EN

LONDON – ATLAS II Thematic Group 2: The Globalization of ICANN - Session 3
Sunday, June 22, 2014 – 11:00 to 13:00
ICANN – London, England

UNIDENTIFIED MALE: ATLAS II Thematic Group 2: The Globalization of ICANN – Session 3, Hilton 1-2.

SETH REISS: Welcome back, everybody. This is Seth Reiss. So we're going to have about an hour-and-a-half before lunch. Those of you who are already here, we're going to be walking to the Paddington Hilton for lunch. Right after when we get out at about 1:00 p.m., we'll be going down to the east wing lobby and walk over as a group with your RALO. We are being hosted for lunch. For about an hour we'll have a speaker and some questions, and then we're back here at 3:00 p.m. We'll have one final session until about 4:30 and then a plenary.

So I think the agenda for the rest of the morning will be to finish out this question one and try to move on to question two, and hopefully get through that as well by 1:00 p.m.

So on our queue is Vittorio next.

VITTORIO BERTOLA: Yeah. I just wanted to add a couple of things. One is another dimension of diversity that I think we might have missed, which is the sub-regional diversity. When we started to develop, very few people from the different regions. Now I think there's a lot of participation. In some

cases, especially Asia-Pacific, it's very hard for a few people to capture all the diversity of their region.

By the way, I remember almost ten years ago, to make this exercise in check, the nationalities of Asia-Pacific representatives say – I think it was in the GNSO constituencies – and there were six people and they were five from Australia and one from New Zealand.

So I think this is getting better, but still in many regions, there are some parts of the region which are more represented than others. In Europe, for example, it's Western Europe versus Eastern Europe.

Also, I think that there could be some effort to expand the opportunities. When we started, we decided that the ALAC would have been made by 15 people and they seemed like a lot. Maybe today it would be better to add some people. Maybe have some bigger ALAC so that we can bring some diversities with the ALAC table. And maybe the same in other places, but especially in the At-Large, since I think that's the place where most of the diversity comes. So maybe by having maybe four or five people per region in the ALAC there could be a way to bring more viewpoints and bring more diversity into the group.

And then I wanted to comment, and this brings me to comment what Carlton was saying because I think it's a fair point. And by the way, the issue about representatives of the users being volunteers while other constituencies are professionals and have business interests and pay people to participate has been there since the beginning.

And again, when the At-Large started, the very first years they said, "We will not even fund you to come at the meetings." So after some

struggling, we obtained the ALAC members would be funded to attend one meeting per year. Then we say, okay, but basically we cannot work that way if we cannot even come at ICANN meetings and meet the people and start talking with them.

So after some struggle, we ended up getting funding for all of the meetings in a year. And then after a while, we started to have liaisons and we were told liaisons will not be funded unless they are also ALAC members.

Over time we managed to really conquer more funding and get funds, at least to cover the expenses. So no one was ever paid for attending At-Large meetings, but at least we have expenses paid and then we started to have proper staff support and the likes.

In this process, maybe again it's time to think how can you actually promote participation so that people don't have to volunteer their time. Not everyone maybe has to volunteer their time. This is a very difficult issue. This already came up. This comes up every time when people discuss Board compensation, which was something that Carlton also brought up. The issue is that if you start giving people money to be part of the ICANN meeting mechanism and be a Board member or maybe an ALAC member or whatever, then all sorts of bad things could start happening. Basically, trying to get there in whatever way they can just to get the money. So basically that's the basic problem, especially since the amount of money which is maybe not too much for someone living in a developing country where the high cost of living might be a lot for people from other parts of the world.

Again, you can [inaudible] to all sorts of difficult issues of whether you have to differentiate the compensation. It's complicated. But still, in the end with let's say traditional politics, almost every part of the world came to the conclusion that you have to pay the representatives for them to be able to do their work properly. So just compensate their time and not just pay their expenses.

So I don't have a final opinion on this, but I think this point in time in the development of ICANN it's fair to raise the issue that some constituencies make money out of this, and so can pay people to attend properly and spend a lot of time, where a lot of people at other constituencies cannot pay people to attend.

Maybe there could be even some creative solutions. For example, ICANN could just ask the governments to subsidize civil society participation in ICANN, just to say, because at least for many countries, that will not be a big expense maybe added to general expenses for Internet governance participation by governments.

But then again, you run into the risk that the government gets to pick which civil society [inaudible] again attend ICANN meetings, which again in some countries might be a problem.

I think there needs to be some creative thinking on this, but definitely it's an issue that we should maybe mark and raise for the future. Thank you.

UNIDENTIFIED FEMALE: Hi, I'm [inaudible]. I'm pretty new to these meetings, but I just wanted to react to some of the things that have been said about compensation

and women participation, because I think you can probably tie the two issues together. One of the things that's probably most widely shared across the world is salary and equality between men and women, and also the way household duties and childcare are being shared.

So for women to afford the time and energy to attend and participate to these meetings without compensation, I think it's even more difficult. So the lack of compensation probably does affect women participation, at least to some extent. So to answer your question, yes there are some barriers to that extent.

And for what you were just saying about compensation by governments, I mean you could have participation of governments to enhance participation. Now, whether you tie this to government deciding who they're sending, maybe that's where you can work out some solution to make sure that yes they do sponsor, but they don't necessarily pick the people.

Now, there is another question. I don't know how relevant it is, but it's for sitting in meetings in Singapore at the last ICANN session things that I've picked up. There was this meeting from people from the Asian-Pacific region who were discussing among themselves how can we make our voice heard and how can we voice our complaints?

And one of the things that struck me is the cultural codes and culture, what you need to master in order to participate to these meetings. And it's not just languages. It's also the way of addressing people, addressing issues. You need to be not only fluent in English, but you need to be assertive. You need to be able to walk up to people and say, "Well, this is my problem. This is how I need you to help me deal with it."

And what I picked up from these meetings is that in many Asian countries, this is just not the way you deal with things. Interestingly, in these meetings, the people who were leading the discussions were from Hong Kong or Australia.

So how do you think in terms of adapting culturally also to this part of the world that does not negotiate, maybe doesn't have the same cultural codes and doesn't bid negotiation the same so that they can get their voice heard. I don't know.

SETH REISS: Thank you. One thing that occurred to me is that every region in every country has vigorous dialogues and debates within their legislature. Obviously we're all capable of having the vigorous debate, and then the only question is how to integrate them on a global level.

[Arnaldo] is next in the queue. We were going to cut it off. I know Garth just put his sign up. Again, since I overlooked him earlier, I'll give him one shot, but then we're going to summarize this issue number one. [Arnaldo]?

[ARNALDO]:   So going a little bit back to inclusiveness and things like that, I would like to give you a little bit of context. I attended my first ICANN meeting, I think it was in Costa Rica. Then I realized and I learned about the community.

I've been working in various things since then, more oriented towards dates, analytics and things like that. So I've been trying to get involved

with the community. I even was at the OARC meeting last May in Poland presenting some results I found on those data sets.

But even though I've been doing those things, in the more general and policy side of things, I feel myself a little bit excluded, and I was thinking why. Basically, I understand that the community wants to hear the voice of the people. And it's not the community that is preventing me from getting access to the stream of ideas. Perhaps it's just the fact that I don't have a clear overview of what's going on.

I know there are some, for example, public comment debates being posted. Although those pieces of information are very useful, I think Internet is so universal. It's so engrained into what is to be human now that there should be a more visual or universal way of explaining those ideas.

It came to mind as a possible solution Google at some point – I don't know if they still do it – but they had kind of a marketplace of ideas in which employees will write an idea, which of course can be translated, and then people will vote or say things about that idea, but in a very compact and perhaps universal way. The key here maybe is to simplify the language, use simple English. I think Wikipedia has a simple English version.

So use things like that so that everybody can understand what's going on, what is being analyzed at any given time. Maybe those are the thoughts that I have. But a way of interacting online using the Internet that is more based on…

I think there are some dictionaries out there that are very visual that try to be universal, independent of any language and I think those ideas should be taken into consideration perhaps.

SETH REISS: Thanks.

UNIDENTIFIED FEMALE: I'm not making that suggestion. I mean, I'm putting this on the table as one of the barriers that I think affect women even more so than other participants. Now we can start a discussion if you'd like.

TIJANI BEN JEMAA: Sorry. I was asking [Frederik] if she means that a woman should be compensated to participate.

CARLTON SAMUELS: What she was saying, she was making a connection between gender and compensation. You could also say that low participation of women in ICANN meetings could also be linked to compensation. The fact that they're not compensated could also depress the numbers. But she was not making a prescriptive as to why. She was just noting that you could link those two things: compensation and gender, and the lack of participation. That's what I got.

GARTH BRUEN: Thank you. I was just coming into the room late and hearing what [Frederik] was saying, realizing that there are a number of problems

culturally with getting people involved. One of the things that I've been very curious about, and I had asked a number of colleagues from Eastern Europe and from Central Asia about this, why don't we have any ALSes from Russia? It's one of the biggest countries in the world.

And the answer I got from all of them universally was that as soon as you become involved from Russia in an international organization, you're immediately suspected of being part of a foreign plot. So it is discouraged within Russia to do such a thing. It's extremely unfortunate. I don't know how we get past that, but I think it's important that we do get past that.

I have to disagree with something that Seth said. Every country has a legislature. Not every country has vigorous debates. Some countries the legislature is just hold up cards to agree, whether or not they agree. So that's another difficulty.

SETH REISS: Thank you. I appreciate you pointing that out. I think Carlton and then Roberto. Roberto. And then we're going to have to close this issue. All right.

ROBERTO GAETANO: Sorry about that, but what you were saying reminded me of one important thing, an issue that I have already pointed out to ALAC in the past.

If we look at the distribution of At-Large Structures on the world chart, there is what somebody had pointed to me as to be a blank spot, and that blank spot is Central Asia.

When you are talking about Russia, that reminded me of the fact that the issue is also relevant for the new republics that are coming out from the breakdown of the Soviet Union. We don't have any presence there, except for Ukraine. I think that this is one of the big issues for ICANN for sure, but specifically for ALAC in terms of global representation because that's a significant part of the world and it's a culture, there's a world, that is missing the input in ALAC. And I think that, on the long term, there's something that we need to do about it.

SETH REISS: Thank you. At this point I'm going to invite anybody who has not spoken on question one, and then we're going to cut off debate and Carlton will summarize for us. Go ahead.

UNIDENTIFIED MALE: I think I'm new. This is my first meeting in ICANN, but I see the issue of inclusion and diversity. If I look at it as a newcomer, the ICANN has established the multi-stakeholder model for the engagement of all stakeholders and players in the Internet domain.

The model is there and I think it's wide enough to include everyone. There are issues that hinders the implementation of the model, which the language, the translation were probably geopolitical. It reflects the visa issues.

These are the major hindrances of maybe accessibility for the disabled persons. These are really issues that can be addressed in the how to be solved to make sure that they're included. But I think the inclusion of women, the inclusion of different types of societies, of minorities, of the linguistics or whatever, this needs a lot of promotion and work from the [ALAC] themselves so the community knows that they have a voice. People do not know that they have a voice that they can share their opinions with ICANN. I think this is the main issue.

The majority of people, they do not know. They see ICANN, this is something. They see ALAC or [inaudible] privileged people who go and attend the meetings. But what do they do?

I'm sure that the majority of the civil society like us, the NGOs, we don't know that we can have a voice and speak and say whatever the needs and what is our point of view, how do we see that improvement happens.

Africa is the same I think. What you have mentioned about the Caribbean, we are still fighting about the accessibility, how the kids can access the computers. Is there Internet or not? Electricity power supplies. We have basic issues that we really look at.

But still, with all these issues, we have a voice and we need to [inaudible], but we don't know this. So I think one of the issues that we need to look at very well is the promotion or the awareness, raising awareness about the rights of the community to express their needs to the ICANN.

SETH REISS: Thank you.

YASUICHI KITAMURA: Thank you. My name is Yasuichi Kitamura from Asia-Pacific At-Large Structure. You mentioned about a lot of things about Asia-Pacific area, but I'd like to say about Central Asia at this moment. We have some experiences of the connection with Central Asia. As you know, in the case of Central Asia, they have a lot of [problem] about the economy or the [inaudible].

So first of all, it's very hard to organize a circuit there because of their [inaudible] or some of the world was [inaudible]. So for such reasons, they have [it]. Most of the circuit project was made by the NATO order, the European Union these days. So the European Union started the collaboration with Central Asian countries with the name of the CAREN.

But at this moment, their circuit structure is still the [star] type. So that is the source area is from the European area to each country or from the [inaudible] to each country. That's it.

So they [inaudible] single backbone from the European area to the Asian area yet. So for such reasons, actually the academic area still the structure is such like this so that it's very hard to bring some of the ideas from the basic area to the upper. They can't think they can reorganize order, they can make some effect to make the Internet better by their power.

I think that is one of the reasons why Central Asia is a little bit empty area at this moment. Of course [inaudible] academic area they are starting how to organize their activity to accessing outside. But

unfortunately, they can't do it by themselves. They need some help by the European Union [inaudible] NATO yet.

And also, because of a lot of political reasons. For such reasons. If we keep promoting that the Internet can govern by ourselves so we can build some At-Large Structure there. But if we don't do that, it do take long – three years or five years – to start thinking of the At-Large Structure.

UNIDENTIFIED MALE: …inclusion and diversity. The conversation started out by asking if they were biased to participation and we recognized that there were certain barriers. There were structural barriers in terms of language and access, and it went into quite detail about what was happening in terms of language.

I think the general consensus is that while we have made some progress with respect to interpretation and translation, there were still some issues around interpretation. It was felt that for interpretation, the live transcription offered a lot of possibilities that were [now] exploited and maybe could be, especially for other groups or disadvantaged groups like disabled groups and so on.

There was a question in two areas about the translation. The first one recognized was that what is emerging is not fit for purpose, sometimes because of machine translation. So there was a plea that maybe more human translators are needed.

Tijani mentioned that those translators could actually be sourced from the community. That was a major point. The question of documents,

even with the translation policy we have [inaudible] of having translation into the UN languages, the fact that most documents in English was produced first and then the other languages came afterwards is a problem, because what you had was uneven in terms of knowledge and information transit. So they thought there was a policy adjustment that needed to happen to make that work.

Disability is understood to be a global problem. It was global neutral, as that was a word that was used. Disability was global neutral. So the idea is that whatever we do for disability, response is across the board.

Some solutions associate with that was, for example, again about the transcription and how live transcription really is useful in terms of the meeting. Garth made the point that oftentimes we can't sit here – and Neil also made the point very strongly and stridently, that we can't sit here determining what is good for the communities that are disadvantaged when they're not in place to tell us what that is. And Garth made some points about having those people, attempting to have them bring into meetings and it's been pushed back on. Neil made the point very clear that he thought gender was a problem and maybe what we need to do is to take a stand as to how we include gender parity in terms of meetings.

There was a question about making a distinction between engagement in the meeting process and then in the work group people where most of the policy development occurred. We acknowledged that there were some structural problems there. Most of the work groups, almost all the work groups, are done in English and they were structured to favor – in times to favor – the north and European time zones and that probably is

one way that we could begin to look to see how we get more participation in work groups, the fact that work groups were not – they didn't have language support is another are that we might begin to look to see how we might improve that.

We also mentioned one of the structural problems about work groups and most of the people who volunteer [are paid to] volunteer. That is an issue that needs to be addressed.

The disability and participation, problems of language and so on. The human translators is one thing, but also there was a question of getting to the meetings and the issue was about visas and how some areas of the world were disadvantaged with respect to accepting visas, and one of the ways that Tijani thought that you could address this was to be more choosy about where you have meetings. He also made the case that greater engagement at ICANN in the meeting scheduling could also help the problem, and he made the note of the IGF. He even put the caveat on it and said, sure, people will say it's an inter-governmental organization and maybe working within governments, etc.

But his point was that you're not asking – it makes no sense asking government to change their process and procedures. What you have to do is engage it effectively and engage early. That is the point he was making with respect to that.

Roberto drilled down on the organizational culture of ICANN that needed some work. He said that if we focus on policy development to be more effective and more global, then we would probably end up with a stronger participation in the work groups. So he thinks that it's the organizational culture that need some work in ICANN.

There was a long discussion about the role of access and capacity for participation. Lance started off by telling the distinction between where we were in the Caribbean and in Africa in terms of access, the IT side of it. Amir made the point as well where he was in West Africa that we were trying to get people to use the technology, and this is where we're building capacity for access now, and what has happened is probably Europe and North America has gone through that phase. The differences between participation, where we are on the continuum of having access to the technologies and so on and being able to use the technologies is one explanation for the differences in participation.

We are working in some areas of the world just to get people capable of using the technologies and having access where those kinds of issues have long been solved in the areas where there's higher participation.

Several issues came up with regards to gender. It came back before. [Fredrika] mentioned that there might actually be a connection in participation between gender and compensation, the fact that if you look at women who by and large bear the brunt of the responsibilities with child rearing and so on in the domestic space, lots of their time is taken up. It is a real investment of time to put that down to become involved in these things, and maybe if there was some element of compensation, it might…

And the idea is if I can substitute me doing these things in the domestic space and have some time, then maybe I participate some more. That was the point she was making. It's not that you were going to hand money for somebody to participate, but to say that there is substitution. If there's substitution, then there's time.

Vittorio drilled on a little bit on the diversity and talked about sub-regional diversity and what kind of mechanisms could be put in place to ensure that there's more sub-regional diversity, and he made specific mention of what is happening in the Asia-Pacific. Even if you look at the date that we now have, you can see that there's more participation from Australia and New Zealand as opposed to other areas of the Asia-Pacific region and maybe we need to have a look at that.

Some persons thought that yes there is, but there's also some cultural barriers or the moods of participation sometimes affect how some cultures approach it. So for example, in some cultures, being critical in the public is not something that you do, standing up at the mic and making noise is not something that is normal for the culture. So the moods, the modalities, of participation might actually be a barrier to participation in some areas, and that was made very clear.

[Arnaldo], again putting back on the capacity and awareness, the role of the issue. [Paul] also made the same point, that awareness of ICANN and what is happening could also be a part of the reason why there is less participation from the developing economies, because we're just working on helping people to be aware of ICANN and what it's doing.

[Arnaldo] made the point that while he's here, for example, it certainly is a very complex situation. Just understanding how the bits fit together and where you are located in that is an issue. So he figures that what we want to do is probably have a simpler way of communicating these issues. I noticed that while he didn't quite actually develop the idea, he was making mention of the fact that everybody's is visual. Visual communication is more readily accessible to people all over the world,

so maybe what we want to do is to find a way to make more of these ideas, make more of this information visual. That's my understanding of what you were saying.

So he thinks that if we change the communication model and make it more visual, then we would probably reach further into the communities and have more people being aware, and out of awareness it will drive participation. That's my understanding of what you were saying.

Blank spots in the global scene for participation was brought up. Special mention was made of what was happening in Central Asia. There was an explanation given that most of Central Asia, there's telecommunications infrastructure and the people is a part of the problem. Not just the capacity in the people, but the telecommunications infrastructure. Some information was given on what's happening with outside agencies trying to help with the telecommunications infrastructure and creating the communities.

Yasuichi made some point of research, CAREN research and education networks being a part of that motion where they are building infrastructure and they are also building the communities and trying to get them to communicate and collaborate between more.

And what I get from that is that once you have that in place, then part of that could also – in the academic environment at least, you could bring them in because now you have them communicating and you can communicate from the outside to them using that infrastructure and those networks. That's my understanding of what you were saying.

All and all, we recognize that inclusion and diversity are big issues. We recognize that there are some structural issues that can be addressed. We recognize the role of the infrastructure, of the networks. We recognize the cultural barriers. We recognize the gender barriers. We recognize the awareness and capacity building requirements that need to enable more participation. That's it.

SETH REISS: Thank you, Carlton. So now we can move on, but we're going to skip issue two because we've covered some of those in issue one and also because we're going to run out of time. We want to make sure we get to issues four and five.

So starting with issue four, accountability.

UNIDENTIFIED MALE: Can we scroll up so we can read it?

SETH REISS: Sylvia? Accountability. Are the accountability mechanisms to be addressed in a different thread globally fair? Will all the different global stakeholder groups have the same power to enforce? Checks and balances in ICANN's behavior.

I don't know if we have somebody – are we lucky enough to have somebody who may have participated in the ATRT? No? That was the plan.

UNIDENTIFIED MALE: I think that was the plan. Somebody from the ATRT would have been here.

UNIDENTIFIED MALE: Carlton was on the EWG. What's that?

UNIDENTIFIED MALE: EWG just deal with one thing.

UNIDENTIFIED MALE: It's still important.

SETH REISS: I'll throw it out to anybody, though. Who wants to start the discussion on this issue? Milton? It would be best to begin by identifying the accountability mechanisms, then you can answer the question whether they're globally fair or not. And that may be a bit of a challenge. What actually are the accountability mechanisms that ICANN has right now?

UNIDENTIFIED MALE: Who is speaking?

[MILTON MUELLER]:   Milton Mueller. Syracuse University, Internet Governance Project, and the Non-Commercial Stakeholder Group.

[SETH REISS]: I know that a lot of this was covered in the ATRT report that Rinalia referred to. Roberto, can you talk about some of the mechanisms?

ROBERTO GAETANO: Actually, I was not part of the ATRT-2 report. I was not necessarily following up on Milton's comment. I just wanted to make the point as one of the tasks of the subject matter expert is to define what we are talking about, and I would like to make sure that we focus the discussion not on whether the accountability mechanisms are good or not good in order to provide proper accountability, but whether those accountability mechanisms are fair in the global sense. In other words, if the moment that we have established accountability mechanisms, if every type of stakeholder can have equal opportunity to influence those mechanisms, but also to be part of the community that the accountability mechanisms refer to.

Just to make an example to explain, we have currently some accountability mechanisms that are based by the – for instance, DAOC and the counterpart is the U.S. government. That is clearly unbalanced in the global sense because the question is the accountability mechanism should have as a counterpart the U.S. government or somebody else.

I don't know if I understand it. I'm very confusing when I'm hearing to myself, but what I want to say is not the accountability mechanism per se that we are discussing, but the way this covers in an equal way all the stakeholders. And that's basically the same thing that we say also in point two, my interpretation of point two as well.

In terms of to define what the accountability mechanisms are now and what is proposed by ATRT-2 I'm not the best person to detail that, but if nobody else. Maybe Milton. You are pretty well-placed. Actually, we're fortunate that you came in at exactly that moment.

SETH REISS: We were hoping you'd walk in the door just when you did. Can you help us a little bit? What I heard Roberto say is that the ALT is one example of how accountability is not global because of the ALC. For those of you who don't know it's a contract between the U.S. government and ICANN. So obviously that's not global. That's unilateral. So maybe, Milton, can you tell us a little bit more about the other mechanisms, so rather than discussing the mechanisms, we'll discuss the global impact of those mechanisms.

MILTON MUELLER: Affirmation of Commitments. To use acronyms, the Affirmation of Commitments is the AOC. Well, to assess the global fairness or equality of access to these accountability mechanisms, you have to identify them. So the most important form of accountability ICANN faces is really the IANA contract, and that is obviously unilaterally subject to the U.S. Department of Commerce. The Commerce department is politically much more influenced by U.S. business stakeholders than anybody else, so it's fairly obvious that this primary form of accountability is not globally equal and that's why we're having this discussion about the IANA transition.

The other form of accountability is actually California law. I guess in principle it would be possible for anybody in the world who reads English to understand California law and to utilize it. But again, there seems to be a bit of a geographic bias there.

The Affirmation of Commitments is probably the least bias of these three mechanisms. Not that I support that particularly as a form of accountability. I think it's pretty weak. But really it sets out a set of principles that ICANN makes, which are not necessarily U.S. centric.

For example, it affirms the U.S. government's commitment to the importance of global Internet users being able to use the Internet in their local languages and character sets. It makes ICANN commit to a transparent and accountable budgeting processes, fact-based policy development and so on and so forth.

It requires ICANN to remain headquartered in the United States of America with offices around the world to meet the needs of a global community. The basic principles of the affirmation are good things like preserving security, stability, resiliency, accountability and transparency in the interest of global Internet users, promoting competition, consumer trust, consumer choice.

But again, all the Affirmation does from an accountability standpoint is create these review teams which then tell ICANN how it's doing and then issue non-binding recommendations for how ICANN can change its behavior. So again, as an accountability mechanism, the problem with the Affirmation is not so much its inequality, because GAC and other people on the review team had drawn from the broader ICANN

community, but the weakness of the accountability leverage that you have.

SETH REISS: Other comments? I thought we'd use this because it will maybe help us summarize.

MILTON MUELLER: Well, I forgot one mechanism – the independent review process (IRP). That is an economic barrier more than it is a geographically-biased barrier. I think the dot-africa people just use the IRP successfully, so it's some indication that it can be used by people outside the U.S., and the only other person to use it successfully was the xxx ICM registry.

SETH REISS: Could you summarize that for us? [inaudible]

MILTON MUELLER: The Independent Review Process, what that basically says if ICANN violates some kind of procedural requirement in making a decision or it breaks its principles, that you can challenge it and you have three international arbitrators, one of whom is chosen by the challenger, one by ICANN and a third is agreed upon by the two. Then you have basically a quasi-judicial proceeding in which people try to convince these three judges that they're right and ICANN defends its decision.

SETH REISS: Other accountability mechanisms? Roberto?

ROBERTO GAETANO: It's more requests [inaudible] Affirmation. Would we consider the ombudsman as part of the accountability mechanisms or not?

MILTON MUELLER: Are you asking me specifically?

ROBERTO GAETANO: No, I'm not asking you specifically. Generally, maybe the red and green card. Do we consider this a mechanism that we have to include in the analysis or not?

GARTH BRUEN: There's also the document disclosure policy.

SETH REISS: Can you tell us about that?

GARTH BRUEN: Yeah. It's a request that any user can submit to ICANN to release different documents that may not be public, may not already be public.

SETH REISS: Any other mechanisms?

ROBERTO GAETANO: I wonder whether we should go into identifying what are the biases in these. Milton has already pointed out, but what are the biases on this that affect the globalization or the lack of globalization of those?

So in other words, is there anything in those mechanisms that we need to point out as a problem that is working against the global participation?

SETH REISS: Garth?

GARTH BRUEN: I can provide an example, and this goes back to the language issue of course. I was informed about a Tamil-speaking community group that had no members that spoke English, and they had their domain name hijacked because they did not understand certain transfer procedures. Somebody tricked them and their domain name got stolen.

They didn't even know where to start with any kind of complaint process or who to speak to. I only found out about the situation because another person whose first language was not English and whose first language was not Tamil got this information from them and was able to get it to me. So you've got multiple parties passing this information up. ICANN's completely unaware of it. This community group doesn't know how to communicate with them, and ICANN doesn't know how to communicate with the Tamils.

SETH REISS: Other comments? I'm sorry. IANA transition. Milton, if that's successful, will that partially address some of the accountability issues?

MILTON MUELLER: Milton Mueller, Syracuse University. Yes, if the IANA transition is done right, that will be a huge change in ICANN's accountability relationships. A huge change. It will basically be a test of whether we can actually create an autonomous global multi-stakeholder institution that is not beholden to a particular government or to an inter-governmental agency. If it's not accountable to the U.S. government or to an international treaty written through an inter-governmental process, then what is it accountable to? So that's the question that we have to be able to answer going forward in the next year or so. That will indeed have major repercussions for both accountability and the globalization of ICANN.

SETH REISS: Roberto?

ROBERTO GAETANO: I promise this is my last comment on this subject and I will let the others speak. I'm speaking because I'm referring to a comment that Rinalia made to me yesterday after the closure of the meeting pointing out that when we talk about globalization, we have two different scenarios, depending on how the IANA transition ends up, whether there's a full transition. We have one scenario of globalization. And whether at a certain point in time U.S. government holds back on this commitment that they have taken in March, we have a different scenario that will

affect the globalization of ICANN and the ability of ICANN to improve in its globalization.

I would really look forward to hear from the people who have not spoken yet and I'll shut up.

SETH REISS: Other comments? Alan, you look ready.

ALAN LEVIN: Sorry I'm late. I can tell you a little bit about the man on my right if you want me to. I don't know anything about the man on my left. But really, I would rather give you a comment and stay on topic.

SETH REISS: Tell us about yourself first. Who are you? At the very beginning, we each introduced ourselves and explained why we selected the Thematic Group 2. So you can do that briefly and then address what we're talking about today.

ALAN LEVIN: I think I was selected for Thematic Group 2. I don't remember choosing it. Maybe I should say what I feel. My name's Alan Levin. I'm from ISOC South Africa, one of the founding ALSes and AFRALO members. I'm really an old boy. You have to try and see that everything's on track.

So one of the things that I understand about accountability is that it goes together with responsibility and transparency. When you have all of these three in an open basis, they kind of work very, very well

together. In order to be held accountable, you have to be responsible. So maybe the U.S. government was accountable for the IANA up until now, so they were the ones that were responsible for the IANA.

If they're no longer going to be responsible for the IANA, we are. And we are the ones that need to be held accountable for you. If we're being held accountable for the IANA, then we require full transparency about how the IANA works. That's my understanding between the link between accountability, responsibility, and transparency.

I mean, all my feelings about ICANN and these areas is that transparency is central in order to ensure accountability and responsibility. Now, we've got the responsibility for Internet governance. I've no doubt about that. That's what I mentioned yesterday. I think that the Internet is global and I think that we as ICANN are responsible. And one of these moves is to move IANA out of the U.S. government control. That makes us responsible for that.

But I think if we're going to be accountable, we need to have full transparency of all the stuff that goes on in ICANN. It really just begs the question, the default position for any information, contracts, research, market intelligence should be open, public. The default should be closed. Maybe that's the only concern that I have about the incorporation in the U.S. is that there's certain laws that they fall back on that give them excuses to keep stuff closed and not open and not public.

So for me I think the main point that should come out of the session is that we beg, as At-Large, for full transparency. And if they're going to keep documents, contracts, research, anything private, there should be

a reason for that – and an honest reason that's in all of our interests and doesn't disable us for being accountable for the different ICANN functions.

SETH REISS: So California law – I'm sorry? Carlton? I appreciate it. Everybody should speak before I do. Don't let me overlook anybody. California law, it doesn't favor Californians in the sense that anybody who wants to hold ICANN accountable no matter where they're from has equal access to use the California law.

On the other hand, as Alan pointed out, there are certain aspects of California law that may prevent ICANN from being as accountable as it may otherwise be. Transparency being one and maybe Neil and Vittorio will tell us about some more. Neil?

NEIL SCHWARTZMAN: I'll see if I can figure out what you're going to say. Well, for one, America doesn't have a privacy law. They have a patchwork of crappy privacy laws that are at the state level, but there is no prevailing privacy law. So there's that.

Secondly, the onerous barrier to taking legal action in California means you have to hire a very expensive California lawyer, and that is absolutely fundamental because you need somebody called to the bar in California to do anything to deal with California law.

I'll go on to say that in, for example, Canada and particularly – in Canada, there are barriers to suing people that are actually

advantageous in that loser pays. So if you want to launch some stupid lawsuit against a company, if you file you have to actually put up some money in advance to cover the legal costs. America is an incredibly litigious environment and not one that's particularly – doesn't lend itself readily to ongoing international global activities, shall we say.

But we heard yesterday and are alluding to today to an evolution of the organization to something that's much more international, and when we look at where other trade associations are located, IANA is in Montreal. We know of any number that are in Brussels in Zurich and so on and so forth. So there should be some consideration as to why those other trade associations are actually located where they are. They obviously have some insight into the legal regime that surrounds their circumstance, and certainly ICANN stands out obviously from a historical standpoint, but from a current standpoint, and they stand out interestingly as, "Yeah, let's stay in California" for legal jurisdiction reasons. That's an interesting decision. So there may be some room for evolution. And I'll leave it to Vittorio.

SETH RAISS: I'll comment first. Yesterday there was a suggestion that ICANN be incorporated in several jurisdictions so that its contracts would comply with laws of several jurisdictions. This raises an interesting issue of if it was incorporated in several jurisdictions, where would it then be sued? Vittorio?

VITTORIO BERTOLA: I really wanted to challenge you statement that California law is not discriminating to non-Californians, but most of the arguments were the same that Neil already made. In fact, its [inaudible] southern law and southern jurisdiction can be used even by foreign people, at least in most parts of the world, but there are practical barriers. I mean, whatever the jurisdiction is, that will never happen or it will only be possible for people who have a lot of money and knows a lot of knowledge. Because in other parts of the world, they would not evenly understand how the American legal system works.

This is, by the way, a common problem. We have the same issue in Italy. The state often does not abide by the rights of the cities, and people and politicians who administer this [data] don't care because it costs 3,000 Euros just to challenge in the first degree of law that the [inaudible] – most citizens don't have the money to do that. That's a common problem area.

And I'd say that the bottom line could be that you should not rely on whatever jurisdiction ICANN is, and [inaudible] as a mechanism or accountability.

At most, it can be accountability in the wrong direction in the sense that it could make the local government and the local institutions more able to keep ICANN accountable to themselves only, and [inaudible] to people from the rest of the world.

There should definitely be some thinking as to where ICANN is incorporated. I think this is another issue that keeps coming regularly every few years at ICANN.

It's interesting also to think of the possibility of having several ICANNs – I mean, incorporating in different parts of the world, which in fact is how multinational corporations often work. Also because often they are actually required by local laws to have a subsidiary company incorporated in the local country.

This would actually allow, for example, European registrars to sign contracts with a European counterpart, which would then be a subsidiary of the global ICANN.

So maybe in a certain way it could be a way to address the issue of different local laws applying, and the issue of being fair to contracting parties with ICANN, wherever they come from. But again, it would be an additional degree of complexity, so maybe there's better ways to do that.

In the end, I think the point we should be making is that local law is not a way to keep ICANN accountable. It will always be there because ICANN will always be incorporating in at least one place, but you should not use that as the main mechanism of accountability. We should rather think other mechanisms that can be used fairly from people from all the parts of the world.

SETH REISS: Thank you. Anybody else want to speak to this point? Let's go back to the AOCs. It was pointed out that that's not global because it's unilateral with the U.S. government, even though the substance or the content of the AOCs may be global in their scope.

Let me ask this. What is the future of the AOCs? Are they documents – contracts – that expire? We talked about the transition, the IANA transition. What about the AOCs? Is that a document that may expire one day or does it go on forever? Milton?

MILTON MUELLER: Yeah. The Affirmation of Commitments can be I think terminated in 120 days. Let's see. Agreement will come effective…agreements tend to be longstanding but may be amended at any time by mutual consent of the parties. Any party may terminate this affirmation by providing 120 days written notice to the other party. Garth?

GARH BRUEN: I have a conundrum in my mind about the AOC because it's an agreement because ICANN and the Department of Commerce, and since the Department of Commerce is releasing ICANN from its obligations, I don't understand how the document continues to be valid. Maybe somebody could explain it.

SETH REISS: Roberto?

ROBERTO GAETANO: Actually, the reason why the Affirmation of Commitments was manufactured was as a step in the transition towards the goal that has been since the beginning of ICANN to lose their ties with the U.S. government.

So I don't see the problem in the sense that the Affirmation of Commitments – the role was to establish some accountability mechanism and make ICANN go forward in this direction so that it could give some assurance to the U.S. government that it was somehow safer to loosen those ties.

I wouldn't worry about the expiration of the Affirmation of Commitments because that's going to be superseded by the process that has been put in place in March that is going even faster towards changing the relationship, let's say, in this way – change the relationship between ICANN and the U.S. government.

SETH REISS: Tijani?

TIJANI BEN JEMAA: Roberto, the U.S. government announcement was about the IANA function transition only. So it is not clear about the AOC. That's why I cannot say that it is automatic as you are saying now.

ROBERTO GAETANO: Yeah, I agree. It's not automatic. The point is that whether we like it or not, the crucial point is the IANA function. This is where everything is turning around. Sometimes, as we say in Italian, we talk to the mother-in-laws so that the daughter-in-law realizes. We are talking about a lot of things but the key issue here is the IANA function and the control of the root, because that's the only element of pressure.

EN

So everything will depend on this, and this was also the sense of the comment that Rinalia made yesterday, that if this transition goes on in one way or the other, that will change completely the scenario. But formally, you are perfectly right.

SETH REISS: So if this transition takes place and the AOCs are not renewed, does that mean that we need a multi-lateral AOC to ensure accountability when the transition is complete? And how do we ensure that that new mechanism is globally fair? Milton?

MILTON MUELLER: Again, the Affirmation of Commitments is kind of a weird substitute for what would normally be done by an international law. In other words, you want to have certain binding constraints or rules on what ICANN is and what it does that can then be imposed on it or enforced upon it.

So yes, once you get rid of the IANA contract and a special relationship between ICANN and the U.S. Department of Commerce, then you need some other kind of accountability relationship. And the question becomes what are the rules or constraints that you impose upon ICANN? Where do they come from and how are they actionable? Who can sue or do things?

Some people in talking about this transition have said, well, let's require ICANN to put the Affirmation into its bylaws. I'm not sure that's a good idea or not, but it's something that's been proposed. And others have talked more about – for example, I've talked about structurally separating the IANA function from ICANN's policy-making function as an

important accountability mechanism that already exists in the numbers and protocol space, but does exist in the GNSO space.

So those are some of the ideas that are being kicked around. Other people are talking about reincorporating ICANN in Geneva but that would require a special kind of law, so then you're back into the law-making process. It's very complex.

VITTORIO BERTOLA: This is interesting, because there may be several different ways of doing this. The most traditional one, international law, is an international treaty but maybe there could be a new [inaudible] of an international treaty which does not only involve governments.

Which brings me back to the original issue, since in the 90s when ICANN was to have members, because the accountability is a mechanism for someone to allow to do [inaudible] if the leadership or the organization does something wrong. And originally, the idea was that everyone could become a member of ICANN, and so could actually influence what ICANN is doing and keep its leadership and management accountable to the general interest. And the more members you have, the more global and spread accountability you create.

Having members is not the only way to do this. You could just imagine that ICANN signs contracts with businesses, with people, with organizations, governments, whatever type of [inaudible] person wants to become a piece of this accountability mechanism, and then collectively all these contracts would provide some degree of accountability.

I see it more in this direction, so there is a distributed accountability mechanism that in the end works when several actors collectively decide to use it, because that's the only way to avoid one single type of a stakeholder or one single government or business or whatever has a [inaudible] of what ICANN does.

SETH REISS: Anyone else who would like to speak to this point? We have a lot of ideas up on the board. I'm trying the board as a way of facilitating discussion. Unfortunately my handwriting leaves a lot to be desired, so if somebody else wants to volunteer for this role, please let me know.

One issue is California law as a barrier to global accountability. Many people pointed out that the American legal process itself can be a significant barrier, even if the law itself would allow remedies for people worldwide. The IANA transition will address some of the global inequality of accountability, but then something globally fair will have to substitute for that. Then the aspects of California law that prevent global accountability in terms of lack of transparency, ineffective privacy laws, and again the legal forum.

[NEIL SCHWARTZMAN]: Sorry, if I can just add to that. The other aspect of California law is that it leaves ICANN open to spurious lawsuits. The ability of anybody to launch a lawsuit against the organization and effectively stymie their ability to do work is actually quite real.

And particularly after the transition, that may become really problematic. If anyone's been subjected to a lawsuit in America, they

know that basically their operations are frozen until the lawsuit is finished, and that could be a tremendously problematic circumstance for ICANN. Hey, they're the lawyers, but I'm just saying.

SETH REISS: So in your view, Neil, after the transition, the organizations can be more vulnerable to lawsuits.

[NEIL SCHWARTZMAN]: Yes.

MILTON MUELLER: I just don't know where this comes from. First of all, that it's easily subject to lawsuits, because in 15 years there hasn't been one. And I don't understand how the transition affects what happens under California law at all, because California law makes no reference to the IANA contract, Department of Commerce and so on.

The significance of California law is related to what Vittorio was saying. California law contemplates having a membership, and one of the bizarre things that ICANN did was declare that it has no members. So if it does have membership, then those members are given specific rights by California law, and ICANN was successfully avoiding being subjected to these lawsuits by not having members. That's the full story with respect to that.

GARTH BRUEN: I've seen at least two lawsuits against Canada that were completely dismissed before they even got to court because of jurisdiction. One plaintiff was from Hawaii. Another plaintiff was from Canada. Both of them were just completely tossed out because the person didn't live in California.

SETH REISS: Yeah. I'm not sure I understood the point.

GARTH BRUEN: I'm just saying I don't know if it's as easy as Neil's making it out to be.

SETH REISS: I see, okay.

NEIL SCHWARTZMAN: I'm not saying it's easy, but the value of ICANN increases with the dis-engorgement by the U.S. government of their attachment to the organization. Their incorporation in California allows for any number of – as we know, America is a litigious environment, and for somebody to just simply launch a lawsuit within the confines of America – I'm not saying a Hawaiian or a Canadian.

SETH REISS: Hawaiians are Americans.

NEIL SCHWARTZMAN: Well, okay. I'm sorry.

SETH REISS: I'll disclose that your assistant moderator lives in Hawaii. I'm not Hawaiian and certain Hawaiians would claim not to be a part of America, but geographically, we have been included.

NEIL SCHWARTZMAN: In any event, the possibility remains that that may come to be. And it's not to say you can't sue somebody in any legal jurisdiction. I mean, that's the whole point of legal jurisdiction is that you are able to do so. But incorporation in America in California, it seems to me that that is more likely than anywhere else in the world.

SETH REISS: So let me just summarize a little bit, and then we can continue the discussion. I believe ICANN has been sued quite a number of times, so that's one thing. I think we've heard that it's easier to sue in America than other places, which may be correct. I think that you generally have to sue an entity where it resides or do business, so California is the obvious place to sue ICANN.

I also have heard that California nonprofit law holds nonprofits to one of the highest standards in the world, and that's been used as an argument that California's a good place to locate ICANN because of the high standard of accountability. I'm not saying I agree with that, but I have heard that.

I've also heard today – and I think it's a valid point – that for the person who is outside of America, suing in America is not an easy solution or an

expensive. I can confirm from personal working that California lawyers charge about as much as any lawyer in the world. Those things would be obstacles to holding ICANN accountable.

With that summary, do we have other comments at this point? Milton?

MILTON MUELLER: Just a quick fact point. When ICANN refused to release its financial records somewhere around 2002 or something or 2003, they were sued under California law and did succeed in forcing transparency of their financial records. For some reason, it was a clear violation of California law that they were not releasing this information to a board member who had rights to it under the law. So that was one good example of the use of this law to enforce an important accountability requirement on ICANN.

SETH REISS: I think there's another example if I'm not mistaken, the xxx domain I think a lawsuit succeeded in causing the board to reconsider that, and that would be under…

[MILTON MUELLER]:   That was the IRP, the Independent Review.

SETH REISS: Was it the IRP? So that was not the U.S. legal system, okay. Thank you for correcting me. Roberto?

ROBERTO GAETANO: Just a quick reminder that the point under discussion is not in abstract whether it is a good thing or not a good thing for ICANN to be subject to California law, but whether in terms of globalization California law gives equal opportunity.

I'm mentioning this because I remember the case of the board director who sued ICANN, and it happened to be a director who was a lawyer in California bar. So the question that I would ask is would it be equally possible for a director who was not a lawyer who was not a lawyer in California to sue ICANN in California for the same reason?

It's not a provocative question. It's just what we are discussing is whether the choices that are made or whether the situation that we have now is working towards globalization or is working against globalization of ICANN. And in order to have an ICANN more global, what are the things that we have to change?

So it's not the accountability per se that is ensured by California law that is under question, but whether this is treating everybody fairly on a global basis.

SETH REISS: Other comments?

UNIDENTIFIED MALE: I realized that I was arguing both that California law would prevent people from suing ICANN and California law would make them more liable to lawsuits, just so that everybody knows I'm covering all the bases.

ROBERTO GAETANO: [inaudible] global.

SETH REISS: Are you saying you can't be wrong?

UNIDENTIFIED MALE: It's a wash. Just ignore everything I've said today.

UNIDENTIFIED MALE: This is exactly it. At the very least, as I said at the beginning, we should encourage ICANN to explore the benefits and the threats and the negatives to incorporating elsewhere, and I'm not sure that incorporating in a multitude of jurisdictions is it, but certainly this is something that they need to consider. If they want to go global, then act like a global organization and at least consider other places. That's all.

SETH REISS: Alan?

ALAN LEVIN: There are too many lawyers in this room it sounds like. I mean, nobody needs to sue anybody. As far as I'm concerned, suing people is accepting that…

UNIDENTIFIED MALE: Against the law.

ALAN LEVIN: The law. This has nothing to do with law. We're creating a global organization. We're, as I mentioned yesterday, above the law. Let's not resort and lower ourselves to the level of the law, per se, because then we get into this whole debate about Californian law and other jurisdictions and incorporating here and incorporating there.

If ICANN is to be accountable, it means that we can challenge ICANN within the confounds of ICANN. You don't need to challenge ICANN in any court of law. You challenge ICANN through the ICANN accountability processes. It shouldn't require going to any court in any jurisdiction. As I said, the only reason why you might need to go to court in some jurisdictions is because of money.

Now I thought about that a little bit, and maybe we need to consider if money is the problem and money is the reason why we need to incorporate in other places, let's create some ICANN money. I mean, there's something called Bitcoin. I was told last night that Bitcoin is under capture of the U.S. government, so maybe we shouldn't consider Bitcoin.

But if the issue is around money, then let's find another way to increase accountability without having to lower ourselves to the level of international and national laws.

UNIDENTIFIED MALE: We've had this discussion a long time ago, but part of the thing that seems always to escape people. There's something called ICANN the corporation and there's something called ICANN the multi-stakeholder organization. They are not the same. They are not the same.

And when we're talking about law and all that, corporation exists within a legal framework that exists, and if you are going to engage the corporation, no matter how anytime there's a dispute when you need somebody, a referee, that's where you have to go – to the law.

So maybe what we need to do is to make a distinction between what we're doing with ICANN the corporation and ICANN the multi-stakeholder organization. Thank you.

[SETH REISS]:   Thank you. Alan, I wish it wasn't the case that people had to go to court, and I hope it's not the case that people have to go to court. But under U.S. law, there are certain requirements to provide access to the disabled. ICANN's not really doing that right now. It's also in their mandate to provide access to the Internet to everybody. They're not really doing that in terms of the disabled.

And when we ask them to improve certain access to the disabled – and this just happened and I talked about this earlier – I asked, "Can we get certain types of transcribing so blind and deaf people can get access to the meetings?" They said, "No, it's too expensive."

And you're right, it is about money. And that's, unfortunately, when we have to turn to the law. I'm hoping we don't have to. But if they're going to refuse to perform their legal duties and their organizationally

mandated duties, then we're going to have a big problem and the court's the only way to deal with it.

[ALAN LEVIN]:   I really don't like that. "They." The comment was "they" said it's too expensive. It's actually "we." I think we're talking about ICANN – okay, let me just precede this because I really appreciate what Carlton said.

I think we're here to talk about ICANN, the multi-stakeholder organization. Yes, unfortunately we live still in the real world. We're not all in the Internet, so there has to be this ICANN corporation thing. And good luck to you. It sounds like you're Americans, so you want to sue the American company. Keep that in America, but please keep that outside of the global stakeholder organization. Keep that out of global Internet governance, because that has nothing to do with global Internet governance. That's an American problem that's got to do with Americans and American corporation.

If we, as ICANN, have a problem to deliver better access to disabled, then we have to work out how to resolve that problem, and whether it's important enough to resolve whenever we resolve it. But that's "we." It's not "they." They is the U.S. corporation and that's not what I believe we're talking about right here.

SETH REISS: So one question is whether you—

[audio break]

NEIL SCHWARTZMAN: Okay. What's legal is where the company is incorporated. Also to demand that we not talk about their actions is airy-fairy. I'm sorry, but it's not realistic. The realistic thing is that the corporation controls the money – and no we're not about to use Bitcoin either – to pay for translations that are horrible, to pay for text to allow more inclusiveness. And we as an organization, the ALAC, are able to demand they, the corporation, pony up some cash and make some changes.

I mean, we cannot divorce this ICANN from that ICANN. It is the same. It is a group of people and that's what we're talking about here in terms of being able to globalize. They control the purse strings. I'm here on their dime. We are here on their dime. We can't erase the distinctions at this point in time. Eventually, perhaps. There may be a thing where we all become shareholders in that corporation. That would be a way for us to vote to demand money. For now, we don't have that capacity so we are beholden to them. That's all.

[audio break]

ALAN LEVIN: Actually, I don't like this whole thing about lowering ourselves to international law, and I do agree that we all [inaudible] international law. I personally thing that what's said in this room isn't anything to do with international law. It's about global Internet governance.

I might say something in this room that is against the British government, but that's in this room because we're here doing global Internet governance.

As I said yesterday, I grew up in South Africa. I grew up with an antiestablishment mindset, because establishment was clearly wrong. So whilst you might be exposed to your local laws doesn't mean to say that you have to agree with them. Anyway.

One thing that my colleague Neil here mentioned was that maybe we'll become shareholders in this corporation and be able to vote. We are shareholders in this global stakeholder group. We don't need to be shareholders in the corporation, but the concept of elections is definitely one that I'd like to re-raise. I was involved in a study group called the NGO and Academic ICANN Study about 2004, and there was a competing ICANN study group made up of the ex-president of Sweden and various other people, and a huge number of brains and research went into this whole concept of elections.

And both study groups after a year of studying and twelve high-level professor, researchers, whatever, consultants, whatever, came out with recommendations to the board to hold elections. Somehow the board managed to change that and now we have this At-Large Structure system. I'm not in favor of the At-Large Structure system. I don't think this is going anywhere. I think they brought us all here just to legitimize themselves. I would much rather that there were global elections, to be honest with you. I think that is a way of getting people to engage and take ownership of the global governance system.

So I would like to re-raise the concept of elections, not necessarily at the shareholder or national law or legal level, but certainly at the level of accountability, responsibility, transparency, and really representing the people of the Internet.

I was involved in the first ICANN election and I personally think it was extremely successful and I'm sorry that we don't still have them.

SETH REISS: Thank you, Alan. I think what I've heard there is global elections would be a new accountability mechanism that would be globally fair and equitable.

ALAN LEVIN: I didn't say globally fair and equitable, sorry. Accountability [inaudible].

SETH REISS: Thank you. So Lance, can you summarize where we are in question number four?

[audio break]

UNIDENTIFIED MALE: Can you hear me now? You got everything?

UNIDENTIFIED MALE: We have some remote participants.

[LANCE HINDS]: Coming to the end, the response to the comments about the California law leaving ICANN open to various lawsuits. It was then stated that in 15 years ICANN has not had a specific lawsuit. There was a correction to that that ICANN was sued on a couple of occasions, and then an

example was brought up that in 2002 or 2003 ICANN was sued to release financial records and that lawsuit was successful.

There was a general point that if ICANN wants to act global, they need to consider operating in another jurisdiction. Then there was a discussion about [inaudible] and then made a clear distinction between ICANN the corporation and ICANN the multi-stakeholder organization.

And the last points were, one, a suggestion that we don't necessarily focus on adherence to international law. If ICANN has difficulty in delivering services to specific groups, the mechanism should be built within ICANN to address those issues.

Then there is no clear distinction between ICANN the corporation and ICANN the stakeholder. They're one in the same, as an opinion. Neil spoke about the possibility in being shareholders in the ICANN corporation.

That's where I am at the moment. I'm now putting in notes in terms of the last comment about the possibility of global elections.

The only point was a point made that global elections is a useful component in assuring accountability. Did I capture that correctly?

SETH REISS: I'm not sure. Alan, you want to clarify your last point?

ALAN LEVIN: My last point was that in order to ensure the highest degree of accountability, responsibility, engagement, multi-stakeholderism, to

empower all the users of what has been defined as the At-Large community, one should have global elections at least for some number of Board members.

SETH REISS: Roberto?

ROBERTO GAETANO: Again, since the subject here is not what thing is in abstract good or bad, but what is global and what is not global. Just for the record, I would like to point out that in the elections we have held, the only global elections that we have held, we had a very different response from different geographical areas.

I know that Alan never meant to say that this was globally fair, but I don't want to leave the idea in the room that automatically that could have been a globally-fair mechanism. I think that willing to have more discussion on this for sure is an option, but it's not something that if we switch to that, then all the problems will be solved.

I don't mean that you said that, but when we write the report, we have to make sure that this doesn't appear as a possible panacea for old problems.

SETH REISS: Thank you, Roberto. Any other feedback to Lance's summary? We have about another half-an-hour. Does everybody want a five-minute break or should we go straight through?

UNIDENTIFIED MALE: Is this a new topic?

SETH REISS: New topic. We're going to move to topic number five. Five minutes? Yeah, all right. Thank you. See you back in five minutes. Gunela will try to speak into our microphone better.

                          [break]

ASHA HEMRAJANI: My name is Asha Hemrajani. I'm from Singapore and I'm here because I'm interested in Internet governance, and I'm actually going through trying to join as many of the thematic groups as possible. So, thank you.

SETH REISS: Well, we appreciate having you. Question five has one, two, three, four, five subparts. It's quite a lot. We'll start with the first one: is ICANN's footprint global covering the global Internet community on equal footing? Any comments? Tijani?

TIJANI BEN JEMAA: It's true that things have already evolved since Chehadé took over its function, but it is still not the [inaudible], and I think we will not get [inaudible] is not possible I think.

                          But I think that it is a process that is going on, and perhaps our conditions should be toward having more, if you want, more offices all over the world, particularly in the less-served regions.

SETH REISS: Other comments on the first point? Vittorio?

VITTORIO BERTOLA: The answer for the first question is definitely no, even if I agree that much has been done and much is being done. Maybe the footprint is global, but it's not global in the global Internet community on equal footing. I already said this yesterday. 90% of the ICANN employees are based in the U.S. basically, for example. And also in terms of participants, I guess that still leaves a big imbalance.

It would be interesting maybe to suggest a systematic approach to this issue. I'd like to see, at least by count or maybe even by other types of [inaudible] of people. For example, for each country, population and Internet users and then how many ICANN employees and how many participants in ICANN and so on, so you can easily see whether there are some parts of the world which are definitely under-represented. Certainly there are several of them.

GARTH BRUEN: Perhaps something ICANN can do in terms of outreach is specifically set up an office in places that are under-represented.

ALAN LEVIN: I'm not in favor of duplication or wasting money. I think that incorporating in multiple countries is very expensive and I don't think it's viable. I understand that it might be wanted, but it is not always the

best thing in the overall picture. These are small things that I think is more staff related than us.

SETH REISS: Sorry. If I understood you correctly, you're saying that incorporation in other regions is not important, but staff in other regions are. Is that right?

ALAN LEVIN: Okay. So this, again, goes back to my view on the internationalization versus the globalization. By establishing offices in other countries, it means establishing physical legal presence, which is in the world of inter-nations, so it exposes ICANN to further lawsuits and going into the old way of governance.

I think in order to globalize ICANN, you need to dis-establish in the real world and re-establish in the virtual world. I'm not in favor of more offices, more incorporation, more places to be sued, more courts to go to, more governments to be exposed to. I don't think it helps ICANN in any way.

ASHA HEMRAJANI: This is more a question in relation to your comment. I understood that because ICANN receives money from registrars, and this money comes from registrants all over the world, so effectively they're doing business all over the world. So effectively, they are liable for any kind of lawsuit in any part of the world because they're doing business in every part of the world.

So my understanding is irrespective of whether or not there's an office in that country, they are still subject to the laws of that country, of a country there is a website. That's my understanding.

TIJANI BEN JEMAA: I agree with you, Alan, but don't forget that we need ICANN to be closer to the community, closer to them. When they are closer, they can better understand and better feel the need of the community. That's why I think that make [inaudible] better done will be also a good thing.

UNIDENTIFIED MALE: I think just reiterating what Tijani has said, we should encourage ICANN new engagement centers around the world. I think if you look at it, there are places and staff that are helping ICANN to get engaged with the stakeholders there.

I can give just one example. Middle East region, there's no center there. It's required. This is where the governments [all] have very good relationships with ITU, politically make [inaudible] to ICANN. So I think we need to encourage more engagement centers and more hubs.

I'm not sure, maybe someone could give details about ICANN hubs. Are they planned to be operational? Istanbul, Singapore. In terms of is ICANN planning to move some functions to those areas? That means the functions will be managed in that jurisdiction. For example, if the global domain services division, which is currently I think managed by Akram, which is the New gTLD Program fall under that. If that's moved to Istanbul, does that mean everything done by that division will be

under the jurisdiction, the laws, in that country? Can we debate or discuss that?

UNIDENTIFIED MALE: Like Mohammed said, I think on one side, I'm really against opening offices all around the world. I think it's really a cost, because sometimes I have the feeling that just opening, having people there [do not know yet] what they are doing. But maybe you are going on the direction Mohammed is saying. It's the localizing functions, so they do really have a mission there. They may be closer to certain places, in which we, as ICANN, we really need to perform better there.

On the other side, who we are. Are we the community or are we not? Somehow – ICANN could count more on us as the community, us ALSes, to perform that outreach somehow. Just an idea. [inaudible].

ROBERTO GAETANO: I was trying to answer Mohammed's question. I think the idea that Fadi has, the way I understand it, is to have a mix, sort of a matrix, deployment on the functionalities. On one level, geographically; and on the other level, functionally so you try to achieve.

We are not going to have to move a complete function, for instance, in Istanbul. But that is if the responsibility of that function is in Istanbul, that doesn't mean that in a matrix management organization you [cannot] have staff who are reporting functionally to a head that is in Istanbul that works somewhere else in the world.

I think that this is something – I used to work for IBM and that happened already 30 years ago when I was working for IBM. It's not a big deal. Fadi has a lot of experience on that, so I trust him on this.

I would like to point out the historical perspective. In the beginning, there was Los Angeles, and then there were some offices that were opened. We noticed that there was one office that was opened in Sydney and it was just by accident at the time when Paul Twomey was the CEO. Other than that, we had the office opened in Brussels that was mainly because the European commission was screaming pretty loud that they didn't have any input and so on. So we had these offices.

When [Rod] become the CEO, we had a discussion. I was on the Board at that time. And we had a discussion about globalization and so on and opening new offices, and he said, "The first thing that I will do is to open offices worldwide." And in fact, he opened one office in Palo Alto. [laughter]

So anyway, besides this requirement of having new offices opening whenever the CEO comes from a particular part of the world, I think I'm personally welcoming the fact that there is something that Fadi has brought in terms of movement in that direction. I understand that we disagree on this point, Alan.

I think that the perception by the global community is changing when you have offices nearby. And also I think that this has to do – but those are probably, I don't want to preempt the points that are coming afterwards – but opening offices locally means that we increase the chances that somebody can get hold of ICANN in a place that is closer geographically, that has lower communication costs and with higher

chances to have somebody on the other side of the phone that speaks your language.

The issue is what is the strategy behind enlarging this footprint? Are we following – what strategical point, what are the choices for opening new offices? You cannot have one office in every country of the world. That's 250+ offices. But what are we doing?

Just a last tiny word. When the notice that the Istanbul office was going to be opened, I was by coincidence in Armenia at that time, and I stupidly said, "Oh, aren't you happy that you have now an office close by geographically?" completely forgetting about the political issue. So I thought up until that point of time that I was savvy enough not to [incur] in these mistakes, but it happened to me as well. For clarification, Armenia and Turkey have serious international relationship problems.

ALAN LEVIN: My understanding of becoming an At-Large Structure meant that my organization is the local ICANN representative to end users. You're saying that you have failed and you cannot succeed if you want ICANN to have a local presence, because you – we – are ICANN. What does global mean? Global means that there aren't borders between countries. International means that there's borders between countries.

On the Internet, the cost of sending an e-mail is not dependent on which country you're in. It doesn't make a difference. The cost of making a phone call is not dependent on which country you're in. It should not make a difference. Obviously if you're in a country where

Internet is more expensive, it's more expensive. It doesn't matter if you're making an Internet call where you're calling from.

So you're right. If you want to open up offices in countries, you're getting more deeply involved in the politics. If you open up in one country, you have to open up in another country. Each country has to have its own strategy. What is the strategy? What is the reason? To become closer to the people? Surely to become closer to the people is to use the At-Large Structures. Isn't that our purpose?

It's becoming very, very scary this discussion. I don't think it helps at all to have more ICANN offices. I think it's going to great much more problems. I think subcontractors in different countries is a different story. If you're hiring talent, I think it's important to hire the best people for the best job, and it shouldn't depend on what country they're in, absolutely. Yes, you have to hire the best person and you have to have people in different regions to do whatever ICANN work that needs to be done.

Again, I must fall back on elections. When I saw the elections happen – and [inaudible] elections have been going into the future. As an At-Large Structure myself, it will create an immense opportunity for me to outreach to my members and empower them to engage with ICANN, because as soon as I give them an opportunity to determine a Board member, they engage in the process. "Oh, now I'm entitled to determine who's going to be a director in ICANN. How am I going to make this decision? Now I need to learn all about ICANN, because I'm now empowered with the responsibility to determine who's the

leadership of Internet governance." It helps me as an At-Large Structure to help create the pool from the users as to what's going on.

Also need to address the business issue. Users buy domains from registrars. It's not all users. In our ICANN study, we say that everyone with an e-mail address should be able to vote in an ICANN election. The ICANN study said everyone with a domain name should be able to vote for an election. I call that digital [inaudible] because most Africans, or certainly in my country, don't own domains. They don't even know what a domain is. But most of them do have access to an e-mail account. That was the difference in the different studies. One said domain name holders are consumers. Another one said e-mail address owners are a consumer.

Neither of those people are paying ICANN. They're paying their local ISP and their local ISP is using their credit card usually to buy from a registrar, which could be anywhere in the world. The registrar could be in Australia and the Australian registrar is paying ICANN in the U.S. and I'm paying Australia and my customer's paying me locally. So there's absolutely no financial relationship between the end customer, the domain buyer, and ICANN. In other words, kind of through various intermediaries, and it doesn't really matter where in the world they are. They could be anywhere in the world.

GARTH BRUEN: There's a problem with the way that Alan has described the role of the ALS. It's a subtle difference. As an ALS, I represent Internet users in my region to ICANN. I do not represent or work for ICANN. And I think that that's what we're talking about here.

We don't want to have an ICANN office completely a doppelganger operation in every single country. Maybe what we're talking about is more like a franchise. When I got my visa to come to the U.K., I don't have a British embassy where I live. I went to a processing center that is authorized by the British government to issue a visa. In the media, they might call it affiliates. Not everybody is actually a member of a particular broadcasting network, but local media outlets are affiliated with that larger network. So maybe what we're talking about are smaller operations that can actually speak for ICANN in local areas.

TIJANI BEN JEMAA: Alan, what we need is to have, for example, compliance department people near the registry and the registrars of the region and not to have end-users representative, because the end-user representative cannot do those functions.

For example, David Olive told me that already they have part of the compliance department moved to Istanbul so that registry and registrars of Europe, Africa and Middle East will deal in the future with those people and not with [inaudible] people. This is what is asked for. It is the function more than other things.

[ROBERTO GAETANO]:   I agree with you on this point, but the ALS can have all over more relationship with the users of the Internet rather than the other parts of the galaxy of stakeholders. And sometimes the interest of the users can be in contrast with the interest of a registrant or registrar or registry.

So I think it's very difficult for an ALS to take fully this dual role of being on one hand the ambassador of ICANN to the country, and on the other hand to be the voice of the users into ICANN.

So I think it's something that in an ideal world it could work, but I'm not sure in practical terms.

Also, the last comment on this. We have sometimes to live with the fact that we have different ideas and not continue the discussion forever. There is one point where I think you were not completely correct. It's true that the cost of e-mail is the same, but I would substantially disagree that the cost of a phone call is the same, because not everybody can use the Internet infrastructure for making phone calls. I have issues with the phone when I'm having teleconferences because I'm partly living in [Austin], partly living in Italy, and wherever I am I have different sort of difficulties.

But also we have to take into account the fact that if we only had one office in California or wherever in the world, we would have another problem, which is the time zone for making a phone call.

Yes, we could have then people in California working on three shifts. We need to take into account a lot of different things. So at the end it might be less costly to have offices in three time zones rather than concentrate everything in one place. It's a long discussion.

[END OF TRANSCRIPTION]