ICANN 51, Los Angeles

gTLD Registries Stakeholder
Tuesday, 14 October 2014

Part II

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((Crosstalk))

Keith Drazek: All right, let's - this is (Keith). Let's go ahead and get started. So, Cherie, if we could start the recording, thank you.

Cherie Stubbs: Ladies and gentlemen if you could have your seats please and we'll start the recording. And, again, just a housekeeping detail to remind - please remember to announce your name prior to speaking for purposes of those on remote participation and for the recording. Thank you.

Keith Drazek: Okay, thank you everybody. So, again, this is our Working Lunch Registry Stakeholder group meeting in Los Angeles. Talk about our topics for discussion with the board. We will be wrapping up here in about 30 minutes so we have time to get over the board session, which is in their room as usual. And I don't think we necessarily need 30 minutes to get through this, but let's go ahead and get started.

So the three items - I'll just recap - that we've decided to raise with the board and we can add more if necessary or adjust the list if necessary is the two

character RSEP and GAC positioning issue that we raised earlier with the GDD and I've got (Donna) as the lead discussant for that topic for the (Ray) and (Rubens) providing support. The second item is the Nominating Committee Board working group recommendations with (Ken) leading - Don Blumenthal and Rob Hall providing support.

And then third the ICANN FY-15 budget and financial processes, which includes the discussion of the GTLD auction proceeds and excess applicant fees. (Chuck) will cover the budget and processes, (Jon) will cover the auction and excess applicant fees. So those are the three items we identified previously.

I will probably take the opportunity to note and, I guess, to thank the board for their efforts on the ICANN accountability fronts to (McCaley)'s points earlier and I think what I described at the beginning that the board actually was instrumental in reversing course and getting us to where we are today on the ICANN accountability track in effect allowing a cross community working group instead of a top-down staff dictated process.

And I think it is at least a mention of noting that they had done that - that they had done so and we very much appreciate that. So - and I'll be diplomatic about it, but I think it is at least worth noting to the board that we respect their decision as long as it took.

So those are the issues, let me just open it up for comments, questions, thoughts about those three topics or anything else that we want to bring up. Yes, Edmon, Universal Acceptance.

Edmon Chung: Yes, that and before that actually on your last point. I think, as you said, diplomatically probably we should add a little bit more and say, you know, we

thank you, but next time why don't you do it this way from the beginning. So I think that message should be sent as well.

Keith Drazek: Okay.

Edmon Chung: And then also I think it's already raised a couple times and in the Universal Acceptance, but I think it would still be good if we put it at the very end if we have time, you know, we can spend a couple minutes. If not, then at least it is also a bullet item for them.

Keith Drazek: No, I think that's great and I agree completely that it's worth raising with the board even if it's, you know, maybe just a short reference, but even if we've got the time let's talk it through. I think Universal Acceptance, as we discussed earlier, is really a critical issue for the new GTLD program, for IDN Strings and it's definitely worth making sure that the board recognizes that we think this is a serious issue. So and I think that note about ICANN needing to be practice is a really powerful message. Mr. (Switzer)?

Tim Switzer: Thanks (Keith), (Tim Switzer). I was actually mentioning this to (Chuck) during the break and I mentioned this yesterday during the (INTAG) meeting when the GDD staff was there and one of the important things, I think, on the community process to address the audit funds is it's got to get started sooner than later.

                  This is not going to be - there's actually probably a lot of very good uses for this money and probably a lot of good ideas out there. This is going to take time and it seems to be being portrayed as we aren't even going to start until we know how much money there is and that's - I don't get that at all. I mean this process needs to start and because it's going to be a bottoms-up community based input on what happens with this (Chuck) made the point

that, you know, instead of waiting for the board to start that that we should direct the process to get started.

Now I'm not familiar with how we or the GNSO kicks off a, you know, bottoms-up process, but that's actually a pretty good idea, but my point is this can't wait. I mean because this is going to take a long time to get resolved, I think, because we'll have a lot of competing kinds of views and it'd be a shame to have to wait two or three years for what might be some very good uses of these funds. So thanks.

Keith Drazek: Yes, thanks (Tim). I agree and I think we heard - maybe it was in that SOAC leaders meeting with (Faudi) on Friday that the expectation is that by (Marakesh) they feel like they'll have a better idea of what the auction proceeds will be and that they would like to be able to sort of start the process by (Marakesh). So I think they have given us a little bit of a, you know, sort of a vague target maybe, but I agree with you that, you know, I don't see there's a need or a reason to wait to start the community based bottom-up sort of structure that will sort of kick off at least the discussions.

So I see you (Ken). I've got (Philip) in the queue and then (Reg) and then (Ken), but let me just finish. To your point about, you know, the community starting this process. I think if we as a community feel like the board is dragging its feet on kicking off these discussions, if you will, then maybe we do just initiate a cross community working group, yet another one on the disposition of auction proceeds.

I think it's perfectly reasonable because the entire community is going to want to have input into this and so rather than waiting for the board to initiate a consultation, which is the language that they've used, frankly, it may be smart

for us to not wait around for the board and the staff to tell us how to do this and rather we just start it ourselves.

So I do think that that's something that we ought to consider as a community. It'll probably take some time and coordination to make something like that happen, but I can't see anybody that would disagree with that frankly. So, okay, (Philip), (Reg) and then (Ken) and then (Chuck).

Philip Shephard: Thank you, (Philip) with the Brand Registry Group. Just on the two character codes points you're making. Could you - I missed your - the session where you mentioned that during the GDD update and I guess you were aware when the GAC discussed that a couple of days ago, which was relatively positive. What's the points you're going to make just very quickly?

Keith Drazek: I'm sorry (Phil) - can you restate the question? I didn't quite get it.

Philip Sheppard: Yes, on the two character codes in the (ISEPS).

Keith Drazek: Yes? Yes, so I think what we talked about earlier today with the GDD staff we want to raise to the board and the concern about the...

Philip Shephard: Yes, I missed that session. That's why I'm asking now.

Keith Drazek: Yes, okay so would somebody like to take that one in terms of giving an update? Go ahead (Donna), thanks.

Donna Austin: So (Donna Austin) - I'll try. (Philip), excuse me. So not withstanding the fact that we think the GAC is not going to reach a consensuses bias which would allow us to, you know - allow the (ISEPS) to go forward there are a number of process issues that we've had with the (ISEPS) and the way that they've being

dealt with by ICANN staff. One of the big concerns we've had is the as (Krista) said this morning the (ISEP) is a boxed process, but the fact that the two character issues we've considered a material change to the contract and that puts that into a public comment period and now it means that the board actually has to approve that. To many - well to everybody that was a surprise. It wasn't the expectation that it would be considered a material change.

So, you know, we still have some concerns that the GAC may still come out with something that's different to what they discussed during the session. So we need to understand what's the impact of that from the board's perspective on, you know, how they would treat that considering these (unintelligible).

Philip Shephard: So it's about the appropriateness of the (ISEP) as a mechanism or how the asset has been changed as result to the different content?

Donna Austin: I think we have about four complacent issues in this. One of them is that perhaps the asset wasn't the appropriate tool for the release of two characters because it is actually a provision in the registry agreement, but that's what ICANN staff top people, you know, that's the mechanism you need to use then we accept it. That's the road we've gone down, but the material change to the contract as a result was a - has been a concern.

Philip Shephard: Yes, and you're aware that (unintelligible) lately also advised us the asset was also appropriate for country and territory release.

Donna Austin: The names as opposed to the code.

Philip Shephard: Yes, yes. And that's, as you know, (unintelligible) test one in (unintelligible).

Donna Austin: Yes.

Philip Shephard: Okay, thanks.

Chuck Gomes: Can I add to that? This is (Chuck). (Philip), I specifically asked them to report back to us in a week or two explaining why they think it's a material change. Okay? Understanding that it was in the guidebook - it was a provision in the guide book and you're familiar with that so I don't have to go over that.

So we'll see where that goes and - but more than that, again, and they were pretty positive I think in terms of they want the same things we do in getting this thing resolved, but I also suggested that they educate the GAC in terms of the fact that they have a contractual obligation to applicants and registries to implement the RSTEP according to the contractual provisions and that the GAC should be made aware of that. Not that that's going to necessarily solve the problem. You and I both know that that's a tough problem, but - so that was just kind of complimenting what (Donna) said there.

Philip Shephard: Okay, thank you.

Jon Nevett: Just real quickly go to the point - what if the GAC says delay another meeting? Do they honor the RSEP process by improving it or not? Do they wait until another meeting? Or what if the GAC said, no we don't think character needs to correspond to it country code TLD should be approved and then what would the board do? I mean there's a couple scenarios that we should have a discussion with them to say, you know, you need a backbone because you have a process and you have a contract with us and this is not a policy issue. This is a contractual issue and if you get policy advice it doesn't matter.

Keith Drazek: Okay, so I've got a queue - I've got (Reg), (Ken), (Chuck) and Edmon.

Reg Levy: Thanks, I want to just quickly go back to the - oh gosh, whatever it says
              before the slide - sorry. Yes, auction fees - thank you (John). So you indicated
              (Keith) that (Fadi) said that they would be better able to indicate how much
              money the auction fees would be in (Marakesh) and I would imagine that they
              would be even better able to determine how much the auction fees will be
              after all of the auctions are complete.

              And I'm not really certain that there's any relevance to how much they
              auction fees are going to be if - I mean if we decide that we give it to a
              charity, which I believe was the thing all along then charity A is going to be
              happy if we give them $15 or if we give them $15 million. They will probably
              be a million times happier, but they're still going to be happy. So I really think
              that that is complete non-sequitur and we should make that point to them.

Keith Drazek: Yes, thanks (Reg). I mean I think to me to boil it down the point is that, you
              know, whatever process we design should be able to accommodate however
              much money there is. It's not, you know, we're not prejudging where it goes.
              We're just establishing a process and starting the conversation about how we
              determine it and I think that that's something we ought to start tomorrow. So,
              okay, I've got (Ken), (Chuck), Edmon.

Ken Stubbs: Yes, I'm going to make a pitch for a strong emphasis on the nominating
              committee proposal that's been put forth by the board working group. I'm
              afraid that this is something that could sneak in under the radar and what
              concerns me the most is not what's going to happen next week or even not
              what's going to happen next year, but over a period of the next two to four
              years the composition of the board could change incredibly significantly to the
              point where a large number of the board members will really not have the

strength to be able to manage the oversight process for the core functions that ICANN performs.

I've had long discussions with board members and there is frustration amongst board members that many of the members of the board are obsessed with the sexy political parts and policy in the IGF. But when you get down to the nuts and bolts and you take a look at the 330 people that ICANN has working there and look at the functions and areas where the work is being conformed and the money is being spent it's in direct relationship to GNSO activities, you know.

And one of the things that I am going to quietly ask for is an analysis of expenditures and resources dedicated to the various SOs. Because once we point out the fact that they spend little time and little effort working with the RIRs and little time and even less effort in many cases working with the CCs and the RIRs and the CCs frankly by their absence over the last 10 years really don't want to work that closely with ICANN.

We need to have people at the board level that understand what's going on and the only way we're going to get people at that board level is to insure that the people that are screening them and working in the nominating committee have a clear understanding of the impacts of the decisions they make by putting people on the board.

Keith Drazek: Good, thanks (Ken). I've got (Chuck) and then Edmon. Anyone else want to get in the queue raise your hand.

Chuck Gomes: Thanks (Keith). I'm going to reinforce something that (Reg) said very well. It doesn't matter how much the excess auction funds are. They committed years ago that excess auction funds - how they're used would be determined by a

community process. So I think we ought to just nix that argument in totally and say it's irrelevant like (Reg) said because they committed to this a long time ago. They've repeated that commitment so there's no need we need to know that to get the process going.

Keith Drazek: Okay,

Edmon Chung: Edmon here. I want to actually - I wasn't going to, but I want to echo what (Ken) just said. I think that's a matter that seems to be under the radar screen right now and it's really worth bringing up. On the topic of auction proceeds I think this is - besides getting started one other thing that I think is important is that perhaps tie it back in the accountability track issue.

Don't try to create this process top-down again. This is very good, you know, it would be a very good way to link it back and this is - make sure it is bottom-up. Third item, on the one-two character RSEP thing - not directly related, but depending on the dynamics I'd like to bring, you know, both a point to attention to everyone here.

There is a very troubling direction that everything needs to go through an RSEP and I think, you know, and everything seems to be of contractual change or material contractual change.

One particular one that I was very alarmed to realize in the Tokyo Roadshow is apparently staff now considers that if the IDN table if there's one change in - let's say there's one code point in change you would have to go through an RSEP and that's extremely alarming and totally not right I think and that also means that, for example, the LGR thing that we're doing in the larger part - if that ever changes that means all the IDN TLDs will have to, each one of them, put in an RSEP because of a change that is external.

That's completely stupid - I think, you know, I just want to raise that this is going to come back again, but if we do have some time I want to bring that to the board's attention as well as an example that the RSEP process itself, but the two characters as I think (Phil) mentioned is looking like the GAC is likely going to do anything, but the process behind it is something that I think we should care about.

Keith Drazek: Thanks Edmon. So let me pose a question - I've got (Reg) in the queue, but I want to pose a question and say is it - should we be making this discussion with the board about RSEPs more generally and have the subsets of these discussions, including the two character question and what you've raised and really I think the high-level point is we need - it needs to be appropriately focused scoped.

Edmon Chung: Right.

Keith Drazek: That it needs to be predictable. And, you know, not abused or used inappropriately to the point that (Jordan) made earlier, I think. About, you know, don't use the hammer when you're trying to, you know, screw in a screw. So...

Edmon Chung: I think that makes sense and we can take, you know, we can use the character one as a lead and, you know, that's kind of the...

Keith Drazek: Yes, I think actually we ought to talk about RSEPs generally if everybody is in agreement. Talk about RSEPs generally - we want to talk about RSEPS and here are some concerns. So I've got (Reg) in the queue and then (Ray) and then (Jordan).

Reg Levy: Thanks (Keith. This is (Reg Leevy) who never identifies herself for the transcript. I want to quickly answer your question from my prospective that, yes, I think it is important that we speak about RSEPs more broadly and not necessarily just focusing on two character, but I also think that we need to emphasize two character because that's an issue and if we manage to solve the RSEP problem, and it is a problem, then it doesn't matter what the GAC says because it shouldn't have gone to RSEP in the first place. And so, yes, we have the broader discussion, but make sure that they understand that it is of specific concern and we're not just sort of saying hey let's toss that RSEP. Now I forget what the other one was.

Keith Drazek: Come back? All right, we'll come back to you. So I've got (Ray) and then (Jordan).

Ray Fasset: Thank you, Ray Fasset. We heard today in the context of the RSEP discussion ICANN senior staff say they are taking an ultra-conservative view in the processing of the RSEPs. It is to ICANN's self-determined advantage I suppose to approach RSEPs that way. It is why it is a critical point that we hold ICANN staff accountable to the materiality decision because when we do that and we require ICANNs it should be to be transparent about how they're arriving at that decision they won't be so quick to force everything through an RSEP anymore. That's the key.

When they have to explain to you why Edmon that change to the table is a material change to the registry agreement and they can't then they won't require the RSEP any longer. Because without being able to explain that there is no public comment period and there is no board decision. And that's why that is the critical component we have to continue to work with ICANN staff about. That we are going to expect transparency on that particular decision of the materiality.

Keith Drazek: Okay, thanks (Ray). And so, okay, so I'm going to go back to (Reg) who remembered what she was going to say and then we've got (Jordan), (Jonathan) and (Rubens).

Reg Levy: Thank you (Jordan) for your indulgence. So picking up on what (Ray) said and what Edmon said earlier - they're saying that they require the change because it's a material - or they require the RSEP because it's a material change and the only reason they're saying that it's a material change is because they think that any change needs to be in the contract and any change to the contract is material and this is just another instance of ICANN legal taking over ICANN, but they're also interpreting may in some of the provisions of the contracts from their perspective as will.

We've had a couple of instances where they may publish something that they have published and are unable to give us any indication on when they won't or whether or not there's any kind of process for us to request that something not be published or at least notify us in advance if they're exercising their right to may. And I'm going to rephrase what (Ray) just said. That if they have to say why a provision to the contract is material it isn't...

Keith Drazek: Okay, (Jordan) go ahead.

Jordan Buchanan: Okay, so I think as with the discussion around the two other stuff - I get, I think I worry about focusing on the materiality standard in that you still have to go through the intake process on RSEP if that's what we're debating about and it just becomes a question of oh does staff need to go talk to the board or not and there's, I think, a lot of examples of where this stuff shouldn't be going into the start of the funnel in the first place. Two letters are an example of that - IDNs are another great example of that.

To Edmon's point, like if you have a registry service that is to allow you to provide Japanese IDNs it should not be specified to the point that you're talking about individual code points in the contract. So you should never - we're not talking about changing the contract when we're changing code points. We're talking about making an operational change that registry operators should have the flexibility to do and the problem is that ICANN's conservative approach ends up causing problems on both sides. Right?

The - if everything needs to go into that funnel there's this huge glut of stuff. It's a lot of work for us. It's a lot of work for them and that's what degrades the predictability in the process. IF they have to do one RSEP a quarter or something like that, which is probably more than the actual new registry services that are being proposed it would probably be really easy to be able to hit that 15-day threshold. Right?

But if they require every registry operator to submit a constant deluge of RSEPs in order to do really minor changes then they're just not going to be able to keep up with that work and that's a waste of time for us as well.

So I think (Ray) really hit on it. The board needs to tell the staff not to be so crazy and not to be so risk adverse because they're not going to be able to meet their other obligations, which are to comply with the consensus policy that already exists and so as opposed to staff always taking the most conservative stance possible - like reasonable operational flexibility should rule and that will work better both for ICANN and for us.

And I think that's the point we need to focus on. Let's not talk about materiality or, you know, one particular process. They're good examples of what's broken, but the real problem is that risk aversion and the fact that staff

thinks that the contract needs to be this brutal thing that has to be intensely specified to the point that you can't make reasonable operational changes without going through this funnel.

Keith Drazek: Okay, thanks (Jordan). Just a pause - I've got (Jonathan), (Rubens) and (Chuck) in the queue and then - okay, you're good? Okay, so I want to ask a question. I thought I heard - now I agree with everything that's been said, but I thought I heard an acknowledgement from (Sirus) that - or at least an openness to discussing alternative mechanisms or engaging with us to try and find something maybe other than the RSEP in certain cases.

So it's probably worth mentioning in our conversation with the board, I think, that we've had this conversation today with the GDD and there's, I think, some common understanding that maybe improvements can be made or alternatives can be identified for handling some of these kinds of issues. So to sort of put that marker down and say we've had this discussion. We're going to be moving this thing forward together to, you know, I don't know - basically say this is not working today and we're going to find a way to fix it. But I want others feedback as well.

So (Jonathan) - sorry, let me just interrupt. We've only got a few minutes left. So we're going to have to move quickly here so we can move to the board meeting. So like five more minutes (Jonathan).

Jonathan Robinson: All right, I've got a question. It goes back to something (Chuck) said when GDD portal staff - GDDstaff was in here. When ICANN - when they're operating and responding to these RSTEPs and requiring the RSEPs they're acting under contractual requirements. They're doing what they have to do

what they promised they'd do, but there are penalties if they don't do and that's under color of authority of the policy guidelines that have come down.

And they are receiving communications from the GAC that I don't think that are in accordance with any actual operating procedure from the GAC. It's just they get together, they write a letter, they don't ratify it, they just send it over and then all these provisions and the bylaws and everything - everything that's been setup - everything gets put on hold.

And when they do this and they put this - when they create this, you know, temporary stop - this state of execution - are they acting under color of authority of any provision? The bylaws? I mean and maybe somebody with more experience can answer this because I just don't know. Are they actually - is this legitimate or I mean are they just doing what they think they need to do to keep the countries happy?

Keith Drazek: (Liz) did you want to respond? Okay.

Liz Finberg: Not specifically to (Jonathan)'s point. Although I agree with him, but do we have clarity as to why, for example, with respect to Edmon's example of changing a point code, you know, in an IDN table. Why does that have to go through an RSEP? In the past you would submit the table to IANA and so I think not only is staff taking a really, I think someone said, brittle approach to RSEPs itself, but why and how has the scope of what is appropriate for an RSEP expanded? Do we have clarity on that?

And, I guess, the other thing I was going to say that might be worth pointing out to the board is that to the extent that policies such as universal acceptance are desirable and something that the community wants to see. It's really being undermined by this very very rigged approach to operational implementation

of already accepted policies and procedures via this very rigged approach to RSEP.

Keith Drazek: Okay, so I've got (Rubens), (Chuck), (Reg) and Edmon and then we need to go.

Rubens Kuhl: I just want to quickly...

Keith Drazek: Okay, Edmon go ahead.

Edmon Chung: I think that defenses on security. They said there are security implications on changing code point, but, you know, it's a bit bogus. So if like if I change my database version that probably has security implications too, but anyway that's their defense.

Woman: Yes, but why is staff better able to deal with that then IANA? I mean...

Keith Drazek: Okay, (Rubens) go ahead.

Rubens Kuhl: All right, (Keith). (Rubens) (unintelligible) for the record. ICANN staff seems to this that the (unintelligible) set because of having paper trail of what to decide to (unintelligible). So they are imposing their self-inflicting this pain just to have a track record of what's decided (unintelligible). We could ask the board if they would be okay with staff simply keeping a registry of changes of decisions they (unintelligible). Instead of making every such change a contractual change. So perhaps you could ask the board that.

Keith Drazek: Okay, thanks (Rubens). (Chuck) then (Reg).

Chuck Gomes: And I'll be very brief. I'm not opening these two points for discussion now. We can talk about them later, but I want to challenge the two assumptions that I heard made with regard to the auction funds.

Number one, that it would go to a charity. I am not opposed to that, but let's not set any expectations that it's going - some of it could go back to applicants, but - and I'm not suggesting that, okay?

But, secondly, and this may be more important is I'm not necessarily sure that it should be a cross community working group because this is a GNSO issue and all the funds came through GNSO members. Now keep in mind our GNSO processes allow other people to participate. Let's not talk about that now. I just wanted to throw that out since those were mentioned.

Keith Drazek: Yes, thanks (Chuck) - fair points. Okay, (Reg) and then we need to move.

Reg Levy: I just wanted to expand on (Jordan)'s point where he said that there's the sense from staff that the contract is a brittle document and that is also born out in compliance. Where there is no room for reasonable interpretations.

Keith Drazek: Okay, very good. Thanks everybody. I think we will have a very good and constructive and, of course, as always respectful discussion with the board. So let's go do that and then we'll reconvene here afterwards and then get back into some of our other business. Thanks.

Woman: And everyone knows the meeting with the board is down one level in the Los Angeles room on the California level. Thank you.

Man: But I think it's - it should be not a cross community thing. It doesn't have to.

Man:			Yes.

Man:			Right.

((Crosstalk))

Woman:			Where's the meeting with the board?

Man:			It's in Los Angeles - so the main room.

Woman:			Oh okay.

Man:			I think they probably have the sides closed off or something. Oh, I've got to take this stuff because I've got to talk to the one item huh?

((Crosstalk))

END