
HYDERABAD – Q&A with ICANN General Counsel on the legal advice that ICANN receives and how that supports the ICANN mission

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JAY DALEY:

Hello, everyone. We'll be starting in just a minute when Chris returns. You can applaud him when he comes back in if you want.

Okay, everybody. Thank you for coming. My name is Jay Daley from .NZ and I'll be running this. This is the question-and-answer session with ICANN's general counsel, John Jeffrey, who has very kindly agreed to appear, and Chris Disspain, well-known ICANN board member as well.

It has been, I think, quite a long time since we've had any form of dialogue like this, and I'm reasonably convinced that from dialogue, we get a better understanding of people and we get more transparency and we begin to understand other people's motivation and work quite well, so I'm hoping this is going to be the start of a process so that we get to a better understanding of what goes on in ICANN legal.

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And I think it's an important topic because there have been a number of issues that have arisen over the last couple of years that haven't necessarily had that dialogue around them.

So I want to start off by asking all of you to assume that everybody here does their job and does their job as they are expected to do it, and that any questions that you have are, therefore, polite and respectful in that way.

We can't talk about active litigation. I don't know entirely what active litigation is, so John may have to tell me, at times.

I'm also not a lawyer so possibly reasonably well qualified to be up here doing this as well.

And I'm also going to ask that people stay on topic with their questions as well.

This is ICANN. I believe Paul Foody's not here so we should roughly stay on topic.

But I've got three themes I'm going to start off with. I'm going to ask some questions on those just to get the questions going, and then we have two microphones at the top for people to come up and ask questions on those themes.

So I'll do a few questions on the theme, then further questions, then we'll move on to the next themes like that.

I've also got a set of backup themes and backup questions to ask, if there isn't enough, if there aren't enough questions, and a time at the end as well for open questions if we don't cover all of those. So hopefully that will get most things sorted.

So John, our first theme, then, is about legal advice for the company and how that relates to legal advice to the community.

Multistakeholderism, we know, can be a bit of a challenge to the client/counsel model, so how do you accommodate for the broader stakeholder community in the legal advice you give?

JOHN JEFFREY:

Thank you. By the way, thanks everyone for coming. So if you haven't met me, I'm John Jeffrey. I'm ICANN's general counsel and secretary to the ICANN board.

So the question of how we present advice to the organization and how that relates to the community I think is a great question.

There's been, I think, a myth pervasive through ICANN over many years that we can't provide advice to the organization and be consistent with ICANN's values if we're protecting it, but we believe that when we're acting in the public interest, when we're acting consistently with ICANN's mission and its purpose, that

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we're acting consistently with the community's directives as well, and as we proceed forward, we're looking for dialogue on how to improve that advice. So how can we make sure there are a standard set of documents across the community that you agree are the right documents for us to use in litigation. How can we make sure that things that ICANN legal does are consistent with the values of the community.

JAY DALEY:

Okay. So in that, do you think that the requirements of the community are clear enough, as in more detailed than just the public purpose, and do you think there's a role maybe for the community to express their requirements for legal advice more formally to you.

JOHN JEFFREY:

Well, the traditional way that we would see legal -- requests for legal advice coming in from the community would be through the SO model. So where policy development is happening or where there are requests on certain types of things that are happening in the community for a legal input, the input comes typically through the policy support staff to us. If we can provide advice on those issues, we do that directly. If we have to seek outside counsel or other support to provide that, we provide

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that through that mechanism. But we're relatively -- that's a relatively rare experience. It doesn't come in very often. So we're looking for ways that we can reach into the SOs and offer more opportunities for that sort of advice to be provided.

JAY DALEY:

Okay. So to be clear, if the community asks for independent legal advice, is that something that you would outsource or something you'd do yourself or are there special rules around it?

JOHN JEFFREY:

Well, I think that there's a couple ways to look at how legal advice would come in.

So the most important thing about how legal advice would be framed from the community is what's the question. So why are you seeking legal advice. What is it that you want to solve. And when we start there, we can look at, is it advice that could be provided from ICANN's counsel, is it advice that could be provided by our reaching out to counsel that we already have. We work with 15 different law firms in different scenarios. Many of those law firms are across the world and they service us with different types of topics. And where that advice comes in, we could look at whether it fits with an existing law firm relationship or whether we should go out and seek new

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attorneys. If there's a request specifically for independent advice, then it would be helpful to understand why there's a belief that there's a conflict or a problem that presents the need to get independent advice, as opposed to advice that would be consistent with ICANN's values that ICANN's legal staff could provide.

JAY DALEY: But in principle, you would have no objection to that?

JOHN JEFFREY: No objection to obtaining independent or any legal advice, no. I think obviously with what ICANN does, there's going to be a necessity to obtain advice. We certainly saw value from the independent legal advice that was used in the transition process. It was very expensive, but it was very valuable to the community to help get us to this next phase of where we are with the current bylaws.

JAY DALEY: Great. I've never known a lawyer say that you don't need to take legal advice, so that's entirely consistent.

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JOHN JEFFREY: Surprise.

JAY DALEY: I'm going to ask my last question on this theme, so if anybody has questions they want to ask on this particular theme of community advice and company advice and the difference between the two, please come up to the microphone.

Some people would believe that part of your job is to reduce the legal risk to ICANN, and so when you are giving advice on community policies that you may be, in the advice you're giving, watering those down, toning those down, or trying to reduce the impact on the company.

Is that the case?

JOHN JEFFREY: It's not a rumor. Yes, my job is in part to reduce legal liability at ICANN. I'm both the general counsel of ICANN and an officer of the organization, have fiduciary responsibilities to the organization. I think, though, there's an interesting issue about whether that really creates a conflict. I think that there could be instances where that would create a conflict. But most of the time, when we're acting on legal advice, we're acting -- if we're acting consistently with the public interest purpose, with the

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community's directives, then we are, in fact, providing advice that's not in conflict at all with my fiduciary responsibilities or the advice that I'm providing to the organization. And I think all of you want to reduce the risk to ICANN in some instances. For example, the money that ICANN spends is your money. It's the money that you've put into the organization. It's the money that's the public's money.

And so when we're reducing risk, we are also reducing the amount of money that we're spending on litigation, the amount of money we would be spending if, in fact, we were losing litigation. So I think these are important things. We don't want to frivolously waste the money either on litigating things that could have been resolved in some other way through mediation or some other path.

JAY DALEY: Okay. And do you think the community --

JOHN JEFFREY: I think Chris has his hand up, too.

JAY DALEY: Sorry, Chris. No? Okay.

So do you think that the community has a role to state its preference for risk in this era?

JOHN JEFFREY: I'm not sure I understand the question, but my -- go ahead.

JAY DALEY: If as you suggested that it's our money and, you know, you need to protect that, do you think we could state how safe or how much risk we are willing to be taken with our money?

JOHN JEFFREY: Yeah, I think there's an interesting question. Another rumor that I've heard about what advice I give is that I give advice to the board and I tell them not to take risks. And I think Chris would be a good witness on this. But what we really do is we give advice and we say, Here's the threshold. Here's what may create additional risk. I'd like to tell you that the board listens to me. That isn't always the case. They look very carefully at what that risk profile is against what the concerns of the community are, against what the policies are, and they move forward in a path based on an allocation of their willingness to put that risk against the objectives that are part of the policy process or that are being raised by the community.

CHRIS DISSPAIN:

Thanks. Thanks, Jay. Hi, everybody. Chris Disspain.

A couple of things. I think, first of all, as a lawyer myself, I know -
- and as Hillary Clinton has consistently said throughout this campaign, "words matter."

So I think it's important to understand, John and legal doesn't actually -- what they do is they give advice. It's the board that makes the decision. And the role of legal is to say -- it's very rare you will get a piece of advice that says, "Categorically the law says this." It's a very simple thing. You might but generally you don't. And then it is the role of the board to assess the advice that you get -- that we get and to make a decision. And then it's the role of John and the rest of ICANN organization to act on that decision.

Part of that -- getting that legal -- part of the job of providing that legal advice is to put forward, "We think these are your options." Now, those options are not always complete. Sometimes the board member might say had we thought about this, had we thought about that. But, generally speaking, you get advice that says, These are your options and here's what we think the risk profile of each of those options is.

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The board does not automatically or, indeed, in the main necessarily go for the least risky step. What the board does is it looks at it and says, What's the best option from the point of view of ICANN looking at the mission, looking at what it is that we do. And I will give a real-life example in the sense of not a specific legal case. But, like, I will give you an example of how that might work. The board might decide that doing Y might be more risky than doing X but Y is better from the point of view of transparency to the community and openness. The board might decide that. And that's the level at which those decisions get made.

Now, whether or not there's an acceptance that that's the case, I don't know. But I can tell you from inside the board, that's the way it works.

Have I said anything that's wrong, John? Would you say --

JOHN JEFFREY:

I think that's spot on.

And, in fact, you can see instances of that if you go into the board books that we publish with the minutes. So a lot of those board books contain breakdowns of the options that are provided in various papers on different issues and show a mechanism by which we would use. So we use -- a typical board

paper would be an example. The board paper would contain three different options and different assessments based on that.

Sometimes if there's litigation advice, specifically that litigation advice would be excised from that as a standard practice providing attorney-client privileged advice. But for the most part, if you don't see -- you'd see the blanks, if that's taken out. And sometimes we leave that in, particularly where we're not going with that form of advice.

CHRIS DISSPAIN:

And just to finish off, I have been on both sides of this fence, right? I have chaired the ccNSO. I was involved in the setup of the ccNSO, which itself was quite a fairly fraught process. And I've also been on the board. And I can only speak for the time I'm on the board. I can't speak for before that.

But I can say that as a member of the community, as the chair of the ccNSO, I can see how people could think that there's -- you know, it doesn't seem to be right and the board is just doing what it's told. I can see that.

But I can tell you from the board that that's not the case, that the board pushes back, that the board asks questions, that the board says, Okay, yes, this may be the least risky move, et

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cetera, but there's a higher purpose here. We should look at that.

And the best way I can describe it to you is some of you will know this, we call it the Markus Kummer -- Markus Kummer enlightenment because at the end of Markus' first board retreat Markus stood up and said, Wow, this is amazing. The community thinks all you do is listen to what the staff say and do what they want. You guys actually argue and push back and debate. And if you ask Markus, he'll tell you that that for him was like enlightenment. That applies both to legal and to all sorts of other things as well.

JAY DALEY:

Okay, thank you. So in a moment, we'll get into some more specific questions and deeper questions.

But starting off on this particular point of community versus company, Nigel?

It is now. It is now, Nigel.

NIGEL ROBERTS:

I don't mind -- ah, I don't mind which one I use. John, thank you.

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Perhaps it's the relaxation of post-transition but I see this as an incredibly welcomed development that you're sitting right here talking to us the way you are. We have all heard in what we just heard about suspicions and lack of trust and so on, and there's historical roots for that. But we don't have to go into that.

I'm hoping that you might do this on a regular basis. Do you think that's something you would be open to?

JOHN JEFFREY: I'd be open to do it any time. I think you will probably get bored of listening to me if you open that venue.

NIGEL ROBERTS: You don't have to do it every single ICANN meeting. But if we have maybe once a year or something like that, that would be very helpful.

JOHN JEFFREY: Happy to do it. Thank you.

MICHAEL PALAGE: Michael Palage for the record. On I think Nigel's point, about four months ago, I believe there was a resolution saying that the transcripts of the board meetings would be made available so

that we could see that interaction. And, Chris, yes, I will agree there are some very heated discussions at times. And I think that's been that way since at least 2003. So I think that's one of the things that I would like to see. I'd like to see those transcripts made available. And there's just been a lot of events over the last three to six months which people would have liked to have seen, have taken a look into. And could you give an update on where we are? Because I believe there was a resolution. I believe George Sadowsky was tasked with looking into it.

JOHN JEFFREY:

Yeah, I will give you what I remember about it and maybe Chris can fill in blanks if I don't cover it all.

There was a pilot process set up. And so that was to test, and we spent a good deal of time in the Helsinki meeting taking transcripts, recordings, trying to see how that works.

There's a couple of purposes in doing it as a pilot first. One, these are closed board rooms and the board members joke and talk to each other and you can't yet see how that looks when it comes out on a transcript unless you go through that experience. So we thought it was important that we weren't killing their dialogue or their ability to ask questions that aren't

good. And so we wanted to see that. So they went through that. We went through some transcripts.

You'll notice from the most recent workshop, we posted not just transcripts but I think we posted full recorded sessions.

And they also invited -- the board members invited community members to actually sit in on sessions inside the workshop that were discussed during the last workshop.

So when they came to this meeting, there was still dialogue about what was effective, what wasn't, what would people be interested in hearing or seeing, and there was a decision taken that coming into the next board workshop -- actually, I think it's in -- just after the beginning of the year -- there will be -- they'll indicate which sessions will be, in fact, open, as opposed to just transcripts and recordings. They'll actually open up those sessions so that the community can hear the dialogue and understand exactly what's happening inside the boardroom.

And I think that's a good transparency step. It will -- it will show to the community the dialogue that goes on, the quality of that dialogue, the commitment and the passion that the board members have for serving the community's interests and making sure that they're acting in the best possible way toward the public's interest.

MICHAEL PALAGE: So can I just ask a follow-up question?

That openness is only in connection with the workshops or does that -- only the workshops, not the actual board meetings, where resolutions are taken?

CHRIS DISSPAIN: No. It's a process that we're going through to try and -- and get as much of it open as possible, so let me -- let me run through it with you.

I'm an impatient person. I'd do it all now. But then, you know, my lawyer brain kicks in and says, "Well, hold on a second. We've actually got to make sure we know what we're doing here. We can't -- we can't just throw everything out."

So I have a -- just to give you an example, I've asked for transcripts of the last two or three BGC meetings so that I can go through those and look at them and say "Now, what would I be able to have open and what would I not be able to have open and how would that work from the point of view of structuring a BGC meeting, so that some of it could be open without being so chaotic that it became ludicrous," right?

In respect to the board's workshops and whether they are workshops at an ICANN meeting or workshops at a retreat, we are, again, working through a process.

Now, we didn't -- we -- I'd like to say we -- we didn't drop the ball with Hyderabad. We had every intention of trying to make it work here. It just hasn't happened, and for that, I think we raised expectations and we owe an apology. But we will have that ready in time for the -- for L.A.

We're still working through what's accept- -- what can we -- what we can have open and what we not, so if you accept that it's a process and it's building, then you could expect that in the initial stages it's going to be very safe stuff and then it's going to, you know, move on from there.

In respect to board meetings, you know actually often it's the -- it's the workshops where the interesting stuff happens, but nonetheless, the intention is the same, that there's no reason why -- certainly, you know, there will be in-camera bits of board meetings, but mostly that could be open as well.

And I just want to say one other thing -- and if I haven't answered the question, come back. I just want to say one other thing, which is I suspect there may be people in this room who think that this is happening over his dead body, and actually, he has

been incredibly supportive of us opening this up and encouraging us to do it and coming up with -- with inventive ways of letting us do it.

So I just want to acknowledge that and say it's -- you know, those who believe that, you know, John is here just to make sure that it's a black box, that's not true.

JAY DALEY:

I think we agreed you weren't going to be too nice to him, but that's nice to hear.

CHRIS DISSPAIN:

That was the only time it's going to happen, right?

JOHN JEFFREY:

Good. Good. We do -- just as a follow-up, it's also important to realize that under the new bylaws for the reconsideration process, those deliberations and the discussions are both recorded and transcribed.

And I think there's a -- there's something actually different from when you were a board member, Michael, so I think there's actually something that's probably worthwhile noting.

So when you said, "As you know, Michael, most of the discussions happen in workshops," that wasn't true. Actually, when Michael was a board member, most of the discussions happened in the board meetings. But now the board, as it's become more deliberative probably than it was when you were a board member, as it's -- as it's increased its -- its work along with the community's increasing its work, the board's moved many of the discussions into the workshops and into calls where they're asking for information before they're making the decision.

So most of the time before the -- it goes to the board meeting, the -- there's been a lot more clarity around it. The options, the potential options that are in the papers, have been discussed and there's work that's gone on.

So I think the effort by the board members to open up the workshops is actually an effort to show you where the actual decision-making processes are occurring.

JAY DALEY:

Thank you, John. Michael's got just a minor follow-up in a second, but just before to get to that, Michael, I just want to explain, to make sure that people understand, that you have the role of general counsel and of board secretary and this is very

much the board secretary role that's relevant here to this discussion here.

And after Michael's questions, we've got Milton, and then after that, I've got a remote question specifically about these different roles. Okay?

MICHAEL PALAGE:

Point of clarification. It wasn't at workshops; it was at 2:00 a.m. dinners that ran late.

If I can, just one -- one quick request, since we're really trying to focus on openness and transparency. The independent review, which is the highest accountability mechanism in the ICANN bylaws, the hearings which are held right now, the transcripts for those proceedings are only taken if a party requests it. So if you go through, you will see some IRPs in which there are no recordings of those transcripts, and I've asked Amy why is there no transcripts and she said neither party asked.

So I guess my request to the board and to general counsel: Can ICANN request that transcripts be made of every IRP proceeding?

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JOHN JEFFREY: And thanks for that question. Amy Stathos, who is my Deputy General Counsel in Charge of Litigation under my group, you asked her that question. She brought that question to me. And we're going to look very closely at how we can make sure that the transcripts are available, where possible.

JAY DALEY: All right. Thank you.

Milton.

MILTON MUELLER: Yes. Milton Mueller, Georgia Tech.

So I'd like to address the relationship between the community and the board and ICANN legal as a representative of the board in more general terms.

I think when we went into the accountability reform process, we started at two different poles. One was this sort of militant accountability assertions that people like me and maybe Chuck Gomes represented, saying, you know, "We really need to have more control over you guys." And the other pole was, "We're good guys, we're trying hard, we're public spirited. Trust us."

Okay?

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Obviously, we gravitated to some kind of a middle point, but I want you to understand that I don't want to hear you going back, when we're discussing this relationship, to this sort of "trust us" attitude that I've been hearing a bit this afternoon. It's always going to be a struggle. It's always going to be a tension. And fundamentally, your job, John, is to defend the interests of the corporation. You do not represent the community. That's not a criticism; that's just sort of a fact about your position. And we -- it's also true that the community could become so assertive that it could indeed wreck ICANN's capability to function. I understand that. Most of us understand that.

So we understand -- I just want to make sure that this relationship is understood as a -- kind of a tension. If you think of the divine right of kings and the origins of democracy, you know, people had to fight and struggle to get more rights for the citizens, and I'm not saying things are going to be that difficult or violent here, but the point is it's a struggle and let's just accept that, and even though I think, you know, the board members and the staff of ICANN are all trying very hard and good people, it rankles me a bit to just hear the "trust me" line too much.

JOHN JEFFREY:

Yeah. And I -- that isn't what I was intending to say, so let me clarify. But I think your question is very good, because what you're pointing to is something that I don't agree with.

I don't agree that my job at ICANN is only to be a representative of the board. My job at ICANN is to be an officer of the organization, and one of those mandates from the community is transparency.

One of those mandates from the community is to make sure that the multistakeholder processes that lead to policy that make those policies go into the contracts works. And so part of my advice to the board is -- is about those things. Those are some of the questions that we go to. How can we increase transparency. How can we make sure that what we're doing is consistent with the policy process and what has come from the community.

So I'm not sure -- I'm not saying "trust me." I'm saying "test me." I'm saying I have no problem with that conflict and I want you to call out when we have something that you don't agree with. I think that's valuable, I think that makes us better, and I think we're getting better and better when we have those sorts of challenges.

So I understand your point but I don't think my role is only to defend the interests of the organization. It's to make sure that

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the actions of the organization are consistent with what you as the community are driving toward.

CHRIS DISSPAIN:

And Milton? Milton? I just want to -- Milton, it's Chris. Hi.

Apart from what -- I agree with John about the counsel thing, but I do want to acknowledge what you said and say I completely agree with you, especially when it comes to the point about tension. It's tension that keeps structures up. If you didn't have stress and tension, buildings wouldn't stand up. And this organization needs that stress and tension in order to make it work properly. So it's perfectly normal and perfectly acceptable and understood.

JAY DALEY:

Okay. Thank you. So I'm going to ask a remote question about this. Then Michael has a question here. Then I'm going to shut off this topic and move on. But there will be opportunity, when we talk about the bylaws and the mission in more detail, to get into the details of where there may be differences between the board and the community in areas there.

And we have all the awkward questions to ask as well.

So I have a question from Mathieu from .FR.

How does ICANN legal manage the distinction between its various roles as legal counsel, corporate secretary, and recently overseeing the complaints officer? Could separation of these functions lead to greater clarity?

JOHN JEFFREY:

So I think I've sort of answered that in the earlier -- earlier answers, to Mathieu's question probably came in before, but I'll say it again.

I don't see an inconsistency. And I think -- I've heard some of the complaints or suggestions that the complaint officer function shouldn't report to me. I'm going to go with what Goran says on this. He's my boss and he's going to -- he's assigned it to me.

I don't think, though, it creates a conflict between my role in serving as secretary or the general counsel because what we're going to do, but haven't done yet, with the complaints office -- because we don't have a complaints officer yet -- is have a different opportunity to triage questions that come into the organization that we didn't have before.

So many complaints come to different parts of the organization. They come to the front desk. They come in letters. They come to different departments. When Goran looked across the organization and he saw all the places that he was receiving

complaints from, he said, "Who's the complaints officer? Where do we centralize this function?" And he was shocked to find that we didn't have that.

And people said, "Well, what about the ombudsman?" And we talked to the ombudsman. The ombudsman takes many complaints that they then say they don't deal with because it's not within their structure.

So where do those complaints go?

Having a complaints officer would allow those types of complaints that aren't within the jurisdiction of the ombudsman to come into the organization, be dealt with, to be measured, to be understood, and where there are opportunities to improve the organization, we can take those and work on it.

And I think if anything, one of the reasons it might be valuable within my group is that I can cut across the departments and see it from a different angle than we might have if we were contained in any one subgroup.

JAY DALEY:

Okay. Thank you. You're up.

MICHAEL KARANICOLAS: Hi. Michael Karanicolas with the Center for Law and Democracy. I'm also a co-rapporteur for the transparency subgroup in Work Stream 2.

And with that being said, it's really great that we're having this conversation about transparency. I want to thank you both very much for being here. I think this is a great opportunity.

Building on what was said earlier, it strikes me that transparency can be a key area where there is potentially a tension between a desire to protect the organization from potential exposure and the organization -- and the community's broad interest in accessing information. Indeed, strong transparency is fundamental to the success of the multistakeholder model.

With that said, I note that you mentioned earlier excising out material pertinent to pending litigation from transcripts. Litigation privilege.

So the DIDP actually goes further than that and currently includes a broader exception for attorney-client privilege. I would suggest that your role is quite different with ICANN than it would -- than the role which typically exists between an attorney and their client. And as a result, I want to find out your thoughts about whether a stronger principle of transparency should apply to your role, and specifically would you support narrowing the

exception in the DIDP so that it only applies to litigation privilege?

JOHN JEFFREY:

Yeah. Actually, I -- and I know you know this if you've looked that deeply at the DIDP, we call it. The DIDP, for everyone else, is where we have -- it's like a FOIA in the United States. It's an opportunity for people in the community to request documents inside the organization. There's a page that we can provide that we can put on -- up on a link that you can find on the ICANN Web site that shows all of the DIDPs that come in and the responses to that.

And the DIDP actually has a number of exceptions beyond just the litigation privilege. It also has confidentiality exceptions and things relating to other aspects of a nonprofit's business.

I think that -- as I understand it, the very group that you're working within as one of the rapporteurs, it sounded like, is looking at that, and we're certainly willing to engage on what the appropriate level of exceptions are.

Some of those exceptions have great value and we're happy to engage in a dialogue to discuss them.

Our goal is very consistent with transparency.

One of the things -- I was here, you know, for -- I've been here for 13 years, so I've been ICANN's general counsel since 2003, and that's a -- we're a long way farther in transparency than we were when I came, and I think we've made steps along the way, but I think there's still some work to do. And one of the things that you'll be surprised to hear me say is that I think transparency is our best friend. When we look at defending the organization, when we look at the hard work, the dedication of the people that are involved in it, showing that work is not a bad thing, it's a good thing, and you'd probably be surprised to learn that some of the strongest advocates of transparency inside the organization is my legal team.

So I'm happy to work with you and find out whether there's a way that we could narrow that exception or those exceptions and look at how we could increase that transparency.

JAY DALEY:

Great. Thank you, John. So we're going to move on a little bit now.

JOHN JEFFREY:

And just for Milton, that wasn't a "trust us." That was an "I'm happy to do the work."

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JAY DALEY: Okay. Thank you.

So a slightly more difficult question now.

Why did it take so long for ICP-1 and GAC principles 2000 to stop being used in litigation or in other circumstances?

JOHN JEFFREY: Yes. So -- and I think the reference relates specifically to a lawsuit that we defended where there was a -- there was an action --

JAY DALEY: That's right, yes.

JOHN JEFFREY: Sorry?

JAY DALEY: That's right, yes.

JOHN JEFFREY: Yeah. There was an action, as many of you, to seize the assets of a number of ccTLD operators in a federal court in Washington, D.C., in the D.C. circuit. In the D.C. District Court there.

And the effort was to actually seize assets of .IR and KP and SY, I believe, and the -- in that pleading, we referenced documents which were no longer the optimal documents to reference, and that was pointed out to us by some of the members in the ccNSO and others, and I think that that's a -- a very good point and we took that on and we advised counsel that we don't want to reference those documents.

We did have a significant amount of pressure to move quickly on those pleadings, and so there were some errors, and I think one of the things that we've talked about with some of the members of the ccNSO is having a standard set of reference documents that are acceptable so that we can go to a page and make sure that we point our counsel to that page as well, so that we all agree which documents are the authoritative documents relating to those types of matters.

So we're certainly willing to do that and work with the community to do that in any area you think that would benefit ICANN.

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JAY DALEY: Great. And so can we take that as a commitment for you to go away and start work on something like that?

JOHN JEFFREY: Absolutely. And we'll do that with you.

JAY DALEY: Right. Thank you.

Do you think that the community can ever ask that certain documents are never referenced?

JOHN JEFFREY: I think that would be hard to do because we can't control other people referencing those documents, so those -- you can't -- we may not believe that ICP-1 is something that should be referenced, but it doesn't mean that someone filing a lawsuit against us won't reference it and we may need to be able to reference that document in order to defend the organization or to explain something.

JAY DALEY: Okay. Thank you. So does anybody else have any questions about this particular theme of what documents are provided to the external counsel, the story that is told in litigation?

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Nigel, please come up, thanks. Sorry. Before you start, can you clearly give out your name so the scribes can capture this. Sorry.

NIGEL ROBERTS:

Nigel Roberts, from CCO council and .GG.

I was actually thinking of raising the question of that document and thought in the spirit of the openness we were given here, I wouldn't do so. So somebody else obviously thought we'd raise that. I followed the Weinstein litigation extremely closely and it's true to say that it was an unfortunate incident but that nothing turned on it. The actual decisions that were made all the way up to appeal didn't rely on anything that was in those documents. Now, that's not an excuse for what happened. It was, as you say, an error. But I think we need to put it in perspective.

JOHN JEFFREY:

No problem. But let me go to that for a minute --

NIGEL ROBERTS:

Yeah.

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JOHN JEFFREY: -- because the way that you -- and you probably know this and -- but it may be useful for someone else. The way that you often argue these is not to pick the argument that you know will win. You pick a series of arguments and you argue them in the alternative, with the opportunity for the court to pick the ones that they think are most valuable.

So you're right. In this particular instance the court did not use that argument that contained that document to grant us what we were seeking.

But I think, as I said, it was not the optimal thing for us to argue. And I think we've already said that and don't intend to use those documents again.

NIGEL ROBERTS: Just the other things is that you seem to be open to some assistance in working out what we could maybe use -- I won't say in a similar case because you can't predict what cases may come forward. But I'm very happy to work with you on that, if that helps.

JOHN JEFFREY: That would be very good. And just to explain that again, what we think would work is to identify an authoritative set of

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documents that would then be available both to those seeking actions against us so maybe we wouldn't have to talk about that document and to our lawyers that we work with who are pleading those cases for us.

JAY DALEY:

All right. Thank you. So I'm going to move on then.

Talking in more detail about the bylaws and the mission and whether there are any issues in there that separates the company from the community. Do you think that there are any tensions in the bylaws?

JOHN JEFFREY:

Well, the bylaws are very extensive and untested at this point. So I would be surprised if there won't be tensions within those bylaws.

I think that as we begin to see tensions, though, we'd like to take a different approach than maybe we have in the past. And that's to point those out either to the board as a starting point or straight to the community and ask for advice on how to resolve those tensions before they become conflict-oriented matters between the organization and the community.

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JAY DALEY: Okay, great.

I think this is from a -- I think I need to ask this generically rather than specifically.

JOHN JEFFREY: Sounds like it's about litigation.

JAY DALEY: Yeah, possibly.

But are all staff and the board and contractors fully bound by the bylaws and ICANN's mission?

JOHN JEFFREY: Yes.

JAY DALEY: So, it has appeared in the past --

JOHN JEFFREY: Is that a trick question?

JAY DALEY: No.

[Laughter]

It has appeared in the past that external counsel has tried to argue in a gray area in the middle that a contractor is not bound by the bylaws but equally that the contractor has a degree of responsibility that isn't transferred to --

JOHN JEFFREY:

Yeah, I might have missed the word "contractor." So that's a more complicated issue, and I'm glad you are pointing out the hole possibly in my answer to a yes.

In many instances, contractors enter into agreements with us, and they don't agree to take on our 256 pages of bylaws. So there may be an opportunity to point out key things that contractors should be abiding by. But it's very rare that we're going to enter into a contract of, you know, tens of thousands of dollars as opposed to a much greater number where they're going to say they're adopting all of our bylaws as something they'll just adopt into their practices.

An example of where it might become more difficult is, for example, where we have a dispute resolution provider agreement where a dispute resolution provider uses their set of rules to structure the things that we put within it like a dispute resolution provider for an IRP, for example or some of the

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groups that helped us with the processes inside of the new gTLD program.

And where they're using their rules, we are able to insert a supplement that relates to how ICANN interacts with that process. And we literally negotiate with them about which parts of that are capable of changing their rules without -- without harming their processes or their legitimacy.

JAY DALEY:

Okay. So if we look at the 260-something pages of the bylaws, there are general principles in there such as transparency. And there are very specific things in there such as the domicile status of ccNSO board members, for example.

How -- well, do you think it is possible for us to as a community discuss taking out the salient points from the bylaws that should apply to contractors?

JOHN JEFFREY:

Yeah, I think that's a great idea. I think it's something that could be valuable to us as we proceed forward. And along the lines of what we talked about with transparency, this is the kind of dialogue we could be having.

JAY DALEY:

Okay, great.

I've got one more question on this point, so if anybody else wants to jump up. And then I've got a remote question.

Can you explain -- this comes from litigation as well, but I think I'm going to keep it more generic -- how the California business judgment rule applies to ICANN?

JOHN JEFFREY:

Yes. So, the business judgment rule is a rule that applies to the corporation and its directors in defending judgments of the organization.

So one of the things that you can test an organization about in litigation is if you have a question -- if you're questioning the judgment of directors, you can apply the business judgment rule as an explanation for why they took an action. You can show that they use good judgment or best judgment in applying information to a decision. And that in some cases removes the liability from individual directors or to the organization.

So that's a rule that's available under not just California law but common law generally and is definitely included inside California's law that relates to non-profit entities like ours.

There has been in the past requests to panelists to review whether the application of the business judgment rule as it relates to ICANN is appropriate based on some of the aspects of ICANN's bylaws. And ICANN argued that it should be applied.

For example, XXX in the ICM IRP argued that it should not. And there was a split decision among the judges, if I remember correctly, about whether it would apply or not.

We then at that time went about looking at is this something that we can actually remove under California law from the organization. We found that no one else had done that, no other organization that we could find had accepted a different standard. And so we continued to argue and have continued to argue that the business judgment rule applies.

I think that also goes to the basis of protecting the organization, and it goes to protecting the directors of the organization that volunteer and are paid a nominal sum to participate in ICANN's board work.

JAY DALEY:

Okay. So can you just clarify if this is a California-specific rule, or is it actually just a local interpretation of more general legal principle?

JOHN JEFFREY: My understanding is business judgment is a common law principle, so it would be applied in many jurisdictions other than California. And there's a specific interpretation of that that relates to California.

Becky Burr is coming to the microphone probably to educate us on this point.

BECKY BURR: Well, I just want to make sure that we sort of round this out by saying that in the new bylaws, we have applied a different standard with respect to evaluating compliance actions or inactions that may violate the bylaws. And that's all laid out. So, I mean, the business judgment rule is a common law rule that among other things talks about liability of directors. And, obviously, you can't get rid of that.

But I think in -- the only reason I'm saying -- standing up and saying this is because in the XXX case and in other cases, it was about the standard of review that was being applied by the IRP. And we have changed that now.

JOHN JEFFREY: Thank you, Becky.

JAY DALEY:

Thank you.

Now there's a question I missed out and one before.

Is it about time that external counsel were contracted out -- well, sorry, a proper tender were issued for external counsel?

JOHN JEFFREY:

So -- so -- I know this will be a surprise, but ICANN works with more firms than Jones Day. We work with 15 or so firms from around the world. Jones Day has remained our primary partner for corporate law and for litigation and that is, in part, both a quality of service and a competency level.

There are certainly other firms that can provide services to ICANN, but we've carefully evaluated and discussed with the board numerous times the value that we get from the relationship with the powerful firm that understands ICANN deeply. And it saves us a significant amount of money every year to work with primary litigation counsel such as that so that we don't have to spend millions of dollars educating counsel about the organization.

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JAY DALEY: I think a very similar argument could be made to keeping auditors. But I think that all companies that I know of have a rule of rotating auditors after a period of time. Do you think that should apply for legal counsel?

JOHN JEFFREY: I think those are two different concepts. I certainly understand the value of changing auditors because they are independently evaluating the organization, and that's a best practice in audit. That's not really the same approach that you would take toward defending the organization in litigation.

JAY DALEY: Okay. Thank you.

Are there any more questions on this point? Otherwise, I shall move on.

I think there are probably quite a lot of questions being asked but I've received them by email and things. So we'll move onwards.

So this is on a slightly different topic but still related and it's a relatively lengthy question. The chair of the board noted in the ccNSO board meeting today that the board is responsible for the health and welfare of people at ICANN meetings. However, in

this meeting board members were less clear on how they could consider some aspects of personal safety when selecting meeting locations. The example being discussed was the different safety advice for women in some meeting locations, but this could also apply to participant's religion or sexuality.

My question is: Has ICANN received legal advice on the liability they have for location choices and liability they may have if participants are prevented from equal participation due to gender, religion, or sexuality?

JOHN JEFFREY:

Not that I'm aware. I didn't hear the specific dialogue that you're referring to, although I think I was in the room for part of it. I'm not aware of advice that we've given on that topic.

I'm certainly aware of advice that we considered in terms of risk to the organization relating to the Zika outbreak. And some of that has been mentioned both in the postings of the reasons why we moved locations. But that's more of a business judgment issue than a legal issue.

JAY DALEY:

Chris, is this something you want to pick up on?

CHRIS DISSPAIN: No. I not only agree with John, I'm not aware of any legal advice. I'm conscious it is a legal session, so I don't want to get involved in a discussion of where we put our meetings.

JAY DALEY: That's fine.

Okay. I'm going to move on then.

I'm going to talk about the .AFRICA case. But rather using this as an example rather than talking about the litigation aspects of it, okay?

This is still ongoing as we know. Now, does that suggest that there is actually a weakness in the design of the applicant guidebook that effectively allows somebody to conduct a denial of service through litigation?

JOHN JEFFREY: That's a good question, and I'm not going to talk about it in the frame of .AFRICA.

I think, though, that it does open a broader question about the guidebook and the aspects of the guidebook that are being tested at this point. I don't think it's a surprise to anyone who participated in the creation of the guidebook that we would

have disputes at this point. In fact, it was widely noted that there were different ways to set up the different mechanisms that were tested, the tests that were obtained -- were contained inside the applicant guidebook for the different TLDs, the way that we would reach contentions, the way we would resolve contention sets. We knew there would be questions about that.

With each of the things that were tested through third parties, for example, like the community tests, there were -- there was careful consideration given to how we would do that. The first principle that I understood was that the community didn't want those decisions to be made inside the organization. So we were tasked to find outside groups that would advise ICANN about those tasks. There was also a request that we not spend a considerable amount of money, you know, millions of dollars, to test a community aspect, for example.

And so appellate systems or re-reviews of some of those systems weren't built into the processes. Because of that, ICANN legal and the business groups inside ICANN that were managing that process identified that there were risks, talked to the community about those risks, talked to the board about those risks. And we, in fact, put aside a considerable amount of money for this phase when we would get to the disputes.

The good news is we haven't spent nearly as much as we would have expected we would have spent resolving those disputes at this point. The bad news is we do have some. And like in the .AFRICA case and some of the other cases that have been front and center in the IRPs and have been the subject of litigation, we still have a ways to go before the program is over and we'll still be resolving some of those disputes through the accountability mechanisms hopefully and maybe in some courts.

CHRIS DISSPAIN:

Just a -- Just a very quick note from me and just a story really. This is nothing to do with .AFRICA. But I think it illustrates why, as John said, we shouldn't be surprised about any of this really.

I recall being -- having discussion with a participant at an ICANN meeting not that long ago who came up to me and said that they wanted to talk to me about a particular TLD where there had been a finding in a reconsideration request or something like that and now, as they put it, the other side is abusing the process by launching an IRP to which my response was, Well, if you had been on the losing side of the reconsideration request, how would you feel if you weren't allowed to launch an IRP?

So I think it's very important to remember that this process was built by the community, not by the -- by the staff. It is difficult to

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do. This is large amounts of commercial -- large amounts of money, commercial situation. It's hardly surprising that we have actions going.

JAY DALEY:

Okay. As I understand it, the applicant guidebook made an attempt to prevent people going to the courts. Is there a weakness there in that design of that element given what's happened since?

JOHN JEFFREY:

Unfortunately, that is straight in the middle of one of our litigation. We have an appeal before the Ninth Circuit Court of Appeals on that issue at this moment, so I will defer from answering that question at this point.

JAY DALEY:

That's fine.

Okay. I'm going to open up to more broader questions. If anybody would like to come up and ask them, please do.

I've got some other questions to carry on with that are fillers until such time as other people have them.

So whilst someone is coming up, I'll ask you the first one. John, does ICANN make a habit of attempting to use mediation at all in settlement of legal dispute?

JOHN JEFFREY:

Yeah, I'm not aware of where we've used mediation. Although, we have built into the process based on community input on the current IRP, the IRP that we're still using from the old bylaws, there was a process in it that's similar to a mediation. The moment we don't have a mediator, we enter into a conciliatory discussion to see if there's some opportunity to resolve the dispute before it goes to IRP.

I think that we should look very carefully at how we could use conciliation and mediation, any mechanism that would keep us from spending unwisely the community's money in disputes.

And so certainly we're welcome to suggestions about alternative dispute resolution mechanisms or best practices that we could add to our current way of going.

JAY DALEY:

There is an irony that so many of us in different areas here are involved in alternative dispute resolution and have been for many years, isn't there? Right.

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Over to the microphone. Do you want to state your name, please, for the scribes.

UNKNOWN SPEAKER: Thank you, Chair. (saying name). At the very outset for the theme of this session is the main part the legal advice within ICANN and how that ICANN mission can support this one. But in respect to the international law and the law of the nation, how does human rights and other laws will help ICANN with the concern to this one? Thank you.

JOHN JEFFREY: So if I understood the question, the question is how does human rights interact with what ICANN does? I think that's an active question right now. It's something that the community is actively discussing, and thank you for the question. We'll certainly -- that will be something that we'll all be talking about in the coming months.

JAY DALEY: Okay. Thank you.

Michael.

MICHAEL PALAGE: Michael Palage.

Chris, to your point about the person, I actually concur with your opinion. It's incredibly frustrating. I'm dealing with a community client that is being held hostage by the process.

So here's my comment for perhaps the board and the rest of the community to consider. While I believe all parties have the ability to exhaust their opportunities under the bylaws, there are perhaps other means by which people can perhaps move forward with PDT testing, controlled interruptions so that the string, once it's finally resolved, they could go to market and not have to worry about a nine- or a 12-month delay. Again, as long as that party is not offering services for the TLD, that's one way that perhaps could be done. So that's my comment for the community to consider as part of the subsequent gTLD process.

Here's my question. The standard operating procedure for ICANN was that pending any outstanding accountability review, a TLD would not move forward. And one of the things that one of my community clients is trying to understand is, there still is a pending IRP in connection with .SHOP but that contract was signed, delegated, and is now in business.

Could someone explain how that happened?

JOHN JEFFREY: Yeah, again, I don't want to speak about specific ones. But I'll be happy to take your question back to the GDD team and provide an answer if there's one readily available.

MICHAEL PALAGE: Thank you.

JAY DALEY: Okay. Thank you.

Do we have any more questions from the audience at all?

Byron, please go ahead.

BYRON HOLLAND: Hi. Byron Holland from CIRA.

Just a question regarding Jones Day. And I appreciate what you said about that, but as an officer who also has to mitigate risk, I'm wondering what your thoughts are in terms of mitigating the potential risk of having not a sole supplier, because I heard you say you had numerous other law firms around the world, but Jones Day has a preeminent role by far, and have you given any thought to having a secondary legal firm that, in a sense, is occupying the second chair, who can start to learn, as you point out -- and I think rightly -- that the knowledge required to offer

the opinions that they have to for ICANN takes a considerable amount of time, but perhaps mitigating the risk would be to have a backup law firm engaged.

JOHN JEFFREY:

Yeah, absolutely. That's a -- that's a good point, Byron. And of course. Over time, we've had second-chair firms available to us because of potential conflicts with Jones Day.

Jones Day is one of the largest firms in the world. They represent some of the people that come into our space and we've had second-chair firms available for instances where we would have had a dispute where they would have been in conflict.

We'll continue to look at whether there's value in bringing second-chairs into a first-chair position in some litigation and that will be a continued thing that we'll look at and be prepared for.

One of my jobs as, you know, the general counsel is to make sure that we maintain litigation readiness, so that's a principal concern to us to have more than one firm that understands ICANN and is available for such things. So thank you for your question.

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BYRON HOLLAND: Just following up on it, given that significant learning was had by the law firms who were engaged in the transition process and accountability processes, would they not be kind of a natural and obvious potential, since that money has been spent, those learnings have been had?

JOHN JEFFREY: So that's a good -- good question and I won't speak to specific firms or how we'd go through that evaluation process right now. I think that would be inappropriate. But obviously Sidley's experience would make them a good candidate, if they're not the independent counsel to the community. While they're still independent counsel to the community, we wouldn't want to interfere with that relationship, as I think we were requested not to do. So they'd certainly be a candidate.

Adler, the other firm, was a brilliant firm in terms of how they evaluated the California nonprofit law and how it fit into our system and they certainly would be somebody we would be considering working with in the future as well.

BYRON HOLLAND: Thanks.

JAY DALEY: Okay. Thank you. So I have two remaining questions so if you have any more, please get thinking about them.

We've talked about openness of legal advice, making it available to the community.

Do you have a general principle that guides you here on what you make available?

JOHN JEFFREY: Yeah. The general principle is to make anything available that we can that's not -- there isn't a reason not to.

So we utilize a similar path to what you see in the DIDP in evaluating that, so when we're producing board books or other things, we do an evaluation of those books, for example, against those sorts of principles to see what it is we can produce.

Most of the advice that ICANN creates is really relating to the day-to-day operations of running a 360-person organization, and so most of that advice would not be something that's produced in a form that you would review or have made public, but for the advice that is public, for that advice that relates to specific topics that are community policy topics, topics that are

being discussed with the board, we'll continue to look at how we can be more transparent about that.

JAY DALEY: Okay. Would it be useful to have a register of legal advice so that people could find it without going through board books?

JOHN JEFFREY: I don't -- I haven't thought about that so I'll take that back and think about it, but certainly we have -- if you go to our litigation page, you'll see a lot of things that are the product of legal advice, so we have pages for reconsiderations and we show that work. We have pages for IRPs, pages that show the DIDPs, and pages that show the active litigation and the pleadings that are filed.

JAY DALEY: Thank you. Jordan.

JORDAN CARTER: Thanks, Jay. Jordan Carter, .NZ.

John, as the general counsel, I guess I'm interested in what you find or experience as the biggest tensions in your role, as that officer in that role, trying to uphold ICANN's mission.

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I can't imagine in this organization, the way it is, that there aren't tensions, but from your seat, I think it would be helpful for us as community participants to understand what the tensions are. What's difficult for you?

JOHN JEFFREY:

I hadn't thought about that question but it's a good one.

The quick answer that comes to mind is that sometimes we work outside of a factual basis. So some of the complaints that are brought to the organization are based on premise or falsities, right?

So an example would be a recent article in The Register that highlighted the way that a lot of things that weren't in the decision, they misrepresented, in the way the decision was written and what it said. And as an example of that, it's very difficult for us to find a forum to counteract those kinds of errors. So factual errors are probably the biggest problem that we face in the legal department. How we appropriately put the right facts out into the community, how we make sure that the record is corrected is a constant challenge.

I think there's also probably tensions in that there's a mistrust, and so one of the reasons I'm sitting here today is that I want to help change that and I want you to understand not "trust me, it

will be all right," but, "Here's what we do and here's the basis upon which we do it" and continue to judge and continue to push on those things so that we get better.

JAY DALEY:

Okay. Thank you. I certainly, for one, am surprised by many of the answers you've given today, and very pleasantly surprised, I should say, and I suspect many of the people here are as well.

Would you have given the same answer, say, two years ago to these questions?

JOHN JEFFREY:

Well, so I don't know where that would fit into the time line exactly.

JAY DALEY:

Approximately.

JOHN JEFFREY:

When I think back across my 13 years at ICANN, I know we've been in some periods where it was much more tenuous, if you will. You know, I cite back to some of the major litigation that we had not so long after I started as the general counsel that were really existential threats to the organization and with far

less funding available to us, with less resources available to answer the questions and the problems that were coming up.

So I think -- I don't know about two years ago, but certainly I would say when we entered into the process of the transition, we were probably more suspicious of where it was headed and where it might head and were pleasantly surprised by the way that the turn of the transition occurred and the way that it enhanced the community's involvement and the accountability to the community that we now see coming out of the bylaws.

JAY DALEY:

So one of the key messages to take away from you today has been about the close -- well, in -- I think in your view, no particular separation between the public interest as it applies to the company and as it applies to the community.

Has that always been the case?

JOHN JEFFREY:

I'd have to go back and study that. I think it's probably evolved. I think that we're at a unique point with our new bylaws where there's greater consistency to the organization's bylaws to allowing community empowerment and accountability of the organization.

Also, I mean, when I started, I was employee 23 or something like that, and we now have 360 people. That presents us with a whole different opportunity to do the job of the organization and to serve the community than was available to us 10 or 13 years ago.

JAY DALEY:

Thank you, John.

So I have finished the questions I have, and if you think I have missed any of the hard questions, now is your chance to come up to the microphone or to come and whisper them to me or to send me a text message very quickly.

Otherwise -- oh, no. Last chance, Milton.

MILTON MUELLER:

Can't resist on this one but I know you can't talk about ongoing litigation. Milton Mueller, by the way, Georgia Tech.

But the picture -- and I did read the actual decision of the Dot Registry case.

So the picture of the process that was developed there was truly appalling. I mean, I don't -- I'm not saying you're responsible for it. I don't know who's responsible for it. But if you could sort of

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put down in writing the worst nightmares of people who have been dealing with ICANN all these years, that would have been -- would have been it. I mean, it -- it could have been written by a very good fiction writer who had been, you know, dramatizing some of the intricacies of the ICANN process because you created all these indirect mechanisms of evaluation and some of us suspected that these were kind of a sham, in the sense that you just wanted to move the responsibility away from the organization. And I understand why you did that, but the -- this - - as I'm sure you know, this is very, very corrosive of the legitimacy and trust behind the organization, so...

JAY DALEY:

Can we just be clear, I think, that this needs to be argued in the -- answered in the context of ICANN rather than the individual here, okay? I think. Effectively, what I'm saying is I don't think that we should take anything personal from that. That would be inappropriate, okay?

JOHN JEFFREY:

I'm not sure I understood the question. So if the question is, did -- did the decision --

I'm not sure. Can you restate the question, Milton, because I'm - - I'm struggling with how to answer it without answering specific

questions about the -- the case. And as you know, we are conducting an investigation of some of the allegations in it and we might find that there were deficiencies. It's also possible that we'll find that some of what was represented wasn't true. Particularly, the way it was cast in an article.

So, you know, we posted a two-page factual clarification regarding the blogged report, and that's contained in the board papers and I'm happy to point to that. That might answer some of the questions. And we're -- certainly we might learn more as we do the investigation of how the process was run.

But we take it very seriously and I agree that if ICANN did something wrong -- and it's very possible we did -- then that's a serious thing and we should take it very seriously and figure out a way to make sure it doesn't happen again.

MILTON MUELLER: That answers my question. Thanks.

MICHAEL PALAGE: Final word. Actually, not -- actually not -- Mike Palage, for the record. Not a question. More of a perhaps recommendation.

With regard to the retention of different outside law firms, Chris, to you: In the Board Governance Committee, do you currently

conduct an audit to kind of look at those cases that you win and you lose? So when you perhaps lose a case, what was the recommendation of legal counsel? What was the recommendation of outside legal counsel? And kind of looking at the numbers. Does -- is that undertaken?

CHRIS DISSPAIN:

Let John say something first, and then I'll...

JOHN JEFFREY:

Yeah. Not exactly the way you've said it, which is a clever approach and I'm not sure I've thought about it exactly that way, but I expect that from you. Mike and I have talked a lot across the years about these sorts of things.

We did present recently some statistics about when we've defended the organization on IRPs or reconsideration requests or other things, and I think that if I'm not wrong, some of those statistics will appear in one of the books that would be presented with the minutes that will be published this week.

And if not, we'll -- we'll work to see if we can make a public version of it.

But I think -- you know, I think what you're saying is, is the board looking at, you know, what we do and how we do it? All the

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time. They hear from people like you about -- challenging it. They hear from, you know, other people here that have said "You shouldn't use this firm" or "You should approach it differently." We get a lot of advice about how to give advice, and the board takes that in and challenges the legal team and the -- and the management team on a regular basis about how we conduct our business.

MICHAEL PALAGE:

And just to be clear, the board can, in fact, be wrong because you give advice and they -- from what Chris said, they could disagree with you. So part of that audit and accountability would be the board disagreeing, so...

JOHN JEFFREY:

That's true. All of us can be wrong.

CHRIS DISSPAIN:

And just to -- just to finish that up, Mike, yes, I think -- I mean, what you -- you raised a very good point. I just wanted to flag that one of the things we're working on at the moment is a -- is a refinement of the way that we deal with what I'll -- what I'll -- umbrella legal issues in the sense that the board deals with in reconsideration requests, et cetera, and I think the concept of -- I

mean, you don't want sort of a chart but -- but I think the concept of an audit, if you like, over all that stuff is very useful. Thank you.

JAY DALEY: Great. Thank you. So I have two questioners left. I have Ali and then I have an online one and I'm closing the queue after this, okay?

Up to you.

UNKNOWN SPEAKER: I'm Ali for dot KM. Is it possible to think that a decision could be taken in a hurry and you regret later?

JAY DALEY: Did you get that? That a decision could be taken in a hurry and regretted later.

CHRIS DISSPAIN: And regretted later. Yes. I think everyone in this room has a life and I think we all have a life. We'll say the answer to that question is yes, it's entirely possible a decision could be taken in a hurry and regretted later generally. From a legal point of view, we strive not to do that.

JOHN JEFFREY:

And I think just to correct the record, I think the record says "highly regulatory letter" and I think -- yeah.

So absolutely. We have to be very careful about that, and one of the -- one of the things that my team has to do on a regular basis is slow down, make sure we're -- we've collected the right facts, and sometimes when we get to the board, we find out we didn't collect all the right facts, we're challenged by that, and we go back and we get more facts.

So I think that's a good question. It's something that any lawyer has to be careful about that you don't get ahead of yourself and you make sure that you're basing your advice on the correct set of facts.

JAY DALEY:

Great. Thank you.

So final question then. Now that I think we all understand each other much better and that we have some of the finest legal minds in the community here, do you have any questions for the audience?

JOHN JEFFREY: Yeah. I would say the most important thing that I would like to ask you is to continue to have dialogue and criticize us, to give us advice on how we can give advice better and what we can do better.

So if you have any suggestions, we're certainly open to it. We hear what you say. We'd like it if you could frame that advice sometimes in a little less causatory way, maybe a little friendlier and hopefully this type of dialogue would set that up.

JAY DALEY: Great. So I have an extra question, then.

Byron, carry on.

BYRON HOLLAND: Well, it's not going to be a question, it's going to be a comment.

And I would just like to say that to some it may be a surprise that you didn't show up with a trident and horns, and I think it's very, very welcome and we should recognize that, that you have come out on behalf of ICANN legal and stood or sat in front of this audience and were willing to take on all questions.

Clearly, sunshine is good for the relationship, and I think it's safe to say that it's much appreciated and you should be recognized

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for that and I would suggest that we do it more regularly and that nature abhors a vacuum and people start to fill in their own narratives and often those narratives may have a tenuous relationship to the truth, so the more that you can -- you can fill a vacuum, the better.

And also thank you, Jay, for being the catalyst to get this going. I think it's very helpful for the whole community and hopefully for ICANN as well.

JOHN JEFFREY:

So one thing I'd like to say is I'm standing here, but really I'm representing, you know, a whole management team that worries about these issues and thinks about it and, you know, we almost have honorary lawyers across our whole management team because people think about these things very hard.

Also, I have a very strong, very smart set of lawyers that work with me at the ICANN legal department. Just over here is Samantha Eisner sitting right in the front row. Shawn White is here. Laena is here as well. We have our team back in L.A., Dan Halloran and Amy Stathos and Erika Randall, all who are -- and David also from the contracting group. So we have a really strong set of smart lawyers who are very passionate about

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helping you and the community do your work, and if we can get better at it and you can give us suggestions on how we might improve, we're very open to that, and thank you.

JAY DALEY:

Great. Well, I want to thank you for this time, John. Thank you for the answers.

I think like you that some years ago the answers would have necessarily been quite different, but that would have been perhaps more about culture and leadership than anything else.

I would hope the next time we do this that all of the many people that have emailed me questions will feel free to ask the questions in front of the microphone because I think that will be a better dialogue for us to do, but certainly thank you to all those people who did send me those questions so I could do this.

And thank you very much to Chris as well for coming along.

So that's it. Thank you.

[Applause]

[END OF TRANSCRIPTION]