HYDERABAD – Exploring the Public Interest Within ICANN's Remit
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OLIVIER CREPIN-LEBLOND: Okay. Good afternoon, everyone, and apologies for the late start of this session. I understand that we have to finish at the exact time that we're scheduled to finish at, so we'll get moving now.

Today's session is about engaging the public interest within ICANN's remit, and we have a star-studded panel with us which I'll introduce in a second, when we look through the session flow.

I don't know who is controlling the slides. Over there. Okay. So if we could please move down to the first slide.

So today, we are going to -- well, first, we'll set the scene and then we'll have Wolf Ludwig from EURALO who will be speaking to us about the historical and political nuances of the concept of the global public interest in a European -- from a European perspective.

We'll have Rajesh Chharia from the Internet Service Provider Association of India but also a member of the board in APNIC who is sitting over at the end of the table.

And then we'll have, after that, Jonathan Robinson from the GNSO, and Becky Burr, also from the GNSO, soon to be an ICANN board member, reaching a shared understanding about the concept of the public interest on an ICANN -- from an ICANN perspective and basically community perspective and also how to apply this. And I think this is one of the goals we'll have to try and hone in on in this session.

After that, we'll have Thomas Schneider from the GAC who will be speaking to us about how the public interest could be operationalized as the basis of decision-making at ICANN.

And then after that, we'll have an open mic and I do hope that we'll get a lot of contributions from all of you because that's what this session is for. Several panelists have already told me they will not be using their 15 minutes, so we will maximize your input and try and bring that into the process.

So let's move on and let's go to the next slide, please.

So the work about the public interest -- and the one after that, please -- the public interest has been a concept that's been discussed around ICANN and at ICANN probably as long as ICANN has existed and probably even before that.

When the -- when the -- when ICANN was about to be created, there was a lot of discussions worldwide about having an organization that would be able to act in the public interest.

There was a panel on public responsibility framework a few years ago that proposed a definition of the public interest as it relates to the -- to the Internet, and I'll read the -- the definition itself. "Ensuring that the Internet becomes and continues to be stable, inclusive, and accessible across the globe so that all may enjoy the benefits of a single and open Internet. In addressing its public responsibility, ICANN must build trust in the Internet and its governance ecosystem."

Now, in Marrakech, we had a session that took place where we had panelists, including Nii Quaynor, who had been part of a panel in ICANN working on this. Today we're trying to grow this concept further and look at the next steps after that.

The issue of public interest was indeed a key issue in light of the IANA stewardship transition and in light of all the new governance structures that the groups worked on, both in the IANA stewardship transition but also in the Work Stream 2 topics of the -- of the accountability cross-community working group.

Next slide, please.

The words "public interest" and "global public interest" are actually mentioned a total of 10 times in the new bylaws, and yet they're not defined, as such. Work Stream 2 recommendations also now are working on furthering the global public interest, and there are several Work Stream 2 subgroups that are working on this. Of course the one that deals with the human rights issue is one of them. There are others also regarding accountability and so on, because obviously accountability also brings this component part of the public interest.

But despite the lack of specific decisions, there is a broad understanding that the work of ICANN is rooted in the public interest. We just don't have a definition of it. We just don't know what it exactly is, but we all know how it should function somehow.

In that context, it may be useful to identify areas of agreement and this is why we're here and why the panel here is going to try and juggle your mind a little bit and get you to be a bit reactive. I hope they will have some good not only dialogue but perhaps even some contradicting views and build something out of this. And then if we can bridge the gap and come up with bridges where there are agreements that don't exist, I think that will be a good step forward.

So without further ado, we can start.

Let's go for the next slide and have an historical perspective and looking at the historical and political nuances of the concept of global interest -- global public interest in Europe and in India.

So we'll start with Wolf Ludwig from EURALO, and just to mention that Wolf is the chair of a EURALO working group on the public interest and has presented a paper which I think might be linked to this session somehow. I'm looking at Ergys and seeing if he's -- it's not. Okay. It might have been in the past. But there is a mailing list, by the way, about the discussions on the public interest, but we'll come back to this at the end of this session.

Wolf Ludwig, you have the floor.

WOLF LUDWIG: Okay. First of all, thanks, Olivier, for setting the scene and paving the ground for this discussion.

I will try to keep myself as short and precise as possible, to give more time for the other presenters and particularly for the audience and their questions.

Basically, I have started, a couple of years ago, because I do not believe what Olivier has said, there is no definition for the public interest. I think there are definitions. There is not one single

definition, but there are plenty of approaches to discuss and reflect about the public interest, at least from a European historical point of view.

And therefore, I started some time ago, a year ago, a paper with tracing the public interest in an historical sense, and I started with some equivalence in European languages. And you have equivalence of the public interest in German, in Greek, in Latin, in French, in Italian, in English, and in some other European languages.

So if you have a word for it, usually you must have also had some meaning about it.

And then you can go further. You can start with Aristotle, who in the Antique Period already created as a term "polis," and in the concept of Aristotle "polis," the public interest -- the notion of a public interest or an understanding of the public interest pops up repeatedly.

Therefore, you can trace it far back in the European context.

Then you have some -- you easily find some other examples.

So city states in the Middle Ages all over Europe, whether you look at Venice, at Genoa, whether you look at Hamburg, the (indiscernible) states, et cetera, those city states all knew in their

city constitutions a kind of a term or prescription what was meant to pursue the public interest.

The interest of the majority or the entity or the community.

So you have plenty of references there. You can go to other details, what I did, and there are several books I found about what is called Gemeinen Nutzen, and it's a German term, and what you can find in a lot of communities in Switzerland.

Public interest in Swiss communities are a very common phenomenon, and so it was more the rule than an exception, but we can come to this later.

In the English context, you have the comments, and I think, okay, the comments may have, in the historical continuity, some slightly different meanings or contextualization, but I think the basics of the understanding are quite close or similar.

You have references to the public interest in a variety of European constitutions. You have it in the Swiss constitution, in the Spanish constitution, in the French constitution, and in the German constitution, where they are expressly mentioned, and public law in German-speaking countries are always referring to the public interest.

To make it brief here at this point, I think it may be more difficult on the global level regarding other parts of the world, and

therefore, I'm very interested what Rajesh will tell us afterwards what it may look like in the Indian context, and I'm almost certain it's difficult to say there is a definition for the global public interest.

This may be rather difficult to include from the various regional angles all over the world historical tradition language issue whatsoever. It may be more difficult to define or to come close to a term of the global public interest, but the public interest itself from a European point of view, you can take it for granted, it's a guide -- it became a guiding principle over many historical periods and it plays an important role, particularly in -- when it refers to regulation.

Governmental regulation usually -- now I take just examples from France, Germany, Switzerland. They usually refer to the public interest. So I cannot imagine any concept or any system of good governance neglecting the public interest. On the contrary, I believe the public interest is constitutional for any good governance system or model.

And I suggest I leave it like here, like this for the moment, if you have more questions afterwards in the discussion, and I'm now very curious myself to learn from our colleague from India what the picture looks like in another part of the world, which is now the host of our conference. Thank you.

OLIVIER CREPIN-LEBLOND: You've stolen my words, Wolf. Rajesh Chharia.

RAJESH CCHARIA: Thank you, Olivier, and thank you, Wolf, for having me the confidence in me about speaking about the Indian concept.

India. 65% rural and penetration of the Internet has just started. What I will say, we have started crawling now and we have to go -- move very long.

In the country, we're around 15% English speaking, don't able to understand Internet properly because right now, if you see, Internet is English only, and into our country, yesterday our Honorable Minister has spoken, 22 languages, and every language is different with the main languages.

How to bring all of them together at one platform is the biggest challenge.

Until the time there is no some improvement into the regional languages Internet, I don't think the public will have any interest towards the Internet or the community.

Our Honorable Prime Minister has already announced about our stand of the multistakeholder and into my opinion, public is one of the major stakeholder into this system, and without public --

or without, I will say, Internet user, no other stakeholder can survive.

Regarding the governance, yes, government is there for the governance and they are working for the -- in the interest of the public only, but how to bring public into the decision-making is the biggest role of the government and of the community.

In 1995 when our former prime minister, Mr. Atal Bihari Vajpayee, has opened a sector for the public sector, the development has started taking place. A lot of new Internet Service Providers has come forward in giving this infrastructure benefit to the Indian public.

Lots of changes, lots of things has come, and if you see stats from the APNIC, as Olivier told you that now I am one of the executive council members as well as the secretary of the APNIC executive council, this is called public engagement that we started going forward toward the APNIC initially because APNIC is our RIR and they allocate the IP resources to us, but slowly, slowly, we have also started discussing about ICANN, IGF, and lots of other international events. And due to this confidence, somehow Southeast Asia Network Operator Group meeting has been located to India once in every year, and every year we are seeing that the numbers are increasing day by day.

By bringing the public -- or by increasing the interest of the public toward this policymaking, what we find, that empowerment to the common people, empowerment to the common man. And this empowerment now uplift the living standard of the Indian citizens.

And we have seen this drastic change in the last election of 2014 when the new prime minister has taken over. And after winning the election, he has very categorically confirmed that the social media -- users of the social media has empowered the common man. And due to this, the government -- new government has taken over.

450 million Internet connectivity right now with 1.05 billion mobile connectivity in the population of 1.35 billion. It's not a small thing. And we have done a lot.

Internet is not a simple mobile connectivity where illiterate people can press red button, green button and the number for dialing the things. Internet requires hand holding into the rural part of the country. And the Internet service providers are creating the interest of the public into the Internet and accordingly they are also bringing them forward so that they should be able to take an active part into decision-making and into the policy making.

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Earlier when the Internet was not so developed and people were not so active towards the Internet, at that time speaking of the public interest into this active communication was not at all questionable because we were not knowing what is happening out of their area or out of the country.

But due to this active participation of international community within the country, now that lots of people have adopted and started discussing about the Internet policies and the different organization which is prevailing right now.

Yes, the multistakeholder has been announced. But converting 100% into the multistakeholder will take time because the people who have announced or I would say the upper layer or the medium layer of the bureaucracy have understood that the multistakeholder user, private sector, NGOs are a part of the stakeholder group and play an active role in decision-making. But what we are finding that still the old bureaucrats are there who are not so comfortable. And they still understand that the decision-making should only be with the government. And that's why, Wolf, you have told that the governance is there. Governance, in my opinion, with the help of the public will be getting succeeded, and it will help India to become very big into the I.T. sector. Thank you.

OLIVIER CREPIN-LEBLOND: Thank you very much, Rajesh. It's good to hear the point of view from those countries that we don't often go to and, indeed, yes, it's significant -- it's such a significant change and such a significant development. We'll turn now to experts in the ICANN community, experts in both ICANN. I guess two participants, Jonathan Robinson and Becky Burr, from the Generic Names Supporting Organization. Of course, the GNSO is where the policy for generic names takes place, and the mandate on the public interest is something that's pretty significant.

Jonathan, what is your point of view in those matters? And how do you sustain the public interest or search for the public interest in making policy?

JONATHAN ROBINSON: Thanks, Olivier.

So the question that was posed to me was really looking at what ICANN currently does from a public policy perspective, and I guess tying that into GNSO work at the same time looking at some specific examples.

I suppose we've heard it said before that public interest is sometimes something you have a feel for. You feel you might know when something is being done. But it's much more difficult to apply an absolute test. So here I'm going to -- instead

-- is look at some manifestations. And I asked for some help from staff as to where they saw it and threaded that together with a few of my own ideas.

But really there were three key areas that seemed like good examples. One is, of course, supporting the security, stability, and evolution of the DNS and the marketplace to be a healthy, robust, and stable and trusted service. And typically, if you think about any decisions involving the security and stability of the DNS, by definition, those must be in the public interest. We want a secure, stable DNS.

There's areas of effort in cooperation and competition which, of course, help promote greater understanding and trust in the system. And then transparency and accountability obligations.

So at the high level really, I was looking at things like supporting the security and stability of the DNS; things like developing best practices in multistakeholder systems; and enhanced participation, all of which are broad themes.

I talked in a little bit more detail about the DNS. And, of course, as you mentioned in your introductory remark, Olivier, when policy work is commissioned within the GNS -- GNSO, it's commissioned and then further managed by the GNSO Council, which is of itself a multistakeholder body. And, therefore, you could argue -- and this is the kind of thing it would be very good

to get some discussion on and feedback -- is something like that, the fact that there's a multistakeholder body commissioning, managing, and ultimately overseeing the introduction of policy -- domain name policy in a multistakeholder way. Is that, in part, the definition of public interest? Of course, the policy development processes themselves are open, multistakeholder processes.

And by committing to the outcomes of the PDP, the contracted parties to some extent are subjecting themselves to public interest involvement.

So when you look more broadly at that, there's the sort of best practices that are being developed within the multistakeholder mechanisms, things like the strategic planning work that goes on, the organizational reviews that go on, and all of ICANN's effort to be accountable, have openness, cooperation, collaboration. All of those things you could argue are mechanisms by which ICANN in a broad sense seeks to meet or meets public interest commitments. And, of course, those not only meet public interest commitments for the sake it, they potentially enhance the organization's overall effectiveness providing, of course, it's responsive to those.

And one of the issues at times we've seen is at times effective implementation of review output or at times less so. You could

argue it's not only the commitment to the reviews but it's the effective implementation of those. So there's that sort of thing.

And then I guess there's a pretty substantial commitment. Again, we argue about whether at times this is effective enough. But ICANN has got a great commitment to enhanced participation, accountability, transparency, openness, all of those good principles. And another overarching principle is diversity, which you could argue in and of itself is a public interest commitment as ICANN strives to become ever more diverse and reflective of various cultures, gender, religion, region, and so on.

So those for me are examples where public interest activity takes place within the current environment. And for me it would be very interesting to hear and have some debate as to the sufficiency of those, the adequacy of those, and how we move from that behavior, if we need to, into quantifying those.

So, Olivier, I think that's probably enough as a set of remarks. And they we can take it to the discussion obviously following my other panelists.

OLIVIER CREPIN-LEBLOND: Thank you, Jonathan.

Well, let's turn to Becky Burr.

BECKY BURR: Thank you. And I will also be brief. Just to repeat a little bit of the history that Olivier discussed, of course, ICANN has talked about public interest and how you make sure that you're serving the public interest in it.

And there was a working group, a strategy group, that came up with the definition. And I'll just read it again. This was the strategy committee on the public interest, "Ensuring that the Internet becomes and continues to be stable, inclusive, and accessible across the globe so that all may enjoy the benefits of a single and open Internet and in doing so, ICANN should build trust in the Internet and its governance systems."

So when that definition was proposed, it pretty quickly became clear that it was going to be very hard to get community buy-in and it was going to be very hard to figure out how to implement that going forward.

And partly that is because the public interest, I think, is almost -- can almost never be described in the abstract. It's very context specific. And there is an infinitely wide set of individual circumstances, as one person who has thought about this has said, about -- that would affect the public interest. And so in any situation, you're doing a balancing.

So when we started the CCWG on accountability and in particular writing the mission statement and the commitments and core values, there was discussion about ICANN acting in the public interest. And, indeed, the core values in the ICANN bylaws call on ICANN to develop -- to develop policy in the public interest.

And so, of course, we had to have a conversation about what did that mean. And the group after really quite a lot of thoughtful discussion decided that the way to handle this was, first of all, to have a -- was to essentially say -- to refer back to the mission statement as the context and the mission statement requires ICANN to endeavor to preserve the stable and secure operation of the Internet's unique identifier systems. And specifically with respect to naming, that is related to policies for which uniform or coordinated resolution is reasonably necessary to facilitate openness, interoperability, resilience, stability, and security, and policies that are developed through the bottom-up consensus-based policy development process.

So if you had to come to a sort of short definition of what public interest ICANN at its core must serve is to ensure the availability and integrity of registrations, which is essentially names, and resolutions which are numbers.

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But, again, I think after a lot of thought -- and this proposal -- this language as Steve DelBianco often defines the public interest, that ICANN has to look at in this way. But in the end, what we decided to do is to essentially not define the public interest other than to say it is bounded by ICANN's mission but to talk about how you identify the public interest.

So under the ICANN bylaws, basically it says ICANN's core values are providing -- making sure that there's informed and widely participatory policy development -- you know, development of policies that are developed through the bottom-up multistakeholder policy development process.

And I'll read specifically from the bylaws. It talks about -- one second. I'm sorry -- "Ensuring that the bottom-up multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent."

So in the new bylaws, we very consciously and deliberately decided that the effort to have a global definition of the public interest was going to -- was not going to be successful but to essentially say if you develop policy through the inclusive bottom-up global multistakeholder process that considers inputs, informed inputs, from all of the parts of the community including, of course, the GAC which has a special relationship to

the public interest, the output of the policy development process, the output of a well-developed -- of a well-run policy development process that is supported by consensus is -- should by definition serve the public interest within ICANN's mission.

So it's a very different approach than a kind of more prescriptive definition. It is inherently bound by ICANN's mission and inherently bound -- and defined.

It's very specific description is that we use the bottom-up multistakeholder policy development process to ascertain, to identify the global public interest.

So it is essentially -- although, I suppose we could continue to have one PDP after another to try to develop A definition of the global public interest to which -- that ICANN must serve, it really is designed to be self-executing in the ICANN bylaws. If you follow the process, if you get input from across the stakeholder community, that the end result is supported by consensus, then you have served the global public interest and you don't actually need a stand-alone definition.

So that's -- that is the result of a lot of work and a couple of years worth of thinking. But that is what the global public -- that is how we identify the global public interest at ICANN in a post-transition ICANN.

OLIVIER CREPIN-LEBLOND: Thank you very much, Becky.

In the meantime, questions are arriving already on the chat. We'll bank them until we open the mic for questions and comments.

Let's move to Thomas Schneider from the GAC who is going to be speaking to us how this public interest could be operationalized as the basis for decision-making at ICANN. And it's interesting because, Becky Burr, you made the transition to this, if I can use the "transition" word.

Thomas?

THOMAS SCHNEIDER: Thank you. My name is Thomas. I'm currently the chair of the Governmental Advisory Committee. I have been asked to talk about the governmental perspective and give a way because governments are actually used to -- or forced to take decisions that are supposed to be in the public interest on all levels, on a community level, on a regional level, on a national level, and on a global level.

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Just one remark, that definition that we have seen that security and stability, availability of the Internet is the public interest, I don't think that that makes sense.

For me this is all public interest. It's an element of public interest, but it's rather one element out of hundreds of thousands of elements of public interest. It's a public policy objective or a public policy goal where ICANN, of course, has a basic function.

My proposal for a definition of public interest, it's very simple. It's everything that is in the interest of the global public, full stop. Everything, not just the DNS. It's energy, food, health, and so on and so forth.

And then the question is how to aggregate and mitigate and balance. We've heard this before. A definition of an element doesn't make sense in this regard.

What I would like to do is give you a concrete example how the governments have to, are forced, and are able to, if you take their role seriously, to take decisions in the public interest in a completely different environment on a completely different issue. But there are different ways to do that.

But the elements that are there are exactly the elements that I would suggest you to look at, if that would be a model that

could be applied to the ICANN world, to the DNS, as a process for making sure that a decision is taken in the public interest through taking it into account all the necessary and relevant elements of public interest for that.

And this concrete example is the following: Imagine that you have a proposal of an electricity supply company to use the water of a river in a valley to create an artificial barrier lake -- I speak German, I hope that everybody understands what this is -- in this valley to generate electricity. And, of course, the public interest objective is generate electricity because it's necessary in a society to have electricity. And this is the situation. There is a country of 100 million people. The country has problems with providing sufficient electric power to the people. The project of the barrier lake would, of course, be a significant part of the solution to this public policy objective. The project would cost $1 billion, would generate the welfare of $100 million per year so in ten years' time the whole thing would be profitable and economically be a good thing. The problem is that in the area that would be covered by the water of the lake you have 100,000 people that live there. They have the land, they cultivate the land, and they would need to be moved elsewhere, if you don't want to let them drown. Five kilometer below there's a city of 200,000 people that if the dam broke, many people would die, there would be serious problems. 20 kilometers down the river

there's another -- there's a border, there's another country, and there's a city of a million or two million people that would undergo severe damage if that dam broke. It's getting even more complicated, but this is reality. In the area where the water would be filling up the valley, you have 100 endangered species that don't live -- of animals and plants that don't live anywhere else in the world and you have one unique historical cultural monument that exists only in that region. That's the situation. So what do you do? What decision do you take in the public interest? Do you allow this dam and this lake to be built or not? So there are different ways to decide.

The easy way to decide is, the electric company finds a way to give a payment of $10 million to the minister responsible for electricity of that country who will then decide and in addition will give $10 million to the fund campaign for the upcoming election of his party, and the minister will then say well, public interest, electricity supply, of course, we have to build this dam. This is in the public interest. And, of course, this absolutely makes sense, and we will compensate the people who live there with $1,000 per person to go somewhere. We have identified the land. It's not as fertile and not as nice and so on and so forth and to build a new house costs you $10,000, but at least we give you $1000, so off you go, everything is fine. Maybe this is not the ideal way to deal or to take a decision in the public interest.

So in my view, and this is -- of course, the reality is somewhere in between the two extremes that I'm signaling you, my experience with my country is that because we have introduced something like the empowered community that has the right of the last word in the decisions that my government takes in -- when our country was founded, i.e., direct democracy, we have a more, let's say, bottom-up way of having a process that has a higher chance to get a decision in the public interest. So what you need to do is you look at what interests and public policy objectives are at stake in such a situation. So we have electronic supply, electric supply which is one, you have the interest and the rights of the -- of the rights of the people that live there, their property, you have the risks of the cities down the river, you have the value of biodiversity with these 100 endangered species, and you have the value of a historically culturally unique monument that is there. These are all public policy objectives and goals that are not each of them are the public interest. They're elements of public interest.

So what could you do? You could look at the legal bases for each of these elements. What is there in terms of legal bases, and legal bases are usually meant to be an operationalization of public interest or public policy objectives into some regular things that you can follow. So, of course, these people have legal rights. There are maybe legal bases in terms of risk

management with dams that -- or nuclear power plants, you can take other examples, that if people live in the area, what is the minimal requirements to make sure that the probability that something happens is lower than that you die in a car accident in your city, for instance. You may have international agreements on the use of water in terms of how much water do they have to let go through so that the next country can benefit from the water, and you may also have international risk mitigation laws that you may have to apply when deciding about this. And then you may have national or international legal bases for how to preserve biodiversity, you may have signed some conventions, and the same with cultural heritage. There may be laws that bind you to protect cultural heritage.

So you have a number of very diverse public policy objectives, elements of public interest. Only one is the energy supply. But if you take a division to foster the energy supply that has negative effects on all of the others, then this is not necessarily in the public interest. So if you assess all this and you come to the conclusion that this particular project is not in the public interest as an aggregate of all special interests and special goals, then you maybe should try and find another project.

An alternative could be to have the same amount of electricity generated by two smaller lakes in two different valleys where you have only a thousand people living in this space that would

be filled with water, you have maybe only one city with 50,000 people living immediately down the valley, you have maybe no historic monuments, and maybe only five endangered species. So that simplifies the problem, for instance, if you find a solution. So that is still not the solution. So you need to do something with this thousand people. And you need to make an assessment of all stakes. Again, you need to establish the rights and everything and so on and so forth and, for instance, in the case of Switzerland, when we have to deal with an issue like this, this is what we do. You invite the electricity provider to contact these 1,000 local people to work out the proposal for finding an appropriate alternative land that they would accept to go, finding financial compensations for the pain they undergo to move there to leave their home and so on and so forth, and maybe think about giving them a share of the gains that are gained for the next 80 or 100 years through the electricity plant. This is what happens in my country. We have cities that have been destroyed, filled with water, people have moved, and they are being compensated and so on and so forth. And then the question is, who should decide? In a case like this, it is, of course, of immediate interest of those living in this land but it's also of an interest of the whole country or even beyond the country. So in our case, we would give a vote, a right to vote, for the people who are living in this area that will be flooded, but they need to accept that we would also give a right to vote to the

whole country that they also need to accept. So there's some checks and balances that you can use. So -- and even if you don't have a legally-binding international contract, you may want to have good relationships with your neighboring country and make sure that they are fine with the safety measures of your dam in case their cities are close enough. And they may even contribute to funding a better dam in case that is needed because it's in their own interest. So it's not only what is legally binding but it's what is in the interest. And if you get the parties together, you may normally find solutions that help to you to solve these problems.

And so the right to vote for people locally and nationally is also a balance that you cannot just buy these 1,000 people to move. You give them a million each if there's other risks that are not mitigated because the whole nation has to say yes, too. If you pay them too high, the whole nation will say no, this is not fair. If you pay them too low, they will say no, this is not enough, or we need other elements, not just money, to compensate for our loss of our history, of our father's family's mother's home, et cetera.

So there are elements there that I think could be used as an inspiration to take the ICANN case. And what I'm trying to say is, in essence, it doesn't make sense to define "the" public interest. It makes sense to define elements, whether you call it public policy objectives or elements of public interest. You need to

have a process that allows you to identify all of the elements that are relevant in a particular case. You need to identify all the stakeholders. They need to have a voice. They need to be heard. They need to be able to articulate their stakes. And when you have all these together and you need to assess all these elements, and then find solutions through inclusive processes, bottom-up mitigating processes. Define who should have the right to say yes or no to a proposal. There may be several layers of people that may have to say yes or no. And if you have these processes in place, what will come up in the end, on any issue that you put in at the top has a higher likelihood of being in the public interest. Not the public interest but in the public interest than if you don't have such mechanisms and define anything with a site like this in the beginning.

So public interest is an abstract concept that leads you or forces you to identify a process that if you go through the process in the end what you get is supposed to be in the public interest. That's how, from a governmental perspective, at least in the country that I live, we deal with these things. And something that you should also keep in mind is that the demand side of the public policy objective that you're trying to achieve, if you take energy supply, maybe in the time that you discuss whether to build a dam or not in Florida and flood it with water you realize that solar energy has become so cheap that you can just put

some solar cells in another valley where nobody is living, where there's no river, and you don't need to build the dam and destroy the land of a thousand or a million people. So things may change on the demand side. In that case it may be energy where other sources come up and the same also needs to apply. So the public policy objective or the public interest is not just a given thing but what is it that we need but it may also change because the situation may change. And you need to have a process that is adaptable to this. If you have a fixed decision definition that won't work. So the demand side of what is actually needed that may change over time should also be factored in to the process. I'll stop here. I'm happy to continue for hours, but I'll stop here. Thank you very much.

OLIVIER CREPIN-LEBLOND: Thank you very much, Thomas, for this. Of course, I realize the Swiss pragmatic approach is always something that baffles most of us, but it's good to see how Swiss politics and how things get worked out over there. Of course, you need to have mountains and valleys to start with, which you haven't mentioned. But questions are already coming in, and now is the part of our session where we really would like to hear from you. There is a microphone in the middle of the room. It's not going to move around, so you are going to have to line up. And whilst you line

up, I'm going to address two questions which have been sent in to the chat whilst our panelists were making their presentations.

The first one is from a -- a person called Aaron in that Mr. Chharia from (indiscernible), could you speak a little about overly conservative fair usage policies that ISPs in India adopt? And I guess this is a little bit of a tangential thing, so let's make it a quick reply. Thank you.

RAJESH CHHARIA: Okay. Thank you, Olivier. I've already talked about the quality of India. What service is prevailing in the European and the western market cannot prevail into India because India has got a very different market approach. Few years back Head and Shoulders has come with the shampoo and the bottle. It was totally failure. Immediately after that, they started sachet, one rupee sachet, and what we found, that even the rural women started to use that sachet because that comes under their purchasing power.

Here regarding the FUP, we know we are the cheapest in cost of mobile. We also know India has got high density of users in respective area. When there is a spectrum scarcity and if we will not be able to put this FUP, fair usage policy, then few people will start abusing this network connection and will hold the connection for a long time into that scarce spectrum, and the

other person will not be able to use the broadband in the proper way.

Other thing, into our houses, on one connection the whole family is running the broadband connection. And nowadays, we are very much fascinated about seeing the video on the cable connection, on the Internet connection, YouTube, et cetera. Just to stop that abuse this fair usage policy is existing into the India. And that's not only that it is benefiting the one portion. It is benefiting to a large portion by stopping a few very little percentage of the users who use Torrent to download the movie, who you started to download other big, big size of files which holds the connection.

And one more thing is there yesterday only I was talking to a few of the studios about the abuse of the piracy into the Internet. That few sites are giving X's to the pirated movie. And this type of FUP also stops them to stop their downloading because drastically their speed getting downgraded. But, of course, to our broadband definition of 512 kbps. Thank you. I think I was able to respond.

OLIVIER CREPIN-LEBLOND: Yes. Thank you very much. That's very good. So we have quite a few people in the queue. Of course, I realize now, looking around the room, there are a fair number of experts who could

have been sitting at this table. So obviously the questions you can aim at the panel and also at anyone else in the room itself. So let's start with a queue, please. Introduce yourself. Yes, first person. Introduce yourself for the benefit of the -- the scribes and, of course, the interpreters. So please.

ASHWIN SASONGKO: Thank you. Ashwin from Indonesia. I mean, first of all, good information, Thomas. I just wonder if you're -- in the next GAC meeting you can bought several Frederick Forsyth's novel book, "The Devil's Alternative," and distribute it to us. And secondly, if you become the president, you tell me, I will take my -- put my 100 billion U.S. dollar deposit, you know, in your country or in my country or somewhere else.

But my question to -- I mean, I would like your comments, that IT technology now has been developing at the level whereby you have global monopolies -- well, monopolistic, one or two or three product. Whether it is in operating system, whether it is in the chip, whether it is in the applications, whether it is in the whatever. Services. Now, many people are happy with that because they can get free mail, cheap computers, cheap affordable smartphone, whatever. On the other hand, why we only have one or two services, one or two product? Why can't I make my own chips and my own computers? Or my own

smartphone? My own services? My own mail? So it's free mail for all of you. So that's -- perhaps you can -- I can get your view on this. Thank you.

OLIVIER CREPIN-LEBLOND: Thank you very much. I don't know if anybody else wants to -- do you want to bank the questions for the time being and then we'll go through? It's a question that I think a lot of people have asked, and obviously, I think one of the things is, why indeed do we just have one major search engine in the world, one major of many different services looking at, for example, the -- all of the social networking and so on. But I guess it really is down to the consumer. It seems that the consumer decides they just want one. I don't know. Meant to be provocative. Let's see if we can bank a few questions. Let's go to the next person in the queue, please.

CHUCK GOMES: My name is Chuck Gomes. I'm with VeriSign but I'm sharing these thoughts in my personal capacity. And they're more comments than questions, although certainly I welcome response.

I guess I want to start by thanking each of you for what you shared. I think Ludwig started it by saying there's not one

definition, and Thomas, you really said the same thing. There's not one definition. It's situationally dependent. And I think the problem that we've had for years in the ICANN community defining this is because we often assume that the word "public" is a very homogeneous group, and if it was, it would be easy to define the interests. But it's really a very heterogeneous group. And when you add the word "global," it becomes more heterogeneous.

So I really like what several of you said about focusing on the process, and in particular, that's what we do in ICANN. Several of you mentioned the bottom-up or the multistakeholder process and putting those together, and so instead of wasting our time trying to come up with a definition, I think you're right. We need to focus on the process and let that very heterogeneous global public define what's in the public interest for a given situation.

As chair of the RDS PDP working group, we have a huge challenge because of the diverse views of people in the whole community and we have to try to bring those together to find the best combination of public interest that we can, and that's what it's all about.

So I really believe that that's where we need to put our focus with regard to public interest, and that is applied at the policy

development level for each policy and they're all unique. Thanks.

OLIVIER CREPIN-LEBLOND: Thank you, Chuck.

Okay. Next person, please.

MICHAEL PALAGE: Michael Palage. A quick two-part question.

First, is there anyone who disagrees with the comment that Becky made that the GAC has a special relationship with the public interest within ICANN?

I agree with you, Becky. Is there -- does everyone agree with that?

Okay.

Second part -- there's no disagreement, so let's go to the second part of my question.

OLIVIER CREPIN-LEBLOND: Perhaps we can ask the room, actually, a show of hands, if anybody disagrees, because I guess it's not the panel that's just under trial but everyone else. A couple of people.

WOLF LUDWIG: May I make a short comment?

Well, I think it's more or less institutionalized with the GAC, but on the other side, I think it should be the major concern of at-large as well, representing the end users globally but it's very pretentious, I agree, but it should done in the global public interest. Therefore, I see a main concern from at-large as well, so it's both of the advisory committee. It's a main concern of GAC and it should be a main concern of ALAC.

MICHAEL PALAGE: And to be fair, Becky didn't say it was exclusive. She just said a special relationship, to be fair.

BECKY BURR: And if I could, that is embodied in the commitments and core values. It requires, in develop- -- in following the process, to give due regard and take into account the public policy advice of government.

MICHAEL PALAGE: So good. So now the more complex question.

So what happens when the GAC provides advice to the ICANN board, the ICANN board chooses to disregard that advice, and

then there is harm which happens to a third party? Is there potential liability to ICANN for disregarding that?

And let me give a specific example here.

In the context of the GAC communique, in Category 1 there were a list of sensitive strings. Included in that was .MARKET. It was included in the financial strings. The GAC advised, in connection with regulated strings, that registrants needed to be pre- -- they needed to be pre-vetted. That was contained in the GAC advice. In connection with .MARKET, Bloomberg.market was registered, and about a year -- about a year, year and a half ago, there was a false story that was posted on Bloomberg.market that resulted in Twitter's stock temporarily going down. It recovered and the registry operator did take action.

But I guess that's the question is: When the ICANN board disregards GAC advice in the public interest and there is harm to a third party that would not have happened if they followed it, is that something that needs to be factored into the DAM and the people down there. Does it become a business decision and is there consequences when there is a harm?

BECKY BURR: So I just want to take issue with the fundamental premise that the board would actually disregard the GAC advice.

It might not follow it, and the bylaws provide for that, but -- but -- and the bylaws ensure that the board can't, because the board has to interact and work and endeavor to find a mutually acceptable solution. So the bylaws require ICANN to follow the bottom-up multistakeholder process and to conduct its multistakeholder process consistent with its commitments and core values and stay within its mission, and the output of that is the articulation of the global public interest.

The GAC does have a special relationship with public policy. It is not the exclusive owner of that. So there's -- so I don't think that there's a -- any liability that's created because the commitment that is in the bylaws and that can be tested is, did you follow the policy.

MICHAEL PALAGE: And --

BECKY BURR: Or the process, I mean.

MICHAEL PALAGE: Correct. And would have --

I would agree, "disregard," "not follow" is probably the better characterization.

Just food for thought because there are some other strings -- I believe -- I think yesterday John Carr spoke to the public sector working group and the GAC in connection with .KIDS as one of the strings where, you know, what happens if there's a community that's not chosen versus a public sector. So these are just things that I think the board needs to weigh, much like they do in the analysis that Thomas had cited.

So just posing the question for consideration. Thanks.

OLIVIER CREPIN-LEBLOND: Thank you very much, Mike.

Now, since we have a limited amount of time, I've closed the queue after Stephanie Perrin, so if you are behind Stephanie, you might wish to go back to your seat. Thank you. I don't think there's -- I can't see, actually, who is behind you. So first person in the queue, please.

SIVASUBRAMANIAN MUTHUSAMY: I'm Sivasubramanian Muthusamy from Internet Society India Chennai. The first part of the topic was historical perspectives from countries including India, so I want to talk about one of the grandest notions of global public interest from ancient India. It is the notion of considering the whole world as one family. And this concept, viewed together with another

concept known as the concept of trusteeship, wherein power or wealth, a person with power or wealth considers his power or his wealth as something that is entrusted to him to be used for the good of the world, and these two concepts together could help define the notion of global public interest.

In Internet governance, global public interest is achieved by a government or a business acting for the whole world rather than for itself, and Thomas was saying that governments act in public interest. I -- in this context, I look at it a little differently. Governments act in their national interest, and that needs to change to global interest. So I think that's happening in ICANN.

When it comes to business, there are certain barriers to the definition of global public interest in ICANN. The limitations are imposed by the notions such as we should not be looking at content and we should adhere to our core mission. Chuck was also saying that we should focus on the process. Maybe I'll agree with Chuck here and say we'll focus on process but get the process redefined to be rooted in global public interest. Get the process centered on and pivoted on global public interest. Thank you.

OLIVIER CREPIN-LEBLOND: Thank you, Siva.

Any comment from our panel? Thomas?

THOMAS SCHNEIDER: Thank you. Just a very quick reaction.

Of course you're right that basically one GAC representative from a particular country is paid for acting in his national interest, but the GAC as a whole is supposed to mitigate -- and this is what we do, this is why we have -- now they're open -- all these hard discussions within the GAC if we disagree, because the national interest of my country may not be exactly the same like the national interest of another country at the other end of the world. So we try to mitigate national -- special national interests into something like an aggregated balance, whatever you call it in English, global public interest, or a global public policy objective in a particular issue. Thank you.

OLIVIER CREPIN-LEBLOND: Thank you, Thomas. Let's go to the next person in the queue, please.

SUBI CHATURVEDI: Thank you, Olivier. My name is Subi Chaturvedi and I represent the Cellular Operators Association of India.

Thank you so much for initiating this really fascinating conversation. We've heard multiple perspectives. I speak to two particular threads.

When we look at public interest, if you look at the textbook definition it talks about not the interest -- not the selfish interest of a few but of communities and citizens. If you look at India, besides being a really argumentative and a very noisy democracy, it's also a unique conundrum in many, many ways.

About 22% of people connected. In terms of absolute numbers, the growth is truly incremental, but we also have the largest number of population which is still not connected, needs to be brought on line, needs to come on line.

When we speak to questions of public interest and representation and processes which are structured, however loosely, we're still excluding a lot of voices because what we do tend to see are spirals of silence. We tend to see echo chambers.

My question was: A lot of times these processes, however well intentioned and well meaning they might be, have barriers of language, have barriers of inclusion, have barriers of outreach, cultural determination, cultural sensitivities. They're not -- those -- 78% of the people are not in the room and nobody speaks for them.

So in terms of facilitation and processes, are we leaving a large section of society behind who we really need to do outreach with and connect? What is it that we want to do about that? Thank you.

OLIVIER CREPIN-LEBLOND: Thank you, Subi.

Oops. Becky?

BECKY BURR: I just will point out that it is a core value of ICANN, and therefore part of the process for discerning the public interest is to have very open, inclusive, and diverse participants in the policy development process.

Could we get better? Yeah. But -- but that is part -- clearly part of the process.

OLIVIER CREPIN-LEBLOND: Yes. Thank you. That digs into outreach and accessibility, et cetera, the whole thing. Next person in the queue, please.

JONATHAN ZUCK: Yes. Thank you. Jonathan Zuck from ACT, the App Association. I'm also the chair of the CCT review team.

I appreciate this conversation. I have to say, though, that it, listening to everyone, makes Steve DelBianco's definition to which Becky referred to more attractive, not less attractive. I come away from this conversation really nothing short of terrified about the implications of what it is that we're describing, and I think the reason that we've had this ongoing debate about trying to define the global public interest is to create the boundaries within which we have these discussions.

And so the fact of the matter is, you know, the GAC recommends something, the community now has the ability to overwrite what the GAC recommends, et cetera.

That process itself is in place for accountability with the organization but all of that happens within the confines of its mission, and I think now that the organization is so big and so wealthy that the -- the incentive is going to be to think broadly about the role that ICANN can play in the world and the global public interest, and it wouldn't surprise me if we somehow involved in a DAM dispute in Africa or something like that because of the global public interest.

I mean, I -- it wouldn't surprise me in the least, right? So I think that in order for the process to which we are ascribing to actually broaden the perspective of ICANN's public interest, that should involve a change to the bylaws of the organization to

change its mission. And barring that, any notion of the public interest has to be in the confines of ICANN's mission, which is essentially the availability and integrity of the DNS. That is what ICANN does.

And so I think that, you know -- I don't -- I can't think of a scenario, Thomas, where anything ICANN does is in any way similar to what -- the thing that you outlined there. That was such a disastrous scenario. So if adding a few gTLDs is going to displace a million people, then I've missed the connection there, right?

So we need to stick to our knitting, and I think a definition can be very useful in that way. The very few negative impacts that our policies could have are contained in that definition of integrity. So I'm inclined to support Steve's age-old request to define it narrowly and change our mission before we change on a case-by-case basis what the public interest means.

BECKY BURR: So I'm just a little puzzled because the way the bylaws are set up, ICANN cannot do anything that is not specifically articulated in its mission, period.

It doesn't have a --

Its mission is to -- it's along the lines of preserving the stability and security of the unique identifiers. That's what it -- that's the mission. The availability -- I think I've been educated by Thomas a little bit that the availability and integrity of names and numbers is the public -- the objective of that.

The process that we have through the PDP, bottom-up PDP, ensures that what comes out at the end -- and remember, nothing that comes out at the end can exceed -- can cause ICANN to exceed its mission. What comes out at the end of the process is both within my -- ICANN's mission and serves the public interest.

OLIVIER CREPIN-LEBLOND: Jonathan, we actually have five minutes until the end of this session so I'd like to --

JONATHAN ZUCK: Okay.

OLIVIER CREPIN-LEBLOND: -- try and get through the queue. I realize this is a very interesting discussion we're having, but let's just let Thomas speak and then I'll tell you what, we have to continue the discussion on line. So Thomas?

THOMAS SCHNEIDER: Thank you. I try to be brief.

If I expressed myself wrong, I wouldn't want ICANN to be responsible for saving the whole world, but that's not -- that's not the goal.

My point is you need to have a process that allows you to identify all elements of public interest and take them into account. This is why we have trademark people here. This is why we have people that care about things like historic names or names of rivers in Latin America that maybe matters to some people and so on and so forth. It's maybe less a question of life and death, but if you remember the wine and vin discussion, it's about billions of dollars or Euros that are at stake, and that is also part of the public interest globally. That doesn't mean we have to solve all these problems here on the country. I'm fully with you that we need to know what our job is and what is not our job, but we need to be aware of externalities if you look at this economically and make sure that these externalities are aware and they are minimized. Thank you.

OLIVIER CREPIN-LEBLOND: Thank you, Thomas. And we'll send both you and Jonathan to resolve DAM disputes around the world. Let's have the next

person in the queue. Please let's try and restrict it to one minute, and then -- otherwise, we won't be able to finish the queue.

Next person. Thank you.

KAVOUSS ARASTEH: Thank you. My name is Kavouss Arasteh and I am speaking in a personal capacity.

Let us be practical and pragmatic. We are not going to solve the problem of the world. We are going to solve the problem of ICANN.

This is a very live and dynamic meeting, although in some instances even emotional. I don't think that we can define public interest. We may describe that, but not define that. When you define that, it becomes a law. When you describe that, still it is possible to extend that.

In my view, having some experience, I think the description provided by Becky, taken from the bylaw, is the most practical way and we have to remain within that descriptions.

Whatever you started from, stability, security, resiliency, in the democratic, transparent, so on and so forth, that is the

maximum we could say. But we also need to have criteria if that is not respected. So let us be practical and not emotional.

And I would also like to answer one of the points made by Thomas Schneider, the chair of the GAC. It is clear that each GAC representative undertake the interest of his country, but the collective decision of the GAC is summation of those national interests should not be interpreted that it is the global interest of the global community. Thank you.

OLIVIER CREPIN-LEBLOND: Thank you, Kavouss. And the next person in the queue, please.

MANMEET PAL SINGH: Thank you, Olivier. This is Manmeet, ICANN Fellow and also the member of NomCom 2 working party.

I quickly have a small question for Becky. Becky, you mentioned that the core value of the ICANN -- ICANN -- the concept of the public interest that ICANN has is to ensure the availability and the integrity of the registrations which essentially is names. On the other hand, we have given a free hand to gTLD registries to price their gTLD domain names the way they deem fit. Is that right?

BECKY BURR: Yes.

MANMEET PAL SINGH: I've been in the domain industry for the last 15 years and I see -- well, after the launch of the gTLDs, most of the key word names are priced premium, so is that something that comes under the -- ICANN's public interest policy?

BECKY BURR: So ICANN does not have -- there -- I can say there's a legacy exception to what I'm about to say, but ICANN is not a competition regulator. ICANN also has a core value that it -- that it operates by letting the market address problems, and so increasing competition, increasing the availability of top-level domains is a way of doing that, but ICANN does not have authority, in general, to regulate prices and that would be outside its mission.

                         So this is an example of what -- what we were talking about. It has to serve the public interest, but it has to remain within its remit, and we're going to leave the -- the -- those questions to competition authorities, sovereign competition authorities around the world.

MANMEET PAL SINGH: Thank you.

OLIVIER CREPIN-LEBLOND: Thank you, Becky, and thanks to all of the people who have asked questions. I -- there are a couple of questions and comments that made it to the online -- online system. We're -- we will address those in the mailing list.

As next steps, we have a mailing list that deals with this issue and if you are not on the mailing list, you can come to the front and speak to Ergys Ramaj who will be taking your details. Ergys is putting his hand up. We are -- I think we have enough here to start thinking about actually putting together a working group. We're not going to go into what the name of the working group will be, whether it's a cross-community working group, whether it's a working party, a committee or whatever, but let's just make it a working group to start with.

We need a chair for that, so if anybody is interested in leading this, then please could they also step forward. And just I think I have -- I don't -- I've actually gone over by one minute so I just have to thank our panelists here and of course thank everyone here in the room for having participated in this. It's been very interesting and I look forward to following up on this work in the -- in the next meeting that hopefully we will have at the next ICANN meeting. So thank you.

[Applause]

[END OF TRANSCRIPTION]