

Alan Greenberg: We are reminded by the interpretation people that French and Spanish tape have more words in it than English does, so speak slowly to give them time to translate. Ladies and gentlemen, if there are no other administrative issues, I would like to go onto our first item. For those who have not been in a coma for the last few months, one of the (inaudible 0:01:55) issues on getting to the point where we can accept applications for new GTLD's is the issue of vertical integration, that is to what extent may registrars and registries have some level of co-ownership.

Currently there are restrictions on ownership for the existing GTLD's and also all of restrictions on what, even if there is ownership what they can do. We have with us the Co-Chairs of the working group, Roberto Gaetano and Mikey O'Connor, the working group has been meeting since, I guess shortly after Nairobi, for the first while we were meeting once a week and teleconferences, we're now meeting twice a week in teleconferences, there have been something over 2,000 emails exchanged and some untold numbers of private emails and private discussions going on between various parties.

There are a number of very significant proposals on the table, there is no consensus as to the way to go and our understanding is we have until about August to come to closure or the board will make a decision and proceed with the applicant guide book. With that I'll turn it over to whoever is going to start first.

Mikey O'Connor: I am Mikey O'Connor; I am the junior Co-Chair so I do all the work. And then Roberto the senior Co-Chair, like in soccer, I am the guy in the middle of the field, runs back and forth, Roberto is the guy that hits the ball with his head and makes the goal. I will walk you through some slides, and then Roberto will have some things to say and then we'll do whatever Alan tells us to do.

Thanks a lot for inviting us to your meeting, it's a pleasure to be here, a lot of you are on working groups, so I am counting on corrections when I stray from truth and reality. Sebastian and I had a great plot going to have our very own domain name which didn't turn out very well when we found out how much it was going to cost, but it was a great idea, it was all Sebastian's idea. We were going to have v or w/g.vi. The problem is by the time you can ask for it, the question will be moved. Well we just couldn't afford it.

Anyway the next slide please – we will let the slide move forward in Adobe. So I am going to only spend about 5 or ten minutes, basically as Alan pointed out, this is a very aggressive schedule that we're under, primarily because we have to arrive at our conclusions without delaying the roll out of new GTLD's and as you know, that roll out is in final stages, so to solve a few problems that arise out of our charter, what we're really doing is two PDP's for the price of one.

The first PDP, the one we're in right now, is really just two ICANN meetings long, we're half way through, we started in Nairobi, we'll wrap up by Cartagena, that slide is a little old, I didn't know where we were going to be when I drafted it. So as Alan mentioned and I guess you can go onto the next slide, whoever is running the Adobe room? Who is running it? Margi are you running it? Oh. I mean I can even call you by name. Matthias ok, perfect, thanks Matthias.

Just a few factoids, we're a little bit late, we're about 3 weeks late from the schedule that we laid out right after Nairobi. But it's not for lack of trying, we're doing a process that typically takes a year and a half, sometimes 11 years, depends on which topic you're working on, and we're trying to get it done in about 180 days, and I think we're going to make it. But we're also a very large group, there are a lot of people that are very interested in this topic and we have about 70 members including a number from the ALAC which is quite delightful and those of you who have been participating, have been strong, important contributors to this and I will take just a moment to say thanks for all the effort that you all have put in, one of the things that does characterize this working group is that we have a lot of email traffic.

We have about 2,000 emails in the pile so far, and just by way of comparison, I was on the registration abuse working group and over the course of the year and a half we generated 500 emails. And this one we've generated 2,000 in three months and we're still going strong. The way we've structured the work is we've been developing proposals, we started with about 12 and we're sort of collapsing and narrowing and we're down to, depending on how you count, two or three proposals but the VI is to internet time, what internet time is to real time and so some of these facts are three whole days old and thus wildly out of date, because we are moving very hard and very fast during the week.

I guess we will go onto the next slide. The rest you've heard. Basically Roberto and I both come from chemistry cultures, my dad was a chemist that worked on the Atom bomb back during the Second World War, so I grew up with chemistry and Roberto works for the Atomic Energy Commission in Europe, and so we've been using the analogy of atoms and molecules.

The proposals are molecules and the components of the proposals are atoms and what you see on the screen in front of you is the result of a meeting that we held on Saturday morning here in Brussels in which what we did as a group was to develop a list of the atoms that were the most important to us and the most important to the process and then we ranked them, but then when I put them on this slide, I un-ranked them and sort of clumped them by topic.

But probably one of the most surprising and interesting conclusions is that the top ranked atom that came out of that discussion has to do with the ability, capability and desire for ICANN to be an enforcement and compliant operation and the reason that's important is because, it's my understanding that we're here to sort of present the summary but that the actual debate is going to happen after we leave this group.

I think one of the things to think about in your debate is, how much of what you are proposing hinges on a compliance function, either the presence of a compliance function, or the assumption that the compliance function is not going to be there, because that seems to be sort of the issue that underlines a lot of the difficulty that we have and the working crew coming to consensus. And so during your discussion it would be very interesting to pursue that and we, the working group, would be very interested in what you have got to say.

The next clump has to do with sort of the core issue, which is control versus common ownership, whether those restrictions are only within the TLD or whether they pertain to all the TLD's that the organization interacts with and what the role of a registry service provider is in that mix. Clearly that is at the heart of the recommendation, that's what is going to get translated into language in the contracts and all of the proposals address that and we, as Alan says, we have got a lot of diverging opinions, so again very interested in hearing what you've got to say.

The next clump has to do with exceptions and there are a variety of exceptions, one of which is the single, what we're starting to call the single registrar exception and just to further confuse the terminology, we've got single registrar single user which is essentially a registrar that produces domain names where they control the sites, they control the content and then there are single registrar multiple user where an organization would distribute domains to employees, vendors, people outside the organization.

And those people would be able to control the content of the websites so we have some subtle distinctions, but there are other exceptions, for example one of the issues is what about a domain that is an orphan that can't find a registrar to sell it, should there be an exception for that kind of domain, or for that kind of registrie, should there be an exception for a community type domain etc.

There are a variety of discussions about a variety of exceptions and clearly the exceptions atom is another big part of whatever the final proposals would be and then the final atom that we've really focused on Saturday, is whether this is a permanent long standing, long term solution or whether this is an interim solution where we put this in place and we, 'we' ICANN, not 'we' the working group, revisit the decisions we've made in some period of time, eighteen months, three years etc. Those are the sort of the dimensions of the discussion, there are a number of other atoms but they sort of didn't make this high priority list and I think that is the last slide. Is that the last slide Mathias?

Next steps, lets hang on to that atom slide for just a minute, I'm going to switch to one other document that I've got on my PC. So this week in Brussels we've got a couple of, so the next part of that Saturday meeting, we went in and assembled two molecules out of these atoms, I just want to briefly summarize those with a huge caveat, which is that I am summarizing a very nuanced, very complicated discussion and the positions are still changing, they are still moving.

And so I don't want you to think that these are the proposals or the positions of the working crew, I just want to throw them out there as examples to give you an idea so that when you carry on your discussions, you've got some thoughts. So one debate is whether or not limits apply across all TLD's or whether they only apply within the GTLD that the registry sells. And I guess I am going to leave it at that, there's 2,000

emails and three months worth of discussion behind that but it's hard to summarize that.

The next one is ownership and control. The sort of lead in discussion has always focused on the ownership percentage, 15%, 0%, 100%, 2%, lots of different numbers. But what is clear is that one also needs to think about control between these entities, it's possible for an entity to have almost no cross ownership, someone can own one share of a company and yet they can control it other ways, they can control it through contracts and so on. And so one of the key distinctions that we've made is that the difference between ownership and control and there is a pretty strong sense that the key issue is really control rather than ownership percentage, so as you discuss that, that is another dimension to think about.

We talked a little bit about exceptions and we've mentioned registry service providers, but just to touch base on that, one of the things that is emerging is the possibility of introducing new contracts between ICANN and various entities, Alan has got an idea that he just told me about before we sat down, this is typical time for this working group, things change by the hour and one of the ideas that came up on Saturday was the idea of perhaps introducing new contracts between ICANN and registry service providers, that is a contractual relationship that does not exist today. And to steal it, I won't, I will let you tell your own idea, you can get all the glory.

Alan Greenberg: We're not talking the battle yet.

Mikey O'Connor: OK, never mind. This is the tricky bit about being the junior Co-Chair, as every once in a while I sort of walk into the ditch and get in trouble. So anyway, that's another dimension; it's the whole who has contracts with whom, who has contracts with ICANN, do we have enough and this sort of circles back to the compliance issue. And that's the final one. The group is pretty, you know, we're probably closer in a way to consensus on the compliance issue in that we're all pretty convinced that something needs to be done in terms of compliance, although there are deep philosophical differences as to whether ICANN ought to be a compliance organization or not.

It's also not clear to me as a Co-Chair whether this is an issue that can be solved within our scope, this may be one that we have to bounce up because, we're starting to touch on a fundamental strategic issue, sort of

fundamental mission issue for ICANN and we may only be able to raise it, but it's clear that compliance is a big part of this discussion and when you talk about it, I would assume that you would all have something to say about it as well. And I think now we can go to that last slide, which is really the possible outcomes from the Brussels meeting, there are really three. One would be my least favorite, would be that we will confirm that we as a working group can't get to consensus at all and we will just stop because we will have run out of time and we will move onto our slower paced, longer term, second PDP.

Speaking personally as a Co-Chair, I don't think that's going to happen, I think what we're going to see instead is either substantial progress towards consensus and we'll request a little more time or we may even arrive at a consensus position here in Brussels, in which case we'll just carry on and we had an update session with the GNSO Council on Sunday and received very clear word that the schedule is not aggressive enough, we have to get this done very quickly and we will do that and I think that is what will happen, so we'll come to some sort of consensus view with perhaps one or two proposals that will forward very quickly to the council through the public comments cycle etc and hit a sort of end of summary deadline for the whole shebang. And with that Roberto, do you want to say a few things?

Roberto Gaetano: Yeah I have to have the last kick to the ball. Mikey has spoken describing what we are doing for you and now let me tell you what you can do for us. This working group has been characterized as a battle between registries and registrars opposing the interest of the commercial economic interest of registries versus registrars or opposing the interest of the incumbent in the markets versus the new entrants, how can we have a situation by which new entrants can still come and make money and all this kind of thing.

In all these discussions there is one point of view that is taking the risk of being missed from the picture which is what is the interest of the registrars and of the users and I think that this is, these are questions that the ALAC is very well placed for answering and for contributing to the work of the working group and in fact this is what we have been hearing from Alan, from (inaudible 0:23:13.4) and from other people that come to the working group, but let me put it this way in very practical terms, we have, for instance, the position on which the current separation favored in competitions among registrars is beneficial to the consumer because it offers, it keeps the prices low and so favors the registrant and in this way,

favors the presence on the market of the different choices which at the end will be beneficial for the consumers.

On the other hand we have situations, cases, for instance, potential community led TLD's that will not be able to operate if they have forced to use the current market situation and current (unclear 0:24:41.2) to play by the current rules which is that they have to use the accredited registrars, so on one hand we have the benefit of the competition, seen from the consumers and on the other hand we have, and that is if we have the vertical separation.

On the other hand that vertical separation obliges to have an additional layer that is not beneficial, its actually counter-productive, in others cases and specifically small community TLD's and so on, and I think that we would like to have the ALAC thinking about this and contributing with proposers so with clarity to the rest of the working group on what are the issues that are related to this situation and maybe you can see other things that are related to the interest of the consumer that maybe we have not discussed, debated strongly enough or deeply enough and that we are taking the risk to miss when we come to the compromise solution.

So I would really invite the ALAC to think about what are the implications of the different solutions, what are the implications on the different atoms, for instance is there any position that ALAC has or that any contribution that you can bring to the discussion in order to have also the full weight of the consumers in this working group that otherwise will be (unclear 0:26:42.4) towards registries and registrars and contractual practice.

Alan Greenberg: Thank you Roberto and you captured most of what I was going to be saying, so I'll be very short. I need to point out that we're already way over time on our first session of the day due to the fact that we started very late. And so I think we're going to have to try to keep this a little bit short, or we're not going to end doing half of our things and our agenda today, but I think Roberto captured the real issue.

There are plenty of people on this working group who are fighting for their own businesses, be they registrars, registries or the new GTLD's they want to sponsor or be involved in, there are relatively few people who are looking at both the potentials harms and the overall, what I call the domain ecosystem, and making sure that we don't do things because we're in such a rush that cannot be undone afterwards if they prove to be bad.

So I think that's going to be part of the discussion that we will have when we resume this in an hour or so, assuming we get that far. Just to give a little bit of a flavor, Mikey gave the theoretical definitions, let me try to give you a prospector of the range of things we've seen, the variation has been basically from where we are today, that is, there is a strict 15% limitation but adding control issue and adding RSP's into the limitation, that is the back end providers and the other end of the extreme is there are no rules, the market does what it wants.

There have been some discussions that it's ok to do the latter because if we find a problem afterwards we will simply fix it then. That unfortunately lives in a different universe than most of us live in, where once ICANN signs contracts they're bound by them. So the range of options that people have proposed has been very wide, we are coming down in scope, that is the people, most of the people who said they want complete freedom, have accepted the fact they're not likely to win at this point and therefore there are more constrained options but there are still some very significant differences that we'll be talking about when we come back, let me, yes, sorry?

Mikey O'Connor: I just wanted to add the other extreme in terms of options, I forgot to mention that during my intro, and that is that the current situation is that the board passed a resolution at Nairobi that said 0% ownership, and instructed the staff to revise the day to reflect that, current language in the day is 2% ownership limit, so we really have the whole range from 0% to 100% represented but if this working group does not arrive at consensus and does not present a proposal, the current language in the DAG would be 2%.

Alan Greenberg: I would disagree, just to show that we can't even agree on facts. The current version in the applicant guide book says 2% which was the approximation of 0% the board said, it also contains the provision that should the working group not come to consensus, the board will revisit it first, so that may well not be the real position, but it is the threat. We have in a way of one question from [Hong] (spelling? 0:30:43.6) who has to leave quickly, I would like to try to keep the questions to a minimum if we can in this session, and push them over to the next one, so we actually have a next one, but go ahead [Hong].

[Hong]: Thanks Alan, I fully agree with Roberto this is not only an issue of economic study of commercial interests of registrar and registries, it also has some impact on the users interest, I fully agree you are doing hard work on a very complicated issue across ownership is very difficult to define, even for a corporate lawyer, and given that you're doing this hard work in very short timeframe, but I have a question on the timeline, not only the timeline for this wonderful work, but also for the whole new GTLD program.

I do see that the statement clearly in the version 4 of DAG, your work has been taken into account of DAG, it says that registrie registrar cross ownership language proposed position pending to you, to the GNSO, so an issue here is, I do see your two options, two possibilities, one is a long term PDP and another is hopefully a short term PDP, if this is going to be a long term PDP this means that the new GTLD program will be, well, delayed, and this would have significant impact on users absolutely, specially think about this idea, new GTLD, has this been waited by the user community in the native script user language group.

Mikey O'Connor: Let me, this is Mikey, let me respond to that, it's clear that, and it's even in our charter that our work will not delay the new GTLD roll out. If we don't get done, the train will leave the station without us.

Alan Greenberg: The timeframe that we're looking at, Brussels is perhaps a somewhat artificial deadline; the timeframe is generally perceived to be around August, which would give time for a public comment period, the GNSO to vote, including the GNSO constituencies to consider it and to go to the Board in time for a final applicant guide book. So we're looking at roughly August, which isn't a lot of time given the fact that parts of the world, the next month or two is on vacation. [Esumee]?

[Esumee]: Yes thank you, [Esumee] I am from Asia Pacific RALO, not knowing exactly much of the work, sorry. Has there been any conversation [does he mean conversation? (Inaudible 0:33:27.5)] about regional distribution of the registries? The background is so far I know that only US and Europe they are registries, but at least in Asia Pacific there is no real established registrie and if the restriction of the vertical separation is applied very strictly, some of the regional Asian registrars and others are considering to appeal that they'd be hindering the entrance to the registrie competition from other regions than US and Europe and ALAC is one of the few organizations divided by regions in ICANN context.

Mikey O'Connor: I think that's a good example, this is Mikey again, that is a good example of the kind of information that we'd like to hear from ELAC and its come up in the working group but not as a central issue by any means. So that's very good.

Alan Greenberg: Evan?

Evan Liebovic: Hi there, I guess that in this instance I'm speaking mainly on behalf of my AOS and other people I've spoken to informally. And to keep your analogy going I'd like to add some (unclear 0:34:39.4) material. One of the things that has been really concerning, is as Roberto mentioned, is it seems in many cases that this is an argument over business models as opposed to ICANN's core competency that is, you know, the stability and continuity of the name space.

Whether or not registry should be allowed to say, take a model like DELL and go directly to the public or whether or not an indirect channel is required, it seems to be acknowledged that because we have a scarcity of domains right now, scarcity of TLD's that maybe some regulation is needed, but can there be consideration to revisiting this when there's a lot more TLD's out there and the necessity to have this kind of restraint may not be necessary.

There is a real concern, at least amongst the, shall we say, rank and file that I've been trying to talk to about this, that issues like this damage ICANN's public credibility when it seemed to be agonizing over business models when the main issues such as, you know, falsification of information and encouragement of fishing and things like that, you know, are being less addressed, you know, when ICANN has to turn its compliance efforts into business models as opposed to issues that affect the public, this has an effect on ICANN's credibility in the general public.

And I really don't know if this being considered while all this financially motivated infighting is going on. Can you talk to me a little bit about whether or not these things are meant to be long term or whether they will be revisited once you blow open a whole bunch of new GTLDs.

Mikey O'Connor: This is Mikey again, that's part of the reason why we have, that sort of two PDP's for the price of one model, is that the kinds of issues that you're describing, and there are a bunch of them. In many cases, we don't have

the facts to, some of these we need economics studies, and we need all kinds of information that we don't have the time to develop. so we have this fundamental conflict between the pace of the new GTLD roll out and the strong desire in the part of community not to delay that.

And at the same time the need to develop some underpinnings for the kinds of issues that you're raising, so what we've been saying to the working group is, let's focus on things that we can agree to and support quickly, get those atoms into the new GTLD handbook and defer but not ignore those issues that we would need much broader, much deeper information on it, so what you're seeing is a lot of the issues like that haven't been center stage in the conversation because we know that we don't have the facts to have the discussion.

Alan Greenberg: Is there anything else before we go on to our next, oh I'm sorry we have Sebastian.

Sebastian Bachollet: I will start in English and then will follow in French to allow you the time to take your headset. First in English because I want to thank you very much Mikey and Roberto for two reasons, the first one it's for the job you're doing, to try to put some consensus in quite difficult large group and that's very difficult. Second one, I think it's the first time we have chaired a working group not unlike a large amount of people coming to us and not staff talking about a subject where we as participant are engaged, and I think it's a very good sign for us that you come to us this morning. Thank you very much. Now I will speak to you in French because its more substantive and it will be difficult for me in English.

Voice of translator: I think that the difficulty of this work it lies in its number, but also somewhere we would want in a few weeks, say to ourselves whether capitalism is the better, the best economic system where we are asking ourselves about the organization of the market, do we need regulations, is it good to leave the market alone and I don't see how ICANN and its 70 participants could reach a consensus.

Personally but absolutely personally I am against the freedom, the total freedom of the market, the crisis showed us that we need a minimum of regulation and if we say that I want the free market otherwise ICANN is not doing its work, I think that we are not right and we are not looking for a consensus, we would be all together, we would not be happy, we would be unhappy, otherwise each one of us should proceed, I would be

personally go for regulation and other people think that we should find an equilibrium.

This is what Alan said in the beginning, we have to think about the steps that we can do today, that are not irreversible that will help us and allow us to go further in the next step and this is what we have to bear in mind at any time in order to be able to reach a consensus, furthermore, the question of the percentage or of the mode of the form that you are going to adapt is also a discussion that will take some time.

I think that it would be interesting that today in the discussion that we have here, we could have a very strong expression of the regions that do not participate in the working group. I think that North America and for example, is not the world vision and we need the vision of the other regions that do not participate in the working group and I'm going to stop here.

Alan Greenberg: Two points, first of all, we have already used completely up the time that David Giza, had to talk about and us to talk about compliance, so I think we need to cut this session short and I really would like to have the discussions between us and not lectures at the Co-Chairs, who have no control over where this is going other than to try to do it in an orderly manner. Are there any questions from the chat room, anyone who is watching it, no? If there is nothing else that needs to be done in this session, I would like to, sorry, if there is nothing else from the At Large, that I'd like to give a few seconds to each of the Co-Chairs to wrap up and then we'll go on to David Giza, who's been very patiently sitting here.

Mikey O'Connor: I'll go first because I'm the junior Co-Chair, and mostly I'll respond to what you were saying Sebastian, because I think that what you hit on is what I was alluding to earlier, that some of these issues are profound when it comes to ICANN and in fact cut right to core of the ICANN mission and I think that also fits well with Alan's point and yours too which is first do no harm, we have to balance a lot of things and we'd love hearing from you and we'll come back any time you invite, thanks for inviting us today.

Roberto Gaetano: I will answer so in French so that you can get the interpretation to my opinion it is not that this working group has to find a new system to go out of the capitalism (inaudible 0:44:19.7), I think that it is simply about the fact that we have today a situation, current situation, current rules that are for the total separation, can you reintroduce within a limited situation in

the beginning, other models that are not separation, whether this is possible, is this useful or not?

And starting from that point after having tested the new rules that will be suggested by the Board, so following the recommendations of this working group, if we reach the recommendations after a testing period and evaluation period we could ask ourselves on a longer term if the model, the separation model, can be, must be reviewed, totally reviewed, or do we have to go backwards.

Or do we have, we will see in a period of two years if we have to review the situation concerning the participation, it is true I think that Sebastian is right, but the working group is made of the people who have come and are ready to work within this working group, before undertaking the Co-Chair of this, before becoming the Co-Chair of this working group, I sent a message with a list of ALAC saying that there is this working group, I don't think that there are many members on behalf of the users and this is something that we could, that we were able to do.

But if we look at the composition of the group, most of them are in Europe and in the USA. Small story, very brief story, we had to decide the time of the video conference are in the evening for Europe and in the course of the day for the USA, and at night for Asia. So I suggested to have a ovation (inaudible 0:46:59), but actually we were not able to manage it, because throughout Asia there were only two participants and with a group of 70 members.

We could not force or impose on the majority to wake up at night, I would have done it of course, personally but why the people from Asia do not participate because time differences are prohibitive, or are the time differences prohibitive because there is no pressure from that region of the world, this is still an open question

Alan Greenberg:

Thank you, I thank Mikey and Roberto and we will now take one minute to swap the head table positions and welcome David Giza. Most of you know David, who took over and is responsible for ICANN compliance about a year and a half ago and we have a twenty minute allocation which expired fifteen minutes ago, I'd like to give David as much time as possible, give us as much time with David so I turn the microphone over to David for any introductory comments he has and hopefully we can then go to some questions and answers and some dialogue.

David Giza: Thank you Alan and good morning to my ALAC colleagues, I want to be as brief as I can, considering that I have 20 minutes to cover several slides and then I would like to leave some time for questions, because unfortunately I think there are many questions that go un-asked and un-answered due to time constraints. So let me begin quickly by sharing the agenda with you and I'll be moving on an abbreviated pace due to time constraints.

I think it's important to review the mission of the contractual compliance program as that mission continues to evolve and change, I want to share with you our recent enforcement activities, I'd like to highlight our IRTP that is the Inter Registrar Transfer Policy, dated test audit that we're currently conducting, we have other key compliance work in the pipeline, which I'd like to share with you as time permits, talk a bit more about our ongoing communication and outreach efforts and then just remind everyone how to reach out and contact us with respect to compliance issues or matters that require our attention.

This slide may be a little difficult to see due to the coloration but the compliance program is comprised of essentially 6 modules and you'll see from that first module on the far left that we are really required to manage the compliance relationships with over 940 ICANN credited registrars and 16 registries, core mission: manage the compliance relationships that exist through those contracts. That requires corrective action, well actually auditing corrective action and enforcement of work with respect to contracts.

That also involves particular enforcement activity around consensus policies such as the UDRP and the IRTP, a good portion of our work involves audits, I'll talk to you a bit about audits that are under way as well as planned, we are focusing more attention on communication with all of the constituencies that we serve through our website, newsletter and outreach in various regions of the world.

And then finally we realize that there are emerging compliance activities that will require attention, such as the presentation you've just heard regarding VI, and I think you'll be pleased to know that compliance will be playing a role in that discussion going forward and I think as many of you heard Rod say yesterday, I can, will do whatever it takes to invest in

and build a compliance program to support the work of the VI working group.

So moving quickly to enforcement, as many of you know, we have been working very aggressively and assertively over the last two years to identify and when appropriate non-renew and terminate registrars who fail to comply with key provisions in the registrar accreditation agreement. This chart shows you that in the prior calendar year there were 20 registrars that were non-renewed or terminated for various compliance failures with respect to the RAA.

This year we have 10 registrars in the first 6 months of 2010 who have been terminated or non-renewed, if that pace continues we will come close to the 20 perhaps 25 number that you see from the prior year. That work is good but honestly it's not good enough, we think that there's more that can be done and you will hear me speak today and throughout the conference with respect to the need for continued investment in compliance, both in terms of our resources and technology tools to assist us in this continuous mission that we're entrusted with.

Since Nairobi there have been six registrars that have been terminated, we have sent 5 breach notices to registrars, I think the next number is particularly interesting, almost 400 enforcement notices sent and people will ask me, you know, what does an enforcement notice constitute, so in those instances I will tell you that we send notices to registrars who are essentially not complying with our registrar data escrow requirements, we forward complaints and then send enforcement notices to registrars who have been identified through our consumer ticketing system, as essentially non-complying in one or more areas.

And we also send enforcement notices requesting registrars to investigate Whois inaccuracies particularly Whois inaccuracy reports that we receive through our Whois Data Problem Reporting System and that number is fairly consistent with our annual average where we experience about 400 to 500 enforcement notices that are being sent on a trimester basis, you will also see we had about 3,000 consumer complaints that we processed and the data with respect to those consumer complaints can be found on the ICANN dashboard.

If you go to that page on our website, you'll see that compliance maintains two bar charts, those charts are under review and we're actually

developing some new metrics that define our performance goals and objectives and report on our results and those new metrics will be available later this year. The last bullet point that I want to share with you is that all registrars are required to comply with ICANN's RDE which is Registrar Data Escrow Deposit Program, happy to tell you that 54 registrars made their first RDE deposit and we're now looking at essentially 5 remaining registrars out of the entire registrar family that we're working with, to bring into compliance so that all registrars will be onboard with that program. The IRTP audit.

Alan Greenberg: Yes Sebastian, what is it?

Sebastian Bachollet: Yes I want to know what RDE is, I love the anachronism in this organization, thank you.

David Giza: It's the registrar data escrow program requires registrars to escrow registrar data.

Sebastian Bachollet: Simple words are always better even in English, thank you very much.

David Giza: Thank you, will do. So that they are required to escrow registrar data with a service provider, in most cases that service provider is Iron Mountain. For purposes of conserving time, I have one slide here regarding our IRTP that's Inter-Registrar Transfer Policy Audit, we're running a beta test based on an audit plan that we developed late last year into this early calendar year.

And you'll see from that slide that there are four categories that we're currently beta testing or auditing. We're looking at about 120 transactions that have been reviewed, we're analyzing that data and we'll have a preliminary report from the audit that we'll share and post on our website after the Brussels meeting. There are some key compliance work that I want you to be aware of, we were working diligently in the area of issuing advisories and there are two in particular that I think are relevant, the UDRP Communications Advisory which we believe will help registrars, to better understand their obligations under the UDRP.

And then secondly we're working on a registrar accreditation agreement Section 3773 advisory and for those who are familiar with that particular section of the RAA, that would require registrars to essentially accept liability or to disclose the identity of the registered name holder in the

event that they are put on notice by a 3rd party that there is a pending matter or an enforcement action or a law enforcement proceeding.

The second advisory is posted on our website, we're currently in a public comment period and I would encourage all of you, if you have the time to review that advisory and provide feedback to ICANN so that we can constructively move forward with that advisory later this year. In connection with that advisory we're also doing some fundamental audit work under the RAA regarding section 3773 and there what we're attempting to do is to identify registrars who have failed to include that required provision in the registration agreement with registrars and that audit is under way.

We expect to have preliminary results in hand before September and we expect to share that information on our website with the community well before the Cartagena meeting. The last audit there that I wanted to briefly mention is our registrar primary and public contact information surveyor audit. As many of you know, we've received a variety of complaints from the community that registrars do not update or keep their contact information current, not only on their websites but also with respect to the information that's communicated through ICANN's website.

And so the purpose of this survey is to identify registrars whose contact information is in fact not current, and then to work with them in a corrective action mode to update that contact information both on their website as well as on ICANN's website and then finally is, I think many of you know, there were two particular research projects that we've been involved in the Whois, I should say the privacy proxy registration services study which has been completed and a draft report has been posted on our website.

And then the Whois accuracy study, I think that many of you know, that there will be a work shop on the topic of Whois accuracy this Wednesday at 11am in rooms 311 and 312 where our consultant, The National Opinion Research Centre, will be working with me to summarize the public comments that we receive with regard to that study and to discuss the path forward. Some folks I believe have seen our new contractual compliance quarterly newsletter, that work will continue, we plan to update our compliance web pages with a revised version of our compliance program with new dashboard matrix in process.

And we want to provide the community with timely announcements related to enforcement that might otherwise go un-noticed, largely in part due to the timing of our meetings, the communication work that we do and the outreach we do, we try to touch all regions of the world and in particular, Pam Little, Senior Director for Contractual Compliance in the Asia Pacific region, was very active, between Nairobi and Brussels, outreach activities involving 18 registrars, one registry, an UDRP service provider.

Pam conducted multiple presentations at industry conferences, outreached to registrars and specific compliance reviews and audits and of course Pam and our team is continuing to assist her with registrar liaison team with the adoption of the 2009 RAA so a very busy time for compliance and that work continues with the help from the community and so we welcome and look forward to those moments when the community reaches out to us through the various portals I've identified on the screen in order to connect with contractual compliance for purposes of filing complaints, for purposes of requiring information, or even just for purposes of just communicating with us to learn more about what we're doing, and we encourage that.

We are on a mission to improve the contractual compliance work that ICANN is doing, we believe we can accomplish that successfully with the help of this group and others provided we work closely and I want to use the remaining time now to take your questions and provide any additional information I can and then of course I'll be available to all of you during the conference to consult or answer questions with you if time does not permit today. Thank you.

Alan Greenberg: All right, we'll start, speakers listen - I'll put myself on it after [Beau] who got his hand up before I did.

[Beau]: Thank you for the presentation, I wanted to ask two questions, one is that you alluded to, the notion of the compliance departments mission being thought about or changed whatever, what is it if it's not compliance and then my second question is, can you provide us with some, not now, by email or something, some budget information in terms of something that would illustrate the historic investment ICANN has been making in compliance, because if its, you know, should be going up like this, and if it's not maybe we can make a statement that funding should increase.

David Giza:

Thank you, with respect with the first question, we are evolving our business model, as I think many of you know, to address the emerging issues that are being presented through the new version 5 draft applicant guide book, I've been working closely with our ICANN team to, sorry applicant guide book 4 not 5, working closely with the ICANN team to identify the compliance resources that will be required to support the launch of the new GTLD program, and in particular how those resources can be embedded inside of the team that will be responsible for both pre and post delegation reviews of the applications that are filed.

Certainly with respect of VI, we're just beginning to have a dialogue now to determine what compliance work will be required, what sort of model we would need to build to support the direction of the organization, as that direction comes to us from other working group and the Board. With regard to your second questions, resources, happy to tell you that in this prior fiscal year and I think many of you know that ICANN's fiscal year starts July 1st and runs through June 30th, compliance hired Pam Little, our Senior Director in Asia Pacific.

Pam has been with us for about a year now and has provided both a strong presence and I think extraordinary amount of contribution to our work in Asia Pacific region. For the coming priory year we are planning to hire a Whois registrie and registrar services manager, that individual will focus 100% of his or her time, exclusively on Whois compliance issues.

This is a topic that I have spoken to Garth Bruen and others about in terms of the need to step up our Whois enforcement work and we're also hopeful that there will be room in the budget to support the expansion of our audit staff. As many of you know, we had planned to hire two auditors, this prior fiscal year, unfortunately due to budget constraints that did not occur, but we're very hopeful that our audit staff will have the funding and the investment required to expand in the coming fiscal year.

Alan Greenberg:

Thank you, I'll put mine in now and I'll add Carlton to the list. I'd like to issue a challenge to compliance, one of the pet peeves that some of us have had for many years is that compliance takes a completely hands off position with regard to registrar resellers, now the rationale is always but we have no contracts with them, therefore we cannot do any enforcement, that is correct, you cannot do any direct enforcement, you have to work through the registrar for whom they are reseller, that says nothing about what compliance can do in terms of audits of any form.

ICANN does not know who the resellers are, there are an estimated something perhaps close to 100,000 resellers, two of the largest registrars have 30,000 each they say and many resellers have resellers, and we don't know how deep they're nested, however it's easier to find resellers on the web, you do a Google search for domain name for something like that, many resellers have an implicit implication to honor the terms of the RAA, because they are presenting the presence to the registrar, many don't. I challenge most people to go to a webhoster who sells domain names and find the registration agreement that applies, maybe you can find out after you've given your money, maybe.

You certainly can't find it before, and there's absolutely no reason that ICANN is not doing at least random sampling of these kind of things. So to identify the problems ICANN is compliance here to protect the registrant and if a large number of the most innocent registrants deal with resellers, I believe there's a strong obligation to look out for them and it's something ICANN vehemently refused to do in the past.

David Giza:

Thank you Alan, you make some very good points and let me start by saying that you are correct, that, you know, ICANN's mission in particular the contractual compliance mission is to protect the rights of registrants, I completely agree with that, we are working diligently, as I think you know, with the RAA sub-team B working group regarding proposed amendments to the RAA, I believe that many of you were in the meeting yesterday evening when that working group reported out, and I believe you're having a discussion regarding those amendments following my presentation this morning.

You'll see from the list of proposed topics for amendment that there is an opportunity to address reseller compliance but it is moving slowly and certainly if we have the additional resources in order to conduct a survey or an audit regarding reseller business models, processes and obligations with respect to their agreements with registrars, we would do so, I think that information would be very instructive and useful to the community, but at the moment I will tell you that our mission is focused and contractual relationships, as you know, and until such time as the RAA is further amended to provide greater outreach for ICANN with regard to how we manage registrars who manage resellers, we will find ourselves in this place we call between a rock and a hard place. But I am certainly willing to look at a way to conduct a survey or to begin to explore more of

the reseller relationships that exist in the market place, again provided we have sufficient resources next year to do so.

Alan Greenberg: Just a quick response, with all due respect the current RAA, which I'm told applies to almost all of the correct registrars and certainly all of the major ones, does include provisions that resellers although clearly defined must honor all of the display and related terms in the RAA, so you don't need a RAA change to do that, you already have provisions in the RAA that a registrar who's notified but has had a reseller problem must do something about it and you're in a position to notify them.

So I understand the issue of your staffing but I think that this is an area which should be an absolute priority to start looking out for, start processing you won't do full surveys, because you don't even know who they are but at least then an attempt to show that ICANN cares about these registrants who are the most vulnerable ones in the whole ecosystem and we don't need RAA changes to do it, we just need will. Evan, is this a follow up on that?

Evan Liebovic: Absolutely, I mean the thing that I was going to say before Alan spoke, was to say I'm sorry David I didn't consider that to be an acceptable answer and the reason being is that simply because a registrar has chose a system of going through agents does not waive any obligation so if you're answer is not to go after the resellers but to go after the registrars because of the behavior of their agents, then do it that way, but saying that you've got to be hands off because the relationship between registrars.

And their agents is out of your control, doesn't take away the obligation, and so you go after it at the level at which you can and if it means holding registrars responsible for the actions of their agents, I don't see it as acceptable to be able to say, well you can't do that because of something that isn't in the wording, could you please expand on this because I really found the original answer unsatisfying.

David Giza: Ok, thank you Evan, point noted. And Alan's point is noted too, there is language available today that we could rely on, we have not initiated an audit or a survey or a review of those obligations under the RAA, certainly willing to do so provided we have sufficient investment of resources to move forward. We have multiple, as you know, multiple competent enforcement priorities and as all of us try to do, we try to prioritize those in terms of where we think we will get the greatest community benefit, and

so if this is where ALAC believes we can get the greatest community benefit, then I appreciate the feedback and we'll examine how to do that work.

Alan Greenberg: One more then we'll go to Garth and then Carlton. With regard to that, if the President and CEO is willing to commit unlimited resources to get VI going, there should be some resources committed to the lowest people in our ecosystem and the ones least able to defend themselves, I will point out that the current version of the RAA in fact weakened ICANN's ability to police resellers because it explicitly called out some of the responsibilities but not all and registrars are now taking the position that the ones that were not explicitly mentioned in the revised RAA are not something that is subject to compliance and I find that very dissatisfying, but that's subject for a different issue, Garth?

Garth Bruen: Thank you, Garth Bruen from KnujOn.com, and for those of you who don't know, we have conducted our own independent audit of registrar compliance and we've made this available publicly, if anybody doesn't have access to it please see me, I'll give you a card and we'll post it anywhere that you want to see it.

And in this audit we found 162 registrars are in non-compliance by our estimate and a large chunk of that really concerns basic services that they're obligated to provide and that includes Whois access, in 80 of those registrars they're not compliant, are blocking Whois access either through port 43 or through the web and in one of the grossest violations last night we filed a complaint against a technology company Inc AKA namesystem.com, they were actually specifically manipulating their own Whois record.

They're the registrar for their own site and if you try and do a Whois look up of that site, even at their own site, it says 'this name does not exist', so there is no Whois record for their own domain. Problematic. And we've seen a lot of other issues like that. But rather than go into the specifics of the report because I'll give it to everybody to read, hopefully you'll go through it.

I want to talk about the compliance process specifically. Number 1 as David noted they issued enforcement letters, as far as I know, those enforcement letters are not available publicly for people to review, I'd like to know first why that is. Secondly in terms of the registrars that have been

de-accredited, if you were to review the reasons for the de-accreditation, you would see that they mostly concern ICANN business, they're for non-payment of fees, failure to escrow, failure to respond to a breach notice, they do not touch the consumer end of the problem.

And in our audit we spent a lot of time talking about the consumer issues, so we'd like to see consumer issues addressed by the compliance area and a third point is about the compliance lifecycle, if you go to the compliance area on ICANN's website you don't really get a feeling for what stage in the process the compliance issue is, for example if a registrar is issued a breach notice, if its cured, you don't know.

If the registrar is terminated obviously you will see that document available there, but whether or not a breach is cured, it is something you don't see, and I think it would be beneficial to the end user to be able to follow the entire lifecycle of a non-compliant registrar and how it's handled. Thank you.

David Giza:

Thank you Garth, with respect with the third point you made, we are working and creating a process where there will be visibility into the compliance lifecycle, for example, there were some folks who asked me some questions today about the status of some breach notices that were posted on our website and your point is well taken, we need to be able to have that information accessible so that you know whether or not a registrar has responded in a timely fashion to a breach notice, and if so what was the response and if not, what compliance action are we planning to take, so we are taking that comment to heart.

And we'll be developing a different process to have that information available. Compliance notices, I don't think there's any reason we can't post those, I just believe historically we haven't, there is a large number of them, but again if we can aggregate that data and put that data on our website in a format that is useable to the community, I am very happy to do so. We just need to figure out how to get that data on the website in a way that is either easily searchable or organized in a format that will meet the needs of the community. I think we can do that.

And then finally, yes I did receive a copy of your report and I have had an opportunity to review it, and our compliance team will be looking at some of the specific compliance allegations in those reports that were directed to certain registrars and we'll be determining where we need to take some

corrective action. You know, I do want to mention for the benefit of the group, ICANN does have an internal process, similar I believe to KnujOn's, where we monitor port 43 and access and perhaps that process hasn't visible enough in the past, but we're currently developing a compliance tool that would allow to do essentially port 43 automated port 43 Whois lookups at a much more regular basis that we do today.

And that information could then result in let's say, compliance notices that could be issued perhaps through the WDPRS system, within 12 hours or less after determining that a registrar port 43 service is down and then if that service is not up and running within a following 12 hours, then within 24 hours that registrar would be a candidate for a compliance notice.

So our hope is to modify the WDPRS system and use this automated compliance tool that we're currently beta testing, to improve our Whois port 43 enforcement, then finally with regard to the reasons why registrars are not renewed or terminated, yes historically that has been for, the key reason has been for failure to pay ICANN fees, but I think if you look at our data and you look at our semi-annual contractual compliance reports, or the prior year, actually about 18 months now.

There have been at least about 12 instances where registrars were either sent breach notices or were put on notice, through a compliance notice, that their Whois related issues that could rise to the level of a breach and/or constituted a breach thereby setting a registrar up for a possible non-renewal or termination. Have we done enough in that area? No. Do we plan to do more? Yes. That's why I've asked the community to approve our budget so that we can hire a Whois registrie and registrar services manager who will focus his or her time on this area. And I hope that answers your questions.

Garth Bruen: I don't want to take up Carlton's time, I feel bad about that, but what we're going to run our process today which tests the Port 43 and make those results available and it's a really simple process, I don't know how extensive or complex your process is, but ours is a simple script.

Male: I'll add one quick comment, I sat in an IRTPBPD report the other day, listening to three very large, very prominent registrars, talking about how they handled reversing improper transfers that is hijacked transfers and talking about the difficulty in getting Whois data from some registrars because they don't have Whois services or they're not working, or they're

blocking the other registrars from getting it, and they don't answer their phone, and don't answer their email also. So it was interesting having registrars tell me how difficult this is and the fact that, to be candid, ICANN doesn't seem to be doing anything about these rogue registrars.

Alan Greenberg: Carlton?

Carlton Samuels: Thank you. There is a, well, first of all let me say, I am a skeptic, when it comes to compliance issue because the facts are compelling, if you know anything about enforcement there is a process, and all along the chain, there are interventions of one kind or other and that requires agents to intervene and so you have an infrastructure that is bid. And it is very clear from ever follows function that is why a duck looks the way it does.

And it is very clear to me that ICANN does not have the infrastructure to effect a compliance that it is obliged to do, it is clear to me that even with the way you've been trying, David, you will not have enough to do what you're supposed to do, it is clear to me that the thinking that is now about, will require even greater efforts at compliance, if it is allowed to go through, it is clear to me that given the batting I have heard so far, you asked for two compliance actors in the last budget cycle and they poo-poo'd you.

Two was not enough then, this is an incrementalist organization, they don't do anything radically, the thinking doesn't even change radically and it doesn't take anything to think radically. You are not going to get the resources you need. It is clear to me that you're going to have these issues remaining with us and its clear to me that the ones that are coming will not be addressed, so let us stop. I think you're setting up yourself for disappointment if you think it's going to happen, the issue is the form, it's the way the thinking is, there is no intent that I can discern for any deep enforcement, really there isn't. And until that thinking changes we're going to be at the same place, I'm sorry.

David Giza: Thank you for those comments, I joined ICANN about a year and a half year and prior to joining ICANN I was working with Hewlett Packard as their Director of Global Enforcement and I was privileged to be in that role with a large publicly traded company that provided extraordinary manpower and resources and support, under the business initiative of a for-profit organization but when I joined ICANN I realized that the challenge would be great, much like scaling a mountain, but I also realized that

ICANN extraordinary people and talent that has yet to be fully deployed or utilized.

And so I'm hopeful that through realigning resources within ICANN's existing staff and with the support of the community for current budget initiatives, that we will see incremental change, you're right, we're not going to see profound change overnight, but incremental change starts in the direction in which I think we've been moving this past year and we are crawling and walking better today than we were 18 to 24 months years ago, our journey is long and we have a lot of heavy lifting to do and you're right, unless the pace of change accelerates and unless there is additional commitment to the enforcement work that is required to support the goals and objectives of the community, we can't possibly meet all the demands that are there, so we're trying to be real in terms of what we can accomplish.

And I look forward to these sections because it is a reality check and it helps us hearing your thinking, get your feedback and find ways to constructively do the best we can under the circumstances in which we are currently operating, but I would like to, again, challenge ALAC to assist us where you see gaps in our performance that can be addressed or closed through existing resource reallocations, through different infrastructure improvements or through investment and the compliance function, I am certain with your help and the help of other constituencies we will get better, but again, it's a long journey.

Alan Greenberg: Ok, Evan said he has one very short comment, and then I have one closing comment.

Evan Liebovic: Actually I just wanted a very quick follow up on Garth's question and one of your answers to him and it was the issue on transparency, of the idea of openness and when we can figure out a way to aggregate things and a way to put out the data then we'll do so, I'm going to suggest taking an opposite tact, and then we'll figure out how to categorize it.

To me this is a cultural issue that sort of very symptomatic of ICANN in general, the default action should be to consider transparency, hide things when there is a specific reason to hide them as opposed to tacking on public availability onto something previously thought to be private, so I am really hoping for cultural shift in which the default consideration is to have things open unless there's a specific reason to hide them as opposed

to the other way around. This isn't just you, this is a general ICANN thing, but I am hoping it starts here too.

David Giza: That is a fair point and again, we're an open book so if it doesn't appear that from the work we've done in contractual compliance, let me commit to you today that we'll put that information on our web pages. It may not, to your point, it may not be perfectly organized, may not be perfectly categorized, but we'll put the compliance notice information out there and you can examine it, and then maybe with the help from the community and from the others we will find a better way to internally organize that information and make it useful to the community but also a better way, perhaps with your help, to use that information constructively, it'll work, so perfectly willing to do that.

Alan Greenberg: Ok, thank you David. I would like to make a comment, because I think it's important, I view David's arrival at ICANN as a ray of sunshine in what was a rather dismal, dark place and for that I thank you. That being said, my comments and some of the other ones around the table were rather harsh, and that was deliberate on my part anyway. I want you to be able to go to your masters and tell them that you were really beaten up here, and that you do need more resources and we'll provide that in writing if necessary. But showing the wounds, figuratively, I think is an important issue but I thank you for your efforts.

David Giza: Thank you Alan, and thank you for your claps.

--End of recorded material--