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PRAGUE – GAC Law Enforcement Update & GAC Discussion

Sunday, June 24, 2012 – 09:00 to 10:30

ICANN - Prague, Czech Republic

CHAIR DRYDEN:

Good morning, everyone. If you could take your seats, we'll begin.

Okay. So let's start. Good morning, everyone. So our first session today is to discuss several issues that are related, beginning with the registrar accreditation agreement negotiations that have been taking place. In particular, we have requested a brief from law enforcement this morning about their perspective and the progress that's being made on implementing the recommendations that the GAC has supported along with law enforcement.

And there are various documents. Some were added in addition to your binder yesterday. So some of the documents you will find there and documents were provided just a couple of days ago by the registrars, for example. So we have -- we have more and more information coming in.

But earlier ICANN did post various documents including a proposed revised RAA. And I think that may be our main reference today to help us find our way through all the various documents that have been added and that are already in our binder.

So what I propose we do is we begin with an update from law enforcement. And, if we have questions or things to clarify with law enforcement, let's do that.

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And I would also note that tomorrow morning the registrars are holding a session. I'll give you a few more details a bit later on about that. But will remind you about a session they're holding tomorrow. And it may be beneficial for GAC members to attend that session to talk about the RAA and to get as well a perspective from the registrars in that way.

So, with that, I will ask the U.S. to intervene. The law enforcement have identified the FBI to be their lead. So, Bobby, if you can lead in as their spokesperson, and we can go from there. Thank you.

BOBBY FLAIM:

Thank you, Madam Chair. My name is Bobby Flaim. I work for the Federal Bureau of Investigations in the United States. And the GAC has asked me to do an update on the law enforcement recommendations in 2009 and was endorsed by the GAC at the Brussels ICANN meeting in June 2010.

So the update, as it stands right now insofar as our law enforcement recommendations, over the past three years we've had negotiations with the registrars. And more recently, pursuant to the Dakar meeting, there have been negotiations between ICANN and the registrars directly. Law enforcement has participated or given input to ICANN and the registrars at two meetings this year -- in January and also in February. Pursuant to those negotiations in which our recommendations were more clearly defined, there were explanations given, discussions made on the 12 recommendations we have, ICANN on June 4th actually published a new proposed RAA.

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In the new proposed RAA, which, hopefully, you have seen was published by ICANN and was ICANN's version only, we were very encouraged as law enforcement that most of our 12 recommendations were actually in the new RAA or the proposed new RAA.

I just wanted to clarify, for the record, that our law enforcement recommendations are actually broken into two parts. Part 1, which is due diligence recommendations which pertain mostly to the registrar accreditation agreement, which is the contract between ICANN and the gTLD registrars. Those are the 12 recommendations of part one.

Part 2 of our law enforcement recommendation actually pertains to ICANN doing due diligence in accreditation of registrars, registries. It also deals with the compliance of those registries and registrars with ICANN.

That, unfortunately, there were four recommendations on part two. Only one have been addressed. The other three still remain outstanding.

So, insofar as part 1, which has received all the attention with our law enforcement recommendations and pertains mostly to the registrars, we are encouraged by the new RAA. And the new RAA includes most of them. The things we're most encouraged on is the transparency aspect of the new RAA which informs the public on public Web sites and also through ICANN all of the registrars' contact details. Law enforcement has had problems in the past contacting registrars insofar as serving them legal process, legal orders. This becomes especially critical with international cybercrime investigations.

So we're very happy to see that included in the new RAA. They've also included an abuse point of contact, which actually was a recommendation by the security and stability advisory committee of ICANN. They've included that. They've also included a few other things which are beneficial to law enforcement.

There are two, I guess, big issues or more outstanding issues which have been the subject of much debate and discussion. And those go to the data collection of registrant information at the time of registration. And it also goes to the validation of the registrant information.

Now, with the validation of registrant information, it's actually pretty much a 2-step process. And this has been a point which has been confused a little bit because, number one, it's the validation of the registrant information at the time of registration. So we want to verify the -- who that person is that is actually trying to register a domain name or a series of domain names.

The second portion which you hear a lot about and which is confused is the WHOIS validation. And the WHOIS is actually part of the contact information that the registrant fills in him or herself. And a lot of times people have assumed that, when we're talking about validation, we're only talking about WHOIS validation. But it's actually two different types of validation.

So with those two points of contention -- or I won't say contention but discussion at this point, because they are two very big issues -- there's a lot more that needs to be done between ICANN, registrars, with the input of the GAC and the community.

So, with that, ICANN has published some specifications which they have added. I'm not quite sure if it's an appendices or it will be incorporated into the RAA. That part hasn't been clearly defined. And I think we would need to hear that from ICANN, what the status of that is and how they plan to either incorporate that or make it part of the RAA. Because that isn't 100% clear. And that is a very big portion of what we're trying to do.

So I would say that we very encouraged as law enforcement on the current status and the fact that this is the first time in three years that we actually have a tangible document in front of us.

And, just to give you background, we, actually, like I said, we brought our law enforcement recommendations to the GAC in 2009 in Seoul. They were endorsed by the GAC in 2010.

We also did have direct negotiations with the registrars. "We" being international law enforcement. And I'm going to introduce the international law enforcement that's here. That was in 2010 and 2011. And then Dakar was where the board, the chairman of the board actually directed negotiations to incorporate the law enforcement recommendations. So this is actually the very first time in three years that ICANN has actually come up with a new RAA pursuant to the law enforcement recommendations.

And, just to let the entire GAC know, this is a true international effort. These law enforcement recommendations came through with international collaboration and cooperation through the international law enforcement community.

It was the United States, the U.K., Canada, New Zealand, Australia. We also had the endorsement of the G8, which includes Russia, Germany, Japan, Italy. We also had the recommendation of INTERPOL, the London Action Plan, the messaging anti-abuse working group, also other countries such as Brazil, South Korea, Thailand, South Africa. This is a true, true international effort. And, to show you, I think we have about 30 law enforcement officials from around the world here in Prague today.

Just, for instance, in this room you have representatives of the U.S. Department of Justice, the United Kingdom Serious Organized Crime Agency, the Canadian -- Royal Canadian Mounted Police, the Canadian Quebec Police, Luxembourg Police, United States Department of Homeland Security, security agency, Dutch Police, the Swiss Milani, (phonetic) which is their equivalent of Department of Homeland Security. Over the next course of the next few days we're going to have representatives of the Mauritius Police, French Police, Danish Police, Spanish Police, Czech Police, INTERPOL, Argentina, Europol, Cyprus, Romania, and the European Commission.

Unfortunately, our Asian colleagues are attending a cyber conference in Seoul, Korea. So we're bifurcated at this time, but they're in support of what we're doing. So it is a true international effort. And what we're trying to do is ensure that our recommendations are international and that we comply with all national laws and that it is something for the betterment of the Internet community.

So I think that's all I have to say insofar as updating with the recommendations. The one point that I would make is that there's still

a lot of work to be done to make sure that this actually becomes something real. We have made a tremendous amount of progress, but we're not finished. We still have a long way to go. And that's what we still have to work on from now till Toronto, hopefully, at the next ICANN meeting. And maybe we can actually have an RAA which can be signed by Toronto.

We'll hope the one thing that we also do want to stress is that, even though we may have a good RAA that comes out of this process, what we're also hoping for is that we also have good compliance mechanisms as well so that the RAA doesn't say could, should, may, and will say must and give timelines to make sure that this document, even though it's written very well or will be written very well, will be enforced very well as well.

So I think that is all I have insofar as introductory remarks. And I also invite any of my other colleagues from the international law enforcement community, if they have anything over the course of this session, to participate as well. So thank you, madam.

CHAIR DRYDEN:

Thank you very much for that update.

Are there any initial reactions to that update from GAC members or questions that they may have for law enforcement regarding the progress and activities since Costa Rica and up to today? Australia?

AUSTRALIA:

Thank you, chair. And thanks to Bobby for the very comprehensive update. It's very useful to get an overview. Like all the GAC members, I guess, this is an interesting one to try to track as it's sort of closed door negotiation and information is coming out periodically. But, like U.S. colleagues very much welcome that we actually have some text on the table now. Really useful to see actual draft amendments and be able to focus our attention on that.

I did want to revisit the point that the law enforcement recommendations which the GAC endorsed had two components. So there were was the component to do with the RAA amendments, which we're seeing some progress on.

Regarding the second part, which is due diligence activities by ICANN, I believe we still do not know where they are up to. In Costa Rica we asked questions of the board. And we actually posed a question to the board, asked for an explicit response in the Costa Rica communique. And I believe we still do not have a response from the board on the status of those recommendations.

So that's troubling.

And the other thing that may be worth focusing on is the timeline for all of this. While the progress is very welcomed, we were anticipating or at least ICANN had suggested that it would have a draft of the RAA amendments to look at at the previous ICANN meeting. And we have a partial negotiated draft, as I understand it, now.



I think, certainly from my perspective or focus on the quality of the outcome rather than pushing for it to be resolved at any particular time is a priority.

But from -- there are -- I think it would be very important for this to be finalized in advance of the launch of any new gTLDs so that it was very clear to all in the industry what the new RAA provisions were that were bedded down. It was clear to any new players going to enter into the industry what kind of due diligence ICANN was going to be doing and in terms of linking that with compliance so that it is very clear to industry and to all in the community what they can expect from ICANN in terms of here are the contracts, here's how we're going to be enforcing them, here's what you can expect. It's going to be predictable. It's going to be consistent.

So, from my perspective, I think it would be very important for this suite of work related to the RAA amendments the due diligence by ICANN and focus on ICANN's compliance activities to be finalized and bedded down in advance of any new gTLDs being launched.

CHAIR DRYDEN:

Thank you, Australia. EU Commission.

EUROPEAN COMMISSION:

Thank you, Madam Chair. And many thanks to the colleagues from the FBI and the law enforcement agencies for providing this update.

I must say this, as other parts of the work been performed within ICANN, has been a bit difficult to track. And, in particular, I stand to be

corrected. But I think we received a document by the registrars, a critical analysis of the position of ICANN just, if not today, yesterday an hour before the meeting. So this just a signal that on the part of European Commission we would certainly need more time to analyze the text and understand where we stand.

I know I want to say this for the record that the -- this document RAA critical issues analysis that attention of WHOIS by the registrars makes reference to EU directive, the data retention directive, without prejudice to further analysis that we will do. But I have some doubts that the reference is correct, because I don't think that's what registrars do is actually within the scope of the directive being mentioned here. But, again, this is without prejudice to further analysis that we'll have to do. This is particularly important for us because certain parties have raised the issue of the compatibility between the current text on the table and certain data protection that the privacy law with particular reference to EU data protection data privacy law, which the commission is, of course, responsible for the correct implementation of that.

What will be useful for us is to understand when are we going to discuss -- and I apologize if this is somehow in the agenda. But I find it confusing, I must say. When are we going to discuss with the actual negotiating parties? Because it's very good to hear from the GAC. It's very good to hear from law enforcement agencies. I would like to hear the views of ICANN and the registrars and to have a discussion with them. So a clarification on if -- are we going to have this discussion this week, which I understand we will. I hope we will. And when are we going to have it.

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But, again, for the record, this is absolutely without prejudice for the fact that the European Commission, on behalf of the European Union for the work you consider, will need to go back home and will need to check very carefully with law enforcement. We will not be in a position to take any clear position on these documents now at this meeting. Thank you.

CHAIR DRYDEN:

Thank you, EU Commission.

Do I have further requests for comment or question at this time? Germany please.

GERMANY:

Yes, thank you. And we would also go along with this position mentioned by the EU Commission. We have to go home with these papers and discuss them. As you may be aware, we internally have also discussion on data retention, and it's a very important one. And another one is the relationship to privacy, which is also very important. And, therefore, yes, we have to be very careful. It is law enforcement on one side and data protection on one side. And we have to, let's say, balance both approaches and come to a solution which comforts each side and is in line with our legislation we have internally. Thank you.

CHAIR DRYDEN:

Thank you, Germany. I have U.S. And if I could ask the U.S. or the FBI to clarify what the sessions are on Monday or the activities of law

enforcement. There may be opportunities there to interact further, GAC members with ICANN or the registrars and so on.

We do have this item on the agenda for the meeting with the board. And I think we will need to raise this with the board on Tuesday and at today's session. If that can be clarified, it might also help us to plan. U.S., please.

UNITED STATES OF AMERICA: Thank you. I'm going to defer to Bobby on the second point. But I did just want to chime in to make a suggestion. I fully concur with my colleagues' statement that our preliminary assessment of the multiple documents that we have been provided a scant two weeks before the meeting does suggest to us very strongly that some very, very good progress has been made. And I think that's very encouraging, and I think we want to say that. I think it's been a very challenging exercise for the negotiating parties.

I also think we want to reinforce our availability as GAC and our LEA counterparts to continue to work with the negotiators to answer whatever questions they may have directly. And, quite honestly, if I may, to avoid situations where either the registrars or ICANN staff might be trying to interpret what we want. I think it's always better they should speak directly to the GAC or the LEA, and I think we would all be better served by that. I think it's better we signal that publicly and perhaps in our communique.

And we might want to consider -- I don't have a specific suggestion at the moment, but I'd like to get the temperature of the room -- we only

have a few months between now and the Toronto meeting. As Australia has noted, the original board resolution actually called for draft amendments to be discussed by Costa Rica.

We all know we did not have draft amendments to review for Costa Rica. We had a progress report.

We now see, if you note, the posting very carefully worded on ICANN's Web site. All of this documentation has not been posted for public comment. It's been posted for information.

So, in a sense, that's the good news. We have time to digest all of the documentation. However, there is a small down side in that we still don't have a sense of when we will actually see an actual proposed set of RAA amendments for comment.

So we might want to consider signaling both in our session, the public session tomorrow, as well as in our communique that we have an expectation that by X date -- and whatever date we wish to choose. I don't know whether it's August or early September, however we want to go about it. But I do think we need to signal that we actually believe that the finally agreed proposed amendments between the two negotiating parties be available for public comment so that we can comment and can have perhaps a final round of discussions in Toronto to nail everything down. I do think it's important that we set an end date, an expectation for an end date.

Now I'll turn to Bobby to sort of answer the question about the timing at this meeting to engage with the registrars.

Thank you.

BOBBY FLAIM:

Yes, actually, law enforcement, there's going to be -- we have two days of special law enforcement session. Later on today we're going to do some training, you know, concerning DNS abuse and so on and so forth. But tomorrow we're having more of a policy discussion on the recommendations. It starts at 8:30 tomorrow.

And what we will discuss there is we will discuss amongst ourselves, internally, privately, the documents that we have seen, kind of get a temperature for what people are thinking on that.

We are supposed to have the registrars come in and speak to us in principle.

We actually have a very, very packed day because it's the only day where we can all get together where it doesn't interfere with some of the other ICANN meetings.

So we do have the registrars coming to see us. We do have Margie Milam from ICANN who was one of the principal negotiating parties and drafters of these recommendations. And then in the afternoon we are going to meet with the SSAC, the Security and Stability Advisory Committee of ICANN, and there are two issues that we will discuss there. And one concerns validation, which goes directly to our law enforcement recommendations. The second issue we'll discuss there, which hasn't really been raised here and it's slightly out of the purview of ICANN, per se, is the carry-grade NAT issue, which is an IPv4 to IPv6 transition technology.

So for tomorrow morning, we are going to be meeting briefly with ICANN staff. We are going to meet briefly with the registrars. And then we are going to go to the public session from 11:00 to 12:30 in which this whole RAA negotiation will be discussed publicly. We want to make sure we're there for that.

So that's what we have planned for tomorrow. Any of the GAC members who would like to attend any of the portions of that, they are more than welcome to do so.

The other thing I was reminded to talk about was the fact that even though we're very encouraged with the new RAA or the proposed RAA, there's still lots of loopholes and things that don't lend themselves to -- how do I say? Complete compliance. You know, the reseller issue is still kind of nebulous in how they are defining that, even though the registrars have agreed that the registrars would be the ultimate responsible party. The fact that we have proxy and privacy accreditation process that has been agreed to, the language is still doubtful in there. They say "if" and "they may" propose that.

So there are still lots of things to iron out, even amongst the new RAA, which we are encouraged but, like I said, there is still a lot more work to be done.

CHAIR DRYDEN:

Thank you very much for that update.

EU Commission, please.

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EUROPEAN COMMISSION: Thank you, Madam Chair. And apologies for again taking the floor.

We would agree with the U.S. that, yes, a timeline would be useful. We just want to highlight that the language only referring to the law enforcement recommendation, the proposed language, is complex. It will entail, if we are asked for a position on that, which I must say, it will get only to a point because at the end of the day this is a negotiation between private parties, so as governments we're not in the business of telling private parties what to unless they violate existing law. But in any case, this negotiation of the text that we have on the table only for the law enforcement condition is complex. We will need to have enough time for a consultation, which means the standard three weeks consultation which I think ICANN applies will not be possible. There is no way that the European Commission and, I believe, the member states and -- we are here in a complex situation for the European Union because these are issues that cover European Union responsibility, national responsibility. So we will have to request to have the time to consider this very carefully.

Linked to this, I understand that the topic of the agenda is on the law enforcement recommendation. I don't want to go beyond that, but I must note that our understanding is that the negotiation on the Registrar Accreditation Agreement, the language being discussed goes beyond the law enforcement recommendation. There are a lot of other issues which may touch upon consumer protection, competition issues, et cetera. I'm wondering whether the GAC, there is a sense in the GAC whether we are going to, at a certain point, discuss those as well because -- and this is without underestimating the importance of the



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law enforcement recommendations, but there are other elements that we may have to consider as well.

And to conclude this, confirms once again that if we are asked for an opinion on this, we will need to have even more time to provide any firm opinion, or we will just be able to provide a very unformed opinion which I don't think we would do in any case. We are not in the business of giving opinions unless we are very convinced about the opinion.

Thanks.

CHAIR DRYDEN:

Thank you, EU Commission. I think it is clear we are going to have difficulty commenting on the substance given that the papers contain references to issues that deal with privacy or potentially consumer protection and so on and so forth and that we received the materials so close to the meeting. So we have to be realistic as we determine what the next steps are to move the work ahead.

I have U.K. next, please.

UNITED KINGDOM:

Thank you, chair, and good morning, everybody.

I just want to share, first of all, my sense of the -- the sense that real progress has been achieved, and that's great credit to the parties. And although the state of negotiation between ICANN and the registrar seems a little bit unclear, and there are issues like the accountability of resellers that looks a bit -- very, very unclear to me, having had a quick look at the document, so I hope very much that negotiations will

progress. And I support the U.S. proposal that we do signal request for a timeline, and that we be kept informed of any problems, any issues that are still sort of hovering around here, like cost burdens and so on, things like that. We need to be -- we need to really understand if there is any barrier or concern on the registrar side, we need to understand that fully and clearly.

So I hope very much this is finally the last lap. As Bobby Flaim said, it's good to actually see some kind of document here which incorporates the law enforcement recommendations. It's very encouraging, but this has really got to be the last lap to concluding this long-running issue which, you know, has had its ups and downs. But I hope very much we're getting there. Thank you.

CHAIR DRYDEN:

Thank you, U.K.

You have reminded me that what I'm hearing from the registrars is that they are interested in having a PDP on the two main outstanding issues. This is my sense of things.

So perhaps that's something we could clarify, because there is the substance issue, which we're going to have difficulty, as a GAC, commenting on because there are a number of considerations and we need time. But we do need to, I think, clarify some issues about the process going forward, about what issues are going to be finalized as part of the negotiating mechanism that we have now. Will there be a public comment? These kind of issues I think are how we may focus our attention.

You've also reminded me that we have the domain name market briefing today, and the GAC has asked to receive a brief on the issue of contracting and resellers, and so on. So let's hope that that provides a bit of clarity on the perspective from ICANN on those issues.

I saw the U.S. asking for the floor. Maybe you're going to correct me in a way that's positive, so U.S.

UNITED STATES OF AMERICA: Perish the thought, Madam Chair, that I would seek to correct you. No, no, not at all.

Actually, I was glad that you pointed out that you had an understanding that the registrars might be seeking a PDP. I think that's something very useful for us to clarify with them, because as we all know, although we didn't get into it yesterday in our meeting with the GNSO, I think our informal sense of what a PDP involves is perhaps a timeline that may be far lengthier than we like to see in terms of results that are then taken into account as actual provisions in the Registrar Accreditation Agreement.

So if I may, I think I can informally say, and we can make it formal if we need to, we would be a little bit reluctant or perhaps even concerned that some of these key issues would be deferred to a PDP instead of being resolved through the RAA negotiations.

Thank you. So I think that's a helpful reminder for us, that we need to seek some clarity there.

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CHAIR DRYDEN: Thank you, U.S.

I note as well that we have identified the WHOIS Review Team recommendations as linking to these issues as well. I'm looking to Australia as the representative on the review team. Would you be able to law a link between the particular recommendations that would relate to this discussion?

Thank you.

AUSTRALIA: Thank you, Chair.

So I guess I'll start by reminding members that I've -- nearly 18 months, I was the GAC's chair delegate to the WHOIS Review Team. The WHOIS Review Team published its final report in May, and the Board subsequently released that final report for public comment.

I understand that the next step will be for the Board to respond to that report.

Whilst those activities are going on, I do understand that ICANN staff, in the RAA negotiations are mindful of the WHOIS Review Team's recommendations that relate to the issues that we have been speaking about here. And there are three that I would draw to members' attention.

I raised these on the GAC list in an e-mail shortly after the review team's report was released. But those specific issues, recommendation 4 of the review team's recommendations related to ICANN's compliance activities. And in particular, the review team focused on the -- similar

things to the GAC focused on in our discussions in Costa Rica. So basically some principles for what a best practice compliance activity would look like. It would be proactive, it would encourage a culture of compliance. Its activities would be very clear and transparent. And there would be no conflict of interest or incentives in the lines of reporting of that compliance function.

So the review team focused on those issues in particular detail and provided a series of recommendations.

Recommendations number 5 to 9 from the review team focused on WHOIS data accuracy.

The review team took a slightly different approach to the law enforcement recommendations in that the law enforcement recommendations in one sense propose a mechanism to improve WHOIS accuracy, in terms of up-front data validation or verification. Whereas, the WHOIS Review Team did not reach consensus on any mechanisms as such but on a principle that the current level of data inaccuracy was completely unacceptable and that it should be significantly improved. And without recommending a mechanism.

And so the data which was available is a study which ICANN commissioned, a WHOIS Data Accuracy Study, and that broke up WHOIS data accuracy into a number of categories. The one that the review team focused on was, in our view, the very problematic end in that the data is so inaccurate, you simply cannot make contact with anyone. So the data is a series of X's in all the fields or A's in all the fields or are made-up names like Mickey Mouse, which we saw examples of all of those. And we provided concrete targets for improvements in those

areas and requested our regular follow-up report so that there is a time series of data available to track progress, and available for the next WHOIS Review Team to consider what else may need to be done.

And the other area the WHOIS Review Team focused on explicitly in its recommendation number 10 was the regulation and oversight of privacy and proxy services.

The review team was -- its consensus recommendation was that the current state of play was unacceptable, and that ICANN sudden make moves to regulate and oversee the activities of privacy and proxy services.

Again, we did not specify exactly how that should happen. We did not dive into the detail but we provided examples of considerations that would need to be taken into account and stakeholders who would need to be consulted.

So the current state of play with privacy and proxy services is that it is effectively largely unregulated and little or no oversight.

The review team considered that that wasn't serving anyone's interests. It's certainly not serving law enforcement interest. It certainly didn't appear to be serving registrants' interest in that there was no clarity for those who actually did want some privacy regarding their personal details about what they were buying, what sort of protection they actually had, how it would be dealt with.

So the review team focused on providing some certainty for all players, essentially, and provided some guidelines for the community to develop a scheme around those areas.

I won't take up too much more time at the microphone but I'm happy to answer any questions about how the review team came to those -- the considerations, what was actually recommended and so on. But these areas in particular overlap directly with the law enforcement recommendations and with the GAC's overlapping interest, and in other areas of the community the interest in ICANN's compliance function.

CHAIR DRYDEN:

Thank you, Australia.

Are there any other comments on this topic that GAC members would like to make?

Or law enforcement?

Netherlands, please.

NETHERLANDS:

Thank you, Heather.

One interesting point, I think U.S. triggered me for this question, is the fact whether these recommendations for, let's say, very thorough, accurate, complete, WHOIS data, in what extent are already in the New gTLD Program. Some of these recommendations already taken on board through the WHOIS policy. And maybe somebody could answer this.

CHAIR DRYDEN:

Australia, please.

AUSTRALIA:

Yeah, thank you, Netherlands. This is an important point and goes to some way to the WHOIS Review Team's thinking and why we didn't -- There are a number of reasons why the WHOIS Review Team didn't focus exclusively on WHOIS data validation. And one is that, yes, the New gTLD Program does provide some better provisions around WHOIS, but at the same time, we're facing a very large legacy data set with a high level of inaccuracy.

So requiring up-front validation for all new registrations will help improve the situation going forward, as do the new gTLD provisions -- I mean, yeah, the provisions in the new gTLD contracts. But at the same time we have many, many millions of very bad data.

So the WHOIS Review Team focused on data as a whole. So what we were seeking was new data and the legacy data to see a dramatic increase in the accuracy or the level in the reduction of gross inaccuracy in the data overall.

So I may not be explicitly answering your question, but I think draws in a number of other components as well.

CHAIR DRYDEN:

Thank you, Australia.

Okay. So it's clear that we will need to communicate further with the Board, with the registrars, ICANN about some of the challenges we're facing in being able to provide comment on the substance and track progress in a way that allows us to provide clarification on issues -- again, whether they're related to privacy law and other kinds of national laws that may be implicated in what is being proposed in the RAA. So



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let's move forward with that kind of approach in mind. And I will remind you about the session tomorrow that the FBI briefed us about that takes place at 11:00 a.m. So it's a public session on the RAA.

BOBBY FLAIM: It's tomorrow.

CHAIR DRYDEN: Tomorrow. Did I not say tomorrow? No. Okay.

BOBBY FLAIM: It's tomorrow at 8:30.

CHAIR DRYDEN: Tomorrow at 8:30. So GAC members are invited to come to all the meetings you outlined.

BOBBY FLAIM: We'll get our act together. We are going to meet with the registrars directly prior to the 11:00 a.m. public session meeting. So that would be 10:30 to 11:00 tomorrow, with the registrars. But our meeting, our law enforcement session starts at 8:30.

CHAIR DRYDEN: Okay. So if GAC members are interested in attending, are you inviting them --

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BOBBY FLAIM: Yes.

CHAIR DRYDEN: -- to join you at --

BOBBY FLAIM: At 8:30.

CHAIR DRYDEN: 8:30 a.m.

BOBBY FLAIM: Yes.

CHAIR DRYDEN: Okay. Okay.

So we'll send information to the GAC list about your meetings tomorrow morning, and then GAC members can attend based on their interest in those.

So that's an opportunity to hear more from law enforcement and the registrars.

Argentina, please.

ARGENTINA: Thank you, Chair. Just one clarification. The 11:00 meeting with the registrars, we are also able to participate?

CHAIR DRYDEN: The 11:00 a.m. is a public session for the community, as I understand it, yes. So certainly everyone is invited to that.

Okay. So this covers, I think, the central issues associated with the RAA negotiations as we understand them today.

We do also have on the agenda in this session a discussion about the ICANN compliance function and how that is functioning within the structure and how effective that is able to be and so on, which is certainly related to the discussions which we're having about the contracting involved in compliance.

So can I look, again, to GAC members to perhaps provide a brief? I know several of you have taken a particular interest in this. I don't know that there's a lead, exactly, that I can look to to introduce the topic. No?

Okay. All right. Is there an interest in providing further comment from the GAC this week in the communique about this topic? I'm seeing nodding. Okay.

So, Australia, did you want to comment?

AUSTRALIA: Thank you, Heather.

So the GAC, as we will recall, started a discussion with the Board in Costa Rica about the structure -- ICANN's compliance function and its role in overseeing and regulating the domain name industry.

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So as Heather has mentioned, we're going to be continuing that discussion here in Prague.

In Costa Rica, we requested a session with the Board to discuss ICANN's role in overseeing and regulating the domain name industry, so I look very much forward to that discussion.

From my perspective, there are a number of things which are not entirely clear about the way ICANN performs this function. In some cases, it does this through direct contracts with some parties, so registrars and registries being the obvious example. In other places, it does it indirectly through contracts.

So I must say I am still relatively unclear about exactly how the accountability of resellers is dealt with within the ICANN system. At various times, I hear assurances that resellers are subject to all the same requirements as registrars, and this is evidently clear through the RAA. A lot of times I hear that it is not clear, and it seems clear from ICANN's documentation on the RAA progress that there are still some issues being worked out about the accountability of resellers.

In other places, there is little or no regulation and oversight. So following from my update on the WHOIS, privacy and proxy service providers appear to be an example of that. There are a couple of very brief provisions in the RAA which deal with privacy and proxy service providers but it is not clear there is any accountability or oversight of the activities of those providers at all at the moment.

So following the GAC's advice in San Jose on ICANN's compliance function, which was very high level and principles based, I note that the

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WHOIS Review Team has commented. The Security, Stability Review Team has also commented on ICANN's compliance function.

And following from my comments before about timing, it seems that the importance of an effective industry oversight and compliance function will become more and more important with the upcoming introduction of new gTLDs and an increase in the number of contracts that ICANN will need to oversee with the introduction of new gTLDs.

There are likely to be new entrants entering the market and the industry, and it is important that ICANN will need to ensure that all its processes and its contracts are clear, publicly known and consistently enforced in this new environment.

So I'm very much looking forward to the upcoming discussion with the Board and the community on this at our marketplace briefing session, but I say in my perspective there is still much work to be done in this area.

CHAIR DRYDEN: Thank you, Australia.

EU Commission, please.

EUROPEAN COMMISSION: Thank you, Madam Chair, and many thanks to Australia for the update on the situation.

Peter, you mentioned that the Security and Stability Advisory Committee has commented on ICANN function. I and other colleagues

would appreciate if you could point us to that particular comment, to the documents, to the relevant documents, as well as other constituencies of ICANN that have commented.

What I wanted to express is that of course the European Commission continues to remain extremely interested in how ICANN is managing its compliance functions, especially in light of the new gTLD. There is one point in particular which came to our attention after reviewing the various documents and which we will be interested in explanations, further explanation, which is the role of the Audit Committee of the Board in the compliance functions of ICANN.

Of course, the Audit Committee is primary with financial auditing within the organization, but you can't really separate that particular element from the overall compliance function of ICANN. To be very blunt, we have -- not necessarily us, but other people have highlighted that there are certain structural conflicts of interest within the organization for what concerns the compliance function in terms of who reports to whom and what are the financial interests for the organization.

So we will be very interested to hear more from the Board in our meeting with the Board about the role -- how the Board sees the role of the Audit Committee in the overall compliance functions of the organization. Thank you. And whether that committee should be strengthened or modified or whether it has the necessary scope and manpower to perform its duties.

Thank you.

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CHAIR DRYDEN: Thank you, Australia.

AUSTRALIA: Thank you very much, European Commission, for bringing that new component. I just wanted to give a relatively quick response to the question of the security and stability review team. It's recommendation number 10 in the report -- draft report. ICANN should continue its efforts to step up contractual compliance enforcement and provide adequate resources for this function. ICANN also should develop and implement a more structured process for monitoring issues and investigations.

CHAIR DRYDEN: Thank you. U.K., please.

UNITED KINGDOM: Yes. Thank you, chair. To highlight what we're talking about there, there are two aspects, aren't there? There are what we have been talking about in terms of architecture, how you actually create an effective mechanism for ensuring compliance. Should it be in-house or external, some kind of independent functionality that ensures that there are no hidden conflicts of interest that might impair effective enforcement of contractual negotiations. So there's that element, the architecture of it. And we, with Peter and a couple of others, have exchanged a few sort of examples of architecture and so on. So I hope our discussion with the board will reassure us that they're looking at best practice here and what is happening in other organizations where there are strong relationships but where there are contracts and

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obligations and commitments that need to be enforced and that there are adequate sanctions and so on. So there's that.

And then the second sort of angle to this is the resourcing. You know, how much necessary resources are available within the organization to ensure that contract compliance is adequately taken into account, taken care of, that cases are investigated and the necessary skills and analysis and then processes are in place for compliance enforcement.

So two angles to it, really. And these are critical for ICANN's performance and its credibility. So that's why it is a key issue for us. And, like colleagues have spoken earlier, it's a discussion with the board about this and the state of their thinking and how they are reacting to these various references to the importance of contract compliance for this WHOIS or, indeed, law enforcement, what we're doing with the RAA. As Bobby mentioned, you know, there's no point in doing all this and tightening up the RAA and instituting due diligence if there's no follow-through in terms of ensuring that everybody complies with obligations. So look forward to discussion with the board on that basis. Thank you.

CHAIR DRYDEN:

Thank you.

U.S.?

UNITED STATES OF AMERICA: Thank you. And I appreciate you giving me the time on the floor again. I just wanted to concur with what colleagues are saying. I think the GAC



has been very, very focused in our more recent communiques. And we probably want to continue that pattern of linking these issues together. You know, and law enforcement recommendations, RAA improvements, WHOIS review team recommendations, and contract compliance. And I wonder if, again, similar to what I was thinking about for the RAA, that we send a very clear signal here in Prague both in our exchanges with the board and in the communique what our expectations are. And perhaps we target Toronto as a sort of good platform and good opportunity for very focused exchanges but expectations of action, of responses, you know, some quite deliberate step that we can all point to. And it would be a realization, if you will, of all of these sort of lower level disparate efforts that we somehow can send the signal here that we expect them to be pulled together and we expect to see changes and we expect to see deliverables. So I think we need to consider that. And I would ask colleagues to ponder that as we, you know, sort of continue to work together through Wednesday when we start to deliberate on the communique messages. Thank you.

CHAIR DRYDEN:

Thank you, United States. I think that's a good place to conclude in our discussions. So we have some meetings tomorrow that we are invited to attend with law enforcement and the registrars. Later today we have the domain name market briefing that will also touch upon these issues and, hopefully, provide us with at least an initial brief to talk about some of the contracting issues, resellers, and so on. And then we also have the meeting with the board that will take place on Tuesday where we can ask them questions about some of the mechanisms that they

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have on the board and how they see these linkages between these different aspects related to law enforcement compliance and so on.

So our next meeting is at 11:00. So, if you could please be in the room at 11:00, and have an enjoyable coffee. Okay.

(Break)