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LONDON – Board with Non-Commercial Stakeholder Group  
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ICANN – London, England

STEVE CROCKER: Well, welcome. I'm Steve Crocker, chair of the ICANN board. It's a pleasure to meet with you. We've been -- as you know, we spend this day meeting with each of the stakeholder groups, and time is always short, so our purpose is to get right into the substance of things and speak quite directly to each of the issues.

And it's really your meeting, so Rafik, I turn everything over to you.

RAFIK DAMMAK: Thanks, Steve. So it's always a pleasure to have this opportunity to talk with the board members and discuss with them and asking maybe them some harsh questions.

So we selected four topics and also some kind of any other business, just quick questions, and we will start with the IANA stewardship transition and that will be led by Milton.

Milton? Yeah, please.

MILTON MUELLER: With respect to the IANA transition, we wanted to ask you about the role of the board in reviewing, approving, or ratifying the results of this coordinating committee.

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How do you understand that role?

STEVE CROCKER:

So the coordinating committee doesn't have results. The community has results. The coordinating committee is just there to facilitate that process.

And the last version of this I read says we get the report from the group and we say "Thank you" and post it and things proceed from there.

The board will certainly have, you know, inescapably, some obligations if there are structural changes or there are things that require board interaction, but generally we want this to be as broad and open a process as possible.

I certainly have been watching it myself very closely.

There's a wide range of objectives that different people have. Some want to make this a fresh review of everything related to everything, and at the other end of the spectrum the null hypothesis of what's the least we have to do in order to continue the good work that the IANA group does and sort of ask the question, "What's necessary?"

But all of that I expect will come out in the wash and I expect it will be a long and bracing, if you will, wash.

MILTON MUELLER:

I guess I'm more interested in your understanding of the specific way in which the board or the coordinating committee transmits the final proposal to the NTIA and what is the role of the board in that.

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In other words, the coordinating committee, on behalf of the community, has a proposal that they accept and they -- what do they do with it? Do they give it to you? Do they give it directly to NTIA?

STEVE CROCKER:

My recollection is that what the document that I read says is that it gets posted for discussion and then things go, so I guess I'm not sure what the next step is.

It will be a pretty public process, so I think the details of how it gets transmitted and so forth are probably less meaningful than you're suggesting, but maybe I'm not understanding the import of your question exactly.

MILTON MUELLER:

I guess one way to make it more specific would be: Let's suppose it's posted, the proposal is posted, you get some positive comments, you get some negative comments.

Do you then decide, "Well, we're going to eliminate those things that there were negative comments about and then send it to NTIA" or does NTIA just look at the comments and say, "Well, this is an acceptable proposal or not?"

STEVE CROCKER:

So, you know, I think this really sort of puts focus on the wrong things.

The key issue is, is there a competent proposal, one that can actually work and deals with whatever the issues are. And so to put it in

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categorical terms of, you know, do we take anything that comes out of this process and just send it or we don't or whatever kind of is at the wrong level of the discussion.

The challenge is a sensible and workable system, and there may be many, many different alternatives and any of those would be fine, but to try to give a categorical answer to, you know, how we would treat things, it kind of depends a lot on what comes out.

MILTON MUELLER:

Well, who decides whether it's workable or not workable? Let's put it that way.

STEVE CROCKER:

Well, among other things, the people who have to work it.

I mean, you've got a -- you've got a process. You've got a -- you've got a set of customers, if you will, for the IANA process. You have the -- the IANA team that processes transactions. You have the outputs of that in various different directions. Publication of protocol parameters, allocation of addresses, changes to the root zone, changes to the WHOIS side of the root.

All of that has to continue to work. Otherwise, we do enormous damage.

And I'm not sure what else is thought to be necessary, but --

MILTON MUELLER: So it sounds like the board -- qua board really has no role in vetting or approving the final proposal.

STEVE CROCKER: Gee, I just really am not going to say that.

[ Laughter ]

MILTON MUELLER: Okay. Okay. I pinned you down finally.

There was another issue that we wanted to ask you about. It's not a particularly pleasant one, but we have a sense in the NCSG that when --

You know, during the course of an ICANN meeting there are panels and programming about particular topics, and there's a feeling among many of us that we're not really fully involved in that programming; that issues that we have a real stake in or real opinions about, we will see these panels be composed without involving us either in the programming or on the panel that often.

The latest example being the -- the one about the IANA transition, which is coming up on Thursday. I just received a message from -- it was nice that there was an outreach asking us our opinion about the program, but the program looks like it's been pretty much set and we're being brought in at the last moment.

It's not particularly this panel. It's perceived as a general pattern.

Is there anything you could instruct the staff to do to involve this entire stakeholder group more in the programming of these panels?

STEVE CROCKER:

Again, I'm -- I don't -- I'm not going to accept the assertion that you're making. I don't have enough facts. I'm not even sure what panels we're talking about. We don't have -- you know, when we create a panel, what we call a panel, it's a big heavyweight thing.

If you're talking about how the session on the IANA stewardship or the ICANN accountability sessions are being structured, I haven't looked too closely at those, although I'll be there, obviously.

I guess I just -- I just don't know what issue it is that -- that is a concern.

You guys have first-class access to everything, so...

If -- you know, I would sort of push back and say if you're not feeling like you're part of the process, then you're not exercising the avenues that are wide open and available.

MILTON MUELLER:

Yeah. I'm not accepting that premise for one second.

We -- we -- certainly we're very involved in a lot of issues. Usually it's from the floor, okay? We're asking questions from the floor of panelists who were appointed --

By "panel," I don't mean something like the strategy panel or the big Internet governance groups that Fadi appointed. I mean something like you have a program here on, you know -- let's see -- on Thursday on the -- or even Wednesday. You have an Internet governance session, okay?

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Who -- who composed the people that are speaking on that panel? Because there's nobody from our stakeholder group on that panel. And this is -- this is just a routine occurrence. It's -- it's not this one panel we're talking about. We're talking about just routinely.

We're surprised when we are asked. That's the way it goes.

STEVE CROCKER: Chris wants to speak to this.

CHRIS DISSPAIN: Yeah. Milton, I don't -- I don't know is the answer, but I can tell you that in respect specifically to the accountability panel, which I know is happening on Thursday morning, an email was sent on the 19th of June to the chairs of each SO and AC asking them to provide a representative or more than one representative from their SO or AC to sit on the panel -- let's call it a panel -- for that session and that it was explained that the idea would not be that the panel would be making, you know, presentations or speeches but rather when discussion happened from the floor and there were questions, there would be an opportunity for each of the members of that panel to talk -- to talk from their own perspective.

So to take the CCs as an example, the ccTLD representative on that panel would say, "Well, thank you, that's an interesting suggestion but let me just tell you that from the ccTLD point of view, that wouldn't work and here's why."

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So I can't speak as to why you -- you don't know about it but I can tell you that on the 19th of June, an email was sent to the chairs of each SO and AC requesting the names for people to sit on that panel.

MILTON MUELLER:

The chair of an SO --

There are four stakeholder groups and six or seven constituencies in the GNSO, so -- each of which have different views, so in that case, it would be perfectly understandable if you informed the chair of the SO and nobody in our particular stakeholder group knows about it. That -- that would not be an oversight at all.

But in particular, the IANA transition panel, I just wonder why something like that would not, from the beginning, involve all of the stakeholder groups.

STEVE CROCKER:

Yeah. Bruce?

BRUCE TONKIN:

Yeah. Look, I'll just give a quick gut reaction, because I noticed this came up the last ICANN meeting when there was a particular panel, and the first question when you start putting a limited set of people up front is who chose those -- that limited set of people.

Maybe we should move away from using panels. Like I reckon we should just have a person that introduces a topic saying, "This topic is IANA transition. Go for it."



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You know, let people queue up on the mic and talk. Because I think it just gives people a privileged position and people that are not on the panel a less privileged position. You're creating -- creating levels of status that's unnecessary.

STEVE CROCKER:

Okay. So there's a substantive suggestion, which is, we should deconstruct that session and make everybody equal.

But of course the other thing that's implicit in what you're saying that there's a communication gap from the leadership of the GNSO to the different stakeholder groups. I think that's what you're saying.

MILTON MUELLER:

No, that's not what I'm saying.

I can understand how Jonathan, the head of the GNSO, would not -- you know, if he's asked to put somebody from the GNSO on a particular panel, he will provide one person. Probably himself.

It's more about when there are specific issues, anything from, you know, privacy, WHOIS, freedom of expression, Internet governance, we just want to be equally involved in the programming. We want to no longer be overlooked in the programming, and why don't we just leave it at that.

RAFIK DAMMAK:

I think I will make a last comment here and then we can move on.

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STEVE CROCKER:                    Yeah.

RAFIK DAMMAK:                    I mean, not just about the IANA transition or the accountability panel, but for example the Internet governance, I am involved in that cross-community working group in Internet governance which was supposed to bring all constituencies, stakeholder groups, SOs and ACs there, and we were not contacted about the programming organizing that session, and this was surprising for us.

So that's an example what we are talking about is to be involved in any of this kind of cross-community session, to be involved in the process of organization.

Okay. So maybe we can move to the next item, which is about IANA accountability, and I am happy to give the floor to -- yes.

STEVE CROCKER:                    Sebastien wanted to chime in here, if it's possible.

RAFIK DAMMAK:                    Yes, Sebastien.

SEBASTIEN BACHOLLET:            I have the impression that you are asking the board to be in charge of the program of this meeting in any session.

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If it's the case, please tell us that it's in our duty. If it's not, I am not sure that this meeting between the board and the constituency, noncommercial constituency, is the right place to discuss that.

You can raise the issue, but if we spend half an hour to discuss not the substance but the organization of the meetings here, it's quite -- I have the impression that we lose our time.

Because we are, as a board, not in charge of taking care of each panel of each of the sessions during an ICANN meeting and it's good like that, from my point of view. Thank you.

RAFIK DAMMAK:

I'm sorry that the board lose its -- or waste its time with us but just we made kind of request to clarify our position about organizing what is supposed to be cross-community session, so that's --

But let's move on to the next item, which is about the ICANN accountability and I am happy to give the floor to one of our newest members from (indiscernible). Gabrielle, please.

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Thanks, Rafik. I'd just like to begin by saying that the NCSG feels strongly that the IANA transition process is very much contingent on completing an acceptable proposal on ICANN accountability and I was wondering if the board could explain how the comments and how the process on accountability is going to be taken into account by the group responsible for the work on the IANA transition.

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Secondly, we understand that there's going to be an ICANN accountability working group. That working group will submit a report to the board. And here the first question that comes to mind is: Given that a lot of the problems around accountability have to do with the accountability of the board, if there are no conflicts of interest here.

And given that the board, as we understand, would be able to consider which parts to adopt, what is going to be the role of the community in overseeing of the implementation of the recommendations of that report of the -- of the group.

Finally, we heard today from the Council of Europe about the mainstreaming of human rights within ICANN, and I was wondering if that's something that would be part of the terms of reference or be considered as part of the review of the accountability mechanisms within ICANN. For instance, integrating human rights as part of the bylaws or consider some of the proposals that are made in that report. For example, independent advisory group on human rights issues. Thank you.

STEVE CROCKER:

A compound set of things that you've raised here.

At one end of the spectrum, the sort inherent conflict of interest of having the board involved in evolving mechanisms for accountability, and at the other end, what fits and what doesn't fit within the mandate of ICANN's *raison d'etre* of overseeing the health and safety of the unique identifiers for the domain name system, and whether there's some relationship to human rights involved in all of that.

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Fadi, do you want to speak to the accountability issue or, indeed, to any of that?

FADI CHEHADE:

Sure.

Simply to say that the accountability track is separate from the transition track, but we've made it extremely clear that they are interrelated.

Before everyone is superbly comfortable that ICANN is ready to ride along without the training wheels of the U.S. government, I think it's fair to say that everyone working on this accountability track needs to feel satisfied that we have, you know, looked at our accountability and ensured that there is a level of comfort to that.

Having said this, accountability is in the eye of the beholder.

If I asked you today how accountable are we on a scale of 1 to 10, what would you say?

I don't know.

It's a very difficult question to answer because it depends on the issue, depends what you're accountable for, who are you accountable to. This is a very complicated discussion.

So if we start saying that "We shall not do the U.S. transition until we're accountable," it's almost like me telling my kids they'll never drive a car until they're accountable.

"Well, Dad, how do you decide that I'm accountable now?"

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I know. It's complicated. It's not simple.

So we need to set clarity here that the word "prerequisite," which I'm hearing from some quarters, is a dangerous word. We should not set prerequisites. We should as a community come together, assess what we want, and that's an open process that is community-based. Everybody's welcome to be involved in it. Let's do it.

Your second question was about the working group. Let me be very clear. We have not decided we will even have a working group. This is all still up for discussion. We may all decide we don't want a working group, we want to do it differently.

Do we want a working group? How will the working group look like? What will it do? This is all up for discussion. Let's discuss it all before we decide how exactly the working group will work, because we don't know that there will be one, even.

There may not be one. Because you all may decide on something more -- different, you know. Something to do differently.

So I just want to emphasize that on the area of accountability, on the -- that track, everything is still open for discussion.

I want to also finally say that my colleague, Ray, in a prior session made a very important point that accountability is not just know the board and it's not just for the staff.

Accountability is an ecosystem discussion which means every one of us, these organizations that make up the ICANN family, the ICANN ecosystem, we all have to be accountable, right?

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I mean, I've -- for example, I'm a fan that every person that has a leadership role in ICANN should tell the world who pays them to speak. This is important. Because if we don't, then we don't know who this voice is coming from. Right?

These are accountability and transparency measures that we should all adopt because my accountability is your accountability, is her accountability. If we are all not personally accountable to a core set of things, we will never get there.

RAFIK DAMMAK:

I think we -- yeah. We have a queue. So Bruce, Robin, Wolfgang, Milton, Gabrielle.

Bruce, please.

BRUCE TONKIN:

Yeah, I guess just wanted to share our experience from the last round of what we did with, I guess, the ATRT1 request for review of the mechanisms. There we tried to be very independent so we actually went and got a group of experts as a panel to look at that. They made recommendations. They presented those recommendations to the community. They got feedback. And the board really didn't get involved in the detail of that at all. And, you know, basically, based on the significant feedback, that panel basically just came back and said, These are the recommendations and we accepted them.

I think this time, though -- and talking specifically from an ATRT2 point of view and specifically looking at reconsideration and ombudsman

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functions and things, I think it is actually more important that there is actually a community working group that has experts available to it rather than punting it to an entirely separate expert panel. That would be kind of my recommendation of lessons learned from last time because clearly we didn't hit the mark, the community doesn't feel that those changes met their requirements. So (indiscernible) was saying you should get active as a community.

In terms of the way the board approves anything, really what we are really trying to make as a board, we are deliberately actually, where possible, not get involved in interfering with a particular outcome from the community. Generally what we are focused on is determining the level of consensus in the community. If you look at the GNSO policies, we look at the recommendations, the key part of that is the documentation and the recommendation that the degree of consensus support that there was in the GNSO for that recommendation. And then we take input from the GAC and the ALAC.

And to the extent that the ALAC and the GAC support and the SSAC and the RSSAC and all the other advisory committees support what comes out of a particular group, measuring that level as close to consensus or majority there is, that's why the board would act.

I don't think we're going to interfere and cancel some particular recommendation because individual board members don't like it. Really what we're doing is assessing the community's view.

RAFIK DAMMAK:

Okay. Thanks, Bruce.



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Robin?

ROBIN GROSS:

Thank you. Hi, this is Robin Gross. Yeah, I wanted to also talk about this ICANN accountability working group that's being set up. And I'm looking at ICANN's page -- Web page for ICANN accountability that talks about this working group and how it's going to work. So it says it's going to draft a report that will be provided for public comment and then the ICANN accountability working group would submit its final report to the board.

The board will then post it for public comment and then consider whether to adopt all or parts of it and direct the CEO to implement those parts of it it has accepted once that decision is made.

So it sounds like there has already been some decisions made about how this group is going to work and it also sounds like it's going to be more self-assessments of the board deciding which parts of the community issues it is going to choose to accept or not.

Is this up for changing? Is this something that the community can have some influence?

FADI CHEHADE:

Let me make this very easy, Robin. Yes.

ROBIN GROSS:

Because it looks pretty clear here. It says it is going to work this way.

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FADI CHEHADE: The existence of the working group is up for discussion.

ROBIN GROSS: It doesn't say this there. It says this is how it is going to work.

FADI CHEHADE: I'm telling you, it is completely open. We put this out. And the prior group that we just met before you, for example, the registrars, they recognized that the comments completely changed how we had the transition coordinating committee working, and they thanked because they saw their comments directly changed as a result.

So we are listening. Please give us input. This was based on what we did in Singapore. We listened to you. We put something out. You know better. Just come back at us with anything that's smarter, better, that works for the community. We're ready. This needs to work for you.

ROBIN GROSS: Thank you.

FADI CHEHADE: This is your way of changing the system. Please.

RAFIK DAMMAK: Okay. Please, Wolfgang. Yes?

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WOLFGANG KLEINWACHTER: Thank you, Rafik. And thank you for mentioning the report of the Council of Europe on Human Rights. I think this report is extremely helpful. It needs to be studied in detail, and it is a very good source of inspiration because a lot of technical things we are dealing with in ICANN have human rights implications. It cannot be separated.

We cannot deal as ICANN -- this issue has human rights issues per se because we have to deal with the technical issue. But we have to take into consideration the human rights implication.

If it comes to what you have mentioned the proposal for a bylaw change or something like that, I think the articles of incorporation of ICANN make very clear that ICANN operates in the framework of international law and national legislation. And the international human rights is part of international law. So that means this is already there, and we have to make use of it to say, okay, if there are standards, the way -- ICANN is not a standard setting body for human rights.

But if there is a standard -- and this is the usefulness of the Council of Europe report, so that we see, okay, this is accepted human rights. Then ICANN has the duty to follow the standards and to take this into consideration for all this.

And I think we will discuss this more in detail if we come to the privacy issues. And I can only say, you know, we are on the beginning of a process. The working group, you know, has opened the door now for further discussion. And all international agreed standards with regard to privacy has certainly to be taken into consideration if we move forward on the basis of the report.

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RAFIK DAMMAK: Thanks, Wolfgang. So we will have comment from Milton and Gabrielle.

MILTON MUELLER: Right. I just wanted to reassure Fadi that we have a reasonable attitude about accountability. We understand that this is not some magical state that you're in or out of 100%. And the only thing when we talk about the relationship between accountability outcome and the transition, we just simply understand that there is a gap created by the removal of the NTIA from the loop.

We want to know that there's something that looks like a reasonable substitute for that before the transition takes place. That's all we're talking about.

FADI CHEHADE: Sorry, Rafik.

We are 100% aligned. This is a first, so please, let's record this moment. I am completely aligned with Milton on this, what he just said.

This is exactly what we need to do, to frame now that the training wheels are going to be removed what additional mechanisms are needed and to focus on this and get this right. This is our opportunity to do it.

You have my commitment that at least I will support this, but it is really the community that should come up and frame this in the new working group we're doing -- or this new process that we're going to create.

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GABRIELLE: And just to briefly follow up on that, is that to the extent it might be working groups working on the one hand on the IANA transition and accountability, like, if there will be any sort of process to make sure that they don't operate in silos. So that doesn't liaison like some form of coordination.

FADI CHEHADE: If you read the documents that describe both processes, we actually put a whole section on how these things will inform each other and that we're committed to do that through the staff to keep reporting back and forth between these two. And we will do that. As much as we need to do this, we will do it. Okay?

That doesn't mean we will start putting prerequisites and preconditions. That's why I carefully use the word "They are interrelated, not interdependent."

Interdependency causes issues because then, you know, people who do not want the transition to happen -- and I know this is not people at this table because I know that everyone here wants it to happen. But people who do not want the transition to happen will use dependencies to trip the process.

So let's be careful not to tie them too tight, but let's keep an interrelation and an information link back and forth. And we are all the same community. It is not like we have two different groups on two different planets who will work on these. We are working together on these. Let's inform each other.

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I'm asking Theresa who is sitting in this room to commit to us that there will be a formal information line between the two constantly. Maybe at every meeting of each team, somebody from the other team and liaison briefs them and let's them know where we are. Would that be helpful? Would that be helpful?

RAFIK DAMMAK: I think we will have last comment from David here.

DAVID CAKE: So just -- bearing in mind all this discussion we just had about the interdependencies between the issues of accountability and IANA transition and so on, I just want to make it very clear that in another sense, it is not just the accountability -- it is just not the NTIA accountability function that we are interested in. We very strongly believe that all the other accountability mechanisms within ICANN are currently too weak and need reexamination. And we do not want that process particularly to stop and end with the IANA transition.

RAFIK DAMMAK: Okay.

Fadi, we have Ray and then... Okay.

RAY PLZAK: Thank you.

David, you raise a very important point. And as Fadi noted before, accountability is not just this amorphous ICANN thing. It is everything. I

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would rhetorically ask the NCSG: What accountability mechanisms do you have inside yourselves to make sure that you do things correctly and that people are held accountable?

So when every organization at ICANN can demonstrate that they are accountable to themselves and have mechanisms that contributes to the overall picture of accountability, so it is not just at one level, it is at every level that it has to occur.

All I say is, is that it is the entire organization of ICANN and the entire organization of ICANN is made up of all of its component parts. And all of its component parts must be accountable.

DAVID CAKE:

I would like to note that NCSG does most of its processes fully transparently and most of its office holders face reelection regularly.

RAFIK DAMMAK:

We have a queue. I'm trying to manage it.

Ray, thank you for the question. But our internal mechanism, I think, as the chair of the SIC, you know --

RAY PLZAK:

It is a rhetorical question. It does not require an answer at this time.

RAFIK DAMMAK:

Okay. Just to make sure.

We have Fadi and then Brannish (phonetic) and Avri and Milton.

FADI CHEHADE:

I wanted to agree with David that accountability doesn't stop with the frame that Milton and I just agreed on.

But that's precisely why we should not make these two tracks interdependent. You just put your finger on why we shouldn't make them -- we should make them inform each other and be interrelated.

But if we suddenly on the accountability track load the truck with everything we should be doing -- and I agree with you -- and then suddenly you have people in other parts of our community say, You know what? Until all of this is dealt with, no transition from the U.S., is this something we would like to see happen?

So we have to be very careful. This is why we separated these two tracks, and this is why we said they're interrelated.

But as we build the framework for all the things we must do -- and I agree with you, David, we should also be very careful to acknowledge what pieces of these would be desirable to go with the transition and what pieces of these may go beyond the time frame of the transition. But if we load all of that, as some people said in a prior meeting in this room, prerequisites before we move, then those who would like to stop the transition or delay it for another 14 years because it is 14 years late will be winning that argument.

And there are some people who are motivated to do that, either because of their business, because of who pays them. That's a fact. Let's just accept it.



RAFIK DAMMAK: Okay. Fadi, thanks.

So we have several people who want to comment. But I will ask them could be concise. We have Brannish, Avri and then Milton.

Brannish?

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Thank you. I just had a question about financial accountability of ICANN. I have been trying to understand a little bit more about the finances. I've been told that the very planning process is open and inclusive and anyone can participate. Yet, I've been trying to do so and can't really find the appropriate avenues despite having written mails to ICANN staff.

So what could the ICANN board do to me increase the amount of accountability with regard to finance especially to avoid accusations of profligacy which are often hurled at it.

FADI CHEHADE: Sorry. If you could repeat, you said accusations of something. Neither the -- we didn't get the word. Accusations of?

>> Profligacy.

FADI CHEHADE: Profligacy.

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>> Extravagance.

FADI CHEHADE: Okay. That's a good English word that I need to --

Okay. So I'm not sure if you saw what we just published, the operating plan. I don't think an organization our size ever publishes this detail. If it is too much detail, I apologize. But the detail is yours. It's for public comment. We published our budget divided into the four goals, 16 objectives, 53 portfolios, 300-plus projects, every project what is the KPI and the budget. We've never done this before. If this is not enough, tell us what else to do. But it is all out there for you to give us feedback on.

If we can improve, remove projects, that's exactly what the community should be doing. But we are -- in the interest of transparency, this year we've published all of that.

>> If I may just get back with one line of comment, would that be okay?

RAFIK DAMMAK: Please comment because we need to move to the next item. Yes, Brannish.

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>> Just one comment. I think this is commendable, and I took part in the financial -- finance open sessions in Singapore.

My question was perhaps not just about reporting and auditing but also about the financial planning process which also to my understanding is supposed to be open.

RAFIK DAMMAK: Cherine.

CHERINE CHALABY: If I may respond to that. I think what the gentleman is saying -- I will phrase his words again -- is there are two parts to the budget. There's the initial part where the draft is put together, the whole plan is put together and the community wants to participate in this and have sufficient time to have meaningful participation.

And then after the budget is -- the draft budget is posted, they want sufficient time to provide their comments on it and that the board takes into account all of that.

This process has not been very smooth in the past and this year it has been also challenging because of time scales and so on.

But I know that staff is working with the community to reform that process so that moving forward, these two objectives are taken into account, the participation in the planning and the preparation of the budget, and then sufficient time to post comment and for those comments to be taken into account by the board.

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RAFIK DAMMAK:                      Okay. I think I need to improve my time management skills. But we will get comment from Xavier.

XAVIER CALVEZ:                      So I will just take a minute two indicate that I will get together with the gentleman here to make sure that we include -- that I can explain what the process is, how to access that process, and what communication tools there are and that we have the information from this person in our email addresses and distribution so that he systematically gets the information that we distribute to that list. Thank you.

RAFIK DAMMAK:                      Okay, thanks.

Avri.

AVRI DORIA:                              Thank you. Avri Doria speaking. In terms of all accountability issues being dealt with before the transition, no, that would be an argument ad absurdum. And I don't think that's what we're suggesting.

What I think we are suggesting is there needs to be a definitive checkpoint that all of the accountability issues that pertain to the IANA transition are, indeed, completed before that can be completed. To say that we're looking for 100% of all accountability would be a bit much.

Also, Ray, I do accept your rhetorical question but would like to point out that the SIC provides external oversight to the NCSG in addition to

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whatever accountability we have internally. That is perhaps a model you favor, but it is not one that I favor. Thanks.

RAFIK DAMMAK: Okay. Milton, you will have the last word.

RAY PLZAK: I need to respond to that last comment. The Structural Improvements Committee does not provide oversight to the NCSG.

RAFIK DAMMAK: Let's move to the next topic, and this will be presented by Kathy.

KATHRYN KLEIMAN: Hello, I'm Kathy Kleiman. And I wanted to thank you, the board, for these important meetings. We didn't have this in the old days, and I appreciate it.

We appreciate it. So I'm switching the order a little bit. We're looking at the point trademark clearinghouse and URS. In the interest of time, I will start with the URS. And here's observation and a question.

So the URS, of course, is the Uniform Rapid Suspension. We've got a new -- we've got a new mechanism for challenging domain name registrations in the new gTLDs.

And being a hard-copy person, I brought my new gTLD applicant guidebook, the Bible that I carry.

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And in this -- in the URS, we created a number of defense mechanisms. And so here's the question. I see a lot of -- we see a lot of discussion about rights protection mechanisms, about how to register and use the trademark clearinghouse, about how to file Uniform Rapid Suspensions.

What I've been looking for, what we've been looking for, is material discussions about how to file a response. How do you respond to a URS? What is -- how is the time frame different? There's a word limit. How are the defenses different? We included, when we were drafting this, something called the Nominet defenses that go above and beyond what's in the UDRP.

We also made an assumption that some of the people who will be challenged on this, some of the domain name registrants will be English as a second language people, will be in developing countries, will be in developed countries but small businesses, entrepreneurs, small organizations, individuals, people without easy access to attorneys.

So where is the material -- how can we have -- so here's the ask. How can we have Webinars? How can we have ICANN learn classes? How can we have materials that make the rules, the defenses of the URS more accessible to the new gTLD registrants as all of this comes online in a big way?

CHERINE CHALABY:

What I suggest, if you say all your questions and then -- because some of it is implementation questions that we the board are not familiar with the details but what we can do is get all your questions answered in the public forum in a couple of days' time, if that's okay with you. All

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right? So why don't you keep going, because I know you have other issues as well, or -- yeah. And we'll compile those and respond on Thursday in the public forum when staff has an opportunity to answer -- unless someone is here who is prepared to answer that question.

KATHRYN KLEIMAN: And I should note I have a meeting also with Akram on Thursday.

RAFIK DAMMAK: And he wanted to comment.

AKRAM ATALLAH: Thank you very much for your question. This is Akram. I -- I actually appreciate the question a lot. I think this is something that we've been discussing for a while. We don't -- we do all of these services but there is no advocate for the registrant in all of these services that we do. So you're spot on. I take that as an action item that I will take on personally and we'll discuss this later on in our meeting. But I commit that we need to do all -- everything that you mentioned. We need to have as much clarity on the other side as we do for the -- for the IP protection advocate. So thank you very much. And I have some ideas I want to run by you when we talk about it, so thanks.

KATHRYN KLEIMAN: And thank you very much. We've done all of this at great speed, so this is understood.

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And this one's a more detailed question, and so we'll be -- but I wanted to raise it here which is, how do we police the trademark clearinghouse? There are a number of rules that were set up for it. Is it under contract to ICANN? And one specific example -- and this is getting down to the nitty-gritty, we don't have to go into it -- is that we asked that the trademark clearinghouse accept only wordmarks. Wordmarks are very specific things in the trademark world, and they're accepting design marks. So if you look at the script of Coca-Cola, you know the famous lettering, it's the design with the letters that's protected together whereas Coca-Cola has another trademark specifically for the words. It's a typed drawing. So this is a specific question but also a general question. How do we police these new structures that we're putting together?

And I'd be happy to talk -- you know, we can talk about it more later, but I wanted to raise it. Thank you. And unless anybody wants to comment, I think Rafik is going to move us on to privacy, which is also, of course, a very important topic.

RAFIK DAMMAK:

Okay. I think -- yeah. Thanks, Kathy, to make it so easy for me so we can move to the next item, and this will be presented by Stephanie.

STEPHANIE PERRIN:

Thanks very much. My name is Stephanie Perrin, for the record. The last time we were here meeting with you we made comments on the ICANN privacy policy and we actually promised to give you comments and deliver the bones of what a better privacy policy would look like.



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We are working on it. We opened up Pad, we got people volunteering, and I suppose I'm guilty. I've been too busy doing EWG work to finish this off. Just a reminder, if we could get the HR policy, we would look at that as well and wrap them together.

A second -- so my apologies. We'd hoped we'd get it to you by now, but you know how it is.

We are having a privacy afternoon from 3:00 to 6:00 on Wednesday, and one of the purposes of that privacy afternoon is to sort of up our game in terms of the level of discourse on privacy here and possibly to round up a few more volunteers to work on substance, to work on actual implementation. So anybody hasn't heard about that, please come. Remind me what room it is.

>> Sovereign.

>> Which room, tomorrow?

STEPHANIE PERRIN: Sovereign, thank you. Between 3:00 and 6:00. I'm going to reiterate some of the points that Wolfgang had made about the Council of Europe document. I have it here to wave somewhere. It's a -- we had an impromptu visit this morning and were presented with the report. It's exactly the kind of thing that I think we've needed for some time and we made a commitment that we would comment on it. I'm certainly going to be commenting from the privacy perspective. You're

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going to be looking at it more from the human rights. But we'll definitely be interested in trying to get sort of concrete what we need.

Now, the fourth item, and you will see that it says EWG report. All this talk about accountability, I'd like to make it very clear what my accountability is in speaking on this. I was out at another meeting -- always a mistake when there's a constituency meeting -- and I was volunteered to update on the EWG report. I don't represent the NCSG on the EWG, we all represent ourselves, and that's a consensus group. So I agreed that I would give an update, if required. But let's be clear, I'm not representing the NCSG in that.

Second thing on that, I think people are aware that I have issued a dissenting report on the final report, and I would just like to briefly clarify that there are wonderful things in that final report. We have moved a long way on privacy. The dissenting report actually says that. However, as long as we're talking about accountability, if I'm there to represent data protection expertise, I feel deeply accountable if I see something that I think causes the mitigations that we have put in throughout the report to be affected in a negative way. If I cannot persuade my colleagues to believe me, I have to do -- I have to at least make a dissenting report. So that is why I did it. And the principle problem, if you haven't read the report that has made it out onto the net, there will be another one coming from the EWG, but the principal problem comes from the consent principle and people who are not data protection experts will say what is wrong with asking for consent. And what's wrong with it is that you can consent your way out of your rights. And therefore, if we have a lot of language about how the protection is the implementation of data protection law or the implementation of a

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policy, once you have consented, that may not be relevant. And I say may, and this is my view, and although I'm not a lawyer, data protection policy people are very much like lawyers. If you have ten of them in a room, you'll get ten views. So I have emphasized in my analysis, it is my view. But it's strongly held. So I think that's probably enough for me to say, because we're not here to talk about that. But I just was asked to clarify.

RAFIK DAMMAK: Okay. Thanks, Stephanie. Maybe we can get some reaction from board members.

STEPHANIE PERRIN: Okay, if nobody is going to say anything. Keep going, no?

STEVE CROCKER: Chris, you're in the optimum position here.

CHRIS DISSPAIN: Well, I'm not entirely sure what I'm meant to be responding to. Stephanie has explained that she has put in a -- posted a document that says that she disagrees with one of the principles of the report, so I'm fine with that. I don't have an issue at all. And the board will doubtless take that into account. I mean, this report is -- let's be clear, just in case -- I know this has been said in several different meetings. Some of you, I know, were there yesterday when I said it, and I'll say it again. This is a report that is not something that then goes away and gets implemented. This is a report that sets out the recommendations of a

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group, and there was a significant amount of work to be done. I'll say again what I said yesterday. When the board met with the GNSO council the other day, one of the things that we asked them to do was to come -- was to ask the GNSO to come back to us with a list of things that they would like us to do before we do anything else with the report. And to take a very specific example, because it came up in the room, there was a question about the need to get legal advice in respect to some aspects of the report, and the report itself says that. And so we used that as our example in the question for the GNSO to consider was, would you prefer us to go and get that legal advice now -- you know, before you start a Policy Development Process. So we've asked them to come up with a list of things. And if I remember correctly, Kathy, you came up with another couple of things yesterday that you thought we should do some work on. There was a risk -- a risk report and a few other things. I don't need to discuss it now. I just want to make it very clear that this document is a report into a process. And if anybody thinks that it's just going to get implemented, either as is or changed, then they're mistaken.

But in respect to the dissent piece, it's a dissent piece, and I don't really have any other comment on it.

RAFIK DAMMAK:

Okay. Thanks, Chris. I think Mike wanted to comment.

MIKE SILBER:

Yeah. I would have thought the silence was indicative the EWG did some great work. There's dissent on an area, and I hesitate to call it a

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dissent report because as I read it it doesn't dissent from the entire report. But it deals with some nuance which colors the entire report and then one or two specific areas. So to me, in the legal capacity, it wouldn't be a dissenting judgment but rather a decision to write a concurring judgment with a slight difference in emphasis. But that's detailed and neither here nor there. I think the reality is, as Chris has said, this is not now ready for implementation and we have to, as a board, make a decision as to who is right or wrong. It's rather all input which colors the discussion and debate going forward, and all of it is welcomed. And in particular the input that all of the members of the EWG gave in creating that report, the time and effort they put in, is greatly appreciated. I'm not sure if we can say much more than that.

STEVE CROCKER:

Stephanie, I really valued the multiple contributions that you made during the EWG process, and I -- I think there is a relevant issue of looking at privacy issues across the entire ICANN spectrum of how we build our systems and manage them and how we handle sensitive data and so forth. We probably do a decent job. We probably could improve it, and I think having a focus on this is an appropriate thing that we ought to do as part of the maturation of both ICANN the corporation and ICANN the full community.

Going any further than that at the moment is beyond what I have any -- anything specific to say because a lot of it will be in the details. And as you said, there's some -- some questions where there are possibilities and then looking to see whether or not they actually apply or they -- or they don't will require some much finer work. So I think that point has

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been made, and usefully so. And I, for one, do feel well-served by the contributions you've made. And it will take a while for things to play out from there.

RAFIK DAMMAK: Okay? Kathy -- yeah, you can.

KATHRYN KLEIMAN: I just wanted to thank Stephanie for all of her time and her dissent which I think helped the rest of us kind of navigate the report. There are things that are ambiguous. We spent a lot of time talking about it yesterday in the meeting. There are fields that appear to be public that would really gut a lot of the protections, privacy protections that were promised. So I urge everybody to read this closely and look at the dissent as a roadmap for issues that either need to be clarified or changed or corrected.

CHRIS DISSPAIN: So can I just make -- that's fine, but if I could also just make the point that there are, in fact, a series of FAQs that have been published which also deal with a significant number of the points which have been raised in respect to misunderstandings or the -- the -- an incorrect color in a chart or whatever you want to call it. So there are a number of FAQs. I highly recommend that everybody looks both at the full report, at Stephanie's comments, and at the FAQs. All of them are incredibly important in this -- in this process. Thank you very much.

RAFIK DAMMAK: Thank you. So I think we will -- we have just two questions to finish -- to finish before this meeting and starting with Maria and then we go to Cintra.

MARIA FARRELL: Hi, it's Maria Farrell. Yeah, just in any other business, I just wanted to bring up the fact that we -- as it's been mentioned by a couple of people, the NCUC met the Council of Europe person Lee Hibbard this morning and Thomas Schneider and discussed their report on human rights, the policies and procedures of ICANN. And one bright idea that came up in that meeting was perhaps that we might try and work with them and others to organize a session in Los Angeles to talk about the application of human rights to ICANN and how it goes about its business. And where we're coming from there is the idea that human rights aren't just something that sort of exists in the definition of the public interest cooperation of ICANN and that sort of is in the penumbra that covers us all but rather something a bit more muscular that needs to be subject to rights analysis and really something that is actually applied more directly throughout the organization as a whole. So we hope that's going to be something that will go forward. And we think it's useful to look at the idea that the Council of Europe came up with which was one of them was looking at human rights impact analysis body or panel within ICANN that would be separate from the GAC and -- because we think it's very clear that human rights inhere to individuals and there's not necessarily something that is given to us by governments. So, you know, we're looking at the idea of well, is there some way we could create a part of ICANN that would actually do human rights that actually would implement the human rights analysis

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that we have put into part of our processes recently. So in any case, that is a bright idea we have had to just start a workshop or a session as one of the things that NCSG and NCUC has done ahead of many other ICANN meetings or possibly during the meeting. And if and when we do so, we hope it will be, you know, an open platform for debate and possibly taking up Bruce Tonkin's idea maybe to try a little more to dispense with the idea of the panel and everybody else, but we'll see how it goes. So we just wanted to let you know about that and hope we'll have an update for you at the next meeting.

RAFIK DAMMAK: Thanks, Maria. Cintra.

CINTRA SOOKNANAN: Thank you. My name is Cintra Sooknanan, and I want to show you that even though these two topics fall within any other business, they certainly are important. The first being a question with regard to the NPOC member on the NomCom. Could you please let us know the status of the board working group on the NomCom including the interim progress schedule and the anticipated final report or bylaw change date to provide favorable community resolution of the current lack of representation of the NPOC on the NomCom. Further, given this obvious gap, which has been recognized by the ICANN community generally, we would like to immediately recommend the addition of an NPOC member be placed on the current NomCom, at least in an observer capacity.



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The second question I have is with regard to the increase in board remunerations. With that increase is there a similar increase in duty of care to the community to ensure no conflict of interest and the efficiency of board work and resolutions? Thank you.

STEVE CROCKER:

Who's got the timeline on the board working group on the NomCom?

GEORGE SADOWSKY:

I'll take this one, Steve. Steve, I'll take this. Thank you. Thank you for the question. Just a bit of history. The bylaws, with respect to the NomCom, at present were written in 2002 or 2003 and they reflected an ICANN which is considerably different than the ICANN that we live in today. And so the -- looking at the composition of the NomCom was foreseen already by the review group that reviewed the NomCom in 2010. Their recommendation was in three years to look at the composition and to make some judgments about whether it should be changed or not.

A lot has changed and the board working group with respect to the NomCom is working on a proposed plan for a -- a change in that distribution. We hope to be done in about six months. I don't know exactly how -- how long it will take. There will be -- obviously there will be a public comment period on the -- on the report as it -- when it comes out. But I think it's worth looking a little bit beyond your question in the following sense, that every NomCom appointee -- sorry, every appointee to the NomCom from one of the supporting organizations is charged with entering the NomCom as an individual,

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that is, the person entering the NomCom does not represent in any way the -- the organization that sent them there. Clearly their -- their attitudes, their knowledge, their understanding is tempered by the fact that they come from that group and they know those groups and the group's activities, but they are not to represent that group. They are to represent themselves and to make their judgments in the best interest of the organization.

So while there clearly is an imbalance in terms of change in the composition, in terms of changes that have occurred in the last ten years, the representation is less important than it otherwise would be if we were -- if we had a NomCom composed of competing interests. We shouldn't. I believe we don't, and as such there -- the interests of ICANN as a whole, I believe, are well represented. But we will, I believe in about six months, be ready to float something to the community. Thank you.

RAFIK DAMMAK: Thanks, George.

STEVE CROCKER: The question about remuneration, if I understood it, was --

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STEVE CROCKER: Does the increase in remuneration also increase the duty of care, and the answer is of course not. We already have an exceedingly high and absolute duty of care. So it's impossible to raise that. I -- I phrase that in facetious terms, but we expected, when we didn't pay anybody, an enormous and very substantial level of duty of care and that is not coupled with -- we don't pay people to be honest. We don't pay people to have no conflict of interest. We pay people because we think that's the right thing to do. And the -- and the requirement of duty of care and confidentiality and the other requirements come with the job, no matter what the remuneration is.

RAFIK DAMMAK: We need to close this meeting. I'm sorry that we take more time than planned. I assure --

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RAFIK DAMMAK: Okay. Yes, Maria.

MARIA FARRELL: I'm sorry to butt in, but I just wanted to come back and support something Cintra was saying which is, you know, in response to George. Absolutely, when somebody's on the nominating committee they are there to be on the committee and not to represent an interest. But as someone who staffed the nominating committee for two years and was representative -- a non-representative, a member of the nominating

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committee for two years and it -- sometimes it does matter whether you're a commercial or a non-commercial. And, you know, we -- the only rule about NomCom is you can't talk about NomCom. So I will say that sometimes, you know, the tendency to favor commercial interests can become pronounced. It depends on the Chair, it depends on the chemistry in the room, but it is very much the case that the non-commercial view of the world and mentality is somewhat unrepresented in that field.

FADI CHEHADE: But Maria, it's not just if they're commercial or non-commercial. It is also who is paying these people to be here. It's important to know that, when we select people. For any leadership jobs. Who is motivating these people to say what they say? Not everybody, unfortunately, is pure. So we have to know this in order to make sure the right people are involved in every process.

RAFIK DAMMAK: Okay, thanks. I ensure you that it's not a plot to keep you from meeting with the board -- with the GAC. Thank you.

STEVE CROCKER: Thank you all very much.

**[END OF TRANSCRIPTION]**