BEIJING – BOARD with Registries Stakeholder Group
Tuesday, April 09, 2013 – 13:00 to 14:00
ICANN – Beijing, People's Republic of China

KEITH DRAZEK: All right. Good afternoon, everybody. I'm Keith Drazek, chair of the
                          registry stakeholder group. And I just want to take the opportunity to
                          welcome everybody and thank everyone for participating, particularly
                          the members of the ICANN board. We, the registry stakeholder group,
                          very much look forward to these sessions and appreciate the time that
                          you make for us on your busy agendas. Again, thank you very much for
                          this.

                          I think in the spirit of the conversations that the board had with the
                          GNSO earlier in the week, we're going to get to the point and get to our
                          agenda. But before I do that, maybe I could just hand it over to Steve
                          for any comments.

STEVE CROCKER: Thank you, Keith. So on behalf of the ICANN board, we're pleased to be
                          here. We don't view this as squeezing in. We view this as a first-order
                          priority. Although it is often built as a kind of two-way exchange, we are
                          a lot more interested in hearing from you guys. So we're in heavy-duty
                          listening mode, if you will.

                          And as always, we want these to be substantive, direct and informal and
                          not -- with as little posturing as possible.

                          So with that, let's just jump right in.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

KEITH DRAZEK: Thanks very much, Steve.

                           Maybe what we ought to do for the benefit of everybody in the room is
                           to have the registry stakeholder group members introduce themselves
                           here at the table.

PAUL DIAZ: Paul Diaz, from Public Interest Registry, alternate chair.

JEFF NEUMAN: Jeff Neuman from NeuStar, council member.

JONATHAN ROBINSON: Jonathan Robinson from Afilias, council member.

CHING CHIAO: Ching Chiao, DotAsia, council rep.

BILL GRAHAM: Bill Graham, board member.

BRUCE TONKIN: Bruce Tonkin, board member, elected by the contracted parties house.

KEITH DRAZEK: Thank you very much.

And, Bruce, you will be happy to know that the registry stakeholder group unanimously confirmed our vote for your continuation in that role this morning.

[Applause]

STEVE CROCKER: Speaking as chair, I have had the pleasure of working closely with Bruce. He has two extremely important roles on the board. He is vice chair, and he is chair of the Board Governance Committee which is the behind-the-scenes operation that helps put structure on the rest of the board. And it's incredible working with him. He's very, very knowledgeable and got an incredible touch of balancing things.

So the success that the board has is very much due to Bruce's -- Everybody works very hard. It is a good team. But Bruce's role is really quite incredible. So I couldn't be happier speaking personally. It takes a lot to make the board work well, and Bruce has been just amazing. Thank you.

KEITH DRAZEK: Again, I'm Keith Drazek, chair of the registry stakeholder group. We have four agenda items we submitted to the board for our session. A couple of them I think are fairly closely related at this point. I think they are on the screen. I'm going to talk about the recently proposed changes to the new gTLD registry agreement, provide the board an update on developments around that.

I think Number 3 -- bullet number 3 is closely related to Number 1. So we will do maybe a little bit of reordering. And talking about some concerns that we have as a stakeholder group around ICANN's ongoing commitment to the bottoms-up policy development process and the multistakeholder model.

We will talk a little bit about policy versus implementation and then, finally, discuss the upcoming or planned GNSO review.

So with that, I will just go ahead and get right into it. And during our stakeholder group meeting, we talked about this in preparation for this session. We will have a variety of voices from registry stakeholder group members as well as new TLD applicants that are a part of our observer group, the NTAG, that will sort of offer some views.

I think most everybody knows sort of where we are, but I want to give a little bit of background as an introduction of how we got here.

Around the new gTLD registry agreement, as included in the applicant guidebook, there was -- specifically around some language around unilateral right to amend or an amendment process for the board to enable the board to -- in urgent cases where DNS security and stability were impacted to implement temporary policies that would be in place without having to necessarily first go through a PDP.

On February 5th, ICANN staff posted a revised version of the applicant guidebook that included a registry agreement clause, 7.6C, that effectively established a unilateral right to amend clause for the board that caused a lot of concerns among the registries.

It was a language -- the original language in the guidebook had been agreed to through a community -- a bottoms-up community process and finalized in 2010. It had been a negotiation. A compromise was reached. And a lot of the new TLD -- well, all of the new TLD applicants relied on that when deciding or making a determination to submit an application.

On February 5th, a new language completely reopened that conversation, the language, and effectively overturned what had been developed through a bottoms-up process from the community and in our view was an ICANN organizational top-down decision or implementation of language that was completely new.

That's the context. That's a little bit of the background. Let's catch us up to where we are today.

Over the last few months, there have been ongoing community interaction, specifically around this topic. On March 4th, the registry stakeholder group hosted a community-wide teleconference. It was open to anybody that wanted to participate.

And I have to take a moment to thank Fadi and the ICANN staff. And I think several board members joined that teleconference. Fadi actually spent 90 minutes with us on that call. And he was overseas. I think he was in the Middle East. I don't remember exactly where, but he was well around the world. I do want to note that Fadi spent some time with us on that call.

He spent further time with us on our stakeholder group call, the registry stakeholder group call two weeks ago. He spent the full two hours with

us. I just want to note before we go on, we value that interaction quite a bit. We find it refreshing.

And I just want to note that I think it was -- it is a very positive development that we're able to have an ICANN CEO so closely engaged with us on an issue that we care so much about.

Having said that, there is -- we still have some pretty significant concerns about the language as it exists today, although I think I will speak for many in the stakeholder group that it is a lot better now than it was. But we have some pretty significant concerns about the process and the timing. And that sort of gets us to bullet Number 3 on our agenda, talking about the commitment to the bottoms-up process.

So maybe I'll stop there and open it up and see if there is any of the other registry stakeholder group members or NTAG members that would like to sort of jump in at this point on any of these topics. I certainly want to make sure that the ICANN board members, you know, have an opportunity to engage as well. Any comments or feedback or thoughts, we would certainly welcome that. So I will stop there.

Don't be bashful.

[Laughter]

All right, Bret, please, thank you.

BRET FAUSETT: Things are spread out. So I am not sure who I am talking to, so I will stand up and look at the entire room.

Yesterday in one of our meetings, Chuck Gomes from VeriSign made some very strong comments about his unhappiness with the process that brought us to renegotiating the registry agreement that was part of the guidebook.

I want to let you know that he wasn't a lone voice. That was a feeling that has widespread support in the registry community and in the NTAG community.

And there is a process point that Chuck was making and I'm going to make right now. There was also a substantive engagement that we've been going through with Fadi and the legal staff about renegotiating that. And we're doing that in good faith, and we are moving that forward. And I think we are going to reach resolution on it.

But I think it is important now to step back and think about how we got here.

And one of the things I've heard from ICANN is that we had to do this because ICANN was under great pressure. And that's a constant state. Those of us who have been around ICANN since the beginning know that there are participants in this process. I don't know. Sometimes they're lobbyists. Sometimes they're some segments of law enforcement. Sometimes they're some governments. And their sole job is to push you in directions you don't want to go.

And they will never be happy with wherever we find ourselves.

So we have to know that when we've closed issues, that they're closed and that you're going to get pressure. You're going to hear more pressure. But at some point, you've got to know that you can never

satisfy these people. And once we've given them their due, consider their issues, made accommodations as we had with the registry agreement -- we made many accommodations to reach the agreement that was in last year's guidebook. But once we've done that, it's done.

And especially for a process that is so new, maybe we could revisit things in two or three years.

But we just did this. I remember having some of the conversations I've had here this week last year. So we need a process that closes things. And we can't have an ICANN that changes things so quickly.

[Applause]

KEITH DRAZEK: Thanks, Bret. Thank you.

Anyone else? Jeff. Please.

JEFF NEUMAN: Thanks. Jeff Neuman.

The question I have is, you know, we talked about -- or Keith mentioned in the opening there is a scheduled meeting on April 20th, a board meeting, to possibly review or approve the new gTLD agreements. That's one of the hopes for that. At least that was expressed by the ICANN CEO. Although I just looked at an agenda for April 11th that's also on the New gTLD Program Committee meeting agenda as well. I don't know if it is approval or just a discussion.

I guess one of the things -- this is not an universally held view. There are some registries that disagree with what I'm about to say. But it seems a lot of them agree.

We feel pressure to negotiate an agreement by April 20th because it is our sense, our feeling, that the board may approve an agreement whether or not we as registries agree with it.

I guess one of the questions I have for the board, or maybe it is a comment, is a comment I raised yesterday during the session. If this team that the registries are setting up to have discussions with the ICANN staff on the agreement, if the team is not comfortable moving ahead with the registry agreement, what will the board do on April 20th?

KEITH DRAZEK: And this is Keith. Maybe I could just jump in real quick to add a question, piling on what Jeff said or leveraging what Jeff said.

I think, you know, we as the registries saw the most recent red line of the proposed registry agreement or the draft registry agreement, whatever we're calling it. I think it was posted on April 1st. We have had very little time to consider, to review, to engage our legal teams as necessary to engage.

There is -- there are developments taking place as we speak in terms of, you know, updating of process, updating of language, you know, negotiations in effect ongoing now.

We had a session this morning from 7:00 a.m. to 9:00 a.m. This is still very much in play.

So whether we're talking about April 20th, which is absolutely -- Jeff is absolutely correct, that's the date that we've been told the board will consider this and potentially vote on it, the target for meeting the P.R. date of April 23rd for the event that's planned in New York City with the desire of, you know, sort of being able to have a signing ceremony for registrars on the RAA and registries on the new registry agreement, my question is: How will ICANN staff and the ICANN board determine that there is sufficient support?

How will ICANN be able to say we have the buy-in, we have consensus from the registries, the new TLD applicants to move this forward? It is unclear to me how we arrive at that point to make sure that everybody's on the same page, at least enough people are on the same page. What's that threshold? And how is it reached?

STEVE CROCKER: So the board hasn't taken a decision. It hasn't been presented to us. One of the things that we have been working assiduously on over a period of time is to make sure that by the time something does come to the board that the homework has been done, the discussions have been had, that all of the documentation is in place so that we're not trying to have a brand-new discussion in the middle of a board meeting.

And that's a discipline question. And necessarily it means that when something does come that is not yet ready in contrast with past behavior where we would then go into extended discussion and try to

sort it out on the spot, I've tried to set a course of saying, "We are actually going to push back and say not ready" and defer it or reschedule it or whatever.

In the present situation, we also have to deal with the fact that we have a kind of parallel structure. We have a New gTLD Committee that Cherine Chalaby chairs and has the full power of the board. This is our super-wide bright line to prevent not only conflicts of interest but appearances of conflicts of interest, potential conflicts of interest, appearances of potential conflict of interest, et cetera, et cetera.

Cherine, do you want to say more?

CHERINE CHALABY: Yes. As to the question about tomorrow's item on the agenda, it isn't for decision, okay? It is just for an update.

As to the 20th of April, we knew that in talking with Fadi, management, that there is a meeting in New York on the 23rd. And in anticipation of a possibility of signing any agreement, we've provisionally set a board meeting -- a committee meeting before the 23rd. So we are going to take our cue from the CEO and see where we are.

There are negotiating teams there. And we are going to ask our CEO where we are. We are not going to go into a meeting and just vote blindly on a registry agreement.

KEITH DRAZEK: Thank you, Steve, and thank you, Cherine.

I saw Chris had his hand up. I saw Krista, Erika and Antony.

CHRIS DISSPAIN: Thanks. Thanks, Keith.

To the specific questions or the specific hypothetical of what would the board do, what would you do after what we did is the logical question for me to ask you back. I mean, we can't answer the question about what we are going to do. Have no idea.

In respect to Keith's question about how do you measure level of support, how would you recommend that we measure level of support? Do you have any thoughts about what would be acceptable? Is one large registry standing out against the contract acceptable or not? Is it 50%? What do you think?

KEITH DRAZEK: Okay. Thanks, Chris. Why don't I open that up to see if anybody would like to respond.

Chuck?

CHUCK GOMES: Just one quick response there, Chris. This is Chuck Gomes. The registries that are applying for new gTLDs have the opportunity to enter into individual negotiations if they so choose. So even if one registry didn't support what the broader registry group did, that could still happen.

KEITH DRAZEK: Thanks, Chuck.

I think that's absolutely right, although it may be that ICANN on certain terms, once there is a base agreement that's been approved by the board, is unwilling to negotiate certain points.

And, Chris, I think to answer your question about how would I recommend or how would I suggest you determine that level of support, I think traditionally in the ICANN world that's done through a public comment period.

Now, I'm not -- I'm not sitting here saying we must have a public comment period on that particular -- on whatever comes out. I think we need to talk that through and think it through. That's typically how ICANN determines levels of support around decisions.

Anyone else on that? Okay.

Okay. In the queue, let's go to Erika and then Krista and then Anthony.

ERIKA MANN: I wonder if you can describe briefly the main conflicts you have with the agreement and either as a group or if you even ideally can more lay out -- you don't have to be specific about the companies behind, but where the conflicts of interest are even within your group, I think this would make our judgments much easier.

KEITH DRAZEK: Thank you, Erika. One moment, please. Thanks for the question. This morning, as I mentioned at the outset, we had a meeting of, I think it

was, probably 10 or 12 representatives from registries and new TLD applicants that actually met with ICANN staff, Fadi, the legal team this morning, and sort of walked through where we see the remaining issues between -- well, I guess since we saw the latest red line on April 1st, right?

So, you know, we've taken a look at that and we came up with a list of -- I think it was, like, nine or ten items where we needed to at least have conversations.

I wouldn't say all nine or ten of those are major obstacles or, you know, something that we can't get past through negotiations and discussion.

I think there are still some fairly substantial concerns about the amendment process. I think in my view -- and I certainly welcome the view of others -- is the board amendment process which first was, you know, basically, in our view a unilateral right to amend back on February 5th; was in the interim called the public interest amendment process and is now being called the extraordinary amendment process. I think that's probably the biggest remaining concern or obstacle, something that we still need to spend a lot of time on.

And I think at the end of the day where companies will need to go back and discuss with legal teams who may not be here to really get to the bottom of it and determine whether it is supportable or not.

So let me now hand it over to Jeff.

JEFF NEUMAN: Thanks. I just want to echo about the meeting we had this morning. It was not just the NTAG applicants and the registry stakeholder group representatives, but we did have some representatives of the Brand Registry Group, the BRG. So that was actually a positive step since they're not oftentimes present in the just general NTAG group.

So, again, they couldn't commit on behalf of their group but at least were present to have their issues heard.

So there were some issues -- and I will just kind of go over them but not in any kind of detail. I also do want to emphasize that I believe that -- I want to thank ICANN staff because they seem very willing to work through all of these issues. Some of them, they've had the same discussions with the registrars. But since we weren't part of that, we're now just getting the background. And I want to thank Fadi and Cyrus and the legal team of ICANN for being with us during that.

So one of the issues, as Keith said, is the whole amendment process, how do we amend the agreement either in terms of the extraordinary amendment process or a newer one that we found out about today which is more of a negotiation of commercial terms, I guess is sort of how you would classify that. The second issue is -- again, these aren't necessarily in order but registries are still grappling with the specification that requires only the use of 2013 accredited registrars. We certainly understand where ICANN stands on this issue but it's something that we're still dealing with.

A third issue is on -- some of these are kind of legalistic so I'll apologize, but there's a subcontracting provision, change of control, which the way it's drafted, it makes it difficult for certain registries that outsource

certain functions or in cases of acquisitions. We'll e-mail this list to the board, if they'd like. And I know ICANN staff has a copy of this.

One other one I think is actually pretty substantial is the new PIC DRP and we may spend a couple of minutes on this. I know there's some people that might want to address this from the crowd, but this is the dispute resolution policy. If there's a third party that has a complaint about a violation of a PIC spec. And this is actually a really big concern from us. I know that the board has heard from the ALAC on this issue, that they don't believe it's strong enough. We actually feel quite the opposite. This is actually something to us that threatens the whole fabric of the ICANN process, in our view. That we actually believe that this is an issue of contract enforcement and should really be handled by ICANN staff and not handled by any third party that for any reason wants to file any kind of complaint against a registry. I mean, for those of us that live in the United States, the amount of frivolous lawsuits that occur in the United States is tremendous. The cost of fighting those is tremendous. And if we just have a dispute process that's open to anyone that doesn't have to show some material harm, it's just kind of ludicrous for us to even imagine. And I know that there's others that definitely want to talk about this, but we feel as registries that this should really be the job of ICANN staff. That's why we have a contract. And ICANN staff should not push the enforcement of that to the community when we believe that this is really a bilateral agreement. I'll stop and take questions.

KEITH DRAZEK: That's great, Jeff. Thank you. Okay. So I had a queue that I don't want to lose, but I also want to make sure that we address Erika's question. So if there are any specific responses to Erika's question about what are the biggest obstacles or what are the biggest issues, let's address those now before we get back to the queue. So Jordyn? Oh, sorry, did I miss somebody? Oh, Bertrand. Thank you.

BERTRAND DE LA CHAPELLE: Yeah, Bertrand de la Chapelle. Just -- just a response to Jeff's comment, it turns out that this morning we had the interaction with at-large and this topic emerged in the discussion. I think there's a misunderstanding between two different things. From what I got from at-large -- or ALAC, the idea is not to remove the harm provision in the dispute resolution mechanism because I think they do understand exactly what you said which is that it could open the door to a tremendous amount of lawsuits and procedures. The thing was to make a distinction with the other aspect which is part of its normal compliance function ICANN has the duty and the responsibility to verify that those PICs will be followed and respected. And so what is at stake is more to try to see how potential concerns from interested parties in the community would not necessarily allege material harm. It can be a government who has a concern about the behavior of one actor. It can be an association that is not impacted could channel through an appropriate mechanism to ICANN this type of concern so that in the performance of their compliance function of verification ICANN takes that into account potentially to see whether there is indeed respect of the PICs. That's the way I understand how the problem should be addressed, i.e.,

separating the two dimensions. I don't know if it answers what you asked.

JEFF NEUMAN: I mean, if this is a matter of whether ICANN itself takes it on as a compliance function I think we would support that -- I can't speak for everyone, but I would support that completely and just remove the whole third party brings an action against the registry directly. I think that the whole PIC resolution policy is fraught with problems. I think it should be completely an ICANN compliance function. So if ICANN wants to itself accept complaints from anybody, whether they allege harm or not, and then ICANN conducts its own investigation and if ICANN finds out that there is yes, it looks like there's a violation of the PIC spec, then ICANN comes to the registry and just like any kind of violation of any provision in the agreement, that gets worked out in that manner. But to have -- to just outsource it all to a third party, I mean, I could tell you just for speaking of defending objections filed by third parties, the cost that a third party has associated with it. Even if you say the loser pays, there's still administrative costs which can never be recovered. And it's a huge, huge burden for the registries.

KEITH DRAZEK: Thanks, Jeff. I think Steve wanted to comment.

STEVE CROCKER: Yep. So all of this sounds reasonable, but we need to avoid having a parallel negotiation session here. So there's a limit to how far -- I mean,

it's fine to get these ideas out, but let's all have a common understanding, this isn't where the decision process is being taken.

KEITH DRAZEK: Yeah, understood. Thanks, Steve. And I know we only have 25 minutes left. The board has a hard stop at 2:00. So let's get back to the queue. Right now I have Krista and then Antony. Is there anybody else that would like to get in the queue at this point? Okay, Krista, go ahead.

KRISTA PAPAC: Thanks, Keith. Actually Jeff pretty much made my point. I just wanted to make sure that the board was clear on the fact that the discussions that we're having with ICANN, the discussions -- there we go. Okay, the discussions we're having with ICANN include or -- are on behalf of applicants rather than -- and some registries are applicants, but I just thought it was important to make sure they knew we're trying to get as many people who have diverse interests involved in this conversation.

KEITH DRAZEK: Okay. Thanks, Krista. Is Antony still here? No, he left. Okay. We can come back to him afterwards. Okay. Any other comments or questions at this point? Any questions from the board? Jordyn, anything?

JORDYN BUCHANAN: I have a comment on the next topic.

KEITH DRAZEK: All right, sounds good. Let me just wrap up the discussion today with you all on the registry agreement to say that the registry stakeholder group and the members of the NTAG are 100% committed to working collaboratively and constructively with ICANN staff to move this forward. None of us want to delay this. We want this to move forward. But when it comes to, you know, finalizing a contract that will have a very long life, we're, you know -- we're concerned about the pressure that we feel like we're under, whether that's real or imagined. We're certainly feeling it. But I do want to say that we're committed to working closely with the ICANN staff and legal team to move this forward in a constructive fashion. And to really get this thing done so we can get forward, have the new gTLDs move forward down the path, you know. A lot of the applicants are very anxious, understandably so, and we want this to move forward quickly. So you have our commitment on that. So let's move to the next item. Jordyn.

JORDYN BUCHANAN: Wow, that's one way to get in the front of the queue, I guess. So yeah, I do -- and by the next topic are we going out of order now and talking about the commitment to the bottom-up process?

KEITH DRAZEK: Up to you. Go ahead.

JORDYN BUCHANAN: Sure.

[Laughter]

So I just want to reflect briefly -- like, I think we've seen a few events recently and, you know, we've talked about a lot of them and I don't want to belabor any individual point, but whether it be the straw man on the rights protection mechanisms, this new provision for initially unilateral and then eventually extraordinary amendment to the contract, the WHOIS expert group which has been reformulated, so I think a lot of these cases we've eventually worked through some of the issues that we're discussing here. But often at a lot of pain and cost to the organization, and I think the consistent pattern that we see throughout this is that there are attempts, and often well meaning attempts, to work through issues that rightfully belong as part of the -- the Policy Development Process, through other mechanisms. And, you know, people have, I think, in some cases legitimate concerns about whether the Policy Development Process is the best process in the world or not, but at the heart of ICANN and our multistakeholder bottom-up process, the living, breathing heart of that is the Policy Development Process. And if we either circumvent that process or in the case of the unilateral right to amend arguably damage that process by giving people a way to work around it in the contracts themselves, I think we do -- we do an incredible disservice to that sort of core principle of ICANN. And I just -- I just want to reflect that, you know, instead of spending all this time sort of in furor around all these ways of working around the Policy Development Process, I think we as a community really need to double down on looking at the Policy Development Process, see if there's things about it that we should fix and spend our time making the Policy Development Process work as well as possible as opposed to, you know, thinking about extraordinary amendment provisions and so on. Let's get the tool that we've had and

it's embodied in the bylaws, embodied -- always been part of the history of ICANN, it's what makes me personally passionate about wanting to participate in ICANN, and I certainly know that, you know, one of the core reasons that Google's always supported ICANN is that this process works. So we really need to work together to make sure that's what happens going forward.

KEITH DRAZEK: Thank you very much, Jordyn.

MIKE PALAGE: -- investing and believing in the bottom-up Policy Development Process. A little history lesson I think is important. The most successful policy or PDP I think that ICANN has produced in its 14-year history is probably the UDRP. You can ask anyone that there's universal agreement, that is something that worked. And what's important about that is that came from an expert group originally from WIPO. The world intellectual property report, a group of experts, prepared a report. That report was then given to the old DNSO working group A, and that working group A then made refinements and went into implementation. So the reason I'm trying to give this history listen is there was a lot of concerns in the community regarding the WHOIS directory services and how originally there was talk about how that work would be hard coded into a potential registry agreement. I think most of the people in the registry group have been encouraged by what we've heard here in Beijing, that that group will view its work going through to PDP and not necessarily going fast forward into the registry contract. So again, I just wanted to provide that little history lesson of one of ICANN's greatest successes

and just again echo the comments of what Jordan was saying about those people that have been here for 14 years trying to make the process work.

KEITH DRAZEK: Great, thanks you very much, Mike. Jeff, you wanted to get in the queue?

JEFF NEUMAN: Yes, thanks.   One of the things we discussed at the GNSO council meeting with the board and one thing I just want to reiterate for everyone here, we discussed a notion that if the board's ever faced with advice that, I don't want to say is inconsistent with but is not -- I'll say it differently, is not consistent with advice given from the GNSO, what we look for -- what we look for as the GNSO community is a commitment from the board to bring that issue back to the GNSO.   Doesn't necessarily have to be a PDP. Not all of our policy is made through PDPs. That is -- you know, there's other ways to develop policy without going through the -- the capital PDP. And so a commitment from the board, from the staff, that if there's advice given, let's say from the GAC or from the ALAC, that if that somehow seems inconsistent with or not consistent with advice given from the GNSO community, that there's a commitment from the board to bring that back. And I say that at an interesting time because there's lots of discussions right now going on of advice that may be provided by the GAC on new gTLDs. Some of that advice, I will say, I believe does contradict or is certainly not consistent with advice that the GNSO community gave to the board back in 19 -- in 19 -- sorry, in 2008. Seems like 1998. But in 2008. So if there's -- you

know, there's discussions of categories of strings and, you know, lots of these things were addressed by the GNSO back in 2007, 2008. If there's advice from the GAC and you go back and you see that that advice may not be consistent with the previous advice given from the GNSO, the community believes that should somehow -- we can figure out how -- but that should come back to the GNSO.

KEITH DRAZEK: Thanks very much, Jeff. I had Bertrand in the queue. Chris, did you want to respond directly to this? Okay. Go ahead.

CHRIS DISSPAIN: I just want to ask a question. Does that mean the current situation of the brand holders who are seeking to have a separate contract, you're not in favor of that because it would be categorizing them as a separate group, because my understanding is they currently are saying they should have different terms in their contracts and so on and so forth. Because they're a different category. So I'm wondering how that fits with the -- what you've just said.

JEFF NEUMAN: So to clear the record, no, I'm not against the brands having a separate contract. But that's my personal. But what I'm saying is, if there is a separate contract then that should -- you know, that should be -- no, actually it's not even a contract issue. The issue is that if something goes against advice -- and I'm not going to decide what is or is not here -- but if something seems to go against GNSO advice, then at that point the GNSO should somehow be involved. We can discuss and argue as to

whether a brand contract is or is not inconsistent. You're saying it is. I don't necessarily believe it is. But other people can have different views.

KEITH DRAZEK: Okay. Thanks, Jeff. I've got a queue right now of Mike, Bruce. Are you wanting to respond to this issue directly because I think this is an ongoing conversation. Go ahead, Bertrand. You were in the queue first.

BERTRAND DE LA CHAPELLE: On that point, I don't think there is a very clear answer to your question, which is a very valid one, because it's not necessarily a question of inconsistency -- inconsistency, sorry. It is a question of last word or not. It is a question of is the principle that there is GAC advice that can come at any time meaning that anything that has been inputted by the GAC at any moment in the process can always be brought up to the end as a GAC advice that has to be integrated, this brings exactly the same question of circumvention that you were asking before. And if you remember in the GAC -- in the board GNSO interaction yesterday, Milton mentioned the disincentive to agree, if you know that in the end you can circumvent or go around by pressuring either the GAC or lobbying the board or vice versa. So in that case what you are saying is if the GAC is in a position of believing that it can always in the end impose what it tried to put in the process early on, there's no incentive to participate early on. It's a very tricky issue. Because at the same time the system of advice and the mechanism that we've all agreed to put in place does give the right to provide advice at any time. And so there's a tension between the two. I don't know if I'm clear enough.

JEFF NEUMAN: I do understand the tension. I just think -- and I agree with the tension and it's not an easy issue. But if there's something that's clear advice given by the GNSO and the GAC, ALAC, or any other outside entity that advises the board provides different advice and the board's inclined to act in that manner, then there should be some mechanism to bring that back to the GNSO for --

BERTRAND DE LA CHAPELLE: As a matter of fact, and without anticipating what Steve might be saying, you raise an interesting question, which is that today we have a system whereby if the GAC gives an advice and the board disagrees, it needs to explain why it disagrees, but we've never envisaged a situation where the disagreement is that it actually cannot be taken as such without going back to some feedback, of sorts, which may be one of the avenues. I don't know. It's just a personal remark, not a board position at that stage, but interesting question.

KEITH DRAZEK: Thank you very much, Bertrand. I think Steve wanted to jump in very briefly and then we'll get back to the queue.

STEVE CROCKER: Yeah. I just wanted to note -- to pay attention to the language that you used. Jeff, you used "outside group" to refer to the GAC or ALAC. I thought they were actually part of the same family and ought to be part of the multistakeholder process, so I'll just let it hang there.

JEFF NEUMAN: I just want to clarify. Outside the GNSO was my -- so the ALAC is not a structure within the GNSO.

STEVE CROCKER: Right, right. I understood that you meant outside the GNSO but the point is that we're talking about something that the GNSO is not the totality of the decision process. It is the GNSO, and in the multistakeholder process, there has to be a way to fold all of the advice together and to have full participation.

KEITH DRAZEK: Okay. Thanks, Steve. I've got Mike, Bruce, then Jonathan.

MICHAEL PALAGE: Thank you. Just to follow up, Chris, on your point about earlier you were talking about what you would look for as far as publishing a contract for change, so I'm agreeing with Jeff.

I do think there are certain changes that need to be made to address brands and to address their particular business model, so I'm in support of that.

And as someone who negotiated for two years on behalf of the Universal Postal Union to get dot post, I can tell you the pains and angst.

But here's what happened. After the agreement -- which were substantial changes; it was the first time ICANN entered into a contract

with an IGO -- those changes were published. They were put out for public comment. People were able to comment.

So what I would encourage the board is if you're going to make changes, which are going to happen, don't make it be a surprise. Do not let someone for the first time see the changes when they're published as part of an executed contract. Go through the public vetting process, if you're going to change. That will save everyone a lot of angst.

KEITH DRAZEK: Okay. Thanks, Mike.

Bruce, you're up.

BRUCE TONKIN: Thanks, Keith. Just a couple of observations. I just want to pick up, I think, on what Michael was talking about, about the success of the UDRP process, where it first started with, you know, a document from an expert group.

And I think it's hard for the GNSO, in many conflicts areas, to start with a blank sheet.

But it's interesting. I think it's useful, perhaps, just reaffirming what the GNSO is, just to pick up on your comment, Steve.

So the GNSO is a multistakeholder group that in the bylaws is the policy development body responsible for developing and recommending to the board policies relating to generic top-level domains. So that is the role of the GNSO.

Now, obviously when the GNSO makes recommendations to the board, the board also receives advice from other groups which include the GAC, ALAC, and other groups. And I think all Steve -- all Jeff was saying is if there is a change or that advice conflicts with what the GNSO has recommended, that the GNSO at least has a right of reply to address that advice.

And I think that's perfectly appropriate, given the structures and the bylaws.

Another thing that I think is causing issues is that we have different groups that may look at a given topic area, so WHOIS is a classic.

So we actually have -- we've had advisory committees look at WHOIS. So the GAC actually has principles related to WHOIS. So they have actually created their own principles within the GAC.

There are other. SSAC has actually issued a number of reports related to WHOIS.

So has -- I think ALAC probably has as well.

Then we have review teams under the Affirmation of Commitments, and some of those review teams have tended to focus on the board, like the accountability and transparency, but the WHOIS review team actually was a policy review team.

And then we also have expert groups.

One of the differences -- in each case, the advisory committees, the review teams, and the expert groups generally have quite restricted membership and a limited number of members, partly to be efficient.

Whereas the GNSO is actually far more open. Like the majority -- in fact, it -- as far as I know, pretty much everything is open. The working groups are open within the GNSO. Anybody can join them. They're not restricted to members of a particular advisory or stakeholder group. So it is genuinely multistakeholder.

And that obviously takes time, quite often, for those large groups to reach consensus, whereas some of these advisory committees might be quite small and more focused and they can actually, perhaps, reach consensus on something.

So I think the general principle is whether it's an advisory committee, whether it's a WHOIS review team, whether it's an expert group, the right place is for them to develop some well-thought-out policy proposals, then to take that through the GNSO process which is -- which is multistakeholder, and then the board looks to see whether consensus was reached. If consensus was not reached within the GNSO, then, you know, the board may, in many cases, have to move forward on a particular topic anyway.

But just thought it was worth putting that into the context, because part of the problem is we have lots of groups that kind of use "policy" in their language but the bylaws are quite clear, and I think what we need to do is actually keep to the bylaws a little more often.

KEITH DRAZEK: Thanks very much, Bruce.

Jonathan, you're next, I'll put myself in the queue, and then we only have a few minutes left, so if there's anybody else that would like to

speak, particularly board members, if there's anyone that would like to comment or jump in at the end, we would welcome that.

Jonathan.

JONATHAN ROBINSON: Thanks, Keith.

Well, you know, as both a registry stakeholder group member, a sort of committed participant in the process, and also, as many of you know, as GNSO Council chair, I'd like to really -- I guess it's in many ways echoing what Bruce has said.

I mean, we have the bylaws right in front of us and it specifically refers to the GNSO as developing and recommending to the ICANN board, in this instance, substantive policies relating to gTLDs.

So we are the responsible policymaking body and I think Bruce's point on right of reply is critical. It may not be that -- it may not be that that's -- that seems to be the way to do it. And you have my commitment.

I guess there's one other example I wanted to make and that's the staff issue. And I've talked personally with Fadi about this, which is where we were -- where he wrote to the council seeking policy advice, which as some of you know causes us some challenges in any event to do short-term policy advice. And for his own good reason, he chose to go against an element of that advice.

In that event, again, I think we would expect at the very least a right of reply or final discussion on that.

One of the critical points that seems to -- to -- themes that seems to run through is the efficiency and effectiveness of the GNSO Council as a policy management body, and within that, the GNSO, and so you have my personal commitment that if we get that commitment to, you know, reflect on the bylaws in that way, my commitment is to respond with efficient and effective processes to the best of my ability within those structures.

Thank you.

KEITH DRAZEK: Thanks very much, Jonathan.

I see Ray has his hand up and then Bertrand.

Bertrand, you're first.

BERTRAND DE LA CHAPELLE: Just a quick point that the multistakeholder model, we need to remember that by definition it requires a lot of time. Just like moving from any dictator to a parliamentary system requires more time.

This requires more time than parliamentary discussion because it's not a representative model.

The consequence that we tend to forget is that it requires more anticipation, because if you wait until the topics become sufficiently recognized by everybody as being urgent, usually you are too late.

And what we are missing is things that exist, for instance, in the IETF and the rest -- it's a birds-of-a-feather type of thing -- whereby when an

issue emerges early, you just have a meeting, the people who are interested and think it is an important issue begin to frame it a little bit, and then it grows and then the time is enough to do the preliminary work, whether through an expert group, an external advice, or whatever, rather than waiting until the topic has bubbled sufficiently to the global acceptance that it has to be addressed, which is usually too late to have a good, in-depth, multistakeholder policy development process.

KEITH DRAZEK: Okay. Thank you, Bertrand.

Jonathan, in response, and then over to Ray.

JONATHAN ROBINSON: Bertrand, very briefly. I mean that is exactly why we met with the GAC this week, to look at that. And you know there's some very good work going on with respect to early engagement with specifically that sort of thing in mind.

And I think one thing I would say, which is a point Jeff just rightly reminded me of, to the extent we can keep that informal we may well make it more efficient, and so that's also a key point in all of this. Thank you.

KEITH DRAZEK: Okay. Thanks, Jonathan.

Ray?

RAY PLZAK: Yeah. I'm talking with regards to this request for policy advice. You know, that's really what it is a request of. And so the answer back is not necessarily, "Give me a policy," but -- "I'm going to give you a policy that I want you to give me a policy."

The answer back may be, "We have examined the policies that exist and here are portions of this, that, or the other one that apply in this circumstance." They may not be evident to the person asking the question that it's there, but upon examination of one or more policies, there may be elements that contribute to an answer, is one thing.

The second thing is, is that we -- an answer -- a valid answer would be, "This really isn't a policy matter." I mean, you can always make that answer.

And the third answer is, is that "There is no policy in this area and if you want to proceed with that, then a policy would have to be developed." Okay?

And depending upon which of those answers is given would then trigger the next set of decisions.

And so -- you know, which would be -- okay, depending upon how it's taken, you may get additional questions back and forth.

I think much too often it's construed to be a very concrete, definitive question that's being asked, and I think there's a lot more latitude in answering that question than has occurred in the past.

And as I said the other day in the session that we had with the council, that if the answer is it takes -- that it takes a policy, and if the time is

needed to take the policy, then there may have to be a programmatic decision that says that we have to halt, delay, or move execution of a program in a certain direction until that thing can be resolved.

It is disastrous, as we have too many times seen and willing participated in, or unwilling participated in, to proceed down the wrong path because then we spend three, five years trying to fix something that may have -- could have been done inside of six months or even a year or something like that.

So we have to be willing to accept those kinds of things as well.

So I think that in the end, when you're asked for policy advice, consider that it -- that you have those kinds of latitudes in answering the question, because it -- you know, it may be that that satisfies -- if, for example, the GAC is saying, "I don't understand this stuff" and you come back and it comes back through the board, back to the GAC, because that's where this thing looks like these things track from a lot of ways, is that may be the sufficient answer.

So I don't think it's always necessary to consider the fact that we have to hurry up and do a policy right now.

KEITH DRAZEK: Okay. Thanks, Ray.

Chuck, I see your hand up and then we need to wrap up. It's 2:00 and I know the board has to move on.

EN

CHUCK GOMES: Chuck Gomes. I will be very brief but I want to take us one step further into this second top of policy versus implementation.

One of the things that I've noted this week, and -- within the GNSO and outside, is there seems to be this assumption that if it's implementation, then the GNSO doesn't need to be involved; if it's policy, the GNSO needs to be involved.

I think that's false.

The GNSO makes policy recommendations and it's the responsibility of the GNSO to make sure those policies are implemented properly.

Now, if there's ever any question about that, it again should be brought back to the GNSO.

I just wanted to point that out, because I think a lot of us are guilty of that thinking, "Oh, is it policy or implementation? If it's implementation, we can just go ahead and do what we want." I don't think that's correct.

KEITH DRAZEK: Okay. Thanks, Chuck.

Steve, I think we're at the end of our allotted time. I really want to take this opportunity to thank again all of the board members for your time. I know it's valuable, and schedules are very compressed at these meetings, so thank you very much. I think the dialogue today was excellent.

I hope it was constructive for all of us. Thank you.

STEVE CROCKER: I appreciate it very much. Thank you. Well organized, well-orchestrated, and we are productive. Thank you all.

KEITH DRAZEK: All right. Thanks, everyone.

[Applause]

[End of Session]