
HELSINKI – ALAC and IPC Meeting
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CHERYL LANGDON-ORR: Hello, hello. Just while everyone's settling in, just to remind everyone to please state their names when speaking for transcript purposes. It's so much better being able to identify who actually said something as opposed to man, woman, man, woman. Thank you.

ALAN GREENBERG: I'm Alan Greenberg, Chair of the ALAC, and I'd like to welcome you to one of our rooms I'm tempted to say let's do a round robin [and have] everyone introduce each other and say what your interests are and that would easily use up the whole session. So what I'm going to suggest is as anyone speaks, if you're speaking for the first time, you can add one sentence to your name to explain who you are or why you're here or what your main interests are. And I'm now going to turn it over to Greg to introduce our first topic.

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GREG SHATAN:

Greg Shatan. I'm the President of the Intellectual Property Constituency and also an end user. Yes, I am. I'm also a member of the ISOC New York Chapter which I think may make me a member of a structure as well. And the first time I actually tried to join ICANN was probably back in like 2001 when I think I joined the individual group when it was back in the old days, but that didn't stick. So somehow I ended up in the IPC.

In any case, given that we have a new format for these new meetings, we thought we'd try something new and have bilateral meetings. And I think that kind of fruitful discussions between ALAC and IPC members about what we can do together here in the ICANN framework will be very helpful. Batted around a number of topics and it's always good to pick one to start because then you avoid spending several minutes talking about topics – which does not mean this is not the only or the best topic, but it is a topic about which to talk – is about compliance and the like.

I will say, certainly from the point of view of the IPC, part of what we do, part of what we're looking to protect, are the interests of consumers and avoiding fraud and deception. So in that case, we're not so far apart at all. And so I'm just going to throw the floor open for that, or I'll throw the floor to the other Chair.

ALAN GREENBERG: I'm going to take this opportunity to reveal a secret. A few people know the secret. Probably not many in this room. One or two may know it. I started in ICANN 10 years ago almost, and one of the first things I took up as a banner – because it was something that had been discussed within ALAC before I got there but no one [inaudible] anything – was a little thing called domain tasting.

If you're old enough you know about domain tasting. It was a concept by which you could buy a domain, monetize it, see if it worked, if it didn't work, throw it back, and it would cost you nothing. And people did this by the tens of millions. And the ALAC ended up initiating a PDP which addressed domain tasting. That was a collaborative effort of the ALAC and the IPC.

It was a secret. We weren't allowed to tell anyone because of all sorts of reasons, but it was a very much a collaborative effort and a very successful one. So I wouldn't mind having that happen again. That doesn't mean we agree at all times. But every once in a while our interests intersect and we really should take advantage of that. So with that, I'll open.

GREG SHATAN: This should not be a dialog between Alan and I, although Alan and I have had many good dialogs including the fact that we share another thing which may be a secret to some, is that we're

in a sense both Canadian Jews with roots in Montreal. Alan is out about it, out and proud. I'm kind of in the [inaudible] Outremont [Jon Monts de Lippe] Park, Schwartz's, and most importantly, San Viateur, not Fairmount.

ALAN GREENBERG: I think Leon wants to talk about the real subject we're here for. Leon.

LEON SANCHEZ: Thank you very much, Alan. Thank you, Greg. I'm Leon Sanchez. I'm a member of the ALAC and also a proud member of the IPC. Actually my first contact with ICANN was through the IPC and then I joined the ALAC.

Based on the meeting that we held yesterday, I think that the outcome that I got from the meeting is that at least all the involved parties in the discussion on compliance are willing to actually sit on the table and with an open-minded mindset, willing to find a solution for the common problems that were discussed yesterday.

And my experience in these years in ICANN is that the interests of both users and rights holders are not in conflict as we usually think. We have more coincidences and more common interests than differences between us. So I really applaud this initiative of

having both the ALAC and the IPC work collaboratively and openly again. And I think that I don't want to put Garth on the spot but I see he's got his tent card up anyway. He's done a lot of work in analyzing how compliance has not complied to what they are supposed to comply with. So I think it's an excellent opportunity for Garth to actually tell us a little bit more about the work you've done, Garth, because it's the main issue that we're trying to discuss here.

GARTH BRUEN:

Thank you, Leon. This is Garth Bruen from ALAC North America. And you did ask me to be here, so you're not putting me on the spot. And Greg also discussed this with me last night a little bit.

So, many of you know me. Some of you may not be aware that I teach Cybercrime at Fisher College in Boston, and this past semester I had my students collaborate on a research project. And their research project was to document how easy it is to purchase narcotics online, specifically opioids – a category of extremely powerful drugs which are usually supposed to be only under a doctor's care. And many of the drugs that were used in the research are only to be administered in a hospital. But these were all easily available through various websites. Most of them were gTLDs. Very, very few of them were ccTLDs. And 65% of

them were actually through registrars in the United States where the law actually currently prohibits this type of activity.

And the way that the law is structured in the United States – it's not even about whether or not the site actually sells and delivers a narcotic product, it's actually a violation for them to claim to be a pharmacy and offer narcotics without a prescription. That in and of itself, the representation of the website, is a violation of the law in the United States. So one would think that it should be relatively impossible for somebody to have a website in the United States, a domain name that is dealing in narcotics. But it's obviously extremely easy.

Something that's of particular interest to the IPC is the number of trademark violating domain names which were found in our study. Specifically ones that imitated well-known pharmacy brands – Walgreens and CVS were among them.

So, of course, there is a process for dealing with these trademark infringing domains. This process takes a long time, and during this period these sites continue to sell narcotics. The reason I picked narcotics is because it is probably the most obvious and egregious negative transaction that somebody can do on the Internet, the most harmful one. So one would think that enforcement would be readily available to deal with it. But the fact is that it isn't.

We've been told many times that ICANN is not the content police. And complaints about these types of sites are readily rejected by ICANN out of hand. They're not interested in dealing with them. I would say that this is not about content, this is about transactions. This is ultimately about transactions. This is a relationship that ICANN has with Internet users and consumers through its contracted parties where the transactions actually become harmful. And the fact that ICANN has not taken on a consumer-oriented agenda in terms of protecting consumers from certain harms is the real problem. And I think that we can work together to make this happen for real. Between IPC and between At-Large, we can make this truly happen and really protect people. Thank you.

GREG SHATAN:

I don't have a tent card. I'll respond briefly. I agree greatly and I think it points out how trademark infringement is often a gateway to other negative activity on the Internet because trademark represents a reputation and it represents – infringing a trademark hijacks a company's reputation and simulates trust. Doesn't stimulate, it simulates trust which is how you suck someone in. It's a gateway drug so to speak to the pharming and the phishing and the malware and the like, especially simulating a commercial transaction. So that's kind of how we're on the tip of the spear.

And I would say that looking at two other words that have gotten tossed around a lot here for various reasons – security, stability, and resiliency, is supposed to be important and the security issue more importantly, and unfortunately I don't think Jonathan Zuck is with us or David Taylor, two members of our group who are serving on the CCT Review. But the CCT – the T is there for consumer trust, and issues like the one that you're bringing up go to the heart of trust in the Internet and the ability of people to go to the Internet and not leave it with a negative experience or losing their identity or enabling transactions that – I'm not sure which is worse, to be able to buy a controlled substance over the Internet or to be fooled into thinking that you can and then having something else happen to you. So just some thoughts.

VANDA SCARTEZINI:

Okay, my name is Vanda Scartezini. I'm from different from you. I used to be President of Patent Office in Brazil, but nowadays I'm a just user. But I'd like to raise one point that is concerning me from the south part of the world. It's the possibility to domain names to lose importance because of the lack of trust of the users. And this will in the medium term allow users to get another way to get access to all these features that is the new [words].

This is not only a risk for ICANN business, is a risk for business for all of us. So we need to pay attention on the consumer trust much more than we are doing now, because we can lose all the users that we have as a business [and all] like ICANN or all lawyers around and all the registries and registrar issues because the domain because with the new gTLDs, they are feeling more uncomfortable. A lot of problems that is coming from the new gTLDs are impacting users more than used to do. And the trust they used to have maybe impact too much and maybe it's not difficult technically to go through another ways and enter into e-commerce and other issues they normally use without a domain. So there is some concern to think about and think about how we can improve consumer trust to not lose our clients. Thank you.

GREG SHATAN:

Thanks. The floor is open. We have a roaming mic here, so we will roam to you. Or a standing mic which you can stand at. Which if taken out of its stand can become a roaming mic.

ALEX DEACON:

Thank you. My name is Alex Deacon with the Motion Picture Association. I just want to make a comment about something Garth mentioned earlier. You said it's not about content, it's about transaction.

The way I look about it that it's not about content or so-called illegal content, it's about conduct. It's about illegal and unlawful conduct. That's the things that we really care about. And when we talk about illegal content or being the content police, I think that kind of muddies the water and it distracts from the real issue which is protecting consumers from illegal conduct. And that's where I think the focus should be.

GREG SHATAN: Steve?

STEVE METALITZ: Thank you. Steve Metalitz. I'm the Vice President of the IPC. Just to go back to some of the earlier comments starting with Alan's, yes, we – IPC and ALAC – have worked together on a number of issues over the years. You mentioned one. Holly and I have worked together for a long time on WHOIS issues and others.

I think it is good if we can identify another issue that we can work on together. And certainly the compliance issue could well be one of them.

It might be worth just talking a little bit about how IPC has approached this so you get an understanding of where we're coming from on it. I think compliance has probably been the one constant thread – well, it's not the one – but it's been a constant

thread through our IPC activities going back to the earliest days of ICANN. And so for example, during the regular meetings – not the Meeting B schedule here that we’re in, which by the way the advantage of this Meeting B schedule is just to make it possible to have meetings like this all the more easily. So we should do this again even after we go back into the other framework. But our norm has been to have a briefing from ICANN Compliance at every one of our IPC meetings at the ICANN meetings. And sometimes that’s a very short briefing and just kind of update of what’s happening and sometimes it gets into a little more detail to delve into current issues and so forth. We can also raise our concerns, and over the years we have done so in many, many, of these meetings.

So we’re very familiar with the compliance system and we’ve had a number of ongoing issues to discuss there. And we’ve also been very actively involved, to the extent we can be, in the negotiation of the contracts that we’re talking about ICANN doing compliance activities around. I say to the extent we can because, of course, we’ve never been in the room when these contracts are negotiated but they have been put out for public comment, the Registrar Accreditation Agreement was, the Base Registry Agreement was. The Base Registry Agreement is out even now for some amendments.

So that's another activity – and that obviously goes directly to compliance, it also goes to the issues that people have been talking about here with the kind of research that Garth and his colleagues have done and the illegal conduct that Alex mentioned – so at least it provides some framework for trying to deal with that.

So again, I think this has been something that we've been pretty continually engaged in. So if there is general agreement that this an area of common interest – which at least these initial comments seem to indicate – then we should be thinking about how we can operationalize that or is there a particular aspect of this that we can best work on together.

I'll just mention one, and this may not be the best one to work on now, but it is timely. And that is that in the Base Registry Agreement proposed amendments, there is a provision about giving ICANN the unfettered discretion to reduce fees for registries in the new gTLD environment. But it's at ICANN's sole discretion, and I know some people have suggested that maybe this would be a way to give registries incentives to be more responsive, more proactive in dealing with the kinds of abuses that we've been talking about and that they could be rewarded for that with fee reductions. It's an idea that's worth exploring.

But the other point that I think it would be interesting to talk with ALAC about is the fact that, I mean, the new gTLDs are important and as Vanda said, they do present risks and so forth that we have to be very aware of. But right now I'm guessing – and Garth, correct me if I'm wrong – he pointed out that very little of this is in the ccTLDs in his research but I bet relatively little of it is in the new gTLDs either. And that the problems remain, as they have been throughout the history of the domain name system, primarily in the legacy gTLDs. These are problems in .com and .net and .org and to some extent in some of the gTLDs that were added by ICANN in its first two rounds.

So the fact is that those agreements don't have a lot of the provisions that are in the Base Registry Agreement for the new gTLDs that can be our hook for compliance activities. If you look at the .com agreement, there's nothing in there about dealing with these issues effectively. So that might be an area that we could fruitfully discuss. There are a number of ways to approach this, but it seems if most of the problem is in .com, .net, .org, and the other legacy gTLDs, and if those are the areas where right now the compliance tools are weakest because there's so little that could be done at least at the registry level under the contracts, maybe that's an interesting area to look at and to see about what we could do together to try to change that situation

and put some real teeth into the registry agreements in the legacy environment.

So I just throw out those two examples. One is a short term one because the Base Registry Agreement is out for comment right now – in fact, just for the next two weeks I think. But the other one is obviously a longer term project. But it might be worth considering. Thanks.

GREG SHATAN: Thanks, Steve. Holly and then Paul.

HOLLY RAICHE: Thanks. First of all, I agree with Vanda. I think new gTLDs do present a particular challenge because the name is going to suggest something it may or may not do. But I think Steve is probably right that there's plenty of mischief in the existing. I know that Garth has spent a lot of time working – I'd like to say with compliance but I don't think I will – I think we need to understand what else has to happen to stop the sort of obvious mischief and the harm. And I think that that's probably the best place for this group to start, because actually this is what really does impact users. Thanks.

GREG SHATAN: Paul and then Alan.

PAUL MCGRADY: Paul McGrady. I'm one of the Counselors for the IPC on the GNSO Council, but a Washington D.C. ISOC member and only because Chicago is apparently way too small to have its own chapter. Which is like super embarrassing, right? I know.

UNIDENTIFIED MALE: Start one.

PAUL MCGRADY: There you go. Yeah, on my spare time.

We sort of have an on-ramp here between what Steve and Holly have both said, focusing on the legacy TLDs and Holly said something really important which is that we have to start thinking proactively, that all the mechanisms in this space are reactive, they're not preventative. And I really think that we're mature enough now as an organization to start thinking, "How do we prevent this?" not just how do we address it when it happens, right? And so I just wanted to capture that momentum. I think that that's really important.

And also to a certain extent I think if the new gTLD registries were here, they might say something like, "Yeah, that's part of

an equal playing field, too.” So I’m going to put the equal playing field part of the on-ramp and hope to keep building that because I think that we’ve captured something really important here. Thank you.

ALAN GREENBERG:

A couple of things. There have been some efforts in ICANN to move some of the terms of the new gTLD contracts into the legacy ones. And they have focused on, among other things, the vertical integration which clearly some of the registries wanted to see there. And I’m a little bit perturbed that we’re talking about a new Base Registry Agreement that doesn’t consider some of these leveling the playing field. And I know some of them are rights protection ones which will be considered under the Rights Protection PDP, but there are other ones that fall under the categories that we’re talking about. So I’m a little bit perturbed. I’m not quite sure what we should do about it. That’s number one.

Number two – and I’m a little bit out of date on it because the discussion I’m going to talk about happened a year plus ago – you’re no doubt aware that the ALAC has been pretty closely aligned with the GAC on the protection mechanisms on highly regulated TLD strings. And one of our issues that we have raised regularly is that on some of these TLDs and some of these

registries with virtually no protection whatsoever and strong motivations in the registry to get as many registrations that they can, that they are potential homes for a lot of problems., whether it's related to trademark abuse or spam or phishing or whatever. The answer that came back from the registry community at the time was, "We don't see that problem happening."

And that's not surprising. The statistics that the anti-phishing group and others have done on the incidence of malfeasance as it were on the traditional TLDs is things like one in 10,000 or whatever. I don't remember the exact numbers. When you apply that to the number of registrations the new TLDs had had, it's not particularly surprising we haven't seen a problem. If it's one in 10,000 and they've only had 9,000 registrations – those aren't the exact numbers – but things like that, or one in a million and they're nowhere near there, it's not surprising it's not a major problem. It's not surprising that they've even can claim they – at that point anyway – they had never had a single complaint.

But if any of these TLDs are successful – now we all know bunches of them won't be, but some of them presumably will be – and therefore we will see incidents of these things going on. And I think what we're seeing right now is just the fact that there's an awful lot more .coms than anything else. And it's not surprising that the problems are happening there. But if and

when any of the new TLDs are successful, chances are we're going to see different rules, different results.

GREG SHATAN: Thanks, Alan. Anybody else? Garth, I see your tent.

GARTH BRUEN: Thanks. I don't want to occupy the floor, but to respond to what Steve said or to confirm what Steve said, .com overshadows everything else in our research. But to Vanda's point, there are specific new gTLDs that are problem spots and they're actually easily identifiable. I mean, we can go down a list of 10 or 20 where all these issues are happening. So it's not like it's an unsolvable or it's a problem that we can't find easily. We know where it's happening. We have to talk about it and come up with a solution.

To go into what Holly asked about, is what kind of action should we be taking? I think that there's an overarching problem of – it's a structural problem – of ICANN in that ICANN is conflicted internally in terms of the way that it would enforce the rules. I mean, compliance is basically part of a business. Their business is selling domain names. It's very, very, difficult for a division to enforce its rules upon itself which end up reducing its own income. I think that this would be a problem anywhere.

Compliance really should be outside the organization. We have to figure out a way that it could be better structured, but this model is not really something which is responsive to the community in a meaningful way. They're just too tethered to the business side of things. So that's one suggestion.

There are a number of problems which are not really – I don't know if they're considered contractual or not – but one thing that I see over and over again are suggestion engines on resellers and registrar sites where you enter a domain name that you want to buy and let's say it contains a trademark string. This particular domain might not be available, but these suggestion engines will give you list of 50, 100, thousands of different possibilities containing that trademark string. Why are they even offering this as a service?

One thing that I've noticed is that there is a price differentiation in the way that they're offered. The ones that are more desirable are more expensive. And in our particular research, hydrocodonenoprescription.com was being offered for almost \$10,000 because that engine has been coded in such a way that it knows what somebody is looking for. Somebody wants to buy a domain name that says to the consumer, "You can get Hydrocodone here with no prescription. And because we know you want that, it's going to cost you." This is the kind of area that we should be addressing as well.

ALAN GREENBERG: Just out of curiosity, Garth, couldn't you go to another domain, another registrar, not ask for suggestions and just put that name in and get it for \$10?

GARTH BRUEN: Maybe. But it might be just as expensive there, and in some cases these were domain names that were already held.

YOAV KEREN: Yoav Keren from BrandShield. I want to react actually to points that you've raised. So I've been wearing two different hats regionally. Most people know me from the registrar constituency and I've been GNSO Counselor for the registrars until last year. Today I'm part of the IPC. This is our other company, the brand protection company.

And actually the two points you've raised are a little problematic. One, as much as I know ICANN – although I've been around this for 16 years in this organization – so I don't see the compliance going out of the organization. I think if we want to do anything, we need just to ask for more. I can tell you that we're not happy of how these things are working, by the way from both sides. I know registrars have problems which are legit and also from brand protection perspective. There's a lot of

issues. So definitely there's a need for pushing ICANN and making it better. I don't see anyone in ICANN taking it outside of the organization.

But on the other issue of the suggestions, I think legally and technically it's just impossible to stop that. The fact that you have a trademark registered somewhere is not known to the registrar. These things are automatic. There's just algorithms that suggest something. There's hundreds of thousands of trademarks registered around the world, may be millions. It's impossible to control that. So the registrar cannot know whether that is allowed or not. And more than that, the fact that you have a trademark in my home country Israel doesn't mean that it's protected in the U.S. So I might be able to register that domain name and operate from the U.S. and be totally legal.

So I don't think that's a solution that you can really go after. Thanks.

GARTH BRUEN:

Thank you. I have to disagree with you on a technical point. I have observed intelligence built into these suggestion engines. As an example, if I were to look for a domain name that contained Viagra, it would suggest to me domain names that contain Cialis. It knows well enough to alternate similar product names. If I put in HBO, it's going to offer me Cinemax. I know I'm

very old and that's a very old reference, but many people will get it in this room. And just because ICANN would resist the idea that compliance be moved outside the organization doesn't mean that we shouldn't look for it.

GREG SHATAN:

Just a couple of thoughts, and then I'll go to Paul and then Lori.

I've definitely seen behavior that seems to be linked either to reverse engineered versions of the TMCH that have been used as the database in order to jack up domain name prices clearly. So that's an issue. Also note, Hydrocodone is not a trademark, it's a generic name for the drug so that's not strictly speaking a trademark but it is still an example of how pricing is based on kind of in some ways on popularity of searches, but with no morality attached to it. So that's an issue.

In terms of compliance, I see compliance constantly evolving with the institution. In many ways it's better than it was. In some ways, but there's still room to grow. Maybe ICANN needs more of an Inspector General. Maybe it needs to be much more off to the side. Maybe not separate from the organization but kind of just like we have PTI being separated from ICANN but completely independent but given space and room. Maybe we need something, a model like that ultimately that takes it, that's more independent because ICANN is traditionally conflicted as to

whether it's in the business of supporting the sale of domain names or regulating the industry in a sense. I know it's not a regulator but there's obviously a lot of stuff going on that once you look past it is self-regulation because self-regulation is the barrier to greater regulation by states. And that's generally speaking one of the reasons why we do what we do here.

So in terms of thinking about where compliance could go, just like we made some more extreme suggestions in the CWG but ended up with something less extreme but accomplishing the idea of a level of independence, maybe we end up in the same way with a compliance function that cares less about whether the volume of domain name sales stays high. So I'll stop talking. I've got Paul, I've got Lori, I've got Alan. And back to Garth.

PAUL MCGRADY:

So essentially, we all know ICANN has a policy function. It has a commercial function and I won't use the M word, but I'll just say it is the only entity from which you can sign a contract to become a registry, or be accredited to become a registrar. So I mean there's a clear commercial function and that's what we're talking about in terms of its economic interest being baked into the model. There's an IANA function. And then there's a compliance function. It's the only organization I know of its size that does not have a 360 compliance department that looks not

only externally at its contracts but internally at itself, which is a huge question mark that's a separate issue maybe.

But in a world where digital archery lived for a few months, I don't think that Garth's suggestion about looking about where that compliance function should sit is all that space age, right? We've seen far more unique things in this model than taking a look at where the compliance function should sit.

So again, like the on-ramp that Steve and Holly were talking about, about making sure that we're including legacy TLDs in this, I just want us to capture that idea because I think that it's an important idea and I'd like for us to walk away with it today and really give it some thought. Thank you.

LORI SCHULMAN:

I want to echo what Paul said. I think this idea of an independent compliance function is actually really interesting and I think it would be worth talking about. I have a lot of random thoughts because there's a lot of things that have been said in the room. But with regard to the suggestions, there's a industry term for it – name spinning. And name spinning is something that trademark owners have really trying to be fighting within ICANN and when we have raised it with ICANN Compliance the response that we get – I'm not saying it's an illegitimate response, I think in many ways it is legitimate, there is no precise

language in any of the agreements that say you can't name spin. Right? So it is kind of hard if you're going to look to the four corners of a document and it's not there, what do you do?

And so then some people suggest well then you go ahead and you look at the Public Interest Commitments. But then we were just in a meeting two meetings before where there's differences of interpretation of the PICs, right? So to me the ideas – and I and Alan Grogan will attest to this, he and I have been in some intense conversations over the last year or so about this – and one of the things that I have suggested and I don't see waiting is, if we have these issues about interpretation, why do we need to wait for a next round? Why do we need to wait for anything? Why can't we get together as communities – and I think ALAC and IPC would be a great place to start some of this – is that if there are known ambiguities in current agreements then it's up to the community to clarify them and then work within the process to amend the contracts the way they amended.

Will it be easy? No. Will it be pushed back from registrars and registries? Yes. But that's the process. And so what I just find in this world, particularly now that I'm advocating for brand owners in my current function, is why we wait. When we know the problems exist today, we have interested parties – like on the name spinning side, I have privately talked to registrars who are very sensitive to the issues of consumer protection and how

do we prevent confusion and still have a viable business, because name spinning is arguably legitimate marketing. “Okay, if this doesn’t work, try this.” I mean, you go into a shoe store, one pair of shoes doesn’t fit, they’re going to offer you another pair of shoes. It is that simple and that is how registrars look at it.

On the other hand, because of the context issue, the name issue, the trademark issue, that falls into this, it’s not that simple. And I have had registrars suggest to me that there could be voluntary measures that registrars take their own lists, their own sort of trademark clearinghouses, for lack of a better word, where there could be agreements, particularly with the larger registrars to put some of these in place.

I think it’s really important and I think Alex may have even coined a term, I don’t remember, but somebody – oh, no it wasn’t, it was someone else, Alex . But the idea is this – compliance is the stick – what we want to beat people up with more or less. Voluntary practices is the carrot, right? If you act a certain way and you’re a good community member, then you don’t have to worry about compliance because you’re in a safe harbor. You’ve done something that is constructive and helpful to the community.

So I think it's really important when we talk about these issues of compliance that we talk about carrots as well as sticks, that we talk about this mesh between what can we get registrars on board with so they're not confronted with the heavier burden of a contract compliance issue.

ALAN GREENBERG:

a couple of thoughts, and I'll prefix it with I am not a lawyer, which is an unusual thing for many people in this room to be able to say. But I did earn my lawyer merit badge a long time ago, so I have just a little bit of idea.

The concept of Compliance moving outside of ICANN, I don't think is possible at all because Compliance is in the job of enforcing contracts that ICANN has signed. The concept of outsourcing somehow the investigation end, report end, and the place where you report problems to and the investigation, is something that's exceedingly viable. But regardless of whether it's inside or not, I think a large part of it comes down to reporting in such clear ways and so transparently that you can demonstrate that you are indeed doing a good job, and take really seriously when there are examples of not.

So even without moving that part out of ICANN – which would not be a bad idea – I think that has a lot of merit – there can be things done depending on how seriously you take the problem.

I'm not sure you want to compare it to digital archery. Well, no, some of you may or may not know, that name was coined to make fun of it. It was then adopted as the name, which shows the attitude of the people it was coined as a joke to make fun of a really stupid idea and it was then adopted as the name of the stupid idea which was then pushed. So I'm not sure we want to take something that we like and relate it to digital archery.

PAUL MCGRADY: My only point is that with this crowd, a seven horned, purple, polka dotted, whatever could walk in here and it wouldn't faze us. That's all. That's all I'm saying.

ALAN GREENBERG: It wouldn't faze us, but we'd line up for rides.

GREG SHATAN: We got Garth, a remote question, then Yoav.

GARTH BRUEN: Thank you. I just wanted to tell everybody that the sort of origin of suggesting that Compliance be moved outside of ICANN actually comes from Compliance itself, from their own words. Because at various times when issues have been reported to Compliance, the response has often been, "We are not experts in

X.” It’s like, we have this problem with online pharmacies that are illegal – “We are not experts in online pharmacies. Go somewhere else.” And you could just replace that with whatever illicit or illegal activity is going on. The UDRP is the best example. Let’s go way outside the organization and have this independent arbiter decide who’s right and who’s wrong, and then come back to us.

So the point at which you keep reporting things to an entity and they keep saying, “We’re not experts. We can’t deal with this.” At what point does that function become completely useless if they’re not experts? Then put it somewhere else and build it with experts.

[SCHEIN]: [inaudible][Schein], ICANN staff. We have a remote question let me read out now. “I’d be interested in reading the results of Garth’s research referenced earlier in this session. Is a link available?” Okay, we just learned that there’s a link available.

GREG SHATAN: Thanks. Yoav?

YOAV KEREN:

I don't want it to be misunderstood, I think it's a great idea to have it outside of ICANN. I just think it's going to be very hard to get there, or maybe impossible. And I don't want us to fight the wrong war and the wrong battle. And I think that the best way forward would be first to maybe outline what are the requirements, the things that we would want Compliance to do better, or to do at all? And what are our problems?

One of the offers could be, the option to resolve that is an outsider entity, maybe that's actually probably more possible to do part of those things. And that would be something more practical forward. I think if we go now to the ICANN Board and say, "Okay, our demand is take out Compliance of ICANN," I think that's going to be a very hard battle to fight and we should start from more practical ideas.

GREG SHATAN:

Holly in one second, but harking back to the CWG we talked about the issues of functional versus structural independence for PTI, and I think a greater degree of functional independence for compliance would be all to the good because it's not – unlike typical compliance functions – it's not defending the interests merely of the party to the contract which is ICANN, or should not be, but rather the interests of all stakeholders for which it stands as a proxy. Holly?

HOLLY RAICHE: I like all the ideas, and I'm just thinking we could always do a good cop/bad cop, we want Compliance completely outsourced. However, the middle road is, and it would be functional independence, it would be moving the function out to the edge. It would also be the 360 review that doesn't do and should do. I'm just thinking in terms of how do you actually structure where we want to go with this? And then getting everybody's ideas together and saying, "This is what we want and this is why." And maybe picking up some of Vanda's point, but start with .com.

GREG SHATAN: Thanks, Holly, and I think that also focuses on the idea that we should avoid this meeting becoming just a talk shop and actually have an action items/next steps. Not only will that –

UNIDENTIFIED MALE: Greg, [inaudible].

GREG SHATAN: Too late. Ted Cruz can run for President. This Canadian can, too. Now you made me lose my train of thought.

But when we come up with action items, not only will that help in the short run have something come out of this but in the long

run, it will rekindle the fruitful coordination of IPC and ALAC where we sit and it's clearly non-contracted parties and for many of us – some of us are also contracted, but not me – but in any case, I think there is a lot that can be said for that we sit closer than we sit.

And I think ultimately, working on things where we do have a lot in common can also help bridge gaps or bring closer some gaps on things where we find ourselves more kind of diametrically opposed. But in the end, in a consensus driven system, you can't be diametrically opposed in the result. You can be maybe initially but you never can be at the end. So the closer we can get on things we can get close on, the closer we can also get on things where we're not so close. And maybe I'm just a fuzzy-thinking one worlder, but I think that can help us. So we'll need to pivot relatively soon as we get through this to come to some action items and maybe some volunteers to move things forward.

I've noted that in trying to serve the IPC as its President, one of the things I have to avoid is also becoming a lead of everything that we try to do, but rather to have others take specific items forward. So that's an invitation to others to do that. As if this is worthwhile to talk about, it should be worthwhile to do, which is what made it worthwhile to talk about in the first place. So some

thoughts, and I'll stop talking now. Anybody else want to start?
Steve?

STEVE METALITZ:

Well, let's talk about a couple of action items that are potential. First of all, again, I think it's great that we are having this meeting and I think we should pledge to have a similar meeting at the next ICANN meeting if we can, even if we're back in the old silos schedule. Let's try to do that.

If we identify one or two issues that we've talked about here, none of these are issues that can be moved really quickly. But maybe if we have people who are interested in pursuing them we could get a small group of volunteers together to work online to come up with more of an action plan that could then be brought back to both groups, something realistic and on a timeframe and so forth.

The two I've heard here repeatedly, and [obviously] there have been others, too – one is finding what's the best way of getting a more independent compliance function within ICANN and whether that's structural or functional, I just think it needs more thought than certainly I've given it. There is also some history here, because as many of you recall a few years ago there was a brief and intense period of interest in the GAC in this question and the necessity of taking the compliance function out from

under what is now the Global Domains Division and making it report directly to the CEO. That I believe happened and then we just saw recently an announcement that the compliance function would continue to report to the GDD. So I don't know quite where that stands, but that's one issue. What would be a proposal and a strategy for gaining more independence for the ICANN compliance function?

A second one is, what's a proposal and a strategy for trying to bring some greater safeguards into the legacy gTLD. How do we approach the legacy gTLD issues? Obviously, we have the Registrar Accreditation Agreement. That's one tool that applies to registrations in .com, .net, .org, etc. But the equivalent like what's in the Base Registry Agreement with the Public Interest Commitments does not exist for the legacy gTLDs.

So that might be another – those agreements come up for renewal periodically and we could think about a strategy for trying to highlight those issues and seeing what would be realistic to try to get into those agreements or at least to encourage maybe with carrots rather than the stick of what's in the agreement, are there ways to encourage those registry operators to do more.

So those would be my suggestions for two topics, and if there is sufficient interest in either or both, maybe we could get small

groups working on those with representation from both sides and see if we could come up with a reasonable plan. I'm sure we're not going to come up with a reasonable plan in the next 15-20 minutes, but maybe we could get that process in place. Thanks.

GREG SHATAN: Thanks, Steve. Alan?

ALAN GREENBERG: Thank you. The two topics that Steve raised were the same ones I had written down with slightly different words. And the uniformity of contracts I think I would like to have a briefing to start with from ICANN staff, the registries, some combination, on what the impediments are to doing that and what might be done to make sure. Now, as I said, part of it is going to be under review on the protections mechanisms and that's a couple of years out. But protection mechanisms are not the only differences. So I think that's worth investigating and at least asking a question for, if nothing else, a public or private briefing at the next meeting. So I think that's a good start.

On the issue of compliance, I don't recall actually the GAC getting involved. I do recall, however, a WHOIS AoC recommendation that said it should report directly to a Board

committee. The Board chose to say it will report to the CEO, and now we have at least an interim change away from that and I have actually talked to the CEO several times on that one issue because I thought it was somewhat perturbing. He viewed it as simply a short-term expedient when he is heavily involved with the transition and doesn't know much about our compliance. And Compliance did when Akram was an interim CEO did report to him. But he felt that this was expedient and made sense. My response was, "It may be expedient and it may make sense, the optics of it are horrible. And we'll see if and when that changes."

I don't think our object is the independence of Compliance or even the independence of the compliance investigation function, which is I think the only part you could physically move outside because of the ultimate aim is to enforce contracts and those are ICANN contracts. I think the ultimate aim is a good compliance function. And if it works really well, I don't think many of us could care where it is if it works really well.

So I would think the first thing that we want to do on that one is, what kind of reporting do we want to see from Compliance to convince us and satisfy us that it is doing a good job? And I suspect that we could specify the kinds of statistics, and perhaps more than just statistics, that will give us a warmer feeling.

The last time I looked at the output, it wasn't enough to really convince me that things were going well. It was better than it had been a year before, but I would like to see an independent audit of it, for instance. I would like to see statistics that could really demonstrate that we have a compliance operation that is reacting to the things that we want them to react to.

Now, for all I know, that's happening today. I can't tell because I haven't personally submitted any requests recently. But I think we need a much higher... We talk a lot in ICANN about trust. And maybe this whole accountability thing wouldn't have come up if we trusted the Board. I think we need a higher level of trust and belief that things are going well. And whether that comes from externalizing something or simply making it work well or simply proving to us that it is working well today, I think we need a much higher level of trust in the ultimate end product.

Thank you.

GREG SHATAN: We've got Steve and then Yoav.

STEVE METALITZ: Just briefly, as usual Alan has really helped to crystallize some of these things and put them in a clear context. And I think the suggestion about getting a briefing on the impediments to

uniformity of contracts is a good one. I'm not quite sure who is best situated to do that, but let's think about that.

I said independence and we had this discussion of functional versus structural, it doesn't necessarily have to be outside of ICANN. So I guess what I was talking about was shorthand and the lens you're looking at it through is the reporting of what they're doing. I support what you're saying. I think we have to be thinking about not the quantity of reporting because, boy, do they report a lot. They generate a huge amount of reports. But there's a quality question.

And I'll just give one example. It actually came up in the meeting that we had that Bruce Tonkin convened yesterday, and that was this question of contracted parties that repeatedly get called on something and then fix it within the five-day or seven-day period, so in the statistics it shows up as a great victory for Compliance is really working. But if this is happening repeatedly, especially in the environment that we're talking about here, sometimes just a few days is enough to inflict a lot of damage.

So yes, it's certainly worth having more discussion about ways to get more meaningful reporting. But my suggestion really on the independence was, again, maybe there's some experts that we can talk to about how this is done in other organizations. Again, there's no organization quite like ICANN but there are

some similarities. And we've heard some suggestions about ways – an audit is a good idea, too. An Inspector General structure is a possibility. So maybe we just need to find some people who have greater expertise in this certainly than I do and perhaps than many of the rest of us do to give us some suggestions about ways. Because I think independence itself is an important factor. I agree with you, we want a good compliance function, but the chances of that are probably reduced so long as to the degree that Compliance is tied in with the behaviors of the companies who write the checks that make ICANN function.

So I just think it's kind of hard to... There is an independence issue that I think is pretty much bound up with quality of compliance activities.

YOAV KEREN:

Yes, I think reporting is important but there is more on the ongoing operations, and that would be probably more the sense of transparency on what they do. And maybe more with the communication with people that come from the IPC and others. I'll give an example. WHOIS inaccuracy reporting, for example. I know it from both sides and I know how much they go after the registrar to give them evidence, which is a good thing. Sometimes they're overdoing it. Like they get evidence and they

just don't understand that not everywhere is like in the U.S. There's places in the world that the address works in different ways. But I've explained that in different discussions that we had different places.

But the other thing that we've had experiences is that we had a few cases where we reported WHOIS inaccuracy and we knew for sure these were counterfeit websites that had to be taken down. It was clear these are bogus names. And we get an answer, "It was confirmed by the registrar." That's it. "Okay, can we see the...okay...what's...how?" There's no way. "Okay, can we see that?" Nothing. No reply.

So this is one of those things where it would probably be more helpful, okay maybe they did a mistake or maybe they're just not going after those registrars that are not the good players as they should and they're just leaving them up. I don't know. And this is exactly where... But this is an ongoing thing. The reporting here has nothing to do with it. This is to really show that they're doing their job.

ALAN GREENBERG:

My last real interaction with Compliance was now a year and a half ago or so, but it was a domain that Garth had tried to have taken down and it was rejected saying, "No problem there." The WHOIS information pointed to a bakery in a small town in France

using a French postal code which could not exist based on the structure of French postal codes, and an e-mail address using a domain which didn't exist. So there was no way that mail was going to get through. And to Compliance's credit, when I put it under my name as a single submission and gave them fair warning it was coming – actually, I didn't give them warning it was coming – they responded pretty quickly saying the registrar has taken the domain down. And I checked and it was. A week later, it was back. And of course Compliance only checked when they got the response. They now go back and check again later on to see if it stays down. At least I'm told they do. But clearly, reporting there was not going to solve the problem because in both cases, the reporting looked okay.

When I say reporting, I'm not trying to prescribe what the form is, I'm just saying there are ways of being more transparent and open than we are and we certainly have been in the past. And even if we externalize all of the compliance functions, even if we figure out how to do the contractual part, it's still going to be funded by ICANN and ICANN has control by how much money they've put into it. So there's always going to be a linkage.

What we really want is good trusted Compliance. And I'm not proposing the way, I always have a very strong suspicion of simple answers because there are often second and third order

effects that we never predict ahead of time that come and get us.

So I'm not looking for a simple buzzword answer. I'm looking for something that can and will be trusted. You may not like it if it works against you, but we can demonstrate it's trusted.

GREG SHATAN:

Thanks, Alan. Only about 15 minutes left. I think both Steve and Alan have, as I said, kind of identified the same points that we've discussed and what we need to do is kind of set up maybe an e-mail list or some small groups from the people from each side to be on those two lists to take things forward and report back to respective organizations and then, while Hyderabad seems like a long ways away, it's not that far off so it'll give us some time to work. Cheryl?

CHERYL LANGDON-ORR:

Thanks. I like what I've heard and I think this is great that we're starting to get some way forwards and looking at declared mutualism where it can exist and benefit from working smarter not harder. And it's on that working smarter not harder that I just wanted to make another suggestion. And that is, we're talking about having some very important briefings as well as some very important dialogs with key parts of ICANN and ICANN

staff. Can we make it that we do this as a group activity instead of them having to go to three different rooms to talk to several of us? It seems that there's a certain cross interest here. There may even be wider cross community interest, but let's see if we can say, "Come and talk to all of us," and others may even join. It won't be just a good use of everyone's time, especially if we don't have a B Meeting design at the time. I'd just like you to consider that as you move forward.

GREG SHATAN:

That's a good idea and a good way to kind of get us out of the silos but at the same time not go all the way to the more one way, broad update meetings where the interests of those in the audience are so 360 that you can't actually focus on anything. So I think that a meeting where we kind of focus a little bit more would be really good.

ALAN GREENBERG:

I'm afraid I'm going to have to run in a minute even though it's not quite the end of the session. So I'd like to take the opportunity of saying thank you to Greg for initiating this because it was his idea. Thank you to the ALAC for when I presented the idea to them, I have rarely gotten so quick a response and universal saying yes. So I think it's interesting that the only agenda items we've covered are Welcomes,

Introductions, and Next Steps, and the actual subject matter we ignored completely and had a good conversation. There's probably a message there. I'm not going to try to interpret it. Maybe we don't need to have a subject next time, although my staff insists that we have agenda items and subjects. But thank you all. You can certainly continue for the next 10 minutes. I'm afraid I have to run.

GREG SHATAN:

Thank you. I probably think we would all enjoy a little time so we don't all have to run to the next place that we're going, since we managed to schedule a zero space in between. And I think we've covered some good topics and we wouldn't do justice to any further ones in the time we have remaining.

UNIDENTIFIED FEMALE:

Is there [inaudible] to be in the mailing list?

GREG SHATAN:

Sure. We could do that or we could just go out to our respective mailing lists for the mailing lists. And then bring together some mailing lists, a meta mailing list. I never met a mailing list I didn't like.

This meeting is adjourned.

[END OF TRANSCRIPTION]