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PRAGUE – Contractual Compliance at ICANN

Sunday, June 24, 2012 – 16:00 to 17:00

ICANN - Prague, Czech Republic

Maguy Serad:

Good afternoon everyone. My name is Maguy Serad. I am the Head of the Contractual Compliance at ICANN and I understand we are the last presentation for you today, so everybody's excited and awake for our presentation. There are drinks afterwards, or happy hour. Alright, we're happy to be here. Actually it's one of the tracks that I really enjoy at every ICANN meeting; getting to meet a lot of the newcomers and sharing with you passionately about our department.

With me in the audience today I have Stacy Burnette. Stacy is one of the Directors in the compliance team, but I also have two other team members sitting in the back, if they can raise their hands so the team can look at them. I have Owen Smogelski, maybe you can stand up, and Carlos Alvarez. So we are very happy to be here today and what we hope to do in this presentation is share with you an overview of our department. And then also share with you a little bit of an update, what has compliance done, and some of the statistics.

So you have been introduced today to the ICANN community, the ICANN structure, but from our perspective we wanted to show you where the contractual compliance team lays. We are part of the ICANN staff and we are in this large multi-stakeholder model fulfilling our role as it relates to the contract. So the contractual compliance department today, we are 12 team members strong. And the skill sets of the team

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vary tremendously. We have many lawyers on staff of different law backgrounds whether it's a contractual focus, IP focus, different areas of expertise.

But we also have some other staff members who come from a business background, technology background and just a variety of skill sets. The most important skill set that's really helped us a lot is the language skill sets we bring to the table. We can cover – 1, 2, 3, 4, 5, 6, 7 – I needed to count; I can't keep track because we keep hiring. We have on staff we can cover seven languages. Why is that important? Even though English is the official language of communication and email exchanges, but we find out a lot of times that when we are having a dialogue if you can relate to that contracted party or issue at hand in that same language having that same understanding of the cultural background and the nuances of the language, it helps address the problem a lot better.

So I'm the Head of the department. We have our organization split into what we call like three big pillars. Think of the registrar/registry compliance group and that's where you see the bulk of the focus. Most of the resources, I have nine resources in that area that oversee registrars and registry related compliance operations. We also have on staff a risk and audit manager. We also have a performance measurement and reporting. So these three key areas in compliance are very critical because it's one thing about how do we do our day to day activities and strategize for the future, but it's also how do we plan our audit strategies based on what risks and then how do we report on it and we measure it efficiently and effectively.

We have a new team member that's going to be joining our team in July, and we have two open positions in compliance. So if you know anybody who's interested in doing compliance job, this is a great marketing opportunity for me, I'm really interested in finding staff who now, we want to strengthen some of our Asia-Pacific areas. So anybody that is interested in compliance, has the right background, whether yourself or you know somebody let us know. Send them on our website.

It's important to understand what we do and how we fit in the big picture of the ICANN structure. So our vision, mission and approach are core to our operations. Our vision as a contractual compliance is to become a trusted service provider. As ICANN staff we deliver a very specific service, not only to ICANN but to the ICANN entire community. We have, as you know from the ICANN multi-stakeholder model, there are so many different parties involved in the multi-stakeholder model.

You've got the contracted parties. You've got the stakeholder organizations. And each and every group in the ICANN multi-stakeholder model has different expectations of compliance based on where they're looking at it and from which perspective. So for our group to really be trusted, that means we have to work as a department with fact-based decisions, standard operating procedures and be very transparent. So that's why we made sure our vision is to become a trusted service provider by earning the trust of the ICANN multi-stakeholder model and understanding the expectations of each one of those we can fulfill our vision.

We're not quite there yet. It takes time. Our mission is very well aligned with the ICANN mission also. It's about the security, stability

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and resilience of the domain name. And our role by overseeing that all the contract obligations are fulfilled and enforced that is going to help us get there. And our approach, it's one thing to say "I want to be trusted" but what do we have to show for it is basically through the collaboration, through the transparency and through our communication. And last but not least, it's through enforcing the contract.

So you keep hearing me emphasize the word contractual compliance. I'm sure we have a very diverse audience in the room today with different diversity by backgrounds, not just geographical diversity but also by backgrounds of industries. Compliance can take on so many different roles. Our role is very focused on the contract. So our contract is the tool that we use to enforce our relationship or our process and procedures with the contracted parties. So there is a set of rules and a set of expected performance from the contracted party that we have come into agreement with and we follow up and follow through on those.

I want to also remind the audience we are not a government or a law enforcement agency. That sometimes causes a lot of frustrated complainants because they come to us with certain complaints, which Stacy will share with you about, where we cannot address. So our authority is very much around the contract. Some of our ICANN counterparts earlier today shared with you about the ICANN model, who the registrars are and who the registries are. Our contract, again wanted to just emphasize to you on the screen, is we see the two big areas – our contractual obligations are with the, operators and with the registrars.

So in turns as you see there is a line between registry and registrar contract. And there is a line between registrar to the reseller or to the registrant. Those relationships are governed directly by those contracted parties. But of course some of the terms in these specific contracts are carried down from the main contract to help them apply and enforce it. I'm not going to go into the definition, but we've provided a little bit of information on this slide.

The contractual compliance model and approach is a standard that we rolled out last year, so that we can follow that standard across all contracted parties and across all of our activities. The contractual compliance culture is a bottom-up approach, which is very much aligned with the ICANN multi-stakeholder model. The contracted parties have to fulfill their obligation. The way we're exploring that is as you know in different industries, and I come from a different industry to before joining ICANN, in the past we had what we called a self-assessment. We put that responsibility on the contracted party based on a guideline that compliance provides to a self-assessment.

So we are exploring a self-assessment based on industry best practice with our contracted party. It's still in pilot. We're going to assess it. We're going to understand what it means, how much it means, how much time it takes and all the information about the pilot and make a decision how we carry it. But the next three phases that you see here, the preventive activity, the informal resolution and the formal resolution are part of our approach that you will hear us not only speak to it, but we operate to it and we measure against it.

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In the prevention model we have the different phases and I'm going to blow it up into this high level approach here. We receive complaints through multiple ways. Today we have a couple of systems that we have had for many years and we are in the process of consolidating and enhancing them to where we have one intake system. So there is a way to log a complaint via the tool online tool, but sometimes they come our way via emails or calls, but we always encourage that the complaints be logged through the system because they are tracked better.

No matter where it comes from, the first thing it goes through is the preventive phase. The preventive phase is our way to collaborate with the contracted parties to address a complaint, and it's also referred to as an informal resolution. Why is that important? You think why don't you just go and execute. Sometimes complaints we receive are not valid or don't apply and we have to guide the complainant to the right source. Sometimes we receive an inquiry and we just have to go and inquire about it and it's not really a breach of a contract or a contract issue.

So we take into account through the informal resolutions, through the fact finding phases to explore and to get facts to help us determine if it's truly a contract issue. We call it the three-step approach where our contracted parties receive a communication from us, the first communication is via an email. And the title is very clear no matter who they are, whether it's a registrar or registry they know if it's a first inquiry or a second or a final and third. Because now they know that "oh my gosh, I'm in the informal resolution and compliance is asking for specific facts by a specific date." We don't receive a response it gets elevated to the next level.

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And we try to also approach it in a very collaborative way. We don't only depend on emails. The first notice or inquiry is sent via an email, the second one we pick up the phone; our staff picks up the phone and calls on the receiving end to say "hey we sent you an inquiry or we sent you a notice, we have not heard from you." Sometimes people don't get to their emails so we try to be, I don't want to say accommodating, but try to exhaust all the different communication means. By the third inquiry we also fax that email to the contracted party.

If by the third inquiry after that specific date has not been met, we don't hear or it's not corrected or no action has been taken, we then, on a case by case scenario, determine is it time now to escalate it compliance activity, which now shifts it to what we call an enforcement role. And there we turn around a breach notice and we publish on our website. This is a very critical milestone in our approach. So people sometimes want to know everything compliance is doing from the very beginning. We do not publish what's happening in the informal resolution because we want to give that professional courtesy to the contracted parties to collaborate and get any compliance issue or inquiry addressed.

If it's not addressed and it gets to an escalated fashion, then we do publish because it's serious and the community needs to know what's going on with who and why. So this is where in the approach, and if you are really interested in learning more about that there's going to be more sessions I'm sharing with you too. So the next slide here it talks about our three year plan. I've been with ICANN now one year and since my arrival I've worked with the staff and we developed a three year plan, which now we are in the second year of it. This three year

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plan is very focused on growing our staff, not only in numbers but also in expertise.

We are continuing to standardize on our operations so we become much more efficient and effective. We are continuing to plan and develop on our metrics. Measurement is very, very important. And then we're building an audit strategy, we're doing system enhancements. We're working towards designing an annual compliance report. And last but not least we're working and trying to get our department ready for the new gTLD launch. So this plan here we are on target to deliver this in 2012. This slide here is just to give you a high level view of what does it mean when we say we're working towards a readiness plan for new gTLD.

We're focusing our resources. It's about getting to know not only the contract but all the different terms in it. It's exploring what does our staff need to be trained for it. And what additional staff skills do we need. From an operational perspective we're looking at our existing tools, our existing procedures and processes. Do we need to enhance anything or change it? And we're preparing our templates. We want to make sure the message is always consistent and always addressed with clarity when we are working with our contracted party.

So with that I just want to inform you if you're interested to learn more about the space of registrars and registries we have two outreach sessions planned for Wednesday. One is at 2:00 and one is at 3:00. In there we will focus much more heavily into the operational aspect – what is going on in that space. And even though Stacy is going to share with you some of those metrics, but in those sessions we take it more to

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the level of detailed operational updates. So if you have the time and you're interested please join us.

Stacy Burnette:

Good afternoon. My name is Stacy Burnette. I am the Director of Contractual Compliance. I work with Maguy and several other staff members. Because this is the newcomers session I am going to attempt to speak as plainly as possible. I know you've heard a number of acronyms today and it can be very confusing when you attend an ICANN meeting for the first time. I know I was confused probably for about the first three meetings. Because it's just a new field with all of these acronyms and it's not clear what everything means.

So, I am going to speak plainly and I am going to assume you don't know anything, so I'm going to explain everything I say. And hopefully that will help you and make the rest of your meeting for the rest of the week pleasant because you'll understand what's going on. So the first slide that I wanted to chat with you about is why does contract compliance matter to anybody; why does ICANN even have a contract compliance department.

So I think most people in here were around before we were actually all using the internet. While everybody does look very young, I think most people here probably are at least 30 or maybe 25. But this internet is a new tool that we've all become very accustomed to using, morning, noon and night. People take their Blackberry's and other things to the bathroom with them. I mean we depend on the internet and the news that comes from it, social networking. And because we all depend on it,

it's this very important tool that has to be reliable. It has to be dependable. It has to be consistent.

And in order for that to happen we have this system that this organization has designed, this numbering system that associates a number with every domain name. And one of our colleagues, Khalil Rashid, when he shares with his friends what we do, because sometimes people don't understand what we do, he always says "we make the internet work"; and it's true. This organization does make the internet work. The technical aspect of this whole numbering system, this organization is responsible for that.

And so if our partners our ICANN accredited registrars and our registry operators don't comply with their agreements there will be chaos; instability, inconsistency. And so contract compliance is extremely important. And when we take action it's important that our contracted parties respond quickly so that we can maintain the stability and everyone can wake up every morning and jump on the internet and it just seems normal, it works like it's supposed to. So contract compliance is very important. Next slide please Maguy.

Some of the issues that we address concerning domain names include the following: trademark disputes. And let's say, I think we're all probably familiar with McDonald's and if someone registered a domain name and spells McDonald's with two D's instead of one, there are people who often make mistakes when they type in a domain name and so that webpage could get lots of traffic just because people have typed in an extra D in that name. And people do that intentionally. And so whenever someone infringes upon a registered trademark, the

trademark owner can raise a dispute or attempt to sue the person or take some type of action to protect their interest.

And so ICANN has developed a low cost dispute resolution process to address domain name disputes concerning trademarks. So that's a very important dispute resolution process that a number of trademark owners use to quickly resolve their domain name trademark issues. Another matter that we often concerns WHOIS inaccuracies. Now every time someone registers a domain name they're required to provide certain information about the entity or the person who's registering the domain name, like your name, your address, your telephone number, an email address. And this becomes public information so that in the event someone needs to contact you about an issue related to that domain name here's this public information that's available concerning the registrant, that's the person or entity who registered the domain name.

And often people don't want to provide that information or make it public, so sometimes people provide false information. So they might put Mickey Mouse in the WHOIS data. Well, there's a requirement in your contract when you register a domain name that you have to provide accurate information and if you don't there are consequences. And so our contract again requires that these registrants provide accurate information and that's one of the things we do to assist the public in being able to look up information about an entity or a person who's registered a domain name. And that becomes very important to law enforcement entities when they're attempting to resolve crimes related to the internet.

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Other issues that we address on a regular basis include transfers of domain names. We've developed a policy that allows registrants, those people who registered domain names to freely transfer their domain names to another ICANN accredited registrar in the event they're not pleased with their current registrar, or for any reason. Maybe they are pleased they just want to pay less money; whatever the reason. And so if our ICANN accredited registrars don't comply with this policy there are consequences.

And then also registration restrictions – that's another common issue that we address as part of our contractual compliance responsibilities. When you register a domain name you commit not to use that domain name to infringe upon the rights of third parties. You also commit not to use that domain name for an unlawful purpose. And so those are matters that, these are some of the complaints and issues that we regularly address. Now it's important to note that ICANN doesn't have authority to address issues that stem from the domain name aftermarket.

And the aftermarket is simply a market in which you can acquire a domain name by negotiating with a party who's already registered the domain name or participating in an auction for a domain name. Again it's an aftermarket, it's a secondary market, we don't have contract authority to take action concerning anything that happens in that market. And that market is usually facilitated by auction houses where buyers and sellers communicate to try to close these deals to get domain names. So again, we don't have any authority concerning that. Next slide.

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Domain name use issues, these are matters outside of our authority and I think Maguy mentioned that earlier. So anything to do with website content. If a party is using a domain name and they set up a website where they're showing pornography or they're selling drugs without license to do so, we can't take action because we don't have authority to deal with content issues, also sam or phishing. Let me see how many people are familiar with the term phishing – does everyone know what phishing means?

Okay for those who don't I said I would explain things. It's an attempt to acquire information like a user name of other details concerning someone's – I wrote these notes and I can't see without my glasses, I'm sorry. It's an attempt acquire information such as a user name or password or credit card details by an alleged trustworthy source. So you might get information from a link that looks like it's your bank and it's really not your bank. They want you to click that link and put in your social security number and they may use that for some reasons you don't want them to use it for. But that's one of the things we don't have authority to address.

Also malware, that's when some type of malicious software is created to disrupt your computer operations. And then cybercrime, that's outside of our authority. Law enforcements have to take matters into their hands when it concerns cybercrime. ICANN does not have authority to do that; we have contract authority and these things are completely outside of our contract scope.

So now I want to share with you some information about some activities and things we've done over the past three months. Here you have a

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slide that gives you information about the number of complaints per domain name. And so I want to go through what's happening in Europe. If you look at the legend up top it says "from February 2012 the domain volume by millions." So in Europe there are approximately 21.2 million domain name registrations. Next to that is another number and that's in thousands. Of that 21.2 million domain name registrations ICANN received 1,596 complaints relevant to those registrations. And that represents .008% of the total number of domain name registrations in the Europe area.

If you go under that in blue is the number of registrars per region. Now registrars are the entities that have an agreement with ICANN to offer domain names. So in Europe there are 141 ICANN accredited registrars. Of those 141 ICANN accredited registrars, 67 received complaints concerning those 1,506 complaints that I talked about earlier. And that represents 47.5% of all of the registrars in the Europe area. So half of the registrars received one or more complaints for the period of March to May of 2012. And you can look at the other areas at your leisure, but I wanted to explain the chart so that you can understand it when you look at it later.

So I mentioned that we have ICANN accredited registrars, those are entities that offer domain names to the public. And then we have registries, those are the entities that maintain the records for all of the domain names ever registered. So if you want a .com name there is an entity that checks its records to see has the name you want already been registered. If it has then the registrar will contact you and say that name is not available. If it has not been registered the registry operator will look it up and say "no that name has not been registered, it's

available.” It will communicate that to the registrar and you will receive a notice “yes you can register that domain if you’re interested in it.”

So we have 18 registry operators and we receive monthly reports concerning their performance. And during the period between March to May of 2012 our registry operators reported that they were 100% complaint concerning domain name service availability. That means constantly offering the services they’re supposed to offer in a timely manner, WHOIS availability offering WHOIS information to the public on a 24 hour 7 day a week’s basis, equal registrar access to the shared registration system. So, all registrars who have a contract with a particular registry operator constantly had access to get information about available domain names from the registry.

And we didn’t, those registries reported that they didn’t receive any complaints concerning the denial of bulk access of the zone file. On this slide we also have information that shares with you that we have two matters under inquiry concerning possible non-compliance with two registry operators. And again, it’s in the inquiry stage so we haven’t made a final determination whether there is non-compliance or not.

So this next slide gives you information about complaint trends in different regions of the world. So, we recently started tracking these trends and if you look in the Americas – what is that called a bar chart? Yes, if you look at the Americas bar chart then you can see there was a spike in March and that was due to an abundant number of complaints by a particular registrar. But in America there were a lot of complaints that occurred in March. If you look in Europe there seems to be just an upward trend with a significant spike in May. And then if you look in

Asia, it appears as though there's just consistently an overall upward trend of complaints.

And in Oceania there's a downward trend, and then in Africa there were no complaints. And so it appeared the overall trend for the complaints that we received, the spike occurred in March where we received I think 7000 total complaints during the period between March and May in 2012. And so complaints to us sometimes reflect that there may be some misunderstanding in terms of a contract provision or there may be something going on that we may need to address in a particular region. And so that's why it's important for us to monitor complaints and what's going on in terms of the types of complaints that we receive.

So this chart gives you information regarding the types of complaints we receive and the stages they're in in terms of resolution. So as you can see from this pie chart, ICANN received most of its complaints concerning WHOIS inaccuracy. And again, that's the data that you have to provide when you register a domain name. And then the second largest complaint area concerns domain name transfers, when people attempt to transfer a domain name from one ICANN accredited registrar to another.

And so you can see from the analysis on the right side of this slide that we have 15,292 complaints that were received, and of those, we've had to escalate eight to our enforcement phase where we sent either a notice of breach or we terminated a registrar's contract because they failed to cure the breach. So we have, as was reflected on the prior slide, an informal resolution process – oh no, it didn't say that, but we have an informal resolution process and we have a formal resolution

process. And as part of the informal resolution process we monitor how many notices we have to send before a party comes into compliance. And we have a three-step process where we sent one inquiry notice and we ask the registrar to provide information relevant to the complaint or inquiry.

If the response doesn't come back or either the response is inadequate, we may have to send a second notice. Again, if the registrar doesn't respond it's the response doesn't appear to make sense we send a final notice saying if you don't correct by a certain date we're going to escalate this and send you a formal breach notice, which means your contract is in jeopardy if you don't cure the formal breach notice. And so this chart reflects the percentages of first, second and third notices.

So let's look where it says UDRP, and that stand for the Uniform Domain Name Dispute Resolution Policy, that's the policy that was established to resolve trademark disputes. If for instance we received 10 UDRP related complaints, six of those require – because there's 60% here – six of those required ICANN to send a first notice. Of that 60%, let's say it was six, four of those we needed to send a second notice because the registrar didn't so what they were supposed to do, they didn't cure. And in this case it appears all of those complaints were resolved either through the first or second notice, because there was no need to send a third notice. So that's how you interpret these percentages on this slide.

So if you want additional resources about contractual compliance, we've given you some links to go to. And as Maguy said if you know someone who you think might be qualified for a position to work with

us, we only like smart people with a good sense of humor, so don't refer people who don't meet those qualifications. Again, we encourage you to look at these resources and if you have any questions you can always contact us using this email address. And we appreciate you listening to our presentation. If you have any questions we'll stick around for a little while and answer any question you have.

We've provided some additional information, just in case you don't have anything to do tonight and you want more information about contractual compliance, you can look through our appendix and we have all this wonderful information about our consensus policies, about WHOIS accuracy, the inter-registrar transfer, all these interesting topics that I know you'll want to read about tonight.

Maguy Serad:

So with that this concludes our presentation and we have some time for questions if you have any.

Filiz Yilmaz:

Any questions for compliance, Stacy and Maguy? Yep, we have one here.

Gary Campbell:

Gary Campbell from Jamaica. When you get the complaints about compliance, what's the turnaround time in terms of resolving it? And secondly, do you collaborate with the ombudsman in resolving any of those complaints?

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Stacy Burnette: So the first part of your question was when we receive a complaint how much time does it take to resolve the complaint. And then the second part of your question, can you repeat that, I didn't hear it. I'm sorry.

Gary Campbell: The Ombudsman, do you collaborate with him at all in trying to resolve any of those complaints?

Maguy Serad: So thank you for your question, and I'm going to try to go back to the slide. On this slide specifically we did not want to overwhelm you with the times between the different process steps. But I can address that right here. So this compliance approach, the first three steps have specific timelines for a response expectation from the contracted party. What we try to establish is a consistent approach across any and all provisions. There is usually, the general practice is a five business day for a response and we state in the email or the note that we send out a specific date that we expect a response by.

There is one area that we refer to the WHOIS inaccuracy, and that, based on the contract, obligates us to send with a 15 days for the first notice to get a response. But that's the only exception to date. So, five business days for the contracted party to respond back to contractual compliance providing us the data that we specifically asked for. And usually what the general practice has been is we get those responses sometimes even before that date.

In the enforcement phase, once it reaches a formal resolution it's an escalated enforcement, a breach notice is issued with a very specific

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due date and it's all per contract and it's case by case. It's issued and it's posted and we have to respect that date. And again, we follow through on that timeline based on this breach notice that's been posted. So it's clear that the gap, and anticipating your question is how long does it take compliance to turn around a response depends again on the volume of data we receive that needs to be validated. Today we are trying to work through that and hope to publish it more.

Regarding the collaboration with the ombudsman question, yes we do receive sometimes complaints from our ombudsman and we address those. So the collaboration is there.

Filiz Yilmaz:

Thank you. Do we have any remote questions Brian at all in the chat room? Not at all? Okay, there we go. I'm coming.

Male:

My name is [Shihu] from Nigeria. From the graph you showed to us it shows that we don't have complaints from Africa. Now my question is this, ccTLDs today, can they also make complaints or do you get complaints from ccTLDs?

Stacy Burnette:

So we don't have authority to dictate what ccTLDs do and don't do, and complaints regarding ccTLDs are usually referred to the specific ccTLD. And so if you want information regarding the number of complaints that that ccTLD has received you should probably contact them and they might give you that information.

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Beran Gillen: Hi my name is Beran Gillen from the Gambia. I'm curious are all of your staff lawyers, is that a prerequisite?

Maguy Serad: As Stacy said, smart and a good sense of humor. I'm serious. To answer your question more seriously, no it is not. And if you go on the ICANN website, we do have a couple of positions open and there's a clear description of the requirements. I'm not a lawyer. I come from a business background with an information technology background, go figure right. So it's all skill sets are important in this role, but please do check our posting.

And the reason Stacy and I emphasized the intelligence and the good sense of humor is because all we do is receive complaints guys. No one ever calls to say "hey how's your day going," never. Okay. So good sense of humor to take the good and the bad is a prerequisite. But one thing I can assure each and every one of you, we have an amazing staff. I'm really fortunate to work with some very smart, good sense of humor staff members.

Filiz Yilmaz: Thank you. Thank you Stacy. Thank you Maguy. I think we will just wrap it up after you, you are the last stars of the newcomers stations. So we will let everyone go. But before that I have a few announcements to make. First of all thanks for enduring so far, you are the diehards who stayed till the end and you are all hearing this having a little special announcement for you. We have a present, we have presents for all of

you actually, but I haven't made the announcement at the beginning of the day. We have stress balls designed especially for you guys welcoming you to the ICANN world.

They are small balls and they are soft. They are nice and easy to play with. Just drop by the newcomers lounge and get that special present for you. That's one thing. The other thing is we want you to, if you can, if you're on social media, start following ICANNs account. We are using that for various announcements. So if you don't even hear something from a colleague, from somebody else, a participant, you can see what's going on from there.

And finally, we have a survey. We want to improve these sessions each time. The plan being on the feedback we receive. Obviously we are very used to these presentations, we often give them and then since we started for the last three meetings we've already gone through some revisions. But we do that based on your feedback. It's very, very important us to hear from you. You will receive emails pointing you to a special survey link and we will be asking about your experience both at-large and here. So please be honest and let us know what you think of it.

And finally yeah, welcome to ICANN and I hope you have a great week. And if you have any questions, seriously come and talk to us. We always have time for you. Thank you.

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