal process. So I tried to appeal two of my (unintelligible) rejections via the reconsideration system, which is the first step and the easiest step for me with my lack of

financial wit, to get redressal in this regard. And while I was doing that, both my requests got denied, so I got interested in the reconsideration process.

So I did a (unintelligible) data analysis of the 144 reconsideration requests that were put up. And reconsideration is an appeal system where you can ask the board to reconsider any decision that is - that has taken. So of the 144 reconsideration requests that are currently publically available, 118 have been denied.

Six of those are DIDP requests, and all the six DIDP appeals have been denied. So clearly, this isn't an effective mechanism for appealing (unintelligible). So we wanted strong, external, independent, costly time - sorry, cost-effective, time-effective appeals mechanism, which is something I thought we could all pitch in at the NCUC.

The third one and most important one in my opinion is the vast exclusionary clauses that are present. So there's 12 - there's a list of 12 clauses which range from information that could affect ICANN's relationship with external parties, information that a (unintelligible) within ICANN, information that affects - that touches on personnel information -- private personnel information - and finally, there's something of number 12 that goes - information that is too (unintelligible) or tiresome or cumbersome or burdensome to put together.

So I did a comparative tabular analysis with India's (IDR) law, which is what I'm most familiar with, and the grounds for exclusion exist in every country's transparency law, but ICANN has an insanely vast range. And I thought any scrutiny of this process needs to have a comparative with the best practices globally. So that was a suggestion that I sort of flagged off.

And finally and interestingly, there is one question of public interest that comes here. Because at the end of the policy on the website that describes the DIDP, there is on paragraph that says, "Notwithstanding, any of these 12

exclusionary clauses, if your request has sufficient public interest, that we would - sufficient public interest to mandate disclosure, we would consider overriding the exclusion clauses."

I have ripped that out in at least six of my DIDP requests and at no point has it been considered that the public interest would be sufficient to override any of these clauses. ICANN also, interestingly, uses public interest in a different way. They say that the public interest in not disclosing is so high that it's preferable in the public interest to not disclose.

Those are the parts I have right up there showing - the yellow indicates requests that have been flat out denied, the blue is the percentage that has been accepted, and the red is that gray area of some things, maybe not. So I mean, most of those red - in that red area, there is a lot of documentary (unintelligible).

So there's only three pages of links connecting me to their audit program, the (unintelligible) program -- the new gTLD program. I know all of that. That is the basis - on the basis of which I have made those requests.

If I ask for a specific document and I'm given a large number of links, it (unintelligible) to me and that, to me, is a cumbersome thing that blocks my access to information. If I could have the next slide please, Maryam. I don't know if you heard me.

So this is the percentage-wise distribution of the different clauses and how they've been invoked. I've already - this is already out there at the CCWG accountability mailing list as well as on the NCSG, NCUC mailing list -- so if you want to go into what those clauses are. The highest number that have been in (unintelligible) ICANN's internal deliberations with staff members of the board, which sometimes do need to be made public, and in most governmental transparency laws, I do notice that even internal discussions

between the government or whoever do get brought out to the public -- minutes of the meeting, things like that.

So I was wondering if that was worth looking at. So yes, these five questions of timeline and independent oversight and good appeal in, you know - in the clauses of exclusion as well as public interest where things like that we could focus on. Thank you. I'd be very happy to take any questions within my capacity to answer.

Rafik Dammak: Thanks, (Padmini). It was quite brief. Okay, so let me see if - who want to ask a question here.

We have (Bill) (unintelligible) wants to say something or...

Bill Drake: I actually - since we have a member of the board of directory is visiting us, who - would be curious of (George) has any thoughts about what you've just heard about the rate of disclosure of documentation that was requested following the appropriate procedures and so on. I mean, these are the kinds of issues where often we find ourselves interacting with staff, but we don't get a chance to talk to the board directly about it.

And so since you're here, (George), I thought maybe you could give us your insight about how you would view this issue.

(George): Thanks. Can you hear me?

Bill Drake: Yes.

(George): Okay. First of all, I can't speak for the board on this, and I can speak for myself in what I know.

Man: (Unintelligible).

(George): I'm practically kissing the microphone here - okay, oh, that helps (unintelligible). Okay, I - what I can say is that I - the DIDP of accounts that I have been informed about are somewhat different from your side.

So I think one - the first thing I'd like to suggest is that we get the data straight and understand that. With respect to reconsideration requests, I think there's a fundamental misunderstanding here. And first of all, I would agree with you totally that the reconsideration request is not, as it stands now, an appropriate vehicle for reconsideration of the kinds of things that you're talking about.

Reconsideration, at the moment, is defined as reconsideration only of those disputes where the board where - sorry - where process has not been followed. And that's it. And the reconsideration has been used, I think, fairly intensively as a gaming mechanism to get around decisions that one party doesn't like, where there has been no process issue involved.

Now, we - one might argue - and I would argue - that consequences and results may be more important than process. That's just not the way we operate. Now, in the suggestions that have been made for change under - in Work Stream 1, and some of us have argued for some time on the board, reconsideration is an incomplete and/or ineffective method of dealing with the complaints that come up, and I hope we can change that.

(Padami Padewa): Can you respond, (unintelligible). Thank you for acknowledging that. It is just that considering that I am extremely new to this and I'm grappling with the subject as a student.

When I look at what is available on the ICANN website, there's a small clause on appeals and reconsideration is the first thing that talks of that. Certainly, from (unintelligible) understanding, approaching it through the reconsideration mechanism is obviously much easier than going to, say, the IRP.

So I'm - my hands are tied. I mean, this is the only open mechanism I had, so therefore, hence the action. Also, on the (unintelligible) statistics, I have been informed very vaguely by a lot of people in and around ICANN that these statistics might be slightly off. I'm completely open to someone going through my document, making the edits where they feel are relevant, and maybe giving me feedback so I can update that table so that no misinformation happens from my end.

Thank you so much.

(George): Well, I would encourage you to work with staff to get the data consistent on both sides, and then proceed from there. Thanks.

Man: (Unintelligible)

(George): Who is your staff liaison?

(Padmini Padewa): I have been contacted by ICANN staff on this regard and I have been repeatedly requesting them to give me a recent document. So if you could tell me any one person I could directly approach so that my research gets updated, that would be so great. Thank you.

(George): I'll try to find a name for you.

Rafik Dammak: Okay, thanks, (George), thanks, (Padmini). I think, okay, the special that - (Stephanie) wants to say something before or (Ed).

(Stephanie Parrin): Well, (Ed) is in the queue.

Rafik Dammak: Okay.

(Stephanie Perrin): I'll go after him.

Rafik Dammak: Okay. Okay, please go ahead.

(Ed Morris):   Thanks, (Rafik). (Ed Morris) for the record. First of all, thank you, (Padmini). Going through these things is very time-consuming and thank you very much for your work in this field.

I have a few concerns about - I've done the DIDP probably more than anyone ever. I hold the record for having the DIDPs that had all 12 non-disclosure policies cited and refusing the information. So you - here's one of my concerns.

I'm now having success in DIDPs. I've been able to get contractual information from ICANN. And the reason I've been able to do that is because I know people in ICANN Legal; I'm able to get them on the phone, I'm able to say, "hey, blank, I need this for this reason, will you help me?"

It shouldn't work this way. Anyone off the street who complies with the requirements in our bylaws and in the procedures should be able to get the same consideration that I'm now getting for my requests. There seems to be a default of denying information rather than the default of granting information.

And I think that's what needs to change. In Work Stream 2, I know we're going to deal with the DCND. That's part of the problem. But even if we change the language of the DC - Defined Conditions in Non-Disclosure - even if we change the language, until there's a culture change within ICANN, I'm not sure it's going to do much good.

And (George), that's where you can lead the effort -- by changing the culture and the attitude of, particularly ICANN Legal, into more of a default grant information unless there's a real valid reason to deny it. Thanks.

((Crosstalk))

Rafik Dammak: Thanks, (Ed). Okay, I'm trying to check for the queue. So we have (Stephanie), (Marillia). Okay, so, yes, (Stephanie).

(Stephanie Perrin):   (Stephanie Perrin) for the record. I must say that I was so impressed with (Padmini's) work on this that I went in and looked at some of these and, full disclosure, I'm a former Freedom of Information Coordinator in the Canadian government. So I do know something about how these things ought to work, and I have worked extensively with the ASAP in the United States.

I was shocked. Those conditions for non-disclosure are not adequate. And I would disagree with (Ed) -- a concept of a culture. We don't operate that process and procedure here; we're trying to make the multi-stakeholder model work.

I think that we can change those in the next effort in Work Stream 2. They're not accountable. I would certainly think that the - it should not be legal department deciding what should be disclosed and what should not be disclosed; that's a big mistake right there.

So procedurally, I will be pushing in that next committee or working group or whatever it is to change the model, and we need independent oversight of the decision-making. And I would caution us against piling everything onto the ombudsman because, A, he's an ombudsman; he doesn't make a decision. Ombudsman make recommendations.

And we need an effective, neutral independent appeal mechanism for the DIDPs. Furthermore, I find it increasingly, there is tension and a lack of trust between the stakeholder community and staff. And I think that's a probably because you will find, when you get newbies, don't interpret this as a lack of safe in staff.

We've got excellent staff members. The problem is that they are, as the organization grows, they're becoming a corporate staff. And the non-disclosure principles say they're not letting us find out what their deliverables are, what their instructions are, what - so there's a bit of an apartide growing between us, and I think that's most unfortunate.

It can be solved by greater transparency. So we need to fix this. It's fundamental to the multi-stakeholder model that we do make this thing work.

So if anybody has any interest in this, I think they should join the next working group and help (Padmini) out here. Thanks.

Rafik Dammak: Okay, so thanks, (Stephanie).

(Padmini Padewa): Sorry, (Rafik), may I just - last point, quickly.

Rafik Dammak: Okay, yes.

(Padmini Padewa): I - also, if anyone wants to volunteer to cross-check that chart of 102 requests and find out if I've made any errors, that would be so helpful because I've cross-checked it twice, but you know how it is when you're working on (unintelligible). So anybody who wants to read 102 documents for fun, please let me know. Thank you.

Rafik Dammak: If you provide some incentive like (unintelligible) something people will be happy to do so. So...

Woman: (Unintelligible).

Rafik Dammak: Okay, thanks, (Padmini). (Marillia).

(Marillia Michelle): Thanks, (Rafik). (Marillia Michelle) speaking. First of all, congratulations for your study. It's so important what you're doing and I do agree with that.

It's an impressive amount of information and the way that you present it's very clear and I think that it's what you were talking about when we have quality information and we have quiet positions based on some data. I think that we are in the position to push for change and I think that you are giving us all the information that we need to push for change in the organization.

So thank you very much. I just would like to share very briefly the experience that we had in Brazil with (unintelligible) information law, which is recent. It has just a couple of years of being approved and we combatted a (unintelligible) information law by asking questions to different levels of the federation. We asked the state as a whole, we selected some provinces in Brazil to ask questions to see how they would reply, and that was a very interesting experience because, first of all, we could tell that the (unintelligible) information law has been implemented in very different levels of success by different parts of the Brazilian states.

If you look at the federal level, the implementation is considerably - considered reasonably good. If you look at states like (unintelligible) area, it's pretty, pretty low. People are basically forced to go physically to the banks and to ask for information there.

And of course, they are discouraged to do that. So I think that this assessment that does a breakout and that's what we did. We - instead of thinking about information of compliance that did not put any public person on the start, we make sure that the person that was responsible for that particular break in (unintelligible) was put in for.

So maybe this is an approach that we could take here. I have not looked at DIDP, but it would be nice to have information with regards to the questions that we're asked - the nature of the questions -- which of them were accepted or not and have this breakout in - with regards to particular parts of the

organization so we assure what - which ones are being cooperative and which ones are not.

Maybe we cannot impose something as, you know, salaries, like you had suggested, but maybe we can make sure that ICANN has a policy for rewarding the parts of the organization that are being cooperative and finding a way to make sure that you are just feeling the pressure, and the ones that are not because I do agree with that. It doesn't make sense that you need to have contacts inside of the organization to have information that you need. And that's one of the parameters we took into account.

When we did the research in Brazil, we use not only the (CPS) - the IDs of people that work in that city, which is my organization because we are (unintelligible) an academic organization. We just selected volunteers that gave their identification numbers to compare the answers that they would give to us as an academic organization and the answer they would give to a layperson that was just asking the questions and we saw that there were discrepancies.

So it would be interesting to assess that too and to kind of test the system is something nice, not only with the questions that are already there, but we can maybe try to do an audit and come up with data about that that will support and reach the data that you already have. Thank you.

(Ed Morris):   Okay, thanks, (Rafik). I see (George) there and I - we seem to be attacking the policy. So there's some good news on transparency and I want to give him and the board credit.

In the accountability reforms that have been proposed and agreed to by the board, we're actually going to get the community the investigation - the inspection right and investigation right, which is a new, novel concept that was proposed by the board. It's more than we even asked for where if we

suspect financial impropriety, two SO or ACs can ask the board for an independent audit of the financial records, and the board's going to pay for it.

I know of no other major corporation in the world - particularly in America - that has anything approaching this. So I want to thank the board for agreeing to that and agreeing to the inspection rights, which are actually even greater than that -- how (unintelligible) sue the board for a decade and a half ago. The board deserves credit.

Also, on the DIDP numbers, which look terrible, they're bad but a lot of the requests should not be granted. We have students asking ICANN to do their term papers and, literally, we have face reporters from (Paper Cryptites) looking for information that they just want to use to embarrass ICANN, and it is proprietary. So it's not just one-sided that they're sitting here saying "Oh, we're going to deny everything."

Unfortunately, because they have so many of those types of requests, the legitimate ones, in my view, are being denied automatically as well. Thanks.

Wolfgang Kleinwachter: Yes, I want to thank (Ed) for the comment. You know, when I - I worked two years in the board, and in my goodbye speech in Dublin, I said the board has nothing to hide. And everything can be settled via dialogue in the (unintelligible) corporation in a constructive manner.

So I think the spirit of mutual trust is important to solve this important problem. Thank you.

Rafik Dammak: So thanks, Wolfgang. Just to have your name on the transcript. Yes, (Padmini).

(Padmini Padewa):   To quickly respond to (Ed), I guess a qualitative analysis of the kind of requests that are going in would be very useful and I'd be happy to take that on because - that data analysis here. But it would be useful if I could have a

metric so as to ascertain what amounts to (unintelligible) requests and what amounts to requests which are legitimate but because of the vast non-disclosure clauses are getting excluded.

And for me, considering how new I am to this place, I can't ascertain that. So input would be very useful. Thank you.

Rafik Dammak: Yes, (Bill).

Bill Drake: Sure. Just obviously a relevant point there is aside from student term papers, as (George) noted - I mean, a lot of times, the requests would be not a procedural request - the procedures were not followed correctly, but simply, I don't like the result of a decision because it didn't suit my particular agenda. And that's where it gets a little bit fuzzy, right.

I mean, those are the cases where, you know, the substantive and the procedural aspects could be interwoven in the claim that's being made, so you would have to make a little bit of a differentiated assessment there to really see what's going on.

((Crosstalk))

Bill Drake: And (Ed) clearly has something to say in response.

(Ed Morris): That - we're talking there about the reconsideration request rather than DIDPs. I have a whole bunch of issues with the reconsideration request, but here's the good news. In the reforms coming up, Robin Gross, who's the principle author of, I believe, its Recommendation 8, Robin -- reconsideration - Recommendation 8.

Robin - she won't tell anybody this - she basically wrote 80% of it. And the reforms are going to make the reconsideration process one that works. So the problems in the - we can talk about the problems in the past, but I'm not

sure they're really relevant because Robin has fixed them for us going into the future.

Man: (Unintelligible).

(George): Yes. Okay, yes, thank you, (Bill) and thank you, (Ed). I would say that there have been a number of cases -- a small number of cases -- where it was clear that I, as well as other board members, would really want the effect of the reconsideration to take place. But since there was no process there, we could not do it, and that's very, very frustrating and it indicates the inadequacy of the existing situation.

And, (Ed), you're right. What's in the - the changes that are going to take place, that'll be - it'll be much better when we get to that point because we have better mechanisms for dealing with it in the future.

Rafik Dammak: Thanks, (George). Thanks, (George). And just for (unintelligible) question, do you make - difference between a request for reconsideration in DIDP?

Bill Drake: My apologies.

Rafik Dammak: You are not in your camera, (Bill). I'm just asking because you really, really went into a lot of details. So I'm - just to be sure here that you are getting the difference and why we have those different mechanism and what the purpose. Okay, I mean, anything else to add for this part?

Okay, so just to be sure, for those who are active in the committee working group and the accountability, do you think any other issues that handled by the - by that working group is important to follow up? I want, really, just to highlight the human rights and DIDP for some reason, but I guess there are other issues that was discussed. Yes, (Padmini).

(Padmini Padewa):   Yes, so I want it clear that the DIDP reform and the reconsideration reform has to be separate. For DIDP, I would propose having a better appeal mechanism, but we need to deliberate and evaluate a new set of recommendations for the reconsideration process - just a suggestion - because the kind of things that are going on there are entirely different. Thank you.

Rafik Dammak: Okay, thanks, (Padmini). Yes, (Ed).

(Ed Morris):   So, (Rafik), going forward on accountability, there are going to be six areas we're going to be looking at in Work Stream 2. We need representation on all six and we need as many people to get involved as we can. So in addition to transparency, in addition to - what else are we doing here - the human rights tract, we also have staff accountability, which is a huge issue for us.

We have SO/AC accountability which we have to make sure that isn't used to constrain our freedom and independence. We - what else do we have, Robin.

Robin Gross: (Unintelligible).

(Ed Morris):   The - with the roll-apart policy within transparency, but we have to - are looking at the ombudsman office. And diversity is another sub-team. So anyone who has an interest in any of these, please sign up because one of the things that Robin and I get really upset about in the last go-around is when particular interest in ICANN have a certain point of view they wish to more or less impose on us.

They use a thing called a straw poll. What that means is they alert those people in groups that have an interest in a certain question, and then they tack a particular meeting and make sure that their views are overrepresented. We haven't had enough members or participants in the groups to be able to counteract that.

So even if you've not going to be able to participate every meeting, even if you can only participate when we tweet you, please show up. We need as many bodies and names as we can on each of the six sub-groups. Thank you.

Rafik Dammak: Thanks, (Ed). We need body and brains. So - okay, so, as you said, we need more people to sign up, as we tried to do. We circulate some list; please write your name and so we will follow up with that. I think we are done with accountability, but - no I'm confident that we'll be just one, two years of work ahead, but...

(Ed Morris): Just for information, one thing I want to correct, people are hearing accountability is done. Best guess -- we're maybe 25 to 30% of the way through. I mean, there's - we haven't even scratched the surface.

We have to see the legal language, we have to approve the legal language we got Work Stream 2. I think Wolfgang's (unintelligible) had mentioned Work Stream 3 at some point may be coming up. This is never going to end, and when it leaves here, it goes through the NCIA, it may go to congress.

So for those - and particularly in council, we have folks say, "Well, we can get into the real work now." Accountability is going to be with us for some time and, I would argue, probably should be. Thank you.

Rafik Dammak: Thanks, (Ed). So it's a good time to join such fun. I put a agenda item, if we can talk about the global public interest discussion. We have less than 30 minutes and we have some admin matters discussion, if it's possible.

But for public interest, is there anyone who want to say something? Personally, I couldn't attend the session yesterday, but whoever attended has some (unintelligible) to share with us. Here, it will be really helpful.

Yes, (Marillia)

(Marillia Michelle): Hi, this is (Marillia Michelle) speaking. ICANN make - may be a brief overview of how the session was for those that could not attend. And the session was organized by (Nora Bosita), who is the Vice-President for I don't - I already forget the name of her...

Man: Public Responsibility.

(Marillia Michelle): Public Responsibility -- that's it. And so she's responsible for this area and the discussion with regards to public interest has fault under the scope of her responsibilities. And for some time now, we have - she has engaged with the discussions with the NCSG, with the GNSO, try to carve out the details and the scope of the public interest in a way that is more workable.

There was a panel - a strategy panel some time ago that produced the documents on responsibility. And one of the things in the strategy panel outcome document was the definition of public interest because very broad and I feel that some people in the community feel that it's not useful to the discussions that we are having in many policies because it's too broad to be useful.

So yesterday, it was a discussion in which people have reported back on how the public interest is being discussed, not only in ICANN, but there was someone speaking for (unintelligible) reporting that with regards to how (unintelligible) has (unintelligible) or the sessions that were conducted on public interest from the past. I gave an overview with regards to a session that (Bill) organized in the last IGF on quick going to net resources and the public interest.

And then there was an open mic part, and most of the session was an open-mic session. And we heard a very interesting comments from different part of the community -- some of them more supportive of the idea that we should move forward and more neatly define the concept and many of them saying

that they are concerned that public interest can be used for very different purpose inside your organization and it has been used for different purposes. So it's not very useful -- the language -- and we also heard from Legal pointing out the public interest as part of the bylaws, so it's something that in one way or another, we are already dealing with.

So it's for - it was more like an informative session, and I think that the discussion will continue. I don't see the end of the tunnel there, but it's definitely on the table, not only here in ICANN but if we look around in the Internet Governance ecosystem, there are several organizations and processes that are struggling with the idea of public interest that have definitely considered that this idea is necessary, it is part of several documents that have been approved or put forward.

We simply suggest (unintelligible) document. It has been an idea circulated in sub-security discussions as well and for those that are following. So definitely is on the table. Thank you.

Rafik Dammak: Thanks, (Marillia). Yes, (unintelligible).

(Cassie Carmen): (Cassie Carmen). (Marillia), I wanted to ask you a question. I only caught the end of the public interest section. Do you see a danger in going down the path of trying to define the public interest in this particular organization?

(Marillia Michelle): Well, probably to be nice to hear different people because I think that our - NCUC has different views on that. My particular view is that it will be hard to take it off the table right now because we do have the expression, not only in the bylaws, but in the accountability discussions. We have the public interest commitments.

So the exception is there. What we are going to do with that is we can either choose to not do anything -- not define in any way. And as - I personally

believe that this is not a good solution because if the expression is the - and we do not anchor it anything, then it is more prone to be captured.

I do think that if we anchor it in something big -- in a broader definition or some high-level principles at least - we have the opportunity. You know, when something related to the public interest comes, we can kind of measure what we are discussing against this high-level definition or these high-level principles. And if it's not conducive to this broad goal, then (unintelligible) okay, what you were discussing; it's not really a - related to the public interest.

So narrowing down in the sense of anchoring it something that is high-level and positive, I think that it would be a good thing. But I do know that we have different positions on that, so maybe it would be nice to hear from others.

Rafik Dammak: Thanks, (Marillia). I think we have (Bill), (Stephanie). Okay, and I will check - yes, (Bill).

Bill Drake: Thanks. So (Marillia) made reference to the workshop I organized at the IGF on this, which was actually quite a vibrant discussion. And the basic idea behind that was simply that this term is, in fact, being used as a standard of behavior and being invoked in inter-governmental treaties, in multi-stakeholder statements framing the bylaws of ICANN. I mean, it's all over the place, and yet, we have no concept of what we're talking about.

I recognize that there are those who feel that any discussion of this is a complete waste of time. We have very different views within this community. We've had this - we've gone back and forth, back and forth without any resolution, and I'm quite sure that we will never persuade each other.

So therefore, I personally don't have a great expectation that NCUC can participate in this discussion in any particularly coherent way as a group. I will say others will do it. At Large will do it.

The European At Large group have felt that I - I've tossed points to try to begin discussion. They going to try and get this taken up with other parts of At Large. So there'll also undoubtedly be discussions in the CCWG.

So the thought that we won't be able to weigh in collectively is, I think, a little bit of a pity, but it's - that's fine. We can - we have a lot of individual views and we'll participate as individuals and try to engage there as appropriate. And that seems like a reasonable solution under the circumstances, so I'm not too concerned about it.

I will say - and I've said this before - (unintelligible) many times Milton and I have argued about those fears. I don't understand the argument that leaving something vague makes it less subject to capture; I just don't get that. I think having it vague is precisely what makes it subject to capture.

But, you know, if people are convinced that any effort to - even I - it doesn't have to be a precise definition, but at least to bind the terrain of discussion and discourse and start to say what kinds of things, generally, may just be referring to and what kinds of things, generally, is it not referring to, is there consensus across elements of the community at that level, at least? I think that would have been useful, but if we can't have that conversation here because it's - because the composition of either NCUC or ICANN, generally, that's fine.

But there will be other parts of the community that are going to try and take it forward.

Rafik Dammak: Okay, thanks, (Bill). (Stephanie).

(Stephanie Perrin): (Stephanie Perrin) for the record. Thank you and I come in here as my role as peacemaker between (Bill) and Milton. When I - no, take too long, eh?

When I arrived at ICANN, I - my background, I did a bit of standard stuff where they tried to nail down the definitions at the beginning of the standards-making process, and I thought what is wrong with this organization that they leave these definitions fuzzy such as domain name, for instance; what is it? And then I realized, of course, we really lose if we define something because it can be defined in terms that are going to kill us.

On the other hand, I do agree with (Bill) that we're still getting killed. So my answer to this - and I - and forgive me for those who've heard me go on, and on, and on about it - I think we need an analytical framework to evaluate what the public interest is in each instance. And in government, you have a thing called a regulatory impact assessment.

And I do understand that every impact assessment, be it privacy impacts, human rights impacts, can be turned into a meaningless exercise - risk impact assessment, I - you know. However, I think it's better because each situation will have different criteria that ought to be evaluated, and I think we've got more chance of winning. So I would urge people to consider coming up with a framework rather than a definition.

The definition can be something that is broad enough to allow for that evaluation in each particular instance, and it also gives us the chance to reargue the evaluation at every time something comes up for automatic review. Thanks.

Rafik Dammak: Okay, thanks, (Stephanie), just check. So I think (Ed) and Milton, you want to speak. So, (Ed).

(Ed Morris): Okay, thanks, (Rafik). For the record, I don't believe there is any such thing as a public interest. If you get into (unintelligible) theory, start looking at things like (unintelligible) and possibility theorems, we can do algorithms and I can show you it does not exist, but it does in ICANN. Paragraph 51 of

Recommend 1 of the Accountability Reform says we are going to develop a definition of global public interest.

The good news is we have also managed to get in there that we're going to do this by BUMP -- the bottom-up multi-stakeholder process. So we're going to develop it ourselves; it's not going to be imposed upon us as whereas once, more or less, proposed. I have to agree with (Bill); I would like to have - if we're going to do this thing which is impossible, I'd like to actually have a more confined, more concrete definition than I know some of you would like.

And the reason for this is if we have a more general, broad definition, we're likely going to get killed as we try to apply it to policy. So I'd like that they have something that's knowable, known, that we can rely upon as we try to develop policies here within ICANN, if we're going to do it at all, which I wish we wouldn't.

Rafik Dammak: Okay, thanks, (Ed). So we have Milton, (Matt), and (Gangesh). So, yes.

(Ed Morris): So, really, I thought that we had already answered this question and people are just not looking at the answer. And that is indeed BUMP, okay. There is no definition of the public interest that will apply clearly and unambiguously to any situation.

And so the way we work that out is that we have our bottom-up multi-stakeholder process where everybody who participates has a voice and they compromise and they become aware of the perspectives of the other stakeholders and they come up with some policy that reflects the tradeoffs and achieves parietal optimality, since we're talking political economy here, in theory, among the stakeholder groups. So that is the answer.

And working on the framework will not do anything except divert a lot of attention away from actual policy-making into this rat-hole of a definitional problem, which can never be solved. So why does it - you know, why do we

get exercised about this? It's simply because there - the vague versus the - the specific definition is indeed a problem.

The vaguer the definition, the more likely - the more discretion the regulatory process has, right. And that's - that was deliberate in the, let's say, the communications act of the United States where we say, "Hey, here's a specialized regulatory agency; go out and do what you think is in the public interest" -- that deliberate granting of broad discretionary powers. So the only definition of the public interest I would accept within the ICANN context is the mission statement.

We say it is in the interest of the public -- globally and generally and for all time -- to not have ICANN regulate content, to focus on its actual coordination mission of the (DNS). Those - all of those things in the mission statement are the public interest constraints that we should fight and everything else about the definition is just BUMP.

It's - I love that acronym -- BUMP. BUMP, BUMP, policy process.

Rafik Dammak: Okay, so we have (Matt), (Gangesh), and (Dave). And just I'm checking for time. So we have 30 minutes left in this session. So yes, (Matt).

So you have all time to speak.

(Matt):   I love this discussion because we've had it so many times before, but it is an important one to have yet again. I think that the reality is that it may not be desirable to define public interest, but it is most likely a necessity and to define it in some form or another. Just to give you an example, I mean, (Ed) was talking about the accountability report and the charter for the accountability proposal that we're talking about at the moment, the board can, if it's their wish - and hopefully it won't - refuse the recommendations based on their interpretation of global public interest.

So that's - that is a dilemma. I mean, there is no doubt about it. Hopefully that won't occur.

So from the perspective of - you know, from the perspective of our interests, I mean, I've heard a lot since I've been in ICANN about the - that using the global public interest is not a valid reason for the board to stop something. Well if we don't think that that's a valid reason for the board to stop something, then surely we should put some framework or definition around it so that we can parameter that global public interest rationale for refusing the board - for the board refusing something. Thanks.

Rafik Dammak: Thanks, (Matt). (Gangesh).

(Gangesh):   Yes, hi, this is (Gangesh). So from the discussions I've been following since the IGF and (unintelligible) and what has been discussed today, while it is - there are two concerns. One is the aspirational idea of public interest where what you said, like - was talking about, where ICANN is looking at it in a very broad context.

But there are certain criteria's like public interest criteria requirements and gTLD application. And so where there are specific references to, like, what (Matt) just said, so there, you might want to actually try and define or at least give markers as to what you would need to evaluate that criteria. So maybe this could go two ways.

One is to have a broad vision or a broad idea of it -- an aspirational idea -- and the other is what (Stephanie) was also saying -- take specific instances where they have been used and the panel has, I think, made a list of all the circumstances where public interest comes into the ICANN universe. Look at that and then come up with ones where each of these contexts will have an understanding of what it is, whether it's with our gTLD policy or with the public interest comments and their contract.

And something we could borrow from is - if you look at international investment law, there's a public interest - global public interest idea there. Or if you look at international alignment law, there's the idea of common goals in the global public interest area as well.

Rafik Dammak: Okay. I see (unintelligible) from there. So we have (Dave), (Bill), and (Brett). Yes, (Dave).

David Cake: Thank you. David Cake speaking.

Rafik Dammak: No, Dave...

David Cake: The - so the process that ICANN are proposing is not to develop a definition of the public interest; it's to develop a public interest framework. What a framework might mean may very well - and we should get involved and argue this - you know, good guidelines on things like when you can use - when it is appropriate to use a public interest argument, how public interest arguments interact with ICANN's remit, in which I'm sure we should very strongly argue that, you know, getting into content no matter the public interest case is still outside ICANN's remit and it's still in the public interest for ICANN to keep to its remit.

And there may be - they're trying to have a definition that includes all the public interest commitments. Some situations are very different. Sometimes you may want to do some sort of economic analysis or something and it may be good to encourage ICANN to do that from time to time.

But I don't think we should be looking for a - I think we should be getting into this process; we shouldn't be looking for it to end up in our definition of the public interest. We should be looking for clear rules on what forms of the public interest arguments are applicable for ICANN and which ones are not. And I think, given the number of ways in which public interests are already embedded in ICANN, we are far better to have - you know, use an excuse to

care - use this process to carefully delineate how it will be used rather than - (unintelligible) percent at the end of which, we can review how ICANN uses it.

And I personally hope that we will rename public interest commitments to just some commitments because my statement has nothing to do with the public interest. Thanks.

Rafik Dammak: Okay, thanks, David. (Bill) and then (Brett).

Bill Drake: Just briefly, first, the point that David's making about framework is exactly what I was trying to say in that you're trying to at least bound the areas of agreement and disagreement about when this would even be invoked and so on. I think that'd be useful.

If you do have a somewhat bounded conception that you're able to achieve some broad consensus on, one could indeed imagine going back and saying "Well, then, the PICs are inappropriately labeled", right. But if you don't have any bounded agreement, then you have no basis to do that. But I just want to real quickly draw in circle - parallel before we go to lunch.

Ten years ago in the (unintelligible), there was no agreement about what internet governance was. And because nobody knew what the term meant, you had people from governments running around saying "governance means us" and you have the ITU running around saying "governance means us" and you had people who came from the ICANN world saying, "no, governance means ICANN", and then you have some people from the technical community saying, "no, there's no such thing as governance; it's a misnomer" and so on.

By having adopted a definition through the wigging that was broad enough to entail the range of different options but made it clear that it wasn't about any specific actor - that it was a process - we were able to change the dynamics of the negotiations a lot and to, essentially, take the - take all of the focus off

of government actions, ITU action, ICANN action as part of the broader framework. So as you (unintelligible) sometimes in trying to do that, but to keep discourses from being captured, being clear - a little bit clearer can be helpful.

Rafik Dammak: Thanks, (Bill). (Brett).

(Brett): Yes. Thanks. I don't have a whole lot to say, just to add more complications to this debate, which is if you were at the GAC session yesterday, you will see quite clearly from the statements of a couple of governments that, from their perspective, the only institutions that properly can understand and address global public interest are governments. And if you leave it open, it's not just the board's interpretation of global public interest that you have to be concerned about; it's also the GACs and (unintelligible) governments.

They've made this quite clear through the CCWG; a number of GAC representatives have made this point as well. So I just want to say that there are a lot of moving parts here. There are very strong opinions on all sides.

But I think leaving it open leaves a great deal of unpredictability. And the more you constrain the predictability, the better you're going to be.

Rafik Dammak: Okay. So thanks, (Brett) for brief and straight to the point. (Kathy) , you - I'm cutting the queue here, so you will have the last word on this issue.

Kathy Kleinman: I get the last word, okay.

Rafik Dammak: Yes, of course.

Kathy Kleinman: No, it's just warning that we have an awful lot on our plates right now. And so, you know, just making, you know, my little list, you know, human rights and intellectual property and free speech and freedom of expression protection,

data protection, the who is to adding the public interest to this is, you know - and everything else we're doing.

This is an enormous amount. We're going to be stretched really thing. If there's any way - you know, you've convinced me; good, let's have the discussion.

But do we have to have it all at once or is there a way to queue it up so that we can be there together because, otherwise, we're going to be stretching pretty thin.

Man: Actually, it all has to be solved in the next month; I heard that yesterday.

Kathy Kleinman: The next month. How about the next two minutes?

Rafik Dammak: Okay, thanks. Okay, we have five minutes left in this meeting. I know that people want to go to lunch and then we have the NCSG session at 2:00 p.m.

So, just - we will wrap up here. I don't think we can really go through the third agenda items, which is about administration matters and to give an update from the executive committee.

Bill Drake: (Unintelligible).

Rafik Dammak: Oh, yes, (Bill) wanted to speak about the nom com.

Bill Drake: Can I only just say - before we go that the nominating committee on which I am NCUC's representative has been meeting intensively for the past couple of days and there is a bit less than two weeks left to submit candidates. We still have a shortage, I believe, from the way things look, of people from developing countries, a woman, a (unintelligible) society-type people who are going to be applying.

The deadline is the 20 of March. Remember, there are three board seats open -- (Shareen's), (Bruno's), and (Erica's). There is the non-voting NCA slot in the GNSO council.

There's two slots in At Large. There's one in ccNSO. So if we know anybody who would be qualified for these positions, please encourage them to get engaged. And also, there will be a public NomCom meeting tomorrow morning.

And if anybody - and there have been a number of issues coming up in this meeting. I raised the concern about the Due Diligence process that the staff undergoes in a quite secretive manner to review people's legal backgrounds, and I'm trying to get that made a more public thing. So if people have any concerns, would like to come to the public session, it'd be really great to have you there. Thank you.

Rafik Dammak: Okay, thanks, (Bill). So regarding executive committee activities, I don't think we have really fair time to do so. I guess, with the executive committee, we'll prepare some reports and send it to the NCUCs to share what was done the last three months and - since we started as a new executive committee. So we can move here maybe just closing remarks, any other business.

We just have two minutes. So let me take this, I mean, to speak. Thanks, everyone, for attending for - I mean, since 9:30. I know that can be challenging.

We have only a really short break. Thanks, really, for attending. Please share your comment about how we should handle this session.

I know there are different expectations to answer. We'll try to balance. It's never easy, trust me. And just a term of administrative matter, don't forget that we have an NCSG session in just one hour and I think it will be in the same room.

So please go enjoy your lunch but don't forget to join us for the NCSG session. So thanks again. Yes.

END