

Improving Institutional Confidence consultation meeting

Washington D.C.

1 October 2008

DRAFT SUMMARY, PUBLISHED 20 OCTOBER 2008

Introduction by PAUL LEVINS, ICANN Executive Officer, VP of Corporate Affairs):

Ladies and Gentleman, welcome. My name is Paul Levins and I'm the Executive Officer and Vice President of Corporate Affairs. I'm a recent arrival to Washington DC, having come just from Los Angeles, where our head office is located. I moved here four weeks ago with my family in tow. We have established offices here in DC. At the moment it is just myself, you're looking at the Washington office. There will be others joining us, but it will be a modest office of maybe five people. The purpose of that office is in many ways associated with this event. It's about listening, it's about dialog, and it's about clarification. We have had at least in my time and I've been at ICANN for about two years, what I'd term a fly in fly out relationship with this town and the important actors that it has in it. That's no way to maintain a relationship for the staff of an organization, so this is a very deliberate attempt to engage in a process of listening of dialog, of access.

You see before you the President's Strategy Committee. I'll leave our chairmen Peter Dengate Thrush to introduce the members of the committee to you and to describe its purpose. But, to be very clear, and I know Peter will reiterate this point as well, this is a forum about the documents that you see in the folders you picked up on your way

through registration today, and very clearly about a set of proposals for improving the confidence of the organization, not about generic issues to do with ICANN. So, without further ado, I'll ask our Chairman, Peter Dengate Thrush to introduce the PSC and today's event. Thank you.

Introduction to the President's Strategy Committee and the purpose and content of the Improving Institutional Confidence consultation

PETER DENGATE THRUSH (CO CHAIR OF THE PSC, CHAIR OF THE ICANN BOARD OF DIRECTORS): Why are we doing this? After a decade – with a ten-year anniversary yesterday - of successful US Government stewardship, the Joint Project Agreement will conclude in September 2009. This is a legal fact, the date of expiry of the agreement. It's not that anyone's declared it or cancelled it; it was set up to expire in September 2009.

In the early days, we had a very much more detailed Memorandum of Understanding with the US Department of Commerce and in earlier consultations including at the mid-term review of the Joint Project Agreement, we made the point that this was necessary as part of the start-up mode when we started with absolutely nothing except the idea and we then had a board, but no structure.

It was necessary in previous years to explain what needed to be done, and that was done in a very detailed Memorandum of Understanding. We now have a very different

kind of relationship with the US Government. Please have a careful look at the obligations on the parties under the Joint Project Agreement.

We have produced two documents, a Transition Action Plan and a document called Improving Institutional Confidence. At today's meeting, we assume that you know these issues and have read the papers. Nonetheless, individual members of the President Strategy Committee will walk you very quickly through the issues these papers address. I'll begin by asking Marilyn Cade to talk about safeguarding ICANN against capture.

MARILYN CADE (member of the President's Strategy Committee):

Even before ICANN was created, a concept I thought a lot about was how to ensure that a new organization could be a trusted steward. We began as the PSC to talk through what the threats were to ICANN and we recognized that one of the threats is capture, capture by an organization, an intergovernmental institution, by a committee, by the staff, by ourselves. The PSC has thought about what be put in place to provide safeguards against capture. This is one of our five key topics.

JEAN-JACQUES SUBRENAT (MEMBER OF THE PSC AND THE ICANN BOARD): In matters of governance, I was very much looking forward to it when I was appointed to the board of ICANN to see how governance in ICANN really worked on a day-to-day basis, and I must say that I found it to be overall a very open system. For instance, the way board discussions are rendered public just a few days after they happen. This being said, there is room for improvement and that's why we're here to listen to you.

The PSC proposed a few months ago an additional mechanism to reinforce actually the accountability and the transparency of ICANN and the Board especially. One is to set up a mechanism by which a decision taken by the Board of ICANN, which is considered inappropriate or insufficient, can be challenged by stakeholders who can call upon the Board to review its decision. The Board will not necessarily follow that advice, but must listen to it. The second mechanism I want to underline is that by which in very exceptional circumstances the Board could be discontinued or spilled. That would be an ultimate sanction.

YRJIO LANSIPURO (MEMBER OF THE PSC): The needs of the global Internet community were one of the concerns we tackled. The global Internet community be like hundred million Internet users at the time when ICANN was set up. Now it's 1.4 billion users and the question is how should this be reflected on the ICANN, in its form and operations.

ICANN is international in many ways already, the Board, the staff, the way they hold meetings in all corners of the globe, the Outreach Fellowship Schemes, dealing with, a couple of hundred of cc operators, and not last but not least, the Internationalization of Domain Names. The question that the Chairman of the ICANN Board actually put: is the not-for-profit corporation in California, the optimal form of entity to deal with all these international obligations? The PSC asks whether while ICANN's headquarters should remain in the United States, and should there be additional legal presence in other

jurisdictions. We're not seeking immunity. This is not a question of propelling ICANN to the outer-space, out of responsibility and accountability. To the contrary, we want to live up to the expectations of the original model. Developing global operations will allow us to meet the needs of the community and that includes some multi-lingualization and many other things.

The main suggestion we make here in these documents was that ICANN should establish a legal presence in a jurisdiction that could provide it with an international not-for-profit status, a status which would be in addition to its permanent corporate headquarters in the United States.

RAIMUNDO BECA (MEMBER OF THE PSC AND THE ICANN BOARD): The PSC has been looking at financial and operational security; of having a budget consistent with the goals of the institution and having revenue. ICANN has built the solid and stable procedures on operational and strategic planning and building the budget. We have also been building a reserve fund. The documents ask the question of whether and how ICANN's revenue streams can be diversified.

PAUL TWOMEY (CO-CHAIR OF THE PSC, MEMBER OF THE ICANN BOARD, PRESIDENT AND CEO OF ICANN): The final section of the papers before you, focuses on the issues of how to keep the Internet's unique identifiers stable and secure. It's a key plank of this whole process that ICANN remain focused on its narrow technical mission. This is not about trying to expand a mission for ICANN, but staying very

focused on the core technical coordination mission of ICANN in an environment of very rapid growth.

We'd like to point out quite clearly in terms of this consultation process and review that the United States Government's comment that it has no plans to transition the management of the root zone from its current tri-partite agreement. We understand and support of that process. There are opportunities to discuss operational efficiency measures under the agreement. Security and stability is one of the four key founding principles of ICANN. Should ICANN be a thought leader on issues on security and stability consistent with its narrow but critical role? We'd be interested to get feedback from the community on that.

PETER DENGATE THRUSH: The composition of the President's Strategy Committee attempts to reflect as widely as possible the key components of the ICANN community. I come from the ccTLD community. Raimundo Beca comes from the addressing community, and he's also the past chair of our finance committee. Marilyn Cade is a former councilor of the GNSO. Paul Twomey represents the staff and management view and has himself an extensive history in relation to the GAC and other international matters. Yrjo Lansipuro is a member of the Government Advisory Committee and able to reflect the views of that, and Jean- Jacques Subrenat has an extensive history in international diplomacy.

Let me acknowledge a couple of other people in the room for their contribution, and apologize in advance if I leave someone out. It's appropriate to acknowledge Steve Crocker, one of the pioneers in the construction in the technical level of the Internet, who has been a liaison to the Board for many years as Chairman of the Security and Stability Advisory Committee, and has been recently appointed as a full voting member of the Board.

Wendy Seltzer is here. She's a liaison to the Board from the At Large Community, the community of Internet users. Mike Palage, a former board member is here. Becky Burr was the first US governmental representative on the Government Advisory Committee. Steve Metalitz is a former chair of ICANN's intellectual property constituency. Suzanne Sene is the current member of the US government on the Government Advisory Committee. We have in the room a number of people who've made contributions and continued to make contributions to ICANN, and a particular thank you and welcome to you.

That leads me down to open the microphone and ask a few questions. We are really here to listen. Hands up all those people, who have never been to an ICANN meeting. Thanks and hands up all those people, who have never filed comments or made submissions in any kind of ICANN process. Excellent, but what it does show [LAUGHS], some of the staff, acknowledging that they haven't actually done that, which is good, just so that you're quite clear about the transparency and the absence of staff capture in any of our processes.

I would like to ask the people who have not participated in our sessions if they would like to begin. It would help us to hear them. I don't want to put you on the spot and I realize that the reason you may not have ever come to an ICANN meeting is you're terrified of coming to the microphone and making submissions or asking questions, so what I'd like to do now is open the microphone for questions and to hear from you. Remember please to introduce yourself and your affiliation.

GARTH BRUEN, CEO OF KNUJON.COM: We represent consumers and small network users. They submit their junk mail to us and we process it for policy enforcement through an automated engine. My question is; it's been known for some time that there are serious issues with Whois accuracy. Several unrelated studies have shown this to be the case. In our research, we found direct links between illicit criminal traffic, malware distribution, unsolicited e-mail, and registration forgery. Organized criminals have exploited various policy loopholes and clever ways to subvert the system for their own gain. Considering this troublesome exploitation, would it not be time to not only clean up the existing record, but institute a new policy of registration verification at the point of application? In addition to all of the other activities that ICANN is involved in, supervising the accuracy of the Whois records is ICANN's critical function. If the record set is inaccurate or secret, how can transparency and accountability be truly achieved and how can the Internet user or consumer be effectively protected?

PETER DENGATE THRUSH: Thank you very much. As an IP lawyer myself, I sympathize completely with the point and it's well understood and that since I've been Chair there has been a considerably enhanced focus on compliance. I think we might have Paul Twomey answer more specifically in relation to compliance exercises.

PAUL TWOMEY: Thank you for the question. It's not specifically related to the issues we've just gone through, but I'll make the following quick observations. We have two ways of issuing compliance on existing contracts. ICANN is an institution, which moves to coordinate the unique identifying system through contracts that can operate across borders. As a consequence, we have to implement the contracts that we have and then work in ways to keep evolving the contracts.

We look forward to people's participation in that process, the most recent one for instance is up is amendments to the Registrar Accreditation Agreement. We have audits undertaken of the registrars including on Whois. I can report that even yesterday we had moved to de-accredit two registrars, one in Europe and one in China, who have been, we think, in breach of their requirements, specific to the point you make about accuracy Whois data.

So it's a key point, we're very conscious of it, we're keen to get more information from people, so we both do audits but also people like yourself and others, who give us information, we're keen to receive that so we can actually investigate.

PETER DENGATE THRUSH: Garth, what more on your view having heard that should we be doing?

GARTH BRUEN, CEO OF KNUJON.COM: I'm curious as a follow-up if the contracts that he's mentioned are being enforced. If he says breach notices have been issued against these two registrars, that's positive news. But the core concern is about the contracts being enforced.

PETER DENGATE THRUSH: Paul, do you want to mention the additional resourcing that's going into contract compliance enforcement?

PAUL TWOMEY: We tripled contract compliance enforcement this year, and we're in a process of continuing to triple that. A key part of that, as you pointed out, Peter, is participation by the community about how our operational budgeting process works. The strategic planning and operational budgeting is driven by a bottom-up process. Participation is key, because that's how funding gets shifted; by voices that call for additional compliance or reporting or participate. That's how the budgeting process works. It's not completely a top-down process.

On the specific question you've raised about registrar investigation and de-accreditation, we had a process of doing that somewhat quietly in a previous regime, and we de-accredited some ten or twelve registrars in that period. We've moved much more to be more public and explicit in the process; to 'kill the chicken to frighten the

monkeys'. We're also very focused on registrar failure and working with operators on the resiliency of top level domains and having mechanisms and testing in place for security of transition if there is failure. This is specifically directed to looking after the registrants if there are failures or investigations of particular players.

PETER DENGATE THRUSH: Is there a follow-up on the same topic or is there a different question? I'm happy to take either, Sir.

TIM RUIZ, GODADDY.COM: On the same topic. I'm Tim Ruiz with GoDaddy.com and a member of the registrar constituency. Regarding contract enforcement with registries and registrars, as ICANN explores the possibility of presences in other legal jurisdictions. I haven't heard much or seen much as to what thoughts have been given to how that might affect future agreements between ICANN and registries and registrars, and how compliance might be approached, or how it might be affected by national laws in those different jurisdictions. You can even extend that a little bit further as the Department of Commerce has made clear they intend to maintain control of the root. What interaction or possible conflicts could that create between those local jurisdictions and interactions with IANA and the Department of Commerce in updating the root?

PAUL TWOMEY: They're an excellent set of questions and they go from the specific of operations to the sort of things we are putting forward in this consultation. We have copies outside of our semiannual on compliance, so if you actually want to get a copy of

the report on what we've been doing on some of the compliance issues, it's available outside.

We should share quite clearly that the dominant reason there's any consideration of another legalized presence is driven by quite specific administrative difficulties presently faced as we globalize from our base and our commitment to being headquartered here in the United States, particularly in California. We've done a lot of analysis and had others look at this issue. The process of for-profit companies globalizing is actually reasonably well aligned because virtually every jurisdiction has a shareholder, everybody has tax, and so on.

You'd be surprised to know that not-for-profit law and not-for-profit structures are not aligned around the world. They're actually very, very different jurisdiction by jurisdiction and as a consequence, it's very difficult for a not-for-profit then to set up a subsidiary not-for-profit somewhere else. It's incredibly difficult, especially for an organization like ICANN, which has been structured specifically around anti-trust tests and as a consequence it's not a membership organization, it's a very open organization. A Anybody can participate.

To give you an example, in France, if you're not-for-profit, you have to be a foundation with specific foundation members, they have to be named etcetera. It's even surprised me how un-coordinated that is around the world. So we have actually been saying, if we had to establish global presence potentially, at least there's one presence, one place

that might give us some advantage in terms of being a legal entity. The second point comes to why would we do that.

We don't think there's any big rationale for shifting the contracts out of the United States. We don't want to shift the contracts out of where they presently are, but there are one or two small instances we have seen, particularly for intergovernmental organizations who have applied for TLDs, where it's very difficult for them, for their sets of rules to be able to enter into a contract in the United states.

Also, importantly for registrar support, there are some very narrow examples we've come across in the contracts, where another jurisdiction might be able to benefit. We have contracts as they presently are in American law, arbitrated by the International Chamber of Commerce out of Paris, and we'd maintain that as the basic approach.

PETER DENGATE THRUSH : Tim, the last point is the most direct response to your question that there are some advantages for international bodies to have contracts with something other than a US California corporation. The issue that I think you raised is how to make sure those contracts remain coordinated and one of the aspects is to make sure as much as possible that they use the same law and that they use the same arbitration system. But that is work to be done. We recognize and thank you for drawing to our attention the requirement that we retain as much as possible some harmony in the contracts enforcement and compliance.

TIM RUIZ, GODADDY.COM: The key is harmony. One of ICANN's principles is to encourage competition and to not end up with this un-level playing field.

PETER DENGATE THRUSH: Sure.

TIM RUIZ, GODADDY.COM: Between one jurisdiction in registrars or registries and another I think would be a key factor.

PETER DENGATE THRUSH: Thanks for that alert.

MIKE PALAGE: Mike Palage, speaking in an individual capacity. This goes to Tim's comment about multiple legal jurisdictions and ties back to the original comment of Yrjo, about ICANN not seeking immunity. My question is Paul Twomey, in June of 2007, ICANN entered into an MOU with the United Nations Economic and Social Commission for Western Africa. Paragraph five of that agreement is titled 'privileges, immunities and facilities of ICANN' and reads as follows: "Nothing in this MOU may be interpreted or construed as a waiver expressed or implied or a modification of the privileges, immunities and facilities, which ICANN enjoys by virtue of the international agreements and national laws applicable to it". It's not about immunity, but ICANN's incorporating specific provisions addressing immunity in its agreements and I was wondering if anyone could perhaps reconcile that apparent.

PAUL TWOMEY: Very simply, that's a memorandum of understanding on standard boilerplate documentation from the UN council for Western Africa, so every one of their agreements has that clause in it. We have no immunities under law, so the effect of that language is nothing. There's actually a reciprocal clause there for the United Nations Economic and Social Commission for Western Africa and it's a clause that relates to their own immunities. It's a boilerplate they have for all sorts of MOUs they do with all sort of parties, some of whom are intergovernmental organizations. They do have immunities, so the fact that the wording is there is a reflection of their sort of boilerplate MOU language that we adopted. But in practice we have no immunities and this is an accurate description of that term.

MIKE PALAGE: I guess my follow up is having done work with IGOs, I appreciate boilerplate provisions, but boilerplate provisions can be modified. In fact, that's some of the work that ICANN is currently going right now it negotiates the dot post, so I think for the benefit of preventing confusion, if a boilerplate provision doesn't apply, it would be probably best to remove it to prevent any type of ambiguities or confusion among the stakeholders. This is about improving confidence and when you include provisions that aren't applicable, that's not constructive.

PETER DENGATE THRUSH: Mike, thank you for the diligence in combing through, our around 1100 or 1200 contracts to find that one. I think you're right. Good lawyering may well have addressed that point that you raised somewhat earlier, thanks. Let me just

repeat the plea to have some priority to be given to people who haven't had the opportunity to make an ICANN submission.

HENRY JUDY, AMERICAN BAR ASSOCIATION: I'm Henry Judy with the American Bar Association. I'd like to follow up on the issue of immunities. There is a distinction between immunities of the organization and immunities of the personnel. Without some kind of immunities, it might be difficult for the personnel not to be subject to visa restrictions or their personal assets being charged and as ICANN becomes more and more international, and it becomes more and more necessary for people to travel and the like. I wonder if you could have any discussion on the distinction between the two, are you thinking about perhaps needing some forms of immunities by agreement with respect to the personnel versus the organization or is this too technical a lawyer point, and if it is, please feel free to ignore the question.

PETER DENGATE THRUSH: It is technical and we have got General Counsel who's been responsible for collating work on this. I had only recently received last night the start of an analysis of all of those different issues, some of which Paul has mentioned in previous consultation sessions.

Paul Twomey or John Jeffrey (ICANN's General Counsel), can you have a quick answer to that or is it something that's going to have to be teased out as part of the implementation phase?

PAUL TWOMEY: I think probably the better answer to the question is that the administrative issues have presented in the ten-year history of ICANN have been things like as you pointed out such as work visas. If I can just share an anecdote there, we found ourselves in a very difficult situation a couple of years ago when one of our key employee's home country changed its rules vis a vis the US, she went from having a multiple entry visa to having a two-entry only situation and she was already out of the country with two entries. She spent six weeks in Paris desperately trying to get a visa to come back to the United States and her child was here without parental oversight. That's the sort of practical things that emerge where we quickly had to simply say we can't have this person in the United States, we just got to find some other way, and then we got confronted with how do we pay this person. A whole sort of vicious circle opened.

So, it's these sort of administrative issues that we have confronted, and we've got quite a long list of them. That's the sort of thing we're trying to address. What are the U.S. specifics about immunities of individuals? I just couldn't answer, but we're trying to find another way of giving us some flexibility to ensure that we can employ the sort of people we need to employ, they can talk to this sort of people they need to talk to, and what's the optimal way of doing that?

PETER DENGATE THRUSH: The way you expressed that in the beginning is quite an indication of the sophistication of this. There's a lot of issues behind immunities, there's the immunity of the corporation, and that's the point that Yrjo was making; we're not

seeking immunity for the corporation. But there may well be immunity issues in relation to staffing matters and various other things, so thank you for the sophistication that the question exhibits and yes, that is now part of our implementation discussion.

BRIAN KREBS, WASHINGTONPOST.COM: I'm, Brian Krebs with the Washingtonpost.com. In the past, some registrars have been allowed to sponsor ICANN meetings and pay for the travel of people attending ICANN meetings, and I'm curious, but it would seem to present sort of a complex debentures for ICANN given its oversight role of the registrars. I'm wondering whether ICANN sees a conflict of interest here does ICANN have a policy about accepting sponsorship or travel from registrars themselves.

PETER DENGATE THRUSH: Paul, I'm sorry, they all seem to be coming to you. We do have policies on conflicts of interest, but I'm not sure whether they extend to that particular issue, maybe they should.

PAUL TWOMEY: We've got a clear conflict of interest policy. The board itself moved quite specifically on a further code of conduct in last night's Board meeting. We're looking for ICANN's supporting organizations to also develop further codes of conduct, and we have a code of behavior for all people who are participating.

The specific issue you've raised has not been raised in that context. There's a lot of very careful care concerning registrars or registries, or anybody else for that matter, in terms of contributions to either staff or Board members. But for general attendance, our meetings are completely open. There's no limitation on who can attend. I'm not certain this issue has been raised before, but we certainly have the mechanisms for that to be reviewed, either through supporting organizations or a conflict of interest committee. If a particular issue needs to be raised, it can be examined.

MARILYN CADE: I would see the issues of public sponsorship of a public meeting being clearly acknowledged, and the part of the meeting being open to all, as one question. The second question, in the early days of ICANN, I experienced personally the opportunity to count the number of people who were sponsored by a particular entity, who failed to disclose that they were sponsored by that entity. So I would raise a question that if you are sponsored by someone to come to a meeting, then I think that too needs to be disclosed, particularly when you speak about a policy issue or an issue on the budget or issues that are before ICANN.

I'm a big believer in both transparency and accountability and I think we can build that in, but, we are asking the question, and I hope all of you will think hard about it, what else do we need to do? We maybe need guidelines. If you are filing a comment before certain regulatory agencies, there's a, period of time in which you cannot talk to the staff about it, or the principals who are going to make the decision about the filing you've

made. Maybe we need to be thinking about certain guidelines or rules that give the rest of the community a sense of trust that there are safeguards.

PETER DENGATE THRUSH: I'll just close on that by saying there is a Board Conflicts on Committee. It's currently charged with reviewing its own charter and doing another couple of other jobs, and this is the kind of place that that can go on, but I just stress how important that is as we internationalize. As these issues need to be understood by different cultures and in different places where different practices prevail, there's an opportunity to make sure that we get that right.

STEVE DELBIANCO, EXECUTIVE DIRECTOR OF NET CHOICE: I'm Steve DelBianco, a member of the business constituency at ICANN, and also executive director of Net Choice, a coalition of e-commerce companies. At the risk of taking things to a somewhat higher level, I wanted to point out that number one of the criteria in today's documents is safeguarding against capture. The way the documents are presented, it's as if ICANN wants to sort of check that box with a series of bureaucratic measures that are primarily designed to prevent capture by internal parts of the ICANN community. I understand that, but I think it ignores the real threat of capture, which I believe is from external threats. With a 60 million dollar budget and management of something as important as the Internet, ICANN becomes a magnet for the United Nations and other governments who would covet that role. They would say that anything that important has to be managed by governments. It demonstrates the adage that money and power don't buy you friends, but they do get you a better class of

enemies. I heard, at the Internet Governance Forum in Rio last fall, the Russian government calling for the United Nations to assert control over critical Internet resources. And then just last month, September 16, Russia reiterated that complaint.

So here's my point, many of us really believe the legacy role of US government oversight is the key to preventing other governments in the United Nations from taking over the private sector leadership role at ICANN and it's a legitimate concern. And yet if ICANN walks away from the JPA this time next year, I would ask you to think hard about what are the other mechanisms we'll put in place, not for internal bureaucratic capture, but to prevent external capture by the United Nations and other governments.

PETER DENGATE THRUSH: I look forward to a better class of enemies, my current crop are all pretty lower end. Steve, I don't want to trivialize one of the most significant issues of this consultation and I wonder if the people to deal with that are some of the people who had actually been fighting that fight on behalf of ICANN, and I'm looking at Yrjo, who's been part of the WSIS. There are other people in the room who have fought that battle and perhaps, Yrjo, there are people who won't know what WSIS is. You might want to introduce the topic at a high level and then come to the point, thanks.

YRJO LANSIPURO: How many hours do you have? [LAUGHS] Basically, WSIS is the World Summit on Information Society. That was a summit meeting convened by the United Nations in two parts, 2003 in Geneva and 2005 in Tunis. One of the big issues was the issue of Internet governance. There were governments who were clearly of the

opinion that the Internet governance should somehow be managed by the ITU or some other United Nations agency. Comparing the present situation to what we had in 2003 and 2005, things have been quieted down a bit. Russia periodically raises these questions, but for instance, in Rio, there was not support for that and it remained just a remark by one delegation. As for the United Nations itself, the previous Secretary General said very clearly that United Nations doesn't want it, doesn't want to touch it. The last point about how to safeguard against capture by governments; in the Government Advisory Committee, governments are watching each other. It's inconceivable that one government will be able to do that when all the others are watching.

MARILYN CADE: I might slightly disagree with my esteemed colleague by saying that this is a very current, pressing and ongoing question. The challenge to all of us to carefully distinguish between what ICANN does and where perhaps the social policy concerns about access to information and access to content and behavior that is related to that is dealt with. Those are really different areas, but it is very easy to let me use a technical term, 'smush them together' in our own lines. If we don't clearly talk about this broadly to civil society, business, governments, intergovernmental agencies, what I observe in the room is a lack of understanding. And when people do not understand, they sometimes make uninformed decisions. Those uninformed decisions can have serious consequences for ICANN and for all of us. Those debates are going on right now and our opportunity is to continue to improve ICANN, but to also continue to participate in those organizations adjacent for it.

JEAN-JACQUES SUBRENAT: I want to thank Steve. He brought up an extremely important point behind capture, actually the whole big question is governance in all its forms. Frankly, what we're looking at and have been working on in the PSC is to devise ways and means on several points - accountability, transparency, reliability, etcetera - in order to make capture impossible or at least extremely difficult. What I find interesting in the setup we're looking at is the multiplicity of actors or stakeholders, which in itself is a guarantee against capture. The existence of GAC is a safeguard against capture because I can't see that within GAC, that all the delegations except one would suddenly fall asleep and let capture happen. I don't think that's likely or possible.

PAUL TWOMEY: Steve raises an essential question. I've been involved in this topic for thirteen- fifteen years, with various hats on. I'm reminded of being the head of an Internet government agency that actually wrote to the Clinton administration after the green paper and said, 'for heaven's sakes you've got to be more international than your first paper, there's an Internet beyond the borders of the United States'.

A theme that's coming out of all the answers is that, it was my judgment then and it's still my judgment now, that the vast majority of governments around the world are relatively supportive or happy to live with or actively supportive of an international multi-stake holder approach for managing these technical issues. What's important is that they see it works well.

As Jean Jacques and I think Yrjo said, one of the key things for the Improving Institutional Confidence work we're doing now, and the important role the MOU processes have, is we need to celebrate that we have actually built a well performing and operational institution. What we don't want to do is inadvertently send a signal, that it's not working well, and that's one of the careful balances we've got over the next six, nine, twelve months. If we inadvertently send any signal which looks like that, people will say, if it doesn't work, we will look for alternatives. So that's why it's such an important balance.

STEVE DELBIANCO: These are all excellent answers that get to the bureaucratic measures that we can't take. But we have to take a lesson maybe from of all places Wall Street, that if a private sector led self-regulatory regime screws up, it invites the government to come in, take things over and clean house. We've seen what happened there and most governments would be very concerned if they see inadequate attention to cyber crime or cyber terrorists attacks on Estonia and Georgia and, well, ICANN doesn't control all those levers. It has a role in the regulation of its contracted parties, especially registrars and registries that are allowing things to happen that generate problems for government.

In the midst of all that, we're about to launch an explosion of new top level domains. This creates even more opportunities for us to do a better job and avoid mistakes on cyber crime, cyber terrorism, and the denial service attacks that could really stimulate

governments to say, 'wait a minute, this private sector led self-regulation, it's not good enough and we need the UN to come in and take over'.

PETER DENGATE THRUSH: Steve, I think the high level response is that while a continued presence of the US government is important, first of all, it's not going to go away. There will be a considerable number of links to the United States remaining and the United States Government, so it's not a question of unshackling tethers. The US will continue to maintain a strong presence in the GAC. We're going to remain a Californian corporation with all the links to US system, and the contract is going to be in the United States. What's much more important though, it seems to me, the fundamental point is that agreement is coming to an end and the question is what do we do.

The real strength of ICANN, the real reason why ICANN will be immune from capture is if it has international support from all of the constituencies and if it's seen by all the people it serves that it's doing its job. Then, as Jean Jacques says, it's difficult to capture. If all the countries – there are 242 country code registries - and a majority of those, certainly all the large ones, are now participating in the ICANN process one way or another either through contracts or through participation in the ccNSO or both.

The Addressing Organization is participating. We've got the contracts with the gTLD registries and registrars. If you look at the complexity of the entire structure, if all of that is working and is supported, and if governments are attending the GAC to make sure that public policy issues are coming into the GAC and being fit into the policy, that in the

end is the legitimate way. It is how ICANN derives its legitimacy and where it will derive its strength, not from the presence in one way or another of one government.

MARK MCFADDEN, BT AMERICAS: (British Telecom) I'm taking you back to section 3.5, which is the legal presences. A question and then a suggestion to you. As you've discussed it this morning, the idea of legal presences has a very limited technical and administrative reason behind it. Basically the legal presences are there as a mechanism by which you can have TLD operators in other countries where non-profits have relationships with ICANN. There are other administrative reasons for it, yet in 3.5, one of the sentences is that the President of Strategy Committee believes that it would assist in increasing the credibility of ICANN's claim to be an entity serving the global community, for ICANN to have representation in other countries additional to the United States.

My question is which is it? Is it a limited technical motivation for having legal presences or is it this much more grand 3.5 motivation which is trying to meet the needs of a very, very broad global constituency? If I could give the President of Strategy Committee some advice, there needs to be clarity about the motivation for these legal presences. What's missing from the document that we have before us is the reasoning and rationale for those legal presences. If I could give Peter one other piece of advice, it would be my advice to stick to a very limited motivation for those additional legal presences and not have the sort of broad outline or motivations that are in 3.5.

PAUL TWOMEY: I'd agree with all you said including the rationale. I put my hands up, we've been late in getting that material out, so it's a good point. Personally, I agree with the motivation priority as you put them. The only observation, and I found this somewhat surprising, I come from a common law country with common law views of the world, I have found in Latin America, and in Central Europe in particular, people who tend to come from those countries is they look very, very specifically at your institutions of foundation in dialog. So, we will say we're an international profit organization who do the following, and you could be in parts of Latin America and they say, 'no, you're not, you're a Californian company' [LAUGHS] and you say no, we do that, and they still say 'no, your document says you're a Californian company'. And so that wording is a reflection of that response. But you're right, the way it's expressed, it has an overtone just too grandiose so we do need to address that.

PETER DENGATE THRUSH: We need to be clearer about the difference between legal presence and having offices in different places. We already have offices in different places and people working on the ground in lots of places, and we need to make sure we keep those things distinct.

JONATHAN ZUCK, PRESIDENT OF THE ASSOCIATION FOR COMPETITIVE TECHNOLOGY: My name is Jonathan Zuck and I'm the President of the Association for Competitive Technology. We represent small IT companies. In the larger part of my career in actually building software for various customers, there were a lot of contracts

involved in doing that with commercial clients like American Express, the Navy, the US Government, in other forms, etcetera. They all had a lot of specifications about things we were responsible for doing. One of the things that was auspiciously missing from most of those contracts was any requirement that the software we build actually work. It wasn't actually specified in the contract and in retrospect that might have been a mistake for some of those contracts, especially when we look at some of the things that have happened with US government software contracts.

But, there was a sort of implied requirement and there was also a built in accountability mechanism in that we didn't get paid if the system didn't work. So I'm trying to envision a meeting with the client in which they said the system is not working and we respond by saying well, we've hired ten more people to do error handling, you know, and debugging, so will you pay us now? Or, well we've instituted something at our offices, where you have this suggestion box outside the door or a can of lighter fluid where you can destroy our company. So we now have accountability mechanisms in place, and I keep hearing back from my client, but when I hit run the program doesn't work. So when looking at this issue of accountability and the questions you asked in your document, are these the initiatives that you address these very valid concerns.

I think the answer is we don't know, and so the idea of basing institutional confidence on a series of proposals for addressing problems, I think is in itself inherently flawed. So when asked the question 'what might make sense sort of going forward?' or 'what the next step might be', I would suggest it's a set of metrics somehow for success. In other

words, there's a great new program at ICANN for contract compliance, but how about figuring out a metric for success in contract compliance or the level of contract compliance after which we should suggest that contracts are being complied with. Because at that point we'll actually know whether or not the initiatives being proposed are in fact the ones that should have been or that others need to be addressed.

That's my fundamental point. I know that at the end of this there will be a summary of the comments, so I'll help out with that. A lot of people are bringing up this accountability issue. Limiting accountability to requesting the Board to reconsider something or eliminating the board; one that feels strangely ineffective and kind of extreme. There are real concerns in this audience that I'm sure you have in other audiences around the world. The business community is very concerned about this issue of accountability. The best way to address that is through real metrics and finding ways to measure the success of these initiatives instead of making it based on the time of the expiration of a document. It's like saying I should get my license when I'm 16, not because I passed driver's ed.

PETER DENGATE THRUSH: Thanks very much for that. I personally agree completely with the idea of incorporating metrics in as many places as we can. One of my mantras is what gets measured gets done. Paul's just given me an indication that committees are working through that in relation to the number of other matters, so I think the quick response is that yes, we like it, yes, we're doing it, but I bet we can do more of it.

BECKY BURR: Becky Burr, I'm also speaking on my own behalf here. I want to follow up on the accountability issue. Paul is probably going to roll his eyes because he's heard me say this a number of times before, but I'm going to say it again. The three accountability mechanisms that ICANN has - the ombudsman, the reconsideration and the independent review - have really not produced meaningful results. I think we have to agree that that's the case. The Board is free to ignore the ombudsman recommendations and does to my personal knowledge. It's extraordinary, this is the first time I'm every going to agree with Danny Younger on anything. The community has showed what it thinks of the reconsideration process; no reconsideration petition has been filed in over two years. I know because I filed the last one. So I was interested, to see what ICANN had to say about the independent review process in its recently posted response to ICM's petition.

I want to put my remarks in context here. Wilmer Hale is not representing, is not bringing this case, and my remarks here are being made as a longstanding person who has a big stake in the success of this organization, not as an advocate for ICM. Whatever your views are about triple X, I encourage each of you to find the document, which is a bit of a challenge, and then read it. It is relevant to the discussion we're having today, because it sheds important light on how ICANN views the independent review process, the one process accountability mechanism that hasn't been tested. Let me give you a few highlights.

Although the bylaws themselves state that the job of the independent review is to make a declaration about whether the actions of the Board are consistent with the bylaws, the response to the petitions says that this is advisory, that the independent review process seeks the advice of neutral panelists, and ICANN is free to ignore that advice.

Moreover, ICANN asserts that in providing the advice, the independent review panel is supposed to employ a deferential standard of review. Now, since I wrote the framework document that went into the independent review provisions of the bylaws, I was sort of mystified by that, because I didn't know where they were. But, the document asserts that I am not overstating this, that essentially the IRP is powerless to find violation of the ICANN bylaws in the absence of bad faith.

In other words, the Board can't be wrong unless it's engaged in a conspiracy. That cannot be a reasonable standard. I'm really not exaggerating. According to ICANN, it is also free to pick and choose among its core values. Why? Because the bylaws permit the Board to determine if necessary an appropriate and defensible "balance among competing values". That's a quote. Because of this, the paper argues, ICANN has discretion to support one core value over another. In other words, ICANN need not apply policies neutrally and objectively, so long it's open and transparent and listens to input from governments. And finally ICANN asserts that this balancing test, which on its face applies only to core values, flatly overrides section three, which says unequivocally that ICANN cannot apply its standards, policies, and procedures or practices inequitably without substantial and reasonable cause. This is the equivalent of a Washington tradition of a bill-signing statement; I may be stuck with this, but I don't have to comply

with it. The current accountability mechanisms don't work, and in the very first test of the IRP, ICANN has asserted essentially that the protections for the community built into the mission statement core values and anti-discrimination provisions of the bylaws are essentially advisory.

So, do I think that the ability to recall the entire board meaningfully enhances ICANN's accountability? It's not even close. It's a nuclear option of no possible value unless a Board action imposes meaningful cause across the entire community as opposed to a subset of the community. To me, this says, once again, ICANN doesn't get what accountability is. Accountability requires that ICANN acknowledge that its behavior can be measured against a real standard by an independent third party, that's not being reflected, and it is a critical problem.

PETER DENGATE THRUSH: Becky, thanks for that. I think the first response is yes, we do get what accountability is and I agree that the three current mechanisms are inadequate. I agree with you that they are very defensive and that they are inappropriate. What we have done about that is the Board has agreed, although it's not required to, that it is going to treat all of those three mechanisms to the complete review that the other parts of the organization are subject to. So we're going to treat those three mechanisms in the same way that we've treated the GNSO and review them the same way that we are treating the Board. So that is coming, and what we probably haven't done is explained that that is part of the process. What we hope to have at the end, is a is the full panoply of five measures, including the ones you've mentioned;

reconsideration on a very narrow ground, ombudsman appeal in relation to other ombudsman type matters, independent review. The idea is that these two are going to be the additional mechanisms once those three are reviewed, okay.

BECKY BURR: You're still missing the fixed standard and a meaningful third party to enforce it, that's what ICANN has not accepted. You don't have it in the two additional ones, we don't have it in the three that exist. ICANN is saying essentially it's advisory and if you want to hold ICANN accountable, you can go to court, if you happen to have a contract with them. A lot of people who are directly affected by the actions of ICANN everyday, businesses and organizations around the world, big and small, are not in contractual privity with ICANN. Honestly, you need a judiciary. It's not proposed, it's not talked about, but it has to be there if you want to be accountable unless you want to rely on external, very expensive and very limited court battles.

PETER DENGATE THRUSH: Thanks for that.

JEFF NEUMAN, NEUSTAR: I have a comment getting back to the topic of capture. Specifically the proposal in the revised paper makes the proposal that should there be a bylaw amendment requiring a specific prohibition against voting by the same individual or organization in more than one of the related advisory or supporting organizations. My answer to that is absolutely not. I think that it sounds great from a political policy standpoint to make that kind of broad statement, but that fails to recognize the different roles that a lot of organizations have within ICANN. VeriSign operates a top level

domain, but also operates root servers. A registrar, for example Mark Monitor that does IP services as well as being a registrar. If it's NeuStar, which operates a gTLD, but also a ccTLD, which is accountable to two completely different communities, or if it's a company that participates in a business organization, but then decides that it wants to run its own TLD. The proposal of having an organization only be allowed to participate in one of their supporting organizations fails to take into consideration any of the multiple roles that organizations have.

PETER DENGATE THRUSH: Jeff, are you clear that we're not preventing participation in all of those places. The suggestion is that you have to choose which one of them you're going to vote in and surely your voice is the important part here.

JEFF NEUMAN, NEUSTAR: A voice would be important, but unfortunately until ICANN gets away from voting mechanisms, a vote is the way you make your voice heard. You can state as much as you want that you're a bottom-up process, but in the end everything comes down to a vote. I hope that changes in the future, but that's the way it is.

PETER DENGATE THRUSH: Now, we're working on that with the GNSO. Marilyn is going to reply now. We'll give priority to people who haven't spoken, so if I don't recognize your name, you'll get picked first.

MARILYN CADE: (to JEFF NEUMAN) Please do submit written comments on this point. Historically, there was a huge concern when we set ICANN up about capture. There was a big concern that certain parties would hire people and those people would infiltrate the different parts of the organization. The concern about over-dependency on a limited number of people to participate is another concern that we all have to think about. I'm not going to express an opinion about what the outcome of this should be. But I am going to say that, we have an obligation to look hard at how to increase participation, deepen opportunities to participate and we have to be careful about transparency. If the same entity is voting in advisory councils and in the policy councils, there could be concern by governments or others that there's a capture issue.

PETER DENGATE THRUSH: Just a very quick reply, Jeff, because I think the indication was to file written comments.

JEFF NEUMAN, NEUSTAR: We will be filing written comments, but just to make the point about NeuStar's position, we're a gTLD registry, but we're also a ccTLD registry. To tell us that we could vote on one council, but not necessarily on another just makes no sense. I do agree with you completely, we should absolutely increase participation, and 100% agree that anyone who votes should make their interest known ahead in advance of any kind of vote.

KHALID FATTAL, MINC: My name is Khalid Fattal, I'm Chairman, and CEO of Live Multilingual Translator, I'm also chairman CEO of MINC, the Multilingual Internet Names

Consortium. I'd like to start by congratulating all members of the President's Strategy Committee for exceptional work and their diligence on the issues. I know that this is all volunteering, while they all have full time jobs. I'm pleased on a lot of levels, but I've got some concerns as well. I'm pleased at the fact we're meeting here in Washington DC, the political capital of the United States. And in the folder of materials, we have IDNs and it's a long journey that we've covered in the last ten years, first talking about ideas and their relevance and now this has been put into its real perspective, I'd like to take us one step back and really focus on the strategic issues.

A lot of the points raised are valid, but I see them as quite relevant in operational matters. Strategically speaking, when we're talking about ICANN internationalizing itself or becoming a global organization. When we talk about capture, we talk about accountability. We need to ask ourselves, are we serving the current Internet users that we have or are we truly serving, or aim to serve, global Internet, users and communities.

If the answer is the latter, then we need to start thinking in a totally different framework of where to go next. For example some of the issues to do with accountability, some of the issues to do with jurisdiction and the US oversight. Now, I'm not a proponent of getting the UN involved in any matters of Internet governance. But I still do not believe that one of the fundamental issues that we believe in at ICANN, competition, has not been truly thought out so that not only the functions below ICANN are at competitive level, but perhaps how to make ICANN itself in its role a competitive role. We know that the US oversight will remain, that's already recognized. We talk about different

jurisdictions, but I don't think we're really addressing the needs and the concerns from the perspective of the global community.

We all know about some of the negative or perhaps misleading components in the way people have been discussing Internet governance, but the reality here is that we are aiming to serve the global community and some of the points that Michael raised in that MOU with the UN. We are aware of this but it appears as if ICANN from an international perspective it looks as if we are hiding behind US oversight, that's not the message we want to give, so if we want to give institutional confidence for people to believe in the ICANN process, we need to instill that confidence on an international scale, not just from a US or a Western hemisphere point of view.

YRJO LANSIPURO: Thank you for this point, I don't know if I have any answers to them, but it's good to raise them because basically when you talk about accountability, it's good to remember that we should be accountable to 1.4 billion Internet users plus those who are not yet using the Internet. It's good to keep in mind how that accountability can be implemented. I have no idea, but we need to keep that in mind and try to suggest an objective.

PETER DENGATE THRUSH: I've just been given the list of those who want to speak, ah, so I'm going to start imposing the time limits. Steve Crocker, I've got you next and then I've got Mr. Corwin over here.

PHILIP CORWIN, INTERNET COMMERCE ASSOCIATION: I'm Philip Corwin, Council of the Internet Commerce Association and representing domain name investors and developers, and an active member of the business constituency. I'll be as brief as possible. Our major concern as ICANN goes forward is that as domain names remain very valuable assets, with some of them fetching prices on the open market of hundreds of thousand or millions of dollars, that the investment be protected against specious action. The first thing we're concerned about, and this is all outlined in the comment letter we filed for the midterm review, is what we perceive as a growing lack of uniformity and predictability in the uniform dispute resolution process. We believe ICANN needs to review that and establish a regime that provides more uniformity and predictability.

The second situation is something we just recently became aware of that one of your registry operators, the operator of dot mobi, is asserting trademark rights in dot mobi. It has applied for trademarks in dot mobi, in related names with the trademark office, which had been quite correctly rejected. They are now appealing that. Our board has just authorized staff to voice their opposition to that with the trademark office and bring it to ICANN's attention. This relates very strongly to the upcoming bids for new top level domains where hundreds of applications may be received. We believe the contracts for those names have to contain severe sanctions for those who just get generic names, not where a preexisting trademark is applied for, as the top level domain, but for example, if someone applies for and is awarded dot sports. They should not then be permitted to assert trademark rights in the word sports and bring UDRP or other legal

actions against sports related names at totally different top level domains. So we'd like you to look at that and the new contracts and then, this situation is almost too bizarre, but last week the governor of Kentucky took legal action through a plaintiff's firm in Chicago for civil enforcement of Kentucky anti-gambling statutes. A Kentucky judge issued a bench warrant to seize 140 gambling-related domain names and while most of the registrars simply froze those names, some of them have actually turned over control of those domain names to the state of Kentucky. Kentucky is claiming domain names are gambling devices akin to slot machines or roulette wheels, we're going to intervene.

PETER DENGATE THRUSH: I just have to interrupt you, it's really interesting, but can you bring these Issues of law back to a strategic objective?

PHILIP CORWIN, INTERNET COMMERCE ASSOCIATION: ICANN needs to review the actions of the registrar in this situation.

PETER DENGATE THRUSH: So, this is registrar compliance?

PHILIP CORWIN, INTERNET COMMERCE ASSOCIATION: Exactly. We cannot have domain names turned over. Simply due to bench warrants issued in Kentucky or in China or Cuba or anywhere else.

PETER DENGATE THRUSH: Good, thank you. Got it. Can we again have shorter interjections? The point was a good one, but I don't think we need three examples of it/

Can I just be clear about that if there is a problem with registrar compliance, let's raise it as an issue, let's link it to our documents. Otherwise, not everyone is going to get a turn. Next, is Wendy Seltzer, who's as I mentioned earlier the At Large liaison to the Board.

WENDY SELTZER: Speaking here in my personal and individual capacity, wanting to echo the concerns raised most considerably by Becky Burr. I also hear them in several of the other complaints raised on accountability and particularly accountability to those who don't have contractual relationships with ICANN, but are affected as users of the Internet by the non-enforcement of contractual conditions, or by the enforcement of contractual conditions that harm them. We hear on the one side concerns about Whois inaccuracy. I've often spoken about the interests of domain registrants and users in privacy. But specifically this concern about accountability is amplified as ICANN seeks to distance itself from the US, because at least for those of us who are US lawyers as I am, the US courts are accountability of last resort and to try to move further from that without adding greater protections for those third party beneficiaries for the public, I think would be a mistake.

PETER DENGATE THRUSH: Thank you Wendy, I hope we can draw on your expertise as we go through those reviews of those accountability mechanisms to take advantage of those thoughts, Paul did you want to add something to that?

PAUL TWOMEY: I just want to thank Wendy, and really enforce a key message that this committee has reviewed very carefully over long periods of time the whole issue of the

benefits, to deliver security and stability and the other charters that we have about where we are in the United States. We have actively gone out and said we do not want to move the headquarters out of the United States. It is incredibly important that ICANN stays here. I make this clear for international audiences, this is not because we've been pressured or bullied by the US Department of Commerce. It's not because the US government has said 'don't you dare leave'. It is because we've done a careful evaluation and said it is incredibly important for our global accountabilities that we be based, have the headquarters, in a jurisdiction, which offers a lot of great advantages. And one of those advantages, Wendy, I want to make it very clear is that we are actively grasping is the US court. The US legal framework, we're not trying to reject it, so I don't get people in the sense that we're trying to 'get independent and leave'. There's this sort of language developing here, which I find a bit unfortunate. In this document we say very clearly that a key part of our accountability framework is to be based in the United States with US contracts and US law, and people have the right to utilize the US courts. I would just also say I think Becky's interjection was a very powerful and useful one.

PETER DENGATE THRUSH: Thank you.

STEVE METALITZ: I want to make one comment and ask two questions. The comment goes to the title of this event "Improving Institutional Confidence". I simply want to report and I think you've heard some of this, I think the overall confidence that people of the intellectual property community, which I represent as the President of the intellectual property constituency, have in ICANN is probably lower today, than it was a couple of

years ago. There are a couple of reasons for this; the restructuring of the GNSO council, which was widely perceived as an effort to marginalize the role of intellectual property interests. That's been mitigated somewhat in changes that have been made, but that's still a concern. The new TLD process that we've heard a lot about and which is expected to open applications within the next six months. Between now and then, many uncertainties will have to be resolved, uncertainties that are deeply concerning to a lot of intellectual property owners and the prospect that they may have to expend enormous sums of money to defend their intellectual property rights in this process.

The last indication of this decreased confidence is that there is the continual feeling that the views of the intellectual property interests are not heard in the ICANN process. ICANN has become very adept at public relations and its spin machine is much more efficient than it has been in the past. There's a lot of concern that when we express our views they're really not taken into account. I can give several examples, but I want to keep this short. I'm just trying to be a reporter here and not a critic, I'm reporting what I am hearing from many in the intellectual property community.

My two questions are these. First, the President's Strategy Committee stated in its original report that it would try to convene an expert group to get some outside views from people that may have particular skills and perspectives in how to improve institutional confidence and how to address some of these issues. So I wanted to know what was the status of that expert group. Second, Peter's correct that the Joint Project Agreement that exists now is a very lightweight document between ICANN and the

Department Of Commerce. But next to it is an important document called the Affirmation of Responsibilities, where ICANN's Board made certain commitments of what it was going to do. I just wanted to get a sense of what would be the status of the affirmation of responsibilities if the JPA expires and if there is no successor agreement between ICANN and the US government.

PETER DENGATE THRUSH: Thanks Steve, I just want to make a quick response, I don't want to reopen the struggles of the GNSO restructuring, but the community needs to understand that it started under a bylaw requirement to review the GNSO. It was done by involving outside consultants and it was then brought into an internal process and the community itself was largely responsible for that, so if the eventual conclusion of that is that's widely perceived by the intellectual property community as marginalization. To a large extent, that's the result of being industry laid and self-regulating, it's the GNSO and the rest of the organization that did that to you, in creating a new balancing of the structure. We just have to be fair about that, it's not that somebody sat down and said let's take the IP constituency down, it's as a result of a normal review process. Our review was conducted and this was the proposal, you fought your corner and really if you want to live in an industry self regulating body, then you've got to live with the consequences of it. Marilyn, do you want to respond on this discussion that we've been having in the PSC about the possible uses of an advisory group?

MARILYN CADE: Let me call the group a group of expert advisors rather than an advisory group, because inside ICANN we have certain terms and they take on great meaning. I don't think it was ever intended that we were going to have an advisory group. We have been talking about this and in our most recent discussion, I believe the PSC members agreed that we need to hear more from you about how we might use such individuals, who would be highly respected and have confidence from particular sectors, who might be able to better inform the PSC. We need to hear more from you about how we would use them and particularly given the fact that we are trying to close down the first part of the phase of how might we use them throughout the next year as well.

PETER DENGATE THRUSH: The other question was the status of the board's affirmations and I think Paul, you can probably deal with that.

PAUL TWOMEY: Just to be clear, and Peter's been on record saying before that the affirmation responsibilities of Board resolution is a key part, I think you put your finger on it very well, Steve. It's a key part of the points about maturity and about where does accountability sit. It sits with the Board and the community that elects that Board directly or indirectly and being accountable to that community and those principles are passed by the Board, they are standing of the board. We expect the board to continue to stand by those principles, there's no call for change of those resolutions and we reaffirm them. But they are a stated position, a board resolution. So, that's a continued expression, where the accountability should sit. They should sit with the Board, which

represents this community, making clear commitments to the community and the community saying we're happy those commitments have been made. That's the sort of model of accountability we want to see more of, at least just part of the model we want to see reinforced.

PETER DENGATE THRUSH: Okay, we've got half an hour left. We have the ability to stay on longer in this room, but I appreciate that many of you won't how many people are going to have to leave at 11 o'clock and for whom an extension is really of no use.

On that basis, that there's a number of you waiting to speak, I think what we will do is we will stop responding unless we have time at the end. We'll just listen as we say we wanted to do. It's tempting for us and we'll just have to bite our tongues. When there's a specific question that's helpful, we'll try and deal with it at the end.

JON PRAED, INTERNET LAW GROUP: My name is Jon Praed, I'm an attorney with Internet Law Group, based here in Washington DC. I'm in the business of catching cyber criminals for corporate victims and I appreciate the time that you're making yourselves available to listen to comments from the public. At a strategic level, one of the commenters earlier (Khaled Fattal) said that a lot of the comments here today are really tactical. I want to speak to a strategic level. The efficiencies of the Internet are obvious to everyone, one of the efficiencies is that it enables a tremendous amount of fraud and abuse. You have to consider yourselves different from every other business you've created. When email spam is at 90% of the volume and email still thrives, I

challenge you to find any other business that can survive in 90% cheat rate. If we had to pay the gas bill for the nine people ahead of us every time we pulled up to the pump, we wouldn't be driving cars today. That efficiency is a fantastic thing, but it threatens to drive this down if we don't manage it correctly. The single most important thing you need to do is get your hands around strategically how to handle fraud and abuse. At a fundamental level, you have inherently resisted that because of the tension between your mission and surviving within what was envisioned as a stateless environment. It's clear that you cannot survive-- the Internet cannot survive in a stateless environment. There are states, jurisdictions, nation states that exist for very good reasons and will always exist and have to assert their authority. I challenge you to think about ways that parts of your responsibilities can be pushed into a stateless environment, but look at other ways in which the things you're doing cannot be and look for ways to create markets just as you're deciding for market reasons to headquarter yourselves in California. Others are making the same decisions. You have to create mechanisms for legal enforcement, then encourage people who value law and security to gravitate to those jurisdictions. The main problem right now that I see in trying to promote security is our inability to protect people who make a decision to bring their web pages or their E-mail service or what have you into a lawful jurisdiction. They can't protect themselves from people who decide, for also market reasons to put their mail servers in places that we can't get to, to put their bodies in places we can't get to and their money. The bad guys we're chasing today are extremely intelligent and are doing everything that they can to make money. They don't care whether they destroy the

system or not. They're a parasite that will suck us dry and we're slowly, collectively killing ourselves because of all this. Drug companies aren't recouping profits right. I understand that our time is limited, but I challenge you to think about ways to create borders and encourage market competition. For example, a discrete suggestion, you need remove your third party beneficiary restriction in your contracts with registrars, so that registrars can sue other registrars directly when registrars are criminally involved in conspiracies to enable fraud and abuse. Ways to leverage your work and create those borders and market opportunities for competition.

PETER DENGATE THRUSH: Thank you very much for that, John.

DANNY YOUNGER: I'll make a brief comment regarding meeting the needs of the global Internet community of the future. I'd like to begin by taking you back to March of 2007 where ICANN actually did a superlative job of recognizing a particular need. At that point in time, ICANN's CEO Paul Twomey made it clear that in the wake of RegisterFly, what was called for was a comprehensive review of the registrar accreditation processes and a review of the content of the registrar accreditation agreement. Now, when we talk about meeting of the needs of the community, obviously recognition of the need is the first step, and follow through is the second step. While we have had good work done on the part of ICANN staff with respect to the RAA, and proposed amendments, we have not yet seen a comprehensive review of the registrar accreditation processes themselves. It's now 18 months down the road and going forward we need to look at how do we address occasional inaction on the part of staff.

Should there be in fact an easier mechanism for us to make these situations aware to you where perhaps you've been accidentally remiss? Thank you.

PETER DENGATE THRUSH: Thank you very much for that. Alerting systems and mechanisms are always very helpful because these things do go into those kind of places.

MARGIE MILAM, MARKMONITOR: I'm Margie Milam, the General Counsel of MarkMonitor. We're an ICANN-accredited registrar and a brand protection company and we represent over fifty of the world's largest companies. We have registered five of the top ten largest websites in the world. So in our relationship, we hear from our customers how ICANN policy affects them and their ability to protect against abuse, some of the abuses that Steve and others have talked about. I'd like to comment specifically on how to improve confidence as ICANN becomes more independent. Much of the criticism that ICANN has from the corporate community arises from the perception that the processes are unduly swayed by the influences of parties who can attend the ICANN meetings and so that typically is the contracting parties, the registrars and registries and other people. But from the corporate standpoint, that are unable to send representatives oftentimes to the ICANN meetings, what ends up resulting is that these policies end up become spearheaded by the contracting parties with little attention to the business community needs. ICANN needs to recognize that the corporate community is frustrated by the rampant abuse of the domain system over the last few years under ICANN's watch. It looks like ICANN's slow to respond and very rarely holds

noncompliant parties accountable. The sudden rise of domain tasting, phishing and Whois abuse that's been talked about a lot today are just a few examples of how ICANN is seen as sitting back and taking a reactive approach as opposed to a proactive approach. The perception from our customers is that this problem is going to get worse with the introduction of the new gTLDs. This topic is extremely aggravating for our customers. We had a webinar just recently where we had over 500 participants register for this event to hear about the ICANN new gTLD process. We actually took polls of our customers to see how they felt about the new gTLD process.

Approximately 72% of them indicated that they were fearful or uncertain about the process. Only 28% of them actually saw that the introduction of the new gTLDs would be a good opportunity for them. Of the companies that thought they might participate in the process, 28% of them, most of them, intended to do so for defensive reasons and not for brand enhancement reasons. When we look at the statistics, this really should be a point for ICANN to take a look at and see whether they can reevaluate the new gTLD process to make it more amenable to the corporate interests, particularly so that they're not applying for the new TLDs simply for brand abuse purposes. If it turns out that in this new process, ICANN receives a lot of applications from corporations purely because they think that they have to protect from brand abuse and infringement, I think ICANN will look badly and it will look like it hasn't given enough thought to the protection of intellectual property interests.

On the other hand, if you take this opportunity to reevaluate your processes and how you look at the RFP process and you get applications from the corporate community from those, who really want to take advantage of this new way to expand the Internet, then ICANN will look as if they've actually taken account of the business interests. My recommendation for ICANN is to find a way to enhance the business participation in the ICANN process so that you can get input from people who are unable to otherwise participate through the traditional GNSO process.

EVERTON LUCERO, REPRESENTATIVE OF BRAZIL TO THE GAC VICE CHAIRMAN OF THE GAC: I am Everton Lucero, I am representative of Brazil to the GAC and I'm also Vice Chairman of the GAC. I would like to congratulate you for this initiative of consulting different regions and different countries. I understand that you're also doing that in other occasions and opportunities and this adds to improving confidence in ICANN and to transparency and accountability. Being from the government constituency, I would like to refer to the role of governments. First I would like to make a comment to the gentleman that referred to the IGF. As I am from Brazil, I was deeply involved in the preparations of the IGF in Rio, and I recall from the preparation process that the issue of critical Internet resources that there was a resistance to deal with it at the IGF in Rio which proved to be not real. Because the issue was dealt with and it was an excellent discussion with many views there including, ICANN was there and, think it's the reason that we might have such a discussions at the IGF is that it provides for a wider participation as normally at the IGF, we will have much more people and constituencies from all over the world including from the developing countries. I don't

think that we are in a situation in which we may fear the capture by governments or by any particular government or even by the United Nations. In fact one of the main results of the World Summit on Information Society was the crystallization of this principle of multi-stake holders. And this is not being questioned, so whatever we do related to Internet governance, it will be on a multi-stake holder environment. I think that the question now is a question of balance, that is how to reach the appropriate balance between the different constituencies so that each of them may add, be it from the civil society, the private initiative and governments and the technical community and international organizations and so on. And as for governments, I also recall that the Joint Project Agreement one of the benchmarks of the Joint Project Agreement is precisely on the role of governments and well I cannot speak on behalf of the Government Advisory Committee, but I can sense according to the discussions that we are having and that we maybe able to present some contribution during the Cairo meeting.

There is a feeling that the Board and GAC interaction should be reviewed in order to improve implementation mechanisms of any given GAC advice and as for what you've presented to us, I noticed that there's only one reference to this particular issue, which is GAC should keep its advisory status. While I do not have anything against that, I would like to say that perhaps that is not enough, perhaps we should go a little bit deeper in terms of refining how this interaction between GAC and the Board will work to the benefit of allowing the governments to have their participation at the ICANN processes so that we will have the ability to contribute to that work that we will support.

PETER DENGATE THRUSH: Everton, thank you very much, I do want to acknowledge the presence of the Vice Chairman of the Government Advisory Committee and thank you for coming. I personally agree, I think I said it earlier that the legitimacy of ICANN comes from the support of the entire community and one of the most crucial components of that is governments. The role of the GAC needs to be clarified, and if we can have some input from the GAC as to some further refinements to those statements I for one would welcome those.

CLAUDIO DIGANGA, INTERNATIONAL TRADEMARK ASSOCIATION: I wanted to comment on an issue that I think goes to the heart of the ICANN multi-stake holder model, and that is participation. There is a pretty widespread sentiment in the community that the public comment period needs to be more robust and comments submitted taken to account. This is one of the main ways that the community can participate in ICANN affairs. This issue needs to be addressed by the PSC. The other point was that the PSC seems to acknowledge that a greater role is needed from the business community. However, as we've heard already, the role within the GNSO for business constituencies has been reduced. So I wanted to ask what mechanisms the PSC is considering to foster greater input from the community.

BILL WOODCOCK, PACKET CLEARING HOUSE: The security and integrity and uniqueness of the data in the domain name system is ICANN's primary objective, primary driving principle. The Kaminsky attacks highlight the class of data integrity

attacks that directly address this principle guiding objective. The NTIA's obstructionism of ICANN in using the JPA to disallow ICANN to serve the needs of the Internet community by DNSSEC signing the route and forever ending this class of attacks is particularly problematic in that the NTIA is completely out of line with the entire rest of the United States Government as well the Internet community and the global community. Since ICANN is a global organization and the United States Government is but one of many governments that are constituents for ICANN and NTIA is, but one very small agency of that one government, I'd like to know whether ICANN is taking steps to get other governmental constituents to help the US government understand the magnitude of this problem and the simplicity of the solution.

ANDREW MACK, AMGLOBAL CONSULTING: I'm principle of the AMGlobal consulting, which is a small consulting firm here in Washington. I am not a US lawyer, I'm not any other kind of lawyer, I actually run a small company. We do a lot of work with companies that want to do more work in emerging markets and emerging markets companies that want to do more work with larger companies from the outside. So in a very real way my work is all about the next billion Internet users and their needs. I'm pleased to see all the talk about outreach under section three of the transition plan and I think that's great stuff. I am a little bit concerned about the process that ICANN is using to introduce IDN's. Specifically I was in Paris and I sat in on the cc meeting and heard a lot about the fast tracking, and personally I'm concerned about the fact that national governments may have the ability to offer IDN's like say the Arabic version of EG for Egypt, before the IIDN version of .com or .net or .biz or something like that. I'm a small

business and a lot of the people that I work with are small businesses. I can see how this could be a real problem; the need to register in multiple jurisdictions simultaneously, all the different regulations, the costs. It strikes me that it would offer a lot of influence to governments. So the question is, can ICANN guarantee that the gTLDs and the CCs we introduced at the same time?

ELIZABETH ESCOBAR, IP COUNCIL FOR MARRIOTT INTERNATIONAL: I'm IP council for Marriott International and I'd like to begin by thanking ICANN for having this discussion here in Washington on behalf of myself and other DC locals. Improving institutional confidence in ICANN is key and the goals of avoiding internal and external capture as well as improving accountability to all stake holders are very important. I am concerned, however, that the processes ICANN is following is having the opposite effect. You had mentioned earlier when Mr. Metalitz brought up the restructuring of the GNSO that the process was properly followed and therefore there was no cause for concern. But it has to be acknowledged that the deck was already stacked to a great degree against non-contracting parties. The voting, if I understand correctly, the share of the vote went from one-third on behalf of the contracting parties up to one-half and squeezed the business constituency, the Internet users, the IPC down to one-half. Let's face it, the contracting parties make their living in this space and the rest of us play in it. I believe that a lot of the decisions including the restructuring of the GNSO and the introduction of the new gTLDs are impacting the contracting parties in one fashion and impacting the other constituencies in a very different and not positive fashion just to take one example of the roll out of the new gTLDs.

Companies have paid immense sums of money in respect of the sunrises and some of the recent gTLDs, like dot eu, simply to keep domains in that space off the market. We see the coming of hundreds of new gTLDs more or less as a way for the contracting parties to through the sunrise process make a whole lot of money off the business constituencies, who don't need these domains and don't want them, but also cannot afford to have them fall into the hands of people who would use them improperly.

This is I guess my long winded way of saying that I think that the decision making process at ICANN may represent the ICANN community, but I don't think it represents fairly or proportionately the interests of the larger Internet community, which consists not just of the contracting parties, but of the business constituency, Internet users, who have almost no voice, as well as the IPC.

PETER DENGATE THRUSH: While you're passing the microphone, just a quick response. What this highlights is the problem that we face in ICANN of trying to run a multi-stake holder body. This is the passion that the individual people come and put their views. The counter view to your view of course is simply that the user community as a result of the new TLDs, gets a fantastic opportunity and a fantastic number of new territories and a fantastic number of new lands to go and develop new products and innovate. So, we're not hearing from the user community because they tend to not to be able to afford to come to Washington, but there is a very strong countervailing proposal and that all of your companies are going to be able to have the opportunity of market in

a whole lot of new territories. Change brings with it risk and cost, but we're in a changing world. For all of these arguments there are strong counters and they are debated thoroughly in ICANN, including in the two-and-a-half year process relating to the development of new gTLDs.

These are not new ideas and they have been fought out and fought out in the ICANN process so, I think complaining about decisions is really not terribly helpful. What would be helpful to us is if you could point to aspects of the process that you criticize and say how should the GNSO have better done that two-and-a-half-year process in which that battle that you and I have just epitomized was fought out. We don't want to fight or re-litigate decisions. If there's something wrong with the process or if there's something wrong with the organization, please, we really want to hear about that and we've had some very good examples of it.

PAUL MARTINO, CADNA, THE COALITION AGAINST DOMAIN NAME ABUSE: I agree with the comments just made by one of our members, Elizabeth Escobar of Marriott. I'd like to address your question if there is a complaint about process in terms of increasing confidence in ICANN and the decisions it does make. Prior to making any decisions that would have a significant impact and a diverse impact on one constituency versus another constituency, ICANN could do much more empirical research and publish that research prior to those kinds of decisions. That would certainly increase the confidence in and transparency of the decision making process.

So, in this instance with the new TLDs, what empirical research did you do on the market impact of the release of a potentially unlimited number of top level domains, potentially hundreds in a given year?

On the business community, on those that have to defensively register brand names that they already own the trademarks in simply to avoid the misuse of those brands when registrations can take place across hundreds of domains. It may be a great opportunity for some businesses such as the contracted properties. For others, it's a huge cost and an unplanned cost and unbudgeted cost that in the decision while, it may have been in the works for two years, seems to have occurred in a less transparent manner than it could have occurred and my ultimate question is what studies have you done to really assess the potential impact and the diversity of that impact on the business community as opposed to the broader business community as opposed to the contracted parties?

TOM LENARD, TECHNOLOGY POLICY INSTITUTE: I'd like to comment a little bit on the fourth area, which nobody has commented on yet, financial and operational security. Obviously ICANN is concerned about being financially secure, but it seems to me in this context while it's obviously possible they have too little money, it's also possible to have too much. Particularly in the situation that ICANN is in, there have been very rapidly rising budgets and they want to accumulate a large reserve. But really they have a very secure source of income, so it's not clear to me that a large reserve is needed if you have a very secure source of income.

But more importantly, I wonder if you've thought about whether the trade option involved between having too robust budget growth and some of the other criteria and it seems to me that you could easily adversely affect some of the other criteria, the most obvious one is maintaining a narrow technical mission, if you have a large staff that is going to be tempted to get into other areas that may be inconsistent with this narrow technical mission. It could make it a more tempting target for capture and I think Steve DelBianco, alluded to that earlier either by an outside party or make it easier for the staff to capture, ICANN. It could also have implications for accountability that may be adverse. So it seems to me that ICANN should think seriously about not just making sure that it has enough money, but also trying to assure that it doesn't have too much money.

PETER DENGATE THRUSH: Thanks, interesting perspective, there's an interesting balance to be had there. that, thanks.

LISEL FRANKS, INFORMATION TECHNOLOGY ASSOCIATION OF AMERICA: Many of the comments that people have made today mirror the kinds of comments that ITAA made in its submission to the notice of inquiry on the Joint Project Agreement with regard to ICANN's transition. We had called for looking at a long term vision for ICANN, elements required for continued trust and confidence in ICANN's future including, financial stability as was just mentioned, and an acceptable government structure, which has been discussed today.

Elements required for ensuring continuing security and stability of the DNS and the organization itself, and then preservation of ICANN as a private sector led organization, so many of those elements have been discussed today. With regard to a specific comment on the transition action plan though, I want to echo some of the concerns that have been raised with regard to the mention of legal presences. As was acknowledged, you do need to make a distinction between a legal presence such as an office and legal presence such as incorporation. Many of the goals that have been stated for internationalization in that sense might be able to be achieved in other ways, some of which I would argue ICANN already does by virtue of its appearance and participation in many global organization events, many in the places that it holds its meetings, the ubiquitous travel schedules of its staff, etcetera.

So, I would argue then in many ways you might have some internationalization that you are looking for and I'm not sure that a distinct legal presence as an international not-for-profit does actually answer some of the questions you're trying to solve. So it might be just something to continue the conversation on what problems are you trying to solve with regard to that and have they already been addressed or can they be addressed in other ways?

PETER DENGATE THRUSH: Thanks Lisel, we are going to publish some more of that information, we'll be getting feedback and if there are simpler, cheaper and more effective solutions, you can bet that we will adopt them, thank you.

ANDERS HALVORSEN, WORLD INFORMATION TECHNOLOGY AND SERVICES ALLIANCE:, WITSA is an international organization of national IT industry associations, around 70 countries around the world. We are a member of the BC. I want to make some general comments which supports ICANN. I have been doing that for so many, many years, and we have recognized over the years ICANN's positive steps in establishing an effective mechanism for dispute resolution, the continuing introduction of registrar competition and above all, improving a transparent review process. We have called for evolutionary changes in accountability, transparency and bottom up participation to ensure ICANN's success as the means of managing the Internet's technical coordination issues.

Today, I wish to renew support of ICANN's continued evolution and agree broadly with the conclusions of the Joint Project Agreements, which we've reviewed earlier this year and in that light fully support the transition action plan, that is laid out through the President's Strategic Committee with a view to completing the transition next year for the JPA.the, ah, best model for ICANN as it transitions to full private sector management continues to be we believe based on bottom up participation, collaboration and cooperation with other global multi-stake holders and that draws on the advice participation and support of governments through the GAC. We believe that the future arrangements for ICANN must ensure that there's no reduction, but an expansion of appropriate rules for the participation business and industry players. This will ensure that future governance will be led by the private sector and be an efficient response to societal needs and technological changes while ensuring at the same time that

governments will continue to play an advisory and consultative role. Finally achieving ICANN as transparent and accountable party responsible for the technical management and coordination of these unique indicators of the Internet is a high priority to our members around the world. We support ICANN's continued narrow technical mission and core values, and we are fully committed to continuing the private sector leadership as embodied in the white paper that led to the formation of ICANN.

PETER DENGATE THRUSH: Thanks Anders. Let me just go on record of thanking WITSA for its continued long term support. Having your support has always been very important to us, thank you.

THOMAS LOWENHAUPT, DIRECTOR OF CONNECTING DOT NYC

INCORPORATED: We're a not-for-profit New York City that look forward to acquiring the dot NYC top level domain and sharing that with the residents, businesses, and civic organizations in New York City. Cities have half of the world's population now and by 2030, it's supposed to be two-thirds. It was grand in Paris to hear that the ICANN is now authorised to issue top level domains for cities. As I mentioned, we will be applying for dot NYC. ICANN has a great deal of experience with multi-stakeholderism and I suggested in Paris that it would be good share that with cities as we're going to have to figure out how to run these things.

The Chairman has responded and I have been speaking with Kieren McCarthy (ICANN's General Manager for Public Participation) and hopefully, we'll be able to put

some resources on the ICANN's website that will be available to cities as we try and figure out how to manage these resources. Once that happens as cities become part of the Internet, they will be vociferous participants in the process and they will broaden the governance of the ICANN and help avoid its capture. So, we look forward to working with the ICANN in a variety of ways. Perhaps the organization could sponsor some sessions in Cairo and Mexico city on governance of city TLDS. I look forward to hearing how we might do that.

PETER DENGATE THRUSH: Thank you, and then, right on time, the last of my speaking lists in the current form is going to be Moses Boon. What I've done is I've taken the completely arbitrary subjective and non-transparent decision to relegate some of the speakers as being part of the old gang and we'll come back to them if we have time. So don't feel you've been overlooked, we've just given as we said some priorities to some new voices. Marilyn Cade who is so much more diplomatic than me suggests that I call this crowd that's going to follow our valued longstanding participants.

CROWD: [LAUGHS].

TIM RUIZ, GODADDY: I try to be too longstanding right now. This is about improving institutional confidence in ICANN and some of the things I've heard today have me thinking that could be threatened by the ideas that ICANN can somehow solve spam or that ICANN can solve the phishing problem or even fast flux, or any of these that are really public policy issues that ICANN maybe able to find some small part of that affects

the technical aspects of the DNS or the way registries interact with registrars or might be able to solve some small part of that or contribute to it.

But as long as there's a general idea that ICANN can solve those problems, there's not going to be any confidence in ICANN as an institution because it's going to fail. Not because it isn't doing it's job, but because what's expected of it is impossible. ICANN cannot solve those public policy problems, and even within the participants of ICANN, those policies or solutions, whatever aspects of those problems can be solved will only apply to the gTLD name space. They can't be applied effectively to the ccTLD name space because that's not under the same type of agreement with ICANN as the gTLD name space. So there are two points there, one is that a clear understanding of what ICANN's mission is, what ICANN can actually accomplish should be helpful, so that there aren't high expectations. And second that there's an understanding of how the policies that ICANN doesn't act affects the name space overall and that it only really applies to the gTLD side, I think a better understanding of that whole picture would improve people's expectation of ICANN.

PETER DENGATE THRUSH: Tim, I agree completely, can we hear next from the gentleman to your right.

UNIDENTIFIED MAN: Thank you Peter, one of the benchmark issues that I've been looking at personally with regard to trust and confidence in ICANN is the current re-delegation request that the ITU has inquired to ICANN about in connection with the dot

int. The, dot int top level domain and specifically, I've looked it in some of the correspondence on the ITU website. I have not yet been able to find that appearing in the ICANN website and I know Paul you have engaged in some correspondence with the ITU and what I think is important here with regard to this re-delegation request is, Peter we were talking about the board conflict of interest. Here, I think there is a potential organizational conflict of interest issue here because ICANN right now is in fact the administer of the dot int registry, so when you have a third party seeking a potential re-delegation to ICANN when they are in fact the registry operator, that sort of needs to be addressed and I'm also concerned with regard to the bylaws that, I can read them for you.

PETER DENGATE THRUSH : No, don't.

UNIDENTIFIED MAN : There are actually prohibitions in the ICANN bylaws stating that ICANN shall not act as a registry or registrar in competition with those entities affected by its policies and in fact the ITU is in fact the registrar in the dot int, so this is just one of the issues, that I think is really important and really circles back, Paul, to some of your earlier comments about how ICANN negotiates with IGO's, which are in fact what the ITU is.

PAUL TWOMEY: I just need to clarify two points of fact, not go on any further. First of all, there is no re-delegation request from the ITU. It's a request concerning a certain outcome of a working group. Secondly, ICANN operates the dot int under the IANA

procurement contract from the United States Department of Commerce, so I'll just put those two points in the table, and we can have a discussion later on.

PETER DENGATE THRUSH: As long as this is not another complaint from an IP lawyer about--

KRISTINA ROSETTE: No, it's not, I promise. One of the things that I've been giving a lot of thought to is you have a situation in which you have an increasing number of stake holders, regardless of what segment of the community that they're coming from. Being aware of ICANN and being generally aware of what ICANN is doing, what you may be creating is what is referred to in political theory as a revolution of rising expectations. Where you have increasing efforts at transparency and accountability, but those are not necessarily as accessible to as many areas of the community as they need to be and I'll just give a general example of and we've talked about this before; public comment. Make it clear to people what happens to public comment, how it's used, where it goes, what role it plays in the decision making process, because to do otherwise creates the expectation that every comment is read, every comment will immediately sway the vote of someone at some point in the process, and frankly that's just not realistic. To the extent that you can perhaps focus on educating and managing expectations realistically and fairly across the board and to all stakeholder communities, you're more likely to have greater success in the long run.

PETER DENGATE THRUSH: Kristina, I'm glad you didn't wave your right to speak, that was very helpful thank you.

RON ANDREW, RNA PARTNERS: I want to circle back around to the issue of capture. My name is Ron Andrew of RNA partners, member of the business constituency, but I'm speaking on my private capacity at this moment. The BC has called for abolishing the idea of a Nominating Committee representatives, who had been brought in originally to help deal with the voting issues between the weighted voting of the contracted parties and those of the non-contracted groups. In this new house structure that's come about, there's no reason for that to continue. The reason I bring this up is because concern of capture by individuals, we have a situation where the nomcom appointees come from a place that is a little bit opaque. It's not easy to see where they're coming from and then when they arrive on the scene of ICANN, they report to no one, but themselves, so if they want to amass power, they can block a vote or make the vote go through, so this is a very, very serious issue. Today, we have a GNSO chairman, who happens to be from the NomCom group, so we have one individual sitting at the chair of the GNSO, who makes determinations based upon that individual's preferences. So I'm calling on the Board as was requested by the BC to abolish the NomCom representatives because they have no use going forward.

PETER DENGATE THRUSH: Just a quick response while we pass the microphone to David Maher, we're not going to be able to do that in terms of the GNSO restructuring, but I think the very serious point is the accountability of the NomCom appointees. They

are across the ICANN organization and that's a very useful point to take on board, thank you.

DAVID MAHER, PIR: I'm David Maher, Chair of the Registries constituency and I have a question, I realize you may not be able to answer it immediately. The registries are concerned about the new IDN gTLDs and would like the opportunity to operate IDN gTLDs that are comparable to their existing registry functions. Can you give us some reassurance that there is a transparent process, so that all of the registries will have an equal opportunity to compete for the new IDN gTLDs as they may become available?

JOHN NEVETT, NETWORK SOLUTIONS: I'm also the Chair of the Registrar Constituency. You had mentioned contractual compliance and it was maybe a surprise to some folks here, but registrars want more contractual compliance. Those of us who comply with the rules and the contracts are at a competitive disadvantage to those registrars who don't comply. So we've been pushing for more compliance and one of the avenues for doing that is the draft registrar accreditation agreement that's being considered by folks. That agreement provides more compliance and more enforcement capabilities for ICANN through stepped up graduated sanctions, additional audit requirements and other features that will help contractual compliance. So instead of the current system where there's just the nuclear event of de-accreditation, we need more tools for ICANN to help registrars and registries comply with their contracts. I'll take that cognitive leap to the same point; only having the nuclear option for accountability of disbanding the board might not be the best thing. So I think folks on the President's

Strategy Committee through the experience of the registrars and registries with that nuclear option should take that opportunity to review other graduated steps that might help with accountability and transparency.

I think everyone agrees that ICANN's taking a lot of steps to improve accountability and transparency, especially transparency over the last couple of years. I would urge that that be included in any kind of bylaw changes so that those improvements are now institutionalized and can't be reverted through an action of the board. Finally, I know I'm now an ICANN insider because I actually understood Marilyn's point about the difference between an external group of advisors and an advisory group.

PETER DENGATE THRUSH: So, ten years of struggle have been worth it. Just a quick response to that. I had tried to make clear that I agree with Becky and that we are reviewing the three existing Board accountability mechanisms and we are suggesting creating two more on top of that, so we're looking at an entire review of the process. I always find a little bit strange having come to the registrar accreditation agreement and what you're talking about the nuclear option there, why more attention isn't paid in the g space to what the major ccTLDs do, who have exactly the same problem. Most of them have got reasonably sophisticated mechanisms and you might want to adopt those, but there can be some learning from those. That's the end of the speaking order. What I would like to do now is ask Kieren McCarthy, who is our General Manager of Public Participation - I just want you to stop and consider that title and what it signifies about our intention to engage - to take us through, um, the next steps and how this will go

forward. When I finish that we will go back and we will try to address some of the strategic questions that you raised, you'll have to forgive us if we don't answer all the technical questions.

KIEREN MCCARTHY, ICANN GENERAL MANAGER OF PUBLIC PARTICIPATION:

Hopefully today you've had a lot of participation, but there is opportunity for more, you'll be excited to know. What happens next is the Senegal meeting very similar to this meeting, we've run one in Montevideo, the second one was in Christchurch, the third one's in Geneva, there's this one, and we're running another one in Senegal on the 13th of October. Then, there will be a second comment period, which is currently open now, so if you go to the front page of the ICANN website, you'll find all these documents, IIC documents and links through to the consultation webpage.

We're currently running a second comment period that closes on the 20th of October. That will close and we'll produce documents before the Cairo meeting and there will be a special session on the Thursday, the 7th November in Cairo, where we'll discuss those new documents. So if you can possibly make it to the ICANN Cairo meeting, there will be another opportunity to put forward your views, to see where we're going with the process. I'll also make sure there's remote participation so if you're out there on the Internet, and you can't come to Cairo, I'll make sure there's a element there as well. There'll be a third comment period after we've tied in all the feedback from the Cairo meeting. Then the idea is that there will be an implementation plan provided to the Board in time for the Mexico City meeting, which is on 1-2 March. How do you make

your voice heard? Well, you speak up as many of you have today at one of these meetings.

We may have additional meetings if that's needed. It's not been decided yet. But you stand up, you pick up the microphone, and we register them, we'll put through summaries. The PSC have heard all of your comments. That's one way of doing it. The public comment forum is a much more interactive forum than ICANN usually runs in an effort to try and get people to interact more on these precise points. So, if you have a look on the ICANN website, which should be fairly self explanatory. I've got some guidelines that should help people talk through it, but basically that's a very interactive way of saying what you think about each individual point. We'll have a third comment period and then we'll run the same process again, so there're still another two elements where you can feed in comments into this.

There is an IIC newsletter where almost anything that happens of any great importance, I send out a newsletter to e-mail to you. I've got something like 650 people subscribed so far. If you stick your business cards in the box outside, we'll make sure that we sign you up to that. The IIC web pages contain basically everything with regard to this, so it's icann.org/jpa/iic, but it's also the main slot on the ICANN front page at the moment.

We have posted the audio of this meeting. We posted the video of the Montevideo meetings and the Geneva meetings. Everything you need to know about it will be on those pages, and I just wanted to stress that the consultation is led by you. The PSC

does take your feedback and revises the documents, but it is you that decides where this ends up. So if you're not happy about it, use one of these mechanisms to make it heard and that will have an impact. I wanted to thank the interns that come from George Washington University. They're on the Internet and politics course and they are Heung Sung Chung, Kevin Tierney and Jason Bowman, so I just wanted to thank them for helping us out.

PETER DENGATE THRUSH: Do you have the timeline?

KIEREN MCCARTHY, ICANN GENERAL MANAGER OF PUBLIC PARTICIPATION:
The timeline I put up previously with regard to Cairo and Mexico. If anyone has any questions, there's an e-mail address iic@icann.org -- iic@icann.org and that goes to me and I'll answer whatever requests you have.

PETER DENGATE THRUSH: Thanks Kieren, I'd just like to pay tribute to another member of the President Strategy Committee, who's not here. The African region is represented by Pierre Dandjinou, a network engineer from Senegal. So that completes the representation from each of the regions. Pierre's been a very valuable contributor to the process and apologizes for not being here. Now, that was the end of the speaking order. We've taken questions. Would you like us to try and answer some of those and if so, what order would you like them answered in? Before we take the latter, are there any people who have now decided they really do want to say something?

JOHN ZUTKY: I want to ask very, very high level questions, which is what is the significance of the JPA and it's why does that even matter and it seems that a time-based milestone seems kind of arbitrary in a lot of ways and if you're looking for institutional confidence, arbitrarily necessary to do something that, ah, everyone is looking for. Very high level, what is the real significance of the expiration of the JPA?

PETER DENGATE THRUSH : There's probably a number of views about that depending on which side of it you're on the legal reality is that we could terminate it by giving 120 days notice right now either party could do that. It's going to come to end anyway so on one view of things it's really very little significance. What we've decided to do though is we've decided to treat it as a milestone, because we want institutional confidence in ICANN, and this seems to be a very useful trigger for us to say, let's stop at this point and say what are we doing right, what do we need to fix, so that's the short answer.

UNIDENTIFIED MAN: Why make that the deadline rather than actual institutional [INAUDIBLE]. So, I guess that's my question about the date -- what makes that date significant?

PETER DENGATE THRUSH: There's really nothing significant about that date and we've been trying to build institutional confidence in ICANN since 1998 and I've done it, you know, every year, so that there is really in my view nothing terribly significant about-

- about that date, but why not use it and let's work out consultation programs like this around them, Paul.

PAUL TWOMEY: You raised the issue about metrics as a specific point. We've been building, with increasing granularity, metrics into the strategic plan and operational plan and budget of ICANN for the last three years. I'm very happy to keep talking to you about what more would you like to see in that. I know the members of the board are pushing for this coming year's operational plan and strategic plan to have more details of metrics in them. Reporting against that, we have a dashboard up now and we need to expand what's in the dashboard with real time data about operational aspects. So your basic concept, you talked about accountability, with metrics is something that's been to pick up this point that Peter says, building confidence over time is something, we've been working on for at least three years. That's an indication of, to a degree, that the JPA date doesn't matter, it's actually trying to get more of this information for people like yourselves to keep on with their work.

STEVEN DEERHEAD(?): Speaking as a private individual. I recognize from your thousand plus contracts you've signed, the need to be a US corporation, but I'm not convinced and I suspect others are not convinced that California 501C is the optimum vehicle. I think in the interest of confidence building, I'd be most curious to see at some point the thought process that led you back around what other options you considered in terms of US-based charters that are not perhaps California based; what you guys looked at, what were the pros and cons, and what led you back to where you are. I

speak as a non-lawyer, but I'm curious to know why you ended back up under California which has public initiative constitutional change process.

PETER: Steve, good question. I think we've said a couple of times, we are going to publish more detailed analysis of what we see as the problems, and then what we've done about looking at the solutions. That is coming for part of the public consultation and we've uncovered some quite interesting possibilities in the US legal structure. For example, I need to decide that in the end for reasons that we'll give that are not appropriate.

JEFF NEUMAN, NEUSTAR: Metrics are important, but also penalties or repercussions are just as if not more important. It's not just accountability of the board, but accountability of the staff as well. For example, if there is a certain report like an economic study that's promised to the community in March and it's now October, we still don't have it. Sure, there's good reasons for it. But the community just doesn't understand or know why that's not out, or for an example an RFP, that's promised in July, that's not out till October or later. Again, these are all things that I'm sure there are good reasons for, and you need to communicate those decisions by the staff, not just decisions by the Board. On accountability, what is the community supposed to do if they're expecting something and that doesn't come, do they go to an ombudsman? Do I go as Jeff Neuman to the ombudsman and say 'hey, it's no fair they don't have this paper out'? What kind of capability are you doing at that level as well?

PETER DENGATE THRUSH: I think we continue with the public floggings of the CEO at meetings, as generally tends to happen. Paul, a slightly more serious response?

PAUL TWOMEY: They're good questions, and they're fair enough comments. One of the things we're tending to forget in this whole discussion about accountability is that there's a Board with very clear fiduciary obligations. We had outlined that in December, a 25-page document of the existing legal accountability processes. The bottom line is go speak to the Board or kick my ass, right, that's what it gets down to alright.

[LAUGHS]. Let's not get carried away with what other additional things, I mean we've got a whole set of accountabilities now. It's a fair enough point to go talk to the board. That's a key part of the process and you actually are part of a constituency that elects a board member, so you've got a very direct way of doing it.

JEFF NEUMAN, NEUSTAR: A board's a board, you know? Neustar has a board as well, but I have SLA's that I live up to. If I don't live up to those SLAs as a registry, I pay real money. So I have a board, they'll kick our butt too, but we have SLAs.

PAUL TWOMEY: And I've got SLAs in my performance agreement. If I don't reach it, they'll take money off me too and they've just done it recently, so it's exactly the same process.

JEFF NEUMAN, NEUSTAR: And that's good -- that's good to hear, I mean that it's not good that—

CROWD : [LAUGHS].

PETER : Alright.

JEFF NEUMAN, NEUSTAR: It should be published. That's the kind of thing, if not the specific details, but those type of measures, that the communities should know. There are repercussions if staff or whoever doesn't meet up to the expectations.

PETER DENGATE THRUSH: Okay, an additional strand to the accountability bundle.

MARILYN CADE: I heard in Jeff's statement and question, a different question. That is that if a decision is going to be based on information and reports that are committed and there are dependencies later. Was your question how the community can change the rest of the date until they get the data that's been committed? Or were we talking about sanctions? Because sanctions do not necessarily change behavior. In some cases, they do and some cases they don't. But we're trying to make informed decisions, so could you go back to your question for just a minute?

JEFF NEUMAN, NEUSTAR: It was two questions, two points. One is there are certain decisions and the accountability measures that will not just metrics, but also some sort of repercussion. But your point is one that I didn't make as eloquently, but you're absolutely right. That if there are dependencies like in the RFP, like in the economic

study which will need to be considered by the public, which may affect an RFP, that there should be enough time to absorb those to comment on those. And if it results in delay, unfortunately, we need to make informed decisions.

PETER DENGATE THRUSH: I want to close this down now by asking the members of the PSC to just respond briefly to one or two of the key questions that were asked. I've asked them to see if they can focus on the strategic rather than technical, and we're going to ask Jean-Jacques Subrenat to begin, and then Raimundo Beca.

JEAN-JACQUES SUBRENAT: It was about the involvement of the business community. Point taken, it's true that we have to elaborate some of the rules and also the mechanisms for that. Business is one important part, it's not the whole of the community, but it is an important part of that. So we do need to improve business user input to the policy development process and the organization in general, that will be noted.

RAIMUNDO BECA: I would like to address to the community members here and those that are not here to a double invitation. An invitation to participate in two process which are very key for the organization. The first process is a strategic plan. The strategic plan now is worked during this first half of the fiscal year. So from here to December, we have to redraft the key initiatives of the organization for the three years and the priority to give them to them. Although, in my opinion, this is the time to address your concerns on the strategic issues. The second invitation is regarding the principles of

management. The principles of management have been written and it's a commitment. This is a commitment of the organization and obviously this cannot be a list of principles in marble that we'll never see again. We'll have to make them live to make me know if the management has not been following those. The committee has to redraft those principles and I think it was only in Delhi that we approved those principles. So, they are very, very young in the drafting. But we should have those principles as a living rules of the commitment of the management and we revisit it and put some metrics there if they're good or not or whatever.

PETER DENGATE THRUSH: Thanks, I particularly endorse the call to take part in the strategic planning process of ICANN. There's a six-month period in which that input is called for from the entire community and then we spend the next six months turning that into another business plan and a budget. That's the time when you've got issues and you want us to be spending greater attention in any particular area, that's the time to be arguing for funding for that. You are the shareholders, you are the people that need to come to these meetings and make these requests. Marilyn, nothing you wanted to respond to? Okay, then we should record that.

CROWD : [LAUGHS].

PETER DENGATE THRUSH : Thank you, and so Paul, that gives you a chance to pick out a couple of things that you particularly wanted to respond to.

PAUL TWOMEY: I'd like to respond to two somewhat operational themes that got picked up by a quite a number of questions. The first one is about issues around compliance and registrar accreditation. I'm glad Jon Nevett's coming back into the room. I think the points about the registration accreditation process are really good points to be made and it's certainly worth looking into the actual mechanisms for accrediting. I can say that one of the things I'm particularly concerned about and we are staffing for is an expectation that we will increasingly have registrars and others who are not from OECD countries or western countries, or whatever example you want to use.

A key part of that is going to be about ensuring ethnic and linguistic mix in the staff and a cultural engagement with people, so they understand what their obligations are. The part of the world that Peter and I come from, we understand that contract enforcement can be a little different, because there are different cultural perspectives about what contracts equal. And therefore that's a key part that factors into registrar accreditation processes, because as you know, that's an important point of actually saying quite clearly, here's the high jump bar. And maybe we should look at that high jump bar, the issue of notification of abuse. I think it's fairly open and we're fairly clear, but we're not getting the message out enough. We'll keep reinforcing that about how to give us notice about abuse, so that things can be investigated. I think also on the review process on the registrar accreditation agreement, we are at one stage and there's a draft of a discussion took place, which is up now for comment.

It's important that we also flag broadly where we're trying to go with that discussion and that might be a question of trenches. I mean we may be getting something now, then saying okay, we've achieved that what we need in three other areas we need to work on, let's spend the next twelve months working on these three other areas. The idea of maintaining a road map for those sort of things we think are really important to include and things like the registrar accreditation agreement is important. And keeping a dialogue so that we actually see and that we try to solidify those things that are achieved in discussion. People might be aware that if you're trying to change a thousand contracts that are not at their expiry date, you just can't simply unilaterally change this clause. It doesn't work that way. So you actually have to get a thousand parties to agree that they're going to change even though it's not the expiry date of the contract.

So, we want to try to take that step by step. The other thing, Chairman, that I would just make a note about. We potentially are at an unfortunate timing with the new gTLD process, for the purposes of this discussion. We expect to have the application process started at the end of the second quarter next year (2009). One of the key instruments, of course, around the whole implementation process is the RFP process. We have not yet had a chance to put the first draft of that out for discussion. That will come out shortly before Cairo. We expect to take months of discussion around the practical implementation issues. A lot of the issues raised by the intellectual property interests today need to be heard again and discussed, and specifically seen in the context of this draft implementation program. So it's not necessarily a question of these things of being

ignored at all. Nor do we necessarily think in the first draft, we'll have it all right. But I would really ask you to be engaged specifically in that process as we go through the RFP process. So, in terms of holding this session here today, it's just a bit of an unfortunate timing aspect, just before the detail comes out and we can have another engaged discussion around the detail.

PETER DENGATE THRUSH: Thank you, Paul. Well, that brings to a close this consultation. Thank you all very much for coming. We knew that when we came to Washington, we were going to get a intelligent, articulate, well read, good looking audience, and we weren't at all disappointed. So please give yourselves a huge clap for the contributions that you've made.