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SINGAPORE – ICANN Accountability  
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ICANN – Singapore, Singapore

>> Good afternoon, everyone. If you'd kindly take your seats, we're going to begin our program and I would like to introduce to you ICANN board chair, Steve Crocker.

[ Applause ]

STEVE CROCKER: Thank you, Nancy.

So the first thing that we're going to try to do is figure out what this session is about in contrast and comparison to the other sessions that have been going on and others that will proceed.

So we've all been talking about the transition of the stewardship of some of the key technical functions for the Internet, the IANA functions, from the U.S. government to the global multistakeholder model, and this morning, we talked about the process for the IANA transition.

This session, however, is aimed at discussing the broader issues of accountability, specifically in the context of the Affirmation of Commitments.

These two things are connected but they are different, and keeping that distinction clear I think is important.

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So for IANA, we work with our partner. Through the Affirmation of Commitments, we work with the ICANN community to ensure continued ICANN accountability. How we address this is important, and it may serve to look at two separate tracks.

The signing of the AoC by the United States Department of Commerce and ICANN on the 30th of September in 2009 marked a significant milestone in the evolution of the management of the Internet's domain name system and the other identifiers.

Among other things, Paragraph 3 of the AoC notes, "This document affirms key commitments by DOC and ICANN including commitments to (a) ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent; (b) preserve the security, stability, and resiliency of the DNS; (c) promote competition, consumer trust, and consumer choice in the DNS marketplace; and (d) facilitate international participation in DNS technical coordination."

It committed the organization to reviews performed by the community every three years. That was -- has become painful to do it every three years. They keep coming and keep coming.

Recognizing the robustness of the multistakeholder community and its ability to review itself.

Through the AoC, ICANN's commitments to these regularly scheduled global reviews of accountability and transparency, ensuring accountability, transparency, and the interest of the global Internet users are taken into account.



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Security, stability, and resiliency. Ensuring the security, stability and resiliency of the DNS, including global interoperability.

Promoting competition, consumer trust, and consumer choice in the DNS.

And a -- the fourth review, a WHOIS review, ensuring ICANN is enforcing WHOIS policy.

A comment about all of these.

We have now run three of these reviews. We have not yet begun the review for promoting competition, consumer trust, and consumer choice in the DNS, but we are gearing up to do that.

And of the other three, we have begun -- wrong -- we have nearly completed the second round of the accountability and transparency review.

Sitting at the table, and who will shortly take over for me, Brian Cute chaired both the first ATRT and the second ATRT, and did an amazing stellar job, for which I'm personally very grateful and I think that we've all benefitted.

Returning to script here, these reviews elevated the transparency and accountability within ICANN's organizational management and practices, and the permanent accountability mechanisms created were very important.

For example, other governments and private sector could now participate on an equal basis with the U.S. government.



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This is the culmination of the move from public to private control of the DNS. It signified that ICANN was independent and not under the control of any one entity.

The document affirmed that the commitment to the bottom-up policy development model for domain name system technical coordination acts for the benefit of global Internet users.

That fundamental belief in the global multistakeholder model can be seen in the recent announcement that we've all been cognizant of and discussing from the U.S. government.

So the issue to be explored by the community now is: What is the best way forward with respect to the evolution of our accountability and transparency requirements that are currently driven or embedded in the Affirmation of Commitments?

And so emphasizing the point that I made at the beginning, the focus here in this session is on the broader ICANN accountability and transparency requirements, related, of course, but distinct from the evolution of the IANA function and the stewardship of the IANA function itself.

I'm going to turn the chair over to Brian Cote, who has, better than anyone else, I think, deep knowledge of how the processes have actually worked and who does a very polite but thorough job of holding me and each of us accountable.

Brian?



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BRIAN CUTE:

Thanks, Steve. And welcome, everyone, to this session.

Let me offer a few observations of the review team process that Steve just outlined for you.

I had the pleasure and the privilege to chair ATRT1 and ATRT2, serving with Assistant Secretary Strickling and many other volunteers from the community, and what's really striking about the review process is that it is a truly multistakeholder process with all of the stakeholders working on equal footing to carefully examine ICANN's accountability and transparency, its performance in specified areas, and to make recommendations to the board of directors as to how the organization can improve its accountability and transparency. And it's a lot of work. My hat goes off to all of the volunteers of all of the review teams.

This is a very big job. It takes a lot of time and effort, and it's critical to the maturation of the organization.

Observations I would offer from what I saw in the process is that in ATRT1 it was truly a novel, first-time exercise that had never been launched before, an innovation taking place in ICANN, and we learned along the way, and I am very proud of the product that came out of ATRT1.

Fast-forwarding to ATRT2, which just finished its work and made recommendations on December 31st of last year to the board, and with the intervening two review teams -- the security, stability and resiliency review team and the WHOIS review team -- an observation I would offer is that the workload gets heavier. Because of the dynamic nature of these reviews taking place every three years, the accountability and



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transparency review team, in particular, has a task of reviewing the recommendations of the prior review teams, so one of the dynamics I observed this time around was that there was more work for the team.

And it's very important to look at how ICANN has done the job of implementation, and it is also important, as this is a dynamic and forward-going exercise, to have the opportunity to zero in on new areas, new issues, where ICANN -- where a recommendation could be made for improvement to accountability and transparency.

So it's a dynamic process, it's an important process, and the work increases.

I would also offer that the process, particularly this last one, has been very well supported by ICANN staff. They also are working very hard with us throughout the process, and that's very much appreciated.

And while it's volunteers from across the community, we also are keenly aware that the review team has to demonstrate independence and objectivity in its work, because if that's not there, this is worthless.

And so working with ICANN staff and maintaining the right balance of independence and objectivity is a key touchstone that we focused in on.

That being said, this is an issue that's near and dear to my heart and all of ours, and we are now in an environment where broader questions about accountability are being raised, and so the purpose of this session is to actually turn the mic over to you all and to hear from you what is top of mind.



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Again, accountability and transparency is very specific and particular to these reviews, but it's also broader than that. ICANN is accountable in many ways to the stakeholders and the community.

So with that being said, there are three questions that I would like to put in front of all of us for consideration and then open the mic to hear from you, in response to these questions, if you would, and if you have other points, please make them and offer them.

And this is essentially a listening session to hear what the community thinks about the broader question of accountability.

So if we could put the questions up on the screen.

Oh, they're up. Okay. Wrong way.

So one, what are the means by which the community is assured that ICANN is meeting its accountability commitments?

Two, as ICANN grows and improves its overall accountability, what should be the guiding principles to ensure that the notion of accountability is understood and accepted globally?

And three, how does the Affirmation of Commitments need to evolve to support global acceptance of ICANN's accountability, and who should take part in this AoC?

So if you'd use those questions as a guideline, we'd like very much to hear from you what your thoughts are, what your suggestions are, and certainly any points with respect to the review team processes or questions you have there, be happy to answer to the best of my ability.



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Steve, anything to add?

STEVE CROCKER:

I'm going to cheat here.

Think of me as being first at the microphone to try to respond to this and say something, because the first question, "What are the means by which the community is assured that ICANN is meeting its accountability commitments," has both a very big question there and a much more specific question, and I want to deal with the --

The big question is, the accountability and transparency review team makes a bunch of recommendations. Even if those recommendations are accepted and implemented, does that embody what the community really wants?

And so that's a big question related to whether the review process speaks properly for the community and gets all of the information and so forth.

The smaller question, but one which is really very important, is: What happens after those recommendations come into ICANN?

We have been working very hard -- and I have been driving it personally -- to develop a process that is thorough in analyzing each of the recommendations, understanding what the consequences are for saying yes, documenting that process so that we don't lose track of anything, and moving it through in a timely fashion.

So with respect to the current ATRT recommendations -- which I have to say Brian did a fantastic job of managing that whole process and





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delivering a report at the end of last year -- we now have -- we're in the six-month period of digesting those and responding, and I'm -- I have great confidence that we're going to be able to make it.

Tomorrow -- no. Sorry. Wednesday -- Wednesday morning? After- -- it's Wednesday morning, right? Thank you.

Wednesday morning there will be a much more detailed presentation on where we are on the -- on dealing with that specific set of recommendations on the ATRT to report, and I don't want to waste -- sorry, consume the time to get into the details of that here, but I find myself wishing that we had that output so that the broader discussion of how well the process works in general could be informed by that.

So let me commend that you attend that session, too, and let me just offer, for the purposes here, that there is a fairly detailed process, we are working our way through it, and we will have very concrete and specific publications on a regular basis of where we are on each of the recommendations. And that's a process that's not just for ATRT but will be applied -- has been partially applied and will reach a steady state of maturation across advice of various sorts, and particularly across the review processes that are part of the AoC.

Thank you.

BRIAN CUTE:

First at the mic?



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PINDAR WONG:

Good afternoon. My name is Pindar Wong. I was a member of the ICANN strategy panel dealing with ICANN's role in the Internet governance ecosystem.

We just want to draw your attention that we met with the ombudsman yesterday to partly convey some of the results of our work which we basically posit and observe that although there are existing accountability mechanisms inside ICANN -- the 50 recommendations, the ombudsman, the reconsideration requests, and the independent review panel -- those may not necessarily be transparent to those outside the immediate ICANN ecosystem.

And what this means is that there perhaps is a (indiscernible) of internal accountability and that accountability to the wider set of relationships.

So in our report on Page 52, Section (d), one of our recommendations is to globalize the process of accountability within a web of relationships.

Specifically, we posit the idea of accountability panels as a construct to try and deal with the cross-border nature and the increasing diversity of the ecosystem itself.

So the panel itself is unable to carry forward these ideas regarding accountability panels, and we just make a note here that we would hope this community and your good self can also consider this idea and perhaps flesh it out a bit more.

We do observe that there are historic elements where a group outside of ICANN has developed some recommendations, that those have been adopted, and dispute resolution mechanisms have been adopted, the UDRP being a prime example of that.



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So with that, internal versus external accountability and the ability to communicate these accountability mechanisms to the wider ecosystem outside of ICANN.

The 50 recommendations -- 50-plus, I think -- from the ATRT2, several of our members who are out and not new to ICANN had, you know, thought the -- this -- there is a complexity here which is very hard to grasp for newbies, so we thought ATRT2 was something from Star Wars. Thank you.

[ Laughter ]

BRIAN CUTE:

Thank you.

MILTON MUELLER:

Milton Mueller, Syracuse University.

I'd just like to encourage you to -- when you're thinking about accountability going forward, to think way beyond the Affirmation of Commitments.

I think the Affirmation of Commitments is a -- you know, a very strange form of accountability that most organizational theorists would look at and be puzzled by. It's basically a committee issuing nonbinding recommendations, which is not what most people mean by "accountability."

I'd also -- so there would have to be major reforms in ICANN's structures to make it truly accountable. You might need to be talking about



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membership. You might need to be talking about a new international treaty instrument that defines your scope and makes it enforceable by governments. There's all kinds of true external accountability mechanisms that you could be considering in the future.

And those are very, you know, sweeping kinds of reforms that could be done, which is why, when we looked at this issue, we recommended that you split off the IANA transition from the accountability transition.

You can't really deal adequately with accountability of ICANN as a whole until you have separated ICANN and completed the IANA transition because, you know, for example, the IANA contract requires it to be in the U.S. and has other kinds of things like the affirmation that are legacies of ICANN's evolution.

So I also don't agree with the segregation of the accountability issue that's been presented to us; that the -- I think that the IANA transition could play a major role in increasing ICANN's accountability. If you did have a structural separation, that would be something that would make ICANN have kind of a check-and-balance structure.

And if you don't have that, if you fold all of the IANA functions into ICANN and integrate them, then the stakes of accountability rise considerably and the traditional mechanisms of review committees that you have become -- look even weaker relative to those stakes, in my opinion.

So I don't want to mess up the -- I know why you segregated the dialogue and you need to have focused discussions, but you -- I don't think you can completely segregate those two things.



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BRIAN CUTE: Thank you. Olivier?

OLIVIER CREPIN-LEBLOND: Good afternoon. My name is Olivier Crepin-Leblond and I'm the -- oops -- I'm the chair of the At-Large Advisory Committee. The statements I'm going to give you just now -- or rather the answers I'm going to give you are not ratified by the ALAC, but I'm going to try and answer the three questions in the one minute and 50 seconds I still have to speak.

So the first one, what are the means by which the communities are assured that ICANN is meeting its accountability commitments, I believe you have to involve Internet end users in this.

The second question, same thing: Internet end users but globally. You do have to involve Internet end users on a global scale. And the third one, how does the Affirmation of Commitments need to evolve to support global acceptance of ICANN's accountability and who should take part in this AoC, I'm not going to give you the whole list of all the people who should take part in the AoC but it definitely has to involve Internet end users as well.

[ Applause ]

BRIAN CUTE: Thank you.



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CHUCK GOMES:

Chuck Gomes. I'm going to answer all three questions with a very simple sentence, and it really has already been stated by Pindar and by Milton.

You need external accountability. Internal accountability is not enough.

I'd like to refer you to a document produced by the strategic panel on multistakeholder innovation, and the information they provide there in a table has been provided by other people over the years, but it does a nice comparison of ICANN's accountability to corporate accountability, government accountability, other nonprofit accountabilities, and ICANN, and it talks about direct, external, exit, and voice types of accountability.

It's in Proposal 13 from that strategic panel. About Page 3 of it.

It does a very nice job of showing that ICANN doesn't have any ultimate external accountability, and I think that's the answer to all three questions.

[ Applause ]

BRIAN CUTE:

Thank you.

RAY PLZAK:

Ray Plzak, ICANN Board and also the chair of the Structural Improvements Committee. I'll answer all three questions as well. And the first one -- or what I would want to look at is I agree completely with what Chuck is saying. There has to be some kind of external



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accountability mechanism, and that needs to be defined. But we need to be able to define more clearly what our accountability mechanisms are. And Milton touched on that when he used the word "checks and balances." We have to make sure that our processes are visible and that contributes to transparency obviously but the fact that there are built-in checks and balances throughout that allow, at decision points, a counter argument to be made so things don't just get railroaded through. We -- actually that takes care of the first two.

The third one, how does the -- need to evolve? Well, actually it needs to evolve to the point that it actually becomes a multistakeholder lateral document. In other words, it's not between ICANN and this government or ICANN and this stakeholder or ICANN and that stakeholder, it's actually between all the parties that sign the document so that ICANN is just one of many that are signing that document so that not only is it in a document that is -- involves the relationship with ICANN but it's also the definition of the relationship between everybody else that has signed it -- has signed that document. Thank you.

BRIAN CUTE:

Thank you.

STEFANO TRUMPY:

Stefano Trumpy, ISOC Italy and member of the GAC. So I want to make some considerations starting from the third point because the Affirmation of Commitment was an historic step in September 2009 and then it was declared that the ICANN would become accountable towards the community through the review panels and the review panel



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on accountability and transparency is the most political, let's say, compared to the others. So this -- I recognize it, as Milton said, that there is a problem of now also -- of considering the NTIA declaration. But this -- this idea I propose is -- could prepare more complete plot of the accountability. But since the Affirmation of Commitment was signed by ICANN and U.S. government, then why not change the text. Because the idea is good. And then to leave out the parts that are specific for relation with U.S. government and try to verify how many governments would like to sign an Affirmation of Commitment in the same plot of the one that started in 2009 and then could be a preliminary step in order then to rework everything and to maybe change something after the conclusion of the IANA contract. Thank you.

BRIAN CUTE:

Thank you.

DAVID CAKE:

David Cake, Non-Commercial Users Constituency. On the issue of the Affirmation of Commitment and how it should evolve, I should know one of the strategy panels mentioned that the Affirmation of Commitments need not only be with governments. It can be with other organizations. We should -- if we want to really broaden this into a multistakeholder thing, let's think about making the Affirmation of Commitments be in agreement with some other organizations as well, like, you know, either other INGOs or IGOs or various NGOs that could be realistically also part of that agreement.





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On the issue of the review teams, the AoC review process, I've been a participant on one of those reviews. I think the review process is good and productive. You know, I think it's a very thorough way, but I have to say that there is -- definitely seems to be a disconnect with translating those into action and in particular the account of the -- as the -- the review teams as an accountability mechanism is one thing but it does not seem to have translated into a lot of day-to-day accountability mechanisms within ICANN. The request for -- we have got the request for reconsideration mechanism. I'm very pleased to hear that something that on Sunday apparently the -- something extraordinary happened and someone actually won a request for reconsideration. I believe that is the first time. While weary that a single flower may not mean that spring is here, I'd like to hope that -- to mix another metaphor, that this is what we call a black swan event.

Once you see one black swan you suddenly discover there's -- you know, I'm have western Australia where all the swans are black, so let's hope that the -- this is a change and we -- and the request for reconsideration process is -- you know, many more people are successful from now on. But the fact is that really was surprising that we were expecting [ Timer sounds. ] to keep going. We need -- the reviews need to translate into real accountability, and let me just echo the many people who say that if the Board and effectively the general counsel and the other mechanisms of ICANN are the people doing the accountability, it will probably always be as lacking compared to an external accountability.



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BRIAN CUTE: Thank you. I'm just going to interject a thought and interested to hear -- there's two themes that keep popping up. One has been -- and even before this meeting -- this notion of opening up the Affirmation of Commitments for a signature by other parties as one way forward and the other theme is external accountability. I'd be interested from anybody to hear if that notion of getting more signatories to the AoC in your view satisfies that external accountability that people are talking about and if not, how do you propose that external accountability could be created or satisfied?

DAVID CAKE: Well, just speaking for myself, I think we need an external accountability mechanism, not for the long-term strategic accountability that the AoC and the review teams provide but we need some form of external accountability on sort of regular day-to-day decisions, actual specific decisions, somehow.

BRIAN CUTE: Thank you.

MICHAEL ROTERT: Okay. My name is Michael Rotert from the German Internet trade association and ISPPC constituency. I have a simple answer to all the three and a very short one, accountabilities in those three questions. Stick to your mission. Thank you.

[ Laughter ]



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BRIAN CUTE:

Thank you.

BECKY BURR:

Becky Burr NeuStar. A couple of people here have talked about external reviews. I actually think that -- the word "external" bothers me because I'm not quite sure what it means. I would describe it as an independent mechanism. So if you look at what every regulator in the world has to deal with, it's an independent judiciary. And as I have said many times, that's what we need here.

But I'm going to actually tell you something that you can stop doing, because it doesn't provide any assurance that ICANN is meeting its accountability commitments, and that's the One World Trust review. Somebody referenced it today as positively reflecting ICANN's accountability. And so I went and read it. The -- the report was based on 22 interviews, 13 with members of the staff and board, 9 with people who are not. The comparable organizations that they identified was the International Standards Organization, the Forestry Stewardship Council, and the World Fair Trade Organization. Two of those are industry self-regulatory organizations, one is voluntary international standards body which uses experts to build those standards. They don't really have a lot to do with ICANN. You're not -- it doesn't compare apples to apples and it doesn't provide a helpful measure for you. It doesn't provide a helpful measure for anybody who's looking at it, and I understand why it got started but let's spend the money on something else.



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BRIAN CUTE:

Thank you.

FIONA ASONGA:

My name is Fiona Asonga. And I will try to answer the questions in a very brief manner. I think that for ICANN to be able to show the community that it's meeting its accountability commitments the organization needs to keep being transparent and sharing with the community what they plan, what they are doing, and continue involving the community as has happened in the past.

On global accountability, it's very difficult for an institution to be accountable to people who do not understand its mandates, what it does, or that it even exists. So I think, too, it becomes very difficult for ICANN to work towards being that there may be a large percentage of users, of ISPs, of civil society out there who are not attending ICANN meetings, do not know that such an entity exists, and do not -- or do not appreciate the role and the function of ICANN. So I think on number 2 ICANN should focus on trying to create maybe awareness that it is there before it can begin to be accountable to entities who do not even know it exists.

On 3, I think the AoC as ICANN evolves should be signed by every stakeholder that ICANN is able to bring on board in the sense that through the different groups, not individual one-on-one per se but through different groups that are accommodated within ICANN, the different stakeholders should be involved in signing the AoC. And on existing terms so that ICANN's vision and mandate remain the same unless you so want to change that.



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[ Applause ]

BRIAN CUTE: Thank you.

PIERRE BONIS: Hello, Pierre Bonis from AFNIC, the dot fr registry and all the new gTLDs. I would like to comment and try to answer the questions, but it's going to be difficult in a way because we are in the middle of a paradox here that we are talking about the ability of ICANN towards the world in a way and we are still the ICANN community. So I would just like to point out that since we are talking about the ICANN accountability to the world we should talk about that with other -- other participants that's only the ICANN community. Of course, within ICANN we have governments, civil society, private sector, registrar, registries but we know that the discussion we have is taking place and will take place in other parts and other organizations in the next months. So I don't really know if what we are asked today is to try to help having an ICANN position on this global debate or if it is asked to the various communities to say how they would see ICANN as an accountable organization.

And to make it very short, to me when we talk about accountability, we just talk about the building of something you can appeal a decision from ICANN and that is not within ICANN. So this is the problem. What would be this thing? Would it be another body? A new body? An organization? But if we want to [ Timer sounds. ] appeal some ICANN



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decision, we must make sure that this is not within ICANN but outside ICANN. Thank you.

BRIAN CUTE: Thank you. Bertrand.

BERTRAND DE LA CHAPELLE: Good afternoon. I'm Bertrand de la Chapelle from the Internet & Jurisdiction Project. I think we are conflating two different things under the same heading here, and Becky has a little bit alluded to that. The first thing is the general accountability, i.e., what gives ICANN its legitimacy? Who could have potentially the capacity to take the responsibility out of ICANN if the organization were to go in a wrong direction? That used to be the JPA and the Memorandum of Understanding before. The Affirmation of Commitment has somehow transferred this responsibility in a limited manner to the ATRT accountability review teams. But it is more because we believe that this organization has reached a certain level of recognition that now the question of accountability here is more how do we continue to grow the accountability mechanisms? How do we continue to grow the transparency and inclusion and so on.

This is completely different from the second dimension which I believe is the most important focus at the moment which echoing what Becky was saying is not so much external accountability but independent accountability mechanism and redress mechanisms. And in this regard, it seems obvious to me that, to take exactly her word, the judiciary part of the ICANN system is really missing. The reconsideration process that



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is under the responsibility of the Board is putting an extreme burden on the Board on issues that make it very difficult to handle it in the way an independent body would be doing. So I wouldn't qualify it as an external. I would make sure that it is part of the system but that it is independent. The only independent system that we have that provides ultimate accountability is a nuclear option of the independent review panels, and it is much too big in terms of process. We need, especially in the new gTLD program [ Timer sounds. ] the capacity to have independent reviews of panel decisions.

BRIAN CUTE:

Thank you.

CHRIS DISSPAIN:

Hi. Chris Disspain, ICANN Board member. I'm just want to address question 3, how can it evolve? Well, some of this work has already been done. It would be a shame to lose it. Back in the ccTLD world in an attempt to deal with how ccTLDs relate with ICANN we came up with these things called accountability frameworks and they are signed with ccTLDs, some of which are governments and some of which are not and ICANN, and they are two-way documents. So we might like to think about using that as a starting point for a precedent rather than trying to finesse the Affirmation of Commitment because it's all built around accountability. It's a framework for accountability.

And I just wanted to pick up on the point that Fiona made a couple of speakers ago about everybody should learn about ICANN. I hope she -- she knows -- she will know who I'm talking about, I hope she doesn't



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mind. ICANN has a new employee and when I asked her why she was here, she said it's my first job and I learned about ICANN in school. We should make it our long-term goal to make sure that ICANN is learned about in school by everyone. Thank you.

[ Applause ]

BRIAN CUTE: Please.

IZUMI OKUTANI: Izumi Okutani, I'm speaking on my individual capacity. A lot of what I wanted to express have -- wanted to express have already been expressed by other speakers, so I'll make it very brief. Having some kind of scheme or groups of people who are reviewing the accountability, I think the balance is very important. So it's not just like single groups of people like user -- users or governments or single country, but having this composition of people who -- who are representing different groups of people is important in having these groups of people who are doing the review. So that's it for me.

BRIAN CUTE: Thank you.

STEVE DeIBIANCO: Steve DeIBianco with NetChoice. In 2010, several months after the Affirmation was signed, I was at a meeting at the European Parliament, it was during the Brussels meeting of ICANN, and there were two dozen





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European Parliament governmental members there. And I remember discussing the Affirmation and was a big fan and still am. So I pulled a pen out of my pocket and invited these members to sign on, to commit to support ICANN and be in the GAC and hold ICANN accountable to them. And the chairman at the time, the chairman of ICANN, your predecessor, said Steve, put your pen away. The Affirmation is really just a temporary document and within a short period of time we hope to really get rid of it. Well, that was a shock to me, and I don't suggest that that's been in any way your reflection.

But that's what created in all of our minds this notion that the Affirmation was something that ICANN is stuck with because should they walk away from it or fail to follow the review recommendations, they probably would have put their renewal of the IANA contract at risk. And that was a linkage. It's not an explicit linkage but seen as an implicit linkage. And it becomes more evident that when you look at 2012 when commerce department canceled the IANA contract because they wanted to ensure that ICANN would up its game at meeting the procedural and security requirements in IANA.

So that is what gives rise to many of us who perceive a linkage and therefore the IANA transition that we discussed this morning takes away the leverage to keep ICANN living in the Affirmation. And to replace that, I am rolling up my sleeves, I'll working on the mechanisms to replace it. This morning I mentioned some use cases, and one of the use cases is how do we design a process so that if ICANN wanted to walk away or not follow the Affirmation, how do we force it to reengage on that. Thank you.



BRIAN CUTE:

Thank you. And Avri, I'd just like to interject again and invite some more thoughts on this notion of more signatories to the AoC is referenced again, you know, here's a pen, sign. The practical question of who signs, how is that process managed, what if you get, you know, two years into it and you've got 50% of the signatories who should be signed up and 50% who are not. If you can offer -- if you think that's truly a viable way forward in terms of evolving it, can you offer some more concrete points as to how that would work and deliver the accountability that you think it could. Thank you.

AVRI DORIA:

Thank you. Avri Doria, member of NCSG but not speaking for them.

Had the privilege of being a member of ATRT2 and am actually quite impressed by it as a mechanism. I think it is a necessary mechanism moving forward, but I think that it has more of a way to go. One of the things we've noticed is, for example, how few of the members of the community actually participated in commenting and reading and following up. So that was a problem.

I have less of a problem than many on the inside/outside problem because it comes back to the ICANN corporate versus the ICANN community. And as long as it is a very broad part of the community, I think you're bringing in a lot of outside -- I think it is a bottom-up oversight mechanism that we need as we continue to transition.



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I think if you look inside this particular ATRT report, you'll find that there is a lot in it about how we do need to improve our appeals mechanisms, whether we call them reconsiderations, IRP, or what have you.

I think perhaps we even should consider the notion that there is an external binding appeals as an ultimate, not active oversight and some say, "This is what you should be doing" but an exception process.

So I also agree that we need a wider mesh of AoC signatories. But I think as soon as you have any of them, you start to have the mechanism to move forward and you acquire more as time goes on but not having a thousand at the beginning is not a reason to not continue.

So there's probably more I could say. But in 12 seconds, I won't get it said. So maybe I will recycle myself through the line.

I just want to say it is an essential piece that we need to keep.

BRIAN CUTE:

Thank you, Avri.

MARILYN CADE:

Thank you. My name is Marilyn Cade. I made some comments in the meeting next door earlier that I'm going to refer to here, but I wanted to say that I actually have practiced trying to use two of the accountability mechanisms that ICANN has: One called the ombudsman and the other called the reconsideration.

And I would just note that I'm not suggesting I was irreparably harmed by the outcome of either one of those experiences. But I think we have



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to be very frank that we do not have independent reconsideration mechanisms, nor do we have what I think could be viewed by many outsiders as a truly independent ombudsman process. I'm not being critical of the ombudsman. I'm talking about our process.

And I think we do need to think about what kind of separation is necessary, whether it is only functional or it is structural or it's independent. How do we achieve independence if the mechanisms are all internal?

But I want to make a comment about the inability of the community to effectively use even today's mechanisms. The community is not informed enough to actually understand how to use them. And that's a problem. So as we go forward, one of the things we're going to have to worry about -- and we should worry about, whatever we change, we've got to also improve the education and the awareness and the understanding of how to use the mechanisms.

I think I would just also say in my own thinking right now, I'm a little concerned about this idea of a web of agreements that are signed without really thinking this through. And the comment I made -- and I'm going to go past the buzzer, but I'm going to make it. The comment I made is that for many --

[ Timer sounds. ]

For many governments, in order to get approval to sign an agreement, it will take the act of a parliament. That may freeze a decision for a longer period of time than you might have thought it would. So I think before we start thinking about firming up signed agreements, we need to be



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thinking about what's in the agreements and what we're trying to accomplish by having these agreements and then assess whether signed agreements are actually the best direction.

BRIAN CUTE: Thank you.

SEBASTIEN BACHOLLET: I'm Sebastien Bachollet. I'm a member of the board. I would like to say that we have a number of vehicles and tools that we can use with the Department of Commerce, the Affirmation of Commitments, the memorandum. And I think that we need to change names or to change the vehicles. We cannot continue saying that we want an AoC that has to be signed by others. That phase is over now.

We have to start a new one. We have to move on to another stage, something that would be better where we may have mutual agreements, more at the global level, that will truly enable the community to participate in a structure of multistakeholderism.

In terms of the internal accountability, there is a lot of work to be done because decision makers are the ones who carry out the evaluation. And we have to find a way to come out of this circle that is not a virtuous one.

JOHN CURRAN: I'm not going to address the questions there regarding the Affirmation of Commitments. If ARIN had comments about that, we would have put



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them in the last two rounds of ATRT reviews. And I don't consider myself qualified.

I'm particularly thinking of the linkage question regarding not the world we are in now but the world we will be in post an IANA function contract and a change of stewardship responsibility.

The routine day-to-day accountability of ICANN, even the periodic review accountability of ICANN to its commitments, isn't the situation that would pose a problem for ARIN's performance of its mission. But ARIN is part of the ICANN ecosystem. And, therefore, a fundamental failure the organization, an epic one, for example, would pose a problem.

Presently the very light-handed oversight of the U.S. government Department of Commerce sits in the back and reassures that there's no chance of a durable failure of ICANN that would need to be adjusted. And that's a good thing. I actually don't necessarily believe any new mechanisms are necessary except an explanation of a use case, to use Steve's terminology, of -- in the case of a chronic failure of the organization decades from now, how that gets corrected. Whether it's an internal binding mechanism or an external mechanism, it's a requirement to have something, or we're setting ourselves up to believe that this organization can perform and needs no safety net. And that's very difficult for the organizations depending on ICANN to have faith in. Thank you.

BRIAN CUTE:

Thank you.



PAUL WILSON:

Paul Wilson from APNIC again. Accountability, I looked it up in a dictionary and it is strongly related to the fact that someone who is accountable can be called to account. I've got a fairly simplistic approach to some of these things. But you're accountable for something to someone. It means you can be called to account for whatever that is to those parties.

And being called to account means not only to report but to satisfy expectations and for there to be some redress if you don't satisfy those.

So in the case of the RIRs, the accountability to ICANN has been defined fairly well through the structure we have where policies for addressing come from the outside of ICANN. They go into ICANN via the ASO. And it is then up to ICANN to ratify at the board level those policies, then to hand them down, to the IANA to implement them.

And in that process, ICANN is accountable to the RIRs, if you'd like. Directly, it's -- at least in the simplest case, they're accountable to us for the implementation of those policies. We can tell pretty easily when they don't -- if ICANN doesn't implement the policy as they meant to.

We can take action. I think we would need to make sure that our agreements with ICANN at any time allow us to take the action and require ICANN to do its bit, if we do call ICANN to account and decide that it hasn't fulfilled what we expect of it.

I think we --



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BRIAN CUTE: Has that occurred? Are there examples of that occurring?

PAUL WILSON: No, it hasn't. I don't think it is anything we're afraid of because we would know. We can tell. We know what we expect. I.

Think we are in a luxurious situation that we have been able to separate the policy process very clearly out of the ICANN structure and it happens elsewhere. It may not be so easy in other cases.

[ Timer sounds. ]

If I could just finish. I think the point here is we've got clear mechanisms. What are we actually afraid of? We're afraid of those mechanisms for accountability, the actions that -- the mechanisms of redress not working.

And I think we need to make sure that that kind of situation is absolutely transparent, that it is demonstrable, that we can call ICANN to account, and do so in a public way which presumably creates enough embarrassment and enough pressure on ICANN to redress whatever the problem is.

In the case, I think, John described -- John Curran just described it as sort of a disaster scenario. I guess we do. We do have to think to that kind of outcome.

But I think actually in that point -- in that case, it is a case of serious failure of ICANN. I don't think preserving ICANN as an unit is what we necessarily want to do. We need to make sure as a community we have our mechanisms of last resort or our backup plans there. It's not --





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probably not a matter of saving ICANN and keeping ICANN intact but making sure our communities get what they need out of the wreckage, if you'd like.

BRIAN CUTE:

If you don't mind, the concept is understood, but that's sounds a little bit different. That's kind of a failure plan, a backup backstop, an exit strategy as opposed to an independent review mechanism that in the normal course ensures that there's sound decision-making. There is a qualitative difference there. And how does that relate to the broader question of evolving the affirmation in your view?

PAUL WILSON:

Well, look, I'm taking a fairly reductionist approach to our relationship with ICANN. I just wonder if we might benefit by taking that kind of approach because it seems we're piling a lot of mechanisms into the -- we're assuming that a lot of mechanisms are needed to do something which may not be as difficult or as close to rocket science as we seem to think. Thanks.

JONATHAN ZUCK:

Hi, Jonathan Zuck from the Association for Competitive Technology. I think my intervention is probably somewhat predictable because I've mentioned some of these things before. But I want to throw my agreement behind the need to have kind of mechanisms of accountability, which is part of the issue here, and absolutely significant. And I also agree with you, Brian, that there is a real difference between fail-safes for catastrophic events and day-to-day accountability because



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in many ways, if ICANN fails, it may be a death of a thousand cuts more so than it is some outright failure.

And to that end, I want to speak directly to Question Number 1 about: What does it mean that the community is assured that ICANN is meeting its accountability commitments? And I think the means to assure the community that ICANN is meeting his accountability commitments is to define those commitments in such a way that I can actually see if they're being made.

Now it seems a little bit tautological to say. But if the accountability commitments that I make are, in fact, measures of success that I can later on in a somewhat objective manner see have been met or not, then I have a much better chance of building a system of accountability that's based on the meeting of expectations. You've heard me use the term "metrics" a few times perhaps, right, which is one way of having measures of success and making commitments that involve risk.

So when a commitment by the organization is, "We will hire four new employees over the course of the year" and at the end of the year, we tout the fact we've hired four new employees, but if a commitment is we make sure to actually respond to all comments within a certain period of time or make sure that comment periods don't extend beyond the time in which decisions are being made on the basis of those comments, for example, those are measurable commitments. If I make measurable commitments, then it be will obvious whether or not I'm meeting them.



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BRIAN CUTE: Thank you.

HAGEN HULTZSCH: Hagen Hultzsich. About two or three meetings ahead, Fadi Chehade has emphasized on business excellence for both ICANN and the related constituencies. I believe my answer to your three questions is that both accountability as well as Affirmation of Commitments and through related processes should be part of this to-be-achieved business excellence approach.

BRIAN CUTE: Thank you.

BERTRAND DE LA CHAPELLE: Bertrand de La Chapelle again. Apologies for coming back to the mic. But certainly in listening to the different comments, I suddenly realized something that struck me and I wanted to share. We've been having discussions on accountability of ICANN for quite some time now. We seem to forget completely one component of accountability that is normally what everybody uses in nation-states, in governments. When we talk about accountability of governments, we talk about elections. That's the measure of accountability. We tend to forget that we elect the board, the councils, everything. Let's not forget that this is an element of accountability. If things don't work, people don't get re-elected. If things are going in the wrong direction, people have a way to go and measure. Talking about measure, it is a wonderful thing that, for instance, for a board, there is a 360 evaluation that is brought back to



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the community. If we had that for most of the politicians in our countries, I think I would love it.

[ Applause ]

BRIAN CUTE:

Thank you.

XIAODONG LEE:

I just wanted the last comment, but it is the second one. This is Xiaodong Lee, CEO of CNNIC. So for the first question, I tried to answer the question in concrete ways. I think if we discuss the accountability, I think we should know clearly the responsibilities corresponding to the mission defined by the item bylaws. I am not sure how many people will read the bylaws very carefully to know what accountability work ICANN needs to do.

So if we compare what ICANN has done with the missions defined by bylaws, then we need to know the gap. Yeah.

The second question is if we discuss to accept a global evaluation to sort of the people, we support that.

And third question is I think if we discuss the AoC, I prefer to discuss all of the AoC. The so-called AoC now is defined by U.S. government. So I prefer in the future that ICANN can sign some kind of AoC with global stakeholder community. Of course, it is very difficult to define all of the stakeholders. But at least ICANN needs to have some kind of AoC signed with the key members of the ICANN community, especially for the member of the ACs or SOs. Thank you.



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BRIAN CUTE: Thank you.

JORDAN CARTER: Jordan Carter from InternetNZ.

I just wanted to refer back to the slide that we were showing this morning which linked this presentation with the earlier discussion about IANA transition, and to make the point that accountability for ICANN is very important as we go through to the new settlement, but it isn't the only thing that needs to be solved along with the IANA transition.

I just wanted to draw the distinctions clearly between accountability of ICANN in doing its functions and the broader stewardship role that's also being discussed as part of this transition, and to argue that accountability doesn't replace stewardship. They're not the same things. That's all.

BRIAN CUTE: Thank you.

MATT ASHTIANI: Hi. This is Matt Ashtiani for the transcript record. We have a question -- or a comment from a remote participant.

Wolfgang Kleinwachter says, "ICANN's accountability is an evolutionary process. The AoC review is a de facto multistakeholder and decentralized oversight mechanism, as Avri noted. It is still 'in statu nascendi,' in its test phase and it can be seen only as a first step into a



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still uncharted territory of an innovative oversight mechanism. If ICANN cannot be compared with traditional governmental, nongovernmental, or business or trade organizations, you cannot steal their mechanisms for ICANN. You have to be more creative. And this creativity has to come from the broader ICANN community from the bottom-up consensus. Things which have to be added are, inter alia, more independence, as Becky has laid out, more balanced composition of membership between external non-ICANN but Internet governance community and internal ICANN community, with more legitimacy and more bilateral or multilateral AoCs, both with governmental and nongovernmental stakeholders. This could also be the source of inspiration to manage the transition of IANA and to introduce the right accountability and oversight mechanisms.

One option, if IANA remains under ICANN, could be a fifth IANA enhanced multistakeholder review system.

BRIAN CUTE:

Thank you very much.

So we don't have anybody else at the mic. This was primarily, for me, a listening session. Thank you for your inputs.

Steve, anything else to add before we close?

STEVE CROCKER:

Sure.

On behalf of the audience here, the community, what's going to happen with this input?



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[ Laughter ]

BRIAN CUTE: Oh, that's to me?

STEVE CROCKER: Yeah, that's to you.

[ Laughter ]

BRIAN CUTE: Well, I mean, clearly there's a discussion about beginning two processes here, and here comes the person who's better equipped to answer this question, and that's the framing that I took these inputs at is a beginning --

STEVE CROCKER: Come rescue us, Theresa.

THERESA SWINEHART: So I'm now between you and the gala dinner, right? So --

No. So I think this has been an incredibly useful discussion and we've captured a lot of points and Brian had also framed the different facets that are under discussion.

I think a suggestion would be that we summarize the discussions that have occurred here and put that out for further dialogue and see where we want to go, if we want to put a process in place to take a look at



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various elements of it or what the community thinks about that, but I think it's very important that we capture this, we have continued dialogues this week, and then see where we want to take this conversation next, would be my suggestion.

BRIAN CUTE:

Yeah. And if I may make one shameless plug and then I'll say goodbye, I am very much looking forward to the board's report on the recommendations from ATRT2. It is a very busy time in the community. We recognize that with new TLDs this last year, ATRT2, there was a lot on people's minds, but it's a very important process and I'm looking forward to what the board might offer this week and also in June at the end of the six-month period.

And thank you all for your participation.

[ Applause ]

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Thank you, everyone. Make sure you have your invitations to the gala tonight. It's going to be a wonderful party and we know you'll enjoy it.

After the gala, we'll see you bright and early tomorrow morning.

**[END OF TRANSCRIPTION]**

