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HYDERABAD – Joint Meeting: ICANN Board & Non-Commercial Stakeholders Group  
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STEVE CROCKER: Welcome, everybody. Joint meeting, ICANN board and the noncommercial stakeholder group.

We have your rapt attention and why don't you start it up. This is really your meeting. We want to listen and engage on your topics.

TAPANI TRAVAINEN: Thank you, Steve. We really don't have much time so let's get going. Can we have the --

Okay. The questions are on the screen.

So the first question was: Does ICANN still support Fadi Chehade's statement in 2015 that ICANN does not police content? And that general same question for the private party agreements like the Donuts case, actually, is a case in point (indiscernible).

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*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*

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STEVE CROCKER: The -- on the first one, is somebody going to speak at length on that? I can speak very briefly. It's always been our case, from the inception. It's now baked in deeply into the mission statement. We don't police content. That's not our job.

Yeah. Becky?

BECKY BURR: Just to reinforce that, I think strong support for the concept that ICANN does not have any authority or remit with respect to content regulation.

On the question of the, you know, sort of the Donuts agreement with MPAA, the -- you know, ICANN doesn't have the authority to prevent private agreements. It would not be appropriate for ICANN to be sponsoring those kinds of dispute resolution mechanisms, but registries and registrars could enter into whatever kinds of agreements with third parties that they want, and I -- I just think it's not ICANN's business to prohibit that.

Of course they can't enter into agreements that conflict with the ICANN consensus policies and stuff like that.

TAPANI TRAVAINEN: Thank you. Kathy Kleiman, you would like to comment?

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KATHRYN KLEIMAN: Hi. This is Kathy Kleiman, longtime noncommercial users constituency, noncommercial stakeholder group.

And we're here, Mitch Stoltz and I -- Mitch Stoltz is a senior staff attorney with the Electronic Frontier Foundation who has been following ICANN for many years, and this is his first meeting, and we do want to talk to you about what's -- a little bit about what's going on with content regulation, including the Donuts/MPAA agreement, but there's more. And we do want to support not just what Fadi said but what Dr. Crocker said in his letter back to Greg Shatan that ICANN -- "This does not mean" -- I'm just quoting the letter -- "This does not mean that ICANN is required or qualified to make factual and legal determinations as to whether a registered name holder" -- it just flipped up -- "or Web site operator is violating applicable laws and governmental regulations."

And that -- we agree. ICANN shouldn't be doing content. But we need to let you know what's going on. And some of it is private agreements under -- through the registries and some of it is actually happening under ICANN auspices right now.

So let me introduce Mitch Stoltz, who specializes in copyright and public interest issues.

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MITCH STOLTZ:

This is Mitch Stoltz from the Electronic Frontier Foundation. Thank you, Kathy, and thank you, Dr. Crocker and the rest of the board.

EFF, like ICANN, is a guardian of the open Internet and its promise of individual rights and individual empowerment. I think everyone here in the room would agree that the Internet is the greatest engine of free expression ever built, and we here, all of us, have a heavy responsibility to guard its openness and its character as a platform for free expression.

EFF has not been a regular participant in ICANN in recent years, but I've come out to Hyderabad because the issue of regulation of content through the DNS system and through ICANN institutions and through contracted parties is -- you know, is of great concern and I think should be of great concern to all of us here.

The new bylaws contain a very strong statement, and I'm heartened and encouraged, you know, to hear it reiterated here and repeated, that there is and should be a bright line between the management of names, management of unique identifiers, on one hand, and the regulation of Internet services and their content on the other.

And that's -- you know, it's froth, right? Because none of us would say that we're opposed to the notion of copyright or to

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the notion of enforcing consumer protection laws, but on the other hand, I think many, if not most, of us would agree that ICANN is not the body to do it. Even more broadly, I think, the domain name system is not the means to do it. So although there's that wonderful strong statement in the bylaws, there are a number of qualifications and loopholes that, you know, I think, you know, are -- could lead ICANN back in that direction. And there are also efforts, not entirely under ICANN auspices but, you know, some of them are, you know, I believe going on, you know, you know, here in Hyderabad and -- and sort of under ICANN's umbrella, in a sense, to bring in content regulation through the back door, as it were.

There was a proposal -- and this is -- this was quite public -- earlier this year from the Healthy Domains Initiative in which they said that they would -- that they would propose a UDRP process for Web site content.

That's deeply concerning to us, and I believe it probably is for many others here.

So again, I'm heartened to hear this continuing commitment but I think -- hope that we stay vigilant on that point and I hope that the -- that bright line between names and content is maintained because I think if it once gets past it, there is -- there may be no other bright line if we allow in copyright enforcement, if we

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allow in enforcement of professional or business licensing as a criterion for owning a domain name. It's going to be very hard to hold that line. I think the line has to be at content.

So glad to hear that the board is still committed to that principle and we're here to help.

STEVE CROCKER: Chris?

CHRIS DISSPAIN: Thank you very much for a really clear, you know, statement. That's great.

I have a question. I get that -- I get that we should draw the line at content, but what -- what about .LAW only for lawyers? Does that concern you? Is that -- is that the -- does that give you the same issues because it's limit- -- because the use of the -- of the TLD is limited and therefore effectively it's only for lawyers?

Is that a similar concern or are you -- do you treat that as a different thing?

MITCH STOLTZ: I think there are some concerns there, but I think with regard to those policies for the individual new TLDs, the devil's in the details and I have heard of policies that -- that kind of cross the

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line into content regulation. I think it depends a lot on simply, you know, how much demand there is for the use of a particular new TLD, who might use it, how broadly is the term.

I've heard similar things with relation to .DOCTOR, because there are many professionals with the title of "doctor" and there are many different regimes under which they're licensed or not licensed. So, you know, in a sense, that implicates more -- more -- more -- more speech issues.

.LAW, I don't know, it probably depends on the terms under which that -- that domain is actually -- is actually registered and, most importantly -- and this is, I think, the number one question in any free expression issue -- who decides.

KATHRYN KLEIMAN:

But mostly -- this is Kathy Kleiman, for the record -- we're here today under the auspices of the NCSG to talk about the taking down of an entire name based on the accusation of copyright infringement. That's the main reason that brought us here. And we're not talking about a targeted takedown such as under the Digital Millennium Copyright Act, the United States law, where you take down a link or you take down a video.

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Taking down an entire domain name with multiple Web pages, multiple authors, presumably, listservs, email, that's enormous. That's yanking the tree out by the roots.

And we're seeing proposals in many places, and I just want to refer -- and I know our time is winding up, but EFF is writing that shadow regulation. I think that's what we're seeing. And we'll be here and we'll be providing more details about what we're seeing as shadow regulation that's happening, again, as Mitch said, under the ICANN umbrella and we wanted to let you -- to notify you of it so that we can work together. Thanks.

STEVE CROCKER: I have a little bit of a queue, David and Bruce, but --

UNKNOWN SPEAKER: (Off microphone.)

STEVE CROCKER: Sorry?

UNKNOWN SPEAKER: (Off microphone.)

STEVE CROCKER: Oh, Milton. Sorry. Okay.



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The -- I'm a little bit unclear about the -- what the goal is in this session, in that there's a limit as to how far we can plumb and certainly a limit as to how far the board, acting as the board, should plumb as opposed to community processes and legal processes.

Let me just move on to David.

DAVID CAKE:

So -- and it's sort of a partial answer to Chris' question. I mean, I'm personally not overly concerned about .LAWYER for -- but, you know, when you get into .DOCTOR for doctors, it starts to rein sort of free expression issues, so that we don't -- that we apply it -- try to apply it to domains that certainly aren't applied elsewhere. Chris will be familiar with the Australian plumbing franchise Tap Doctor, which, for example, is not a -- you know, is perfectly allowed to go about its business but wouldn't be in the domain space.

But the issue here where I think that issue -- that question overlaps with the content regulation is the same ICANN mechanism, which is the public interest commitments are going to be the -- the primary thing we are concerned about.

Public interest commitments, by their nature, what goes into them is not consensus policy, so if it's not consensus policy, in a

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public interest commitment, why is ICANN enforcing it and this is the bit where ICANN can find itself enforcing something -- you know, content regulation or something that is not ICANN consensus policy and I think we're starting to see that, you know, loophole being sort of widened and I think that deserves some further discussion, you know, somehow within the ICANN policy process. I'm not quite sure how, but...

STEVE CROCKER:

And just for clarification, at least for my benefit, when we talk about a public interest commitment, that in my mind is on a particular TLD as opposed to something imposed across all TLDs.

DAVID CAKE:

It's -- so the public interest commitments are on a per-TLD basis, but many of the larger registry groups like Donuts more or less apply a blanket set of public interest commitments that goes across a very wide group of domains, and I think the Donuts one in particular has some, you know, stipulations about trademark -- trademarks that have essentially already been rejected by ICANN consensus policy, for example, and cover a very wide range of registries.

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STEVE CROCKER: Thank you. Bruce?

BRUCE TONKIN: Thanks, Steve.

I think we need to be careful of the different roles and different agreements involved here. So ICANN has an agreement with registries and registrars, and that agreement has contractual terms. It also has the term that they need to adhere to new consensus policy. So that's -- the ICANN part of it is purely what's in that agreement and purely what's in our consensus policies.

But it's important to realize that private companies that provide domain name services often provide many other services as well, and they are actually subject to content regulation. Not by ICANN but by the, you know, national laws within the countries that they operate. And commonly, you'll see, if you read the terms and conditions of registries and registrars, they'll generally have terms and conditions around, you know, not misusing domain names. And part of the reason for that is that many of the companies actually host content, so it's nothing to do with their registrar role but a large number of the registrars actually host content, provide email services, provide Web site services and a range of other services as well, so they have to adhere to the law and obey those laws.

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And most registries/registrars have abuse or complaints contacts that the public can use, and, you know, some of the reasons that companies enter into agreements with external agencies that do some of the vetting is just to make their complaint process more efficient, but ultimately, it's the registrar or the registry, the company that provides that function, still ultimately makes the decision, and they make that decision based on the laws that they're required to comply with.

So I think we've just got to be careful. We're talking about a much bigger ecosystem here. It's not just an ICANN registrar system. The companies that provide these services provide many services beyond domain names and are subject to many more laws than purely the regulations or purely the registry agreements and registrar agreements.

MITCH STOLTZ:

Mitch Stoltz, for the record.

Kathy mentioned shadow regulation. Shadow regulation to us is the regulation of content or really any aspect of the Internet but primarily content through private agreements and unaccountable means that were not developed through the bottom-up process or through a democratic process. One of the -- what we're concerned about here is shadow regulation under ICANN's auspices, and that's something I believe is going on.

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You mentioned -- you mentioned terms and conditions. Any business essentially can -- can set the terms under which it does business and choose its customers, you know, and so on. But those terms and conditions exist for the protection of the registries and registrars, not for the benefit of third parties.

If anyone in the world -- and, you know, because we are all copyright owners, we are all potentially trademark owners and we're all in some sense beneficiaries of various regulatory policies about consumer protection and other regulations on speech, if any one of us can claim the benefit of a registrar or registry's terms of service, then it's not a commercial contract, it's a law. That's -- that's the difference. So I think we as a community, ICANN as a community, should -- can -- you know, can and must tolerate individual companies setting the terms under which they do business but should absolutely not tolerate those terms becoming global policies for the benefit of -- of any rights holder or aggrieved party who -- who steps in. And -- and also, it's really important that those -- that there -- that customers, domain registrants and other Internet users, have choice, that there are different registries and registrars offering different -- service under different terms, and if those -- those terms are being dictated from the top down or being made uniform through collusive agreements outside of ICANN, then that choice goes away.

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KATHRYN KLEIMAN: And just to follow up, we're seeing -- you haven't heard us here complaining about registrars working -- who are also Web hosts working under national law. What we're looking at here is something new and that's why we're here to share it with you. It's something new that goes beyond the limits or the balances of national law and creates a new law that is without the traditional limits or protections for the use of materials, for fair use, free expression, and we will -- we will be in touch with you more on these issues. I do know we need to move on to others. Thank you for the discussion. We very much appreciate it.

STEVE CROCKER: We've run the course on this?

TAPANI TRAVAINEN: Yeah. I think we should move to the next question and at this point, Kathy, would you like to introduce the next issue? The WHOIS?

Kathy, please take over.

KATHRYN KLEIMAN: I think Desiree.

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TAPANI TRAVAINEN: Okay. We have Desiree Miloshevic. Maybe you want to take the first one? Introduce the WHOIS question?

DESIREE MILOSHEVIC: Yes. Thank you.

Maybe I should just say for the record that people associate with me with other organizations and I have found this channel as most appropriate to bring this issue to the board's attention, and also just to find out how much you will receive this.

I don't know if any of the board member has ever updated their WHOIS data, if they could raise their hands?

UNKNOWN SPEAKER: (Off microphone.)

[ Laughter ]

DESIREE MILOSHEVIC: So I think the issue that I'd like to bring to your attention is some of the practices that are being carried in the ecosystem between registrars and registrants and the ICANN compliance WHOIS emails that many registrants are receiving.

I have been also, you know, privately -- I have an experience of having gone recently through one of the WHOIS updates for the

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domain name `stallman.org`, for which I'm an administrator. Just because of one typo, I could have lost this domain name because the type of emails that the registrar sent, which is the weakest link I think in the system, a very -- I wouldn't say warning. They don't give you enough warning. They're very kind and naive. So you could be receiving a lot of emails about your domain name although you might have lost it.

But there are many other, I would say, horror stories about whole -- a lot of registrants losing their domain names because of the failure to update their WHOIS record. It doesn't have to be a typo, like it was in my case, London, instead of L-o-d-n-o-n, which was misspelled, but there are people and -- who are dealing with this and requesting for many controversial Web sites to be taken down such as `AAAAA.org`, which has been lost and it's now been recovered under five As dot fail. IRG dot fail.

So I think the real issue, I think what's going on here, is that the person requesting the WHOIS update is not taking any risk. They're hiding behind the ICANN compliance and they're anonymous.

So it would be good for the registrant of a domain name, A, to know who is the entity requesting the WHOIS update because it could be a private organization. It could be my neighbor. It could be an LEA. It could be a very genuine request. And I think



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this is one of the issues that I would like us to change in the ecosystem so the registrants will get the identity of the one who is requesting the WHOIS update. I think this is very important for, as I said, those so-called controversial websites that may raise some public debate, whether it's an artist project, whether it looks like it is a copyright content that has been held on that website.

But we have had so many of these repeated WHOIS compliance anonymous updates where domain name registrants have lost many of their websites.

KATHRYN KLEIMAN:

And I just wanted to follow up briefly -- this is Kathy Kleiman -- this is also being used against small businesses and entrepreneurs. And you'll forgive me, I'm going to quote John Berryhill, so the exclusive language is John's. But this is a 2015 CircleID article titled, "ICANN compliance lends a hand to a violent criminal while trashing a legitimate business." And what we had was two small businesses fighting over a .PHOTO domain name. One filed a cease and desist letter on the trademarks, and the other came back with the WHOIS dispute -- with the WHOIS complaint.

And the domain name because of a series of missed emails -- and, in fact, the contact information had been updated and the

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notice was being sent to the older contact information -- it was almost impossible. I mean, it took John Berryhill to figure out what was going on because there were no direct answers. No other small business and virtually no other lawyer probably could have figured it out.

But let me read to you. He said, "ICANN" -- and, again, the anonymity of the complaint -- and let me just preface and also add in the proxy/privacy accreditation. We said that those who file looking for the private information have to tell us who they are, their name, their authorization for seeking it, under penalty of perjury why the allegation that they're making about why they need the information, for trademark or copyright investigation.

So in proxy/privacy, we said if you file a complaint, you have to tell us who you are and we will probably share that with the person.

So here John was dealing with a situation which was businesses harassing -- a business being harassed and he said, "ICANN will shield the identity of people who make false and abusive WDRP reports "-- and, again, this is John -- "because ICANN compliance prefers to protect people actively engaged in fraudulent and abusive submission of false WDRP reports for illegal purposes." Again, that's John's rhetoric.

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But why are we doing this? And why can't we find out easily who is filing a complaint particularly if it's for harassing or abusive or anticompetitive purposes? Thanks.

CHRIS DISSPAIN:

Can I --I'm sure we're going to get to answer the question in a second. But would you mind if I just -- just to clarify for me or maybe my brain is not working this morning.

Desiree, I think I've understood -- your example was just a -- is not actually key to the question because I thought what you were talking about was there was an error in my update and that led to a problem. But that's not to do with abusive complaints.

I'm a little bit confused about -- is that what alerted you to the problem in the first place? I can't make the connection between the way you started and where we finished. I guess that's my point.

DESIREE MILOSHEVIC:

Thank you, Chris. I think there are two issues. One is that you rightly said so. One is there is not enough care taken for the registrant to be told how to update the WHOIS records which may lead to losing a domain name. I said I never got a call from my registrar ever. If I'm going to lose a domain name, you would send an email. And, yet, you requested my number in the WHOIS

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database. However, those people that are anonymous and asking me to update my records want to double-check whether the phone number is correct and would ring me up and put a phone down to see whether the number I have updated or the spelling, for example, is the same.

So that's why I combined the two, the anonymity of the request and the -- so much a naive typo versus controversial websites and really a practice that has taken -- that's been taking place within the ecosystem.

BRUCE TONKIN:

I think one of the questions that you're asking really is how does the compliance office deal with anonymous reporters, particularly that seem to be repetitive and coming from the same source against the same content.

So I think if we got maybe Allen Grogan -- who have we got? Do we have someone from ICANN compliance? Allen, if you could just address how you deal with a situation with WHOIS complaints, particularly from anonymous people and what you might do to filter out what looks like abusive complaints?

ALLEN GROGAN:

Sure. Allen Grogan from ICANN compliance. So, we have publicly stated and we do have a procedure where if somebody

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submits a complaint to ICANN compliance regarding WHOIS information and the registrant believes that the complaints are abusive, we invite the registrant to explain why they believe the complaint to be abusive. And we will take action against abusive complaints if we determine that there is abuse.

We have blocked some parties from submitting abuse reports or refuse to accept them in circumstances where they have repeatedly submitted complaints that we have determined to be invalid. So we do have a mechanism for you to tell us that you believe someone is using the anonymity for the purposes of submitting abusive reports, and we will take action if we conclude that they are doing so.

BRUCE TONKIN:

And I think from a registrant perspective, what a lot of registrars do when you are looking at WHOIS complaints as well is clearly the address appear to be false. For example, it might be an address that is in the U.S. but the content is coming out of Russia or something like that. You know, like, there's a big disconnect between the address and the content. So it clearly looks like someone is trying to deliberately provide false information versus someone that's just -- you know, that misspelled their city or their phone number's wrong and the rest of the contact information is correct. Usually I think registrars

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use a fair bit of discretion in taking websites down for minor errors versus something that's clearly false information.

DESIREE MILOSHEVIC: Bruce, if I can just add, Allen has just confirmed people are using ICANN compliance as an abusive way. But we have not seen transparent reports how that's been used. I would like that information to be passed on to registrants.

CHERINE CHALABY: Sorry, Bruce. But I heard Kathy saying and Desiree saying they also want to know the identity of -- Allen, don't go. Allen, just a sec.

So we've answered how we deal with it, but we haven't answered the question why the registrant cannot get the identity of the person submitting the complaint. That was your question?

DESIREE MILOSHEVIC: Thank you, Cherine.

MILTON MUELLER: If I can get there. I mean, it's a very simple question. Why can complainers be anonymous and registrants can't? Very simple.

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CHERINE CHALABY: So, Allen?

ALLEN GROGAN: ICANN compliance has always told complaining parties whether it is on WHOIS or other types of complaints with limited exceptions that they can remain anonymous because there are reasons why somebody might -- might want anonymity for legitimate purposes. As I say, if you believe that someone is using the anonymity for abusive purposes, tell us. Explain why you conclude that, and we'll consider taking action.

KATHRYN KLEIMAN: But if you don't know -- this is Kathy Kleiman -- who is bringing the complaint, you may not be able to track it as part of a pattern of abuse you are getting in other areas.

So we'd like to work with you on this because there is an escalating problem we're hearing about domain names being taken down through the WHOIS complaint process for reasons that don't seem very legitimate. And the number of complaints we're hearing is growing. So we'd like to work with you on this.

And also that ability of someone to take action if they're seeing it as part of a larger pattern of abuse or harassment that they are

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getting, to know who it is so they can take action on a larger scale and protect themselves.

It looks like Mitch Stoltz wants to add.

MITCH STOLTZ: I'll be very brief. Mitch Stoltz here. I think a good model here is the United States Digital Millennium Copyright Act, Section 512, which allows people to send notices of claimed infringement but they cannot be anonymous and the person bringing the accusation is held accountable for false -- falsity.

DESIREE MILOSHEVIC: That's only one jurisdiction we're speaking about.

TAPANI TARVAINEN: I think we have to move on. We are running out of time. Let's move on to the next question.

KATHRYN KLEIMAN: Thank you for the discussion of this one. We appreciate it.

TAPANI TARVAINEN: I would like to hand this one over to Milton Mueller to introduce the content of his question.



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MILTON MUELLER: Thank you. Again, congratulations to the board on the successful transition.

We were a little bit surprised that one of the first things that happened after the transition was the announcement of this new complaint system. And Goran has already gone through some questioning about this in the CCWG meeting. But basically it looks a little bit to us like the centralization of the complaints in this way and putting the ICANN legal in charge of them might be counterproductive in an accountability sense that the -- since ICANN legal is basically charged with defending ICANN, whether the complainant is right or wrong, we're concerned about whether this process will essentially mute or nullify complaints rather than adequately take care of them.

We're also confused about the role of the ombudsman in this new system. Does it make the ombudsman less independent?

And so, you know, one example of our concerns is that there was an IRP case about the .REGISTRY case which seemed to clearly indicate some misconduct. And it seems that there was no real negative repercussions for anybody after that happened. So, you know, in a post-transition accountability-focused world now, we want to make sure that these mechanisms are working

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right. And could you give us any information about these questions? Thanks.

STEVE CROCKER:

Let me offer a comment and then invite CEO Goran Marby to step in.

Milton, you made an assertion about the role of the legal department that is, in my view, not entirely consistent with the facts. Legal department works as a portion of ICANN, ICANN -- the ICANN corporate organization. And the mission is to be supportive of the overall Internet community. There is a portion obviously of what we have to do is to protect the integrity and operation of the corporation. But that's not the entirety of our mission, and it is definitely not what brings any of us on the board to the job.

This is part of a -- your assertion is part of a -- somewhat of a campaign to assert that because we have the corporate structure of a California corporation that, therefore, the only thing that we're trying to do is to protect the corporation. This is just plain false, and I want to kill it hard now. And I will keep killing it every time it comes up.

So with that, let me turn things over to Goran. Yep.

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MILTON MUELLER: Steve, just let me reply to that. You haven't killed anything. I wasn't talking about the board. I was talking about a specific department of ICANN, the legal department.

MARKUS KUMMER: Can I come here? I think there is to a large extent a big misunderstanding. I would, first of all, say take out the table the .REGISTRY case. That is ongoing, and the CEO is coordinating a (indiscernible) of the entire CEP process. And this review is progressing.

Now, back to the complaints officer and the ombudsman. The ombudsman is defined in the bylaws, and the ombudsman reports to the board. So the complaints officer is totally separate from that and has no authority over the ombudsman whatever.

The fact is, there are a lot of complaints coming in about this and about that, about bills not being paid or travel claims, whatever. But there's no central office registering these complaints. And here we are talking about a measure to enhance transparency of complaints that do come in. Someone who would register all the complaints pass them on to the relevant departments to deal with the complaints and keep track of how they're being dealt with. But nothing would

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prevent anybody going directly to the ombudsman, which is a different track.

But maybe Goran would like to come in and be more precise what I -- about what I tried to explain.

GORAN MARBY:

First, I always said a communication exists when the receiver understands the message. If I have been unclear in anything, I'm duly sorry. That was not my intention at all. I have been trying to explain this a couple of times.

Let's go back for a second. With the new bylaws and new accountabilities, I have been looking through the questions that has been raised to me over time. And my intention was to increase the transparency and, therefore, accountability of what I do internally in what I call the organization.

As you know, I have about 370 people working for me in support of the community. And there have been numerous occasions where people have complained to me about practical stuff and bigger stuff. And when I spoke to the ombudsman and I looked through the bylaws with the new bylaws for the ombudsman, I realized we don't have that. Most organizations that I ever been to, commercial and noncommercial, has always had somewhere, a central point. So that is my intention.

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And what I also added was that I also wanted to be very transparent so you know -- and especially for your group, I think it's important that you know what kind of complaints come in. And I can be accountable for the answers.

So if someone complains something to me, I will -- if it is so and so, I will -- and I will also post what the complaint is about. I will post that complaint, and I will also do my answer. That is the kind of accountability I want to be able -- so you can tell me, hey, you didn't do this, it didn't work. We have been complaining of this for time.

The other thing was very practical for me and for the board. When you deal with such a large amount of things that we do, which could be small things or big things, the intention was also so I get a track record of things that could be a structure problem instead of a one-off problem because we all do mistakes. Apparently I did a mistake when I communicated this, which, again, I'm sorry for. There will be structure problems I have to address. It's easy for me as a purely mathematical thing to see if we have a lot of questions about something, a lot of complaints about something, I could see and change that. I can also be open with it. The intention was all along to improve that.

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So I now want to emphasize what we talked about. I am as the CEO together with the board, we are responsible for the company as itself, which the legal department and Akram's department and Allen's department are as well. I didn't take that job.

A part of that is to protect the bylaws. We are actually measured how we deal with the bylaws. And since I come in -- and yesterday I talked about -- a little bit about the community role in a lot of those things.

My aim is to be supportive of the community, and that's why I'm here. We have an organization, we have to protect the bylaws, and that's important for us. It is -- and, as I said, this is a very -- I think it's important for me to show what we are doing internally. That's the whole intention. Thank you.

MILTON MUELLER:

If you don't mind, so I think I'm convinced that this does improve the transparency of the complaints. I think that's a good step. I think we're still not -- a little bit unclear about putting these complaints through ICANN legal. And I think you could possibly understand, if you think about it from the community's perspective why they might be a bit confused about the role of the ombudsman and the role of this new complaints office, and it's good to get that clarified.

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So let's say that we have a situation in which -- remember the incident, I think it was, at the -- one of the meetings whether there was a sexual harassment complaint, right? Would that person go to the ombudsman, or would they go to this complaints office?

GORAN MARBY:

I think that -- I know the ombudsman is here. That's a typical ombudsman. I'm a little bit -- the word "ombudsman" was actually invented in my home country. It is a Swedish word. One of the few things you actually use around the world that comes from Sweden, apart from IKEA. Yeah, sorry.

[ Laughter ]

So the meaning of ombudsman actually means voice for the weak where you don't have anywhere else to go, and that is -- so sexual harassment and that set of issues are very, very important. And I know the board is looking on those things as well, as you know.

And I think when you look into the role of the ombudsman, it's very, very important. And I also know, which Bruce said yesterday, there is a lot of complaints that comes into the ombudsman which is actually what happens within the community as well.

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This is a practical (indiscernible) where we use as the organization -- I use the term "organization" for the people who report to me so you know who I'm talking about, if we do anything that is wrong. But with that said, you can always go to the ombudsman. If I do anything bad, if my team do anything bad, please always go to the ombudsman.

We are not connected, but we are related because we both are functions to make sure we do our job to serve the community. And I think that -- I spoke to the ombudsman before we set this up. And he gets complaints about that we don't have a central point for. We do have complaints today, but we are not really transparent what we do with them. So, as I said, it is an intention to do that.

I said when I had this conversation earlier this week, you don't have -- trust is something that you -- I only can get after I've proven myself. And let's try to see how this works out. We're going to have good people working with it, and I hope you will get a little bit more transparency what we do, regardless where I place it within my organization.

GEORGE SADOWSKY:

Yeah, thank you. George Sadowsky, for the record. A quick resort to facts. If you look at the ombudsman's reports for the last few years, you'll note that roughly 85 to 90% of the -- of the



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complaints or the issues that are brought to him are not ombudsman issues and he, in fact, is performing the triaging function right now. Thank you.

BRUCE TONKIN: Stephanie.

STEPHANIE PERRIN: Thanks. Stephanie Perrin from NCSG for the record. I wonder -- I think that our comments on this matter may be misconstrued as a criticism of the legal department and a criticism of the ombudsman. And I think in reality what we're talking about are the structural conditions that ensure the independence of the ombudsman. And one of those structural conditions, I would suggest, would be access to independent outside counsel. In other words, there should be independent outside counsel that the ombudsman can refer to when he needs to make a decision about the -- this triage. If he has to rely on inside counsel, particularly in a matter where there's something having to do with ICANN as an organization, and the inside counsel, of course, is rec -- is representing the institution, then I think that becomes problematic.

The other issue, of course, is the length of term of the ombudsman. So these are -- maybe these are structural issues

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that we could examine in a cold hard light of day rather than getting agitated about it.

BRUCE TONKIN: Chris.

CHRIS DISSPAIN: Thank you. Thank you, Stephanie, and I agree. On that score, as a starting point, the -- the ombudsman is going to start talking to us now about the new obligations under the new bylaws. I think it's -- to me anyway, speaking personally, it's blindingly obvious that the ombudsman is going to need to have his own resort to legal advice and that that legal advice quite clearly would need to be independent. But we've got to go through a process to get that set up and all of that stuff. So we're starting that now. And obviously we'll be liaising with -- talking to the community about it as well. But it's quite clear from the new bylaws that that has to happen.

BRUCE TONKIN: Yes --

CHRIS DISSPAIN: Sorry. Yes, as Becky reminds me, there was also the Work Stream 2 activity that's happening with respect to the

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ombudsman which is why we're being very careful not to do too much, because we don't want to interfere with what's happening in Work Stream 2. So we're taking very small steps while the Work Stream 2 work is going on. Thanks, Becky.

BRUCE TONKIN:

Yeah, if I can perhaps -- because I've heard the comment about the independent side of it. So the ombudsman, there's absolutely no change to what's in the bylaws with respect to the ombudsman, with respect to the independence. The ombudsman is appointed by the board and actually has its own budget. And the ombudsman is not even in the same office as the ICANN staff. So basically think of the ombudsman as a completely independent entity to the rest of the staff, and that remains the case. And then as Chris said, the -- the last ATRT review suggested a review of the ombudsman, and the Work Stream 2 of the community is doing that. So Stephanie, it's up to the community to decide what you want the ombudsman to be and that's the Work Stream 2 effort. We're not -- you know, Goran, the CEO, has no impact or decision-making relating to the ombudsman. That's defined by the community. And then ultimately any changes you make will end up in the bylaws, and the board will ensure those bylaws are met.

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Coming back to the way you set up a complaints officer within the company, though, most companies or organizations, including ICANN, have a range of different departments that provide services to the community. So in ICANN's case, there's departments that do travel support, there's departments that provide compliance, there's departments that manage changes to the root zone, there's departments that manage changes to the protocol parameters, so these are all separate functions within the organization. And for those people in the know, you probably know the managers. So most people in this room would probably know the manager of the person that you might be dealing with. So you actually have your own escalation powers and generally the manager, when they get a complaint, can probably resolve it. But for people that don't know an organizational structure, you'd set up a complaints officer to be separate from all these functions. So the complaints officer doesn't report to the head of IANA. The complaints officer doesn't report to the head of the travel department. The complaints officer in a company you generally set outside of all the functional departments and it's very common to have that reporting to the legal counsel because the legal counsel is separate from all those departments as well. But really that complaints officer is not taking instructions from the general counsel. The complaints officer, as I think has been mentioned,

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is working with the individual departments to try and solve the case.

If the case can't be solved, then it goes to -- you can take it to the ombudsman, and that's a completely independent process. So there's no change to the use of the ombudsman function. What changes here is the degree of efficiency in that for internal situations, could just be someone hasn't got back to you with a travel request or something, that you probably normally take to the manager of that department. If you don't know who the manager of that department is, you use the complaints officer, and the complaints officer can help resolve that. So to me it's really quite simple.

ASHA HEMRAJANI:

Thank you. My name is Asha Hemrajani, and I'm the board liaison for the ombudsman subgroup. So I wanted to say exactly what Bruce said because I think the concern here always has been, from I've been hearing Milton say and others and Stephanie, is that the concern has been on independence. So I hope that what Bruce just explained has clarified that. So I just want to ask this question now to -- to you, Milton, and to Stephanie, is that -- has that been clarified? Do you still have concerns on this?

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MILTON MUELLER: Yes, I think you've done a great job of clarifying the issue. And the -- I think the transparency and the sort of the triage that was taking place via the ombudsman was not understood, it wasn't clear from this, and it's good to have those things clarified and separated so that there will still be resort to the ombudsman. There still could be issues about the independence of the ombudsman, there still could be issues about ICANN legal as the handler for this, but I think on the whole it looks -- it looks okay to me, speaking only for myself at this point.

ASHA HEMRAJANI: Thank you for that.

TAPANI TARVAINEN: Thank you. But now we are still have another question and after that we have a little answer to the board's question. So let's move on quickly. And I'll handing over to Niels Ten Oever for this one, and please try to make it brief.

NIELS TEN OEVER: Thank you very much, Chair. Thank you very much, board, also for this opportunity to exchange views and build on experiences we've had together. Please also let me add to Milton and allow me to express my happiness about the transition, and as Dr. Crocker said, there is a lot of work to continue. It will not stop

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now, but maybe we can continue on the wave of happiness and positivity that we have now the transition was successfully happened.

So following up on the discussions we had between the NCSG and the board at the Marrakech meeting at ICANN 55, we will be very interested to hear what steps the board is taking in relations to human rights in addition to the accountability processes in Work Stream 2. This to ensure that there's no duplication and to ensure there are synergies between the different processes ongoing in the different parts of the community.

So concretely, what efforts have been made and what activities are planned in relation to human rights and ICANN's policies, as well as ICANN organization.

STEVE CROCKER: Thanks for the question. Let me ask Markus to answer.

MARKUS KUMMER: Thank you, Niels, for the question. Yes, Markus Kummer speaking. And as you know, I'm the board liaison on human rights. And I thought for this meeting it would be helpful for the board to have a workshop on human rights. So we had that workshop two days ago. We had two speakers that gave us

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some background on the U.N. guiding principles and also had a speaker from industry. We talked about why his company had subscribed to the Ruggie principles and what experiences they had made, and we made key documents also available to the board. We had this note on the application legislation by Sidley, which I think was very helpful. We also made the Ruggie report on FIFA available to the board which I think is fairly relevant as FIFA is also a not-for-profit organization with global reach in mission and also the OECD guidelines for multinational enterprises which as you know has a separate chapter on human rights and all OECD member states, including the United States, have subscribed to these principles and taken on the obligation to promote that among the corporations they're operating from their territories.

This is a first awareness raising session, and obviously we did not have time to come to positions. And as I follow the discussions, I'm aware that there are widely different positions held also within the community, and I think the board also reflects that. There is a -- I think there is a commitment to get it right. But at the same time also a concern that we don't want to expose the organization to undue risks. And that will be the challenge to find the balance. And the question, what is planned as we go forward, we have set up a work plan for the board to follow Work Stream 2 and human rights is part of that. We'll



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follow what is going on in the subgroup and we will also discuss that in the board and try to enhance constructive engagement with the group you are facilitating. I hope that has answered your question in a nutshell.

STEVE CROCKER:

Let me add a little bit. The -- the devil, I think, is going to be in the details, and we're going to -- we're eager to get to the point where we understand what the -- what those details are in our situation. To say the obvious, ICANN is not engaged in the kind of things that draw the most attention in the world at large about abusive human rights. We're not trafficking people. We are not doing other things that are even on the edge usually.

So a straightforward kind of response is, of course we subscribe to human rights and we think we're fully in compliance. Where's the gap, if there is any? And so as Markus said, we're getting ourselves educated and then we're going to be very attentive to what comes out of the Work Stream 2 effort. But we're waiting to see -- maybe I'll just speak for myself -- waiting to see that there is likely to be something where we're not in compliance or where there is an issue because in our hearts we don't think we're doing anything. You know, we're not privately saying yeah, we don't care about human rights because we're trying to make money or because, you know, we have other sets of

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values. We don't see a sharp difference between the -- the rights and values that are inherent in ICANN versus the motivations of human rights.

So at some point along the way here, hopefully not too long, we'll be able to go from these general posture of saying we're interested in -- to something that is specific and that we can debate and take action on or speak to.

UNKNOWN SPEAKER: Steve.

CHERINE CHALABY: Can I ask Markus to also comment further whether our obligation to human rights changes since the -- before or after the transition, whether we are contracted to the U.S. government or not. I think you have answered the question to us on the board. I think it would be helpful to give clarification on that as well. It would be great.

MARKUS KUMMER: I think your question was the starting point of the human rights debate. Before with the contract to the United States, there was the United States that had the obligation and also there is a consensus and that is also reflected in the U.N -- in the OECD

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guidelines that states have a responsibility to protect human rights. And for companies it is different, but now we don't have the contract with the U.S. any longer. I think it's even more relevant for ICANN to get it right and to prove that we are a good corporate citizen.

MILTON MUELLER:

Yeah, I think we may be again not fully understanding each other. I think that the main concern of our constituency is not that we believe that ICANN is going to start enslaving people and putting them to work in the compliance department. We're concerned about the policies that you pass. We want to know what is the human rights impact of your WHOIS policy or your domain name regulations, the policies, how do they affect freedom of expression, freedom of assembly. We want the policies to go through human rights impact assessment and not -- well, some are concerned about ICANN's operations for things such as whistleblowers and so on, but fundamentally it's more -- it's about the policies.

STEVE CROCKER:

Let me just echo back what I think you said, which is interest -- from an operational point of view, just as over the years environmental impact statements and other kinds of things have been added to bureaucratic processes. And I don't say that

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with a negative cast, but you're suggesting that there be a formal human rights impact statement, a human rights assessment and some criteria and processes associated with that. Have I put too many words in your mouth? Okay, thanks. Chris.

CHRIS DISSPAIN:

Thanks. Thanks, Milton. Thanks for the clarity. So my -- again, speaking personally, my immediate response to that would be, I get it. Please don't laugh when I say the board doesn't make policy. Perhaps it's better if I put it, the board should not be making policy. The SOs make policy. So it seems to me that the place for that to happen is actually in the SOs. And whilst you might struggle with -- perhaps with the ccNSO because of the massively large number of jurisdictions and so on, I would have thought that in the GNSO is the place to be having the debate about the policy of the GNSO being subject to that check. Because it wouldn't be appropriate for the board, if you look at the GNSO policy bylaw which says that the policy comes up to the board and then there are small areas in which the board can say no, but fundamentally it passes that policy through, it would be a significant change if additional hurdles were being put in place at that time. So it seems to me that the hurdles need to be put in place further down the chain, for want of a better way of putting it, so that it comes to the board, if that's what the GNSO

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bylaw says, with a human rights tick. We don't have to think about it.

RON da SILVA:

Yeah, just quick follow on to Chris' comments. Ron da Silva, for the record. Certainly the same thing applies in the ASO. There's, you know, an invitation there to participate in the policy process. In the numbering community any of the registry meetings that happen, there's always the, you know, opportunity to interject into those Policy Development Processes and make sure that human rights considerations are a part of the evaluation of new policies.

TAPANI TRAVAINEN:

I think at this point I'll have to consider this question done. But we had -- since the board presented us two questions, we have at least a bit of an answer to one of them and I want to have it shown before we leave. Question was what the board and the organization can do to help make the transition work for us. I asked for the one bylaws slide. Can you please place for us? Yeah, and Ed Morris, could you explain us.

ED MORRIS:

Yes, thanks, Tapani. And thank you to the board for asking the question. I'm actually going to turn the question back to you.

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How can we help the board implement this beautiful aspect of our new bylaws. I say beautiful because what it does is it grants access to the linchpin of our accountability reforms to, as Goran said, to perhaps the weak. I'd rather use the undernourished, the underrepresented, those without resources. We've kicked around the idea in the NCSG a bit, we've come up with ideas such as perhaps we provide some pro bono representation to parties that aren't resourced so they can have access to the IRP process.

I recognize from some conversations we've had prior to this meeting, the board has not considered how to implement 4.3(y). And my question to the board is, how can we help you do so in a way that we can get this right for our members who are particularly concerned and for the community at large. Thanks.

KATHRYN KLEIMAN: So all of these things are being sort of thought through at the implementation oversight team for the IRP. We just on whatever day, I am so confused about what days of the week it is --

BRUCE TONKIN: Sunday is today.

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KATHRYN KLEIMAN: -- but we did agree to a set of new supplementary procedures for the IRP to be published for public comment right now. So now we're going to turn to the -- the call for expressions of interest for the standing panel, and then I think all of the other details come after that because we want to start getting -- we think the process for identifying a very highly-qualified and diverse panel could take some time.

And finally, I don't know if you were there, but I did step down from the -- as the chair of that, and David McAuley will be taking that over.

TAPANI TRAVAINEN: Thank you. I think that's it. We hope -- we're going to thank you for your answers, and I hope this little answer of yours will give you an idea how to help us to go forward. Thank you all. I think we're done here. Thank you.

STEVE CROCKER: Thank you all. We look forward as always in these meetings to a frank and candid exchange. I think we've adequately met that goal.

[ Laughter ]

Thank you, until next time.

**[END OF TRANSCRIPTION]**