

Board Session with Registrars 16 October 2012

>>BRUCE TONKIN: Okay. If I can just get everyone to take their seats, please. We've just hit the starting point in 10 seconds of the meeting between the board and the registrar stakeholder group.

What we've got up on the screen currently is a list of discussion topics, I believe, from -- I'm not sure if these are for you or for us.

>> (Speaker is off microphone.)

>>BRUCE TONKIN: They're yours?

>> (Speaker is off microphone.)

>>BRUCE TONKIN: So let's kick off with those. I think we have Matt as chair of the registrar stakeholder group to take us through those.

>>MATT SERLIN: Yep. Thanks, Bruce. I appreciate it. Matt Serlin here.

Again, the group appreciates the board taking time out to have this dialogue and discussion. It's always one of our -- the highlights of the day for us, so we appreciate that as usual.

I guess we'll just get started with the RAA and a brief just discussion from our standpoint. Obviously there's been a lot of discussion about the topic during the week, both in respect to the Article 29 working group letter as well as some of the other outstanding issues, the WHOIS, data retention, some of the additional items.

One of the biggest concerns for us that we wanted to kind of make sure we discussed today was the mechanism to getting registrars -- getting registrars onto the new agreement, once it's concluded, so that we retain that even playing field that we currently have today with most registrars on the 2009 agreement.

So, you know, we discussed at the public session yesterday this -- the kind of proposed -- oh, hi, Steve.

>>STEVE CROCKER: Hi there.

>>MATT SERLIN: -- the proposed time frame towards, you know, the goal of having a completed RAA for public comment out by the end of the year.

As we mentioned, we've been at this -- you know, the folks on the registrar side as well as the folks on staff have worked extremely hard on this over the past year, and so I think, you know, the goal of having this done by the end of the year is a good one.

You know, our desire obviously is to not rush through some of these important complex issues, so we want to make sure that we're shooting for that completion date but also doing so in a way that is the most beneficial for everyone and not simply rushing through to meet a desired deadline.

So really just wanted to reinforce that and to get any feedback and questions that board members had on the status of the RAA discussions.

>>STEVE CROCKER: My apologies for coming in a couple minutes late, and my thanks to Bruce for getting things started on our side.

How come we don't have hands raised from board members all over the place here?

[Laughter]

>>BRUCE TONKIN: Because we had a good briefing session yesterday. That's why.

>>STEVE CROCKER: Well, so we're done with all that. Thank you very much.

>>MATT SERLIN: We'll see you later.

>>STEVE CROCKER: Yeah.

[Laughter]

>>MATT SERLIN: No. I think that -- so for those of you who didn't hear, Bruce said we did have a good update session yesterday so, you know, I did note that there were many board members present during the session and appreciated that, and, you know, I think from our standpoint, you know, we're going to continue to work closely with staff to get these last issues wrapped up, and then hopefully, you know, get the proposed RAA out for public comment and go from there.

So I think with that, you know, one of the -- one of the issues that we've found ourselves addressing throughout the RAA negotiations are kind of working through these complex issues -- WHOIS, data retention are two of them -- and then I wanted to kind of call on my colleague, Yoav, who is one of our GNSO councillors to just kind of talk through some of our perspectives on the policy development process as it relates to more of these kind of community-wide issues.

So Yoav?

>>YOAV KEREN: Yeah. Thank you. So we started this discussion already during the GNSO's discussion with the board, so I don't want to repeat the same things I've already said during that discussion, but mainly what we -- what we believe is that looking at the Article 29 letter, it's clear that the issues of WHOIS and data retention are extremely complex issues, and what we're -- what we believe that we should -- you know, should be considered seriously is from this point on, to move to a PDP.

This is -- if there's -- I've said it before, I think, that if there's -- if there's an issue on -- you know, on everyone's table that will affect almost every stakeholder group in our community, it is this one, and it's really important that we will not do any mistakes.

I want to clarify. This doesn't mean that we're -- we don't want this to be implemented. We're -- I think that it's common with -- we kind of came to an understanding and consensus among registrars that this should be implemented in this way or another. We just need to make sure that it's implemented in the right way. And so just as this, there's another complex issue on the table, which is the -- it's called the privacy -- the --

>>MATT SERLIN: Privacy proxy.

>>YOAV KEREN: Privacy proxy, yeah, providers. Too many variations.

And this is also -- just as that, this is a complex issue that we believe should not be treated within the contract negotiation but through -- through a PDP.

We've seen recently the RTP PDP going quickly on the GNSO. I can assure you that we'll do our best to push this forward as much as possible, to make sure that it's quick.

I personally have said before that when I joined the GNSO, one of the things that I always didn't like that things went slow, and I think that with me, there -- most of the people on the council now see it in the same way and want things to move faster. So this should not be seen -- and I know this is sometimes seen as that, that asking for a PDP is to try and postpone things.

No. This is just to make sure that we're doing the things right.

>>STEVE CROCKER: Let me ask: What will the other points of view be, with respect to the idea of pushing this through a PDP?

>>YOAV KEREN: You mean what will be the other views that will be raised regarding the WHOIS? Or the WHOIS verification, data retention?

>>STEVE CROCKER: Yes.

>>YOAV KEREN: So specifically the IPC and the BC said that they're against it. The NCUC said -- was in the GNSO Council meeting and they said that they were in favor.

I haven't heard everyone, you know, provide their view, but this is what we've heard till now.

Again, I think it's a complicated issue, and if you hear from the different stakeholder groups that they want to be heard, I think we should allow them.

>>STEVE CROCKER: And all of this is a discussion about process. What can you say about the substance of the matter of where the -- what the key points are and, you know, is there light at the end of the tunnel, no matter which tunnel we choose to go down?

>>MATT SERLIN: Sorry, Steve. You're talking specifically to those two issues, the WHOIS and data retention?

>>STEVE CROCKER: Yeah.

>>MATT SERLIN: Yeah. So I think there is light at the end of the tunnel, frankly. I think, you know, the last proposal that we put forth, which is a two-tiered data retention -- you know, six months for certain data, life of the registration plus two years for other places -- and WHOIS validation where the registrar would choose to validate either an e-mail address or phone after putting the name into the zone file, I think, you know, if that's an acceptable position to staff and we get that into the RAA, then I think that's a win for everyone.

The -- on the back end of that, you know, what we have said consistently is that, you know, we certainly don't think that that's the end of the discussion. That, you know, if further, you know, WHOIS validation, data retention is required and is desired by the community, then we think anything beyond what we've sort of put forth is where we'd like to see it go, you know, through the -- the policy development process because it doesn't just impact the contracted parties.

It doesn't just impact the registrars. It obviously has a great impact on, you know, those that want to register domain names, on the registrants, and other folks as well. I think Mason wanted to get in the queue, so maybe I'll ask him to speak as well. Mason?

>>MASON COLE: Thanks, Matt. Mason Cole. I'm a GNSO Councillor representing the registrars.

I just wanted to add a bit to what Yoav said about the process. And, by the way, I do agree with Matt in his answer to Steve's question. I think that's an exact representation of what's happening.

My observation on this is -- on the RAA, is I understand that there's frustration at the GNSO level with the length of policy development processes. If there are improvements that can be made to that, I'm certainly for them. I want to make sure, though, that we're careful about how we treat our agreements, because in effect, what's happened is the community has come to registrars and said, "We have this set of problems and we need your help with them," and there's an effort to make the contract and enforcement mechanisms that go along with the contract the way to clean up certain behavior on the Internet or a way to handle registrant behavior, et cetera.

The PDP exists for very good reasons. One of those is the predictability and stability that registrars need in order to take care of their customers and run their businesses, so we -- you know, contrary to, I think, some of the bad press out there about registrars, we certainly do not throw things into a PDP gleefully so that we can intentionally slow them down. If there's a way to speed up a PDP for the good ideas that have been proposed, then we're certainly -- we're happy to do that.

But we do deserve reasonably to have some predictability for the sake of our customers and our businesses.

>>STEVE CROCKER: Yeah. Elliot.

>>ELLIOT NOSS: Yeah. I really -- you know, I just want to call out the elephant in the room as well as verification. I mean, you know, the late-in-the-day issues around conflict with national laws, you know, I think are huge and I don't feel they've been fully fleshed out. You know, there's -- certainly we know that the privacy people have now weighed in against -- I can tell you Canada's privacy laws are as or more strict than the European laws, and nobody has talked about the issue, then, of very different verification requirements for very different -- for different registrars and/or the issue of, you know, sort of safe-haven jurisdictions, if you will.

So, you know, I think that Steve, you know -- now, sorry, Fadi, you're dragged into this mess, too -- you know, you guys are going to be the ones on point taking heat if something doesn't get done. And those issues are, you know, sitting there like big steaming piles. So, you know, be aware, boys.

>>STEVE CROCKER: We have not only elephants in the room but some other large, you know, woolly mammoths, whatever.

[Laughter]

>>STEVE CROCKER: The -- sitting right behind your elephants are the -- the WHOIS review team recommendations, the commentary from SSAC saying, "And so what's all this for?"

>>ELLIOT NOSS: Yeah. We're going to talk about that. I believe it's on your agenda, so that's great.

>>STEVE CROCKER: Yeah.

>>MATT SERLIN: Okay. Steve, you said you had more but I don't know if -- if what Elliot has --

>>STEVE CROCKER: The "more" actually was to bring the WHOIS review process into the discussion and ask what's your view about the interaction between that and the active negotiations in the RAA.

>>MATT SERLIN: Yeah. James, you want to --

>>JAMES BLADEL: Hi, Steve, and other board members. James Bladel from GoDaddy and a participant on the WHOIS review team.

And so my -- I've been struggling with the same question, Steve. I see a lot of overlap between a couple of different areas. One is this existing newly-born PDP on the concept of thick WHOIS, coupled with the recommendation for improved WHOIS accuracy and a centralized WHOIS database coming from the RT4 WHOIS review team, and also this concurrent negotiations within the RAA to improve WHOIS accuracy, primarily through verification.

So I see a number of things kind of all on the same general course, which is -- attempts to improve WHOIS accuracy through increased obligations on registrars, on registries, and in some -- and passed down to registrants.

I think the good news is that the concerns that the WHOIS review team had relative to the -- and I'm not speaking on behalf of the review team. That's gone now. That's -- but I'm speaking just personally here.

The concerns they had relative to a -- the centralized WHOIS system might be alleviated or folded into this thick-versus-thin WHOIS PDP, but I think that there is this question of if we go in the direction, for example, of a proxy -- privacy proxy accreditation program, which is part of the recommendations of both groups, where is that coming from? Is that coming from the RAA? Is that coming from the WHOIS review team? And I think the answer is -- at least from the registrars I've spoken to, the answer is, do we direct those efforts towards a PDP? It doesn't really matter where they've come from. They become consensus policy and they get into our contract and they're immediately enforceable.

But if we continue to try and do these kind of end-arounds through various other channels and mechanisms, then it gets a little confusing.

>>BRUCE TONKIN: Just picking up one example there, because I -- we've been sort of looking at the WHOIS review team recommendations and also looking at the RAA conversations.

One of the topics that is discussed under both forums, if you like, is the proxy and privacy service providers.

I note that the -- I believe from the session yesterday the plan is to incorporate something in the agreement regarding proxy privacy service providers. The WHOIS review team talks about ICANN should regulate those -- those providers. And then I see in the GNSO Council being -- trying to work towards identifying input for us on where things should go through a policy development process.

And they have actually identified -- according to the thing I'm reading here, unanimously; I'm not sure I believe that but maybe it is -- a PDP should be required to implement those processes.

So how do you see that proxy privacy discussion evolving? Is the registrar agreement really just a hook to say that, you know, you'll agree with any policy that's created or are you envisaging that there is some work to try and create some rules around those prior to or separate to the PDP process? Just interested to see particularly the RAA people, where you see that overlapping or how you see the development of that.

Because I think the expectation that you'll create, if you put that in the RAA, is that there will magically appear some regulation of that space, but I think the -- the issue is how do you actually get to that point.

>>MATT SERLIN: Yeah. Let me -- I'll take a crack and then I'll ask my colleagues up here to weigh in as well. You know, within the RAA, I think what the language essentially says is that upon development of a privacy proxy accreditation program, that registrars would be required to use such accredited providers in the case where they are knowingly accepting privacy or private registrations.

So that's what -- what is in the RAA.

And then to James' point, once that goes through the policy development process, which we fully expect that members of the registrar community would be actively involved in participating in, that once that program is developed and rolled out through that process, then, you know, it would obligate the registrar to -- to follow the outcome of that -- of that policy.

Volker? Yeah.

>>VOLKER GREIMANN: Let me just add to that -- Volker Greimann speaking -- we have seen very early on that the privacy proxy services would be a loophole to the

verification system, so we tried to deal with that by that process of having to use only accredited providers.

However, there is no such accreditation program so far, so we have agreed to -- with ICANN, together with ICANN staff, to create a straw man based on the requirements of registrars for their registration agreements what privacy proxy services would have to provide to be accredited.

We would then seek community input on that straw man and finally make that policy.

But what we are proposing, what we will be working on right now, is not supposed to be replacing policy. It's just something that we are brainstorming to kick-start that policy process.

>>BRUCE TONKIN: Okay. So that really helps clarify. So what I'm hearing -- just let me repeat that back -- is that the registries/registrars are agreeing to put a clause in the agreement that says that you will abide by any policy developed there. You are also then agreeing to work with staff to create a straw man proposal. That proposal would then go into the policy development process as an input document.

Is that -- is that correct?

>>MATT SERLIN: Yeah, that's exactly correct.

>>BRUCE TONKIN: Thanks.

>>MATT SERLIN: Yeah.

>>ELLIOT NOSS: Very small, and Volker, your English is so much better than my German, so, you know, you used the word "loophole," and I don't think that's accurate. I don't think we view privacy services as a loophole to verification.

We view it as a legitimate means of protecting privacy. And just, you know, the use of the word "loophole" makes it sound like getting around and -- so I want to -- words are important, so we want to be very careful with that.

>>VOLKER GREIMANN: Yeah. Just responding to that, maybe the word "loophole" is not quite the right word, but if we all as registrars agreed to verify registrant data and then only WHOIS privacy proxy server -- providers would be our customers and those weren't required to go -- undergo the same steps, that would certainly create a loophole. And that's what we saw.

>>MATT SERLIN: Any other additional points on the RAA or the WHOIS recommendations?

>> (Speaker is off microphone.)

>>MATT SERLIN: Oh, yeah. Oh, yeah. Bertrand.

>>BERTRAND DE LA CHAPELLE: Just a quick point -- this is Bertrand de La Chapelle. Just a quick point to reiterate what I had the opportunity to say in the interaction with the GNSO the other day, the fact that there can be that late in the process a letter by Article 29, working party is shedding strange light on the affirmation of a large number of GAC members regarding the kind of coordination that they have conducted at the national level between the different public authorities that could be concerned with this topic. Thank you.

>> MATT SERLIN: Thanks, Bertrand. In the update session as well is this notion of revocation of the entire agreement in and of itself if the registrar marketplace were to change and require -- essentially what we refer to as the blowup clause. You know, I think we've been pretty clear as a stakeholder group that that is not something -- we would not present that contract to any of our general counsel to review and sign off with such uncertainty with one party's ability to simply do away with the agreement. If circumstances were to dictate, we feel strongly about that.

So like I said earlier, that definitely is something that as we work towards getting this completed by the end of the year, hopefully that's something that we see pulled out of the agreement as we move forward in the coming months.

Okay. I will give the microphone to Stephane to talk about the new gTLD impact on the contracted parties house. Stephane?

>>STEPHANE van GELDER: Thanks, Matt. This is Stephane van Gelder. Thank you to the board for welcoming us and engaging with us today. This is a topic that's of great interest to us obviously. But it has been discussed both through interactions with the GNSO and other places. So the way we wanted to approach it today really was to ask the board what their feeling was on the potential impact of the new gTLD program on the contracted parties house in the GNSO, which includes the registry and registrar stakeholder group.

And I suppose we're also asking the question in the light of the board having to take a decision rather soon on whether the GNSO review should be initiated in the time that is supposed to -- that it is supposed to happen which is February 2013, I believe, from memory.

But, really, our main point of interest is to get a feeling from the board on how they see the potential impact of this program on our house in the GNSO.

>>STEVE CROCKER: Within the board, we have a Structural Improvements Committee. Ray is the chair. Ray, do you want to offer comments?

>>RAY PLZAK: Thank you, Steve. I will let Bertrand talk about the impacts. However, as I -- I will reiterate what I said the other day in the council meeting because I'm sure there are a lot of people here that weren't there.

Basically -- first of all, the bylaws don't allow us a lot of wiggle room. So the review has got to start next year. That's number one. But having said that, if you look at the work that's anticipated inside of the impacts project, which still needs an acronym -- how about new gTLD impacts on structure and procedures or processes? NISPs?

Anyway, that's really a strategic planning type of effort. Whenever you begin a strategic planning effort, one of the first things you do is that you look at -- you do a SWOT analysis: Strengths, weaknesses, opportunities and threats.

The review is going to identify the strengths and weaknesses. So it is actually doing half of that analysis that you would have to do anyway.

So once you understand where the strengths are, then you know where you can leverage those strengths in certain areas if needed to work the impact program.

On the other hand, if there are weaknesses that you detect, that you may have to overcome in order to deal with the impacts, then that will occur as well.

There is going to be a session with stakeholder group chairs and so forth on Thursday where we're going to go through some more of the details of this. This is something that was requested by the chairs. Something that we've promised you, and so we're ready to deliver.

But in there, you will see that there's criteria and the criteria is really objective. You will know what it is ahead of time. And so it's not going to be like the last GNSO review which was kind of invented as we went along. It is a very well-known thing, exercise.

Bottom line is that we have to do it. We are going to do it in a very orderly way, and the results of this will actually help work on the impacts project. I hope that clears things up.

>>STEVE CROCKER: I see Judith's hands up and Chris', but were you going to pass things over to Bertrand to expand on?

>>RAY PLZAK: Yeah, I only answered half of that. Bertrand really needs to answer the other piece which is the board's view -- or actually the board doesn't have a view at this point in time, but we can still listen to Bertrand's view.

>>STEVE CROCKER: Then Bertrand, Judith, and then Chris.

>>BERTRAND DE LA CHAPELLE: In answering this question, I want to highlight two things. The first thing is the discussion we are trying to initiate is not exclusively on GNSO's contracted parties house's impact.

The very interesting element in this is this is about discussing the evolution of the organization as a whole, its missions and its structure and processes in the context of the existence of this program and the implementation of this program.

So, for instance, without getting into details, it has impacts potentially on staffing, on how you handle compliance, on how you handle the support system for the registries and the registrars and so on.

In terms of process, it brings very interesting questions of how do you handle consensus-building in general in groups that are much larger than smaller ones. That kind of topic.

So the goal is to make a coherent list and as comprehensive list as possible of issues that are identified so that all the different groups can work on their own in their little -- in their own structures and constituencies. And when they gather together in the physical meetings, they have the same chart and the same checklist to exchange. So that's the general goal.

Just as a point of process without getting further, we intended after the request for feedback, after Prague -- and thanks to the registrar constituency for the contribution and the GNSO as a whole. We intended to have a full session open in Toronto to discuss those issues. For mostly schedule reasons and time availability, we have decided this time to do just a discussion with the chairs of the SOs, ACs, and constituencies to discuss mostly two points. One, how does the community view the process to discuss this? And how can we best prepare for Beijing so that the community is fully engaged, fully in charge, but we are all aware of the timing and the best moment to discuss this.

And the second topic is what Ray was alluding to, i.e., how does that articulate with the GNSO review, mandated by the bylaws and also the upcoming ATRT 2 that will address at least some transversal aspects of what we're discussing here.

So in terms of procedure, the goal is to align everybody in having a clear list of the potential challenges and to distinguish those that will require staff evolution, process evolution and potentially, if any, structure evolution. I hope that answers partially your question.

>>STEVE CROCKER: Thank you. Judith?

>>JUDITH VAZQUEZ: So in layman's terms, I'm worried. I am worried. At this point in time, something -- and I speak on a personal basis -- something that is obvious to many is that regardless of the new gTLD, the diversity of interests, the

divergence of views within the GNSO is causing an amount of paralysis. There are very, very critical decisions that have to be made. A PDP is not a solution. It is but a process.

A creative solution is required from the entrepreneurs in the room. My prayer is let's step out of the SO and look at the entire domain name space. We have to think outside the box to bring the new gTLD into implementation in a manner that we truly perform and, wow, wow, put that touch of "wow" in this Internet space. If not, you are literally giving it to Apple. Think, there are other competitors out there who can literally hijack what you created together as a community is my observation. Thank you.

>>STEVE CROCKER: Thank you.

Chris?

>>CHRIS DISSPAIN: Thank you, Steve. Stephane, I'm conscious that -- I mean, Bertrand has given you kind of a meta view of looking at the impacts of new gTLDs. That's also very important, but you asked about if the board has any view on any specific issues that you may face. And the board doesn't have a view. But I have some thoughts just to give you an idea where the sorts of things that are percolating for me.

For example, with vertical integration, you're going to have registries that are registrars and registrars that are registries. Now, that has an impact on your structure because do I join both? If I join one, am I prohibited from joining the other? And how do I get my voice in across?

That's the sort of stuff that -- I think "micro" is the wrong word, but as opposed to meta level -- that may impact on your structure. And if you look at the non-contracted parties' house, they're mixing because you have got some brand applicants who will run their own registries but they're also businesses.

So do they get to sit both sides and what are the dangers of capture? And could you possibly have a situation where you suddenly get all four or five or six constituencies being captured by a small group of people? And on top of that, you have also got the question of expanding constituencies and what does that mean?

I think there is a proposal for a cybercafe constituency or something like that. I'm totally unclear what that's about.

So there is a danger of this whole thing running out of control in an intent to be open and equitable to everybody. At that level, that's also the sort of stuff that needs to be dealt with.

Sorry. My personal concern is that if we put all of that in the hands of an independent review, it is an opportunity for review as to completely rebuild something and that may not be the best thing for anybody.

>>MATT SERLIN: Thanks, Chris. I know I had Elliot.

Stephane, do you want to defer to Elliot?

>>ELLIOT NOSS: I want to come back to words again, and I think one of the things that is going to become obvious and will be extremely important as we relook at the GNSO, which I think we're going to have to, is that the terms "contracted" and "non-contracted parties" which was a very convenient way for us to capture an idea in the past is now an anachronism. We will have registrars that are no longer of one stripe. And we will have registries that are no longer of one stripe. And we will see the interests of traditional registrars that would sell to end users become much more closely aligned with different groups inside of the GNSO. And I think we need to do two things here.

I think we need to, first of all, stop using those terms as terms of art because they are anachronisms and they will carry weight because they are certainly looked at as the way we look at dividing power in the GNSO today.

Second, we should look at this as an opportunity. What ICANN was hoped to be at its onset and through -- really still through till today is to allow for user interests and interests around a piece of subject matter to deal with that subject matter which would inherently make the GNSO a lot skinnier in its function today, a lot more like the board is to staff or GNSO recommendations. And I think we really need to be careful with the words and to look to the future here.

Thanks.

>>STEVE CROCKER: Respond a bit here. When we met with the ccNSO earlier today, one of the pieces of interaction had to do -- and, basically, around the same question was a strong plea by them to make sure that the CCs were not -- the distinction between the CCs and the Gs was not destroyed, that they liked that.

What's your view of the relationship of that statement to your statement that the distinction between contracted and non-contracted parties -- and I recognize that that's -- in our language, that it's not a direct comparison necessarily because those terms apply to what's inside of the GNSO as opposed to across.

But from a common sense point of view, if I just ask the naive question, to me, the CCs are non-contracted parties, are they not?

>>ELLIOT NOSS: I think it's a great question and highlights where we are going to struggle on language. CCs, when we drafted the sort of reform document that led to

a lot of the stuff that ended up happening in ICANN 2.0, we went -- bent way over backwards to give CCs recognition that they were different. And that difference, Steve, was all about the fact that their birth and their governance was inside of their nation states.

And it is that difference that doesn't change going forward, so I think -- when I'm talking about this, this is all about contracted and non-contracted in the context of the Gs and the way that the GNSO works today.

So, in other words, their statement is completely consistent, I think, with what I'm saying. I agree with it. And I think it's consistent.

>>STEPHANE van GELDER: Thanks. Stephane van Gelder again. There is a lot there. Thank you for those responses. I don't know how we can get the "wow" factor into the GNSO. But I have been trying for four years and failing miserably.

There is one thing that just listening to this comes to my mind, which is I understand what Elliot is saying about contracted, the term. The term does have meaning to us because we sign a contract with ICANN obviously to do business.

The term "G" in the GNSO has meaning to us because it means a specific space in the Internet. And, Judith, you mentioned the word "supplier." We are suppliers to some people, whether they be Internet users, purchasers of domain names or supplying services to ICANN. I don't know how exactly you meant it.

But all that does seem to point to the need to look at this and just trying to take a leaf out of your book with a wider angle. And maybe, you know, the constraints that we have a put ourselves in by having a GNSO and a ccNSO, just picking up on your point, Steve, the questions you got, the ccNSO does operate under a very different set of circumstances to the GNSO because they have no contracts. They have limited, if any, obligations to ICANN compared to what we as contracted parties have within the GNSO.

So I'm just wondering if one of the things that we need to look at is the very structure and whether these two SOs may not need a third SO that better represents what the ecosystem will become, which is suppliers dealing with services rather than trying to get away from contracts, et cetera.

And if I can use that to lead into the next topic, because I'm conscious of time as well, that's also something that, I think, you, once again, asked -- you said you were worried and you asked for bluntness and truth.

I think there is an element of worry with us, that what we're seeing at the moment - - so now I'm talking about the conflict of interest and the way that this is being portrayed within the community is that anyone that has anything to do with someone that has a contract with ICANN is somehow tainted, somehow tarred with

a brush. If you want me to be honest, I think that worries us in that we feel that there's a lot of experience and expertise within that part of the ecosystem. And I'm trying to not put words on it, but -- not labels on it, but that part of the ecosystem. And we feel that -- we are worried that it might be shut out because of this perceived conflict of interest. So if we are to be blunt, we would ask the question of whether the Board shares this view and whether you feel that perhaps this has gone too far the other way and, you know, what is your view on the way those two extremes can be brought together.

>>MATT SERLIN: Oh, yeah, Bertrand.

>>BERTRAND DE LA CHAPELLE: During a breakfast we had this morning with the alumni board members, somebody had a very interesting formulation that I think may be used in this discussion regarding the purpose of ICANN, among other things. And the comment was, ICANN is a space to enable the co-existence, the resolution of conflicting interests, which is a different thing. The purpose of a multistakeholder process, multi-equal stakeholder process, to take Fadi's term, could be a mesh process, by the way, is to bring actors who are engaged in the activities with the actors who are potentially impacted by those activities, and it is a unique system. It is neither regulation by an external entity like a government, having no relationship with the regulated entities, and it is not self regulation either. And so the question that you are asking is a broader question of how do we introduce a broader term to handle those issues that are ethics because conflict of interest is only one component of all the issues that we are facing that have to relate to confidentiality, to behavior in competition environment, the question about patents, for instance, that was raised in a different setting is part also of an ethical behavior of the community. And in that -- in that regard, the notion that transparency and clarity about the situation or the different actors, it is for the community, for the Board, and for everybody else, is one of the key prerequisites. And I'm not sure that at the moment we've paid enough attention to a clear repository, a clear place where all the different interests that people have are simply documented and accessible. Whether the pendulum has moved too far in one direction or the other, this is up for the community to discuss. I see the theme clearly emerging in the discussions around the NomCom, around the selection of people on the different committees, and it's permeating the community and it's probably a good thing to address and keep in mind, and I know that Fadi is putting the question of ethics and standards, as the rest of the Board, very high on the agenda.

>>MATT SERLIN: Yeah, Bruce.

>>BRUCE TONKIN: Just an observation, and particularly when we're talking about Nominating Committee and a few other processes. I often hear, when people don't get the outcome they want in some kind of vote the pressure is well, that means we need to change the structure. And I often look at that and I think is that really going to help? We saw a huge exercise to restructure the GNSO, which I think just has had an immense amount of overtime, it's cost a huge amount of time, meant that we lost

a lot of progress on nearly all of the policy topics at the same time because it's the same group of volunteers, and it actually didn't change anything. If anything, it's got worse.

In contrast another approach is to actually look at attitudes and ethics, and if you look at the way the Board operates, the Board can be just as dysfunctional because it's got people from all sorts of different areas. And if we all sort of brought our own baggage on the table and started, you know, aggressively advocating registrar versus CC positions, the structure of the Board is no different than the structure of the GNSO in many different ways, yet the Board works together very effectively. And that's because the Board members all bring an attitude of doing what's best for the organization as a whole and we invest a lot of time as the Board getting together face-to-face numerous times during the year, not just in these meetings, and we build a collaborative approach. That, I think, is the solution, not restructuring, changing votes, changing the order. If we're going to do that, we'll be restructuring every parliamentary system around the world every two or three years when we decide we don't get the president or the prime minister that we want, then clearly we have the wrong structure, let's restructure Australia. You know, it's a bad attitudes and ethics and collaboration.

And I think this week I'm seeing a lot of improvement. You know, even just simple things. The business constituency and the intellectual property constituency actually had an agreed set of topics that they wanted around trademark protections. First time I've ever seen that. And then I saw, you know, some of the registry operators, VeriSign, Neustar, and AusRegistry agreeing on a particular approach to the trademark clearinghouse. Never seen that before either. But it's about individuals that were participating and actually with an objective to try and reach something that is actually the ultimate solution.

So just caution this obsession with structure. And actually focus more on the attitudes of individuals and working together collaboratively.

>>MATT SERLIN: Yeah, Judith and Stephane, and then I'm conscious of the time. I want to make sure that we're respectful of your time. We have got about 12 minutes left and I know you all had a list of topics so I want to make sure we have an opportunity for that. Yeah, Judith.

>>JUDITH VAZQUEZ: So back to the question of Stephane. My personal feeling of the COI issue is something we have to recognize is the power of the Internet. And any powerful organization or institution automatically becomes one of suspicion. We are -- we don't feel powerful when we sit within this ballroom, but the perception, the use of the Internet by a global population is such there is now this interest in how we operate, which is why I believe all of these issues are erupting around us. But the challenge is -- and our CEO has said this -- is we have to perform. If they expect us to dance a certain tune, to show a negative or to show reluctance creates suspicion. We're just so used to doing things the way we just -- we will have

to step out of a comfort zone. We have no choice. And sitting on the WHOIS IT is as -- is not going to help us. Not to move on the RAA negotiations is not going to help us. Thank you.

>>MATT SERLIN: Thanks, Judith. Stephane.

>>STEPHANE VAN GELDER: Thanks, Matt. Very quickly. Just to follow on from what Bruce was saying, I take heart in hearing you, Bruce, say that the Board works well because all the individuals that make up the Board bring to the party a common interest in what's good for ICANN. I hope that's true, but what I was looking for in asking this question, perhaps suggests that it's not quite true. Otherwise, if that was the perception that was accepted by all, I don't think we'd be asking the question. Because there would be no conflict of interest perception. If it's a recognized fact that everyone in the Board brings a common desire to work for ICANN without any baggage, so I really support what you said and I just hope it's true. I worry that it may not quite be true because if it was, you wouldn't be focusing yourselves so much on conflict of interest, to the point, just to make it clear why I'm asking this question, to the point that some of you are excluded from discussions that I would like all of the expertise on the Board to be included in. Simple as that. So we avoid certain mistakes of the past, let me just leave that there.

>>STEVE CROCKER: That's an intriguing point that you make, Stephane. The Board is -- is extremely conscientious. I think I agree quite strongly with what Bruce has said, that within the Board there is a -- a strong belief that together we are operating as a team with the common -- common good. We're also aware that just because we think this is true doesn't necessarily mean that that's viewed the same externally. And so we have the dual perception of how we see ourselves versus how we understand we're seen from the outside. And we've been trying to go down the -- the somewhat challenging path of doing the right thing and to the extent that there is not necessarily a contrary view but let's just say additional set of constraints to be extra careful to conform to what we think the requirements are for appearances and for establishing trust externally.

So that's led to a bit more encumbrance in our processes and so forth. As you point out, some of us, including Bruce and myself, are excluded from that process. And we've wrestled with that a bit and the -- and understand that it looks a little awkward from the outside. It has a very peculiar, unexpected positive effect, which is it's divided up our workload, and we've become more efficient. I have to say as Chair that the amount of work Cherine has taken off of my shoulders is incredible. And far from feeling any competition or discomfort about it, it's been a -- a degree of -- despite the fact that it was awkwardly imposed, a degree of internal organization that has dramatically increased our efficiency. And I -- you know, it's sort of peculiar that we wouldn't have arrived at that on our own for exactly the reason that everybody who's got anything -- any sense of expertise, but we've got an enormous amount of expertise within that committee and we're feeling a lot less awkward about the way that's set up than it might seem from the outside. So for

what it's worth, that's where we are. We've certainly spent a lot of time wondering if this was a big problem. At the end of the day we've just moved our attention to getting on with things.

>>MATT SERLIN: Thanks, Steve. So yeah, again, you know, we're obviously mindful of the Board's time and so we've got about, you know, just about 5 minutes left so I wonder if it makes sense to skip ahead. You folks had a list of a few items and maybe we can just, you know, field questions on those and have a discussion. If you want to, you know, pick which of those topics you'd like to get our input on, we'll take the last couple of minutes to do that.

>>STEVE CROCKER: Actually, quite a bit of what is on our topics we've covered one way or another. I don't suppose we've talked about patents and Policy Development and contract negotiations.

>>ELLIOT NOSS: You know, we only talked about WHOIS in the context of the RAA.

>>MATT SERLIN: I'm sorry? Can you just a little closer to the mic?

>>ELLIOT NOSS: We only talked about WHOIS in the context of the RAA and not in the context -- not the report itself.

>>STEVE CROCKER: Take it away.

>>ELLIOT NOSS: You know, if I could, there are some very, very troubling things in the WHOIS report with respect to all the people who worked long and hard on this. As I think a lot of you know, Tucows was deeply involved in the first five, six, seven years of ICANN. Bruce and Ross died on that hill. There are a few things I want to highlight as troubling in particular.

First is the tone that's set out at the beginning that basically says, you know, contracted parties, this will only cost them money and not do them any good so they really just don't want to do anything about it. I couldn't -- what a terrible flavor and a deep untruth.

I think the second thing is that even the nature of the group, there's two independent experts. One is a security expert and one is somebody who deeply desires more security. Those are the -- you know, the outside experts that were on this. And, you know, I think that at the end of the day we, you know, got what we set out with those frames. And I would strongly endorse the SSAC report, which I think more properly framed this. So we can decide if we want -- if we want to be quick here to, you know, show that we're getting something done or if we want to be good. And, you know, we've been trying to reform WHOIS since the very beginning of ICANN. It was one of the very first things that was undertaken. And the reason that we haven't is because we're trying to make, you know, a boat into an airplane. And if we don't really sort of take a look at what we're dealing with here rather than just

trying to shoehorn it, I mean, I think we'll always end up in the same place which is just about to a conclusion, have it killed and start again.

>>STEVE CROCKER: I have a -- apologies but has -- has there been a report from you that you can be as narrow or as broad as you would like, either you yourself or from registrar constituency or stakeholder group, in parallel with the SSAC report commenting on the WHOIS?

>>ELLIOT NOSS: You know, Steve, Tucows as an organization probably invested somewhere in the range of a few thousand hours in WHOIS. And we were -- you know, there was an outcome that Bruce was very much involved in. I think it was Bruce's recommendation at the beginning that eventually got accepted and through outside lobbying the Board at the time rejected those recommendations. We gave up on it. And I can tell you that now what I do is I read the output of the -- the groups that have come out with and I'll give my opinion on them. And I'm telling you the SSAC report comes close to nailing it. And this -- this WHOIS set of recommendations, you know, really is just sort of the --

>>STEVE CROCKER: So I -- I hear you. I'm just -- we're at a particular juncture here.

>>ELLIOT NOSS: Great.

>>STEVE CROCKER: So we've got the WHOIS report sitting on our desk as were, we have the SSAC report commenting on that, and so the question that I'm asking you, and I -- I understand, believe me I understand the enormous amount of energy that's gone in the past and the frustrations and so forth, but holding that aside for a second, given the decision process that's underway, is there a current comment from registrar constituency or from -- at least that embodies your feelings that you're expressing right now.

>>ELLIOT NOSS: There's nothing formal and we have a representative on the committee and I wouldn't -- you know, I'm speaking in my Tucows capacity, not on behalf of the constituency at all.

>>STEVE CROCKER: Feel free to put it on the record and if only to go dredge up what was there and put a fresh date on it and say what we said. See attachment.

>>BRUCE TONKIN: Just a reminder actually Steve, I'm pleased that a lot of people are focusing on the SSAC report and the questions raised. I would note that Louie Tuton had pretty much the same report back in early 2003 and Paul Twomey reminded me that we need to spend a bit more time looking at ICANN archives and Denise Michel reminded me that very close to here, actually in Montreal, at the ICANN meeting in June 2003 we had two days of WHOIS workshops and presentations pretty much covering all the topics we just talked about in that recent report. But it's actually much more detailed. So one of the things I'll do for those

interested, I'll give a link to the presentations from June of 2003. I don't think anything has changed since then.

>>ELLIOT NOSS: Steve, my submission could be *ibid.* and *op.cit.*

>>STEVE CROCKER: I did not go spend all that time myself. I was a lot smarter then. But I do feel obliged to come up to speed. That's not going to gyp me making a decision but I want to get facile and current and I take your comment as coming from a very knowledgeable and heavily invested position -- invested in trying to do the right thing and have thought through these things. So I want to make sure that we have all of the information spread out.

>>ELLIOT NOSS: I mean, if it helps for Tucows to submit a letter supporting the SSAC report I am thrilled to do that.

>>STEVE CROCKER: No, no. I don't want just a plus one. I want the original thinking or your thinking on it as opposed to -- if all you want to say is plus one to SSAC, that's unnecessary. SSAC is getting plenty of attention, and as Bruce said they're only reiterating what was said earlier.

>>MATT SERLIN: Great, thanks, Steve. So I think that brings us to the end of our time. I just did want to take one moment at the end here to recognize Stephane van Gelder in front of the Board. He will be leaving at the chair of the GNSO and has been a great representative for the stakeholder group and has really done an amazing job as chair. So I wanted to thank him in front of the Board for his service on the council, leading them through often turbulent times and doing so with a great degree of class and professionalism. Thank you to Stephane for that.

[Applause]

And once again, thank the Board for your time today. We know you have many different groups coming in. So we appreciate the conversation.

>>STEVE CROCKER: This is primary work for us, so there's no -- I mean, we're not taking time away from anything else. This is a key activity for us. Thanks.