
SINGAPORE - Fellowship Daily Download
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ICANN – Singapore, Singapore

UNKNOWN SPEAKER: Testing, testing, testing, 1, 2, 3, 4, 5, 6.

Testing 2, 3, 4. You're good.

UNKNOWN SPEAKER: Hello.

JANICE DOUMA LANGE: Hi everybody. Hi everybody. I'm right back here, behind, Dave, Dan. I'm right behind David. So we're going to go right into this. You know on our agenda we said we were going to have the representatives from the Nominating Committee with us this afternoon. Stephane, Ron, Joette, and [Gia]. Joette and [Gia] are in the back of the room, and Hans, who is hiding from us.

So Joette and [Gia] are the staff liaisons to the Nominating Committee. And with that, I'm going to hand you over to Stephane to begin this.

STEPHANE VAN GELDER: Thanks Janice. Don't worry, long day for all of us. Hi everyone. It's a pleasure to be here and talk to the Fellows, explain a little bit about the process of the Nominating Committee. My name is Stephane Van Gelder, I'm the Chair of the 2015 Nominating Committee.

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And sitting next to me is Ron Andruuff, the Chair Elect, which means that he is expecting to be the Chair for next year. So his role this year is to learn the ropes, and be prepared for, to lead the committee next year. Now, I've got a few slides that I want to show you, just to explain where we are and what we're doing, but I will say that the process of the Nominating Committee, I think, is an extremely valuable one in the ICANN community in general.

Nominating Committees are not experiments that are limited to ICANN. I mean, they are governance vehicles that are used in corporations all over the world, or organizations that may seek outside help to do their help, and they seek to do the best possible recruitment processes that they can.

So ICANN has not invented the process. What we are doing here is, we are looking to try and bring outside blood, people that may not be regular ICANN people, or that may not have as deep knowledge of ICANN as some of the people here. We're trying to bring them to leadership positions. And we recruit for four bodies on the, in the ICANN ecosystem: the Board, obviously, the GNSO Council, the ccNSO Council, and the At-Large Advisory Committee, ALAC.

I don't know how familiar you are with the ICANN structure and the acronyms, etc., so I'll just waffle on and if you have questions about any of what I'm saying, or the acronyms, or what I'm describing, then I'm sure you'll ask them. I believe we have the slides ready now.

I don't know where they're being projected, but I can see them. But you can't, which is not as useful as it might be.



It's coming up, but you can't see it properly. But it will... Macs are supposed to be simple, so it should work pretty soon.

So, at least now you know you're at ICANN 52 in Singapore. That's useful.

Perfect, thanks. So let me just work this for you. This is just who we're recruiting to, this here. The nominating committee doesn't do the same recruitment every year, so the committee is a committee that changes every year in terms of the task it is, has to accomplish. This year, we are recruiting three members of the ICANN Board. Overall, it's a 16 member Board and we recruit eight of those 16 members.

The Nominating Committee for 2015 is also recruiting three members of the At-Large advisory committee. That is the body within ICANN welcomes the users, so it speaks for the users, At-Large. And At-Large has an advisory committee that helps represent the voices of the users. And on that advisory committee, the NomCom puts a certain number of people, and this year, we're looking for one person from the Africa region, one person from Asia PAC, and one person from Latin America.

We're also recruiting to the GNSO Council, the GNSO being ICANN's policy making body for the generic name space. So anything from the legacy gTLDs, like dot com, to the new gTLDs like dot sexy. And the last recruitment that we're making this year is to the ccNSO Council, and that is the ccNSO being the country codes, name supporting organization.

That is the body that looks at policies and best practices for the country code space. So just to give you a snapshot of geo-diversity on the



Board. I think it's important to remember, or to know that ICANN looks at geo-diversity very careful, and there are rules in the ICANN bylaws to ensure that all the regions of the world are represented to some extent, and that includes the Board.

So for this year, this is a snapshot of where we are now. And if you look at the Asia PAC region, you'll see that there are five members of that region already. Now that's a maximum. We cannot exceed that, so the rules prevent us from exceeding that. So the Nominating Committee, if we get applicants from the Asia PAC region, wanting to apply to the Board, we won't be able to select them for the Board.

But I'll explain in a minute, maybe I'll let Ron explain in a minute, that there are other choices to be made there. And in the other regions, you can see on this slide, there are still vacancies in North America, Latin America, Africa, and Europe. So there is still lots of possibilities there.

This is a NomCom cycle. So this explains to you a little bit about how the NomCom works. Each NomCom is different. Each NomCom term lasts a year, and we work through five phases. We have a preparatory phase, which has been done this year, it's already finished.

We're now in the recruitment phase, and that is a call for applications. So right now, at this very minute, any of you in this room, or anyone that you know that might be a suitable fit, can apply through the NomCom to be part of this ICANN experiment, and to take up a leadership position, such as the ones that I've described earlier on.

That opportunity is open until mid-March. At mid-March, the application period closes, and we then start to assess from the pool of



candidates that we've received. So, you know, it may look a bit daunting, but in case you have an interest, have a look at the NomCom website. There will be some links coming up in a minute.

And why not try your hand and apply? This is a snapshot of where we are today in terms of applications. So, just to explain a little bit more about our process. If you look at the first column on each bar chart, the first column to the left, that's the first choice. That means that people have applied, 43 people have applied to us so far, bearing in mind the proceedings are not closed, as I've just described, asking for the Board as their first choice.

But it also means that, for example, if you looked at the GNSO bar chart, 28 people have applied asking for the GNSO's second choice. What that means in practice is that you can apply for just one position, or you can apply for up to four positions, because we recruit for four bodies.

And the usefulness of doing that is that say you are a good candidate, the NomCom thinks that you are a good candidate, but not quite up to scratch for one position. You may be considered for another. But the NomCom cannot consider for another, if you haven't ticked that box. So if you, or other people, are thinking of applying, do tick several boxes, do, you know, put maybe the Board as first choice, and GNSO as second, so that you're giving the NomCom the opportunity to consider you for multiple jobs.

That's it. There are a few links there. There is a lot more to explain, but I want to give Ron an opportunity to speak. I want to give you an opportunity to ask questions. So I'll just end by saying, we, the



NomCom members, wear red lanyards to identify ourselves to the community.

And if you don't have an opportunity now to ask your question, or if you want to ask questions later, do go up to anyone that has one of these red lanyards, in the corridors, and ask them questions about the NomCom process. We're all here to help and answer your questions. Thank you. Ron, please.

RON ANDRUFF:

Thank you Chair. I want to tell you, you're the most polite group we've spoken to all day. And applauding for the Chair is something that I have observed for the first time with you, so it says a lot about you as individuals and as a group. And I'm quite sincere when I say that.

I have had the pleasure of serving as a Nominating Committee member for two years, before I was elected by the Board of Directors of ICANN to become the Chair Elect. I've served with Stephane in that capacity. He was also a member, and he was the Chair Elect last year, and now he's the Chair this year.

And so I think he would be the first one to echo the comment I'm about to make. One of the things that we have observed as members, and now in leadership positions within the Nominating Committee, is that Fellows have always been very much appreciated by the Nominating Committee.

And Fellows find their way onto the various bodies, whether it's ALAC, or ccNSO, and so forth, because you people come to ICANN, you learn about ICANN, you engage with ICANN, and when you read through the



resumes, CVs, and the other information that we request, it shows there is a real appetite to engage. And so, if I look across the Board of all the different types of applicants that we see, Fellows seem to score very high, and members enjoy what we see.

So it's a commendation to you for having made these steps, and it's a commendation to Janice for having guided you very well in this process. So thank you for that.

I also would like to make the point that when we, when Stephane showed you, do we need to go back in the slides, to the, yeah. That's it. If you look here, as our Chair just announced, these people who have applied for a form to be sent to them that they could make an application. We do not know yet how many people will have.

Some may finish, some may not finish their form and submit it by the close date. So if you look at ccNSO, for example, there is only eight people that have applied for that space. ALAC, 15 have applied for that space. GNSO, 11 people. So that's not a very big pool of people to, for our members of the committee to select from. So if you're all encouraged by this, I would that you would consider looking, sending an email, we'll put the slide back up, how you can approach.

It's on the ICANN website. And just for application request form. And take that step. It's an amazing, amazing process to work in the Nominating Committee because it's a very collegial environment. We basically all come from different parts of the environment, or the body of ICANN, if I could put it that way.

But we check our constituencies or our stakeholder groups at the door. We walk through that door, and we kind of lock arms and we say, “Okay, we’ve got to now reach out and do the work, to find the best possible people to lead the organization forward.” The only way ICANN can grow is through new leadership, growing and carrying it on.

So this is something that we would look to you to do. So I’m speaking to you now, personally, but I’m also thinking, when you go back to your home countries and your home cities, you have a Rolodex, you have a list of friends and colleagues, and people that you know, maybe they’re not even friends, but they’re people who you think might be very good leaders within ICANN.

Reach out to them, and invite them also to consider looking at this opportunity within ICANN, because it’s in this way we will get more Africans, it’s in this way we’ll get more Latin Americans. As you saw on the slide, we have today two Board members from Africa, and we have one from Latin America/Caribbean. So this is not enough. We would like to see that those particular parts of the world are better served.

So we look for geo-diversity, we look for gender diversity, we look for a lot of types of diversity, but that will not trump having the skill set to do it. Most important though that we actually are looking for these things, so we encourage you all to reach out to your colleagues back in your home countries and your home cities.

I think that’s all I wanted to share, thank you.



STEPHANE VAN GELDER: Thanks very much Ron. Let's just open it up for questions. I don't know if there are any. Sir, please.

UNKNOWN SPEAKER: For the record [inaudible], I nominated somebody to apply. And I am told he did actually apply for the ccNSO slot from Africa. He is a friend from Zimbabwe.

STEPHANE VAN GELDER: Perfect. Thank you very much. There is someone just behind you.

UNKNOWN SPEAKER: Can I ask something?

STEPHANE VAN GELDER: Yes, of course.

UNKNOWN SPEAKER: What I miss here is, the minimum eligibility criteria that you seek. So if you could highlight that, that may encourage many of us to consider that. So you have to go through a process to apply, so that will be nice to have that minimum criteria.

STEPHANE VAN GELDER: Thank you for the question, because it helps me tell you that on the NomCom website, there is a lot of information that we try and put, both about the application process, the work of the NomCom, and the skill



set, so there is no minimum criteria, but there is a skill set that comes from the community.

So those four bodies that we're recruiting to, we ask them every year, and they off an answer. We ask them for skill sets. And we say, you know, "What are you looking for this year?" That might change next year, but what are you looking for this year, in terms of, for example, ccNSO candidates? Do you need someone with finance skills? Do you need someone with, I don't know, diplomatic expertise, drafting skills, whatever.

So there is no bar that's set that people have to reach, it's a question of having certain skills that fit with what the people need, what the groups need. I saw another question in the back.

UNKNOWN SPEAKER:

[Inaudible], Fellow from [inaudible]. In fact, you just replied to my question, because after seeing a little card this morning about applying for position, hearing you about reaching people. So I was just wondering about the criteria for this, because I believe that the candidate should be people who are active in the community and their region. So there are specific criteria then.

STEPHANE VAN GELDER:

Yeah. Active in their committee. I think it's also a learning process. And I think, you know, the NomCom is a way for people to take the time to learn ICANN. By that I mean that, a lot of people focus on the Board, but that would be a mistake in my view. The other three groups are just as important, and often there are a lower pressure way into the ICANN



world. So, I think, you know, if you do have contacts, if you do have networks, or if you yourselves are interested in applying, I would encourage you to look at these other positions as well, and not to feel that the Board is the only way in, but to look at those other positions as providing different skill sets too.

So for example, the skill set for ALAC will obviously not be the same as the skill set for the ccNSO. So that opens up a lot of possibilities for people to apply. Yeah.

UNKNOWN SPEAKER: [Inaudible], Fellow from Bangladesh. So if there is no application for any organization, that what, how the NomCom select the representatives then? If there is no application. Thank you.

RON ANDRUFF: It's a good question, but the fact is, that there is a flurry of activity that happens. As the window starts to close, all of the sudden, we see a flood of applications start to come in. So, then about a year and a half, two years ago, I think, we had kind of a record high. It was about 125 or so applications, I'm not sure, but it was a larger number.

My point being is that we expect it will be over 100 applications or so, for the various positions, this year. The key here is that, we're looking for... The reason we're meeting with you today is we're looking to have deeper pools for each one of these positions, so that the committee can really find the best leader to fit the role for this year. And as our Chair has said, each year, these dynamics within ICANN change.



And so, what you may not necessarily be selected this year, but it's not to say that the next year on, if you've been active in ICANN and doing different things, you might not be better set, your skill set might not have improved, and you might not, you may possibly be that candidate the following year.

So, it's really important to understand that. But there will be enough people to select from, in my experience, there has always been enough. Thank you. Please go ahead.

SPENCER THOMAS:

Spencer Thomas from [inaudible]. Part of the Caribbean. The question I'm going to ask is geographic diversity you mentioned, and what would constitute a process question, what would constitute geographic diversity? Is it the country of birth, or a country of residence, or nationality? Do you have a verification process?

STEPHANE VAN GELDER:

That's a good question, thank you for asking it. There are two parts of the question. First of all, it's declarative. So the candidate names a region that he feels he fits into. And it depends as to the second part of your question, it depends which body the candidate is applying to, because there is actually higher, there is more due diligence done on Board members than on the other candidates.

So for example, if you're applying for the GNSO and you're applying from a certain region, you live in that region. You're a resident of that region. It's not birth necessarily, it's residency, domicile, thank you.



Then you just declare that your domiciled in that region. Now it may not be checked, but there will be checks if you are applying for the Board, because once we select for the Board, what then happens is that there is due diligence done on those applicants that we've selected. We will, well not us, but there is a check done to ensure that they are who say they are, and that they do come from that region.

So that is looked at. Please go ahead.

UNKNOWN SPEAKER:

[Inaudible] from Nepal, first time Fellow. I was supposed to ask a similar question, and I explain a little bit more on that. For example, Nepal is a very small country, and it's between China and India. It's sandwiched by China and India. So, is this boarding [inaudible]. What kind of [inaudible] is boarding, like businesses, in there, in China, it has very big business, and then Nepal may have very low business, you know, this economic.

So what kind of boarding pattern is there? How do you board any individual?

RON ANDRUFF:

This is not the process. Effectively, we have five regions within ICANN, and in your case, you would fall into the Asia Pacific region. It's not a question of the size of your nation, it's not a question of any of that. It's the question of the qualifications that you bring, and do you fit the needs that you're applying for?



It's as simple as that. It really comes down to the individual him or herself. Not to how big or how small your country comes from.

STEPHANE VAN GELDER: We're nearly, we're close to the end of the session. So if I can maybe ask for one or two more questions, and then let you get onto your next speaker, which I can see in the back already waiting for us.

KATHERINE: Thank you very much. My name is Katherine. ICANN Fellow from Uganda. Mine is really, I'm curious, is one year enough for the elected leaders to fulfill their responsibilities, including orientation and actually it being the whole...? Okay. For the one...

STEPHANE VAN GELDER: I was just showing you the terms. I'm sorry I kind of put you off your question there. I think it's a very good question. There are two parts to it, once again. If you're asking about the terms of the people that are, that we're selecting, as you can see the terms are different. There are, I mean, the term lengths are different per body.

So for example, the Board is three years. The GNSO council is two years. There is no one year terms that we selected. However, a follow on to your question might be, but what about the terms of the people on the nominating committee? Because the committee changes every year, as I mentioned earlier on.

So basically, each term is one year. And in the same way as you can see that we're building up leadership, that there is succession planning in



the leadership from year to year. So I was NomCom Chair Elect last year, Ron is this year, and will be Chair next year. There is a question in the community at the moment, as to whether those term lengths should be changed, or should be kept the same, should be extended to two years so that there is a possibility of building and retaining experience or not.

So that is an ongoing question. I think you've touched on something that is, you know, the community has already looking at. Term lengths, whatever the bodies that we're talking about, is always a question, because there is a balance between having the experience, having the time to build the experience, and also not having term lengths that are so long that they prohibit new people coming in.

So, there is a balance there that we need to find. If there is one more question, well two more, then quickly.

UNKNOWN SPEAKER: Hello. My name is [inaudible], Fellow from [inaudible]. My question is, I would like to know exactly, who are the individuals that constitute the NomCom, and what's the process of having these individuals?

STEPHANE VAN GELDER: Yup, thanks. So this is not a slide that I had, but on the website, you'll see the NomCom composition. Most of the committee is elected by the various ICANN groups. So GNSO, ccNSO, ALAC, they all elect to the NomCom. Some are selected. Ron and myself are selected by the Board, that the Associate Chair, which is a third leadership position, is selected by the Chair. So myself for the current year.



And there are also non-voting members that are there to represent certain parts of the community. The detail you can find on the NomCom website, NomCom dot ICANN dot org.

UNKNOWN SPEAKER: I think there was one more, gentlemen in the middle wanted to ask a question.

NEIL [CHEGO]: Hi, my name is Neil [Chego] and I'm a fellow from the Dominican Republic. I'm a little bit confused. When a person gets selected to take part in the NomCom, it's more like a volunteer work that you have to share with your workload back in your country and your job, or what is that?

I need that explanation about that.

RON ANDRUFF: If I understand your question, are you asking about the Nominating Committee itself? Or are you asking about the people the Nominating Committee appoints?

NEIL [CHEGO]: No the ones that you are asking for a position.

RON ANDRUFF: Okay, very good. So, let's just take for example, the At-Large advisory committee, because I think that would be a very good one. You see



there is a Latin American person that we would select. That Latin American person will come and serve on the At-Large committee.

So they will come to the ICANN meetings, they'll participate in the calls, they'll do the various things. Because they're based in Latin America, they would also do outreach, and try to encourage more people to be involved. We all do that. But it is absolutely volunteer work.

So as I'm a volunteer, and Stephane is a volunteer, and so forth, we do this work. Now Janice is with staff, so she supports us, and she supports you. Our support staff is Joette and [Gia], so they're the ones that kind of help us do our work and enable our work. But otherwise, we're all volunteers.

STEPHANE VAN GELDER:

Just to say thank you very much. We've had some very good questions, and I want to echo what Ron said earlier on. You're a great crowd and community to speak to, because there is an obvious level, a high level, of interest. There is feedback, there is interaction. And it just drives us on more to do this community volunteer work, which is, which does take time.

It does take time out of your personal lives. It does take time out your professional lives. But it's also fascinating work. It means that we get to meet people like yourselves. It's an unique positions to try and help the Internet be what it is for the world today. So, you know, we all feel it's a very high responsibility job, and we have an extremely important task in choose the right people to continue this Internet governance experiment that is ICANN.



So, thank you very much for your time, it's a pleasure to speak to you today. Thank you.

JANICE DOUMA LANGE: And my roomie Joette, Joette we have three Fellows currently sitting in positions. One ccNSO and two At-Large? I believe? Leon, [Buran]?

Thank you Joette. Steve? Come on down. And I can offer you a seat, and you can say you've sat too long today and get a walking mic, whichever you prefer.

STEVE METALITZ: Well good afternoon. It's nice to meet all of you, and I look forward to meeting some of you in person before we finish up this evening. It's the end of a long day and a long meeting here at ICANN. I know you started at 6:45 in the morning, so I don't necessarily need to take the whole slot here, but let me just tell you a little bit about myself.

My name is Steve Metalitz, and I'm the Vice President of the Intellectual Property Constituency at ICANN. I'm a lawyer in private practice. I practice in Washington, DC. I'm a copyright lawyer, primarily. I do a lot of work also on international legal issues.

And I've been involved in ICANN since 1999. All that time within the Intellectual Property Constituency. I've served as its President, I've served as its Vice President. And also as a representative to the commercial stakeholder group, which is a group of which the IPC is a part. Back when ICANN was founded, in the charter documents of ICANN, they identify seven constituencies that would be participating,



or through whom the community would be participating in the work of ICANN particularly having to do with domain names.

And as you know, that's not everything ICANN does, but by most measures, it's a very large percentage of what ICANN does, and it's the part of ICANN that I've been involved in, not the IP numbers or the protocol parameters, but the domain names. So at that time, as I said, there were seven constituencies and one of them was intellectual property. It's been through a number of changes since then.

One of the constituencies was the country code constituency, that broke off and formed its own supporting organization. And there have been other changes in the structure of ICANN, but the intellectual property constituency has always been part of that structure. So you may ask why the folks who founded ICANN identified intellectual property along with the Internet Service Providers and the business constituency, and non-commercial constituency, and so forth, as one of the groups that needed to be represented.

And I think it was because people understood that many of the decisions ICANN would be making, particularly in the domain names area, would have a big impact on intellectual property. Intellectual property is really an umbrella term that we use to describe a series of legal rights that are recognized worldwide, that the subject of very well accepted international norms.

As I said, I primarily am a copyright lawyer, which deals with creative expression and works of authorship. But the type of intellectual property that is most often discussed within ICANN is trademark protection, which is signs and symbols that are used to designate the



origin of a good or service. So the consumers will know that when they're buying something or getting a service, who is providing it to them, and they can associate that product or service with the reputation of the brand owner.

Obviously, when domain names came on the scene, this had a big impact on the world of trademarks, because you could have a domain name where the second level domain, part to the left of the dot, was the same as a famous, as a trademark. Could be a trademark that's recognized just in one country, could be a trademark that's recognized around the world.

And there was obvious potential for confusion, and for misleading consumers as to whether, you know, whether if you had Pepsi dot com, where you actually associated with Pepsi-Co that is the trademark owner for that brand that's known worldwide. Just to give one example.

So this is why intellectual property has been part of the ICANN fabric ever since its founding, because of its recognition that the decisions ICANN would make about the how the domain name system would be structured, and how it would be administered, could have a big impact on the intellectual property rights, particularly of trademarks, but also we can get into this further, of other types of intellectual property rights.

So a lot of the activities that the intellectual property constituency has been most associated with, really have been dealing with this question of the impact of the domain name system on trademarks. One of the first was the Uniform Dispute Resolution Policy, UDRP. You have heard



so many acronyms over the last few days, that one may have or may not have come up, but it's actually one of the, I think, one of the best, greatest accomplishments of ICANN, is that it put into place long ago, back in 1999, International arbitration system for trying to deal with these cases where someone registers a domain name that is the same as, or is confusingly similar to, a trademark.

And it's an international arbitration system that is now adjudicated thousands of cases. It has been pretty well accepted. There is a pretty well-established body of law that has come from. And that's something that ICANN has really contributed to the world of Internet governance, if you will.

A lot of these issues also ramped up, again, starting about 10 to 11 years ago, when ICANN first embarked on, actually for the third time, ICANN embarked on a program to launch new generic top level domains. The first two rounds have been quite small, just a handful of names in each case, but the round that began, that ICANN began working on in about 2005, of course, is the one that's still underway now, and has led to 1900 applications, and I guess the final number of new generic top level domains would be about 1300.

This obviously presents a lot of challenges to the intellectual property system, and so the IPC, the Intellectual Property Constituency, was very involved in developing new mechanisms for dealing with these new challenges. And some aren't very well known. There is one called uniformed rapid suspension system, kind of an accelerated way of dealing with the very clearest cases where there was impact on trademarks.



And also, as a result primarily of pressure from the governmental advisory committee, ICANN incorporated into the program a series of, what are called public interest commitments, that all of the new gTLD registries had to take on. And that includes, and it covers a lot of things, but it includes having a system in place for receiving complaints about use of a domain name in the new top level domain, in order to carry out copyright infringement, trademark infringement, counterfeiting, piracy, other types of intellectual property offences.

So it was really the first time that ICANN said that the registries have some responsibility through their relationships with the retail registrars, to try to deal with this problem. That's a new innovation in the ICANN framework, and it remains to be seen how effective it's going to be. But there are many questions about the new gTLD round that's still remain to be resolved.

So that's just an example of a couple of the issues that the IPC has been involved with over the years. Like the other constituencies, and I know you've had presentations from some of the other GNSO constituencies, generic names constituencies. So we operate, we have a website, IP constituency dot org. You can find some information there about our bylaws, and officers, and so forth.

We meet by telephone every month, and of course we hold public meetings here at the ICANN meeting. The last one was in this room, and it ended about 90 minutes ago. So I feel like I've spent a lot of time in this room already today. Just about a three and a half hour meeting, we had a lot to cover.



So, it's open. That meeting, of course, was open to anybody. The eligibility for joining the intellectual property constituency is laid out on our website. Basically, we're looking for people that are working in the field of intellectual property. One thing that distinguishes the IPC from most of the other constituencies, is that most of the members of the IPC, not all of them, are lawyers.

And that's because a lot of people working in the field of protecting intellectual property are, have law degrees, they may not be practicing law, but they are well versed in these, in the legal concepts of intellectual property.

But not all of our members are lawyers, but we have individual members. We also have a lot of association members. So major legal associations of practitioners in intellectual property law have representation within the intellectual property constituency. And then we have non, organizations that are not organizations of lawyers, for example, the Motion Picture Association, which represents the major producers of films, entertainment, TV, movies.

They're there because, of course, their entire business depends on copyright protection. And the Internet presents many opportunities for that industry and many challenges for that industry. And decisions made by ICANN do have a big impact on that industry and their ability to protect that intellectual property rights online. So that's another organization that is a member of our constituency.

We do have members from different regions of the world. I think one area where we have not done a very good job is in the geographic diversity of our active membership, but it's something that we're always



attempting to improve upon and get more active members from Latin America, from Africa, and other regions that are underrepresented in our ranks right at the moment.

One of the big challenges we have, like I think all of the other constituencies in the GNSO, is that we are a volunteer organization, and there is an enormous amount of work that we face and getting high levels of participation consistently is very difficult sometimes. But that's a challenge that we're facing, that we're brought up, along with other constituencies within the ICANN framework, to try to figure out are there ways to prioritize the work that we have to do, identify which things have to be done now, which ones are the most important to deal with, and be able to organize our work better, use good technology to try and be more efficient in our work.

These are challenges that we have, but I don't think we're at all unique within the ICANN framework in facing these. So that tells you a little bit about our constituency, and about what we do, what the issues are that we're involved in, and I'd be... Because I know I was here in the last few minutes of your session, I know that you have a lot of good questions, so I'd be happy to try to answer them, and... See? It starts already.

JANICE DOUMA LANGE:

And I want to mention to Alfred, I have your question but better that you get on the mic to ask it.

[INAUDIBLE]:

My name is [inaudible]. I'm a new Fellow from Kenya. I work with the Kenyan ccTLD. From [inaudible] seats, intellectual property



constituency of ICANN generic names supporting organization, does that you don't represent, you don't have representation from the ccTLD? And also, I know there are issues, jurisdictions, but are formulating still, generic names still have issues with jurisdiction.

Why maybe you have chosen the section of generic names and not ccTLDs?

STEVE METALITZ:

That's an excellent question, and it goes back to the history that I was talking about. In the first, in ICANN 1.0, there was no ccNSO, there was no GNSO, there was a Names Council, and it was supposed to deal with all issues dealing with names. So that would mean issues arising in the country code world, as well as in the generic world. In about 2002, 2003, we had ICANN 2.0, and one big change that was made then was to recognize that the cc's have unique problems, unique issues, have a very different relationship with ICANN, since most of them don't have contractual relationships with ICANN.

And therefore that was when the ccNSO was created, but all the other constituencies that have been in the Names Council remain behind, if you will, in the GNSO, as it was setup. I think your question is very well taken because obviously, these issues don't disappear simply because there is a ccTLD involved, but there are a couple of differences.

One is, as you, I think, your question suggests, one of the big problems in the gTLD world, is that it's a global forum. Every gTLD, essentially, is accessible in every country where the Internet is accessible. So you do

have these issues of which law to apply, and how to come up with uniform or consistent policies across the entire gTLD environment.

In the ccTLDs, there are obviously associated with one country, by their name, at least, and by their governance. And therefore, the question of what law applies can be simpler in some cases. Now, that was probably more true in 2002, 2003 than it is today, because today we have ccTLDs, as you know, they really act just like generic, like global TLDs. They're essentially accessible to everybody in the world, of course everybody can reach them, but also people from all over the world can register in them, so that distinction really has been blurred, and I think they're probably are a lot of intellectual property issues where we might be able to provide some insights to ccTLDs.

But those issues are not generally resolved at ICANN. Those are generally handled by each ccTLD individually, or if they chose to develop best practices and work together, it's totally different from the framework for gTLDs. But there have been suggestions over the years to, in fact, we really shouldn't have intellectual property as a constituency of one supporting organization, we should have some other organizational means like having an intellectual property advisory committee, that could comment on, or have input to, policies all across the range of ICANN's activities.

And if we did that, then I think that would answer your question. But they're historic reasons why it has been part of the GNSO. Hope that helps.



PAUL: Okay. My name is Paul [inaudible]. I'm from Kenya. My question is, intellectual property challenges you have the new gTLDs, given that some of them are in contention, and even if they are delegated, a good example would be dot Amazon. So if, for example, dot Amazon was delegated, just supposedly, and there will be contention between Amazon dot com, and also perhaps, Latin American countries that the Amazon Rain Forest goes through.

So, what challenges have you seen, so far, with the gTLDs? Like PR challenges you see?

STEVE METALITZ: Well, the geographic names challenge is a major one, and ICANN had tried to anticipate that. Of course, there was an application for dot Amazon, and it was done by Amazon, the company, which has a trademark on Amazon in many countries around the world, including most of the countries in Latin America, in South America, recognize Amazon as a trademark of that company.

ICANN tried to anticipate this by having some rules about character strings that could not be applied for, such as the names of countries. And there is an UN list, so there was a standardized list, so therefore dot Kenya would not be something that someone could apply for as a generic top level domain. The problem, of course, is that Amazon is not on that list, because Amazon is not a country.

And it's a geographic feature, or it's the English name for a geographic feature, it is not even called that in most of the countries where it appears. But it wasn't something that ICANN, in the rules that it came

up with, dealt with. And for that reason, when Amazon, the company, applied for dot Amazon, there were objections from some of the countries in South America where the Amazon River runs.

And the ultimate result was that Amazon the company ultimately withdrew the application, the application was not successful. But that whole issue of geographic names is still very much alive, and very much a subject of discussion for the next round of new gTLDs, whenever that comes. And I know there is a session later this week that will talk about, and there will be some people from governments, and people from elsewhere in the community.

We feel a very, we feel quite strongly about this within the Intellectual Property Constituency, that these rules ought to be consistent with international law, and there aren't any international legal principles that would give national governments monopolies over the names of geographic features, or even of provinces or towns within their territory.

I think the international law framework is quite clear on that, but that is really the issue that is now being discussed with the GAC, or with some GAC members, and with the intellectual property constituency. So we've tried to bring our expertise in international legal standards to bear on this and provided our opinion on that question.

UNKNOWN SPEAKER:

Hello. It's on, okay? I am [inaudible] Fellow from Serbia.



STEVE METALITZ:

And you were here at the, in this room, for some of that...

UNKNOWN SPEAKER:

Yeah. Constituency session. Paul is mentioning the problems with dispute resolution regarding new gTLDs, but I would like to go backwards. I have an impression that we started introducing new gTLDs, and we are having still experiencing still problems with the dispute resolution regarding, for instance, the registrations on ccTLD within ccTLD.

So there is a group of national registries which adopted the UDRP and the other group which developed their own ADRs. So these alternative dispute resolution policies, they first, at least in a procedural way from UDRP, and some differs in regarding substantial roles. So do you think that ICANN should make it mandatory through contracting with national cc registries, that they all adopt UDRP, at least?

So, my question is, whether the Intellectual Property Constituency took a position on that? If not, what is your personal position on that as an IP expert? Thank you.

STEVE METALITZ:

I think the position, that's a good question. The position of the Intellectual Property Constituency has evolved over time on this. I think if you had asked that question of us 12 years ago or so, we would say, "We want the ccTLDs to basically operate under the common standards that are in effect for the gTLDs." Not just with dispute resolution, but on other issues as well, like WHOIS.



And the management of these registration databases. That clearly is not the case, and is not going to be the case, because the ccTLDs do not even have, in most cases, a contractual relationship with ICANN. So, in theory, your suggestion maybe a very good one, it would certainly be a lot of advantages in having greater uniformity in these dispute resolution practices.

But in practice, ICANN really doesn't have the authority to bring all of the ccTLDs into line, and have them adopt the same procedures. Now, some of that can be done through other means. I mean, the World Intellectual Property Organization has published a couple of, which is the UN agency that deals with intellectual property matters, has published a couple of, a number of best practice documents, if you will, for ccTLDs, and encouraged them to use, to have the UDRP or to have something close to that.

And in fact, WIPO administers the UDRP for a number of ccTLDs that have chosen to do so. But there is no, in the absence of any international norm on this, such as a treaty, WIPO can't force the ccTLDs to do this. And it can have best practices in a number of ccTLDs have adopted those best practices. But beyond that, there is not much that can be done, I don't think.

UNKNOWN SPEAKER:

My name is [inaudible], first Fellow from Sri Lanka. Today, in the GAC meeting, there was a discussion on whether country name can be used as the second level domain. So my question is, can we consider country name as being intellectual property of a political country?



STEVE METALITZ:

That was really the question we tried to address in our response to the GAC proposal for the next round. It's a very extensive paper, but it goes through this question in detail. The short answer is no, countries don't have an intellectual property right in those, in the names of their countries.

They, and there is no basis for that within the Paris convention, which is the main international norm for trademarks. I don't know exactly how many countries are members, but well over 100. And so we have a paper that kind of goes through that as a legal analysis, but the short answer is no. And we think that it would be, any policy that ICANN comes up with in this area should be consistent with international law.

Now, ICANN recognizes that it has to accommodate the concerns of the governments, even though they may not be well founded in International law. So that's why we are where we are in terms of, to the right of the dot, whether you can apply for, dot Sri Lanka, or dot Kenya, or anything else.

And in fact, there were also some provisions made in the new gTLD program for how to deal with two letter, second level domains, that may be the same as the two letter code for countries, and so forth. So ICANN has tried to accommodate those concerns, but I think it's a matter of international legal doctrine, that, I don't think there is a basis for country, for national governments to make those assertions.

UNKNOWN SPEAKER:

I have a question in the back.



JANICE DOUMA LANGE: Go ahead.

SPENCER THOMAS: My name is Spencer Thomas from Granada. I'm an administrative contact for dot [inaudible]. My question has to do with liability and immunity. Can the IPC, or any of these institutions or individuals, be sued?

STEVE METALITZ: Can any of...? Well, ICANN can be sued, and has been sued many times. I don't think, the IPC has not been sued. We're an entity within ICANN. We don't have an independent legal standing, if you will, to be sued.

SPENCER THOMAS: So the individuals that compose the IPC or other situations, can they be sued in an individual capacity? Do you have immunity provisions?

STEVE METALITZ: Here in America, everybody can be sued for anything. That doesn't mean it's a valid claim, but there is, you know, there is nothing that prevents someone from coming into court. But I don't know, do you think that we're doing something that might give rise to liability? I don't have any insurance for what I'm doing here.

So fortunately, in the last 16 years, it has been a theoretical concern, not a practical one.



UNKNOWN SPEAKER: Okay. I have a quick questions. This is [inaudible] for the record, an ICANN Fellow from Pakistan. A very basic question, I was wondering if the work of this IP constituency revolves around the names and numbers. It actually has certain other areas maybe content, or the top content and stuff like that, on its scope, agenda.

STEVE METALITZ: Well, within the ICANN framework, as I said, our work is totally on names, not on numbers. This question of content is a complex one, but I will say, for example, that the UDRP applies not only to registration of names, but it also applies to how names are used. And what is, if you have a website to which a domain name resolves, that can be quite relevant in determining whether or not you have registered, or using in bad faith, a domain name that's identical to a trademark or confusingly similar to a trademark.

Similarly, if you look at, again, the new gTLDs, and the public interest commitments, they talk about having a process for dealing with complaints about abuse in the use of domain names within those registries. That could include malware, that could include phishing strategies, that could also include piracy or counterfeiting.

So, what happens, how the domain name is used is relevant in a lot of these contexts.



JANICE DOUMA LANGE: We have one more in the back, and then James, we're going to end up with you.

CARLOS RODRIGUEZ: Yes. Carlos Rodriguez from Nicaragua. I wanted to follow the idea from Thomas, but this time backwards. If a registrant, for example, is breaking the law and doing some piracy, who is the one that is taking action against that registrant? Is it ICANN itself or another instance? Thank you.

STEVE METALITZ: ICANN has, the question for ICANN has to do with its contractual relationships. So ICANN has a contractual relationship with every registrar, every accredited gTLD registrar, and with every registry in the gTLD space.

So the provisions I'm talking about, for example, the public interest commitments, those are part of the contract between ICANN and the new gTLD registries. So the question is, what does it obligate the registry to do, and what can ICANN do to enforce that?

It obligates the registry to pass along, through the chain, an obligation to refrain from using domain name for purposes such as piracy, as well as other types of abuse, but if a registrant violates that policy, and is using the domain name for piracy, ICANN is, doesn't have a contractual relationship with that registrant.

ICANN does have a contractual relationship with the registry. And in theory, if the registry is doing nothing about it, that could be a violation



of its contract with ICANN. So, I hope that answers the question. ICANN really operates through contracts as a substitute for government regulation, for example, and therefore, it really depends on who ICANN has a contract with and what the obligations of its, of the contracting parties are.

JAMES:

My name is James [inaudible], second time Fellow from Zimbabwe. This is a question I could throw to you, or even to ICANN Legal [inaudible], in that I suppose that maybe you might be able to translate. The question is on the speech of dispute resolution, is there anything that is currently being done to speed up cases which have gone to arbitration?

I ask this because it might result in frustration for those waiting for particular disputes to resolved, in frustration on its own also builds a mistrust. So, I'm throwing it to you. Is there anything that has been done to improve standards in terms of speed of dispute resolution?

STEVE METALITZ:

Okay. Well, the UDRP is a particular kind of dispute resolution of arbitration. And it was designed to be relatively fast, faster than litigation. And it is relatively fast, I mean, it may take a couple of months for those to be, those cases to be resolved. There is a demand for faster resolution, and that's why, in the new gTLD space, there is the URS, the Uniform Rapid Suspension process, which is supposed to operate faster, a matter of days rather than weeks or months.

But it's reserved only for the very clear cases. If there is really any dispute about whether someone is registering a domain name in bad



faith, in order to confuse the public, if there is any real dispute about that, that's probably not an appropriate case for the URS.

The URS is very new. And one of the things that ICANN is going to be doing over the next year is evaluating it, seeing if it works well, and has it achieved its purpose. I want to draw a distinction between these cases, which have to do with registration and use of one domain name, or a limited number of domain names, that's different then the process that ICANN has with an independent review panel for other types of decisions that ICANN makes.

ICANN has setup a system where, in some circumstances, if a party feels that they are hurt by a decision ICANN has made, they can involve an arbitration process to review that decision. That is much slower, much more complicated, and much more expensive. It's called Independent Review Panel. And there has been a lot of criticism because of its expense, and the speed, and whether it can be improved.

So that's one topic that ICANN is looking at now, under the whole umbrella of accountability mechanisms, but that's very different then the UDRP, or the URS, which really deal with the registration of one, or a limited number of domain names in a particular registry. It's a much smaller scope, if you will, and those are a lot faster.

JANICE DOUMA LANGE:

Steve, I'm going to say thank you very much, because you have already given more time that we have allotted, and I so appreciate it for the number of questions that are here. So as I say at the end of every session, if you think of other questions for Steve, for the Intellectual



Property Constituency, and I believe Steve, you get to step down from acting chair, now? There is another chair in the house.

We'll work out how they'll get responded to, but please feel free to send them to me, and then I'll make sure that they get through the path to get answered as a follow up. Steve, thank you very much for your time.

STEVE METALITZ:

Thank you very much for inviting me.

JANICE DOUMA LANGE:

And with that, you're released, young birds, you're released. Finally the day is over. I look at the tired faces back there, it's like, oh I feel for you. I know. I've been up the same hours you have and doing the same thing. Part of the joy of being an ICANN community member is, you know, 24/7.

So the fun part is tonight. [Inaudible] to do Music Night, and I strongly encourage, I can't make it mandatory, it's something fun, but I strongly encourage you to go out, get a good dinner, and come on back to the big foyer area at the back directly across from here.

It's a fun night, it's karaoke, it's bands. It just lets you let loose a little bit. We all get to see each other in a little more of an informal fashion. And if you're lucky or unlucky, depending on how you feel about it, I may sing.

I've got to get my voice ready. So, see you guys later, I hope. Thank you for the great day you guys.



[END OF TRANSCRIPTION]

