BUENOS AIRES – IANA Stewardship Transition & Evolution of ICANN Accountability
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ICANN – Buenos Aires, Argentina

THERESA SWINEHART: For all of you over there, there's still a lot of seats over here.

I think it's a sign because I've lost my chair. So I no longer have a chair. Really, Thomas, you can have my chair, it's okay. Great. Well, first of all, thanks for the wonderful turnout on a Sunday evening. This is really remarkable. I think it's also a sign of the importance of the topic, but in addition, the enormous amount of work by the community and the longevity of the history of these discussions and many of you in the audience have been involved in them over the course of the years since ICANN's inception and up until now.

The purpose of this session is not to go back into history and reminisce about the good old days or anything of that sort. It's really to talk about the evolution of ICANN's accountability over time in the changing environment that we've been facing since the organization was established, and in that context how accountability has evolved as its relationship with the U.S. administration has evolved as well. And we're now reaching this fundamental point where we have the opportunity to transition the stewardship role and look at ICANN's accountability in the context of that final change and its relationship. So this is really a great opportunity, both to look at where some of the benchmarks were, what's changed over time, where we're going, and to share some of those experiences as we go into an exciting week ahead.

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So it's then and now, it's a where we were in the middle and what's caused that to change. So I think this will be really good. I would encourage everybody to engage. This is a discussion. It's not just a panel that's been lined up. And everybody can participate from that standpoint.

So let me just run through who we do have on the panel. We have a mystery guest, Larry Strickling, who will be speaking to start with. We were going to give him a nametag, but I think he speaks for himself. We have Thomas Rickert and Leon Sanchez who are up here. Mathieu is here but he unfortunately can't stay for the entire time but did have to acknowledge him as the third co-chair of the CCWG accountability working group.

From an earlier time in the organization that I remember vividly, it was a long time ago, but from a time where we were looking at ICANN and needing to change ICANN from some very fundamental ways during what was referred to as the evolution and reform committee which was established by a Board resolution at the 12th ICANN meeting. So that tells you where it was. Actually in Accra, Ghana, so Nii Quaynor's home country where he hosted us kindly. Lyman Chapin, Alejandro Pisanty, and Nii Quaynor who were members of what was then a board evolution reform committee that worked with the community on really looking at some fundamental changes to ICANN as an organization, to elements around its accountability, and elements around its structure when we moved the DNSO and made it the GNSO and the ccNSO and a whole slew of things. So they'll talk about

different things, what they identified around course correction at the time, observations that they've had since then.

We also get to hear from Sam Eisner our associate general counsel at ICANN. But Sam's here, she has a tremendous amount of expertise, both from her time prior to being with ICANN and then at ICANN around all of the accountability that's been touching across the organization and is our staff member participating actively obviously in the accountability working group, also bringing that expertise and knowledge to all the community discussions that are happening here. So we get to hear from her as well.

Before we go into the panel, though, I wanted to introduce Larry Strickling, U.S. Assistant Secretary of Commerce at NTIA who will give some remarks as well, and he'll be available as part of the panel discussion. Thanks.

LARRY STRICKLING: Thank you, Theresa. Now, I know we're going to get into a more general discussion, but I was asked to speak specifically about the IANA transition and some of my blog posts and some of my reactions to what I've been seeing. But before we start, I do want to state for the record, for those of you who attended the Board CCWG discussion earlier this afternoon, absolutely I want to declare that the report of my death was an exaggeration.

[Laughter]

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But I do appreciate the opportunity to speak at today's session on the IANA transition. And now I think at this stage the multistakeholder process to perform this transition has been underway for more than a year. And so at the outset of my remarks, I want to express my thanks and my high esteem for all of you in the community who have been participating in these discussions, the meetings, the conference calls, the hallway side -- hallway discussions, as to how to best plan for the transition. There is no doubt -- and I think everyone should feel a tremendous amount of pride in the fact that this organization becomes stronger every day as these discussions and deliberations continue. It's a marvelous demonstration of the power of the multistakeholder process, and I hope all of you feel that and understand that and know that you're doing something that probably has never been done anywhere else in the world to the extent that it's being done on such an intense and continuous basis here at ICANN.

Now, I was asked to present my views on the proposals developed to date, but unfortunately those of you who came to hear that, you're going to be disappointed. Because I'm not going to go there. I just don't feel it's my place to inject my views into what has been an open and participatory process, a process where all ideas have been welcomed and where participants are able to test fully all of the transition options. So instead, what I want to do as the ICG finalizes the IANA transition proposals and as the CCWG continues its work and listens to the feedback on its draft accountability proposal, I do want to look ahead a bit and provide some thoughts on the process that we will be using as well as the schedule we will follow to evaluate and

accept the proposal. And I also want to stress in these remarks the importance of implementation planning to complete the transition in a timely manner.

Our primary task once the transition plan is presented to us is to evaluate it against our criteria that we announced in March of 2014. So my first message to you this evening is that in completing and documenting your plan, please focus on the NTIA criteria. Now, this is not to say you should stop working on other issues. If you want to solve other problems in ICANN, indeed if you want to solve world hunger or cure cancer, go ahead. But the homework assignment is to develop a plan that meets the criteria and our review begins and ends there. This point was brought home to me on Friday, Friday's CCWG meeting, where participants were working through a list of criteria by which to judge the various options under consideration. The pros, the cons, the complexity and such. And there was one advocate for a particular option went through the different factors and explained how the implementation -- how the plan would satisfy this and satisfy that. But when he got to the question whether the option met the NTIA conditions, he stated that he expressed no view on that. And no one in the room raised an issue. And so I urge you, stay focused on the task. Shouldn't the first question that you're asking be whether it or any other option satisfies the conditions?

The second message I want to leave you with is the importance of delivering a plan to us that has been fully validated and by validation I mean the following: Has the community built a record that supports the plan and provides the basis for ultimate acceptance of it? For

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example, the record needs to clearly and convincingly demonstrate that the plan satisfies the conditions. That should go without saying. But the record also needs to reflect that the community fully understands the implications of its proposal. Every change in the current structure or practices likely will have consequences, some of which will be unintended, and we will be looking to see how the community has done in identifying and mitigating all of these consequences in its planning.

The record should also reflect that the community considered alternatives and the community needs to document the judgments and the evidence that support the option that is being put forward over the others that were considered. The record, as much as possible, needs to anticipate and answer any question anyone might have about the plan. Here are the stress testing plays an important role. But this is an issue not just limited to justifying the plan. It's also important that the community address and answer as many issues as possible now and not leave them for further discussion and decision. It will be hard for us to certify a plan that leaves too many issues open for further work.

Also if the plan is relying on improvements to existing mechanisms, the record needs to reflect that the community understands the shortcomings of the current processes and that its proposed improvement to remedy those shortcomings will fix the problems. An example of this that I pointed out in my blog is the independent review panel. Putting faith in three or five or whatever individuals to replace the judgment of an elected board potentially provides less

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accountability for the community and more opportunity for the community's will to be thwarted and it may also provide an opportunity for an aggrieved individual to overturn a multistakeholder consensus by pursuing his or her parochial interest. So if the community seriously wants to rely on this mechanism, it needs to answer the criticisms of the current process that exists today.

And all of these factors should drive the community to conclude on a proposal that is as simple as possible but still meets the community's needs and meets our criteria. But if a plan is too complex it increases the likelihood that there will be issues that emerge later. It increases the possibility that the community will be unable to identify and mitigate all of the consequences of the plan. And a more complex plan almost certainly will take longer to implement. Which brings me to the issue of timing and the schedule for the completing -- completion of the transition. Everyone here likely knows that the current IANA contract expires on September 30th. And everyone here can likely surmise that the transition planning, including implementation, is not going to be done by that date. So we're faced with the issue of how long to extent the contract. Today we can exercise an option to extend to contract two years, to September 2017. I, of course, am concerned that if we simply extend the contract two years, it will send a signal to the community that it doesn't have to work as hard to get the plan, or worse, it might be misinterpreted as a lessening of United States Government support to complete the transition. So several weeks ago I asked the community leaders of the ICG and the CCWG to provide me with an update on the status of the

transition planning and their views as to how long it's going to take to finalize the plan and implement it, once it is approved. We hope to get responses from the community shortly after the meetings here are concluded this week, and we are assuming the community will advise us that the work will take less than two years. And assuming that's the case, we will sit down with ICANN to negotiate an extension of the contract in line with the community's wishes.

Now, one factor in this timing is how long we will take in the U.S. government to review and evaluate the plan. And some of you are aware of the action our Congress is considering taking that may affect the length of review by the U.S. government. So let me fill you in on the status of that legislation.

Now, our Congress has been interested in the IANA transition since we announced it back in March of 2014. Three different committees have also held at least five hearings and Fadi and I will be testifying at a sixth hearing as soon as we get back from Buenos Aires in early July.

Congressional staff attended the ICANN meeting in Los Angeles and several of them will be here this week attending the meeting here in Argentina.

Now both houses of our Congress are currently considering legislation that will impact the transition and, in particular, the timing of it. This legislation would require NTIA, after we receive the plan, to certify to Congress that the plan satisfies our conditions and that the community that the Board has adopted all necessary bylaw changes to support that plan. And once we do that, Congress will then have 30

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legislative days. And we need to be clear on this. These aren't calendar days, they aren't business days. They are the days Congress is in session to review our report and determine whether it wants to take any action.

It does not have to act. So that once the 30 days are up, ICANN and the community will be free to complete the implementation of the plan unless Congress does act in that period. And then once the implementation is complete, NTIA and ICANN could then end the IANA functions contract.

Now, the good news about this is the debate in Washington is shifting away from the question whether the transition should happen at all to making sure that it happens in a responsible manner. But obviously this bill, if it is enacted into law, will add about two months to the total time of U.S. government review, which, added to our review, we now estimate to be roughly four to five months depending on when we receive the proposal.

So another critical-path element that emerges from this legislative language is the need to work out the specific language much bylaw changes as publicly -- as quickly and as publicly as possible. We want to avoid a lengthy delay after we get the plan while language is being written and reviewed by the community as that will delay when we can certify to Congress that the plan and the proposal satisfies our conditions.

So I was very glad to hear this issue being discussed this afternoon between the CCWG and the Board, and it does sound like the Board

will be able to provide the technical assistance to resolve bylaw text as promptly as the overall planning will allow.

So to wrap up this contract discussion, the extension discussion, the community needs to determine and tell us when it is likely to complete the plan, add four to five months for our review, and then factor in time to complete implementation once we are past the congressional waiting period.

Here again, it should go without saying that the simpler the plan, the simpler the implementation, the quicker the implementation can be which will then allow us to proceed to a prompt conclusion to the IANA functions contract.

The last set of issues I want to raise deal with identifying the accountability issues in ICANN at this time and develop -- developing the appropriate response.

I have to ask you how confident are all of you that you're focusing on the issues that really matter? As I listen to the discussions of membership models, separability, budget review and the like, I'm struck by the fact that this community goes through cycle after cycle of putting its own people, people from this community, on the board and then you stop trusting them to act in the interests of the multistakeholder model.

[Applause]

I am puzzled by the fact that the discussion to date has not asked why it is the community's leaders can go from prophet to pariah simply by

joining the ICANN Board? And I'm worried that until the community solves this issue, all the other accountability tools you are talking about are going to fall short in delivering the outcomes that the community wants.

Now, I grant you, this is a longer term issue. I don't think the IANA transition necessarily requires a solution to this problem, but the community needs to analyze why the current system leads to this loss of trust in the Board. Is it how the Board is selected? Is it the standard for Board action?

Now, I did raise this question in my blog, and specifically if what the community wants is for the Board to adopt consensus community policies, then shouldn't the standard for Board action simply be to confirm that the community has reached consensus in an open, transparent, and inclusive manner? And if the community does not want the Board substituting its own judgment for that of a community, why not develop a standard that better defines the scope of Board review?

A related question is to understand why the Board makes policy judgments to which the community objects. Is it because the community's policy process failed to address issues that then have to be decided by the Board because the community didn't do its job before the matter was passed on to the Board?

So these are questions you all should ponder, if not today, then in the months and years to come. And overall, as I conclude, I hope you find these comments helpful. I don't even mind if you were irritated by

them as long as they got you to think about these issues and to focus on the ones that matter.

In any event --

[Applause]

In any event, I want to thank you for listening, and I look forward to the discussion.

Thanks.

[Applause]

THERESA SWINEHART: Thank you, Larry. That's definitely a lot for us to be thinking about here, and I think these are really, really important questions.

Part of asking all these questions is actually now is the time for us to be thinking about these things. Now is the time for us to be looking at every issue, every corner. To Larry's points, really have we thought through everything carefully?

What we come out with is a long-term sustainable solution, and so these are the opportunities to do it.

So Leon and Thomas, on that note, as chairs of this important accountability work, do you have some comments and observations or maybe some questions to follow on to this?

UNKNOWN SPEAKER: And how to make it sufficiently robust for transition to take place. I think we might also need to revisit the culture of this organization and to maybe clarify more what the roles of the respective individuals are in this overall system in order to avoid this distrust taking place.

But I may -- I'd like to conclude by saying that before we came to this session, we had a very good session with the Board, between the Board and the CCWG, and we've mutually confirmed that, you know, there might be a perception of distrust in what we're doing, but at least between the CCWG and the Board, I think we're closely aligned. We have confirmed that we work more closely than we did over the last couple of months, and I'd like to confirm that, you know, this is a joint project. It's not us against them or community groups against other parts of the community.

This is a joint project. We're working towards consensus. Sometimes that requires us to be open and candid and criticize what we are doing or what we're suggesting, but the good news is that we're all working towards a common goal.

THERESA SWINEHART: I wonder if we could go a little bit to some of the earlier days and see if any of the discussions around the accountability issues might be reminiscent or have perked up in different kinds of ways during the evolution reform, which was a much larger change time during the organization at a very early phase of, obviously, its existence.

Nii and Alejandro and Lyman Chapin there, I don't know which -- how you want to maybe respond, but, yeah, Lyman, you want to go ahead first?

Thanks.

LYMAN CHAPIN:

Thank you, Theresa. And I am mindful of your comment at the beginning that we don't want -- excuse me -- we don't want to belabor the past. We want to find out if there's anything from the experience that we went through the last time we tried to do a major reorganization of ICANN that might help us to think about some of the problems that we have before us today.

So I'll focus just on two things that are different. Obviously, 2001-2002, which is when the original Evolution and Reform Committee process was taking place, was a very different world and a very different ICANN than what we have in 2015. And I don't have to enumerate all the ways in which, you know, we're all abundantly aware of what those differences are.

But I want to focus on two that I think are very important to the questions that we're trying to answer as a community today. The first is one of -- I'll call it motivation or even mind set. In 2001 when Stewart Lynn first brought up the issues that led to the evolution and reform process, we were in a situation in which we were underfunded, we lacked effective participation from many segments of the community, and it was not at all clear that this new experiment --

ICANN was only three years old at that point -- that this new experiment in a public-private partnership was going to succeed.

The important thing for us at the time was to come up with a structure that would encourage and sustain effective participation by all the affected members of the community. At the time we had no effective way for governments to participate, no accepted and generally understood way for them to contribute to the process. We had no At-Large organization at all. We had no ALAC or any other At-Large participation. We lacked the talents of a large number of people who have since then become part of what we call the ICANN community. Those folks were not part of the community.   They were not committed, willing participants in the process back then.

So we saw that as the principle goal of creating the structures that we created for what we called ICANN 2.0 at the time.

Obviously, today we have a very different situation.   Some people would argue that we are overfunded. Some people would argue that we have too many enthusiastic participants. I don't see either of those as problems, but it's obviously not the same as it was then.

And the other point is much easier to describe. If you look at the three people sitting up here, we were all members of the ICANN Board at the time that we were also the Evolution and Reform Committee. There was lots of input from other parts of the organization and from community members, but the evolution reform that was going on in ICANN at that time was a Board activity. And obviously, today it is entirely a community-centered activity, and that's a very important

difference and I think it speaks to the health of the organization and the way in which it's evolved over those years.

So I won't belabor the past any longer. I'll let my colleagues on the panel get us back into the future.

ALEJANDRO PISANTY: Thanks, Theresa, and to you all who made the invitation and set up this panel.

Lyman has said some of the key issues that drove the evolution and reform process and the evolution of reform committee which led that. It was a very intensely consultative process. Some documents went through -- I have specifically one that went through 19 cycles of consultations in their drafts before they became final, and then they were pre-final until the end because everything was open until the end. We looked at the enormous number of options.

The main concern, as Lyman has said already, was participation and representation. People needed to find and the Board needed to have open avenues for participation that weren't there.

There was a question of accountability from the start, but accountability has come to mean many different things over the years in ICANN and to be asked for from different parts of the community in different times. One of the key things then that I think should inform the present process is accountability is always a two-bladed knife or a two-bladed sword or a two-directional avenue if, you prefer a more constructive view or metaphor. Accountability very often is a proxy

word for ownership. People will ask for the Board's or any other parts of the organization to be accountable to them, which means owning a piece of it.

But accountability also, of course, means what we all kind of accept, which is not having eternal and infinite freedom to do things but to actually be held to account, be held to your promises, be held to expectations that are reasonable and may be broken or unfulfilled.

But accountability was also a factor in the other direction. It was -- And this is very much the key of what is successful in the growth of the At Large, which is the organizations actually and the people in the At Large and other parts of ICANN now are able to say who they represent. They are vetted by their peers. The accreditation process in the At Large, for example, is a peer accreditation process. So you know if someone says they represent an institute of engineering in some place of the world you don't know, there's someone you know who knows them who tells you they actually are this and they represent five -- 5,000 or 500? -- thousand people.

That's one of the key pieces from, say, the evolving experience that we have to work with, that we think that we should work with.

The review processes are another very important part of ICANN evolution.

When ICANN was first started, it was seen that Board and staff would have great abilities to act on the advice of the community, but they could also possibly take a shape of their own. And review process was

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instituted from day zero. It was instituted for an Independent Review Panel, which was formed by the bylaws, it was in the language of the bylaws, by retired judges who had a good understanding of the Internet.

In 1999, 65- or 70-year-old lawyers with judging and court experience who were knowledgeable about -- in depth about the Internet was almost an automatic oxymoron. You would not expect this deep knowledge to exist in that kind of population.

So that was replaced by different -- a set of layers of response and redress. One was the ombudsman, the other was a board review process, and the other was independent review process.

This quasi-judicial arbitration process has been tested, at least for the .XXX decision, and it has proven all its value. It's a huge value. It was actually able to revert an important decision, which was a fork in the road for the evolution of the Domain Name System.

So these processes are there, and improvement or assumed improvements should be seen under the headlights of that train that's already running.

That's a -- those are a few examples of those we think are moving forward. We looked at membership possibilities. We looked at things like making everybody a member, making people members of corporate, things. The difficulties are well-known. They have been well discussed. And that doesn't mean that you will never have any of these things that have been left to a side before, because conditions

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may change. But it's very much so that the burden of the proof that -- a new instantiation of a mechanism that has already been reviewed, the burden of the proof that there are new conditions that would make it viable would be now on the proponents. But we have to out this knowledge, this institutional knowledge that is there, make it much more explicit.

And I think I'll stop there for now. But we have a pile of things that we think we want to contribute from this former committee to be a positive forward-looking force for the CCWG, ICG, and any other working on this.

NII QUAYNOR: I'd like to add a few comments. I think we should all take a good look at Strickling's paper. I recently reread it, and I found one thing was very interesting. The phrase was "at a process that's inefficient is failed." So, as we come out with structures and processes in the current review, we ought to pay attention to the efficiency, the reality of them, and the operational capacity to implement these things.

So it's not enough to simply define the structures and the processes. You really need to test them from the point of view of the community's ability to make them work. And efficiently. Otherwise, it's really not valuable to the community. So that's the first observation. But take a look at that document. You may have a different leaf to pick from there aside from what I've put up here.

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The second comment that I'd like to add is that we want to be a truly bottom-up organization, community.

So, as we ask of things of ICANN, we should be thinking of how to empower our constituents as well.

In other words, it's not enough for us to be asking ICANN for an empowered community and not asking how we empower our constituents. So, if we want to be bottom-up, we should do it properly. And this would apply whether it is the membership issue attached on or its agreements and so on. Because it works both ways. I mean, we really want to be bottom-up. And I think it makes sense to consider how to do that in totality.

The last observation is the issue of voting versus consensus.

I tend to ascribe to the view that minority positions, ideas, thoughts, are better admitted in a consensus environment. And a good example is language. Because many people can live with others having tools to help them. But, if you go the line of voting, perhaps they'll be voted out. So they should be probably considering how to strengthen our mechanisms of identifying consensus both at the Board level and the community level and move away from the voting style. Because I think for minority needs, voting tends to work against them; whereas, consensus tends to admit them. And so, as a guide, I would tend to favor that. Of course, I'm not commenting on any of the specific aspects of this proposal. I think those are core values of our organization. And we should be looking to enhance them as well. Thank you.

THERESA SWINEHART: Thank you very much. There were some themes there. I was struck in particular by Lyman's point about during the reform process it was a board community and now it's really a community process and the issues around the accountability themes that had come up then. But also, to Nii's point, the empowerment of the community and the minority voice and the -- how one ensures consensus around differing views and ensuring that there's a capturing of the majority voice and the minority voice in a topic that's relevant for this multistakeholder model.

Thomas and Leon, I wonder if you had observations and views on some of this and wanted to contribute that based on some of these themes, which I'm sure aren't new ones to you.

LEON SANCHEZ: Yes.

There's a lot to be said. First of all, I'd like to thank you for your observations, and that's certainly helpful. I'd like to pick up on a few points that you mentioned. And, yes, ICANN has evolved significantly. The ICANN community has evolved significantly. The visibility of ICANN and its community has evolved significantly.

If you look at how many governments have been represented in the GAC these days versus, like, five, six years back, that's a significant change. And, when the work was conducted that you referred to, ICANN was still supervised by the U.S. government. So there is a need

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for us to revisit accountability in the light of the absence or potential absence of U.S. government oversight. That's what we're tasked with. That's what this transition is about to equip or to safeguard ICANN against contingencies in the absence of the historic relationship with the U.S. government. And I think it's important to note that we did not take the approach of tearing everything down that there was and build everything new. But we've been very careful to consider mechanisms and will continue to do so that are lightweight and least invasive to the existing system. So, at the outset of our work, we did two things. We created an inventory of existing ICANN accountability mechanisms to see what's there to truly establish the status quo in order to fully understand what we can build on and what potentially needs to be refined. Second thing is that we analyzed the outcome of public comment periods that ICANN has held after the announcement was made last year. So we did not rely on the wisdom of our own group today, but we looked at what the community has established last year. They have very expressly said what their wishes are, where they see deficiencies in ICANN's current system.

So we analyzed that, and we built on that. And we established a set of requirements based on this community feedback as well as based on our group's input as well as based on the independent experts that we have helping us.

And that led to the definition of accountability enhancements that I'm not going to go into detail. But, basically, this is just to show the process. And we've now conducted recently our first public comment period. The report that we put out there was not a report based on a

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consensus position. But it was a screenshot, a snapshot of where our group was at the time the report was submitted for public comment. We do know and we did know at the time that what we offered was not fully thought through. It was the best we could provide at the time, because we could not afford to wait until later to then potentially find out that we need to change direction. And, therefore, we wanted to have two public comment periods. And we've now conducted the first one. We've analyzed the comments. We have revisited the set of the requirements that we established, and we have actually made some changes to the provisional recommendations that we came up with. So this is pretty much work in progress. And some of the issues that you alluded to are very well on our radar. That is, for example, voting versus consensus building. And you're perfectly right that somebody who doesn't get his or her will based on policy that has been developed by the community should not be able to get their will by means of voting. Right? So we're thinking of those different layers and make sure that the enforceability mechanisms that there might be cannot be abused for vexatious purposes or for bypassing the community policy development. I think I should pause here. I would have a lot more to say, but I don't want to monopolize the microphone.

THERESA SWINEHART: Wonderful. We'll have plenty of time for discussion. I'm going to actually ask Sam, given all of your experience before you came to the organization and also your involvement in these discussions, just

some of your observations about how some of these pieces fit together.

SAMANTHA EISNER: Thank you. I think that the theme of evolution is right. I think we're in a really challenging time, but we're exactly where we need to be. We need to be having these conversations. It's time to move from the model that really had a lot of forethought in it that came out of the evolution reform process that gave us the detailed reconsideration process that gave us the independent review process that we've been able to experience over time as well as the other enhancements that came out of it. And we don't -- we know that they're not perfect. We know that they need help. We know that they need to be changed. We know that they've had iterations just focusing on those two processes coming out of the first accountability and transparency review.

In 2012 we ran an accountability structures expert panel that looked in depth at those two panels. But that also looked more like the effort from the evolution reform than it does from the CCWG because that was primarily a staff-driven effort along with the independent experts that came through. Though there were opportunities for community engagement and public comment, it wasn't run in the same fashion that the CCWG is today. And I think that, as Fadi said today at the CCWG session with the Board, that the process that we're doing today is really a triumph of the multistakeholder model. That we're able to sit in a room together and that we have so many people here who on a

Sunday night are so interested in coming to hear and discuss these issues means that we're talking about the right things.

And whether or not there's always full agreement within the group, I think that that there's so many positive things that we're doing within the CCWG -- because I do have the privilege of working with the CCWG on a daily basis as a member there. But really, you know, we knew that the system would be tested. We knew that things would come up.

The new gTLD program and -- brought with it challenges, right? It brought with it challenges throughout the community, throughout the evolution of the applicant guidebook. But we also knew that any situation that you have within ICANN that there are winners and losers, you're going to have tests of your system.

And we've seen that. We've seen numerous reconsideration processes enacted. We've seen multiple IRPs brought in where we only had two IRPs otherwise filed in the history of ICANN.

And we've seen through those that those processes are not perfect. Those processes need to change. And, if it wasn't for the work that was done in the past to even have the forethought to bring those in, we wouldn't be able to sit here today and really talk from experience to he so how those things need to change. So I think that, you know, my experience with the organization -- and I've lived and breathed working on these accountability mechanisms for almost 10 years -- it's refreshing to see where we're going.

THERESA SWINEHART: Yeah. It's actually quite an amazing time. I want to open it up for discussion. And I think one of the underlying themes that has come up is, you know, there's different roles. I think Larry touched at the beginning, you know, the community puts community members on the Board and then the perception is changed about what the role is, right? People go from one role, let's say, in the government to the private sector or from civil society onto the board or whichever it might be. But I think it's an important observation that, as we look at our changing roles and stakeholder roles within the community, with that comes certain responsibilities as well. And so I think that's one of the elements that comes out in some of these discussions. But the microphone is open, if anybody wants to participate in this dialogue and join in to it.

And, Becky, I was going to call you and ask whether you would come up. But thank you very much.

So Becky, if I may, was in the U.S. government at the time when we were actually looking at the reform areas. And so now is in the private sector and brings a unique perspective to this as well. So, Becky, it's all yours.

BECKY BURR: Thank you very much. I just broke the microphone stand.

And I wasn't really even, you know, agitated. I want to start out by saying that I hope that all of the panelists know the esteem in which I hold them. I hope particularly the people that I worked with closely in

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2003 on evolution and reform understand that. And, if Larry Strickling -- Mr. Strickling doesn't understand that, let me reiterate it.

But I do have some comments that may sound like I'm taking issue with you, because I am.

[Laughter]

The first issue is sort of that should we assume that the burden of proof is on us to say that there is a need for change from 2003? I don't think any of us thought 2003 evolution reform was perfect. And we were in an incredibly different world with respect to the membership issue. We had just come out of an election that was characterized by, for example, ballot box stuffing and that the community did not think was a successful process.

We were creating the SOs and ACs that we now depend on for the first time as part of that process. So the calculation on whether membership worked or did not work was an entirely different matter. It was really an entirely different matter. So I agree we shouldn't throw things out just to get rid of them. But I would propose that what evolution reform did was give us the structure that we had to have if we were ever going to think about a membership model.

Now many years later, we have a very robust structure that can support that. And so, if it is the will of the community and the individual constituent parts, I think that's a good thing. I'm not prejudging what the consensus will be on this. I just -- I just think that

the premise that you start with what we did was right, we should be careful about it.

And I'm not in -- I'm not doing this for the "I told you so" or "gotcha" moment. But you may recall I am actually the person who wrote the proposals for the ombudsman reconsideration and independent review. And now, if you're just remembering that, you're probably cringing. But I did. And I submitted it. And my great friend, Joe Sims, threw it back at me and screamed at me about it and made me resubmit it, which I did. But, of course, I didn't go quietly into that night.

So I would like to read a couple things from my statement submitting this.

"The ERC blueprint lacks a mechanism for providing accountability with respect to bylaws revisions that expand the scope of ICANN's mission. ICANN lacks an accountability mechanism to check misuse of authority to determine whether or not a particular action would constitute or require the development of policy. And accountability mechanisms will fail" -- I didn't say might. I said "will fail for lack of a meaningful standard of review that are in there."

Now, you know, it's consensus. We move forward. We did that. But it's not -- it's not -- was not perfect. We need to build on it. We need to be open to that.

Larry, I just want to say one thing. I can't really figure -- well, first of all -- no, I'm going to say two.

One, I can't figure out how the Board just decides whether consensus has been developed, process works. I can think of for example, the two-letter releases and the trademark plus 50 issues that we've had in quite recent memory that would challenge that, that we would be challenged. Now maybe you would say okay, there's no consensus. Go ahead and move. But I think there's some members of the community that would be hard-pressed by that approach.

And, fundamentally, I'm puzzled that sort of -- you know, ICANN is a regulator. And we don't like to admit that. But, if you look at the applicant guidebook or the development of the registrar and registry contracts and consider their relationship, you know, similarity to rulemaking processes, I think that -- I think the point comes home. And it's important.

And so what I don't understand is -- or maybe I -- I'm not going to characterize it anyway.

I think what this process is after is establishing the kind of basic separation of powers and allocation of powers that characterizes every strong and robust democratic process. We are mature. We are ready for that. And I think it's a critical step.

So I understand the complexity. I've been spending a lot of time trying to get rid of it. But the fundamental goal is really about creating the kind of balance that I certainly think we need to have for this to work.

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LARRY STRICKLING: So, while you're -- so before you leave. So, again, I just like asking questions. I'm not going to respond directly. But I guess the question is, when you're dealing with the multistakeholder model, we're dealing with a different animal, I think, in terms of the creation of policy as opposed to a typical, you know, tripartite government with representatives and a legislature and an executive carry-on and a judiciary, all of whom kind of come from the same starting point and are all kind of integrated into the system.

Here it's always struck me that the beauty of the multistakeholder model is that all of the power can reside with the stakeholder community if they're willing to exercise it. So questions of what should the policies be of this organization I think, first and foremost, reside with the community. And the community can define and dictate what they want within that sphere.

So I know the issues of policy versus implementation have bedeviled this organization over the last years. My deal is why is that a question. If the people making the policy, the multistakeholder community want to decide those questions, they should be allowed to define the sphere of what they want to settle at the front end.

And I do think that a natural outcome of that kind of model is it does change the role that you want your Board to play in that the Board may need to protect that the process is working and they can validate that. But that, by the way the community has taken within its sphere the decision making on substance, they're taking it away from the Board at that point.

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And if the Board concludes that there's been a failure of process, then the remedy for them is not to substitute their own judgment but to send it back to the community to deal with it.

Now, if that leads to too much gridlock because there's too much work left in the community, the community can then adjust what it brings within its sphere. And it can, you know, dictate, all right, Board, this is an executive function we want you to decide or staff. This is a function we want you to decide. But at that point they either provide a standard around that or they, basically, say we're willing to accept whatever you decide.

And so I think it's a different model than what you're referring to as a traditional separation of powers model, and the way I see it all is of the powers begins with the community and is basically doled out from the community as it sees fit. But it can reserve for itself all of the policymaking authority that it can handle and wants to keep. Guess I didn't put a question mark at the end of that.

BECKY BURR: Okay. But can I respond anyway? So the -- that getting all of the policy right and putting a framework around it is -- is a laudable goal and it may be evolutionary reform number 3 or workstream 3, whoever -- George, you're responsible for that. And there is work going on in the community about it. The one thing that I am puzzled about is where's the role of constraining the community? Because without the balance of authority is the premise that the community can make policy about anything it wants? That strikes me as a mission

creep gone wild recipe and I would certainly be very worried about the health and legitimacy of this organization in that case.

LARRY STRICKLING: I think that's a good question.

THERESA SWINEHART: This is great. So I'll turn it over to Erick and then if anybody wants to -- Lyman, after that if you want to -- why don't you go ahead and then Erick.

LYMAN CHAPIN: Okay. I think -- I think we want to focus a little more -- I'll put it sharply on one of the points that Larry brought up in your earlier comments. We -- back in 2002 the issue of trust and accountability was very different. It had a lot more to do with participation and transparency. Now in the process that Thomas and Leon have been co-chairing, almost everything is about anticipating breakdowns in trust and breakdowns in process and what to do if those things happen. And I know Thomas quite properly pointed out that a difference between then and now is that then there was the U.S. government backstop and now we're looking at an environment in which we won't have U.S. government oversight. Well, if that's the case, if we're a community that has created all of these organizations within ICANN, populated them with our own people, and yet don't trust them, but we do have ultimate complete trust in NTIA to do the right thing, if everyone else

falls down on the job, then I'd like to suggest to Larry that NTIA probably has a broader base of trust than any other U.S. agency.

[Laughter]

And I think there's something fundamentally not so much wrong or broken but a little bit odd about suggesting that somehow, without addressing that fundamental problem, we're going to come up with a new structure of organizations and a new structure of accountability rules and somehow we're going to get it right this time when we didn't the last time. What are the conditions that have changed that are going to cause us to do a better job this time than we did the last time around?

THERESA SWINEHART: Lyman, thank you. I think that's a really, really important question. I realize that the line here may not specifically be focused on that point, but please, I think that response to this earlier dialogue, please give your thoughts on that as well.

ERICK IRIARTE: Hi, thank you. My name is Erick Iriarte, and I am the legal head of .PE. A CO monitor of LACTLD, the association of ccTLDs in Latin America. And as (saying name) says, I am going to speak strictly in my own capacity. I'm going to speak in Spanish because this is something that we have won for our time. Since the meeting started only in English between Alejandro Pisanty and Abril and they had to translate everything that was said.

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When some engineers sit down at a table and they talk about mathematics or they speak about a mathematical theorem it is very clear that two and two make four, except that you may add nuclear mathematics and then two and two may literally be anything else. When lawyers sit down at a table and they get the same word, even if they do have the same theoretical bases, they get results that are completely different. And I'm going to bet that if we believe there is Democratic tripartite and we get a balance of powers we're going to find results that are pretty different, even though we believe that democracy is exactly the same thing.

What I'm going to say is something that I've already said at the CCWG where I am a part, I am a member, I am a delegate, and perhaps this would be disruptive with respect to the way that has been taken so far in the CCWG and everything that has been written and decided by the majority and I have accepted it as part of this Democratic concept that we all have. I believe it has been wrong -- wrong to consider under one single community all the TLDs. The gTLDs communities has its own dimension based structurally on agreements, on a jurisdiction that is applicable and a legislation that is applicable absolutely which settles the truth.

ccTLDs have gone for a parallel evolution that is unequal and in many cases they are not based on formal agreements in relations with their local community and in essence with their governments with jurisdictions and legislations are broadly variable. So a single solution that can come from a proposal from the gTLDs and the ccTLDs in the same package does not necessarily satisfy all the community or all the

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TLDs in their dimension. Because the problems are different. Because institutions are different. Democratic realities in Europe and relations with the state or the relations with the power or with the government are different from what we have in Latin America, Asia, or Africa where if relations with ccTLDs are no longer technical aside from the RFC 1591 a long time ago and I'm going to go back to what Larry Strickling said at the beginning regarding looking at what the NTIA has requested as a proposal, I think the NTIA has to look beyond the dimension of the Internet and the community of ccTLDs specifically in 2015. These governance issues, public policy issues are so detached from a technical definition of simply maintaining an updated database that can be simple. These -- all of these is reflected in the GAC discussions, for example, on where is the issue of delegations or redelegations and this is a recurrent issues in all of the comments at least of the ccTLD communities that have been at the CCWG. If this is so and if the solution that the CCWG raised saying well, this issue is not involved in any proposals but actually it's outside of it, then we are trying to hide the sun with one single finger and it's very complex realities that will take longer and I'm saying this just to be clear with the dimension of time. All of these can force us to postpone the relationship or to extend the contract for two more years, and this can have political implications in the U.S. Congress and many thought that this has no -- there was no more participation, that there would be no more intervention. And when you hear or read or hear comments within the U.S. Congress, you say well, why are we doing all -- everything we're doing here at the community if at the end the decision will be made by some people there in Washington? I think

this very complex and political dimension that goes beyond the technique. The technique is really clear for all of us. It is very, very simple and this has allowed the number and practical community to provide proposals that are quick understandable, and ordered. And ccTLDs and gTLDs have no proposal for this, even if by a majority we can reach a proposal.

I'm going to respect the majority of the CWG but this doesn't mean that it's the best solution in what we call a modern democracy. Thank you.

THERESA SWINEHART: Erick, thank you very much. Does someone want to address that. Leon and Sam? Yeah.

LEON SANCHEZ: Thank you, Erick. Since you talk in Spanish, I'm also going to answer in Spanish. Definitely the issue of ccTLDs is something that is mentioned in several discussions in the CCWG. We understand there's no unique solution. There's no one size fits all solution. There are different peculiarities that have to be taken into account, and for that point of view it's a shame that Mathieu Weill is not here with us. He's a co-chair of the -- representing the ccNSO. The discussion has been quite long. It has followed different lines, and obviously what we are doing within the CCWG tries to face these peculiarities which we acknowledge in the diversity of our community. Evidently this is work in progress. It's not something that has been finished yet. It is very

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likely that some of the details that will have to be adopted to face these concerns that you have mentioned may not still appear in the document precisely because it's a work in progress. However, I can assure you that this issue is being discussed very actively and undoubtedly we are trying to do our best and the community is doing its best to meet these concerns.

As regards your comment about whether we have to make this effort or not in the community, when somebody in the U.S. will probably make the final decision, well then, there's some political issues that we cannot leave aside that we -- the fact that we're doing this exercise today is already a success by itself. I think we have been able to coordinate the community as it has never been done before, and this reflects the fact that the multistakeholder model does work. Despite the fact that there are different interests and different stakeholders who would like to see this model fail, we're showing that it does work and that we can move forward. Thank you.

THERESA SWINEHART: Sam, did you want to add on to that?

SAMANTHA EISNER: Thank you. So Erick, I know many of your comments had to do with a cross community working group on the IANA stewardship naming functions proposal, but I think they really raise some issues about things that we should be looking at as we're talking about the CCWG accountability proposal. And a lot of it goes to some of the

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conversation between Becky and the gentleman to my left which is, you know, we built a system based on needing to build the structure, right? We built the structure that we're in now and we're using that as the basis to jump off of from the accountability enhancements that we're making. But one of the things that we can take from Erick's comment is that the community itself might continue to evolve and we need to expect it will continue to evolve. And there might be needs to look at the communities -- community in different ways in the future. In three years, in five years, will there be a unified view of ccTLDs or with a growth in IDNs, ccTLDs is there a different -- a need to look at them differently. On the gTLD side will the registries be a uniform group or will they have different needs? Will we see other ways that the community might need to reorganize itself around the issues of representation that you were talking about earlier that we need to consider how we build protections into the accountability now that allow for future versions of ICANN and future versions of the different structures to have meaningful ways to participate and to be allowed into the system in the future.

THERESA SWINEHART: Thank you.

Thanks, Sebastien.

SEBASTIEN BACHOLLET: If I could speak English, I'm sorry to those that I am showing you my back, but this is how the mic is right now.

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I want to talk about trust. Trust is complicated. The question at issue is complicated. We don't talk about it in one day.

When the review of At Large was done, the first review, the proposal that was made in that report talked about two members elected on the Board per community, per group. The decision of the Board was to say we only want one. This is one of the item where there should be trust. There was no trust at the time. And the question is the same from the community to the Board when some decisions are taken.

I think that all the whole community must be very careful about this trust issue. We need to build for the future at all levels for everybody to trust everybody, on both ways.

The question, the issue about how we're going to implement the evolution that we have today is difficult. My point of view is that three years ago we should have been working on ICANN 3.0. We should be here now with the structure already redone, remodeled to talk about transition of the IANA functions. We are not at this point.

We are in a situation where we have a structure which does not answer the needs that we have today, and now we have to make a proposal, simple proposal, easy to implement, quick, that could be used very fast in order to answer to the U.S. government so we can -- we have missed an appointment there. I hope that we won't miss the next step.

We have to work all together, but we have to trust each other.

Thank you.

THERESA SWINEHART: ....

                       Add on to that? Alejandro and then Sam.

ALEJANDRO PISANTY: Thank you, and I will use the opportunity to respond to -- very briefly
                       to other comments. This is Alejandro Pisanty speaking.

                       The first, I think that we should be very clear that there is no sense of
                       confrontation between previous reform process and the one that's
                       going on right now. It has become a reform process, let's say, beyond
                       the size of the original call for the IANA oversight transformation. I
                       mean, I definitely think it's a very positive step to build upon what has
                       evolved since 2003. It's not only what was done then, but there have
                       been many changes. Sam among others have signaled. And it's very
                       important.

                       The trust question is very striking. As Larry has already pointed,
                       there's this paradox that as soon as the most trusted person sits -- and
                       Thomas has also signaled this. As soon as the most trusted person sits
                       on the other side of the table, he or she becomes the most distrusted
                       person.

                       But what we see -- what I see, at least, in many of the current
                       processes, design features or design requirements is actually also
                       significant lack of trust among parts of the community. There seems
                       to be -- I mean, one reading of what's going on is a fear of each S.O.

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and the constituencies within some of the SOs, that the others will take advantage of any situation that comes up in detriment of others.

There's this basic trust equation among the community that is being worked out by proxy, by distrusting the organs that the community forms, the boards, the councils, et cetera. And that's something that's really worth thinking more deeply about.

I think that some of these things come up in the ATRT, in the ability and transparency reviews, both ATRT and ATRT2, and there's a message from there as well that I think is important in this process right now, which is it's very common in ICANN to put in more process and to put in more structure. You have a process where trust is needed. Instead of streamlining it, you actually build more pieces and more components that balance each other out. And you end up in what I will call a Ptolemaic -- for the interpreters, it P-t-o-l-e-m-a-i-c -- process that follows the astronomy of Ptolemy which describes the orbits of the planets with cycles, and then if they weren't perfectly circular, they would add a circular that rotated -- translated upon that circle. So it's epicycles upon epicycles. And some days they say, you know, Copernicus, rise from your grave and bring in some simplicity to this. That will make it possible also to engender more trust because people will not be looking at each other through layers and layers of process but direct interactions. And I think that in particular applies for the IANA oversight and the final comment of the IANA oversight transition.

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I think everybody here has to applaud this community for its bravery in engaging in this task. We're trying to substitute one government with an alternative that is not more governments or all governments; that it's going to be superior in its capacity to the common intergovernmental organizations. The community has also had the wisdom to analyze itself in terms of its skill sets and concluded that there are some skills and some levels of distance that are necessary to look into this process, and there's, therefore, the advisory group that has these international lists, experience and outlook and several other skill sets that I understand is creating a very good collaboration and synergy, with the CCWG, I hope with the CWG where necessary as well.

So this is a daunting task, and it probably needs for simplification, more direct oversight, overviews of what is happening, and I encourage -- I'm very encouraged when this happens.

THERESA SWINEHART: Sam?

SAMANTHA EISNER: Back to the issue of trust that Sebastien raised. It also raises a question for the community. That was actually an issue where we had two competing recommendations that the Board had tried to accept.

So from the ALAC review, it said put on two members of the Board from the At-Large community. From the Board review it said your board is too big for good governance practices.

So how do you balance a request from the community in a validated recommendation that said you should raise this community up to a level of having a voting seat on your board, well at the same time you're being told that your board is too big for good governance practices? So balancing those two recommendations, there was one seat put on.

How do we address that stress test in the accountability process; right? How do we make sure that when there are competing -- competing policies or competing ideas that are validated throughout the community, where does the obligation come to resolve those? And how do we make sure that we don't destroy trust in the resolution of that? It could be trust among the community, trust with the Board, but I think that's a really important component to think about.

THERESA SWINEHART: That's actually a good reminder. Mr. Arasteh, please.

KAVOUSS ARASTEH: Thank you.

First of all, let's be a little bit less serious. I didn't feel comfortable to speak in front of the distinguished colleague panelists like a jury or a judge and a court, and I am standing as a defendant, so I want to just share my experience with you as a simple participant of CCWG since 18th of July 2014. Every day, many, many hours.

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In one of the call, I raised the following question: Why we have such a degree of skepticism with respect to the Board?

17 years of activities of the Board -- or ICANN, not Board, ICANN -- how many cases you have that you raise an issue and ICANN would ignore the views? And if you realize it, again ignore it. And I put a figure. Two case? One case? Three case? How many cases?

No answer was given. It is recorded that, and I said that.

Why we need such a degree of super-extra conservatism in this process? What happened all of a sudden that something was worked and we wanted to enhance the accountability, we just more or less come to some sort of over all -- sorry, overhaul accountability? Totally changing. What is the reason for that?

Then I give some examples. We're calling -- we want to have the recall of the entire board. Recall of the entire board means some sort of de-institution. It is in some constitution, not all constitution, but how many cases that we have a recourse on that one? And what is the consequence of these situation? What is the care -- (indiscernible)? If you take all of them, who do you put them to replace those things?

So have we to see the situation, what are the realities and what are the theories?

I have never seen that for budget, we put something in the constitution part, bylaw.

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There is a budget by ICANN. Put it in the public comments. Comments received. ICANN take it into account, or board. If not properly taken, you have the time to ask for reconsideration.

What is your logic that after your request for reconsideration, ICANN Board ignore your request?

This is the board that you have elected.

How you think that the one you have elected, you made a mistake in that elections? Or did not make mistakes?

A strategic plan. I have never seen a strategic plan be in the constitution. The strategic plan is the work of the organizations. They are subject to some comments. But you don't need to put. The only thing you put into the process is the bylaw, whether you have it for two-third of vote or three-fourth of the vote.

With respect to many other things, you have to be really realistic to see which one you really need to put that one.

How many more WSIS? How many more bolt, screw you have to add? Do we need to do so many screws to add? Or you may broke something. If you add more and screw it, screw it and screw it, it may broken.

So let us to see to what degree we need to correct the situation. If there is -- First of all, we have identify the difficulties. And once identify the difficulties, start to do them, but not in such a degree of

extra conservatism and extra -- not suspicious -- mistrust. I don't see any reason for such a mistrust.

Once again, these views are from an individual, not representing any entity. And that is my experience after this year.

So we have to go back to....

And then coming to the last issue, and that is the independent review mechanisms. It is something really very, very difficult. If they make a decision, the Board, and you do not agree with that, and you want to go to the mechanisms for review, and if you want that the result of that will be binding, and if your decision is in contradiction with the (indiscernible) and actions of the Board, what you do?

They said that we act in accordance with what we have to do.

You go to the court, and I don't understand why so many cases with people, recourse to the court and court and court. How many times we have gone to the court up to now during the 17 years of the life of the ICANN? So we have to really be more realistic, and we have to now, for distinguished panelists, we have to review to see what is the area that we have not considered.

In our national language -- Now I come to my nationality, Persian -- we have an expression. One need to have two lives. The first life, get experienced. And the second life, use the experience. Now we got the experience from the first public comment and now we have to use that experience.

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There is considerable amount of the comments, considerable amount of the points that the people are not happy, so we have to reconsider them, and we have to review them totally. I'm very happy, and I encourage the CCWG that so quickly came to the conclusions that now the way they put it doesn't work and they have to review that. So we have to do it in that way, and we have to decrease the degree of skepticism, the degree of conservatism, and to see to what extent we should be practical and to what extent we should be realistic but not idealistic.

Muchas gracias.

[Applause]

THERESA SWINEHART: Thank you very much. I'm cognizant that we're hitting close to the top of the hour.

We will run over, and for those who are able to stay, please do. For those that need to leave, also please feel free.

I'll ask that the comments are kept short so we can still accommodate everybody, but we're closing the line after you, Keith.

Alejandro, very quickly? Okay.

Let's go ahead to Jonathan, and then maybe at the end the panelists can respond.

JONATHAN ZUCK: Yes, thank you. Good evening. Jonathan Zuck for the record. I had to come up to the microphone to say I think this question of trust, while interesting, is a little bit of a red herring. And the reason I say that is because if we look at the issue of trust, and Larry asked this very important rhetorical question, how is it that people become -- come from being prophets to being pariahs just by being elected to the board? And I guess I have to say that I think the distrust of the institutions of powers that we put in place is one of the healthiest aspects of any kind of democratic governance. And the moment at which we regard the board as prophets is the moment we undermine the very institutions we're trying to create.

So it's no the people we distrust. It's that we've creed created a concentration of power and it's that power we distrust. And I would contend that we should always make sure that we distrust concentration of power inside of any institution, and I'm proud of the fact that we do that.

Trust is also a two-way street. One might argue that the Board demonstrated distrust in the community when they wanted to impose experts into the process. One might argue that the Board demonstrated distrust in the community when they had a secret resolution to send Fadi on a mission to negotiate with the Brazilian government for NETmundial. That argument could be made. Another possibility could reef late back to Fadi's discussion earlier, and that's something that's been sort of stewing with me the last couple of hours, when he called ICANN and the multistakeholder process delicate and fragile. One could make the argument that the reason we

went off and pursued those other outside interests was because of that perception of vulnerability.

Sorry.

UNKNOWN SPEAKER: One could make the argument, but are you making it?

JONATHAN ZUCK: No. In fact, I was going on to make another one. That's what I thought I had said. I'm sorry.

So I guess I believe that a lot of what we did to go outside of ICANN's core mission was because of that perception of vulnerability, this fear of capture and from government from the outside that, if we don't do something to participate in these other fora, that ICANN itself is vulnerable. But I guess I would argue that sticking to our knitting and strengthening the organization is what makes it less vulnerable. Making sure that things like digital archery, making sure that things like security breaches, making sure that the embarrassment around .SUCKS doesn't happen is what makes us a strong organization.

So I want to believe that the multistakeholder process is not fragile. That it is, in fact, strong and capable of handling the kind of criticisms that we're bringing to bear on it in order to take ICANN to the next level.

I don't think NTIA is the most trusted form of accountability for ICANN. I think it's a blunt and very unnuanced version of accountability. In

fact, the needs for real accountability mechanisms of ICANN have existed throughout its history. This is merely an opportunity to pursue them that we've been given by this announcement of this transition.

And I don't think we should think of our organization as fragile or delicate at all, but strong and capable of being stronger by developing the institutions of accountability that this organization demands for its next 10 years. Thank you.

[Applause]

THERESA SWINEHART: Thank you.

Paul, please.

PAUL WILSON: Paul Wilson here from APNIC. I'm sorry. I'm going to start with a slightly predictable comment about the fact that the ICANN meeting -- at the ICANN meeting, it's the names community that predominates. And that's been happening throughout the IANA transition discussion as well. So please don't forget that there are two other communities that worked extremely hard over many months and have produced both plans at the beginning the year and are considering implementation very actively now.

I think one of the reasons they're somewhat overlooked here could be that our challenges are less. They're simpler than we're seeing in the names area. That said, Larry, in your blog, you asked a lot of

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questions. And I guess we're going to be reflecting on those questions as well before we consider anything done.

But I think we should also have some questions to you. And I think there are still a few things which are sort of uncertain and unclear in terms of how things are going to go forward. So they might be being answered in different forums this week or they may be coming up. But, among these, are just a couple of questions, for example, quite specifically. And that is, firstly, when it comes to the implementation period, while the NTIA contract still exists but after the approval of the plan, is it going to be possible for ICANN to enter into agreements with parties in this process during that implementation phase? And will ICANN need permission to do that? If there were delays in that process that could -- it's something we need to think about. We probably haven't factored into implementation planning, actually.

The second question is whether the transition can be implemented in stages that is, still with one plan, one single plan subject to NTIA's approval, but a plan that involves stages like many plans do. There's very few plans that attempt to achieve everything in one step.

So, you know, for example, it would be a transitioning in some form of protocols, numbers, names in some sequence. And whether that can be achieved, say, through adjustments to the statement of work or through referring to the first question of signing of agreements with ICANN which can actually represent the kind of implementation -- beginning of implementation for some of those plans.

So that's just a couple of questions. I'm sure there's actually plenty more which are coming up this week. But I'll start with those. Thanks. Thank you.

LARRY STRICKLING: So, Paul, I'll be real quick in responding. I think these are questions that still need to be worked out. I would put the implementation into, like, three buckets. I think there's the -- what would I call performance improvements that are going to come out of this in the form of new performance metrics, SLAs, that sort of thing.

We'll have to look at those. My own belief is that most, if not all of those, probably could be implemented under the existing contract with us. And so we would probably be able to give the nod to go forward quickly to implement those as fast as you can because they don't create any issues under the existing contract.

The second category would be the accountability improvements. And, of course, we know the bylaw changes have to be implemented early into the process. But I do think that those, for the most part, shouldn't be implicating the U.S. contract and ought to be able to go forward.

Again, if there's a lot of expense involved with them, I would urge that people maybe not commit a lot of resources until we get past the quiet period with Congress just out of prudence. But there's -- those shouldn't be impacting the U.S. contract.

So then the third category would be: Are there any changes that would be made that for whatever reason might implicate our

contract? And so examples are, like, the IETF pulling out directly from the contract. We haven't done a comprehensive legal analysis as to whether that creates a problem for us or not. If it does, we're going to have to figure out how to deal with that. Because, as a bureaucratic and administrative issue, anything that requires us to modify this contract before we actually let it end is going to suck a lot of resources away from us. It's also going to take time because we have to go through, literally, a procurement process with people who spend most of their time buying software and phones. And they have no idea about this stuff, as you can imagine. They demand 90 days to do contract modifications. So we'd like to minimize, if not eliminate, that happening during the implementation period.

But I know that there are two communities that have been waiting very patiently to get on with this. My answer to them up until now has been read The Three Musketeers. We're all for one, one for all.

But I know, when we get past the certification, we'll want to be able sit down and be much more responsive to the individual groups in terms of how to facilitate their implementations.

THERESA SWINEHART: And, Paul, thank you for the important reminder of the addressing and the protocol community as well and all of the hard work that's been happening there towards this. Please.

HANS PETTER HOLEN: Hans Petter Holen, Chairman of RIPE, also one of these strange number guys.

Being part of the RIPE community, which is kind of separate from the RIPE NCC. We set the policies. RIPE NCC implements them. We have those kind of constructs. I'm a true believer of open processes, bottom-up, and inclusiveness.

So I trust that we will actually get the proposal on the table here. I trust the working groups to be able to do their work. And I also trust the Board members to do the right thing in the end because I've been part of putting them there. I'm on the NomCom now, so I am responsible for some of the board members.

So, yes, I trust this community to come to an end. Now, one of the parts of the assignment we got from the U.S. government was to not replace the U.S. government with another government or an intergovernmental body.

And then my question is -- and that's simple. The proposal should not include that. So that's easy to evaluate. But how do we create an organization that is protected from that in the future? Five years down the road. I mean, this is completed September or during next year. But then five years down the road, ITU or some other government comes in and says that we want to change this through legislation or whatever. How do we create protection for so that doesn't happen?

THERESA SWINEHART: Anybody want to -- no.

NURANI NIMPUNO: Nurani Nimpuno from NETmundial. I'm also vice chair of the CRISP team. But here I'm speaking on my own behalf. And I'm also one of these weird numbers people.

When we put together the CRISP proposal or when we submitted it -- when I speak to my friends from the names community, they tease me and they say, "Yeah, but your work was easy."

And, while we can joke about that, I'm also quite keen to remind them that our proposal is built on a community that has developed and matured over a very long time. And, as a longstanding member of that community, I'm very proud of that work. And that's not something that's happened overnight. It's actually a very conscious effort over many, many years.

And, given that, I would also like to -- as we're moving into the final stages of this process, I would, actually, also like to urge those involved with the accountability discussions to look at what existing structures out there work.

Unless you do that, it can become a very academic exercise in creating something that will deal with something -- a potential challenge in the future or a potential threat in the future. And I think that we have some existing processes and structures in other communities that we all can learn from.

And then, just as a final remark, I'd like to comment on something that's been brought up here before about trust and about -- Lyman talked about in 2002 was about trust and transparency. And now it's about breakdown of trust.

And I'm a true believer in trust. Without that trust you cannot have accountability. But you can only get that through empowering the communities, not by building power structures that you then have to put in mechanisms to deal with, but by empowering your community.

Thank you.

THERESA SWINEHART: Thank you.

[Applause]

Please.

KEITH DRAZEK: Hi, everybody. My name is Keith Drazek, chair of the Registry Stakeholder Group. I'm a participant -- sorry -- a member of the ICG, a participant in the CCWG accountability and I work for VeriSign.

Just a couple brief comments. I know I'm last in line here and holding up everybody from dinner and drinks. So -- I hope I'm being missed.

I just want to note that this evening we've been talking about some pretty big issues. I mean, big issues of trust, accountability, power, influence. And we're not going to resolve all of these questions or

these issues in the next six to nine months. It's an evolutionary process. It's not revolution. Right? This is going to take time. And it's natural. And it should.

So I'd like to remind us all about what we are focused on here, particularly in the CCWG accountability. If we think back to -- I believe it was Los Angeles.

Los Angeles is where Secretary Strickling and Fadi Chehade challenged the community to come up with workstream one and workstream two. In other words, to not take all the accountability issues that we want to deal with over time and try to cram it in to a process that has a necessary timeline. So we accepted that challenge and said well, okay. Workstream one is only the accountability reforms or mechanisms or enhancements that we, the community, need to ensure that the transition can take place in a timely manner and that ensures that everything that we put off into workstream two, that the community will have confidence that the Board will accept those reforms provided they come up from the bottom-up consensus process.

So I think the key here is to remember what we're trying to do here in the CCWG accountability is to simply provide the community assurance with whatever lightweight, easy, fast, simple, the least complex possible reforms for workstream one that will guarantee we have the ability to compel the Board to accept the reforms that we'd find later in workstream two. So I think it's important just to

remember we're not trying to solve all the problems here right now. We're trying to keep the focus limited. And appropriately so.

So I just want to note that I think the questions that we received from NTIA and from the ICANN board this week I think are exceptionally helpful.

I think these questions demand answers. And I know that the CCWG is already working to review these questions, to assess them, and to find the best most efficient way to respond in a timely manner. Because, frankly, it will inform the work of the CCWG and make the work product better.

So I would like to thank both the Board and NTIA for coming up with those questions and helping us sharpen the focus on our own work in the CCWG.

So I'm confident that we, this community, through the work of the CCWG, which has been really remarkable -- and I'll make another comment about that before I wrap up. I am confident that this group and this community will develop a consensus proposal that will meet the criteria laid out by NTIA and the needs of this community. I have no doubt. And I have no doubt that we will accomplish that in a timeline that meets the desired timeline that's been laid out for something as soon as possible but probably within the next six to nine months. I have no doubt we'll be successful.

The work of the CCWG has been so collegial and has been really something remarkable to observe, to participate in. The amount of

work has been unprecedented, except for maybe the CWG transition group which was -- congratulations to them.

So it's really been remarkable. And I have to say that I found the tone of this session today, this -- a little bit contentious. A little bit sort of, like, you know, there was a little bit of tension and sort of back and forth over questions of membership or not membership. And, of course, that was all out there for the -- you know, for the public comment period.

None of that has been decided yet. The CCWG is still hard at work. Nothing is predetermined. The community process continues. The multistakeholder community process is ongoing and, from my perspective, has been extremely healthy.

So it's just interesting to me -- I'll wrap up saying that, normally, the working groups are where sort of the angst takes place and where people get into conflict and arguments and sort of work through the tough issues. And that's, actually -- I mean, the tough issues are being worked through. But it's actually been very collegial and very productive. And I actually found this session to be a little more tense than the work of the CCWG. So thank you.

[Applause]

THERESA SWINEHART: Well, I think it's an example -- I think it shows how important the issue is to everybody. And the importance of these open exchanges about everything in order to work towards what's going to be good solutions

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and be reflected also in the work, as Keith says, in the work of the working group coming forward with their proposal. I realize we're short on time.

I don't know if anybody on the panel has any remarks or anything like that to make. Anything closing? Alejandro, very briefly. And then I'm going to close it down.

ALEJANDRO PISANTY: Thank you. This is -- thank you, Theresa, again for organizing this session. Now this is ex post. You have done it, and everybody has contributed a lot.

I think that we need to keep thinking about a couple of fundamental issues that are going on. One of them is this issue of trust, the call for accountability as a proxy for -- or a portmanteau term for things like trust, for things like ownership, and so forth.

And, in thinking of trust as the groups go forward when they address the CCWG, it may be very useful to think of yourself walking through this room and suddenly realizing no one trusts you. That's the general message that you should live with when you express a lack of trust on everyone else. That will be a very, very, very productive way of working forward.

THERESA SWINEHART: Thank you, everybody, for spending your Sunday evening into your dinner hour and evening with us here for this good discussion.

[Applause]

[END OF TRANSCRIPTION]