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CR - ICANN Board with WHOIS Review  
Wednesday, March 14, 2012 – 09:15 to 10:15  
ICANN - San Jose, Costa Rica

Emily Taylor:

On behalf of the WHOIS Review Team, we're really delighted to have this session with the Board here and to discuss with you our draft report. Because we did that preparatory work and we had the call and I'm well aware and thank you, many of you did attend the public comment forum the other day. We thought that the best structure for this session would be to leave it as open as possible. I've got a couple of remarks to make at first, but really then we're very interested to hear from you and to have full engagement and to have this session as dialogue rather than show and tell.

We're very happy to take specific points on the recommendations, which are there really as a reference to anyone who can read them, I can't, but Steve and I have a printout here. There's just a couple of things that I would like to say before we start the ball rolling, and first of all, that is to thank ICANN and the ICANN staff who supported the review team, who are of the very highest caliber, really world class support from Alice Jensen and Olof Nordling; the support they gave us was outstanding. But I think the support of the entire process, the way – I think ICANN doesn't often get enough credit for this – the way we were supported in both in the nitty gritty of travel support, but in the way that the meetings were organized that isn't very easy to do, remote participation – all of this I think it truly world class and ICANN should be justly proud of.

The fact that all of our meetings are transcribed and recorded and blah, blah, blah is a very important part of the credibility of the process, because this is an independent review and anyone who's interested in what we did or what inputs we had looking back from the future, will be able to have a very rich resource which is there, open and transparent on the record. And this is essentially

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essential for the credibility of the independent process, but of course, through that, the credibility of ICANN itself.

We've spent this week having feedback from the community, and in fact our comment period has been opened for several months. We've met with the GAC, the GNSO Council, and we had a session with the community. In general, we've been made aware of areas where our language on certain recommendations hasn't been as clear as we intended; that's great to know and we will address those as priorities. But in the main I think it's fair to say – I'm interested in your views of course, but the response has been in the main very positive. And in particular, that this report is being viewed by many from across the different ICANN constituencies and the landscape, as a breakthrough on what seemed to be an intractable issue.

We hope it can be viewed as not the last word but as the first step in the right direction towards a positive process, a positive outcome. We would be the first to acknowledge that like anything that's written by a committee it would not hold up its head alongside the great works of literature. However, I think the fact that coming as we did from across the community with very, very different views coming into the process, that we can all stand by every single one of the recommendations unanimously is an enormous achievement and a great tribute to the members, each and every member of the review team.

So before taking your substantive points on the recommendations and findings and of course any other comments, there's one thing, in discussing with the review team before we came in here, perhaps we could start our discussions on a slightly more strategic level about the role of these affirmation of commitment reviews as a whole, because they're now becoming part of the life. I think that probably from the Board's perspective from now on there will either be one of these reviews just starting or just reporting or in implementation or just about to be formed at any one time. And I think that it's a continuing process and yet I'm not sure, from my perspective and from those of us on the review team, we won't exist anymore in a few months time once we've done; we will evaporate. Thank goodness, I'm sure for many of you.

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But what is the process and how is progress against the recommendations if adopted, how is that going to be measured, by whom, to whom will be the reporting. If it's the community fine, but can we just perhaps spend a few moments on that issue?

Steve Crocker:

So thank you Emily, thank you everybody on the team. Ray do you want to get in before I launch into an extended sequence here?

Ray Plzak:

Yeah, I've got a question and then I have a hopefully a level setting comment. The first question is, and several of the Board members have discussed this, is that we would really like to know what's the objective of this session, what does the review team expect to take away from here? What are you really after besides just the generic things you said about getting our comments, what is it that you really expect to take away from here? And then I have a comment after that.

Emily Taylor:

We'd like your views on the draft report. We'd like your views on the whole sort of, your high level views on the affirmation of commitment reviews in general and the Board's relationship to them; how you maintain the momentum after these review teams have reported and hopefully some or all of the recommendations are taken up.

Ray Plzak:

Well you realize you're only hearing from individual Board members, you're not going to get anything from "The Board?"

Emily Taylor:

That's fine. I mean we've been hearing from individuals throughout.

Ray Plzak: Well I would hate to see something later on sent “Well the Board said this, the Board said that” when the Board hasn’t really said it yet, so.

Emily Taylor: That’s clear.

Ray Plzak: And the other thing I had to say was looking at the recommendations in the report and hearing the sessions and so forth, it’s clear that the whole thrust of this is related to one specific WHOIS application and that’s the application of WHOIS in the GNSO. It has nothing to do with the multiple WHOIS directory services being run for example in the address registries, so this is strictly a GNSO WHOIS. And so I think that this report should be clear in its distinction, in fact, I would almost look at the title of it to include a reference to the GNSO, just so that there’s no ambiguity.

Steve Crocker: So let me suggest – that’s a relevant comment that applies to substance. We want to deal a little bit with the high level aspects that Emily talked about and then move into the substance in an orderly way. Sebastien?

Sebastien Bachollet: Yes Steve, I think the people around the table don’t know each other. It could be useful to have a roundtable quickly because I think it’s important to know who is who in this WHOIS review.

Steve Crocker: Fair enough. How accurate will the....

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Sebastien Bachollet: And by the way I am Sebastien Bachollet.

Steve Crocker: Alright we'll do that. Bertrand, in sequence now or later?

Bertrand de La Chapelle: Thank you Steve, Bertrand de La Chapelle. Just one point regarding having an exchange with the review team on how do you see the articulation between the recommendations of the review team and the discussions that are going on in the registrar accreditation agreement; because they are sort of paralleled.

Steve Crocker: Excellent. I'll say a few words and then we'll put that as part of the discussion. Sorry, if any of you who are sitting behind want to participate you're going to have to stand up and make a lot of noise or something; we can't keep track of – you're welcome to, but you're going to have to work at it a little bit. So let's do identify yourself, give your name and affiliation and also include whether or not that's the real information or whether that's a proxy and indirect.

Michael Yakushev: Okay, I am Michael Yakushev from Russia, .ru, .rf. member of the Board. And I was designated to the WHOIS Review Team by ICANN CEO. I'm Bertrand de La Chapelle from the International Diplomatic Academy and a member of the Board.

Herman Jose: My name is Herman Jose and I'm a professor at a University in Pakistan. I'm part of the WHOIS Review Team on behalf of SSAC.

Sebastien Bachollet: Sebastien Bachollet, member of the Board of ICANN and maybe proxy from At-Large. I don't know if that's the right word.

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Seth Reiss: Seth Reiss, I'm a private practitioner from Honolulu. I'm in the At-Large and one of the At-Large delegates to the WHOIS Review Team.

Wilfried Woeber: Wilfried Woeber, employed by Vienna University, although also operating the Austrian Research and Education Network. I am on the Address Council and as the Address Council member on the review team.

Chris Disspain: Chris Disspain, ICANN Board.

Bill Graham: Bill Graham, ICANN Board, or as via WHOIS entry says "privacy protected."

Judith Vazquez: Judith Vazquez, ICANN Board.

Susan Kawaguchi: Susan Kawaguchi and I'm the CSG rep and I work for Facebook.

Peter Nettlefold: Peter Nettlefold from the Australian Government, I'm the Australian Government GAC rep. I'm the GAC Chairs delegate to the WHOIS Review Team.

Kathy Kleiman: Kathy Kleiman, I'm vice-Chair of the WHOIS Review Team. I hail from the United States and I was appointed as the representative of the registry stakeholder group.

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Emily Taylor: Emily Taylor, Chair of the WHOIS Review Team. I was designated by the ccNSO.

Steven Crocker: Steven David Crocker, born in California, Chair of the ICANN Board.

Bill Smith: Bill Smith, I'm employed by PayPal. I was selected as an independent expert for the WHOIS Review Team.

Alice Jensen: Alice Jensen, ICANN staff.

Bruce Tonkin: Bruce Tonkin, on the ICANN Board, also a registrar for gTLDs and ccTLDs, and also an operator of WHOIS services, both forward and reverse.

Mike Silber: Mike Silber, ICANN Board.

George Sadowsky: George Sadowsky, ICANN Board.

Thomas Roessler: Thomas Roessler, technical liaison to the ICANN Board, day job at the W#Z, have done WHOIS stuff in the past.

Male: (Inaudible), ICANN Board.

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Cherine Chalaby: Cherine Chalaby, independent director of the ICANN Board.

Ray Plzak: Ray Plzak, I am retired, which makes me gainfully unemployed and a member of the ICANN Board. I'm also independent lecturing.

Marcello Navarro: Marcello Navarro, ICANN Board.

Omar Kaminski: Omar Kaminski from Brazil, GAC delegate and also a lawyer specializing in cyber law.

Steve Crocker: Okay. Do we want to – do you guys want to do this? No? You just want to hide quietly back there.

Kuo-Wei Wu: Kuo-Wei Wu with the ICANN Board and I was ALAC from the ASO. And at this moment I have no interest in the domain name IP anymore, should be independent.

Steve Crocker: Thank you. Alright, thank you all. I'm going to try to remember a series of things that I wanted to cover. Emily asked about where this fits in the affirmation of commitments, in the general affirmation of commitments process, so that's a good place to start. So as I think we all understand, this review is one of, I think I've got the count right, three that were embodied in the original affirmation of commitments. And it is the second of the three, so we have all the work that – do I have this wrong Sebastien? Four?

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Sebastien Bachollet:                    There is four – there is one who must start one year after the introduction of the new gTLDs.

Steve Crocker:                            I see. So then we have the fully complete example set of the cases that Emily was describing. We have the previous ATRT that is under implementation, the reports done. We have this report and then we have the SSRT, the Security, Stability and Resiliency Review Team, somewhat behind where this one is, but moving along. And then we have one more to look forward in the future.

And the posture of ICANN as a whole, and certainly the Board in particular, and in this case Ray I will speak for the Board without asking us to pass resolution, is that we take this stuff quite seriously and that we're fully supportive and want to make it work – full stop. That simply is the way it is. These are very important. Let me now fill in a little bit, but not all of the answers to the questions about what the relationship is of the kind of work that you've done, enormously hard work, we all know what it's like to sit in these meetings and try to tease out the issues and broker opinions, and what happens next.

There will be a consideration of the recommendations as well as a lot of comments on the report itself. And I won't dive too much deeper into that, but I'll jump to the next step. We have learned from the adoption of the recommendations for the ATRT report that it's good to be kind of orderly about prosecuting them, about moving things forward. Denise Michel is the overseer of this process inside the ICANN staff, reports directly to the CEO, and she's directly responsible for this. She does a first class job of orchestrating all this, managing all this.

When I became Chair last year I realized that not only were these reports important, but it was going to come right back to the Board, and hence to me as the spokesperson for the Board, to be able to speak to where we are and so I better have the answers, straight out. So, worked with Denise and she has

evolved a tracking system that started with trying to tease apart each of the recommendations and report on progress that was measured in nominal “25% done,” “50% done,” and so forth and I pushed on this and said “Well it’s hard to know what that actually means, so why don’t we break it down into observable, specific, concrete sub goals, milestones in each one; a small number, not a huge number; three to five.” And the last of them, no matter what the others are, has to have the following property – it is the embedding of the result into our standard process.

And that idea has two versions. Larry Strickling has spoken very forcefully in one aspect and I have a slightly different one. His question is if we come back a year later and ask people what are they doing differently than they did before, they should know the answer to that. My question actually sounds quite different. It is how do we embed this so deeply into the structure of what we do that there is not distinction between the reasons we do something based on these reviews then the way we do anything else.

But the reconciliation between those two things is that I’m actually looking further than just a year out, I’m looking for the time when people arrive on the scene and have no sense of the history but they just see how we do things. so it’s probably closer to a five year view if you want to try to match those two things. But driven, both his statement and mine are driven by the same thing. How do we make this a non transitory, a non femoral kind of operation.

So the last of the handful of milestones in each of the cases, this is what we did for the ATRT, speaks to when is it implemented so that it is part of the operation. Usually that means, depending upon what it is, embedding it in the procedures manuals and operating procedures and so forth, or it’s a generic requirement and so you’ve got to tailor it to what it is. One that’s near and dear to our hearts of course in the last one was pay the Board members. So as soon as the checks are flowing and all of that we can check off that last bullet – not quite there yet. Not quite embedded.

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Anyway, that's one piece of machinery which we will put in place. I think it's been successful and it will happen here. I've come back and pushed even harder. The reports that Denise prepares have now two kinds of information in them with respect to accomplishment of each of the goals. One of them is which goals have actually, which milestones along the way have actually been accomplished. The other is when is the expectation for the remaining ones to be accomplished. And then we do something extremely unpleasant – we keep track of those estimates.

And when we ask for the next estimate we plot the previous estimate against the current estimate and against the times at which they're made and it makes a chart that once you get used to looking at it, can be quite uncomfortable. Because it very clearly shows whether or not successive estimates are the same as before, and that means the project is under control, or whether or not the successive estimates are slipping at the same rate as the calendar and so it's always out there – 90 days I think we can do it and then 90 days comes and we say oh I think we can do it in 90 days. And that shows up so vividly that people physically squirm when they have to see those results plotted in front of them.

So we've begun that process, so you can look forward to that experience and you'll be in the privileged position of watching other people have to implement it and you're just acknowledgeable about what those issues are. So that's what I consider to be a very strong engagement, not just pro forma, we're going to take this on, we're going to make it trackable and we're going to make it very clear that [we'll bring you some]. And the dynamics of that kind of process are that there will be an early phase where some things get done, there will be a middle phase where there's a bunch of stuff and then there will be that interesting final phase where there's some stragglers or there's some difficult problems and there will be a focus on trying to nail each one of those.

So that's the overall arch of that, and taking this much time to tell you about it, not only setting expectations but wanting to make it clear that we're not casual about this all; we take it on board and make it happen.

Emily Taylor:

That's very clear and thank you very much for describing it in that detail because I think many of us have had the painful experience of trying to operationalize policy or independent review recommendations and some time they don't turn out to be as practical as the authors first think. And perhaps the general view that I get from your comments is one of an organization which is serious about learning. And perhaps as part of that learning process it would be useful to get some sort of feedback from the review teams, maybe ourselves and the ATRT, once we've finished to say, from our perspective, for the next guys what would be good if it changed or if we could learn that.

So my offer would be to work with Brian Cute or to work with the vestiges of the ATRT to see if we can provide that for you as part of your learning, organizational learning process.

Steve Crocker:

I think that would be excellent and I think there are probably multiple forms of that, what you've suggested and then sort of maybe informal sitting down and saying "How'd that work out." This is a perfect segue to the part that I deliberately glossed over about the transition from the report to the implementation process. And I know this is the part that is of high interest. What happens to the recommendations? And generically two things basically have to happen.

One is a consideration of whether or not to accept each of these recommendations. The bias of course is very strongly in favor of trying to accept the recommendation. And worse yet, the precedent set by the ATRT process was we actually accepted all of their recommendations. It's obligatory for me to say that does not create an absolute requirement that therefore whatever is written therefore we'll accept. There will be a constructive, thoughtful process about that.

Another element, which is closely related but I want to flag it as separate, is an objective assessment of if we accepted the recommendation who would implement it, what would the resources be, can we actually implement it, is it feasible. The practical stuff that when the decision is made and you toss it over to operational people for execution what would actually happen. And that assessment, I think, is very important and should be fed into the process as early as possible.

So I have already asked Denise to initiate that process and provide a scorecard, if you will, of “if we were going to implement this what would the consequences be,” “do we understand it,” “is it clear what it is, what your words translate into and what we’re going to do.” We do not have that yet, but it is in process and Denise? I’ll just ask you right out here in public, what’s your estimate of having that set of assessment of the recommendations in the report?

Denise Michel:

I think first the recommendations would need to be finalized. We have some general idea of the implementation paths, potential implementation paths for the recommendations. First they’d need to be finalized and then we’d work cross-functionally because the recommendations involve a number of different ICANN departments. And also seek input from the communities involved and then lay out a potential implementation path and potential resource needs for the Board’s consideration. And of course we need to factor in things like potential GNSO PDPs, the RAA negotiations and things like that.

Emily Taylor:

May I just interrupt and ask a question there? Because as part of, we’ve all been here with operationalizing stuff and would it be helpful to have a kind of feedback loop within that process with us to say “well actually, what we had in mine” – we had a very useful call with the staff to try and explore what we meant, but there’s nothing like seeing the plans and sometimes like some huge great, big, enormous thing when actually what you had in mind was something a little bit more directed or – we would be very willing I’m sure, even if we don’t

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exist anymore, to provide that sort of feedback loop to make sure that we're in alignment on the operationalization.

Denise Michel: Yeah. So as you're finalizing your recommendations it might be useful then to have another meeting with ICANN staff or a call and walk through the implementation options.

Steve Crocker: Well let me push a little bit. I think a useful question is given the recommendations as they stand, two interrelated questions – what can you say about the implementation if you had to do it and what questions do you have about clarity and about choices and so forth. And that feedback is what will be needed and very helpful for them to finalize. And so that feedback that can be provided with just what's in front of us.

Denise Michel: Right. And we have, and we're finalizing some written input on the draft recommendations and noting things that would be helpful to have clarification on and noting some different implementation paths that we're exploring. So you'll have that.

Emily Taylor: We'll have that soon will we?

Denise Michel: Yes, before your 18<sup>th</sup> deadline.

Steve Crocker: So the 18<sup>th</sup> is...



questions about the status of these review teams. And we've had questions from the community, "Well you're not a policy development process, what are you," "How can you actually even make this recommendation, it shouldn't be directed to the Board" and so on.

So I think it's an interesting thing potentially, I'm sure the Board's already thought about it, but these things are essentially now rolling reviews, it's every three years. By the time this one is even half way implemented, the next one will be underway. This is an ongoing part of the landscape and the way that it fits in to the existing structures can be dealt with procedurally obviously and probably in practice but I guess it's something to be mindful of. We certainly have been in doing our work.

And so one of the things today, in the way that some of these recommendations are phrased, it would be useful for input from the Board or Board representatives from the particular communities that may be affected, to know if we've phrased or directed these appropriately; that's been a learning experience.

Steve Crocker:

Chris?

Chris Disspain:

Thank you Steve. I want to pick up on what Peter said because I think it's absolutely right, and I want to use a specific example. If you look at the recommendation in respect to WHOIS accuracy and I think it says "50% reduction in something within 12 months." There's a couple of really important layers here, the first thing to remember is that in parallel with your review and these recommendations we've got sensitive negotiations going on, on the RAA, which Peter is very aware of as probably everybody else is too. We've got WHOIS verification things happening and so on.

And all of those things have to dovetail together, and it may well be, this is just, I'm just making this up, but it could possibly be that in the negotiations on the RAA a set of, as part of those agreements steps are being put in place to improve

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WHOIS accuracy, which are actually at odds with your recommendation from a timing point of view. There might be a negotiation that agrees for example that you could do this over a period of two years – it wouldn't be that way, but you understand what I'm saying.

So I would rather see timelines set as goals – “as a goal you could consider trying to do this,” rather than “we recommend that you do this,” because it makes it very, very hard to be seeming to be accepting a recommendation that is so firm on a timeline when there's a whole heap of other stuff going on. Does that make sense?

Emily Taylor:

Makes perfect sense Chris, and I think in a way you're pushing at an open door on this because really our objective is to very firmly say “these records which are so bad that no contact can be made through any means, ought to be your priority and you ought to be setting yourself stretch targets very aggressively.” What those are, we are very willing to recognize that we are not at the operational cold phase, that there are many other ingredients in this particular soup.

Obviously if we can get feedback from staff. I know that a lot of this isn't in your control, we all recognize that. And so I'm also sure you would recognize as a corollary that we don't want to just sort of have a “let's all do better” kind of recommendation, because that doesn't give anyone anything to aim for. This isn't about coming back in a year's time and beating everybody over the head with firm “you failed, you failed, you failed.” The part of the way we've tried to structure these recommendations is to say “look this is what we think you should be working on, can you come back with some metrics” – because we don't have these at the moment – “some metrics on how you did in the first year,” and then let's all have a conversation about what is a realistic improvement.

We hope that the next review team will have a lot more information than we were able to have. A lot of that will come anyway because of the studies that are ongoing will have reported, we hope, by the time they start. But also if they

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could look back over a time period and say “well as of 2009 the data accuracy looked like this. Now as a result of our interventions we’re kind of getting there.” This is all positive and that’s the spirit in which we’re making this recommendation.

Steve Crocker:

So I have Bruce, Ray – unless you need..? Go ahead.

Bill Smith:

A quick response on that is, I think certainly my view on this is, and we have discussed this amongst us ourselves in the team, there’s lots going on in this space with respect to WHOIS, but we have a job to do and we have to sort of say “well here’s” – it’s like a balance sheet. This is the state of the world today; we’re going to take a look at it. I think I certainly recognize that things will be overcome by events; our recommendations may be overcome by events. On the accuracy thing we chose the specifics that we did because they were, in some regard, pretty easy to target – go to the NORC Study, look at this, make some significant improvements in that relatively short period of time please.

Speaking for myself, if that metric wasn’t met a year later or 18 months later, but there was significant accuracy improvements measurable in other areas, that would be, from my perspective, that would be a very good thing. And I think actually would be meeting the recommendation. It’s move the bar significantly.

Steve Crocker:

I’ll jump in at some point there, but let me pick up others who want to speak out. Bruce, Ray and Kathy.

Bruce Tonkin:

I just want to I guess pick up and reinforce a couple of things. Steve’s talking about tracking and part of what he’s talking about in tracking is there’s this date

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that we're trying to achieve and then we're tracking towards that date. Peter though has also raised the issue that I think needs to be very clear from a community point of view, is there are some things in this list of recommendations that the Board, and the organization being Board and staff let's say, have the power to do. And there are other things that we are restricted through our Bylaws, also restricted through the contractual arrangements ICANN has with stakeholders, that changes need to come through a consensus process.

And the same issue which came up in the GAC yesterday and probably previous days, but people saying "what's the date when your negotiation is going to be complete," "what's the date when the GNSO is going to come up with a consensus on this" – the reality is that those things take time. I think what the Board can do, just picking one of your recommendations, is obviously it can provide resources for compliance. The Board could also provide resources in terms of ensuring that the policy processes are staffed and there's sufficient resources to do that policy work.

But the Board can't commit and say "this idea that you have is going to be implemented by date X", because there's a series of steps that would have to happen. So just to be very conscious that there are some dates that we can give and manage, as Steve's talking about tools to manage that. And then there are other things that are really going to require community work. And then from that perspective, and this has been sort of a general discussion is, who should you be talking to? Is it the Board? Is it the community?

I think very much you're doing an external review of ICANN, so you use the word ICANN here in that context and I think that's fine. But then when you're within ICANN it's really sort of thinking which parts of ICANN would have to implement this, and let's say GNSO is one part of it, and really engage with them and try and think about they'll probably kick off working groups. You might want to think about how would this team provide input into a working group that looked at a particular issue.

Emily Taylor:

We've been very fortunate within the review team to have members who are extremely experienced with ICANN and all of its arcane processes, which I have to say I'm not. We fully recognize that some, and I think as Peter said, there are some things that are completely within the Boards control and there are others that aren't. However, we were asked to do this by the Board and that is to whom we are directing our recommendations.

And I think that while we completely accept that there are processes which must be respected and must be gone through, the Board has the overarching responsibility to ensure that things are done even if they are not successfully done, but that you commit to the process and you ensure that it is properly resourced and you would also ensure that it is done in a timely way to the best that you can. You have that responsibility and therefore we do not see that it is our role to go out and start to negotiate with different aspects of the community. That isn't...

Steve Crocker:

No definitely not. No, we take that on board, but there is a relevant point to nail down, but we'll get to that in just a second. Ray?

Ray Plzak:

Thank you Steve. First of all, I do recognize that you can always speak for the Board, that's why we elected you. Picking up on what Chris was saying and what Bruce was saying, I see very early on what the Board has to do and with the assistance from staff is to analyze this entire report, looking not only at the direct tasks that are obvious, but also the indirect and implied task. And in part of that early process work the Board has got to clearly identify where policy work has to be done so that the Board can give the appropriate policy guidance and direction primarily I would think would be to the GNSO.

And so that is going to be probably one of the biggest hurdles that has to be accomplished in the beginning, is to identify that type of work. Because that's

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going to be the longest part of the process of implementation because after you do get through a policy process on any one particular item, then you're faced with the chore of implementing the policy. And at some point in time I would expect to see some sort of a review to make sure that the policy was in compliance with the recommendation or if it in essence rejected a recommendation. That has to happen as well.

So, it's going to be a complex issue in several regards in terms of implementing this, and so I think that it would be well worthwhile that the Board also consider at some point in time, as Bruce suggested, some sort of an oversight working group or something to help sheppard this along and not just me writing on a White Board in the air. There's a lot of process work that we have to get into place and we have to make sure that it's lightweight, that it doesn't impede things and become too bureaucratic, but at the same time it's got to be effective in providing the oversight that's needed to implement the recommendations in this report.

And as a last thing real quickly I would like to say I would like, Emily, to compliment you and your team. It's evident that you've done a lot of hard work here and it's greatly appreciated, by me personally and I'm sure by my fellow members on the Board.

Steve Crocker:

Good. Chris and then Kathy.

Chris Disspain:

Thank you Steve. I just wanted to come back to the sort of recommendation topic very briefly and just draw a line from the ATRT, because I was on the ATRT. We were really careful in our recommendations to ensure that if we wanted them to be interpreted; we left room for them to be interpreted. But if we didn't, we didn't. And I think to say "I would be satisfied if you did this" in respect to a firm recommendation that has numbers in it is really not going to work. You need to allow us, if you want us to be able to interpret you need to

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allow us to give us the room to do that. Because otherwise people are going to look at those recommendations, and they won't know this conversation has taken place. Okay?

Emily Taylor: Thank you for that.

Steve Crocker: Good. Kathy.

Kathy Kleiman: Just a few quick notes on a few things. One of the questions we're talking about now has been asked to us by the community repeatedly where they've said "you're asking the ICANN Board to do something that belongs to us," so we're hearing it from other sides as well. We said no no, this is the ICANN Board pursuant to its Bylaws to delegate the tasks and share them as appropriate. So we've been part of that education process as well.

Regarding some of the implementation details, I just wanted to share with you the refrain that we told ourselves many, many times as we wanted to go down the path of implementation details, and we said no, we are a review team, not a policy making body. And we just kept repeating that. So if you see a bright line and think we should have gone a little farther let us know, but we drew the bright line on purpose and hopefully we picked the right place to draw it. but we're a review team, the details of this belong to the community and to the Board. And that's it. Thank you.

Steve Crocker: And Bill.

Bill Smith:

Sure. This is a personal comment, not a review team comment necessarily. I certainly believe our recommendations are not absolute. These are recommendations to the Board. As I understand it the Board is to review those recommendations and make decisions. I certainly would expect if there is an issue with a recommendation that we have made that either the Board comes back and asks us questions, clarification, etc. And when it comes time to make decisions regarding those recommendations, the Board has the responsibility and the authority to make changes and put them in a form and format that makes sense for the organization if we, as a review team, have got it incorrect.

Another thing is I hear repeatedly within ICANN that this group can't do something that group can't do something, there are contract limitations, there are Bylaw limitations – I hear it so much that it causes great concern. When I hear a Board saying we are limited, we cannot do something because our Bylaws don't allow us to, the Board has the ability to modify its Bylaws. So if that's a problem in the organization, I suggest that the Board should take action, modify its Bylaws so that things can be done properly.

Steve Crocker:

Alright, so let me step into this. Yeah we get viewed as omnipotent which is sometimes the substitute for being omniscient – I'll let you ponder that for a minute. So the common sense and an important step, which is the step right now actually that is taking place at the current time, is to work out the consequences of accepting the recommendations – what does that actually turn into. And so I want to recap all the things that we've said here, some of which I've said and some of which have come out.

So we understand what's intended – that's one layer and we want to have that discussion, we want to see if the way we read it is what you meant or if we have any confusion and we get that sorted out. And that's part of response to your draft and that I think will be very helpful in general. That's maybe a top question – do we understand it.

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Next question is, is it implementable. And that has the complexities that have been pointed out here that some of the implementation may require going through a policy development process, some of it may require other parts of the organization that are part of the volunteer structure of ICANN. And so we will reach out and try to get those assessments, there's actually too different kinds embedded in what I said, so let me tease them apart to be even clearer.

Some things are within the scope of one body or another, maybe within the Boards own scope, maybe within the scope of staff, maybe within the scope of some particular group. Just as matter of good management, before we make a commitment to take those on board and say we will get those done we have to go ask the people who will be responsible and say "well what do you think of this, are you going to be able to do it. Would you do it" and get their feedback and fold that in.

The other kinds of things that may have to happen are full scale community processes, policy development processes, in which case we want to know which ones those are and we want to identify those. And in our response to the recommendations has to be couched in terms of those processes. To your point of "we have Bylaws, the Board can change the Bylaws," there are some limits on this. The change of Bylaws itself requires a community process and not a lightweight things. Not an impossible task and we do it from time to time, usually around very specific items and aspects that have been prepared along the way.

I don't know that any of these recommendations would bring us to the point of having to examine or change our Bylaws, but I haven't thought about it before. And if that's the case, then that should be brought up to the surface during this initial examination period where we do the assessment of feasibility and implementability. I don't have any bias on this one way or the other, I just want to make sure that we don't find ourselves saying "Oh yes we'll do this" and then discover that there are deeper traps there that we did not take the time to sort out in advance. Is that okay or does that sound like a wishy-washy, wallowing answer?

Bill Smith: Yes. Well on the one hand it is okay if that's what it – I do understand that some things may need to go through a community process. I'm just conveying, as a member of the review team, and going back and looking at a problem that has existed for over a decade, pointing out that responses like “well we can't do this,” “someone can't do that,” “we have to go do this” and it's going to take years, it is a frustrating response to me.

Steve Crocker: Well we haven't given that response yet. I'm just sorting out the space.

Bill Smith: I understand but I'm trying to convey that I, individually, hear that a lot. “We can't do this.” “Your recommendation requires that.” I'm suggesting that the organization move a little quicker.

Steve Crocker: Well I'm empathetic and I know that there may be that kind of response ingrained in parts of the organization. The Board, in general, tends to think more broadly and more boldly because we're not stuck with “this is the way we've always done things.” So I think you'll find more warmth and more empathy than you might be expecting, at least I hope so. But anyway, we'll see the way that comes out. Bertrand and then we should move in to some specific...okay, so there's a sequence here. All on this side. Bertrand.

Bertrand de La Chapelle: Thank you Steve. To Bill very quickly, in any constitutional framework the respect of the rules is a pre-requisite, i.e. the respect to responsibilities. And if that is something that prevents a solution, then it should be revised. But the point I wanted to make is actually a more provocative question towards the review team. Because of the framework and because of the terms of reference

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and the approach you have, and correct me if I'm wrong, addressed the WHOIS as is. And Judith yesterday or the day before yesterday used this word that has now gone around the community as labeling WHOIS as a museum piece.

The question I want to ask you is, isn't one of the problems we're facing and why it is dragging so long, is because we're considering it like a Swiss Army knife. It is something that is supposed to be used for; we know that, but at least for the technical contact for security of the web, for marketing purposes, for user simplicity, and potential access to information of who is actually running a site and so on. What struck me in the two parallel exercises that we're conducting is that you have taken the approach of making the existing WHOIS better, and what is emerging in the discussions, and sometimes tense discussions in the RAA, is this notion that we're beginning to distinguish the different functions a little bit more and the different modalities of access and the different types of data sets.

So how do you see this and how constraining was for the group the requirement to basically address WHOIS as is, as opposed to opening up the space and how can we reconcile this?

Emily Taylor:

Thanks for asking that. I can see already that several of my colleagues want to come in on that, but I'm going to just have first go. Yes, we've actually had that comment about WHOIS being a museum piece. You're correct in saying that our mandate clearly directed us to looking at the current thing. And also, this is my personal view, is that I think to say "it's a museum piece" or "it's just worn out," and "it's doing what it was never intended to do" blah, blah, blah, is a copout if I can use an English piece of slang. Because it absolves you of responsibility for fixing the problem by saying "We should be creating a new" something or other.

And absolutely we've had wonderful interactions with SSAC all the way through this process that we're aware of two replacement protocols that have actually been approved over the years but not implemented. Let's just be real

here. WHOIS is what we've got for the time being until we've got something better, so let's try and make it better in a pragmatic way. That was the approach that – well, we didn't really have much choice about it and that's the reason why I think we were very willing to be constrained by that choice.

Of course the protocol can be improved, but it will need, that is a very long term job and that wasn't part of our scope and we're really encouraged to see that there's still thinking on that, and hopeful that that will come to pass in years to come. In the meantime, we have a problem.

Steve Crocker:

We have a queue – Seth and there was a hand up, was it your Judith before? Seth, Judith, Ray and Kathy. And Bill.

Seth Reiss:

Hi this is Seth. Yeah my comment actually was to the earlier point so I don't know if we've left that already. But very briefly I was concerned with the suggestion about changing the Bylaws. I think that the obstacle of getting this done is basically a will on the part of the organization to get it done. I don't think the Bylaws are what's obstructing it. One observation is the fact that there are so many ongoing studies, so many concurrent discussions is one aspect of why things get held up. And if there's a realization of that and there's a will to implement, I think you can make great process.

Steve Crocker:

Thank you. Judith.

Judith Vazquez:

I'm not copping out. I called it a museum piece and it is. What law enforcement today – let's look forward. Is the creation of a universal database that captures the critical data around registrants, of course the domain name, registrants, registrars, the registries, and very critical, is the IP address because

many of the [DDOS] attacks happens when IP addresses are spoofed. And what is attacked is the DNS constellation. Don't forget that. That is the threat.

Now, that having been said, I was exceedingly encouraged when Australia yesterday suggested the probability of a separate organization that may handle enforcement and compliance; it was a suggestion. UK said, thoughtfully aloud, "is it possible to externalize compliance function, was this ever considered and if not, why not." And so I'm saying I'm not copping out. So the question is, and of course our Chairman responded, and Steve said "If an external group is set up where does funding come from." If I was willing to be this external party, and I was willing to fund it, how much time am I given to go live?

Emily Taylor:

Can I first of all clarify I was not intending to make any personal remarks and if insulted you in any way I would like to apologize for doing so. So apologies Judith. I think

[background conversation]

Emily Taylor:

This is something that Australia did mention yesterday and I think that its' resonated through various parts of the community.

Judith Vazquez:

And I'm not talking as ICANN Board by the way.

Emily Taylor:

No, you're just talking.

Judith Vazquez:

I meant personally.

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Emily Taylor: Well I can see, and I think that your CEO immediately pushed back to sort of on a kind of “whoa, so much change. Let’s just see how we’re doing first.”

Judith Vazquez: Excuse me, may I? I’m not speaking as ICANN. I’m saying if as an individual external party, seeing the need for such a database, which will help the internet community in general, because of course investments are required. The infrastructure, the data, the gathering of it, the validation of it, data collection, validation, keeping it updated – how much time am I given to go live, is the question. Live meaning the infrastructure.

Steve Crocker: Sorry, this is a very intriguing discussion and I can see that we can get drawn into it, it’s also 10:19 and this room will be filled up with other people shortly at 10:30. So let’s do a very quick continuation of the round. Cherine I’ve got you added. Ray, Kathy, Bill, Peter, Cherine, boom, boom – 30 seconds.

Ray Plzak: Okay, thank you Steve. First of all, I know that Judith has been quite firm in calling WHOIS a museum piece and Bertrand even referred to it as a museum piece; I don’t think they intended to call you a museum piece because you were early involved in the development of the protocol. So having said that Emily, I recognize that the charge of the team was to review the current WHOIS. One of the recommendations could clearly come back and say “it’s broken and it should be replaced” and you could have recognized the work that’s been done over the years in the IETF. In fact they have developed protocols to provide directory service, in fact, that’s what WHOIS is.

And inside that work on the WHOIS that the IETF has done, it could easily go back to them and ask for them to, for example, include work to take care of IDNs and so forth. So I don’t think it is beyond the purview of your team to

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have recommended replacing it, and also then to have recommended patches that could be put in place until such time that it could have been implemented.

Emily Taylor: Very fair point, thank you.

Steve Crocker: Good, Kathy.

Kathy Kleiman: I'd like to ask Denise Michel, when she has time to circulate 9.3.1 of the affirmation of commitments. Our starting point was its first line – "ICANN additionally commits to enforcing its existing policy relating to WHOIS, subject to applicable laws." You'll find in our report that we had lots of trouble finding what that existing policy is because it's scattered; it's not that it doesn't exist, it's in all sorts of different places. But we did not take a evaluating the whole museum piece, and no one would like to stop talking about WHOIS more than me after a decade, but we took as our starting point that you committed in the affirmation of commitments to enforcing it, and that was our starting point.

Just a quick note about the RAA – we said, the first week we were assembled that studying a system in motion is very difficult. And it had become much more in motion even than it was a year ago. But I was very pleased to find that the RAA session that I attended showed many, many similar overlapping themes, especially at the middle. Not at the extremes, but at the middle. And so that I heard the same words being talked about – contactability, low-hanging fruit – as very reasonable goals. And I invited everyone to our follow session saying if you want to continue talking about the things I've heard you talking about here at the RAA session, come to ours.

So I think we're having a convergence, after all these years, hurray, we're finally having a convergence.

Steve Crocker: I think you're right. Bill.

Bill Smith: I'd like to echo Kathy's comments, especially at this meeting so far, I've seen very positive reaction to our work. If not specific words, at least overall, which is what is important certainly to me and I think the team. I also appreciate Bertrand's comment about "do we need something new and did we consider that." I think it's fair to say yes we did. I agree that it is in many regards a museum piece, unfortunately it's the museum piece that we have and it's the only thing we currently have.

Now I do ask that you take our recommendations as a whole, because if you look at some of the recommendations with respect to IDNs and internationalization, we suggest that there needs to be work done. Ad Emily pointed out, there are already specifications at the IETF – IRIS and CRISP – that could be used. I am not suggesting that they be used or required because the history has demonstrated that they aren't used and that's how the internet works. Protocol is developed and they either get used or they don't.

What we are saying though, as a way forward, we will require a domain name registration data model, one is lacking. This is in the SSAC 51 report as well. There needs to be a protocol. There will need to be policies as well. How they get developed, that's up to the Board, the community to determine. But things like what data must be there for what purpose. This is not a new suggestion. This goes back I think to about 2004, maybe 2007, I don't remember exactly. There were a couple of letters from the Article 29 Working Group to ICANN suggesting that it define purposes for the data so to be in compliance with the Data Protection laws.

If we assume change happens, with WHOIS or some next generation of WHOIS, it's going to take years to be developed, implemented and deployed. In the meantime we have massive amounts of data that is inaccurate. Waiting for

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expecting the new WHOIS before we start attempting to improve the data, as an engineer and as a computer scientist, as a practical matter, that's just a non-starter. Do both in parallel. And I believe at least it is the recommendation of the review team to go do a, get a next generation of this because it had to be done for internationalized domain names and internationalized registrant data.

Judith Vazquez: I'll do it for love of Steve Crocker.

Steve Crocker: Thank you very much Judith. Peter and then Cherine and then we're in the awkward position, but we're going to have to wrap up. Peter.

Peter Nettlefold: I'll be very quick. Kathy and Bill have said what I was going to say.

Steve Crocker: Cherine. Wow. So, I had hoped that all of this was just the clearing away the brush before we dived into that content, and we've touched on content but we haven't really gone through the full set of recommendations and had the debates about it. What is in progress, and lest you go away feeling unsatisfied, as I said is an active process to absorb all of the recommendations and understand if we said yes what would the consequences be. She changes my Bylaws.

Kathy Kleiman: Steve, can I ask you a quick question?

Steve Crocker: Yeah.

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Kathy Kleiman: Can you help us to understand the timeframes? In our head we get or final comments on Saturday or Sunday, the 18<sup>th</sup>, and we wrap everything up, finalize it, dot all the I's, cross all the T's by the end of April.

Steve Crocker: Well exactly. The public comment process is running and it's almost over. Denise has said that we'll have a preliminary assessment that we can feed back, which is the feasibility and clarity from our point of view. And those two things I think will be very key feedback to you. We will organize Board time, you've got 20 odd people on the Board and some are deep into a particular subject and others are focused elsewhere. But we will concentrate our attention in a useful way within the Board. The Board is not capable, it's not structured to be an implementation body. It's an oversight and decision body basically.

So we'll take the inputs that come from the feasibility issues and we'll ask the questions about coordination with other things that are going on, folding it into the law enforcement/RAA interactions, which obviously are timely and taking place, and try to get a coordinated view of all this. With respect to the attitude question really I think that you're pushing on very hard Bill and which I'm quite empathetic, is our attitude is that we're in complete agreement that WHOIS needs to be changed, that creaky as it may be and perhaps there ought to be something different, it is indeed what we have, it does need to be made better, and the work that you guys have done will be – oh I remember what I wanted to say.

There was this comment about whether it was different from high literature from – what was the term – work of art. Maybe not, but it will be read much more widely. I suspect the readership for this report will be much wider than any of the fine pieces of literature, if you go sample school children throughout England.

Emily Taylor: And in my household, yes.

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Steve Crocker: So, I think this is landmark work. I think this is very, very important. I think that this will help make the significant change in a very complicated and creaky system that we've all struggled with for a long time. So I think there's enormous empathy. I would not expect to see the same sort of bureaucratic response "too big," "can't handle it," and so forth. That's not our model.

So I apologize that we haven't been able to get further, but I don't want to revisit this discussion the next time any of us get into a discussion.

Peter Nettlefold: Just a quick follow on question – thanks for talking through the process and so on. Just to be clear – so after our public comment period closes obviously we've got to review all those and they're important inputs. Do I understand that we'll be receiving something from staff on feasibility? Is that something that will come to the review team or to the Board; I wasn't clear on that.

Steve Crocker: Well the answer is yes. I mean I guess formally I've asked for it and it will come to the Board, but we're not going to waste a lot of time. You'll see it. We're not going to hide anything. My purpose in asking that was to cause it to exist and then it's got to be used. It's not a secret here, we're just trying to get the pieces out on the table so we can work it. okay?

Emily Taylor: That's very helpful.

Steve Crocker: Thank you, we are adjourned.

Emily Taylor: Thank you.

Female:

And I apologize but there is a meeting starting in here right now that's a closed meeting, so if we could shift whoever is going to shift as soon as possible I'd appreciate it. Thank you.

[End of Transcript]