BUENOS AIRES – Joint Meeting of the CSG and the ICANN Board
Tuesday, June 23, 2015 – 11:00 to 12:30
ICANN – Buenos Aires, Argentina

STEVE CROCKER: Okay, folks. Please take your seats. Hello? Please take your seats.

Thank you. We'll get started here.

This is a multifaceted experiment. We've changed the format, as you can see, and as I think you probably heard in advance. The focus -- the intent is to try to get more focused and in-depth discussion of a small number of topics that we've tried to identify ahead of time.

To facilitate that, we've asked that we have a handful of people from the constituency and a handful from the board sit around a table and engage with everybody watching, and we have scribing, of course, and so forth.

And in this particular case, the way the time's been allocated is that instead of having a single session for commercial stakeholders, at the request of the constituencies in the commercial stakeholder group we've subdivided the time into 30-minute segments with each of the constituencies, the business constituency, the IP constituency, and the ISPs, in that order.

For the board, we have Cherine, Markus, Asha, Jonne, and Erika, I think. Everybody -- do we have everybody sitting around? I'm missing -- there's Jonne.

UNKNOWN SPEAKER: (Off microphone.)

STEVE CROCKER: There's Cherine.

UNKNOWN SPEAKER: (Off microphone.)

STEVE CROCKER: And do I see Asha? I don't see --

UNKNOWN SPEAKER: (Off microphone.)

STEVE CROCKER: We lost her? She'll be back, probably.

All right. And with that let me turn it over to you, Elisa, and it's really your session.

ELISA COOPER: All right. So I think we have three different topics that we're going to talk about today.

One is around sort of new gTLD registry pricing practices and some of the issues that we're seeing. We wanted to share those with you so that you're aware of them.

We also want to spend some time talking about public interest commitments and the ways in which those will be adhered to and whether or not the appropriate mechanisms are in place.

And then finally, we want to spend just a little bit of time talking about transition planning with regards to the CEO succession process.

So with that, I'd like to turn it over to Susan Kawaguchi and Phil Corwin, who will be leading us off with our topics around new gTLD registry pricing practices.

SUSAN KAWAGUCHI: Hi. I'm Susan Kawaguchi. I manage the domain name portfolio for Facebook and all the other brands that we own.

We definitely have been the target of differential pricing or predatory pricing, and we are finding it hard to deal with the fact that in a land rush you might be able to register a domain name for a hundred but in the sunrise period, we have had prices starting at 35,000, going on down to a thousand.

The latest example -- and I've talked about facebook.top previously, but if you haven't heard about that, you know, it was a $4500 sunrise period fee, but then they added another 30 grand to Facebook's registration.

When we pushed back, they said, "Oh, no, no, that's a mistake." Well, I'm sure they would have accepted our $35,000, if we had paid that.

ICANN | 53
Buenos Aires

The most -- the latest issue was with .LOVE, and sort of interestingly, they valued instagram.love higher than facebook.love but both were outrageous in my opinion. 17,000 plus a 35 -- $350 registration fee, and -- for instagram.love, and then facebook.love was almost 9,000.

So to register two domain names in one registry would have cost us almost $27,000. Which that's a lot of money even to a major company when we've built the brand and they have done nothing.

So -- but we -- you know, the BC did a little bit of work and we gave some information to a blogger, and lo and behold, I just got an email yesterday saying, "Oh, no, no, no. No. 450 a domain name."

Thanks. I'll pay that.

So back to the .TOP issue, instagram.top was also at -- you know, they didn't ask us for the 30,000 but they -- for instagram.top, but it was almost 5,000.

We let that go to land rush. We didn't -- weren't able to register it. Somebody else grabbed it before us.

We filed a URS, which was much cheaper than the 4500, and the respondent was -- complained, and there was definitely -- English was their second language, but basically claimed it was unfair that we didn't register it and allowed them to register it and then came back and filed the legal proceeding against them.

I'm not sure of the legal analysis there, but it's also harmful to the individual registrants. They don't always know what a trademark is

and so we've set up this situation where a trademark owner is almost prohibited from protecting their trademarks, but then have to take legal action against individuals.

So I just would like you to know, I mean, we're not the only company. Google has problems. Adobe. You know, there's a -- there's quite a list of these that were egregious. Flash.video at 50,000. Facebook.rich was 6,000. It was definitely too rich for our blood.

So -- and then Phil has some interesting statistics that have just come out.

PHILIP CORWIN: There have been some relevant reports in the domain industry press on this topic just in the last few days. One published yesterday at Domain Incite notes that -- the headline is "Famous Four Following .SUCKS Playbook with Premium Pricing for Brands," and notes that the Famous Four Media registry is -- announced that it was introducing eight premium pricing tiers ranging from $200 a year to $10,000 per year, but that the one for brands, the brand protection -- the brand protection tier, justified on the basis that it will reduce cybersquatting, is $498 per year for trademarks, which is -- and that it will be initially implemented at the .DATE, .FAITH, and .REVIEW TLDs.

While that's less than 2500 a year, when you think about a brand -- a company with many -- with its own company name and many, many brands that are trademarked at five- -- basically 500 per year in

perpetuity multiplied by dozens and dozens or hundreds of TLDs, it's quite an expensive outlook for defensive registration of your names.

So while .SUCKS has gotten most of the publicity, they've become kind of a role model for other registries.

I've also noticed personally a problem at the other end, at the very low end of the pricing range, with .XYZ initially number one registry in terms of total registrations, but that may be changing rapidly, having worked with Network Solutions to place hundreds of thousands of TLDs on an opt-out basis in the account of registrar.

Customers -- .SCIENCE, some of the famous four TLDs offering domains at prices ranging from 25 cents to 49 cents per year. There have been reports that these free or very cheap domains have been used quite willingly by people involved in phishing and spamming and other questionable activities.

I know personally I -- my personal email account has been inundated, and this is -- by emails from new TLDs that somehow made it past my I.T. provider's own security filters, and many of the emails I've gotten include trademark names particularly relating to financial services and healthcare, and the title when --

You know, I'm sophisticated enough to look at the actual email address and it's clear it's not from the trademark owner, but a lot of -- millions of people are not that sophisticated, so they are being abused.

It's a problem for legitimate registrants at those TLDs because the natural thing for I.T. services and individuals to do if you get enough of these spams is just to block the entire TLD so they stop coming into your inbox.

And then the last thing I'll note is that the very low-priced domains are not going to be helpful to the overall perception of the new TLD program. There's a report just this morning that yesterday 101,000 domains were deleted for .XYZ because they were coming up on the one-year anniversary when they had been put into customer accounts on an opt-out basis and almost none of them are being renewed.

So we're probably going to be looking for the next few months at total registration figures for the new TLD program declining even as new TLDs are delegated because hundreds of thousands of .XYZ and other TLDs are going to be dropping as registrants choose not to renew them. Thank you.

J. SCOTT EVANS: And one -- my -- this is J. Scott from Adobe Systems. One last comment.

As I've said repeatedly whenever I've spoken to the board is, you know, we are only emissaries for the business community. There are hundreds of thousands of affected businesses that are not engaged in this process, and so we are your emissaries back out to them trying to explain.

And one of the big issues that I keep hearing from businesses about pricing models is the fact that we were told as a business community that one of the reasons we needed an expansion of DNS was because there were no good commercially available names that were short enough to use, that everyone was having to use long complicated domains, and so we needed to give more real estate to the market so that innovators and small to medium enterprises could quickly and easily join the ecosystem and take advantage, because all the names in .COM were gone. But the pricing structure with premium names that has occurred -- let's take brands out of the mix. All the short snappy names now are hugely expensive, and so small to medium enterprises, the very public interests that we were told we were trying to reach, is being thwarted by the pricing models. And it's very hard to go back to brands who already feel abused in the system, whether rightly or wrongly, and explain, when they point back to me and say, "Well, you told me they needed this so someone could have cheap.hotels, but cheap.hotels is $17,000. How is that giving names when in .COM a name is $9?"

So I just think that there's a lot of issues that affect the reputation of this organization and I'm not sure how we as a community are going to deal with it, but I wanted to bring that perspective to the board and let you know that people are starting to question this because the very rationale we were given for the need to serve the public interest is being thwarted by these premium name lists.

MIKE SILBER: Thanks. Two comments -- well, three, actually. Two comments and a question.

Firstly, thank you. Really useful to get some practical examples of what's happening on the ground.

Secondly, I'd like to disagree with some of Phil's apocryphal or anecdotal comments around abuse within new gTLDs. We've actually commissioned some research which indicates that there's actually lower incidence of phishing, spam, and the like coming from there, and you'll generally find that email addresses are actually spoofed and have nothing to do with names within the TLD being -- or -- as was presented.

But be that as it may, I think that aside, I think the point that you're raising is very useful and the examples you're using are very useful, but I've got a question, which is: What do you want us to do about it? What's the thinking over here? I feel your pain and I think J. Scott in particular raised a very interesting point, which is, you guys know what you're doing. The pain for people who are not necessarily on top of their game must be even higher. So what's the suggestion? What's the request? Where do we go forward on this one?

ELISA COOPER: Well, now that you know about the situation, what can you do?

I mean, we would like the practice to stop. We would like to not have this kind of differential pricing. We would like to not have brands be forced into paying a higher price than someone in the general public in

perpetuity. Like what can we do about that? I mean, do we -- can we only do something about it in the next round? Is there anything that we can do about it now?

MIKE SILBER: I would think -- and please correct me if I'm wrong. I would think that pricing and price capping is a policy issue, and I would think that unless, as in the case of the .COM contract, a third party has indicated that they want to enter into price capping, I would think that it's either got to be a market structure or there needs to be a policy process that's undertaken to look at actually price capping.

Certainly we, as a board, can't issue a fiat from on high indicating as to what prices should or shouldn't be, so by all means, if you guys want to start the work, we'll ask staff to help you and support you to move that forward, but we can't do anything from on high.

ERIKA MANN: I would agree with -- Erika Mann. I would agree with Mike. I think there needs to be -- once we start the new round, it makes it easier than now just before we close down particularly the first round. It's much harder to introduce new policy measures. But with the new one, of course one could look how we would define the policy process and, for what was mentioned from Adobe, difficulties with SMEs. There are different ways. Typically regulators -- we're not regulators, but let's assume we're kind of quasi-regulators to some degree.

ICANN | 53
Buenos Aires

One could look at, you know, either you have a cap for SMEs or -- you know, I'm always very cautious in intervening in the market because you want to have a lively market and you want to have new pioneering models to evolve, but you want -- on the other side, you want to avoid abuse -- or not abuse, but you want to have -- you want to avoid negative situations for certain companies or individual users.

So I think we have now enough sufficient experience, I think, what works and isn't working well, so I think we as a community together, we should evaluate it and put it in a policy process and evaluate and then come up with the best ideas and the best solution for it.

It's not like it wasn't done before. I think the examples we can learn from other market sectors.

ELISA COOPER: I think with .SUCKS, that was the first time I have ever seen where for the same domain different people were being asked to pay different prices. And that's an issue I think we're starting to see trend. Like, other registries are now engaging in that. So that's kind of a different issue than sort of the premium pricing. And that's also an issue I think we're very concerned with.

FADI CHEHADE: So thank you very much. I just would like to say that individually, we definitely understand that you're frustrated, and this is not good practices. We appreciate that. This is not the question. What to do about it is the question.

ICANN | 53
Buenos Aires

In ICANN, we're not a regulator. We have a contract. When you helped us develop this policy in this contract, you very clearly told us to stay out of pricing.

If now you'd like us to get back into managing pricing or practices around pricing, then this is a new policy. It will require that there is a process. And that's what I will tell Congress no matter how many times you call them. There's a process. You need to start -- bring an issue to the GNSO -- you're part of the GNSO -- and start a process.

I do not have the levers to help you. You need to go and build me a policy. It's kind of strange for me to be making that point, but I need a policy. I will not act without a policy. The second thing that I think will help me and help you is for you start developing what I call real value of the DNS to your companies. So when you say this is costing us a lot, what is the total value and total cost to Adobe system of adobe.com? Do we know that? What is the total value of adobe.com as a domain name? And what is the total cost of it? Is this upside down? And if it is upside down, then we need to go again to the GNSO again and say, We have a problem. We developed a system where companies are not getting the value from what they're spending and fix it for us. But, again, I can't fix it. All I can do is respond to your policies. And I will put them in the contract, and I will enforce them. But today I have no mechanism to enforce pricing practices.

SUSAN KAWAGUCHI: Can I just interject something there on the value? So I can't give you a price -- a number for facebook.com. But what I can tell you is that we

only use 99% -- or we only use 1% of the domain names that we register for actual Web sites. The other 99% of those other thousands upon thousands of dollars that we are spending is to do nothing more than to ensure that those domains are not used for fraud and scams that will injure our users. It is a consumer trust issue.

FADI CHEHADE: Understood. Understood. Again, I could make the same argument about how much you spend on insurance. I could make the same argument on how much we spend on media. If I calculate how many articles say bad things about me versus articles that support me, how am I -- how are my dollars on PR helping me?

So total cost, total value is not my business, is not ICANN's business. But I encourage you as part of this dialogue, is the Domain Name System bringing more value or more cost to your companies? And if that equation is upside down, then we have a deeper macro issue that we should discuss. But if that equation looks good, let's also acknowledge that because I bet you facebook.com is worth a lot more than thousands. It has many, many, many more zeros.

SUSAN KAWAGUCHI: I would absolutely agree. But I think the part of the equation you are leaving out is what is the cost of the Internet users. That's the third equation. The registration and use of our trademark in a domain registration costs our users much more than it costs us.

ICANN | 53
Buenos Aires

FADI CHEHADE: So that requires --

SUSAN KAWAGUCHI: So it is a consumer trust issue when you are using our brand to scam users, and we fight that on a daily basis.

FADI CHEHADE: I agree with you. How do you want me with a current contract that you gave me to enforce that?

SUSAN KAWAGUCHI: I will stop after this comment. I can't speak to exactly -- I don't remember exactly all the details. But we agreed to pay a higher price in exchange for a sunrise period. So we agreed to a sunrise period premium price.

                       What we did not agree to is extortional prices on top of that sunrise premium. And I don't know -- and the policy would have to be changed to fix that.

FADI CHEHADE: So agree with you again. But you also told me you agreed on that, do not get involved in pricing. You have told us that. This was debated heavily during the contract period, and the community said to ICANN, you are not a price authority. Do not get into pricing. We stay out of it.

DAVID FARES: Fadi, if I could jump in. David Fares.

I think it is important to reflect, to recall that the chairwoman of the FTC in response to ICANN's request that she review this indicated that if this is not violative of the letter, it's violative of the spirit of the contract when you look at this juxtaposed against the rights protection mechanisms, which is exactly what Susan was talking about.

So we have a situation where the spirit of the contract is being violated by extortionist practices of certain registries. And, therefore, we think that there should be a way for us to work with you in the interim to address the issue. We are not asking necessarily for price caps. We are asking for the rights protection mechanisms to apply as they were meant to apply.

FADI CHEHADE: Right, David. My answer to that is, again, ICANN staff will not come up with interim policies. If madam chairwoman of the FTC thinks the spirit of the contract is violated and you are asking me to do something in the interim, I need the GNSO to tell me that. I will not go out of the contract. This is very delicate for us. We stay within what you asked us to do. Here's a contract. We will enforce the contract. You want interim policies, you want long-term policies, you have a process. Go to your GNSO and give us some help and we're ready to help. But we need direction, not made-up policies ---

STEVE CROCKER: Thank you very much. I want to echo very strongly what Fadi's just said, but I also want to enlarge the picture just a little bit.

But before either of those, we feel your pain. No question, we understand. But it is more complicated. I mean, the pain that you're feeling -- and we feel for you -- leads you to say this is wrong, we need to fix it. But there's some underlying assumptions there that you're working from that need to be brought to the surface and are, in fact, not laws of physics so much. They are assumptions that are being made about how you think the market ought to operate and what's fair from your perspective.

And if one steps back and says, Well, I don't know anything about this. What are the first principles involved in how markets are formed and how prices are set and so forth? You get a wide range of possibilities.

And as Fadi has made very clear, we're constrained to follow the policies that are put forth. And unfortunately the policies that have been developed so far have been developed in an environment that the world has never quite seen before. So there is a limit to how much insight all of us together had in structuring these policies. Now we're watching them play out and say, "Oh, my God, this is not what we had in mind" or, "This is bad for us." Whereas, quite obviously the people who are on the other side of this are saying, "Yum, yum, yum, this is working out exactly as we had in mind" and they're extracting rents from the community here.

This bears a great deal more study, not just a sharp reaction saying, This is wrong. We got to fix it. Or get everybody together -- I mean, it is

ICANN | 53
Buenos Aires

fine if you want to get everybody together and have an interim policy. We'll execute that. That's fine.

But from a longer-term perspective, this is exactly the kind of thing that needs to be studied in greater depth and from a broader and more neutral perspective using all of the basic principles of how markets are structured and what the various forces are. And this is exactly the kind of thing that was anticipated in the fourth AoC review of what the impact has been of this first round in looking at consumer choice and trust and competition all bundled into one.

And that -- just to make the tangential point that will be important, in order to do that study may cause us to pause longer than some people would want to get into the second round. So that's sort of a segue into some of this other stuff there.

But these are big, complicated things and they don't have instantaneous answers. If they did, we would have thought about every one of these beforehand. We could rail about we didn't do enough homework collectively or we could just sort of accept that this is where we are and say, okay, we have to really bear down and get greater depth in this. Economics is a dismal science, but it is to a certain extent a science, and we can come at it that way. Thank you.

ELISA COOPER: So I think we're actually at time, but I wanted to see if it was okay to Steve to just briefly share some of his thoughts on the PIC specs.

STEVE DelBIANCO: Two minutes. Time me on this.

This regards the mandatory public interest commitments. We all know about Specification 11 and the kind of actions it requires between the Registry/Registrar Agreements. And then we all know about 3.18 in the RAA, the Registrar Accreditation Agreement. And we invite Allen to pay attention on this because in every congressional hearing that I have testified at in the last month and in every single markup of the bill, even in the report language of the bill that we are jointly supporting in Congress today, it also came up on a panel that Fadi and I did in Washington two weeks ago. And it's in five of the public comments that came in on the CCWG. It is this notion of what does it mean -- Allen, what does it mean to investigate and respond? That's the topic of two blogs you put out last week.

Here's the trick, though. I appreciate the focus on you paying attention to it. But it's the exact opposite process that Fadi just talked about for pricing. In other words, the PIC specs were added long after the contracts went through the community approval process. And now we're turning to staff to -- I don't want to say unilaterally because you are gathering a lot of input, as you said in your post. But it is a big burden on staff and staff alone to come up with what it means to investigate and respond in the context of that RAA.

We're going to have a long line of different abuse incidents and reports that will come in on different registries in different parts of the world invoking different parts of the law in those countries.

And that matrix of complexity only raises the point that we've got to talk about what it means to investigate and respond and not have it be an edict that issues forth from Allen's department. Because, you know that won't make anybody happy. There will be some parts that will be concerned with all elements of it. You talked about get -- community, get me policy. I won't do anything without policy.

Well, we don't have any policy on investigate and respond. And we need probably to develop some. That process needs to be begin sooner or later, or we'll end up figuring out the policy as we go along one compliance complaint at a time. And I'm afraid that that process will bring us back into this room in the months ahead, expressing a lot of frustration.

DAVID FARES: If I could just make one clarification because, I think, Fadi you made some statements that ICANN is not a content cop. We don't want you to be a cop. We want you to meaningfully enforce the contract. We understand there's some definitional issues. But this is about contractual enforcement, which is the mechanism by which the self-regulatory regime and the multistakeholder model of ICANN works.

If that system -- if there is not meaningful enforcement of the contracts, that multistakeholder model of contractual obligations crumbles.

FADI CHEHADE:

This is where you are making a mistake. We're disagreeing on what is enforceable. But don't say we're not enforcing our contracts. We are not Madam FTC Chairwoman of the FTC. We are not a regulator. She can come up with an opinion and make it law and enforce it. I can't. ICANN is a complex model that involves us signing contracts with people and enforcing those contracts.

If matters are beyond the contract, either a law has to come into play where we will enforce it. I don't make laws. I enforce contracts. We are disagreeing on what's enforceable. Our attorneys are giving you opinions. You may not like them. They are giving you opinions on what they will enforce. And that's all we will enforce.

As to your good question, I think, Steve, I think it's very important to appreciate what you said. First to thank the business constituency. I should do that publicly because the work you have done to support the bill emerging from Congress is laudable and the way you did it, Steve, with many of your colleagues is superb. It was collegial. It was professional. And we were able to hopefully in the next few hours here to hear the good news that this will become law. Many thanks to your efforts on that. I think the community may not fully appreciate what happened here. But with time, we will appreciate that this was very helpful to ICANN and to this community. Thank you.

As to your question, I will ask my colleague Allen Grogan to come up and respond very quickly because I think it is very important we are straight with you. You have been straight with us as to your frustrations. And I'm with you on that.

Allen, why don't you address specifically the question Steve asked about responding to these things. And, by the way, Allen, just before you go, on the issue of the PICs, the PICs came to us either voluntary submissions by applicants or through GAC advice. The staff did not make up PICs or make up the PICs. Just to be clear, this was not an area where staff stepped in to make policy.

Allen?

ALLEN GROGAN: So thanks. And thanks, Steve. I think there is a distinction between trying to provide some clarity about how we interpret and enforce contract provisions and making policy, right? I think those are two different things, and we need to kind of keep them separate.

We do have a contract that does impose certain obligations and it uses certain language. And I think it's reasonable for both the business constituency and for the contracted parties to ask for some further clarity about what we think those provisions mean and when it comes to compliance matters, what do we intend to do when complaints are submitted. The contracted parties would like clarity on that, and somewhat various constituencies submit complaints. What I have been trying to do is not overstep the bounds and get into the realm of making policy.

I agree with you. At some point we may need a policy development process to clarify some of this.

But I think short of that, it's possible through discussions and dialogue with the community to get input from the community about what they believe those provisions mean and for ICANN ultimately to provide some guidance about how we intend to interpret "enforcement."

STEVE DelBIANCO: Be clear with us about that process of dialogue with community since it is not one of the processes on the schedule. It is not something with a formal public comment. Is it just informal conversations with you and your team? And if so, I want to get on that schedule so we can weigh in with our concerns.

ALLEN GROGAN: So far it has been largely informal. You know, the contract is a contract between ICANN and the contracted parties, right? So if you ask the contracted parties, they would say in a normal commercial relationship, interpretation of a contract would be a matter of discussion between those two parties.

I think within the context of this multistakeholder model, it's appropriate to expand the scope of that to seek opinions and input from other people within the community. But I also think everybody, including the business constituency, and including the contracted parties, would like to see some further clarity on that short of a multiyear process where we throw this into a PDP. I'm happy to meet with you or with anybody else to talk about 318 and how we intend to enforce it.

ICANN | 53
Buenos Aires

FADI CHEHADE: Allen, could you also explain who you have met with so far just for clarity and transparency.

ALLEN GROGAN: Sure. So I've had a number of meetings with the Registrar Stakeholder Group executive committee to solicit their views. I've had a number of meetings with the IPC. The IPC and some of the people who are members of the IPC are among the people who submit the most complaints regarding copyright issues.

I've also talked to law enforcement. I've talked to people like LegitScript who are involved in trying to police rogue pharmacies.

I have talked to ALAC members. I've talked to all kinds of people. So I am happy to engage in dialogue with anybody who thinks they have constructive input.

ELISA COOPER: Thank you very much. I know we're at time.

STEVE CROCKER: Thank you.

[Applause]

We move off of the -- Thank you. We move rapidly to the interactions with the IPC. On the board side, we have Chris and Mike and Asha,

ICANN | 53
Buenos Aires

Jonne, Erika. And Ram will be joining us shortly. And Ram has joined us. And Ram and Mike, you're in charge of facilitating on the board side.

Good morning, Greg.

GREG SHATAN: Good morning, Steve.

STEVE CROCKER: With that, the meeting's yours.

GREG SHATAN: Thank you, Steve. Thank you, members of the board, for meeting with us. Appreciate this new opportunity to meet in this roundtable. Although, as a trust issue, I note you have instead given us a square table.

More seriously, of course, we have brought up two issues which you see posted which you have been informed of which we would like to discuss with you. And I think both of them relate in some ways to the discussions that you've already heard but at the same time have a somewhat different take on it coming from our community.

As you know, the intellectual property constituency represents the interest of brand owners, of copyright owner, and creators of copyrighted works, distributors, and consumers who depend on both

the Internet and on finding real content coming from the real source under intellectual property.

So the first of our two topics is the second round of new gTLDs titled "reboot or refresh." And in order to kick off this particular topic, I'm going to turn to my colleague Steve Metalitz first followed by Jonathan Zuck and then other members of our team and yours as we dialogue. Thanks.

STEVE METALITZ: Thank you, Greg. I'm Steve Metalitz, vice president of the intellectual property constituency.

I think our major message here is about the -- we know a number of reviews are going on at the staff level and an upcoming Affirmation of Commitments review, all dedicated to looking at the last round and figuring out what comes next.

I think with any institution, with any company, any organization, there's a tendency -- there's inertia in the direction of, Well, let's do it again. Fix the problems that may have arisen but basically do the same things. The second round should the first round only with tweaks.

And when the chairman of the organization in the opening ceremony says, Well, the new gTLD program has been a success, I think that that message is again communicated to the company and to the organization.

We would just urge you to step back a little bit in both at the board level and in the guidance you give to the staff to encourage a broader view. More needs to be on the table. Obviously, as you can hear from the last panel, the view of the new gTLD program is a success is not shared by everyone. And there may be some very fundamental approaches that were taken in the first round that need to be re-examined and changed.

I'll just give one example which is that -- I think it's fair to say that throughout the entire process the approach that ICANN and the staff took was in favor of a one-size-fits-all approach. There was great resistance to any kind of categorization of the different types of applications. There's great resistance to any kind of contractual variance or having any specialized types of contracts. And perhaps that's one example that is right for fundamental reexamination.

At the same time, I think it is important for the organization to harvest the positives that may have come out of this process. And I think on behalf of the IPC, we want to applaud the fact that in the proposed renewal contracts for three of the legacy gTLDs, the parties have negotiated provisions that are taken from the new gTLD program such as the URS, the Uniform Rapid Suspension program, public interest commitments, and the requirements phased in that all of the registries use registrars that have signed up to the 2013 RAA. So we think that's certainly a positive development.

The last two points I would make, before I turn it over to my colleagues, are points we've probably made just about every time that

we've met with this Board. Certainly the issue of contract compliance, which has already been brought up here, is absolutely critical, and I think that's already been ventilated but we'll be talking more about that. And enforcement in the new gTLD realm as well as with the legacy gTLDs.

And then the final point, which again we've made several times to this Board in these fora and we appreciate this opportunity to do so again, is to emphasize the critical impact of the new gTLD program on rights holders, on intellectual property interests, and to insist that we have a seat at the table in the AoC review. This constituency has never had a representative on any AoC review that's taken place so far. And this is one where it would be particularly indefensible to do so. So I just want to close with that. We've brought that up to you in the last two or three times that we've met, but I did want to emphasize it again. And I think I'm turning this over to Jonathan at this point?

JONATHAN ZUCK: Thank you, Steve, and thanks to the Board for sitting down us. We really appreciate it. I'm Jonathan Zuck from ACT and also a member of the IPC. And I guess I just want to build a little bit on what Steve said and also on what Steve said, which is that we need to really make use of these reviews and to get an understanding of what the next round should look like. I think that there is right now a tendency to draw conclusions about the gTLD program on both sides that in both cases are premature. And so we see that. We were in a session yesterday where we went over the results of the Nielsen poll on

ICANN | 53
Buenos Aires

consumer awareness and trust in the DNS and the first stages of an economic study on pricing, et cetera, and what I felt compelled to remind everyone is that those were just to establish a baseline and that the second halves of those studies would both take place a year later and that this review was actually scheduled to start in March of -- the CCT review that Mr. Crocker referred to was scheduled to start in March of next year. And so I guess all I want to confirm is that we all sort of hold off on drawing conclusions about the new gTLD program until these reviews have really had a chance to look at it, until time has had a chance to have its way with the program as well.

So I think fundamentally what we need to commit to is not making irreversible decisions about what the new round will look like until those reviews have completed. And I think -- I think it's that momentum that frightens me the most, that well, let's put together an issue report. Let's start this process review. What are the tweaks that we need? And it is my belief that we really literally know nothing about this first round of TLDs at this point because so many crazy things have happened in terms of pricing, free things, non-renewals, only some of them are even released yet. I think that when we try to find the positives of the program -- and I sincerely hope we will -- we're not going to see them now. That we're going to see them a year from now when we really are digging into the details of what's happened. So my only plea is to make sure that we don't put anything in stone about the new round until those reviews have had a chance to really thoroughly look at -- at -- in retrospect at what has happened in the new gTLD program.

LORI SCHULMAN: I'm Lori Schulman. I am the permanent representative to ICANN from the international trademark association and I'm a member of the IPC. I want to echo something Jonathan said about, you know, we don't know much about this program yet and I echo that. But one thing we do know, and we've heard in the halls and we've seen a few statistics, is that the new gTLDs are not selling as we would have hoped, that this hasn't taken fire the way some people have predicted. And speaking on the end of brand owners who have been asked to invest in these new gTLDs and again, some of the unpredicted outcomes, either suspending applications, stalling applications, whatever word you want to use for some of the applications, and where we predicted we would have great success, we have not had success. And I think it's vital, particularly to the business community, the community that typically would support innovation, that you don't move forward and ask us to continue to invest in a program where these unintended results are happening and our investments are not being -- that we're not getting the return on investment that the community envisioned.

GREG SHATAN: Since this is a dialogue, Chris Disspain.

CHRIS DISSPAIN: Thanks, Greg. May I ask you a question? I pretty much -- I mean, I'm leaving aside the detail which we could argue about, I pretty much agree with the overarching things that you've said. Is it -- are you

ICANN | 53
Buenos Aires

concerned that you think the process is going to run away from you because I'm not clear that we would do anything until it being a full process. So have you got concerns that because of things that are happening, and if you think there are things that are happening that concern you, what are those things that give you the impression that it might be running away from you?

LORI SCHULMAN: It's Lori Schulman. I would answer that there seems to be a need for speed or we feel -- it's the feeling we're getting as a community that there's a need for speed.

That the new gTLDs are not selling as fast as we would like, that we need to get more into the hopper. We want to see what sticks. I mean, I'm being realistic here. You know, I'm talking sensibly, I hope, about some realistic concerns about the success of this program, the income that it generates to ICANN and the rest of the community, and that if we push this and we push investment and we don't get the returns on the next phase of this new gTLD program, we're going to be in bad shape.

STEVE CROCKER: Yeah --

UNKNOWN SPEAKER: We have a queue.

STEVE CROCKER: I'm sorry, but you've made a number of statements as if they were fact but they're -- we don't know who said them, we don't know what the basis for them is and so forth, and it creates the -- an environment in which as if -- and those get reported as that's all -- that's true. Let me just say, I can equally take each of those statements and say no, no, no, no, it's not true, and create an exact opposite impression. There will never be a second round because we'll never finish the studies and so forth. So the question is how do we get an accurate statement about what the facts are?

LORI SCHULMAN: I agree. I mean, we're talking about a sense. Chris asked about a sense of it, and we're not here to say that these are absolute facts. That's certainly not what I intended. But he had asked me specifically, is there a feeling, a feeling that this is running away. And I would argue yes, there's a feeling. Whether it's data-driven, no. And it goes to Jonathan's point, that we don't have the data in yet. In that, Steve, I completely agree with you. But there's two issues going on here. What's data-driven and what's driven by something else. And I agree that we need to separate those -- those intents and feelings out of the process and be very strategic and data-driven.

STEVE CROCKER: So I think what you -- what you -- not just you but I think what everybody wants is a -- a strong sense of what the milestones are going to be along the path to the next round and what is and what isn't going to happen. And the sense that you're conveying that

there's a -- essentially a fear, a particular kind of feeling, that we're going to rush headlong into this and then some motives were ascribed to that. And I can assure you that we're not eager to created a new gTLD -- a second round just to bring more money in. Our lives, frankly, are made worse by the more money we bring in, not better.

So I think it's fair to have some very clear markers along the way and for -- and that's a communications issue, not just a data-driven issue.

GREG SHATAN: I've seen a few people, so Ray, then Paulo, Kiran, and Steve and Ram. Hopefully in that order with not too many objections.

RAY PLZAK: Thank you. Ray Plzak. You can't say that the new gTLD program has been an unmitigated success. You cannot say that the new gTLD program has been an unmitigated failure. What you can say is that it has done some things. You can say it has done some things well and you can say it has done some things miserable. There are -- probably everybody in this room that can reflect back to 2010 or thereabouts and say, "aha, I told you so." So it bodes us well to sit there and think about what it is that we want to do. I think it was either Steve or Jonathan mentioned some good things that were there that should be valuable lessons learned and some things that are also valuable from the fact that we didn't get it right. And if you ever want to sit down and have my laundry list of what was wrong from day one, I'd be glad

to do that. And it's fortunate for you that I don't drink, otherwise it would cost you a lot.

So I think that this is one of those times when calm pursuit is the best way to move forward. And so the conduct of the fourth AoC review that is starting to get off the ground is an important step. The lessons that are learned from other experiences need to be -- make sure that those things are fed into that review, that they become criteria for that review. So the pricing discussions and everything else that's had so forth, we have to make sure that those kinds of things get included. So let's stay away from high level looks at things and somebody's business school model of things. Let's look at the practical aspects of it and what works and what doesn't work. Let's be cognizant of the fact that the people that are going to be consuming new gTLDs are not all from the developed world and that the developing world has got a different set of needs and they are entirely different than those from the developed world. And so from a review perspective, that criteria has got to be cranked into there too. I frankly see a lot more time developed -- devoted to developing the criteria for the review and that the review itself becomes a relatively short period of time because all the sense of planning and efforts you put into figuring out what it is you really want to investigate. Thanks.

GREG SHATAN: Ray, if that were a painting I would put it on my wall and frame it.

PAULO BATIMARCHI: I'm Paulo Batimarchi from IFPI, the music industry association and original coordinator for Latin America. It's really hard to evaluate if this is working or not working or if we are doing good or bad if we are not playing by the rules that we have set previously back in 2013. So I want to raise again -- and I think this is critical for everyone in this room -- the compliance, the contract compliance or the lack of compliance. So answering your question, Fadi, if this domain system is beneficial or if it's -- or not for us, I would say we've been facing the music industry a lot of challenges for many years. Probably we were -- and I am very comfortable to say -- the first industry to migrate from physical to digital and to suffer with all of that and it's a huge risk for us today not being able to enforce all these contracts. And this is not bad. I mean, I don't want to -- to -- to be perceived as a critic or negative criticism on this. I mean, we rely on this group and on ICANN to enforce that for us and with us. We are part of this. We are part of IPC and we are -- we need that, you know. But as Allen recognized a while ago, a few weeks ago, we have much more uniform IP legislation around the world. We have the contracts we need. We have the rules we need. And we know they can be enforced. And that will bring the safety we need to evolve in these -- in this land field.

So I think this is a critical point. I do not see why we cannot take this step forward. I think it's a matter of maturity of this group here, taking this responsibility. And I don't see any disadvantage. We want to make the business online. We want to go digital more and more. Our artists, the stakeholders, everyone wants to be there. But if we don't have this sense of safety and this -- it's much more than a sense. If we

cannot enforce and use it, it's going to be really hard. Otherwise we are, you know, in this Whac-A-Mole game of chasing people around the world, and I'm talking about Latin America specifically now. This is a nightmare here. We have people doing everything with the new gTLDs. And they can do much more. And then we don't have the safety of some legislations in some territories.

So how can we rely on this new environment we are creating. I think this is a huge question, a huge concern for us. I would like to address and reinforce that for this group. Thank you.

FADI CHEHADE: If we can reply, first of all, Paulo, it's the first time I've met you, so welcome. Happy to see new faces here. Always happy to -- welcome to our community and welcome -- appreciate your comments as well.

I think, Paulo, this is the part where we need to be very clear. If someone in your community informs us that some site around the world is not -- or is infringing on rights that you have, do you expect ICANN or the ICANN registrar to unilaterally shut down that site? Because if you do, we can't. Let's just be clear. And that's why when I said in Washington we're not the content police, I'm not -- I'm not the authority that can decide if somebody infringed on your rights. So if someone infringed on your rights in France, for example -- and you say the IP rights are universal, Spain has different rights than neighboring France. They do. Different laws. You know that in Latin America as well. So my ability to step in and suddenly become the IP police of the world, I can't be.

ICANN | 53
Buenos Aires

Now, the good news is thanks, frankly, to the person sitting right there next to you and to many of the good members of your community, we have strengthened the RAA and the RA so that these instruments become usable by us as laws or regulations or rulings to guide us to certain decisions. But we're not going to be able to unilaterally make these calls ourselves today, especially because of the variability in the legal system around the world. Are we at least understanding each other at that level so we can then get okay, what is then enforceable and how can we enforce what is enforceable?

PAULO BATIMARCHI: Absolutely. I mean, what we expect from ICANN and registrars is to enforce the contracts. And by that I mean to provide us what we need to protect our IP rights. So that's not happening. Let me be clear, that's not happening. When -- every time we have a concern about a domain name around the world and we need to verify that information, we have a lack of response or a lack of action in that regard. So that's the main point. I mean, I don't need ICANN -- we don't need ICANN to be the police, and that's -- I mean, ISPs love to say that. You want us to police. No, we don't. But we do need, you know, the right people, the right organizations to take their own responsibility. If ICANN and registrars are offering that domains as a service, they need to provide us some level of security on that, on a limited responsibility basis. But we do need that. So if -- what I'm saying here is, we don't get that back from ICANN.

UNKNOWN SPEAKER: (Off microphone).

GREG SHATAN: To Erika.

ERIKA MANN: I sense -- Erika Mann. I sense that there are two levels of debate we are having here. So one is some frustration about contractual obligations, and maybe you want to be a little bit more precise why you argue that they are not met. I would love to hear concrete examples.

The second one is a broader issue, which I think we should debate and we should discuss. And Fadi and this working -- Steve, this working group, I was wondering, I mean, it's something I worked on many years. I'm wondering if we couldn't approach maybe -- maybe WIPO and just have a check with them and say can't we set up just maybe, you know, a working -- not a working group but a discussion, invite them for discussion, invite, you know, the contracted parties and some regulators. I'm talking now about real regulators so Fadi is not going to be accused of being a regulator. So -- and have a debate about this. I mean, there's so much experience, and we have solved so many issues in the past in the IP world. Some were very hard to solve, I must admit, and we will not solve everything, but at least we would have a debate and we would have more time than we have today.

GREGORY SHATAN: This is clearly a continuing discussion and we're running short on time. I see Fadi but -- and then Kiran.

MIKE SILBER: And also a request from Gonzalo.

GONZALO NAVARRO: Yes. Thank you.

FADI CHEHADE: So I very much appreciate what you said, Paulo. You went one step deeper. I want you to please help us go one step deeper, either today or later, in dialogue.

The step deeper, you said sometimes when you detect that there is an infringement on your rights, you're feeling that our registrars are not responding, so let's break the "responding."

There are two parts to "responding."

Within the contract, you helped us put provisions that forced them to give you information that you need in order to pursue whatever you wish to pursue.

If they're failing to do that and we're not forcing them to do that, then you have a very big case here with me.

But as we've heard from some IP owners, if you're expecting the registrar, without a legal instrument, to actually respond to you that

somebody's infringing on your rights and shut the site, I cannot enforce that and should not enforce that. Then I become a content police or I ask the registrar to become a content police.

So if your issue is -- which you're nodding and I want to confirm -- that our registrars are simply not giving you the information you need so you can pursue your legal appropriate course, that -- I'm not aware of these cases, and if they're there, please let's have an actual dialogue because I want to help you there.

This is my job to help you there, and I agree with you on that point.

GREGORY SHATAN: Thanks. We're eating into the next time but we have Kiran and Gonzalo.

KIRAN MALANCHARUVIL: Yeah. Just -- Kiran Malancharuvil from MarkMonitor. I wanted to make a couple of points on the original topic, which were -- which is about what needs to happen before we can really have a discussion on the second round, and I think there were a couple of really -- really interesting questions around the table that we actually do have some quite concrete information about.

For example, Chris Disspain asked us what makes us feel like the train is getting away from us, and what we heard from the GNSO over the weekend and the subsequent rounds discussion group, of which I'm a part, is that ICANN staff is actually telling us that if we don't do an

issue report right now, that it's going to move on, that the next round is going to move on without our input.

So that's one thing that we hear.

We heard that from the chairs of the new gTLD subsequent rounds discussion group.

So of course now there's a sense of urgency in the GNSO about that issue.

And we've got -- you know, and we've got -- also, you know, we don't -- as Jonathan Zuck said, we don't want anything set in stone at this point, but my concern is sort of on the other -- the flip side of that same issue, is, we don't have enough for it to be firm at all at this point, and in light of things like volunteer burnout and the staff being stretched too thin, I don't want us to get into a situation where we're drafting an issue report and then information comes out and then we have to redraft it and then information comes out and we have to redraft it.

I think that it's not the time to do this at all because it's -- not only is it not set in stone at this point but it's not even really firm enough to create a solid foundation to do any substantive work yet.

And I think a lot of the issues that have been discussed around this table speak to our insecurities about where we fit in as the commercial stakeholder group and the intellectual property constituency in the documents that govern this process.

For example, Paulo's concerns about contractual compliance is something that needs to be worked out before we can move forward in a new round because if we don't have any ability to protect our interests as the new gTLD program steams forward, then that's problematic for the multistakeholder process in general.

And, you know, Mr. Grogan sat at the table in the last -- in the last group's discussion and said that the two parties to the contract are ICANN and the contracted parties, but I think there's a significant misunderstanding about what "ICANN" means.

Seems to me that Mr. Grogan's opinion is that ICANN is ICANN staff, and then he says, "Oh, but we can expand that -- we can expand that definition to account for the multistakeholder process."

It doesn't need to be expanded. It's already in place. We are ICANN. The constituencies and the stakeholder groups are ICANN. We are as much a party to these contracts, when we negotiated them, as the contracted parties are. And so we should address these issues and understand where we fit in before we can move forward on subsequent rounds. Thank you.

FADI CHEHADE: Greg, I'd like to clarify a few things.

GREGORY SHATAN: We can then -- go ahead.

FADI CHEHADE: Any notion that the ICANN staff is going to start a new gTLD phase in the middle of the night is ridiculous. We can barely change the coffee in our machines without having a public comment period, much less start a new gTLD session.

If you're hearing secondhand or thirdhand that ICANN staff is saying anything, please come and ask ICANN staff, "Are you planning to start a new gTLD round without letting us know?" The answer will be --

KIRAN MALANCHARUVIL: They were at the table. They were at the table when they had that conversation.

FADI CHEHADE: So it's ridiculous to even think that we will start anything of this magnitude without your involvement.

Come on, guys. Let's get practical here. The reality is, nothing will happen without all of us being involved.

Secondly, please do not mischaracterize what my good colleague, Allen Grogan, said at this table -- the record is here -- a few minutes ago. He said what you said, but you truncated his statement. He continued saying, "However, we are in a multistakeholder community and I'm engaging with all those other constituencies." So let's not mischaracterize where Grogan is on this. He's very clear and he's been engaging with as many community members as possible, including the IPC community, by the way.

So please.

I think, look, we are very aware of the concerns you have, and I want you to know that putting Allen where we did was precisely to start looking at these things calmly, together with you, and I intend, if -- especially -- I want to go back to what Paulo said because it was very clear and lucid.

If our registrars are not giving you the information you need per the contract and we're not doing anything about it, let's get down to these instances, nail them, and I'll go after my own team and my own compliance to make sure why this is not happening.

I'm not aware, but if they're there, that's the kind of substance that allows me to do my job for you, and I will do it.

GREGORY SHATAN: Gonzalo, you've been very patient.

GONZALO NAVARRO: Thank you. I'm going to be really brief.

What's important also, if we are going to cooperate or we are intending to cooperate, is to have precise information and facts about what's going on.

You said moments ago that this is a disaster that Latin America is going on now. You have legislations. In many jurisdictions, we have free-trade agreements. Chile, Peru, Colombia.

You can enforce the law in that way because the law exists. What is necessary for this community and for this board to understand is precisely what are the facts that you are putting on the table about this disaster, how we can collaborate to solve it, if we can.

PAULO BATIMARCHI: Just to be clear, I mean, we went --

GREGORY SHATAN: Paulo, we're actually taking -- we're 15 minutes into the next time.

PAULO BATIMARCHI: Okay.

GREGORY SHATAN: Mark had a very brief --

GONZALO NAVARRO: We can take it off line, if you want to.

GREGORY SHATAN: As I said, this is a continuing discussion and we're not going to finish it here, so we'll give it to Mark and then we won't get to our second topic, which kind of sucks, but we'll yield the floor to the ISPs. Thank you.

MARC TRACHTENBERG: Actually, Marc Trachtenberg for the IPC. I'm going to address the second original topic just very, very briefly since we're running very short on time.

I won't go into detail into your concerns. I think the IPC in our letter and others, including other ICANN constituencies, other professional legal organizations like INTA, members of Congress, and the media, have pretty much made those concerns very clear.

But I'll go back to something that I think Fadi and Allen said before, which is that there's no mechanism available to ICANN to really address these concerns because ICANN is limited to enforcement of the registry agreement, and I would say that I think there is a mechanism available to ICANN in the registration agreement to address all of these concerns and that mechanism is Specification 11.

Specification 11 requires registry operators to operate the TLD in a transparent manner consistent with general principles of openness and nondiscrimination by establishing, publishing, and adhering to clear registration policies.

And I would argue that the practices of .SUCKS and now other registries that appear to be following suit violate that obligation in the following ways.

One, frequent changing of registration policies and pricing.

Two, discriminatory treatment -- in other words, pricing -- for trademark owners, and specifically those that chose to utilize the RPMs which were agreed to by the community.

And third, an elusory registration policy based purportedly on a subsidized model for consumer registration and a third-party complaints platform where (a) there's no party ready to actually subsidize these domain names for consumers and there's no realistic likelihood that any such party will be found, and (b) there's no third party identified to operate this third-party complaint platform and no details on that.

And so I think these are just three examples where Specification 11 is a tool and a mechanism available to ICANN to address these concerns.

GREGORY SHATAN: I think we do have to end. I see some very anxious ISPs.

STEVE CROCKER: The goal of this format was to take a small number of hot topics and dive deeply into them. I declare a major success.

[Laughter]

But we'll take feedback, nonetheless.

Thank you all.

So last, but not least in the -- in this trio that is packed into the -- our interactions with the constituency -- with the commercial stakeholder group, the ISPs.

TONY HOLMES: Thank you, Steve.

Whilst people are beginning to settle down, because we're running tight on time, I will just give a brief introduction. Firstly, I'd very much like to say that we welcome this experiment, the change in format. We particularly appreciate the fact that it gives us, each of the constituencies in the commercial stakeholder group, the opportunity to present our own issues, and I think some of the discussions that have gone on in the -- in previous sessions with the other two constituencies actually just enhance the diversity that exists.

We're going to bring two other topics to the table. We're going to talk about IANA stewardship and accountability, particularly on the stewardship issues that we feel are appropriate to bring to the board.

And on universal acceptance, I'd also like to say that we actually come not bearing gifts but bearing good news, because when we originally put this on our agenda, we had far more concerns about that particular issue than we have today, and it's a credit to the group that has worked diligently in that area across this meeting.

But we would still like to discuss some of those issues with you.

So with that, to get into the first topic, I very much appreciate I am able to hand over to other members of the constituency who are leading on these particular issues, and turn over to Wolf-Ulrich. Thank you.

WOLF-ULRICH KNOBEN: Good morning.

My name is Wolf-Ulrich Knoben, the -- from this constituency, and I'd like just to introduce that first topic, but to make it clear from the beginning we are not going to comment on the CWG proposal.

We had planned the opportunity to do that during the public comment period, and during this ICANN meeting we will have other chances to do so.

As the discussion is going on and the proposal moves forward, we also fall in line with it and shall continue also to contribute.

Rather, then, we'd like to look ahead how the table is going to be set after the transition and what we can expect from it.

In this context, we would like to emphasize our concern that the board ensure there are no roadblocks to implementation and that the NTIA accepts the proposal in order to ensure a joint approach is realized with the numbers and protocols community together.

The ISPs' business, to a large extent, relies on IANA services customers who are, in part, members of our community for they are customers of these members.

IANA customers in general are satisfied with the present service offered and guaranteed. That has to be spoken out.

And here is a moment to make reference to the IANA staff who is performing this service and who may become worried about what is going to happen to them once the proposal gets to be implemented.

There are people behind that. This is my goal. And this is normal behavior in companies where structural changes is on the agenda, and in addition to potential management changes which come from the CEO transition in the future.

So in the new structure which is proposed by the CWG stewardship, the PTI, the post-transition IANA, as the IANA functions operator shall be an affiliate controlled by ICANN, and we'd like to stress the point that in the contract, the contractual relationship between ICANN and the PTI, there is utmost diligence to be used in order to ensure the operational excellence, performing and continuing operational excellence, for the future. And this is important because continuous operational excellence is crucial with regards to the security, stability, and the resiliency of the system.

So this should be taken also in consideration by ICANN in the discussion about any potential separability requests which may arise.

So to summarize that to a question, following this, the question is then: How would ICANN or the ICANN board define its future role with regards to its responsibility towards the IANA functions in this respect? So that's the first question.

STEVE CROCKER: The concern that you're raising about the people touches on something that is first and foremost on our minds.

ICANN is all about the people that are involved at every level. From the community, but certainly the people who work at ICANN.

It would be automatic and highest priority that we would protect the people, that we would do no harm. The proposal to create the PTI is a legal structural thing that, at least from where I'm sitting, I'm expecting it to have very, very little actual impact on the people and the operation. That it will be a -- it's a maneuver that is aimed at an eventuality that no one actually expects to happen and that will, you know, sort of clarify things, but it's not -- it's not intended to disrupt, even for a minute, the actual operation nor the status and security of any of the people involved.

That's the way I see it. I think Fadi sees it the same way.

So it's not on the table. This is not like we're doing a merger or acquisition. This is a -- this is a kind of small -- at the end of the day, it's a small bureaucratic change that will be handled with papers being filed in various places, maybe some titles changed and so forth, but day-to-day it's the same -- it's the same thing.

I was -- a personal thing: I was at the agency at the U.S. Defense Department which was called ARPA, Advanced Research Projects Agency, where all this network stuff was started, and one day the director of the agency came and had a staff meeting with us all, July 1st, 1972, and said that because of some bureaucratic stuff above, we were being booted out of the Office of the Secretary of Defense, which were part of, and we were being turned into a defense agency.

And the impact was that we had to put a "D" in front of our name and became DARPA, and he got to report on paper directly to the Secretary

of Defense but in practice he reported to the same person that he reported to before and that we now had a $200 million travel budget.

[Laughter]

STEVE CROCKER: He said it was like a 5% difference and he was kind of annoyed about the "D" because he liked the term ARPA instead of DARPA. And we went about our business the same the next day as we had the day before.

So I expect that this is kind of similar, in some respects.

FADI CHEHADE: If I could -- Tony, if I could just answer.

TONY HOLMES: Yes.

FADI CHEHADE: So effectively, what Steve just told you is that the IANA name will be changed to DIANA.

[Laughter]

[Applause]

FADI CHEHADE: I think it's much cuter.

Just quickly to say, first of all, how happy I am that we're sitting at the table with the ISPs for the first time, and Tony had a lot to do with that, and thank you for your encouraging us to meet with you like this. Thank you.

TONY HOLMES: I think our thanks go to you, actually, Fadi, so you're welcome.

FADI CHEHADE: Many thanks for that. Many thanks.

Secondly, I want to emphasize what you said to -- to all of us and to people in the room.

You spoke about security and stability through this transition as being key. You as ISPs understand security and stability and maintaining steady operations. We want the least amount of interruption to what's going on, so I thank you for that because in designing the transition, we should be very cognizant that one of Mr. Strickling's key criteria is security and stability, and if we start upsetting that, we will get tough questions in Congress about our proposal meeting the criteria.

And security and stability comes at different levels.

In terms of your specific concern that IANA will -- there will be enough of an upheaval within PTI and so on that IANA will be unsettled, I think the way most of the people speaking about the PTI now makes it very

much a really silent, internal legal structural change, but from a practical operational standpoint, everything will be largely the same.

The reality is, it worked for many years, it will continue to work for many years, and we intend to keep this very much aligned.

So I'm -- I want to give you that assurance that I'm not seeing anything in the proposal that upsets that operational steadiness of the IANA function.

MALCOLM HUTTY: Thank you, Tony.

I've been asked to address some points that we'd like to raise on the transition and accountability issue, and I've been asked to start by reading a short prepared statement.

The ISP constituency believes the IANA transition and the accountability improvement process are inextricably linked. The IANA transition can only be supported if it moves together with essential improvements in ICANN accountability.

For ISPs, our core requirements are these:

We need to be satisfied that any transition will meet our expectations for operational stability, resilience, and security in the IANA functions.

We need to be satisfied that post-transition ICANN will remain fully committed to the multistakeholder model and that this will endure through the challenges the future brings.

And we need to be satisfied that ICANN will never use its duly constituted authority over certain unique Internet identifiers as a lever to expand its role so as to attempt to regulate or govern the businesses and individuals that use the Internet for purposes unconnected with -- I'm sorry, my screen just went blank -- for purposes unconnected with ICANN's properly authorized role.

Given the natural propensity of all organizations to seek to expand their role at the time, this last guarantee needs to be underpinned through the implementation of effective and enforceable accountability mechanisms that will hold a future ICANN to its current commitments.

Accountability without enforceability is no accountability at all.

We would therefore like to convey to the board the importance we attach to these requirements, to thank the board for its previous commitment to accept the outcome of the CCWG accountability recommendations, and to urge the board to instruct its lawyers to approach the implementation of these proposals in a manner that fully discharges this commitment in the utmost good faith.

That concludes the prepared statement.

If I may add a little gloss on the last point.

The -- as we move into implementation, it will clearly be a difficult time and it will clearly -- a delicate time, and it will be quite a lawyer-intensive time, and we would like to identify the importance of the board's ensuring that it has got full oversight of the way that that is

handled so that no gap opens up between the commitment that the board has made to accept the CCWG's proposals and the way that that is addressed at the coalface.

In the last couple of days, for example, there has been a letter from ICANN's lawyers to the CCWG that wasn't -- there was -- wasn't received as being entirely helpful in all respects in the way that it was proposed.

So many of -- there were, I think, something like 158 questions in that letter from --

UNKNOWN SPEAKER: (Off microphone.)

MALCOLM HUTTY: Yeah. Many, many questions. Some of those questions hinted at or suggested concerns that weren't identified, leaving it -- leaving an impression in many people's minds that this was -- this letter was actually resisting the direction that the CCWG was taking.

Some of the questions suggested concerns that, frankly, looked -- well, were described by some of our colleagues, not just in the ISP constituency but also in the rest of this commercial stakeholder group, as simply vexatious.

Now, I don't want to make too big a thing about one letter, but it highlights an issue.

We took enormous comfort from the commitment that the board made back in, I think it was Los Angeles, to -- a strong statement of commitment to accept our -- to accept the CCWG's recommendations.

Reading a letter like that, many people feel that that chips away at some of the optimism and confidence and goodwill that exists when it appears to be a gap between the general statement of willingness to work and then something that looks like it is resisting what's coming.

Now, as I said, I don't want to make too big of an issue of one thing. But it identifies an area where we would like the board to pay careful attention as we move forward in that oversight. We are not board representatives, and we understand that you have a small subcommittee or a caucus of the board that is looking principally at that.

You may wish to review the level of attention you are giving to that area. You may wish to review how you are briefing and instructing the team that are working on your behalf for implementation and in particular lawyers but also staff.

We essentially feel that it is not right for us to sit here and wait for a problem to develop and then come to you and say, We have a major problem. We have a complaint. Things have gone wrong.

But instead where we can see a delicacy that needs to be carefully handled, to highlight it to you and the salience that we put it on it as we move into this very delicate time so as to encourage you to give the

ICANN | 53
Buenos Aires

fullest attention to that. So that what might look like a developing problem doesn't become one.

MIKE SILBER: There were too many suggestions in that statement where I couldn't quite work out who the "we" were and who the "you" were and who the "us" were. And I was getting a little bit confused.

Let me give you my personal view, and that is we are going through essentially an ICANN restructuring, as has been done before. And that's ultimately what the CCWG work has come to be, a restructuring of ICANN. Previously when we relooked at the ICANN structure, we did it in a very calm, slow, and deliberate phase.

But because of the exigencies of the current circumstance, we are doing it at a rapid pace. And the board is very concerned that the rapidity of the pace is leading to certain elements that are not necessarily critical now being (indiscernible) in the interest of speed rather than full consequences. And that's why questions were asked as to has this been fully thought through. Not because we have our own blueprint or master plan. Because it seems to us that people were going in directions that weren't necessarily fully thought through, all the consequences had been thought through. Or if they had been, they just weren't particularly well-documented or explained in what had been released.

That's why we went through that process, and I think being told now that we're not dealing with this with appropriate delicacy is very

ICANN | 53
Buenos Aires

difficult for us because to some extent our hands have been tied. We've tried to participate. We've tried to engage. We've tried to do as much as possible without stepping into the fray for fear of being accused that we're then trying to actually wring the game and run the process and stew the whole process in our favor. And that's not the intention at all.

So I hear what you're saying. But I'm not quite sure how it could have been done better or differently. I thought this was done with absolute deference to the people in the process.

TONY HOLMES: Chris.

CHRIS DISSPAIN: Thank you, Tony. Mike has said a few things I was going to say, but I have got another couple of points to make.

First of all, just again for the purposes of correcting the record, it's not correct that you received a letter from our lawyers. You received some questions from the board. As I've said repeatedly, the process was that in our public comments we said, we think that the CCWG should conduct an impact analysis and we will be sending you some questions that we think are relevant to an impact analysis, which is what we did.

We are not saying, never have said, "You must answer these questions." We are not saying "Until you answer these questions,

nothing will happen." What we are saying is we think you should do -- you, we, us, all of us -- should do an impact analysis and that these are some of the questions that we think would form a part of an impact analysis. We've offered to work closely with the CCWG to provide the CCWG with support, both legal and otherwise, to help with that impact analysis and to ensure that what does need to be questioned and answered is dealt with in a timely manner because we all recognize -- and we've spent most of the last three days discussing what is, in effect, a time frame to make this work. That time frame, whilst it's not completely set in stone, it is in effect what we need to do.

So we are all very conscious of it. I appreciate that in an ideal world it would have been -- if we could have had the impact analysis questions ready to go into the same time as public comment, then that would have been great.

But I really do encourage you to accept that, first of all, we don't -- we're not being -- the board is not being ruled by its staff and by its lawyers. Secondly, that what you got came from us. And, thirdly, it was intended -- still is intended to be helpful input into coming to a consensus-based conclusion about what the best way forward is. Thanks.

TONY HOLMES: Thank you, Chris.

I'm not going to dwell on that. But I do think a better understanding of what was urgent in that list and the focus of them would have probably taken away some of the tension from that particular --

CHRIS DISSPAIN: I suppose the point is that's the matter for the CCWG to work out with us, whether there is anything in there that is urgent and important in conducting the impact analysis.

Fadi, is that right? Do you think? Yeah.

FADI CHEHADE: Spot on, that this was intended to start a conversation.

So let me be blunt a little bit because I've been affording to do that lately. If we continue to work together and waste time on questioning each other's good faith, we're not going to get through this transition.

If we use the time we've used in the last 48 hours as to what could have been the intention of the board of sending these questions to actually discuss the 88 questions, we would have by now put them in nice little buckets, what is important, what is not important, what does that mean, what do we do about that. Let's move to the substance, folks.

There is no bad faith. We're all trying to do this. And I want to emphasize the board's commitment to be fully engaged in supporting the community to make us more accountable. It has not changed. It's there. We need it. We are all believers in this.

If we do not make ICANN more accountable, we are not going to move forward with a healthy transition. We are with you. Let's get to work. Let's get to the substance. Let's take these 88 questions. Let's spend overnight all of us cleaning them up, figuring out what is important, answering it. That would be progress, not questioning the good faith of any party here. We are sincerely trying to work this out.

TONY HOLMES: Cherine.

CHERINE CHALABY: Can I just add to my colleagues? I am a member of the board. These questions is a collective effort by board members -- and I witnessed this happening. And, in fact, you should be happy that we've done that because we are an integral part of the community. And rather than wait until Dublin or some other time at the last minute, we just put for you some things for your consideration as you finalize your proposal.

And, in fact, I've repeated some of those, for example, regarding the budget proposal at one of the CCWG meetings and expressed them in such a way which I believe were welcomed as an input rather than a challenge. So please take it as a constructive input rather than a fierce criticism. Thank you.

TONY HOLMES: Thank you. I believe we should move on to our second topic since we're pressed for time.

Mark, if I hand over to you. Thank you.

MARK McFADDEN: I'm Mark McFadden, from InterConnect Communications. Before I say something I am supposed to say, I wanted to say something about what Fadi brought up. And that is, as Fadi and David Olive and his team start to work on, I'm sure, the very thorny policy issues related to changing the coffee in your coffeemakers, I want you to know that the ISP constituency is a full partner with you in that work. Especially the bits.

[Laughter]

It was worth a try anyway.

So I'm here to talk to you just very briefly about universal acceptance. It is not something I need to define. Something that's well understood around the table. No need to waste your time with that.

The ISP community, I think, was maybe a month ago, month and a half ago, sort of looking at the work that was being done and sensing that the pace that was going on was a little slow and was worried about that.

There was a workshop on Sunday that you may know about, and that workshop has proved to us that the pace -- the pace is good, the organization of the work is good, and that we fully support it, in fact,

ICANN | 53
Buenos Aires

so people here at the table are two people who were actually actively engaged in it.

So one of the things we think is excellent about it is that it is a community-based effort. It is not something where ICANN is actually making people do something. This is something that has come truly based on the bottom-up model that we all treasure.

I think that's great. And one of the things that the ISP community and the constituency genuinely really appreciate is the support of ICANN because ICANN has said, we're willing to -- we think this is an important effort for the entire community, and we're willing to put resources to it.

But here's the question: While I want to focus on the positive -- and on behalf of the constituency, we feel very positively about it. One of the things that we've heard from everyone who works on this -- And I sat next to Ram very carefully here. I chose my chair wisely. One of the things about this is that everyone that works in that group knows that is not a six-month effort. That's not a one-year effort. This is something that's going to take a lot of time. And we know -- we know that things change. We know that CEOs change. We know that -- oh, he's gone -- board members change.

[Laughter]

They become invisible. We know that community priorities change. Our stakeholders' interests change. And, yet, here we have a community-based effort that needs to go on for a long time and, to be

honest, needs the support of the ICANN. We appreciate that support. We need that support. But we need it over a longer time. This is not a 12-month effort.

The question is: In a changing environment where leadership changes, right, where interests of the community change, and so forth, how do we ensure -- what things do we put in place to make sure that we can support projects that have great community value and the community genuinely thinks have real value but do it over a longer period of time?

And before you answer me, Fadi -- and I'm glad you are interested in having me an answer -- the second part is we throw around the word "accountability" so often. We just use that word -- I won't say too often because it is very, very important to us as a community.

But one of the things about a community-based organization that's going to do such important work -- and I'm thrilled to be joining Ram and Christian in that work -- is how do we hold that community-based organization accountable to its own goals, its own stakeholders, its own time lines? There is an accountability aspect to it as well.

So what we want to do, first of all, is salute in a very positive way the fact that the community had come together and did this and thank ICANN for actually supporting us.

But what we want to talk about, and have a conversation with the board and with you, is how do we -- how do we make sure we support projects that are important to the community over a long time?

Maybe over ten years, right? And even with great board members coming and going, right, how do we make sure that it has continued support from ICANN?

TONY HOLMES: Ray.

RAY PLZAK: Fading in and out and having known Mark for way too many years, I would say that when you look at universal acceptance, take a look at the adoption of IPv6. So how much time has it taken for IPv6 to be universally accepted?

STEVE CROCKER: We don't know yet.

RAY PLZAK: That's exactly right. And IPv6 has been out there and allocated by the I.P. registries for almost 20 years.

So, it's the same problem.

TONY HOLMES: And I think that's exactly why we're concerned about the issue. Ram.

RAM MOHAN: Mark, thank you for the comments. I'm Ram Mohan. I'm on the board. I'm involved quite a bit with the universal acceptance topic.

The issue you bring up is relevant, and I might point you to perhaps two work examples in the ICANN community where we have engaged on issues that have a long lead time and take a long amount -- a large amount of time to actually get to resolution. The first being IDNs and the work on Internationalized Domain Names, and the second being DNSSEC. Both of these are efforts that the community came together and said they were important, and ICANN, the Board as well as the staff, ensured that there was attention, resources committed to that. So I would say that there's good precedent here.

Now, in terms of specifics, I wanted to share with you that the topic of universal acceptance and the oversight, if you will, of universal acceptance and the efforts that ICANN is making is now formally on the agenda and on the workstream of the Board Risk Committee. That is something that the Board Risk Committee, as well as the IDN working group, both of these are Board committees and they're looking at that. Those committees go beyond the -- the scope of an individual Board member or of a specific staff member coming in and out. So there is not only an acknowledgment that this issue will take a significant amount of time, but there's also some direct action from the Board to ensure that there is oversight. And that oversight, I believe, should help send a signal to staff that focus has to continue on it.

Fadi, I didn't know if you wanted to follow on.

FADI CHEHADE: Just to second what you said. I think the answer to Mark's question lies in his own statement. I think if we can tie ICANN staff getting coffee with being supportive of universal acceptance, we can win. That's a very sure thing. You know, they need their drug.

Look, we have 433 projects at ICANN. There's a lot going on. What you're saying is this is important. You seem to be committed. Stay committed. How do I make sure you stay committed? The answer to your question is partly what Ram said which is make sure you have one or two Board members who are vested in the success of this initiative, because that keeps us all -- keeps the -- and stay in touch with them. You know, this is not quite lobbying but it's important a couple of Board members adopt this cause and keep us in check on it. And then make sure the senior global leader at ICANN who owns this area, in this case my colleague Akram Atallah, the president of GDD, is also reporting to you regularly at this forum on what we're doing with that. So I know many of you are already volunteering your time, but since he's the staff leader looking after universal acceptance, maybe make it part of your one-minute update at the beginning of any time the ISPs talk to us, hey, how is that going? So use your -- and finally, the budget. So, you know, this is a yearly process. Make sure you quiz us. What is in there? How much are you supporting this? Can you put just even a little bit of an item to produce knowledge and information and to support the great committee that many of you here are leading. And we thank you for that. I hope this is helpful a little bit. But tying it to coffee might do the trick.

STEVE CROCKER: Speaking of coffee, we're 20 minutes -- 18, 19 minutes over. And so we're holding up lunch for everybody and other meetings that are going to run. So I think we need to bring this to a close now. You're the third in a sequence of this particular experiment and so you -- I don't know how the time is actually allocated, but I appreciate your patience and commitment to this. Thank you all. We have a lot of material here which we'll chew on and looking for feedback and further interaction on these things. So thank you all, and we will return to this room after lunch and continue meeting with constituencies. And I, for one, am -- feel very well-served with the intensity and focus of these meetings. Thank you.

TONY HOLMES: Thank you.

[Applause]

[END OF TRANSCRIPTION]