
BEIJING – New gTLD Registry Agreement, 2013 Registrar Accreditation Agreement, & the Registrants Rights & Responsibilities

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ICANN – Beijing, People’s Republic of China

CYRUS NAMAZI:

Good evening, welcome to the RAA negotiations and gTLD Registrar Accreditation Agreement session. My name is Cyrus Namazi, I'm head of industry relations at ICANN.

Today's session consists of a panel of representatives from the registrars and the registry community. The format that we're going to follow is that we are going to give you an update on the status of the agreement negotiations both on the registrar side as well as the registry side.

And then we will open it up to Q&A. So we will spend just a few minutes on the update part of it, and we hope to spend the bulk of the time today on questions and answers. We actually have a peculiar layout in this room. So access to the microphones is somewhat limited. So if we can perhaps leave one section of each side open -- oh, we have a roaming mic.

With that, I am going to hand it over to Matt Serlin who is the head of the negotiating team for the registrar operators.

Matt.

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.

MATT SERLIN:

Yeah, let's go to the next slide. To Cyrus' point, I want to give a brief update. We have officially been at this since November of 2011, over countless hours of conferences, in-face meetings, at ICANN meetings, outside of ICANN meetings, I don't know, probably 15,000 e-mails traded back and forth. We really have tackled a lot of issues in that time. Hard-fought concessions on both sides. We will get into some of those.

Really, at the end of the day, what will become the 2013 RAA has a number of enhancements to the 2009 RAA. So, though, at times, the course of 18 months has been frustrating and difficult and challenging because of the number and the types of things that we were discussing. You can understand the length of time that it has taken.

We posted for public comment last month what ICANN called a proposed RAA. From the stakeholder group side, frankly, there were still items where there were pretty big areas of difference. But I am happy to say that since the time of the posting, which was really just a month ago, we have continued to make progress and actually through -- it's frightening that today is only Monday and the opening of the Beijing meeting. But through the weekend, since we all arrived here in Beijing, we have continued through several in-person discussions with the negotiating team and staff. We have continued to make significant progress.

And I think Sam is going to kind of talk through where we are today compared to where we were a month ago.

SAMANTHA EISNER:

Thanks. I'm Samantha Eisner, I'm senior counsel with ICANN. And first I'd like to just really say thank you to the members of the registrar negotiating team that are here with us today. As Matt said, we have spent countless hours. And if you have seen how much they have worked and how hard they have fought for the positions of their stakeholder group and really came to the table and listened to all sides of the issues, thank you, guys, for all the work that you've put in.

So with all the work we've been doing since the March 7th posting, while we had reached agreement and principle in many items as of March 7th, today we are able to say we have reached agreement in principle on most terms. We've come a long way.

Within the RAA that will become the 2013 RAA, all 12 law enforcement recommendations are addressed. As you may know, it was the 12 law enforcement recommendations that were outstanding that really brought us to the table in the first place. So the first objective of the negotiation has been met.

Another thing you will find within the new 2013 RAA, we have a new structured and amendment process that will be in there as well as being able to move forward on unified agreements across the registrar group. As many of you may know today, we have the 2001 RAA that's still in force for some registrars. We have the 2009 RAA. We will have the 2013 RAA. And there will be a period of time that we will have registrars on multiple agreements. But the way that we are structuring the renewal process for the new 2013 RAA as well as the ability to make amendments within that agreement, we will then have the ability to, once we have all registrars ultimately transitioned onto it, have all

registrars on the same agreement even when that agreement needs to have modification. And we think that that's a big benefit not only for the registrars but for ICANN and for the Internet-using community to have a good understanding of a single contractual regime that covers that.

So we've made some progress in key areas. Some of this you've heard before. When we were with you in both Prague and Toronto, we reported on progress on many of these areas. We have registrant level e-mail or phone verification as well as field validation of some of the items the registrant provides for their WHOIS data.

Something new that you will see here and that was noted in the posted agreement as an area of difference was account holder verification as well as field validation. That is something that has now been agreed to, to put into the RAA.

We have abuse points of contact for both law enforcement and for public that will be posted on the registrars' Web sites. Registrars have agreed to provide additional information and maintain that as updated with ICANN, including information on officers, affiliates and resellers.

We have enhanced compliance remedies. We have enhanced ways that ICANN can terminate the agreement as well as brought in suspension rights so we don't always have to go to termination if it is appropriate to work with a registrar at a suspension level instead.

We have a prohibition against cybersquatting by the registrars, which is something that's new. We also have streamlined arbitration language to make the arbitrations run at a quicker pace. And additional technical

specs, the registrars are taking on the obligation to relay orders related to DNSSEC, that their customers might give to them that need to go to the registries as well as supporting IPv6.

Some of the key changes since we posted the draft on March 7th include -- we've come to agreement in principle on how we can have the registrars approach ICANN in the event that they believe that the data retention or the WHOIS obligations for that matter cause them to be in conflict with local privacy laws.

You may know that we have a formal WHOIS conflicts with national law procedure. That procedure does require the registrars to actually have a proceeding initiated against them within a jurisdiction. And we've been trying to work with the registrars to see if there is a way that they cannot be already the subject of a proceeding in order to come to ICANN and say, "I believe that this certain provision will cause me to be in violation of law."

We also have a temporary specification on proxy and privacy services. So the registrars have agreed to some high-level principles on certain information that will be made available in relation to proxy and privacy services that are offered through the registrar and their registration process.

That specification will expire if no accreditation program is created. You may have heard that ICANN initially started doing some work towards a proxy/privacy accreditation program that was part of the law enforcement request as well as requests from the GNSO drafting team that has long been working on this.

ICANN is also committing along with the introduction of this spec to reinitiate that work.

And so the proxy/privacy specification that is in the agreement will terminate either upon -- most likely it will terminate once we have the accreditation program in place, but there also is a date limit in there so we can all be encouraged to really move forward and get a program together through the policy process.

We're also -- we looked at the public comment that we received on the Port 43 issue. The registrars have requested since the beginning of the negotiations that their obligations to offer Port 43 WHOIS in thick TLDs be removed because of the level of service that's provided at the registry level for those. And we saw public comments in both ways, but we also did not see a groundswell of objection to that removal because that information indeed is available through the thick TLDs.

We also have the amendment processes. There's been a lot of talk in the community about what has been termed the "unilateral amendment process." That is now not quite an unilateral amendment process anymore. We have built in a lot of safeguards, a lot of opportunities for community comment, have specifically required reference to the policy development process when an item is within what we have termed the, quote-unquote, picket fence on matters reserved for policy making within the contract and many other safeguards within that.

Also, as part of that process, the registrars have also worked with ICANN to develop a new negotiation process; that in the event we have changes that we would like to explore to have come into the

agreement, we now have a bilateral mechanism through which to initiate negotiations and see that process through.

With that, ICANN is moving the Registrar Accreditation Agreement to a place of presumptive renewal because we have the tools that we think can help us amend the agreement as we keep moving forward as necessary, but we don't require the need to place the registrars at a new form at every five-year term.

And then the other thing about what we've come to an agreement on is many of the things the registrars have willingly taken on through this negotiation process will be new technical obligations, will require coding, will require operational and technical work on their side. And so there are some of the terms within the specifications that require transition. They require transition time to build out the correct systems, make sure that it happens as it should.

And so we have identified a fixed transition date for those certain specifications and terms that require those technical obligations. And so that would be January 1st, 2014, for any of those terms, assuming that the agreement, assuming the agreement is signed before then. Fingers crossed.

And so with that, we're going to -- the process that we're going to use here today personally because of the strange layout of the room, we imagined we would have a panel that we would take up and down. We are actually going to then walk through a presentation on the registry agreement. And then at the end of both of these presentations, we will take your questions. Thanks.

CYRUS NAMAZI:

Thank you, Sam. So on the registry agreement side --

Next slide, please.

Would you advance the slide, please. There we go.

So we actually posted an update to the previous version of the registry agreement that was posted on the 5th of February last week. This one incorporated many of the public comments that we received of which, I believe, we posted 46 pages of responses. Many, many good comments actually came back from the earlier version that was posted in February.

Next slide, please.

The new agreement, the one that was posted last week, it actually incorporates a new language for the public interest commitments specification as well as substantial protections in the extraordinary amendment clause which we received from -- through the feedback from the community.

So this is the update that we have on the registry side. It is not as detailed as the RAA. And with that, I would like actually to open it up to questions from the floor. If we can have a way to --

SAMANTHA EISNER:

If you are sitting at the table, we have mics around the table. We do have a roaming mic up here. Someone can come up and grab it. I believe we have a second roaming mic. If we want to find place in the room to form a queue, that works.

Steve?

STEVE METALITZ:

Thank you very much. Steve Metalitz. Thanks for the run-down on the changes that have occurred in the registrar agreement since it was posted. I had a couple of questions about that.

One is, on the temporary specification on privacy and proxy services. I guess it was called an interim specification. My first question was: Is the agreement on basically what was put out for public comment? Or is it a substantially different document?

And, second, you indicated that it would expire at some date certain if a -- excuse me, a privacy/proxy accreditation program were not in place. I'm just wondering if -- does that mean if that were to occur, then we would revert to the status quo where there is no effective rules about privacy and proxy services? Or would something else happen on that date? Thank you.

SAMANTHA EISNER:

Thanks. Thanks, Steve. So in terms of the difference between the version of the proxy and privacy specification that was posted for public comment and the version that we are -- we have negotiated on, they look different in the fact that the new version is shorter. But there were a lot of operational words in there.

But what we had already done prior to creating that version was we had sat down with the registrars and agreed on some high-level principles about items that should be displayed. So we'd come up with issues such

as proxy/privacy services should display for their customers what their customer service handling processes are, should display what their processes are for reveal of the data, and other things that actually exist within that specification.

But what we've done is tailored it back to a far shorter document with a lot less operational language in it. It almost looked like an agreement in and of itself in the way we posted it. We've pared it back to more of a specification-looking type thing, but the principles that are in there remain the same.

In terms of the termination provision, our thinking is we're looking at about a 3 1/2-year window. So January 1st, 2017, is what we're targeting as a potential sunset date for the proxy/privacy specification in the event that policy has not been reached on that or a program hasn't been developed.

However, what that also means -- the other thing the registrars have agreed to is to sit down with ICANN in good faith to discuss whether or not those agreements should continue. It is not solely up to the registrars or up to ICANN if the temporary specification will continue. But they do have a commitment to discuss that with us in good faith.

It is our hope that the community will identify whether or not further protections are necessary and even if the result of a policy or further program is to embed what currently exists in that specification, we really want to make sure that we get this into the right realm for making further rules about this.

We are trying to use the date as a way to spur action on this.

STEVE METALITZ: Could I just follow-up on one point which was our constituency had some rather detailed comments on this interim specification. And I hear you saying basically it is substantively the same as what was posted.

So when will, I guess -- one question is when will we see what it is. But the other question is how were the comments from the public taken into account.

SAMANTHA EISNER: So we have been looking at the comments as they've been coming in to see how we can use the comments as part of the negotiations that go forward.

To the extent that -- there are some areas that we will not be able to incorporate the comments because of some of the business positions that had been stated, right? And so the registrars might want to discuss that further. In fact, we really kind of -- we think we've gotten mostly everything we can get on that from the ICANN side. But I'd let the registrars speak to that more.

JAMES BLADEL: Steve, this is James. The two problems I think we had with the specification that was published previously was that it was very detailed, very operationally and specifically detailed to the point where it was effectively a development of the accreditation process on the table, on the negotiation table.

And, secondly, it had no incentive or impetus to get rid of it and replace it with something that was developed by the community. It would just by default become the permanent accreditation program.

That's where we took it. We rolled it back up to those key provisions. And I think we referenced the comments that were received, but I think that the fundamental high-level principles are there.

And then we created this thing to really light a fire and make sure that it wasn't just a subset of registrars and ICANN legal cooking up this accreditation program that we threw back into the community to develop the permanent solution.

But I can say as a registrar, anyone who's going to put in place the necessary systems to comply with this, the temporary specification, we are not going to tear those things down when this thing sunsets. That seems silly actually.

I think we would work in good faith to extend it.

CYRUS NAMAZI: Next question?

SAMANTHA EISNER: Wendy.

WENDY SELTZER: Thanks. Wendy Seltzer from the Noncommercial Stakeholders Group. Steve actually anticipated some of my questions, also around the privacy and proxy. So I'm also very interested in more specific details of

the current proposal and in particular to make sure that it leaves room for all of the different ways -- even in the interim, all of the different ways that registrants protect their privacy from the individual or association going to a lawyer to register a domain name to individuals continuing to exercise various self-help mechanisms to various small and large organizations offering to serve as privacy shields. I would wonder if there is more you can say about that current state.

MARGIE MILAM:

Wendy, it is Margie Milam. The program applies -- or the specification applies to privacy or proxy services offered by the registrar. And so it doesn't try to pick up services that might be outside that scope.

WENDY SELTZER:

Thanks, Margie. I'm also encouraged by the inclusion of a reference of a policy development process and a sunset because I do think the proper place for this kind of policy making is in the GNSO Council and policy development process. So I'm pleased to see reference to that process here.

CYRUS NAMAZI:

Anybody else?

AMADEU ABRIL i ABRIL:

Amadeu Abril from CORE. I have a question for Sam and a question -- I don't know for exactly from the ICANN legal side.

For some reason, the conduct you described, you say that there is new provision, a prohibition of cybersquatting on the registrar side.

And my question is related to all the provision of warehousing names that's been there from the version in 1999, that ICANN legal has always pretended was not implementable because something was missing. We know it has never been applied, I would say, whether it is still there in the same lethargic status and whether the cybersquatting will have the same lethargic status or have some implementable items in it.

And the other question, the general one is: What happens now? I know what happens if the registrars approve that. But what happens if they don't in relation to the RAA that the new TLDs are supposed to sign starting end of this month?

SAMANTHA EISNER:

Thanks, Amadeu. So in terms of the warehousing provision, the RAA has long had within it a term that the registrars would comply with policy development relating to warehousing if policy was developed on that. And the policy has not been developed on that. That provision is still in the agreement. It's still -- we've moved it to Specification 1. That lays out the consensus policies. But that provision is still there.

The cybersquatting prohibition is a bit different. What we have in there is the inclusion of a new ground for termination of a registrar in the event that they have been found to have participated in a pattern or practice of cybersquatting or its equivalent. It is in a much different stead than the warehousing provision already been.

In terms of whether or not the registrars are going to accept the agreement, I think that that's hopefully part of the message that we're trying to send today, that we've been negotiating in good faith so that we can have an agreement that the registrars are able to sign.

ROBERT HALL:

I can speak to that a little bit, Amadeu. Rob Hall, Momentous, of the registrar negotiating team. We have gotten into a agreement that I believe if I were to speak at least on behalf of the negotiating team, that we will be signing. I know speaking for my company, we plan to sign it as soon as we're able to. Certainly, I think what you touched on, the access to the new gTLDs, is a carrot that will cause more registrars to sign it sooner rather than later. You may get a few holdouts that will still take the balance of their five years, whatever is left in their current agreement.

Once the board votes this is the new approved agreement, even on renewal, they must sign it if they want to continue to be a registrar. My hope is you see registrars on it sooner than later.

They also get the advantage if they sign it now of having until January 1st to implement a lot of it. If they sign it after January 1st, they have to have all of the new GTLs implemented prior to signing it. I think you will see a lot of registrars hopefully in the next few weeks, or certainly next month or two, sign it so they can to start to offer the new gTLDs.

I don't share any -- I don't have any fear that a lot of registrars will not be signing this fairly quickly.

MATT SERLIN: Cyrus, I have Jeff that wanted to make a comment.

But, Jeff, go ahead.

JEFF NEUMAN: There we go. Thanks.

There you go. Thanks. Just a question on the registry agreement. Are there any issues -- I mean I know, Cyrus, you had displayed on the slide the extraordinary amendment which we're all going to try to work through.

Are there any other issues that have not yet been put on the table or anything else that ICANN knows of that will be added to the agreements, or is -- is that now -- do we now have the sum total of everything that will be in the registry agreement?

CYRUS NAMAZI: I'm not aware of anything else that is going to be added to it, but we continue to engage with the community and the registry side and incorporate their feedback in the requirements in a good-faith negotiation that we're holding with them in Beijing, actually.

So I can't promise you that there won't be anything added into it, but there's nothing that we're holding back in our back pocket today.

Does that answer your question?

MATT SERLIN: Keith? Sorry. I got Keith -- I guess I'll keep a queue, Sam. That's cool. No, I'm fine. I've got a pen and paper.

Keith? Elliot?

KEITH DRAZEK: Thanks very much, Matt. And just following up Jeff's question to Cyrus, you said that you're continuing to negotiate with the registries and to engage with the community here in Beijing, and I'm just curious what the mechanism is for that.

How exactly are you negotiating with the registries and what are the -- what's the -- sort of the structure or the fora in which you're negotiating with the registries on this?

I know that Becky -- Becky Burr has been intimately involved on behalf of the registrar negotiating team. She also happens to work for a registry operator. So there's some overlap there.

And I know that there have been discussions that were specifically around 7.6 and the language that's now in the soon-to-be, you know, considered and maybe approved RAA, but this is brand-new language to those of us in the registry community and I'm just curious what the -- what the mechanism is for us to be engaging with you and really, at the end of the day, the question is: How will you know when the registries and the community are happy with that language and ready for it to move forward?

CYRUS NAMAZI:

Yeah. Thank you, Keith. No, you're right that on the registry side, the negotiation representation has not been as exact and as in place as we'd like to see it. In fact, when I e-mailed you last week the updated agreement, I asked you to see if you'd like to assemble a representative group of the registry side and we're still very open to that.

So absent that, we continue to have discussions with individual or individual groups of registries, but we'd like to see actually something similar to the registrar side represented.

ROBERT HALL:

Okay. Thanks, Cyrus. Let me just respond. We actually do have a team that is in the process of being assembled. We obviously saw the -- sort of the latest version late last week and there was travel involved, so we have a team. We'd be happy to engage with you.

Obviously, the registrars have been engaged on the registrar accreditation agreement for, what, 18 months now because it's been an ongoing negotiation around a -- you know, around an agreement that I guess for some in the community needed updating.

The registry agreement, as it was included in the applicant guidebook prior to February 5th, really wasn't open to negotiation. It had been finalized, at least around 7.6, and the unilateral right to amend language was really in place as of September 2010. The compromise language.

So, you know, yes, now we're in a position of having to consider the new language, something that was proposed on February 5th, and we had several consultation sessions with the registry stakeholder group. And I have to give, you know, thanks to Fadi for his commitment to

engage with us both on the March 4th community-wide stakeholder engagement meeting. He spent 90 minutes with us on that call. And then on the registry stakeholder group at the end of March, he spent the full two hours with us, and it was very refreshing.

So I want to note that for the record, that it was -- it was good to have him engaged with us.

I think as it relates to the public comments that were filed, I'm not entirely sure that all of the comments that were filed were actually incorporated into the language, but we stand ready today to continue to work with you to try to fine-tune this and to move this forward.

CYRUS NAMAZI:

Thank you, Keith. We're looking forward to engaging with you and the representative team very much.

MATT SERLIN:

So we've got Elliot. And again, the folks that are in the room that are not sitting around the table, we've got a microphone up here and a microphone somewhere else. Just come up and smack me in the back of the head and let me know if you want to get in the cue. So Elliot.

ELLIOT NOSS:

Thanks, Matt. I'm also most interested in the extraordinary clause or the public interest clause, and, you know, something that I've been asking for -- and, you know, some of you have heard this privately -- is for staff to provide specific examples of where a clause like that might be invoked.

And, you know, I'd like to narrow that down a little. You know, the -- sort of the public document that talked about examples then spoke about categories, which are not examples to me.

And so really my "put" to you is twofold. And I should preface this by saying, you know, I don't agree with Rob. I'm not as comfortable with the agreement now as some are, and I'm not sure that, you know, the general view is quite as overwhelming and I would -- I would also note that I think the threat of not being able to sell new gTLDs is not that important, especially at the very beginning. It's certainly not that important to us at a business level. We would like to be early, but the earliest new TLDs that we're going to be able to sell are not significantly important financially.

And so I want to make sure you all understand that, you know, what was put to us as -- I could take it as nothing but a threat -- you know, is not going to be the thing that gets us over the line here.

So what I would really like to see are -- you know, I'd like you to use your imagination and tell me, going forward, what sort of specific fact situation might lead to the board taking extraordinary measures.

And my second question around that is: Do you think that in the -- from the time of ICANN's inception till now there has been any one specific fact situation where that clause might have been used in the past?
Thanks.

SAMANTHA EISNER:

Thanks, Elliot. This is Sam Eisner, for the record.

One of the challenges -- and this has long been ICANN's position as we've continued to provide presentations on the RAA negotiations -- is that we are entering into a new place in the market, right?

ICANN has been around for over 15 years. We've had this registry/registrar model. There's always been separation between the registries and registrars. We're now at a place where we're going to potentially have over a thousand new registries. We're allowing vertical integration. And as we've said throughout this conversation, if you recall we -- we used to have a provision in the RAA called the -- what some people called the blowup clause, right? It was a revocation of the model.

And we put that out there to really start this discussion, because we needed an agreement that had enough flexibility to respond to changed market conditions, and those are conditions that we don't know what they're going to look like.

This is a new time.

The market that exists today, who could have predicted that it looks like what it does today 10 years ago?

So we -- our goal in having this agreement was to make it as flexible as possible, and we have long thought, even when -- when we had earlier versions of the registry agreement that had this -- the board-approved amendment process in it years ago, this has always been something that ICANN's put on the table.

It's not that we know of a specific factual situation that we know that we want to use it in. That's why we haven't been able to really give the example.

But we know that it's a point of responsiveness and agility that it gives us in the future, in the event that something happens that is so critical within the market that we need the ability to respond to it without having regulators step in and regulate us and you. And so that's really why we have it in there.

And what we have now is a very tempered process. It has a lot of protections in it and it -- it's not very broad. You can't drive a truck through it. It has a lot of different protections.

So that's really where we're -- where our head has been on this for a very long time.

ELLIOT NOSS:

Great. So I think you've said three things there. One, we threatened you with a lot more initially and we came back from that initial big ask.

Two, you can't give me a specific fact situation. You can't imagine one.

And I think the third thing is, you know, you started by, you know, acknowledging that there were a number of additional obligations being put on registrars that will have to be operationalized and you're right that we can't imagine what the world of new gTLDs will bring.

So I think if I put those last two pieces together, Sam, you know, what I would say is -- and, you know, I'm not on the negotiating team, but I

don't know what's going to happen to my business in the world of new gTLDs either.

So I would imagine that with all these new obligations and all of that uncertainty, it would be reasonable for there to be an extraordinary clause that we could also invoke that might relieve us of a bunch of these additional obligations or perhaps even negotiate terms that were more favorable to us.

Because we're the ones who will have to operate our businesses in this new environment where you said you can't even imagine what will happen. You know, you've asked for something -- I'll wait till you're finished. Okay.

You said you can't even -- you can't even put an imaginary set of facts to it, but yet you need it.

So I mean if it's that uncertain, I think it -- obviously I should be extremely concerned trying to operate a business in that environment where I have employees and customers that I'm responsible to.

So, you know, again, I think my specific ask would be that there would be a clause in our favor that would allow us that same ability to unilaterally amend, through some extraordinary provisions. We can't imagine what they are and obviously they'd have, you know, the same protections that go the other way. But with that much uncertainty, I think that sounds reasonable.

SAMANTHA EISNER: So just to be clear, there is now a provision within the agreement that allows the registrars to drive through amendments that ICANN may not agree to.

There is a provision now that does that.

And so you are getting more flexibility in this agreement that you haven't had in previous agreements within the registrar accreditation agreement.

ELLIOT NOSS: Which has nothing to do with this specific point. And --

SAMANTHA EISNER: They're inherently in --

ELLIOT NOSS: Look, I'm going to keep asking for this all week. You know, we have other fora where you're going to hear this. And all I'm really asking you to do is to take a step -- when I say "you," I mean staff, not you, obviously, in particular. But I think it's beholden on you guys to take a step back, use your imaginations -- and I don't mean that in a bad way, I mean that in a creative way -- to think about what some of these extraordinary circumstances might look like specifically.

Use your imagination. Don't be constrained.

Look, I've negotiated countless agreements. Where they always end up being most difficult is around the reps and warranties and the

indemnities, and all parties want to protect themselves. We understand that. I understand that.

But in every circumstance where it comes down to those toughest things, those reps and warranties -- which is really what this is, the extraordinary stuff, the -- you know, the -- where the person on the other side is just going to say, "What if everything you told me isn't true?"

I get that.

But it's incumbent on the person asking for that protection to at least be able to put forward what the facts around some of those circumstances might look like.

So, you know, please take a step back from this and put on your thinking caps.

SAMANTHA EISNER:

Thanks, Elliot.

Chuck?

MATT SERLIN:

Wait. Sorry, Jon -- Jon -- no. You hit me in the back of the head, so -- he'll defer, but I've got Chuck and then Jon, since he hit me.

CHUCK GOMES:

This is Chuck Gomes from VeriSign. I was okay with Jon going first. That was all right.

With all due respect, I keep hearing this new unknown market. I don't know what's new today that wasn't known three years ago. The board approved vertical integration a long time ago. Like Elliot said, we're running businesses every day with the same unknowns you are, so I don't see a different situation there. I agree with him on that.

I'm really bothered by the term "good faith," because we're being asked to operate in good faith and you're not.

It was not in good faith to, at the very last minute, a few weeks before introducing new gTLDs, reverse a community decision that was made three years ago. Nobody can convince me that that was in good faith.

And so be cautious about telling us to operate in good faith unless you're willing to do it yourself. That was not in good faith.

You're dealing with organizations on both the registry and registrar side that fund 95%, through our registrants, of your budget and yet we're treated like second-class citizens by throwing something at us that totally reverses a community multistakeholder bottom-up decision that was made three years ago.

Convince me that that's in good faith. I don't think you can.

This process with regard to the registry agreement is bad and it should never be repeated again, and if you don't see that, we've got more serious problems than we think.

Now, as many have said, we are going to try to operate in good faith, but I think it's important you understand what you did and that it was

not in good faith, and it's very important that you recognize that because if you're not -- if you're honest, you will. Thank you.

[Applause]

MATT SERLIN: Thanks, Chuck. Jon?

JON NEVETT: I should have gone before Chuck.

[Laughter]

JON NEVETT: This is Jon Nevett from Donuts, chair of the new TLD applicant group.

Just going back to the RAA, I chaired the registrar negotiating team in the 2009 round and I know how hard it was and how much work was involved in that, both on the ICANN side and the registrar side, so I commend both sides for getting to the point where you are today. So congratulations on that.

On the registry agreement, you know, a lot of us -- you could characterize it, depending on your perspective, as we're farther along than the registrars or we're behind the registrars. We're farther along, as Chuck alluded to, in that we had an agreement in the applicant guidebook, and we're not as far along in that we're now setting up a negotiating team and trying to put the finer touches on the final registry agreement.

NTAG sent a letter after the new proposal came out from ICANN in which we raised a number of issues with the proposal, and the first one being the unilateral right to amend, the second one being the PIC spec changes, and the third one being the expert working group on gTLD directory services.

So I want to thank ICANN for -- as Keith did for participating in our processes over the last few weeks, and ICANN has agreed to get rid of the third issue that we didn't like. They've amended the second issue, so addressed that to some extent.

The use of RAAs that signed the 2013 agreement.

They also had a parenthetical after that saying "or any subsequent agreement approved by the ICANN board," and they removed that parenthetical language, which is good.

Obviously there are folks who still have some concerns about the 2013 language. And then the unilateral right to amend.

So that is an ongoing process that the registry -- registrars, rather, have been making a lot of progress and we look forward to working through those as potential registries as well.

And then on the PIC issue, which is related to the use of the 2013 RAA, it's a different provision in the PIC spec. There's a PIC DRP or dispute resolution process that we will definitely want to discuss, as that just came out last week.

So as far as status goes, the new TLD applicant group is meeting on Wednesday and we encourage people to attend. The registry

stakeholder group is meeting tomorrow and we're observer members to that, so there will be a lot of opportunities for discussions as well as, as Keith mentioned, we set up a negotiating team which includes both incumbent registries and new TLD applicants, so future registries, and we look forward to having those conversations and hopefully moving -- moving those -- moving that forward on those issues.

And I think that's it. I'll yield any time to anyone else on the list, Matt, or anyone else who smacked you.

MATT SERLIN:

No, Jon. You were the only one. Thanks.

Sorry. I've got Keith, I've got Amadeu, and that's it. Keith?

KEITH DRAZEK:

Okay. Thanks again.

I was going to talk a little more about process and timing looking backwards, but I think Chuck covered that.

Looking ahead in a constructive way, in a collaborative way, as Jon mentioned and as I mentioned, we have a negotiating team that has formed. They're actually going to be meeting at 7:00 tomorrow morning and we look forward to engaging with the ICANN team to help move forward.

It appears from what we've seen, based on the recent progress with the registrar accreditation agreement specifically around, I guess, what are we calling it now, the extraordinary amendment process? I'm losing

track. But it appears to me that we've made a lot of progress, okay? And again, thanks again to the registrar team for, in effect, taking the lead on that, because it appears that the language is going to be similar or identical in both agreements, or I guess that's the -- that's ICANN's desire.

So it appears, having -- we've just seen it, right? Reserving judgment until we have the opportunity to review it carefully, share it with our legal teams who may not actually be here, get their -- their cautious review.

It appears that we've made a lot of progress from February 5th. So looking ahead, noting that there is an ICANN board meeting scheduled for April 20th where, according to Christine Willett and other comments from various board members and others, that the RAA and possibly, I guess, the RA will be on the table for a vote, what's the time line between now and then? And again, I go back to the question of: How will ICANN know that the community is ready for those agreements to be put to a vote at the board level?

I understand -- and we've got, you know, just over a week, I guess, from today to get to that date, and I'm just a little bit concerned about the compressed time line.

It seems to me, from where I sit, that the date of April 20th is a bit of an arbitrary or artificial date that is tied very closely to the arbitrary and official -- the arbitrary date of April 23rd for the event in New York City. The press event.

So I'm personally concerned about the timing, looking ahead, the extremely compressed time line for review, and I guess I would ask ICANN legal team, you know: How would you feel if you were presented something and had eight days to review before a board vote was going to take place?

So I'm just looking for a little bit of help from ICANN in terms of timing looking forward and whether you think that's reasonable and whether you think we can really get there by the 20th. Thanks.

CYRUS NAMAZI:

Thank you, Keith. I'll take a stab at this.

The time line of April 23rd -- we've said this time and time again -- is totally irrelevant to our discussions with you. It's something that is desirable for us to achieve, but not an iota of anything is going to be compromised -- in terms of, you know, getting the right agreement in place that the community can buy into and can sign up for is going to be compromised to achieve that date. So if it's going to take another month beyond April, if it's going to be in May, June, then so be it. We've always said that. Fadi has said that, we've said that all along.

So there is no -- there is no rushing anyone into anything.

We're very cognizant of and sensitive to the fact that there's new material that's being introduced and I'm very happy to see that you're now assembling a negotiating team representing the registry side of the constituency, so that we can have meaningful discussions taking place, and however much time it takes, then however much time it takes.

MATT SERLIN: So I've got Amadeu and Stephane and Steven. Amadeu?

AMADEU ABRIL I ABRIL: Okay. The past, the future, and the immediate future.

I do confess that I am somehow in a minority position in the registry constituency in the sense that I tend to understand why ICANN wants this sort of unilateral right of amendment for public interest reasons.

This is not just two parties contracting. ICANN is a contracting party, but also somehow the regulator.

It very often has, you know, not been using that part of its role.

But that being said, I do have some understanding and some sympathy for this concept.

I should completely agree with what Chuck was saying. What it seems to be here is that there is a lack of trust on this model going forward in the future and working.

If that's the case, what you should do is start, you know, putting on the table, with a little reform, the policy development process as of today, not three years down the road. But in the meanwhile, please respect the process.

And we feel that, you know, that's been not very -- it hasn't been the case. Let's put that politely.

On the future, in the near future I really don't completely understand what -- I think it was Cyrus -- just said.

Look, I have a personal problem and CORE has a serious problem. We have Number 6 and 9 in the priority dual, and we have passed the initial evaluation for two TLDs that have no objection. So what happens next week? What happens two weeks from now? Will we be faced with the following challenge: I mean, here's the agreement but the registry hasn't been approved but the board has approved so sign it or, you know, delay the process?

Should we wait for some discussions for all the community agreement that when we know that some key participants have an objective interest in delaying the agreement and some of the concerns regarding the agreement are more related to the value of the agreement in front of investors than the operations itself of the agreement?

So what happens? You say, "Well, there's no rush." No. Sorry. After so many years, there's some rush. So is there -- what will happen there? Will we be in front of an agreement saying, "Well, there is no agreement and we will change it if we reach an agreement with the registries?" I wouldn't like that. I don't want to betray the negotiations of the registries. But I don't want also to provide an excuse for further delays for two months with nobody going into pre-delegation and going into the next phases. I don't think this is -- this will not be the solution.

So could you please clarify, Cyrus, for the audience what do you mean that there is no, you know, rush in finding an agreement on this?

What happens then?

CYRUS NAMAZI:

So I'll be happy to clarify.

What I'm trying to say, Amadeu, is that the fact that there is a date in place in April to which we said we're going to drive is not going to cause us to sacrifice anything or to push people to sacrifice and compromise.

The time that it takes for us to reach an agreement is the time that it takes for us to reach an agreement.

Nobody wants to see the new TLDs going into the root more than us. However, there is no -- there is no need, there is no desire, there is no motivation here to compromise anything, whether it's stability, whether it's security, whether it's actually rushing our partners on the registry side into rushing into something they don't want to sign up to yet. We have to have the dialogue and the discussion, understanding that everyone wants to get it done and move on.

AMADEU ABRIL I ABRIL:

My English is failing me. I don't understand you. So what happens? I mean we haven't reached an agreement as a community, so what happens then? We wait or we say, "Well, you know, some people move into pre-delegation if the agreement is not completely signed because we are -- and we will come back to the signing later" or we really delay everything for two or three months until we have an agreement? Please say that simply because I don't understand it.

CYRUS NAMAZI: I'm not sure how else to say it, Amadeu. I mean I said what I had to say. I said it twice, actually. I'll be happy to discuss it with you offline after this.

AMADEU ABRIL I ABRIL: No, no. Why offline? It's not my personal problem. I think that we all should know, you know, what are the risks of reaching an agreement or not. We all should know what happens if one individual TLD decides to sign the agreement and the registry constituency team is still negotiating the agreement.

CYRUS NAMAZI: Sure.

AMADEU ABRIL I ABRIL: It's not my -- it's not my -- I said I have a personal problem because I am in the line, but it's not my only personal -- I mean, it's not only my exclusive personal problem. You know, it's a community problem. We should know what happens.

And if you -- if this is the clearest you can be, sorry, there is a problem of clarity in ICANN.

MATT SERLIN: Yeah. I got hands up all over the place. Hold on. So I've got Stephane, Steve -- yes and yes. I've got you both. Go ahead, Stephane.

STEPHANE VAN GELDER: Thanks, Matt. Stephane van Gelder, registrar stakeholder group.

Cyrus, let me try and be more direct but take it -- come at it from another side. You say there's no incentive -- well, no obligation to get a result because of the data that have been stated.

We're hearing rumors or noises that there's a board meeting on the 20th to agree and sign these contracts. That seems to contradict what you're saying.

Can you reassure us on that point, that what you've just said twice to Amadeu and to the rest of us does not include any specific special board meeting that's been called on the 20th to sign these contracts, which is what I've heard?

CYRUS NAMAZI: I can reassure you that there won't be any rushing into an agreement based on dates that have been put in place, whether it's for a public relations purpose or whether it's a board meeting. Does that answer it for you? Sure.

MATT SERLIN: Steve, Jeff, Ken.

Steve, go ahead.

STEVE METALITZ: Steve Metalitz with the intellectual property constituency. I want to pick up really starting with Keith's comment and ask Cyrus and others if those statements also apply to the registrar agreement.

I'm asking this not -- from a slightly different perspective, which is that of the non-contracted parties.

As you know, this RAA process is not 18 months. This process was set in motion four years ago in Mexico City. And I chaired a sub team composed of GNSO and ALAC that developed topics for the new RAA. And as you may not know, one of the toughest issues, one of the most confrontational issues, was over what role could the non-contracted parties whose interest are vitally affected by the terms of the Registrar Accreditation Agreement, what role could they play in developing the new agreement? We were not allowed to participate. Ultimately, the contracted parties vetoed that.

But I think it's at least important that, you know, today you've described some significant changes to the document that was put out for comment a month ago.

So after four years, are we going to have a 21-day public comment period? The reply comment period hasn't even ended yet. The agreement has been changed substantially. What is the way forward that's going to allow the community to actually have some input into this process? Thank you.

SAMANTHA EISNER:

Thanks, Steve. So as you know, another part of what came to the table with the law enforcement negotiations were the recommendations that came out of the drafting team. And I know that we have -- I think we have provided an updated report on how that maps. Or we have something fairly -- we have something that we are preparing to provide.

I know that's something that's of interest to you, to see how it maps to the GNSO drafting team negotiations. So those recommendations were at the table.

In terms of moving forward from here, the public comment is still open. As I noted before, we have been reviewing the comments as they come in. You know, the registrars -- you may agree or disagree with this, but I think many of the changes that we've made have been in very small areas, right?

The base documents that you've seen are -- are fairly much intact from where it was. And so really our -- as we do always with ICANN, we review how the -- how the agreement or how the document we posted for public comment, whether the changes that are within that are responsive to the public comment. And so we will continue along that path as we continue forward to finalize an RAA. And so we will be considering that as part of the calculus.

STEVE METALITZ:

Sam, unlike some others at the table, I don't think you guys are acting in bad faith. I'm assuming you and the registrars are acting in all good faith. But the fact is -- And I appreciate your representation about what the changes are. But I think we need to see them, and I guess I would like to know when we will see them and what chance will we have to provide input to them before they are finalized?

SAMANTHA EISNER:

Right. I know it's important for us to know that those are put out so that people can actually see them. We would never have the board

approve or sign an agreement that has not been seen by the public. So that will happen.

MATT SERLIN:

The only thing I want to add, Sam, to what you have said is the area of discussion and change are areas that were flagged in the public posting from March. So in what was posted in March, there were areas that you saw proposed ICANN text, proposed registrar negotiating text. That's what -- the areas that have been our focus since that time.

I've got Jeff and Ken. Jeff? And Michele.

JEFF NEUMAN:

Thanks. My English is not as good as Stephane's. I didn't thoroughly understand your answer to Stephane's. So I am going to ask it in a little bit different way just so I fully understand it.

Does ICANN commit that if the registries are not comfortable with the new form of agreement, that the board will not vote on April 20th to approve the contract?

CYRUS NAMAZI:

That's a slightly different question. It is hard to quantify if the registrars are not comfortable with it. To whom are you referring?

JEFF NEUMAN:

Sorry. We're trying to put together a negotiating team, and it's very difficult -- I would say in some circumstances, it's more difficult or just as difficult than putting -- as putting out negotiating teams as registrars

because you are not only dealing with different business models like you have the registrars. You are dealing with non-established entities or non-established providers of services, right? Applicants who have never even stepped foot into the ICANN arena. So setting up a negotiating team is extremely difficult, as you can imagine.

But if we do -- we are planning to do that. And I guess my question is: Right now you are hearing from a number of registries that we are not yet comfortable with the way the agreement is, where we're happy with the way things are progressing. If we are not comfortable in a week from today, is it ICANN's commitment that the board will not vote to approve the registry agreement?

CYRUS NAMAZI:

Let me rephrase my answer. The short answer to your question is yes. If you are actually representing the negotiating team is representing the entire registry community, the answer is yes.

But let me tell you -- rephrase my answer to you. The point that you should take away from my response is that we are ready to move as fast as you want to move.

This is what we ended up doing with the registrar side. We ended up meeting three times a week. We ended up having additional actually conference calls with them. And this is why we actually ended up where we ended up, which is a great place that the negotiating team was comfortable with at a reasonable time, at a reasonable pace. No one felt they were pressured. We didn't feel that we were pressured.

They didn't feel they were pressured, and we're ready to actually come up the same pace of movement and progress that you want to set.

This is the message that you should take away.

If you want us to actually move with you on a day-to-day basis, we're ready to do it. I'm not shooting for an April whatever date. But I'm ready to actually move as fast as you're ready to move.

MATT SERLIN:

Ken -- no, Ken and Michele.

KEN STUBBS:

This is Ken Stubbs. I'm speaking in a personal capacity here. First of all, I have a couple of questions. But let's go back to the basic legal concept of a contract. I'm assuming that contracts will not be presented to the registries to sign until the board has ratified the language of the contract and authorizes staff -- empowers staff to proffer the contracts to the registries.

We're trying to get this done in extremely accelerated time frame. Please understand, the overwhelming majority of people that you're talking to in this room would like to get to the end of the line. We want to get across the finish line. But we don't want to have a situation where we are being painted in any way whatsoever as recalcitrant or reluctant or dragging or anything like this.

And there are many people here that do not have the benefit of counsel available in the room. As fast as I get the stuff, I send it back to my people to let them look at it. So we need to make sure that we don't

have any innuendos out there that we really would like to be there but we're disappointed. I've heard this. "We're disappointed at the pace in which the responsiveness we're waiting for." Things have been changing so rapidly that it's very difficult to move because there's this constant interaction there.

So I can assure you that the comments that Keith made about -- and Jeff has made about our desire to move forward to get the teams together, to talk to you and so forth. But at the same point in time, I don't want the innuendo in the background trying to put pressure on these people who have obligations to people who are not necessarily here at the meeting to make sure that it's done.

The whole key is supposed to be in good faith, parties who have all the information available before them to make decisions.

When you get amendments and proposed contract language at 2:00 in the afternoon, it is pretty damn difficult when you are at the other end of the earth to turn it around in 10 to 12 hours and come right back with a yes or a no.

So we will -- and I'm only speaking for my own self. We will work our butts off to try to get this done in a manner that we can point to with pride. But, please, let's not express any disappointment about anything here because you know most of us have dealt with a lot of your people for a long period of time. We're working there. We're trying. We're working.

MATT SERLIN:

Thank you, Ken.

KEN STUBBS: The question I had is, very quickly -- given the time parameter, if you are the first person in line and if you're not able to sign the contract because it takes a certain time period for you to be able to get authorization from your company, what happens to your place in line? Are you being put at the back of the line because you can't sign? Do you understand what I'm saying there? There is a certain queue that has to be dealt with.

SAMANTHA EISNER: You retain your priority number. You don't get put at the back of the line. When you are ready, you come to us and that's when we will move forward. You don't have to move to the back.

CYRUS NAMAZI: And the answer for your first question about the board approving the contract obviously is yes.

MATT SERLIN: Mr. Neylon.

MICHELE NEYLON: Thank you, Mr. Serlin. Michele Neylon, Blacknight, not speaking in my personal capacity since I don't really have one. This entire process has been tortuous at best. From the registrar perspective, it's been 18, 24, 36 months. I don't know -- Where did you say it started, Steve?

STEVE METALITZ: Mexico City.

MICHELE NEYLON: I wasn't in Mexico City, but I did suffer with Steve through the entire prioritization process, through multiple engagements with law enforcement and GAC which was, like, I don't know going in and being attacked with razors. It was great fun.

And, you know, I had a lot of reservations with various drafts of language. But what I'm seeing now is a hell of a lot more palatable. Some of the -- finally, having ICANN put in a contract, even if it is still only being worked on, it is not 100% final, that you finally recognize local law, thank you.

You are not a law-making body, and you need to respect local law and you need to put that in contracts. About bloody time.

As an European registrar, I've had huge issues with a lot of the way ICANN approached things with your U.S.-centric view on the world. And it is refreshing to see that you have finally woken up and realized that you can't keep doing that. Thank you. I'm very happy about that.

On other matters just -- I think it's great to see that we're getting somewhere with this. I would love to be able to see an end to it because I've got better things to be doing with my time than dealing with the stream of updates from the negotiating team who have done a fantastic job. But there is a lot of other stuff that those of us who actually are trying to run businesses are doing.

And to Elliot's point, if you are going to talk about extreme circumstances, would you please give us concrete examples of that because this kind of hypothetical what-if -- I mean, for God's sake, at the moment on the way here, we had the Korea at the point of going to war with the United States. I'm thinking to myself, I'm sitting in an airport somewhere going: It won't actually matter. I am go to the ICANN meeting. We will be talking about the RRAS, RAAs and all other sorts of acronyms and we will all be dead. So, anyway, thanks very much.

MATT SERLIN:

That's a pleasant way to finish your comment. Put the fear of war into all of us. Wonderful

Wendy, did you want in the queue?

WENDY SELTZER:

Thanks very much, Wendy Seltzer. I appreciate all of the work that the registrar negotiating team has done updating the registrars. And I'm still concerned about the lack of transparency that the process has had to the public who -- and the other members of the community who are affected by the agreement. And then timing, if it is challenging for registrars to review materials, it is even more challenging for others to review it and get comments in a time to be useful.

I recognize the interest in speed, but I think that can't be used to leave out opportunities for community review. After all these contracts set up the only opportunities, that individuals, organizations, everyone who depends on domain names has to register domain names. So they

critically affect a range of interests well beyond just registrars and registries.

So there will be GNSO counsel review of the documents, and I think we need better ways to interact with processes like this. I'm not saying that we need to become the managers of contracts, but we do need to be able to weigh in on the important public provisions there.

MATT SERLIN:

Thanks, Wendy.

I don't see anyone else in the queue, although I don't have -- rob? Okay, Rob. Go ahead.

ROBERT HALL:

Just wrapping up, I think we got a few minutes left. I want to say some thanks if I can. We have a large registrar negotiating team that included people that are no longer even on it such as Mason and Tim Ruiz, certainly Volker and Jeff Eckhaus, Matt and James and myself. Would like to thank the ICANN staff. I said Volker.

I would like to thank the ICANN staff from Fadi, Akram, all the way down to Sam and Cyrus and Margie and John Jeffrey and Dan. They have been through various iterations of this over the last 18 months. And we have been locked in rooms for many hours with you. Gotten to know you well.

We would like to thank you on behalf of the registrar community for getting this with us and getting to a result that I think we will all be happy with in various forms. Some of us will be happier than others.

That's the nature of the side of our table. We would like to say thank you for sticking it out and getting to know us as well as we got to know you.

CYRUS NAMAZI:

Thanks very much. Thank you, everyone.

[Applause]

MATT SERLIN:

Didn't we want to talk about R3? I think it has gotten the short shift here, rights and responsibilities. I'm joking.

[Laughter]