

**Transcript ICANN Marrakech
Saturday, 05 March 2016
NCUC Outreach Committee**

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

The recordings and transcriptions of the calls are posted on the GNSO Master

Milton Mueller: Welcome everybody. (Dee), does it need to hear me talk before it comes on? You just need this for the Adobe Connect. Okay. Yes. You can all hear me. There's a lot of other meetings and people are straggling in. Oh, there he is. Come on in.

Man: Were you talking about me Milton?

Milton Mueller: I am now. Where'd you...

((Crosstalk))

Milton Mueller: There's a baseball player that you look just like. Except you don't do baseball do you? (Unintelligible). All right. We will get started. Probably a few other people will be straggling in as we go on.

But welcome. This is the Non-Commercial Users Constituency's Outreach Event. And how many of you is this your first exposure to NCUC? Very good. We actually have some novices...

Man: (Unintelligible). I'm sorry.

Milton Mueller: Really?

Man: (Unintelligible).

Milton Mueller: Thank you. Well you know who we are anyway and what we do.

Woman: I'm sorry. (Unintelligible). Please use the microphone when speaking (unintelligible).

Milton Mueller: Yes. We are dominated and oppressed by technology. And we must bend our practices to the needs of Adobe Connect, not the other way around. Just get that clear. Okay? This is one of the first things you have to learn about ICANN.

All right. So who are we? What is the Non-Commercial Users Constituency? Well, we are part of the GNSO, which is the Generic Names Supporting Organization. And we as a whole, the GNSO makes policy for domain names.

And in order to make the policy making process more representative and balanced, the GNSO is divided up into different stakeholder groups. There's a Non-Commercial Stakeholder Group and there is a Commercial Stakeholders Group. And then there's a Contracted Parties, which has two different stakeholder groups, one for registries and registrars.

So basically you have here the industry suppliers and you have the domain name users. And we have a balanced mechanism of formulating policy where we're given a certain amount of weight.

And in order to do that, we have to organize ourselves as a constituency. And if any of you get confused about this complicated structure, we can answer questions about for example the difference between a constituency

and a stakeholder group, one of the more fascinating topics that we love to discuss in ICANN. Or we could talk about the houses.

But fundamentally just think of these as bunch of different stakeholders from different perspectives whose voting power is balanced in the formulation of policy within the GNSO.

Now there is no cost to join the NCUC. We welcome you. The only thing is we do an eligibility check. We want to find out if you really are a non-commercial stakeholder as opposed to something else; for example, a commercial stakeholder or a supplier because we don't want duplicate representation. If you're a registry, you should go into the Registry Stakeholder Group and not mess around with us.

Not that we don't want to dialog with the registries but we don't want people who are working for registries to represent themselves as academics, non-commercial users and so on.

So we have this Web site here and you can find out a lot more about us by going to that at any time. But we have some of the key people from the constituency here.

Unfortunately our current Chairman, Rafik, is arriving I think later tonight. And so he couldn't be here for this meeting. But we have myself. I'm a former Chairperson. We have Robin Gross. She's a former Chairperson. We have some active members in the working groups. We have Executive Committee members; from the Asia Pacific region, Peter Green.

And we have some people who have been active in particular issues and you are members, right? Yes. So we have members. And from - and to give you an example of where are members are, you - (RT) is from the university based center on law and Internet governance. I can't remember the exact

name; Centre for Communication Governance. Center for Internet and Society in India.

(Niels) is from the very prominent NGO Article 19, which focuses on freedom of expression. (Gongesh) is also from the Centre for Communication Governance. Robin is from a group called IP Justice in San Francisco. Matt Shears is from the Center for Democracy and Technology, which is sort of in Washington. (Brett) is from the Heritage Foundation.

And so you get an idea. I'm from Georgia Institute of Technology, a university based organization. So we're education organizations, we're human rights groups, we are research groups, we are education, we are think tanks, we are cultural groups and development groups, those kinds of things. So any really basic questions about who we are and what we're doing before we go on? No? Okay.

Well, here's our agenda today. So we're going to talk about some of the issues that we're involved in. And these issues can get complicated. Not that they're all that hard to understand but they are detailed and there's lots of acronyms. So if you don't understand anything, nobody will mind if you interrupt and ask a question.

For example, what is an IFO, et cetera? If somebody uses an acronym - an unauthorized acronym when they haven't defined it, then you stop us and you ask a question. So yes.

Man: What's an IFO?

Milton Mueller: An IANA functions operator. And in fact...

Man: (Unintelligible).

Milton Mueller: ...that's the next topic and Matt is going to talk to you about that.

Man: (Unintelligible).

Milton Mueller: Yes, yes.

Man: So I have a diagram of the IANA functions here. If you want to stand up here and point to things, you're welcome to. If you want to sit there and talk.

Matthew Shears: I'll sit here and talk if that's okay. Is that all right?

Man: Yes.

Matthew Shears: Okay. So Matthew Shears with the Center for Democracy and Technology based in...

Man: (Unintelligible).

Matthew Shears: ...that's perfect. So we're based in Washington, D.C. I'm based in the U.K. I do global Internet policy and human rights work. So I have had the pleasure of participating in the Cross Community Working Group for IANA stewardship, which is the issue we're going to talk about right now. And also in the Cross Community Working Group on Accountability Enhancements, which is what Robin's going to touch on in a minute.

And I think you probably - I mean stop me if you have any questions as Milton said because it's easy to get way too into the details on this. But - and the weeds, so to speak. But as I think you all know, back in March of 2014 NTIA decided that it was the right time to step away from its managerial and stewardship role in the DNS.

And what that meant effectively was that for a long time the U.S. Government had been the only governmental entity involved in the domain name system. And there had been since probably the past 15 years or so considerable

concerns amongst other governments and other stakeholders that why one government as involved.

And why was it still there when we were moving into a multi stakeholder world and there were many other types of organizations where there was significantly less government engagement in the DNS space particularly in the organizations that responsible for the day-to-day management.

So this has been a - this issue of U.S. Government role has been one that's always been a little bit of a lightning rod or a little bit of a controversial issue in governance circles.

The reality is always a little bit of a debate as to how much of a role the U.S. Government actually had and how much influence it had over the domain name system. And there are different interpretations as to the degree of that control.

So the U.S. Government decided to step away. Its role was really two fold, one of which was perhaps a more challenging part of that role with this notion of its stewardship role.

In other words, the U.S. Government was there to ensure that the DNS was secure and stable and there was continuity. And that if anything went wrong, there was this knowledge that it could step in to correct whatever that wrong might have been. So for example, if ICANN had done something terribly wrong, U.S. Government could always step in.

I think it's pretty well accepted that the U.S. Government has not done that over the period of time that its been involved in the DNS. And the - so that's the stewardship side. And it's important when we come to talk about accountability issues.

Its other role was really a checkbox role. In other words, there was an - there's a contract between U.S. Government and ICANN to manage the IANA functions, which are up there. And the U.S. Government has a person who checks whether changes to the root have followed procedures. And that's effectively what happens.

So I mean to put it in a very crude way, it's a little bit like having piece of paper with a series of checks that have to be made, series of boxes and they check if the proposals for changes have actually been met and then they check the box and they make sure its followed that procedure. It's simplifying it somewhat but that's largely the administrative or largely administrative role that they had.

So when it comes to the work that's been undertaken at this transition from the U.S. Government having a central role to stepping out. That's where this community has had a significant role. Am I going to fast? Are there any - yes. You're looking concerned.

Woman: Yes.

Matthew Shears: Do you want to...

Woman: Yes. It's not like concern but I just - there was this part that was not really clear for me. When you said that if ICANN had done something terribly wrong, then the U.S. Government would step in and correct it. And what's terribly wrong? You know, that was really unclear for me, you know. It's what do you define as terribly wrong?

Matthew Shears: Well I mean for example, I'm not - for example, let's say that a particular change was being asked to be made to the root. So this would come through ICANN. ICANN had gone through the appropriate steps. The change had been submitted to the U.S. Government. And the U.S. Government realized

that it hadn't met certain series of checks or something had gone wrong in the process.

And so it sent it back to look at it again. And then there was an ensuing disagreement about how wrong this was and whether or not it could be done. Or maybe there was a situation where ICANN was trying to push something through that was clearly not in the interest of various stakeholders within the community.

So it's really a matter of - this is the reason why - this is the reason why it's a very interesting question the notion of stewardship because it's very hard to - it's pretty well recognized, as I said, that this hasn't happened. But it was a - it was a notion, an idea that were something to have happened, then the U.S. Government could have stepped in.

So actually saying what could have happened is quite difficult. But I think that the idea was that if anything was threatening the DNS and its continuity and stability and security, then the U.S. Government could have stepped in. Because effectively there's a contract and so as the ultimate arbiter, if you will, the owner of that contract with ICANN for the IANA functions, then it could have stepped in in that respect.

So when it comes to actually trying to understand how that stewardship notion gets changed in terms of the change that we're going through now and how you account for it has - is one of the biggest challenges that we had in the IANA process.

So the - I don't know how much - how long you want me to go on Milton? But that's - so when the - so when NTIA said okay, we're going to hand over - we're going to step back. We're going to hand over our role to the Global Internet Community.

So then there were two things that had to happen. And I'm shortening the process a little bit. One was that there had to be a new model or structure for the IANA functions. And that is what we were working on in the IANA Working Group.

And then the second thing was how do we account for - how do we change ICANN as a structure and make it more accountable to the community to effectively deal with the stewardship notion. So instead of the U.S. Government having a role, then it would be the community that has that kind of checking role, that stewardship role.

So the IANA functions took probably - was probably a year - well, a little less than a year to actually come up with a process and a structure for taking the - allowing the U.S. Government to step back and for the community to take over the roles the U.S. Government had in the IANA process.

And that's - that was signed off and completed - the proposal was completed back in July of 2015. Even though the proposal was completed, it wasn't handed over to the U.S. Government to review because it's waiting on the accountability part, the stewardship part that Robin's going to talk about.

And so that's why this particular meeting is so interesting and so important is because the accountability track has come to an end. We have the IANA transition proposal. And that package of the two pieces is what's going to be handed over to NTIA. And that allows - when that's implement, that allows for the transition to occur in September. I've skipped a lot Milton.

Milton Mueller: The only thing I would add maybe to clarify is that the NTIA was literally contracted with ICANN to do the IANA functions. And the basic assumption of that system was that fundamental oversight and accountability is working through the U.S. Government, which had kind of a nuclear power authority over ICANN in the sense that if it changed that contract, it could basically completely eliminate ICANN's authority over the DNS and other roots.

The only thing that Matt didn't really get into was that the IANA functions are not just about domain names. We are in the GNSO and the policy stuff that we do is fundamentally about domain names. But the IANA functions really are about three different kinds of resources, domain names, protocol numbers, port numbers and so on and IP address numbers.

And all three of these communities organized themselves separately to come up with their proposal for what they wanted. And hello Amr. This is one of our GNSO Council members.

So this is also a very important change because each of these communities now has a lot of autonomy over how they govern or oversee the way ICANN does the IANA functions. And each one of them except maybe for names can actually get rid of ICANN as the IANA functions operator and contract with somebody else if they're not satisfied with the way things are going.

I say names - it's supposed to have that authority but the proposal we got was a little bit muddy. And if you really wanted to fire ICANN, you'd have a hell of a time doing it. And it's not clear that you ever could. But I think you want to answer that.

Matthew Shears: Well just to say I think that it is a very complicated proposal. And by trying to interpret what stewardship means, we've put in place various checks and balances and various processes in this IANA proposal that is complicated but I think it's - at the end of the day, it's probably the closest we've come to being able to keep ICANN to account on the IANA side, which will be supplemented by what Robin's going to talk about.

But it's still a process that's been useful from a multi stakeholder perspective because it's been truly something that all parts of the community have contributed to.

So it really is now turning over that particular function that the U.S. Government has been involved in to this community that you are now sitting a part of. So it's quite an achievement.

Milton Mueller: It is. It's a very historic thing because basically in the past global governance was done by governments. And this is a kind of a new model that we're trying to do some kind of global governance directly through the direct participation of various stakeholders rather than through the agency of your national governments.

So I don't have any slides for Robin. Do you want me to leave that up for your part or doesn't matter. So just to introduce Robin, again, Robin is a lawyer in San Francisco. Used to be Chair of NCUC. Is very active in NCUC. And she was our representative to the Cross Community Working Group on Accountability.

And a basic tradeoff to ICANN was if we're going to transfer the IANA functions to you effectively in this new regime, you also have to make yourself more accountable across the board, not just with respect to the IANA functions. So what happened?

Robin Gross: Thank you Milton. This is Robin Gross for the record. So sort of picking up from where these guys just left off, there was some concern about the U.S. Government stepping back from this role because the way the ICANN has operated since its existence has been kind of loosey-goosey and rather unaccountable.

We've got the Board often violates the bylaws and the Articles of Organization and decisions aren't always followed properly with processes. And there's a lot of concern about whether or not Board members are doing a good job or paying attention. And once they're on the Board there hasn't been any way to remove them.

So there's been a lot of growing concern over the years about ICANN's accountability. It's been largely seen as unaccountable. And so the community has said that before this transition can happen, we need to - we need to fix some of the accountability holes at ICANN.

And so this working group was set up. And we took a look at well, what are the holes, what are the problems, what are the fixes that we need to make ICANN a more accountable organization to the users and the people who depend upon the Internet.

So it's been about - more than a year, a year and a half almost at this point. And what we did was a number of recommendations, 12 recommendations that are now before the chartering organizations to approve. And then that would go to the NTIA for their approval.

So what we said we needed, we need to create a community empowerment mechanism where the community has more power over what happens at ICANN, over decisions, over the strategy, the operational goals, these kinds of issues.

So we created this empowered community where the different stakeholders and parts of ICANN are members of the empowered community and they're going to be given rights under this new proposal. So they will have rights to remove their Board members that they appoint. They will have rights to look at budgets and strategic plans that ICANN comes up with and approve or reject those.

They will have an opportunity to have decisions over whether or not Board - to spill the entire Board for example. And we also said we need things like improvements to our existing independent review process, which is a process that we have had at ICANN for a number of years but hasn't been largely effective of where we ask the Board to sort of - or where we take the

decisions of the Board to panelists where they will make decisions about whether or not the Board followed its bylaws and acted appropriately.

And that makes - then make a recommendation back to the Board to perhaps adjust or not a certain decision. So that process has been seen as largely broken over the last few years.

So we made a number of improvements to that process broadening the scope of things, which can be brought, broadening the timeframe in which to bring issues. And that is one of the primary accountability mechanisms at ICANN. I think we've done a number of really good improvements to that particular process.

Along the same lines is the reconsideration request process at ICANN, which is sort of a lower level than the independent review process; independent meaning it goes outside of ICANN.

The reconsideration request is a reconsideration so we're asking the Board to reconsider a decision they made. Again, that process has been seen as largely not very effective over the years. So we've made a number of improvements to that process.

So again, we've got these 12 recommendations. They're now before the different supporting organizations and advisory committees to approve or not hopefully this week.

And I think by and large most people are pretty happy with the recommendations as a package. The governments weren't happy because they felt like they didn't get enough power. A number of us in NCSG including myself were concerned that they got too much power out of the proposal.

So that is sort of a remaining controversy but I don't think that it will have an enormous impact here this week. So those are some of the issues. And those are some of the fixes, the recommendations that we came up with to fix some of the accountability holes here at ICANN. Does anyone have any questions on that?

(Veni Baloa): I have a question.

Robin Gross: Yes.

(Veni Baloa): (Veni Baloa) from the Center for Internet and Society for the record. If you've gone through the stats I put up recently on reconsideration requests, and this is on the accountability group, the process is only flawed, it's almost on the verge of not being useful at all because more than 80% of the requests just get rejected outright.

I was wondering since our discussions on the thread have led to the creation of an improved IRP process. Does the reconsideration process have any relevance at all? Why do we need it in the first place? I mean it's - I don't see any which way in which influence of the Board or the staff in this regard can be reduced. So I was just wondering do you think the process has any relevance at all? Thanks.

Robin Gross: Well I think it can have enormous relevance if it's done properly. The problem is the way it's done in the past is those reconsideration requests would initially go to ICANN's legal department, the General Counsel. And they would take an initial evaluation and make a recommendation to the Board on that.

While there was a lot of concern about that because the obligation of the legal counsel is to protect the corporation, so, as you said, many of these - many of these - the vast overwhelming majority of them are just summarily denied and it's been a very broken process.

So that's one of the things that we're trying to change about that process is to take that initial evaluation out of the hands of the General Counsel who has an obligation to protect the corporation and into the hands of a more neutral minded person.

So I think it's important also because unlike the IRP, which is going to be expensive, you got to hire lawyers, there are panelists that you need to pay for. It's enormously expensive.

So the reconsideration request is sort of the first step. And then you would go to an IRP. So if you can get the problems sorted out at this easier, less expensive, less cumbersome process, I think it would be great. And I think a lot of the fixes that we've put into the process will help to hopefully get the decisions that come from the Board to be better.

There is one thing that there was nothing we could do about the reconsideration request process that - is that it's the mindset of the Board often that they have when they review these. It just seems like they're so often defensive and unwilling to accept any instance that ICANN has ever done anything wrong because I think they're afraid of liability. They're afraid of, you know, not looking good, PR, whatever.

But the problem with that is everyone now just says these processes have just been a joke and they haven't been able to be relied upon.

(Veni Baloa): Just a small comment on that. Over the years I think the people who are deciding these reconsideration requests has (gone on) - has undergone a bit of a change.

So earlier there was a reconsideration committee in 2010 I think that became the Board Governance Committee so on and so forth. Who constitutes the people who screen reconsideration requests at the outset and then throw

them out? Because I think if the nomination of the people who are supposed to be screening these requests come from the Board, then that's not really a very independent process or a process that's likely to result in proper outcomes.

Am I right? I mean so I don't know. I was thinking maybe that would be a useful point to flag in terms of (form).

Robin Gross: Does anyone else have any other questions. Milton, you ready to take it back over?

Milton Mueller: Yes, if there's no other questions about accountability. So accountability has been what's been holding up the transition essentially. We have had massive political battles between the Board and various stakeholder groups in the community.

And it has all taken longer for us to reach consensus and than anyone expected - well, I wouldn't say anyone. But it has taken longer than many people expected.

And we are actually bumping up against a pretty serious time issue in the sense that the U.S. Presidential administration is going to change this year. So whether you like it or not, the U.S. still has the final word on this transition. They have to basically approve and execute what we have proposed.

And so what we hope coming out of Marrakech is that this agreement that we've pretty much finally reached - there are some loose ends there, which we can talk about but really don't have time.

We're hoping that that goes to the NTIA. The NTIA gets consensus of the U.S. Federal Government including Congress and then it is executed. So you're at a really kind of a turning point.

Most of the issues we're talking about are pretty much settled for the time being although there is a Work Stream 2 process in which all of the issues that we didn't think were either immediate enough or agreeable enough to be solved right now have been pushed back to what we call Work Stream 2. So there are issues that newcomers could get involved in going forward.

Man: (Unintelligible).

Matthew Shears: Matthew Shears. I think it's really important to put what we're doing here in ICANN in a kind of a broader context. We talk a lot about the multi stakeholder model. And we tend to refer to it typically in spaces like the IGF where stakeholders come together and they talk about policy issues and then hopefully that results in policymakers going back home and bringing about change based on those discussions.

This is probably the most amazing example of multi stakeholder process in action what we have here. Because this is really the first - when you think about what we're trying to do, which is actually enable a government to step away from a policy process, right, that's at the core of the DNS and at the same time change the fundamental governance structure of the organization that has a significant role in the DNS as well.

So those two things are quite substantial. So when you think about other examples of what's happening in the multi stakeholders' space, they pretty much pale compared to what we're trying to achieve here and what we're hopefully going to achieve once this process completes.

And I think that's a very interesting thing to bear in mind when you consider other processes where they talk about multi (stakeholderism). This is really a - it's really multi (stakeholderism) in action and with significant implications. Thanks.

(Moma Sheep): Hi. This is (Moma Sheep) from the Center of Internet and Society. I just wanted to point out that some research CIS had done by analyzing the (.posts) on the CCWG Accountability list.

We found that almost 60% was from a single country, which is the U.S. We found that almost 90% of all the (.posts) were from Western countries. We found that exactly 90% were (male). And we also found that almost 60% are from industry and commercial stakeholders.

So I'd be interested to know how you think about the multi stakeholder model and I'd be interested to know whether you think that this is a process that is actually (bearing) each stakeholder. These are the statistics that are very preliminary example - a very preliminary research, you know, question has produced. (Just) be interested to know if you think - if you think this is capture and if not, then why?

Matthew Shears: So I think those - I think those statistics are disappointing not in the fact that they're wrong or anything but they're disappointing that they point out how we did not have enough engagement from other parts of the community perhaps.

The thing I would say though is that perhaps what also needs to be taken into account is the openness of the process and how easy it was to become involved if one wanted to.

Neither of the working groups were closed. Neither of them - there were two different categories of course in terms of members and participants. But the opportunity to engage was there.

Now there were a number of impediments to engagement. You know, the amount of time that it took, the number of emails, the number meetings, the resources to get to meetings. I mean there are significant impediments in that sense.

But in terms of the stakeholder communities being open to engagement, I think that's an important factor. I agree the numbers are somewhat disappointing.

(Moma Sheep): Just to add to that, I think - there's a difference - I think we could look at maybe incentivizing or making it easier to become a part of the processes. Merely making the process open doesn't actually enhance engagement with the process.

And I think coming from a demographic that is not white and is definitely not male, you know, there are ways in which you can actually enhance participation that go much beyond just keeping it open. So just want to make that point. Thanks.

(Veni Baloa): Yes. Just to add to that, I think a proactive role in this regard has to come from the NCUC. I don't see the Commercial Stakeholder Group exactly taking this up as a mandate. I mean (not) denying that ICANN's processes are open because, you know, they say anybody can come in within a certain time period, blah, blah, blah.

But facilitating it and making it easier for communities who have not been able to participate sort of not just passively opening the process as much as actively engaging and involving groups, you know, sort of outreaching - reaching out -- I guess, sorry -- reaching out to them strongly is a role that I think NCUC can play and we should (unintelligible).

Man: I would like to...

Milton Mueller: Yes. We - oh, go ahead. Go ahead...

Man ...to weigh in and really strongly underline this point even though I am guilty of being...

Woman: White.

Man: ...from the non-female gender and from the West and being right handed and male and all that. So I'd like to underline that opening the door is indeed not enough for transparency. It's a start but it's by no means halfway. It's an issue of language. It's an issue of resources. And we tend to think - and this might also be a bias in the West that resource always means money. But that's not true.

Resource is also cultural capital. Is knowledge of the process and (is in) the time to invest in it. And also the style of decision-making and discussion is very intense and might not be culturally appropriate or welcoming for many people. So those are definitely things that we need to keep in mind if we want to get people more involved.

Plus that ICANN is a very lawyerized environment. So where - and I think it is a very interesting example of the multi stakeholder model but you can also look at other models such as the Internet Engineering Task Force, which is much more horizontal where not everyone is locked up in constituencies.

You can also make an argument there that it's even more dominated by business and by even older American males. But it's another middle and we need to consider different ways of working on it.

And I think one of the ways by punching through this is ensuring that it's not only lawyers and it's not only technicians and that we also try to liberate ourselves from these holes where we get locked into because if you're at a lawyer conference, law is the solution to everything. You're at a technical conference, technology is the solution for everything.

If you're at a human rights NGO conference, human rights are the solution to everything. And we need to be able to also try to step back and give each other also that space to be able to look for the new solutions because the -

and also recognize that we actually do not know what we are doing because the Internet is a new thing and that we need to think about what we want this potential public space that is built on private infrastructure we want to look like.

Milton Mueller: All right. I'm going to - there's a comment from the online world. Is - did you want to read that or is - was that what you were suggesting? And I'm going to have some comments and then we're going to move on. Okay. So we have...

Nathalie Peregrine: This is Nathalie from ICANN staff for the transcript. And just reading a comment from Seth Johnson in the Adobe Connect room chat saying it's a very long comment and globalization is a part of the U.N. frame and in particular U.N. (cc 89 and 10).

There's a whole intergovernmental frame falling into place connected to TPP (on the list). These will become policy after the transition and that's not really being well noted in the IANA process.

The focus stays inside the IANA functions and not the context. Don't want to go into details here but (rights are key) to putting that frame into limits we're accustomed to.

Our future depends on fundamental rights that we've been able to assume are (effective) thus far. The (tech) community tends to think this is a chance for (unintelligible) without seeing the (inter government) that will fall into place.

He added afterwards just saying (no sir, I can't hear) so I'll put that in the mix and I'll see you all later. He's still online so you can respond.

Milton Mueller: I'm not sure how to respond to Seth. I think he has a lot of complex ideas that maybe come across better in emails than being read out in a meeting like this.

I do want to say this about the diversity issue. You know, you're preaching to a choir here. The NCUC in particular was the one that broke the barriers. I remember the very first meeting of ICANN in Berlin. There was the Intellectual Property Constituency up there and they had nothing but white male American trademark lawyers.

And they said, you know, why don't you have anybody from Asia up there. And they said there's nobody from Asia here. And I was standing right next to somebody from Korea who sort of wanted to be up there and we said, you know, here they are. And we were ignored.

We were the first group that actually had people from the Middle East, Asia, et cetera, Latin America on the GNSO Council. You have no idea how far things have come in that respect.

It's not to apologize for the way things are. But there's also an element of sort of political science realism that has to be taken into account. I mean when you're saying oh, the people from the industry are more commonly commenting on these things than the public, I mean that's political economy 101 folks.

Concentrated interest versus diffused interest to what does a domain name mean to the general public. Okay. It means maybe a \$20 a year thing and they may build a Web site on it. It may be important to them. It might be worth maybe \$5000 to them, you know.

What's it mean to VeriSign? You know, you're talking hundreds of millions of dollars. So they send full time staff people here, multiple full time staff people. Same with the trademark lawyers. Okay.

Those people have very significant economic interest in the outcomes of these debates. And so of course they are more active. They have the time. They have the resources to devote to these issues than essentially a volunteer group.

So the only way to change that is to change it. Like if you think people from India should be involved, you guys are doing a great example of fixing that problem by getting involved.

We do have a problem with the Far Eastern nations mainly because of I think language. You know, everything is in English. They have a completely different character set. They're not used to English. It's difficult for them to maybe culturally also to be as active and vocal in these meetings.

So there are all kinds of issues like that. But again, the solution is to just do it, you know. And this is the leading edge. I mean this is the most diverse group you're going to see in this framework. All right. So Matt, did you still want to jump in?

Matthew Shears: I just wanted to say I forget who gave us the challenge but yes, I think as (Moma) said, you know, this is our challenge to NCUC to bring more diversity into this process. And I think - and hopefully we will continue to be reminded of that and one could continue to act on that. Thanks.

Milton Mueller: Oh, I'd like to add one more thought to that. And that is it's not just about diversity. It's about the ideas being diverse, not just the people, okay. You can get somebody from any region in the world to say the same old junk that everybody else is saying. And you can have what I'd call tokenism, right.

What matters is when you have people who can actually articulate and mobilize the actual interest of people in these different regions and bring those into this arcane world of domain name policy and say how does - how

do those interests get translated into domain name policy. That's what we need.

We don't need, you know, cosmetic forms of diversity. We need real idea diversity and real new perspectives being brought in by this process.

(Moma Sheep): Yes. But there's an issue involvement in the first place. Then to say that well, to block the involvement by saying that well it has to be a diversity of ideas is (slightly unfair).

I mean when I joined the ICANN ecosystem, I knew next to nothing and just like (unintelligible) in Dublin there's a lot that got into my brain. So I mean just the initial involvement I think is important like people are saying here.

Milton Mueller: Yes.

Woman: (Could you use) the mic? (Unintelligible).

(Moma Sheep): Okay. Sorry. I was saying that while Milton makes a good point, it's important for people to be involved in the first place because only then will they acquire sufficient understanding to make diverse ideas and arguments the kind that (unintelligible).

I mean yes, of course, it has to be a diversity of ideas. But that will only come if there was an initial involvement enough for people to understand the issues that they're debating on. So therefore, I still feel that even if at the beginning there is token diversity, it's okay. It's not an (evil). Or if...

Milton Mueller: Well nobody wants to block that kind of diversity in the sense that - yes. For example, when we were considering who to offer support to to come to this meeting with our own funds, we definitely privileged Africa because we're in Africa.

And we want - you know, this is a better opportunity in outreach to people in Africa. But, you know, there are such things as - it's not nice to say but there are like tourists, people who come into these situations just to get like a free trip, right. And then you never see them again. And they never contribute anything.

So yes, we need these initial exposures and we need to take changes on people and we need to - we need to, what do you say, valorize diversity in those initial choices. But we also need people who follow up and who actually have something to contribute.

(Moma Sheep): So yes. I agree with what you said but I have only one comment with regard to funding people coming from Africa and they end up for example coming for tourism or whatever. It's how you choose them. So it's - if this happened in the past, so I think it's you basically chose the wrong people.

And you did not - because definitely there are the right people there. And if you outreach to them and you're able to get them then yes. They are definitely - but if this happened, it's the choice. It's how you choose the people.

Milton Mueller: Well, there's uncertainty. You have to admit there's - you don't know. When you're - when the new people are coming into an organization, you don't know who's serious and who's not. People can look good and not end up being so good and people cannot look so good and end up being really great.

So there's no argument here. What we're doing right here right now is the kind of outreach that you're talking about where we're trying to introduce ourselves to new people and get to know these new people and provide a basis for selecting and going forward that would be more informed.

All right. So the next item on the agenda is Mr. (Niels) - (so I can) get that. Why is that not working?

(Niels): I know who I am Milton. I don't need the slide.

Milton Mueller: No, no. I just want to - there we go. Some people want to see your name in writing. There you go. Human rights.

(Niels): Hi all. I'm (Niels) and as Milton said, I work for a freedom of expression organization called Article 19. And yes, that's Article 19 of the Universal Declaration of Human Rights for freedom of expression. I'll try to go at our work here a bit from another way. So trying to not go at it from what ICANN does but what we think is important.

So I'd like to ask you and especially people who have not been here before. On what human rights do you think ICANN touches upon? What are different human rights that ICANN impacts either positively or negatively?

Woman: (Unintelligible).

(Niels): Yes. We have expression. Excellent.

Man: (Unintelligible).

(Niels): Is the (unintelligible) human rights?

Man: (Unintelligible).

Man: Liberty of conscious.

(Niels): Liberty of conscious.

Man: (Addresses).

(Niels): Yes. The distribution of IP addresses. So to get access. So...

Man: (Unintelligible).

(Niels): Equality, non-discrimination.

Man: (Freedom of association).

(Niels): Freedom of association.

Man: (Unintelligible).

((Crosstalk))

Man: ...the IANA function.

(Niels): Did you say economic and social rights?

Man: Or the IANA function (unintelligible) human rights.

(Niels): So there are many different ways that ICANN can impact human rights. So something that we did not mention and I'm a bit surprised because that's one that gets called out mostly as one of the first is the right to privacy. You can also think about the right to security with DNSSEC due process.

And so we are right now what ICANN has been doing is that it has been reactive on these issues. So the Whois database for instance is a very - is a very big thing where when you register a Web site if you do not set up a privacy proxy, your name and address is publicly available for people.

Now you can imagine how this can impact a blogger but also how this can impact for harassment if you write about something where if you're an - if you're an NGO.

And for a lot of people who I checked and talked about this for the first time, I simply did a Whois lookup and it showed their personal address because many organizations start by just one person thinking I'm going to do this and after that they never change their Web site anymore. They don't update their information. And then all of a sudden their home address, their home telephone number is on there.

So there has been a lot of discussions about this and the Whois review has been going on for a long time. But right now building on I think 16 years of the time that NCUC exists, we have the opportunity to set a positive human rights framework to ensure that new decisions are not having an adverse impact on human rights.

And we managed to do this with joint efforts of the non-commercials but in collaboration with other constituencies to make a human rights commitment part of the transition that Robin just - Robin and Matt just talked about.

So right now if the proposal gets adopted here, we have one year to develop a framework of interpretation for human rights within ICANN, which is a - which is a tremendous opportunity because we have been saying that the Internet is related to human rights since the World Summit on Internet Societies in 2003.

And then it was repeated in the U.N. General Assembly. Human rights online should be protected as human rights online but also in multi stakeholder (forra) such as NETmundial.

It has been said that Global Internet Governance should be based on human rights principles. But what does it actually mean? We do not know yet. And that is something that we can work on here, that we can shape to really see what it concretely means.

And one of the first steps of that would be make a proper human rights impact assessment. Because we have some idea that ICANN relates to freedom of expression, economic and social rights.

But before we come up with a framework, we need to understand what it actually is and how it impacts the different people and also ensure that it doesn't have a cultural bias. So different people need to have a look at it from different parts of the community and also from different parts of the world.

So in order to bring this work forward, we also of course have the Cross Community Working Group and its instruments. But we also have the Cross Community Working Party on ICANN's Corporate and Social Responsibility to Respect Human Rights. I know. It's a consensus title. I'm sorry for that. You can say Cross Community Working Party on human rights from now on. That's okay.

And we got two sessions this week. And this is a simple advice that I would like to give to the newcomers because ICANN can be really quite overwhelming with people who have been here a long time. It seems that everybody already knows each other and you feel a bit lost.

And you think that's interesting but that might be interesting as well, that might be relevant. But maybe just pick one or maybe two subtopics and try to follow that through the week.

And if you see a few people that you see them at several meetings, just tag onto them and tell them tell me a bit more about it. Because then people are actually pretty happy to talk and explain a bit. And that will then give you a much friendlier entrance to ICANN than just trying to do everything because it will be way too much.

And if you choose to take one human right or other human rights, we are more than happy to assist you with getting engaged, getting you up to the reading. If you're interested in what we've already been doing, you can have a look at (icannhumanrights.net) and that is where there are a lot of documents already (listed) the work that we've been doing. And of course come to the session on Monday and what we've been doing lately. Thank you.

Milton Mueller: Okay. So (Maria) is not here. Right. But anybody able to handle the Whois stuff? I'm really not up on it. Okay.

Man: (Unintelligible).

Milton Mueller: (Monica), have you been working on the directory services at all?

(Monica): A bit but I guess I'm not at the level of Stephanie or (Maria) to talk about it. Perhaps I could just briefly say the registrar accreditation agreement is also relevant for this.

And what the core ideas of - and the goals of NCUC work would be there. So briefly speaking, privacy - right to privacy relates to these instruments in tremendous ways.

So registrar accreditation agreement, which is compulsory for any of the registrars wishing to provide service to sign with - it (sort of has) compulsory clauses that requires these registrars to keep the personal data of individuals registering domain names for extra two years after the contract has terminated simply for the purposes for law enforcement to have access to those data whenever it might need to.

So this is very complicated from the data protection perspective. And NCUC has been working on these issues and within the context also of human rights group, we've been trying to raise these issues and demonstrate how it pretty

much violates any reasonable human rights instrument on international level and especially European data protection law.

So this is one aspect and not - it doesn't stop here in a sense that all this data that is - that the individual is required to provide and it is also kept there for extra two years after the contract has ended. Most of this data is also publicly available, as (Niels) has already mentioned, to any third party that wishes to go online and look it up.

So this is even more sort of crazy talking data protection or privacy language that anyone could actually have a look upon the personal data. And as (Niels) mentioned, it involves many different complex issues such as harassment or even worse, it might lead to actual physical insecurity of people. And even, you know, sometimes death depending on which context it might arise.

So these kind of issues are Whois trouble. But I think Amr could say maybe more what actually people were doing there and how the processes internally were. But I just say that this is the substance of the problem that is there that we've been trying to raise and highlight from the data protection privacy perspective. So thank you.

Amr Elsadr: Okay. Thanks (Monica). Hi. My name's Amr. I'm one of six GNSO Councilors selected by the Non-Commercial Stakeholder Group. Does everyone here know what Whois is or - okay.

Whois is actually one of those rare things that is not an ICANN acronym. It's actually just meant to mean who is because it's supposed to help you look up who is the registrant of a domain name.

And Whois goes way back. I mean it predates ICANN and it used to basically be a way for folks used to technically operate the DNS, make sure that they can contact each other to make sure it runs smoothly.

It's - the purpose of its use has changed dramatically over the years. And okay, buy me dinner for this but you guys should read Milton's book Ruling the Root because yes, he talks a lot about that and he talks a lot about how the DNS sort of evolved from being basically just a unique identifier system to what he calls a resource identifier, right. Yes. He doesn't remember what he wrote.

Man: (Unintelligible).

Amr Elsadr: Yes. So Whois - and Whois is a (lot of fun) but let's refer to it as registry directory services. And it's basically - registration directory service, sorry. So it is basically when someone wants to sign up a domain name, part of the requirements which is imposed by the registrars, which is in turn imposed by ICANN through its contracts is for a registrant to be able - for the registrar to be able to contact a registrant.

And not just a registrar but also maintain an open and free database online that allows anyone to contact the given registrant of a domain name. And this is what's kind of unique about ICANN's governance model of the domain name system because it governs it across different jurisdictions and it does that through contracts.

So it's contracts with the registrars called a registrar accreditation agreement; contracts with the registries, the registry agreement. And this is sort of a matrix of contracts that allows them to accredit or de-accredit the contracted parties. And so registrars have to do what ICANN says.

But Whois has become a very sort of controversial topic. Its use, like I said, has evolved. And right now basically it's a means for trademark holders to be able to hunt down registrants and sort of either scare them or use different sort of processes like universal dispute resolution process to sort of hunt

down registrants and transfer domain names to them when they feel that their trademarks are being infringed or diluted.

And that really wasn't the purpose. And it's - like (Monica) mentioned, it's a nightmare from a privacy perspective. Because a lot of people don't even understand what Whois is. When they register a domain name, they don't realize their contact information is going to be floating out there in cyberspace and anyone has access to it.

There are what we call privacy proxy services. And that's the way - so a registrant can pay a little of extra money to have a privacy proxy service provider hide their identity and they sort of provide a proxy contact through the service so that registrant data is not there.

And ICANN has just gone through a policy development process to accredit privacy proxy service providers so now they're also under ICANN's thumbs. Most of those are associated with registrars anyway but there are some who are independent.

In a lot of countries Web developers act as de facto privacy proxy service providers because they develop Web sites for clients and they register the domain names and they never actually transfer the domain names to their clients so they kind of act as the de facto privacy proxy provider.

And one of the things is in perhaps in countries like the U.S. you get these big trademark owners who hire lawyers to register their domain names for them. And so they also act as de facto privacy proxy service providers. And there's nothing ICANN can do about them.

So you get the trademark interest really pushing for privacy proxy accreditation and bring them under ICANN's thumbs. But then when the same rules need to apply to them, no, they have client privilege with their

lawyers who are not going to hand over their information to ICANN or anybody else. And that's really kind of silly.

But well, anyway, like I said, Whois has been a problem for a long time. NCUC has had a long history of trying to argue for registrants' rights to privacy. You guys mentioned some of the new data protection laws. That's one of the things.

And there's what we can a thick Whois model versus thin Whois. Back in the day with legacy TLDs they're all called thin registries because they didn't require that registrars who resell domain names under their top level domains to actually transfer the Whois data to the registries.

So the Whois service would sort of be run by the registrar. And that's where all the data is. But then there was this policy called thick Whois that ended a couple of years ago that became an ICANN policy a couple of years ago. And that requires that registrars send all their Whois data to the registries.

And this is especially significant for registries like the ones who - like VeriSign who have the .com and .net just got tens of millions or hundreds - over 100 million domain registrations. And a lot of these are in countries with better data protection and privacy laws than the U.S.

But now because of this policy they have to send this data from their jurisdiction over to the U.S., which isn't exactly right. But the thing is there are loopholes in the - at least in the EU data protection directive and it's sort of - and that's something that ICANN legal has very effectively exploited.

And we're doing a legal review of this because then they said well all you really need to do to get around this law is to get the consent of the registrant. And if the registrant provides a consent, then it's okay from a legal perspective to transfer all their data to the U.S.

If the registrant doesn't provide the consent, you can offer them a privacy proxy service and that way their data stays within their jurisdiction. If the registrant doesn't accept a privacy proxy service and doesn't want to pay for it, well then you can go ahead and cancel their domain name registration.

And so these are some of the sort of things that happen with Whois. And right now there's a PDP, a policy development process that has just started. It's going to be huge. It's going to take years to resolve. It's sort of like a complete (uphaul) of the Whois system.

There are going to be questioning what data element are required for Whois. What are - we're going to revisit the purposes of what Whois serves and also how it's going to structured and sort of - yes. Sorry (Niels). Go ahead.

(Niels): Is RDAP going to be part of that?

Amr Elsadr: RDAP is in scope of this PDP. And it...

((Crosstalk))

(Niels): Sorry. I made a mistake. So it's the next generation technology...

Amr Elsadr: Yes.

(Niels): ...that is currently being standardized in the Internet Engineering Taskforce that also has access control. So that would be able to give certain people access to the Whois database and others not. That would be...

((Crosstalk))

(Niels): And I was wondering whether it was in the scope of...

Amr Elsadr: Yes. They're calling that gated access to Whois data. So that's just one of the things that we are - there is this ad hoc group that ICANN formed at the direction of the Board called the Expert Working Group on gTLD Registration Directory Services.

And then they came up with all these - it would have been great to have Stephanie here to speak to you about this. But she's also one of our Councilors and they're in the GNSO working session discussing some of the motions we're going to be voting on on Wednesday including the Accountability Cross Community Working Group's recommendations.

So yes. So there's going to be this major overhaul of Whois and we're going to be looking at in this PDP. It's going to take a couple years. It's one of the very controversial and hotly disputed issues in ICANN.

And if any of you really want to jump in the deep end, then yes, get on that. Those - my first PDP was thick Whois. I was warned not to join - not to join that as a first working group because they said if you join that, you'll never join another one.

But that wasn't the case. I actually had a lot of fun giving the Intellectual Property Constituency members a hard time on that PDP. And I think it might be interesting for some of you to sign up to the post-EWG PP, the RDS PDP and even if you want to just as observers, go ahead. But I would encourage you all to join as members and then just try to get involved.

And there's no such thing as a stupid question in ICANN. If you have questions, you should ask people who know more. If you have questions, you can even ask the working group members. It's perfectly fine.

We've got a team of four in the leadership of this working group including David Cake, who is also one of our Councilors. And you will find plenty of us there to answer questions and help if you would like to. And I'm sure I

missed a whole bunch of stuff. This stuffs been going on forever. But if there are any questions that I can answer, I would be happy to.

Man: A little thing which I would always find really insightful and I probably learned something when you're talking about - is like what are like the different interest in positions of the different ICANN stakeholders for Whois? Could you shortly draft - you mentioned something about intellectual property.

Amr Elsadr: Well, yes, sure. The intellectual property of course they want to be able to hunt down registrants who they feel are either infringing or diluting on their trademarks. And they want to do this at no cost and with no effort.

And so they really want an open Whois, which is actually part of the Affirmations of Commitment, ICANN's AOC. And that's also problematic. And that was an issue I believe on the Cross Community Working Group for ICANN's accountability because they want to sort of bring this into ICANN's bylaws and this is just a terrible idea.

When the AOC was going on, when Whois - they were referring to Whois in its historic context. There's no way Whois - the way it's being used now, there's no way it should remain open and free the way it always has been. You really need to look at the different purposes it's being used now and who's - who are the actors who are using it? They're different than they were back in the day. And so the rules should really be changed.

Some of the other actors - some of the people who are also interested in this are law enforcement agencies. And so they're always looking to make sure that this is open. They want to use that to hunt down bad actors online. It's not a good way to hunt down bad actors online. I mean it's the easiest thing to do would be to submit false information or use privacy services.

But bad actors - there have been studies on this. Privacy proxy abuse study that have been done, a lot of research and all of it is pointing towards the

direction that Whois is just a terrible tool to use if it's going to hunt down for example people who exploit children online, pornography for example, that sort of thing.

These guys are not going to put in their accurate Whois data. I mean realistically speaking that's just ridiculous. And so there's a bunch of details on Whois as well, what needs to be verified, what needs to be validated.

And basically what the registrars care about are - well there are two things. First of all they need to make sure that they can contact their clients if they need to, the registrants.

So what they do is that they check to make sure that the email addresses provided work. They don't care what your name is, not really. I mean they have to ask you for your name. They don't care what your phone number is. But they have to because it's policy and it's in the contract.

But they just care that they can reach a registrant if they need to, a registrant who is one of their clients. And this can easily be done using an email address. That does not disclose a person's name, does not disclose their physical address. It doesn't expose them to either abuse or even dangerous situations like (Monica) mentioned.

And you've got people who register domain names to set up a Web site for a battered woman's shelter. So if someone wants to find for example a spouse who's been abused domestically and they find it through the Whois data of the shelter, I mean that's pretty ridiculous.

But there's a bunch of examples that make this bad. So law enforcement agencies are another stakeholder in this. There's also registries; registries and registrars.

Registrars are usually really on our side when we have these discussions. They care about their clients. They care about the registrants. They want to make sure that they don't break any laws in their own jurisdictions.

But at the end of the day, they are regulated by ICANN. And they need to keep their accreditation. They need to keep their contracts with them. And so they sort of walk a really fine line between standing up for what they believe and what they feel is in the best interest of them as a company and their clients and also making sure that they can remain accredited and keep providing their service.

So you've got the registrars and the registrants that (unintelligible) got the trademark holders, the LEAs - I'm not sure if I left anyone out. There's the registrants obviously. But I don't know. Is there anything else I should add? Milton, I think you know way more about this than I do.

(Monica): I just wanted to...

Milton Mueller: Well not any more.

Amr Elsadr: Avri also sitting in the back.

Milton Mueller: There's a procedure. I think (Monica) you wanted to get in. I mean right now the issues are procedural in a sense that we all know what the privacy Whois trade off is about. But the RDS is a new development. There's a new twist in the debate, new stakeholders come in, the Council of Europe has gotten interested. So you guys are more - in a better position to say what's going on here, so.

(Monica): I just wanted to sort of - as Amr was saying all these things, to me occurs that citing law enforcement interest in here is kind of misleading because perhaps it would be fine if law enforcement would have access, yes. But why everybody else should have access?

So this is an interesting sort of question being raised all the time because I think it would be sort of - everybody pretty much agree that law enforcement might need to have access occasionally. But then yes, I'm saying they would have it anyway.

So but this is another question. But occasionally they might - but why this has to be totally in public for everyone. And as you were saying, I think that perhaps that is then intellectual property lawyers looking for the trademark (infringers). I wouldn't see any other reason because there are lawful procedures when law enforcement can have access.

Amr Elsadr: Yes, that's the key.

(Monica): Yes. That's (unintelligible).

Amr Elsadr: But they have to follow the lawful procedures.

(Monica): But so...

Amr Elsadr: Giving them open access to the Whois is also not necessarily the right thing to do.

(Monica): So that's what I was saying.

Amr Elsadr: Giving law enforcement agencies in foreign countries access to that is not necessarily the right thing to do.

(Monica): All I wanted to say is that there are ways for them to access the data. Yes. They do have those ways. These are the established ways. But why everybody else should have this access, why it should be publicly available that's not clear to me. This justification that law enforcement might need access is kind of - it doesn't make sense, so.

Amr Elsadr: Okay. Let me use another example of another PDP that recently ended. It's called the Translation and Transliteration of Contact Information. And this was mainly about IDNs and internationalized IDNs...

Man: (Registrations).

Amr Elsadr: Yes. Internationalized domain names. So those are domain names and top-level domains and scripts other than Latin. And this is the new thing that is emerging.

And so the thinking well if you're going to have internationalized domain names, then you should also allow for internationalized registration data, right. But then you got the trademark holders and the law enforcement agencies. We're like oh God, now they're going to have internationalized registration data services.

Now we have to translate contact information when we look it up. We don't want to do that. We want it to be translated and like ready for us to pick at. So this is - the reason I'm using this example is to point out that trademark holders, law enforcement agencies, all of them, one of the major things for them is reducing their transactions costs when they're looking up Whois.

So that's why they want it open. That's why they want it in languages that they understand. Because they don't want to have to wait to get the information. They don't want to have to pay to have someone translate the information. They want it at their fingertips. They believe they are entitled to it. And they do that on behalf of their clients.

And okay maybe I don't agree with that but this is ICANN, it is the multi stakeholder model. They are stakeholders. And they have a right to bring their issues forward. But they normally roll all over us. And we need to do what we can to just push back whenever we can.

I think this new PDP is an opportunity. We have - there's a bunch of people - oh, wait a minute. I'm going to shut up right now. Kathy's sitting there. Hi Kathy.

((Crosstalk))

Amr Elsadr: Yes. That was actually a good PDP for - yes. And so the PDP on Translation and Transliteration was asking two questions. Should internationalized registration data be translated and transliterated? And if so, who should decide who should bear the cost of this translation and transliteration?

The PDP Working Group came to the conclusion that no, it is not desirable to do this. There is no data right now out there that sort of suggests that it was - it will be necessary. It will be an added cost and burden to both contracted parties and registrants with no justifiable reason.

And so the standing policy right now is no, it is not desirable. So that was actually one win in decades of not winning for us. But on the - yes, that was a good one I guess. Thanks for mentioning that. But I'm going to shut up. Kathy's sitting here. Stephanie's sitting here. So I need to be quiet.

Kathy Kleinman: We just came in. Kathy Kleinman. Hi. I'm one of the co-founders of the Non-Commercial Users Constituency with Milton. And I apologize for being late. But Amr, what would you like us to talk about?

Amr Elsadr: (Unintelligible) talk about Whois.

Kathy Kleinman: How much time do you guys have?

Milton Mueller: We have ten minutes. And basically this is an engagement session with new people who are getting acquainted with these issues. So I think what we

need with respect to Whois is the sort of strategic perspective on what we need to be doing or what people here could contribute to to advance our goals in a nutshell.

((Crosstalk))

Man: Who's chairing? Milton, can I...

Milton Mueller: I recognize anybody who's willing to grab their mic and start speaking. Do it. Go.

Man: Thank you. I just wanted to add to the point of law enforcement access because it is - they do not always have it. And the reason they want to have this is international situations where you want to get the data from another country.

And that is not in our view always a good thing for them to have easy access because some countries the law enforcement may be wanting - well let's say (again) dissidents or some groups that don't have legal rights in the countries. Some countries say sexual minorities might have - not have the right so it would have a genuine need to protect their data.

And the reason that these law enforcement people want it is - a (big factor is) they want to have access to that kind of data that's protected by the laws of another country. And we want to have it (unintelligible).

(Monica): And I totally agree. I'm personally myself data protection background. So I wouldn't have any issues with that whatsoever. I'm just saying that it appears to me that had they really wanted, they might organize themselves these data transfers or the access to data.

Law enforcement has more powers is just crazy that it has to be public to everybody. That's what I'm saying. It's not a justification to have it totally

open. And I think that we started this discussion already back in IGF in Istanbul when Robin organized the panel along this. So this - that's where it all started to me.

I think it doesn't make any sense to say that law enforcement needs this access from their perspective. And it's not just to say that I'm not somehow being pro law enforcement by no means. I'm just trying to question what is justification, how it makes sense. And it appears to me it actually does. So that's it.

Man: It doesn't make sense except this workaround for them when they cannot get the legal access they want so they're using this as a ruse.

Man: (Unintelligible).

Amr Elsadr: The thing is that Whois data as a tool for law enforcement agencies is actually ineffective but byproduct of their demands to have it open is that a lot of other people who are not bad actors online get hurt. And this has been something that has been in studies like the privacy proxy. I was talking about the privacy proxy abuse study.

That study concluded that Whois is just a bad tool for a law enforcement agency. They can go after hosting providers, which are more affected. There's other ways you can actually track them down that are more effective.

So if this is an ineffective tool for law enforcement agencies but they're still asking for this open access and they don't care what happens to people who...

((Crosstalk))

Amr Elsadr: ...are - yes. So - and so that's really the issue as far as law enforcement agencies are concerned at least from my perspective.

Man: It actually is an effective tool in a situation where you're dealing with another country that does not give you what you want.

Man: (Unintelligible).

Man: Yes. They shouldn't get it. (That's protected). We agree on that. But yes...

Man: (Unintelligible).

Man: ...yes.

Stephanie Perrin: Can I jump in here? It's Stephanie Perrin. And I see my name up there and I do apologize for being late. We were at a GNSO meeting.

I think there's several things that are important here. And you've probably already said them. But just in case you haven't. There's three key privacy issues speaking as a privacy person who came into this late.

Number 1 is the data that is actually collected under the registration accreditation agreement, the data that is released in the Whois document, the data that is retained by the registrars because it's dictated in the registrar's accreditation agreement and the data that is escrowed basically for law enforcement purposes.

There are other good purposes like protecting the consumer, the end user, the registrant. But bigger than that is also that it's escrowed for other purposes. So when we look at this whole privacy issue with respect to the Whois, we have to look at those whole ecosystem of what's happening. So that's one thing.

On the issue of law enforcement, in many countries law enforcement through the constitution is prevented from raking up data the way they do through the Whois. Your constitution (may protect it).

We just had in Canada for instance where I'm from a Supreme Court decision that has basically stopped a 17 year practice of getting the kind of data that is released in Whois from the (telcos). The Council of Europe has similar such protections - not the Council of Europe. I mean the Court of Justice has said same things.

So what ICANN is doing by publishing data in the Whois is basically ignoring local law - local rights law be it human rights, be it constitutional protections. Forget data protection law. For this discussion we're talking about law enforcement and due process rights.

And that applies to everybody whether they're an individual. It also covers organizations and groups and the individuals in those groups as opposed to just a person end user.

So and this is a very important issue. So we need to pick the whole thing apart. And unfortunately the way ICANN operates is we tend to take things in narrow slices. We'll have a working group looking at thick Whois. And if you start looking at Whois, you will be totally bewildered.

I'm still bewildered and I've been here three years. So here's the thick Whois thing over here. And here's the RDAP, Registration Data Access Protocol that was set up by the ITF and then brought over here and we're rolling ahead in implementing. Not the way it was planned.

And then there's another working group over here. So this is the way we operate. One of the reasons we are really reaching out to anybody who cares about privacy to get involved is so we can help cover all of these

groups because we have one gigantic working group right now in the - I call it Who 2. It's the Whois rethinking the RDS...

((Crosstalk))

Milton Mueller: But Stephanie, I want to ask you a strategic question here. When you say these things are divided up, I'm familiar with that as a tactic. It's called agenda setting. And that can be a deliberate way to make sure that you don't deal with the overall issue, that you only can look at narrow parameters of a defined issue. Is that happening here? And if so, how do we change that?

Stephanie Perrin: Well, yes. It is happening here. It happened to you guys way back in the first Whois groups when they divided that up into three groups. And you know better than I do the history of this.

I would say that it's happening again. I am confident we're in early days. I think we're on Meeting 4 for Who 2. And as soon as I start bringing up thick Whois, they're going to tell me that's out of scope. And there's going to be a heck of a fight.

But we also need people in the implementation groups for all of these slices that have already been carved off the poor dead animal and set up in another working group.

And we need a strategic vision at the RDS level because that's where it's really most of the policy thinking is going to be going on. We also have an excellent Chair who's going to listen to some of these arguments, which may not be the case in some of the other groups.

And then we need to coordinate and communicate with each other so that we can make sure we've got all our bases covered literally with a team on first, a team on second, a team on third, coordination, reporting.

I mean it's a pretty big job but it's very important because the Whois as a disclosure document isn't important just because your name, phone number, address are out there or your - a women's group doing health education or your religious group that is not tolerated in a country and you're being, you know, there's a risk you're going to be rounded up and removed or there's a risk your Web site is going down because you're exercising free speech.

Those are all important issues. But we're also at a more global level setting policy for the Internet. If you're not allowed any privacy on the Internet, there is a ripple effect at the very high level I would argue, and it's certainly why I'm spending so much time at ICANN, that permeates the entire Internet ecosystem.

And I think that's something that we sort of always have to keep up top and, you know, (to fuse) down to all the other arms and tentacles. And that's my ten minutes I think.

Milton Mueller: Yes. Well thank you. It's - we spent more time actually on this Whois issue. Basically we started to delve into the debate and strategizing about policy, which we do that in our formal meeting. So this is me pitching you. If you are interested (in what) you heard today, you can see that we're very engaged.

The issues are pretty important regarding the way the Internet works. And Constituency Day for NCUC is Tuesday. Tuesday morning. This is where we get down to the brass tacks of deciding, you know, what we're going to do on a particular working group and who's going to do it. And then there's the business administration stuff also.

But we hope that you would be motivated to join NCUC. You need to fill out a form. It's pretty simple. And then you get processed - vetted by our executive committees and admitted to the constituency.

And then you would be put on the mailing list and that's where the really the rubber hits the road. You would see, you know, all these debates going on. You would see the plans. You'd see the agendas that we're setting for ourselves. And you'd be able to participate in that as a member.

So the next thing that's happening here tonight in a few minutes is there's going to be a reception for a broader group of civil society stakeholders. So I would encourage you - we have so much expertise here. You know, Kathy hasn't really gotten to talk much. Stephanie came in late and had more to say than she got to say.

You - I encourage you to talk to these people at the reception. They're going to stand around I hope and stay. And...

Man: Avri.

Milton Mueller: ...Avri...

Avri Doria: (Starting) a new gTLD.

Milton Mueller: ...new gTLD stuff and Avri is a longstanding NCUC member. And so - and you can talk to the newer people too and talk about their challenges in getting involved in ICANN and so on.

So let's take a break and let's make our way to the reception and enjoy just networking and talking a bit. Thank you.

((Crosstalk))

END