HYDERABAD – Joint Meeting: ICANN Board & Commercial Stakeholders Group
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ICANN57 | Hyderabad, India

MARKUS KUMMER: Please take your seats. We're going to start the meeting while we are waiting for Steve to arrive. He will be here in a short while. He was holed up in a meeting. This is the traditional meeting between the board and the Commercial Stakeholder Group. And I take it that you want to start with questions up from the business constituency. Is that correct? In that case, can I welcome you here and please ask your questions. And in the interest of time, we are starting while the board slowly is moving in. Okay. Please.

CHRIS WILSON: Thank you, Markus. This is Chris Wilson. I'm chair of the business constituency, and I'm joined by my vice chair for policy, Steve DelBianco, and my vice chair for finance and outreach, Jimson Olufuye.

Just real quick on a process issue, traditionally we've -- each constituency has utilized their full 30 minutes to put forward their own individual constituency's comments and thoughts. We've chosen to reserve five minutes of each of our allotted time

for a collective 15 minutes at the end for the CSG to sort of provide its collective viewpoint on a particular issue. And so I just want to let the board know that's sort of how we are operating right now.

So BC will go ahead and begin with our BC-related issues, and then we'll turn to -- I think the IPC will be next and then the ISPCP after that.

So, from the BC's approach, we actually -- and we are sort of responding, I think -- in thinking about this engagement, a lot of the issues of interest and concern to us have sort of dovetailed, I guess, to a large extent to the questions the board has posed to the CSG in preparation for today's engagement. Question 1 from the board is: What can we, the board and the ICANN organization, do to make the transition work for you? By "transition" I think meaning the IANA transition.

And then, two, what do we, the board, the ICANN organization, and community need to do to advance trust and confidence in what we do?

So as you can see, we've -- there are issues that -- a variety of issues, I guess, that fall into the two categories in that question. So we thought it would be just best to go ahead and answer those questions and utilize our time to delve into some of the issues through those particular lenses, if you will.

With regard to the first question -- with regard to the transition and what the board and the ICANN organization can do, I think, first and foremost, as many of you know, the BC was very, very engaged with regard to Work Stream 1 and the work that was done leading up to the CCWG report and the accountability report. And no surprise, we're also very much engaged in Work Stream 2 activities. I happen to serve as co-rapporteur for the transparency subgroup on Work Stream 2, and I know other BC members are engaged as well. Steve is co-rapporteur for the SO/AC accountability subgroup.

And we -- I guess to some extent this is a request for a commitment from the board now that the time, attention, effort that was put towards Work Stream 1 and engagement from the board can also be put towards Work Stream 2. And we've made this point -- certainly made this point in Marrakech before the transition occurred that the work in Work Stream 2 is just -- can be just as important as Work Stream 1. Work Stream 1 got us to where we are now, but we really have a lot of work left to be done. And so I think we would -- we welcome the commitment today from the board that the level of engagement and effort from them Work Stream 1 can be utilized for Work Stream 2. So, I mean, I'll just leave it there for the time being. If anyone wants to comment now before I turn to other points, I'm happy to do that.

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STEVE CROCKER: There might be other board members who are more directly involved, but I can say two things perhaps related to Work Stream 2. We're very, very interested in making sure that Work Stream 2 doesn't suffer from, you know, sort of being relegated to the back burner and ignored and extended and so forth. We have multiple reasons why we don't want that to be the case. We want Work Stream 2 to be successful. It will totally undermine our credibility as an organization and community if we can't get that done. And to have it hanging around will be just painful.

So I think we're on the same page with respect to that. And it is a point of discussion and allocation of resources. It's getting attention.

The other side of this is we also don't want it to be as expensive and as all-consuming as Work Stream 1 was. So it won't be an unbounded amount of expenses. We've had that discussion already. Everybody is familiar with it. We have cost controls and engagement of people so that it's not just an arbitrary matter. So I think we're taking it quite seriously, both in terms of getting it done and making sure that it's a managed process so that it doesn't consume all of the resources and time and attention and

we get other things done and we can go back to getting our regular work done, if you will.

Does anybody else want to comment on that? Okay.

Continue.

CHRIS WILSON: Thanks, Steve. So that's question one.

I think turning to question 2 from the board, you know, what do we, the board, the ICANN organization, and community need to do to advance confidence and trust in what we do?

I think there's sort of the broad thematics that we are working from. And to some respects, it dovetails with the Work Stream 2 activities. But I think it also goes into efforts that are outside of the Work Stream 2 remit, if you will.

But in particular, the BC -- I think frankly the broader Commercial Stakeholder Group and other -- I think other stakeholder groups and ACs, SOs in this community care deeply about the issue of contract compliance. And I think we believe sort of at its core, ICANN is here to award and enforce contracts. And there's a general dissatisfaction with the effectiveness of the compliance office at ICANN and a dissatisfaction, I think, as well with the amount of transparency that's needed for us to better

understand how decisions are made within the compliance office.

To be sure, you know, we understand obviously there will be a change in that -- a new person in that role going forward in 2017. I think it's safe to say we feel that hire is probably one of, if not the most important hires we made for ICANN because it goes to the core of what ICANN does.

And, you know, we as the business constituency certainly have plenty of concerns with regard to mitigating DNS abuse, for example, in both new gTLDs but other just -- generally speaking gTLDs. For those that may have been sitting in on the GAC Public Safety Working Group high-interest topic discussion just yesterday with regard to mitigation of DNS abuse, one of our BC members from Facebook presented an excellent case study as to why there's deficiencies in the compliance office, how there are deficiencies in the compliance office and the response there.

So we think -- we'd ideally like to see the board to the CEO to the staff level really hone in on this issue and really work with us, work with obviously the community at-large but certainly with the business constituency to find ways to improve the office, improve the metrics that are used and improve the transparency into how decisions are made and why they're made. Because I

think at this point there's a concern that there's a bit of a black box there.

Some of these concerns I know are not new to you. I know, in fact, I think we raised them in Helsinki. We raised them in other venues as well. But we thought here we are now post- -- post-transition and we are at a station where compliance, we think, is even more important in that regard. So I wanted -- I wanted to flag that.

Obviously welcome comments, but I will go ahead and move on a couple other things unless there's immediate comment from a board member.

STEVE CROCKER: Yeah, let me make a brief comment and maybe Goran will want to comment as well. We're hearing a lot about compliance issues, so it's clearly something that we want to deal with and for all the reasons that you said. One of the generic kinds of topics in the discussion is how much of the issue is things that everybody agrees should be done aren't being done or the second order of that but it's not visible enough versus differences of opinion about what should be done about somebody says this is abuse and somebody else says it's not your problem, it's free speech or whatever. I don't want to get into the details. I'm just -- sort of the shape the problem.

It would be good to get to a place where we have agreement even if the agreement is only what we disagree about and agree that we're not going to get past that.

And, Goran, do you want to say anything about compliance function going forward?

GORAN MARBY: I just turned around to Allen and said, What are you going to do about it? And he said I could fire him.

[Laughter]

ALLEN GROGAN: Can't fire me. I quit.

GORAN MARBY: Yeah. I will let you know we are -- we had posted already the replacement for Allen to continue the work we're doing. That's more or less I could say. I think more specific, if Allen wants to say something about it. He seems to be fine. But that's what we're doing. We're hiring a new one. Thank you.

CHRIS WILSON: Thank you. Steve, to your point and I think certainly there's obviously differences of opinion of what may -- in the weeds of

this issue. But I think generally speaking, when there's consensus about what needs to be enforced and not enforced, we still want to see improvement in that -- in that regard and look forward to further talking with you all about it and certainly working with the next compliance officer and collectively improving the process.

Sort of tangential to that, of course -- to the notion of transparency, again, is where we would like to see better data and meaningful data and better metrics with regard to just -- sort of the DNS metrics generally. And I think we're struggling to get a best sense, especially in the wake of the new gTLD rollout and in anticipation potentially of a second round to get -- we are somewhat left in the dark as business users, consumer users of the Internet of how healthy this -- the DNS is and where we are. I think we see a lot of good news coming out of ICANN on this. But we don't see what we think is probably some likely bad news as well. And we think we need improvement there.

Obviously there are review teams underway, CCT RT, another engagement there. Of course, a lot of that is relied upon data that ICANN is collecting or not collecting as the case may be. And I think we would like to see improvement there. And we would like to see, I think, a priority be made not just to gather more data but to better publish that data.

And I think this goes to a broader -- a broader construct. Of course, we're speaking as, I guess, somewhat established people within the ICANN community. Some of us have been here far longer than others. I don't -- I won't commit to say I'm a veteran of this community yet. But I have been here for a little while. But we also have plenty -- we are trying to do outreach to plenty of newcomers as well, businesses that heretofore have not engaged with ICANN, in fact, maybe didn't know ICANN really existed or what it did. It becomes -- it's much easier for us to sell to them why ICANN is important when we have -- when we have data as to what -- with regard to DNS and other data that shows that there is -- there's a lot there here and there's a lot of important work being done here. And I think it can be a challenge in that regard. Maybe I will turn to Jimson real quick to talk about how that dovetails to the outreach function.

JIMSON OLUFUYE: Thank you, Chris. Good afternoon, everyone. This is Jimson Olufuye.

Well, we do a number of outreaches and there is need to do more. And the issue of transparency is quite important here. People need to get to know fully what we are doing when we have to report as to (indiscernible) of facts and figures and more

details. This is the multistakeholder approach that we need to continue to celebrate in the post-transition.

In the Africa region, down through the transition, people could not believe that the transition will happen. So as it happened, we need to reach out more. So there is needs for more transparency and more clarity in what we put out to the public. Thank you.

CHRIS WILSON: Let me turn to Steve maybe to provide an example of what we are talking about.

STEVE DelBIANCO: Steve DelBianco with the BC. With respect to the kind of data that's generated, often a bottom-up process is necessary to understand what data we need and why. And I'll contrast that with the top-down process initiated in the prior CEO's regime for this thing called the gTLD marketplace health index. Comments are allowed, but it was driven entirely from a visit that Fadi Chehade had made in 2013 to Davos. And when talking to folks in Davos, they didn't know who was ICANN was and they didn't know who Fadi was. I remember he flew back to Los Angeles and we were all there for intersessional. And he said, We've got

to do a better job increasing the awareness of the DNS industry and what ICANN does.

And that generated a little bit of a cheerleading concept for the DNS industry and also this notion of marketplace health index, a series of metrics that enable you to assess how broadly distributed registrars and registries are around the world in a global coverage thing. And there are many metrics on there that are quite helpful to demonstrate, I guess, the growth and the breadth of the DNS industry.

But there aren't enough metrics in there to help us assess, well, the unhealthy part of the healthy marketplace, the notion to which we have a lot of complaints of abuse, complaints that are resolved versus unresolved. In other words, the part of the industry that I know Fadi didn't want to talk about was the part of the industry that needed reputational improvement. And ICANN even commissioned a survey, I think, to understand where the reputational holes were.

So where this leaves us is that that is a top-down initiative. The gTLD marketplace health index is being driven by staff who are still operating under the -- I guess, the theme that ICANN's mission is to promote the DNS industry and that's one of ICANN's missions. But ICANN's true mission is to serve

registrants and end users by using the leverage you have on contract parties.

So we are attempting to demonstrate that I think that marketplace health index can be saved if it can be broadly expanded to include regular, realistic, verifiable, credible statistics both on the good and the bad so that we have data we need to know where to improve.

If that can't be done through this gTLD marketplace health index, we ought to scrap it and start over with something the community drives from a bottom-up standpoint so that working groups, cross-community working groups, can decide how do it. They can include the ccTLDs because that's a huge part of servicing registrants and users around the world.

If we do that correctly, we'll generate the kind of metrics we need and then staff can respond by publishing those metrics every few days.

So I bring it to your attention because it's sort of a holdover from a prior regime, and it may or may not be possible for us to enhance that marketplace health index to show both the healthy and the unhealthy side in covering the ccTLDs at the same time.

STEVE CROCKER: Bruce. And Asha has her hand up, too. But Bruce first.

BRUCE TONKIN: Yeah, Steve, just on the topic of data, certainly one of the things that we committed to the U.S. government in the Affirmation of Commitments was the competition and consumer trust review. As you know as part of that, there was a working group which was bottom-up within the GNSO to identify what data needed to be collected for that review. You're on it, yeah.

And I think that's the sort of right approach. So as a result of that, ICANN has then commissioned external agencies to collect data. And I'd see no reason why whatever data gets collected is essentially owned by the community and would be public.

And then I sense -- so there's obviously a set of data that was collected in advance for that review. We had a briefing from the members of that review team a few days ago, and they said that one of their recommendations was going to be some additional areas of data to collect.

So I guess what I'd suggest is why don't you work with the different constituencies in the GNSO and come back with what data that you think should be collected. I know Goran has told us there's something like 400 reports with data in it that's produced by ICANN at the moment.

In any organization, there's always thousands of reports. And after a while, you find that most of those reports are never read. And they're often at great cost. In fact, just the cost of doing the reports for that review will be in the millions of dollars.

So I think it's important to identify, really prioritize, I guess. And that's where if the GNSO can come up with a prioritized list saying, Here's the ten pieces of information we want you to collect and track ongoing that will inform your policy development processes, then I think that would be a great GNSO initiative.

CHRIS WILSON: Let me just say real quick, Bruce, sometimes those reports aren't read because they are not easily found or easily understood. I think that may go to another core issue in terms of availability and understandability for lack of a better word from not just -- not just from us that are sort of well-versed in this but also those that aren't as well-versed. I think that's part and parcel why we are raising this issue now, too. It's as much about collecting the data as it is about making it understandable and approachable for the broader community as well. So...

STEVE DelBIANCO: Bruce, we'll commit to do the bottom-up generation of which data we need. But we need you guys to commit that the staff-driven gTLD marketplace health index, that they'll accept what it is the community asks for, even if there are statistics that don't maybe reflect always positively on the health of the marketplace. In other words, the gTLD marketplace health index is not a bottom-up process. We don't have the ability to get the data in there that the community is looking for more broadly.

BRUCE TONKIN: I won't be on the board at this point. But process-wise, they were doing their best effort to provide information to the community. You're saying there is some information missing. Why don't you just be explicit about it? I don't see any reason why the staff wouldn't comply once the community has come up with a set of metrics it wants. So why don't you just assume that they will because it sounds like you are assuming they won't. I think it's the wrong starting point. The organization works at the direction of the community. You come up with what you need. We obviously come back with what the budget might be and that might feed into the budget process if it costs $100 million to collect the data. But assume it costs a few million, then that would be a budget line item and that would go back to the community and you've got veto mechanisms if you don't like

the budget. So there's a very clear process. Come up with the metrics, the organization will identify the cost of collecting that data. That would appear in the budget. You review the budget. Board approves a budget. Gets done.

STEVE CROCKER: Everything he said, plus in listening to all of this, you made the point very eloquently that the -- what Fadi commissioned was in service of a particular purpose which was to raise the visibility for the Davos folks, if you will, whereas there are other objectives. I think including what the purpose of the -- is of collecting the statistics so that there is a connection between the numbers that are collected versus what you're trying to accomplish. Not taking any issue with what that is, just asking that it be explicit and so that it also defines a notion of what good is. And even if the numbers are bad, at least we know where we want to go. Asha has been waiting patiently, I think.

ASHA HEMRAJANI: Thank you, Steve. I want to go back to -- this is Asha Hemrajani, for the record. I want to go back to what you mentioned earlier, Chris, about engagement and getting more businesses joined. Can you very briefly outline what your outreach program has been in terms of getting businesses outside of the United States and Europe to be members of the B.C. Thank you.

CHRIS WILSON: So I think it's an ongoing process. I think I should take the time to acknowledge the hard work that Chris Mondini ask others do in this regard because they do work tirelessly and engage with us all the time about trying to reach out certainly to regions of the world that -- outside of Europe and North America, quite frankly, and I know Jimson probably could speak even more specifically because Jimson does some wonderful outreach on behalf of the BC within African and other parts of Asia, but I'll let maybe Jimson -- I'll give Jimson maybe 30 seconds, and then we are out of time. But, Jimson, just 30 seconds, if you want to speak to that, and then we'll defer.

JIMSON OLUFUYE: Yeah, this is Jimson. Just to say quickly that whatever we do requires continuous improvement. So we will continue to improve on this in Africa, Asia, and Latin America. Thank you.

CHRIS WILSON: So we're going to go ahead, and we're out of time on our side, so we'll go ahead and turn to the IPC for their engagement. But thank you all very much for listening to us. Appreciate it.

GREG SHATAN: Thank you. This is Greg Shatan, president of the IPC, and I'll be joined at the table by my colleagues Kiran Malancharuvil, Vicky Sheckler, and Paul McGrady. Though they are making their way up to the table. Quite dramatically.

So we'd like to start. First we have a couple of questions for the board, and then we'll take, you know, your questions to us, including the ones that were initially posted to us. And I would say that there is an overall theme of trust and confidence and accountability that runs through both our questions and yours, especially as we're in this new post-transition ICANN.

So first question goes back to the intellectual property constituencies charter. First, the -- now my computer just shut down in front of me. Love technology. The board-approved mission statement of the IPC, which is in our bylaws, includes, quote, to provide to the GNSO and the ICANN board timely and expert advice, unquote, on issues relating to intellectual property, quote, particularly as it interfaces with the DNS, unquote. In the board's view, how can we, the IPC, more effectively advise the board on IP issues on which our members have expertise? And as a follow-up, how does the board inform itself on those issues today? So need to figure out how to -- we'd like your thoughts in part on fulfilling the full mission of our charter. Thank you.

STEVE CROCKER: I have to say, I don't fully perceive what the question is that you want us to respond to.

BRUCE TONKIN: In simpler terms, Steve, the question is, how does the board get informed about intellectual property issues?

STEVE CROCKER: Greg tells us.

UNKNOWN SPEAKER: That's what I thought.

GREG SHATAN: In an ideal world, perhaps. Or at least in my idea world.

STEVE CROCKER: No, no, in this world.

GREG SHATAN: That is in essence the question, which is how can we, IPC, more effectively can carry out the part of our bylaws that says that we're supposed to provide the board with timely and expert

advice on IP as well as the part that says that we're supposed to represent the interests of IP stakeholders.

MARKUS KUMMER: I'm sorry, I'm the board member elected by this part of the non-contracted parties house. I happily offer myself as the conduit. So my simple suggestion would be to send me an email, let's talk, if you have a problem, and let's sit together, and I will then pass it on to the rest of the board. And I think coming up with this, Steve sitting in the first row actually did that. He sent an email on an issue that was important to him to Becky, Bruce, and myself. And I think that's a very sort of common sense approach of dealing with this issue. Now, whether we need to --

UNKNOWN SPEAKER: (Off microphone).

MARKUS KUMMER: That one there, sitting in the front row. I did mention Steve Metalitz. My apologies. So no. But if you feel there is need to have something more structured or formal, let's talk about it.

GREG SHATAN: Thank you. Chris Disspain.

CHRIS DISSPAIN: Thanks, Greg. Just a question for you. I just want to tease this out for a second. Were you implying that there would be a clash of -- because you mentioned both advice and also representing the interests. Were you implying there might be sometimes not necessarily an item that they might actually be clashing?

GREG SHATAN: To my mind there shouldn't be a clash, but I could see how it can sometimes be hard to understand or to keep the two apart. And what we want to do is try figure out how we can more fully and in a more structured way fulfill the part of our bylaws where we're supposed to be providing timely and expert advice and also, if necessary, make sure that there's no confusion between that and the more representative part of our -- our remit.

STEVE CROCKER: We -- just taking the words as you said them, Greg, we have other groups, the formally structured advisory committees that have a comparable thing. So the Security and Stability Advisory Committee provides timely advice on security and stability issues, and they write documents and they label them as advice documents and send them to us and we pay attention and we respond. I don't see any impediment to having the same thing come from the intellectual property constituency. At least speaking from my point of view, it matters not that you're a

constituency within an SO as opposed to an advisory committee, and common sense would be that we'd pay attention either way.

GREG SHATAN: Thank you, Steve. Kiran Malancharuvil.

KIRAN MALANCHARUVIL: Kiran Malancharuvil IPC from MarkMonitor. I certainly appreciate Markus' answer about receiving communication from IPC members and using that as a way to inform yourself, but I think that in a lot of ways that illustrates some of the concerns of the IPC members who don't necessarily have as much connection and visibility have about how the board is informing themselves on IP. And I think that that's why we often feel like we need a more formal structure on how to -- how to inform you because the individual letters, although I actually like Steve Metalitz and often agree with him, so it's not criticism of whatever he wrote to you about, we want to make sure that we've got sort of a more formal structure in place. And I think that a lot of us feel like we lack that, and we're happy to hear that you're willing to work with us on that.

STEVE CROCKER: This may sound a little on the simplistic side, but when I had the pleasure of chairing the SSAC, the Security and Stability Advisory Committee, and getting it going over a period of time and one of the things we did is we'd write reports and we'd do the simple-minded thing of putting a number on it, date, number, and so forth, and so sometime later I find myself being interrogated after I was on the board and I guess as I was chair, the At-Large folks took me to task and said how come you're not paying attention to our advice. And, you know, we send you stuff. And I -- this is going to sound dumb, but my whole career is basically made on this one idea. Why don't you put a number on it and send it to us. And you could do that and it would actually raise the status of it from a letter that's floating around to a thing that has to -- you know, that's sort of in the files and has got a -- a fixed position, and we now have a system in place that takes these things seriously, tracks them, keeps track with what the -- where we are in the process of responding to the advice, et cetera.

UNKNOWN SPEAKER: (Off microphone).

STEVE CROCKER: Yeah.

BRUCE TONKIN: I'm just looking at the IPC website. Actually so I see you have got a section on that website where you have got all your public comments documented. But I recommend you also have a look at the SSAC website and the RSSAC website because as Steve says, there's a combination -- there's obviously public comments, which are very reactive. You know, you're reacting to whatever the latest issue is. What you'll see on the RSSAC and SSAC site, though, is documents that are intended to have long-term -- or to be dealing with more longer term issues. So, for example, one thing that might be interesting in the intellectual property world is latest legal developments. You know, what new laws have come into place in what countries that ICANN might need to be aware of. You know, has there been any significant changes in trademark law. You know, a simple memo, if you like, would be really helpful. And one of the things that Goran has done for the board recently is on complex topics where there's something new, he provides what he calls a scorecard which is literally a half a page of text that says, here's the main issue and this is the implication for you. So something in that format, just like a one-pager. Very similar to how you probably -- you know, many of you work in the corporate environment. What sort of briefing would you provide to your boards on some new legal development? You know, a board's

not going to read a 100-page document but a one-pager that says here's a new law on intellectual property arena and this is how this law might impact what -- might impact Internet identifiers. You know, that would be helpful, I think. And then you could keep a track of those on your website, as Steve says, as some sort of, you know, document 1, document 2, and update them over time.

GREG SHATAN: Thank you, Bruce, and thank you, Steve. And while those are common sense, I think it actually is a very good kind of roadmap to creating a second type and easily distinguishable type of communication from the IPC that will, you know, work. So we've taken -- gotten some very good conversation on that and we have other questions, however. So I'm going to turn the mic over to Kiran Malancharuvil for our second question.

KIRAN MALANCHARUVIL: Hi, Kiran Malancharuvil again. Does the board think the organization with its current structure and participants is fully representative of the public that ICANN serves and fully diverse through its coordination of DNS resources? If yes, how is this demonstrated? If no, in what way does ICANN need to evolve to ensure the adequate representation of the global stakeholder community within its governance? You may remember that I

spoke to you about this same issue in Marrakech. Looking forward to your thoughts.

STEVE CROCKER: The form of your question is to create a -- an issue in which we have to take a position on it and then we have to defend that position. I'm not going to do that. You do it. Tell us where you think the discrepancies are, where you think the matches are, and then we have an interesting discussion.

KIRAN MALANCHARUVIL: I'm not entirely sure that that hasn't happened, to be honest with you. In fact, I think there were a couple of concrete asks about increasing diversity, in particular participation of women, in Marrakech. And I haven't heard any update on the specific asks that were made at that meeting. So certainly if you're asking us to come up with a list and draft a letter on how we feel that you can be more fully representative and encourage more diversity in the ICANN community, then certainly we'll do that again, I think, and we'll move forward.

LOUSEWIES VAN DER LAAN: Thank you very much. Lousewies Van der Laan. I think this is a question, of course, which is important to the board but to the community as a whole. And I'm the board liaison for a Work

Stream 2 subgroup on diversity. And this is precisely -- the core of the discussion is, how can we get the organization to be more diverse, and that includes obviously gender diversity but also geographic and linguistic cultural diversity, and then we're kind of labeling qualification stakeholder background diversity so you don't have only lawyers or only engineers and things like that. And the challenge really is for all parts of the community and of course the ICANN organization and the ICANN board to do what they can do. What we're doing internally within the ICANN staff organization and the board is that we're starting to really make sure we have the facts and the figures. So that we have all of the data available, who's attending the meetings, where are they from, what is their gender, if they want to identify that, et cetera. And I think that by having a spotlight on the facts and the figures, that's really, really important so that we know where we're missing things. But in order to encourage more diversity, and this is precisely what the subgroup is working on, there's going to have to be a lot of steps taken. And one of the things, for example, if we don't think there's enough diversity in the leadership, do we have enough diversity in the pipeline going up to the leadership. This is not something the board can impose on the community. The board composition is not something we decide on ourselves either, but it's something that's important and that I hope we can all work on it together. Thanks.

KIRAN MALANCHARUVIL: Can I just ask a follow-up question for that speaker? Sorry, before we get to the next. Just super quick. In -- when we -- we speak about diversity, so gender diversity is my pet project just because -- personally not an IPC thing. But I think that I should point out that this question also speaks to diversity of viewpoints, where we're coming from, you know, is there an imbalance between contracted party interests and non-contracted party interests, and I think that -- you know, that's an important thing for the board to take into account when you're mulling this question over as well.

GREG SHATAN: We have got Asha, Bruce, and Vicky.

ASHA HEMRAJANI: Thank you, Greg. First of all, Kiran, thank you for your question. Like you, I'm also very passionate about gender balance. The correct word is "gender balance" because we are 50 -- women are 50% of the human race, or nearly 50%. Now, coming to your point about how do we improve, and I want to go back to what Steve said. It would be really helpful if you could tell us specific areas that you see we should improve on. We have a lot of statistics that are already published on our website. We already

have statistics on who's coming to our meetings, what is the composition of each of the SOs and ACs in terms of geographic balance and gender balance. And as -- as my colleague mentioned, there is a subgroup on diversity and that would benefit from your inputs. So what would help is that we get specific inputs from you.

In terms of the board, I think we're very -- we are not 50/50, but we are much better than most boards I have come across. And what I would like to see is better gender balance in the community, which I haven't seen. And I also would like to see better geographic balance in the community, which is why I asked the question earlier for the business constituency and about their outreach efforts and engagement in order to bring in better geographic balance from other parts of the world into the community.

But we would -- I would love nothing more than to continue this discussion with you. Thank you.

KIRAN MALANCHARUVIL: Sure. Thanks.

I think I would just note one thing that's very important to me to note. I understand gender is a balance but I also understand that gender is not binary. There isn't just male and female. So --

so we're not going to get to 50/50 ever with gender because that's not how gender works in this world.

I also understand that we can't impose -- that the board -- sorry, that we -- I'm not a member of the board. Sorry. Excuse me.

[Laughter]

KIRAN MALANCHARUVIL: Yet. No. I'm teasing. So we -- I know that the board can't impose gender diversity, but I would hope that the board could set a better example in how it's composed, and I do know that there are women who -- there are women on our board and it is better than a lot of what we see, especially in the tech world, but I think that there's more that we can do and I'm happy to hear that there is a diversity effort going on. So I'm excited to see that.

GREG SHATAN: Bruce?

BRUCE TONKIN: Yeah. A quick response on the board. The board doesn't appoint members of the board. You do. So you, for example, appoint a member to the board. So -- and so I think more generally, one of the things that the board's looking at --

because the thing is, what can the board or the organization do about it. So we can't appoint the board. The community appoints the board. But what we can do is look at outreach and try and get more diversity through that method in terms of encouraging people to be involved in ICANN, and so I think one of the things the board's looking at is the strategy for what are the goals and objectives of our engagement officers that are located in different parts of the world. And as you -- I don't think I've heard a couple of people point out, but you can look at geographic diversity, do we have enough people from different regions of the world volunteering to be involved in ICANN. You can look at gender. Do we have enough mix of gender. But also skills, and I think that can be -- as Lousewies -- you know, do we have enough lawyers, engineers, politicians. But then perspectives. And I guess what you're saying is you want to ensure that there's enough people from the -- the business user community involved in ICANN rather than just the civil society, for example.

So I think these are all things that what might be helpful for us is if you could give some thoughts on what you think the engagement centers could do to help with that, because that's one of our areas of focus at the moment is what's the best use of our engagement offices, because they're spread around the world and the board's sort of thinking about it in the last couple

of workshops, actually. I think the emphasis -- just a personal view -- the emphasis in the recent past has probably been more on government relations, trying to get more governments involved in the GAC, and I think that's broadly been successful. I mean, the GAC's now much bigger than it was when I first got involved in ICANN. But, you know, maybe there's some new objectives for those officers and some input from this community on what those objectives could be would be helpful.

GREGORY SHATAN: Thank you, Bruce. In the interest of time. Vicky is seated. We have only a couple of more answers and Paul is going to handle our answer to the first question that you posed to us.

PAUL McGRADY: Thank you. Paul McGrady, IPC, GNSO Councillor.

So Question Number 1 is what do we, the board and ICANN organization, have to do to make the transition work for you? This is a real quick answer. The answer is: Predictability. The accountability mechanisms that came out of Work Stream 1 were very detailed, and in terms of getting the business community behind the idea of the expiration of the IANA agreement, Work Stream 1, the details coming out of that were part of that sell, and so to the extent possible, if you can track as

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closely as possible to -- to that package, that will provide some predictability that I think that people are looking for and certainly the folks that we come here to represent are looking for.

ICANN took a reputational hit during the new gTLD program rollout with a lot of, you know, things that got changed and this got started and that got started and other things that -- during implementation that were not at all predictable and took a -- added a lot of time and cost to the process, and we're hoping that as Work Stream 1 work is implemented, that it will be done in a predictable way.

And I think I've used the word "predictable" four or five times now, so hopefully I've been able to convey that that's the answer. Predictability. Thank you.

GREGORY SHATAN: Cherine?

CHERINE CHALABY: Thank you.   Thank you, Paul, for that.   I think not only predictability, which we agree with, but also implementing all these new bylaws and all the changes and the new powers has to be done in a collaborative way with the community.

I think there are -- over the next couple of years, all of these we will learn how to live with them, and we are absolutely committed to make it happen. There will be some times where people sort of disagree a little bit about how we're implementing something, but I think the most important thing is we do it in a very collaborative way so that we increase the trust between the -- that the community has in the board.

So we are totally committed to the predictability and the collaborative approach to implementing this.

GREGORY SHATAN: Thank you, Cherine.

We have an amazingly incisive answer to your second question, but out of respect to our ISPCP colleagues and to the clock, we will -- we'll send it to you. Thank you.

Oh, do we still have two minutes? I had a different timer. Sorry. Well, Kiran why don't you -- now you have to stand up to that description.

KIRAN MALANCHARUVIL: I want my two minutes.

GREG SHATAN: There you go.

KIRAN MALANCHARUVIL: Sorry. Quickly. One of the primary drivers that reduces institutional trust and confidence has been ICANN's inability, despite its best intentions, to effectively govern contractual relationships with business partnerships, particularly GNSO registrars and registries. These contracts need to be robustly developed in the first instance, and once entered into they must be strictly enforced by all parties and understood by all parties.

We rely on ICANN staff and the board to ensure enforcement of terms that protect IP and consumers. However, all too often hyper-technical interpretations of these contracts are exploited to the detriment of IP end users while ICANN staff takes no action under the banner that their hands are tied. The contracts are not interpreted holistically in commercially reasonable ways in a manner that gives effect to the underlying policies that underpin the agreements, such as RPMs, WHOIS, et cetera. We need consistency, predictability, transparency, and reliability, and a commitment from the highest levels of this organization to instill a culture of compliance and contractual accountability that will build institutional confidence in the organization.

Lack of transparency, especially from ICANN staff, particularly compliance, contributes to the breakdown of understanding these contracts. The apparent disconnect between our

understanding of provisions such as the 3.18 of the RRA, WHOIS accuracy specifications, and Specification 11, just as examples, and ICANN board organization interpretation of these same provisions have fostered confusion and frustration and have eroded our trust in the ICANN board and ICANN organization.

And we look forward to your response to that bomb on the list, probably.

GREGORY SHATAN: Thank you, Kiran.

Any response from the board on that one or will we take that one off line?

Tony, why don't you take over.

TONY HOLMES: Okay. Thank you, Greg. You see how tough it is now in the commercial stakeholder group. We go right to the final second.

[Laughter]

From the ISPCP, we have four people around the table here. Just a very quick response to the board's questions, and we're happy to follow up after for any detail, but when we looked at those questions, and the first one about making the transition

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work, we felt the answer to that was almost in the second question.

Basically, it is about building trust and confidence. And certainly in order to achieve that, you have to have good ways of judging if it's improving or if it isn't, and it comes down to really having the metrics that are going to help you make a decision on that readily available.

So you need the right data to facilitate that, and that's one aspect that I think has been covered by the responses here and we would certainly echo some of the views from our partners in the commercial stakeholder group.

We also felt the level of compliance had always to be leveraged in a way that met the future demands from that area.

But what I'd really like to do here is to move on to some issues which have been discussed pretty well within the ISPCP recently, and two issues in particular to raise with the board through this opportunity.

The first concerns the future round of gTLDs, and then we would like to talk about the meetings strategy and certainly scheduling for meetings.

But on the first point, I would like to hand over to Tony Harris, who is going to lead that item for the ISPCP. Tony?

TONY HARRIS: Thank you, Tony. Yes. I would like to refer to a letter we saw from Steve Crocker -- it was dated, I think, sometime in August, early August -- with respect to this, and the question was, "Identify critical issues which should be addressed prior to new application process being put into effect."

I think we can highlight a couple of issues.

The first one would be the universal acceptance issue, which is being worked on by the universal acceptance strategy group, and I think that the more time we give them to work on this quite serious problem, the better it will be for the new applicants that eventually show up.

I think the second critical issue -- and here I would say I'm not complaining about something but we're just observing -- would have to do with access to market and specifically with the way let's say the new gTLD launch has encountered activity or interactivity with a registrar.

We have to consider that the registrar industry has four leaders. The four of them comprise 53.6% of the market. I'm going to name them. They're GoDaddy, eNOM, Tucows, and Network Solutions. And if you don't have them carrying a new gTLD, that

new gTLD has -- is pretty well shut out of that percentage of the market.

In the case of Latin America, it's even worse. In Latin America, as the recent LAC DNS study which was issued for public comment recently -- and incidentally, it's a great study. If you haven't seen it, you should look at it. It highlights the challenges that the -- that as a region Latin America and the Caribbean has as far as developing, let's say, the registrar market in the region and also the adoption of new gTLDs.

It's simple. In Latin America, since you don't have registrars -- there are probably two, I think, operating with new gTLDs right now -- the main factor are the resellers. The resellers, of course, are hosting companies, Web site developers, and ISPs. And they all hang, as resellers, on these four companies I just mentioned. So in our case, for example, I'm a registry for .LAT as well as being an ISP, and we -- we're poised to relaunch our domain because we weren't all that successful in the initial launch, which means a large investment in advertising and marketing.

Well, we can do that, but the problem is that those that are going to sell domains in our region are most -- in the majority, resellers. 90% of it would come from them. And since they have a -- their accounts hinge on these four companies who won't carry our domain -- they've told us more or less politely to get

lost -- we have a problem there on how we can improve the performance of our -- the sales performance of our new gTLD.

That would be an example.

And to not make this too long because there are other issues that have to be brought up by our constituency, I'd just finalize by saying that registrars are the obligatory sales channel for any registry, obviously. That's in the applicant guidebook. But they have no obligation to carry a new gTLD. So there is some inequality there.

As I said before, this is not a complaint, it's an observation, and I think it might be a critical issue that should be looked at before we embark on a new round of applications, because the newcomers are going to run into the same problems that we did. Thank you.

TONY HOLMES: Yeah, please. Go ahead, please.

ASHA HEMRAJANI: Thank you, Tony. I just wanted to ask Tony, thank you for your comments and what's the "ask" of the board? What would you -- I understand you think it's a critical issue to be looked at. What

do you -- what would you like us to see? Or what would you like us to do? Thanks.

TONY HARRIS: Basically, when consideration is given to the new -- the new round that will be forthcoming and we have a new guidebook, if that's what it's going to be called, that this issue of how the access to market is constructed -- in other words, the current structure with the registrars -- be looked at because there is no protection for the new applicant.

As I said before, we have to -- we have to go to them to sell our gTLD but they -- they can say, you know, "We're not interested." So where do you go from there?

I think the -- the way this is structured, the way the sales media is structured, needs to be revisited. That's all. Perhaps -- perhaps there are some other alternatives.

ASHA HEMRAJANI: So -- thanks for that. So as a follow-up, is that something you -- the group can -- your group can give feedback to, as part of the community process that we're collecting, that's being held now to collect inputs on the new gTLD process?

TONY HARRIS: Absolutely. We'd be very happy to contribute.

ASHA HEMRAJANI: Thanks.

TONY HOLMES: Thank you. I'd like to bring Mark into this discussion as well.

                          Mark?

MARK McFADDEN: Thanks. Mark McFadden, ISPCP. In terms of subsequent rounds for new gTLDs, one of the things that the ISPs see is that there's a lot of work that is well staffed, well supported, well organized, that is preparatory to a new round for gTLDs, and I'll just throw out some examples here.

                          The people who are looking at what changes need to be made, if any, to an applicant guidebook, the process that supports it, the policies that underline it. We've just had the public comment period or just had the public comment opened for the Phase 2 report on economic impacts. Also, people are looking at competition.

                          And the ISP community thinks that there is a class of issues that aren't being holistically addressed, if I can suddenly become

Californian, that need to be addressed for subsequent rounds for new gTLDs.

We think these are primarily around technical issues. Now, Tony mentioned one and -- universal acceptance, but what I'll say to you is that you -- I don't think that any of us, whether we're in the technical community, in the policy community, in the registry/registrar ecosystem, I don't think any of us would want to start a subsequent round of new TLDs before the user acceptance issues were solved. Because, once again, we'd be putting people who are looking to apply in a subsequent round in the same set of problems that people in the first round, in the current round or the just-completed round, would be in.

So I think it's important to take universal acceptance very seriously, and I don't doubt the board is. But I give it as an example of a class of technical problems that aren't being addressed together in the same way that some of the others are. Another example is a breakdown in the relationship between ICANN and the IETF, is that -- one of the things that has happened here as a result of the new gTLD round is that we have no mechanism, no effective mechanism, by which the two organizations can agree who is responsible and the mechanisms for reserving names in the root. And it's an extremely important engineering issue because one of the things that we happened was we know we saw contention in the root for particular

names. In fact, ICANN commissioned a study through years on that exact topic.

We also know that folks like the RSSAC have issued a report says intriguingly, I think, that another round -- a subsequent round of new gTLDs would be just fine as long as we did it the same way as the first round. The likelihood of us doing it the same way as the first round is the likelihood of me being voted for President of the United States on Tuesday.

UNKNOWN SPEAKER: (off microphone).

MARK McFADDEN: And, by the way, if you are going to write in a name, it's Mark McFadden.

But another example of this is that we're starting to see an emergence of people talking about competing name resolution systems. We need to nip that in the bud. We need to make sure that if we believe in One World, One Internet that we have a name resolution system that actually fits the bill, that is actually globally distributed, available to all, and that has a meaningful governance mechanism as well as some technical gravitas.

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In short, I think one of the things that the ISP community would like to see is that the range of technical issues, if you will the basket of technical issues, that have emerged after this first round of gTLDs be treated together and addressed before a subsequent round get approached.

One of the things that the ISPs have already told the board is that we think that all of that good work that is getting done -- and I mentioned that before, the redevelopment of the AGB, the examination of processes and policies, the economic -- the phase 2 economic study and so forth, all of that good work should get done before the board commits to a subsequent round and commits to the outline of the subsequent round.

The ask that I have, Steve, is that we think that the board should take action to bring the technical pieces together, the issues that have come out of the first round and address them in a holistic way. This is not an opportunity for SSAC in our opinion -- that this goes -- that this is a very particular activity in support of a new initiative for ICANN. And so SSAC would play a role in this, but we think the board should commit to addressing these technical issues in a holistic, concrete way together in the way that it's dealing with issues like competition, economics, policy and process. Thanks.

STEVE CROCKER: Thank you. So I heard two very specific technical issues. I hope I didn't miss anything else. One was the reservation of names, and the other was universal acceptance. So we've already heard quite a bit about universal acceptance today in other settings, and I think that's made an impact and we need to sort of look at where things are.

In fact, let me diverge a little bit and draw an analogy. We're at mercy, this whole program, by forces that are not under our direct control, the people who build websites and may have lists of what they think the top-level domains are and so forth. And so we need some sort of outreach program or something like that.

And then conversely, the question that was raised a bit earlier about it's fine to have new gTLDs but if the registrars don't put them into their catalog, then they're in deep trouble. And so the question is: What is the forcing function or incentive, whatever, on the registrars? All of that is, I think, an important thing.

On the reserved names, this isn't the right time and place to get into it. But there is substantial interaction on that. My understanding is that it's not solely a question of getting IETF and ICANN folks together. There's also quite a bit of dissension or difference of opinion within the IETF about what their process. So if you imagine some sort of mediation, even if you

pushed all the way in one direction and you said, Do whatever the IETF says, you still wouldn't get an answer. And I think they would take issue with your assertion that there ought to be one name resolution system. And, in fact, they would be pointing to Facebook on one side and to Onion on another and so forth. So making it a bit more complicated.

But, anyway, it is getting attention. We have Suzanne Woolf right in the middle of it, as co-chair of the DNS op working group in the IETF. And she's managing to escape our clutches here in a few days. So I don't think it's as out of control. It's definitely not under control. It's somewhere in the middle. But I take your point that this is certainly one of the areas that ought to be addressed before moving forward.

BECKY BURR: Sorry. I just wanted to get back to Tony's comment about the access to distribution systems. It's pretty hard for me to imagine that ICANN could get to a point that we could have authority to create some kind of must-carry rule.

But one thing that has always bothered me is the way we implemented the vertical integration of registries and registrars. And it does seem to me that we -- we said you could be vertically integrated but not really and you have to do all kinds of

complicated things. It doesn't make any sense from an anti-trust competition theory.

And so one question I have for you is: Is that a way to get at a solution to the distribution chain problem? In other words, you could be a registry and a registrar fully integrated, distribute the names yourself, not be dependent on getting shelf space at GoDaddy or eNOM.

TONY HARRIS: It might help in some instances. I don't think it's a solution honestly because you already have a huge reseller chain in place depending on major players. And if the major players don't carry your TLD, all those resellers will not be selling your domain names because they don't process them.

I think -- I don't think you can force them, they are private companies, as far as saying we have to carry the TLDs.

But if you have a company with a market dominance such as a well-known company who has 31% of the market, it might be justifiable to say, well, if you're a dominant player, you should at least include the TLDs in your catalog. You don't have to promote them. You don't have to spend money on marketing them but at least have them in your catalog.

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TONY HOLMES: Just on that, I think the short answer is it doesn't mop everything up. It may help, but it certainly doesn't mop up a lot of it.

I would very quickly like to turn to the other issue Tony raised, if I may.

BRUCE TONKIN: Tony, I wouldn't mind commenting on Mark's comment because I'm just trying to understand it. You are referring to technical issues around universal acceptance. And by technical issues, I think at this point we are really talking about the millions of end user systems that use pieces of software to read characters being typed interest a website. I'm not sure you'll ever get universal acceptance of something like that. What you really are trying to do for something like this is raise awareness, and over time it improves.

If we use your argument, it seems like we should stop issuing I.P. version 6 addresses because there's network devices that don't support them. Whereas, really we're saying there's a benefit of I.P. version 6. We encourage people to implement that and then it works. But it's certainly not -- I.P. version 6 isn't supported in every network today. And then if you look at other examples at a software level, you know, when a desktop publishing company introduces a new font, it doesn't display on all devices. Or you

look at emojis with respect to text messages. So people that have modern smartphones are now using emojis, if you like, to express emotions. But if you have an old phone, they won't display. And it's never likely to display on an old phone. So I don't think you can use the argument we should stop moving forward until instantly we launch something new and it's available everywhere. So I don't think that's a technical issue. But it is an awareness issue, definitely. And it's an issue about how do we let people know who are writing new software that the new software should handle these new types of names appropriately.

MARK McFADDEN: Very quickly, Bruce, thanks. I sort of don't agree with the IPv4/IPv6 example because there were no scarcity in names before the new gTLD program, where there's clearly no IPv4 addresses left to hand out. So there's -- that seems like a very different situation.

And what I was trying to respond to in a way for the constituency was to respond to Steve's letter because he was looking for gating factors. What should the board think about as gating factors for a subsequent round, right? And what I'm bringing to the board -- or what the constituency is really bringing to the board is that we think the board is doing very well on a set of

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issues. But what we don't see is these technical issues, and UA is an example of one, okay? We don't see those getting addressed in the same way with the same level of organization.

STEVE CROCKER: Just very briefly, there is room, I would hope, in the CCT review to mention these things because that relates to consumer choice. I don't know -- I haven't looked too closely at how they are structuring the review. But conceptually that could be one of the areas to put in there.

TONY HOLMES: Okay, thank you. I'm going to be in trouble here with my colleagues in the CSG, so I will go through the second issue very quickly. We're at ICANN57. And having gone through arrangements 57 times, would have thought it was pretty easy organizing meetings. Of course, that wasn't the case. And certainly I think a number of us have found that the arrangements we needed to make scheduling for this meeting have been more difficult than ever before. And, of course, there are reasons for that. The fact that we changed the meeting format and this is the first of the longer meetings in the new format was partly to blame for that.

I think a lot of us also anticipated that it would map pretty much on to previous meetings, being a similar length. And that wasn't the case. We had a totally new format. We had block schedules offered to us for certainly our constituency meetings and stakeholder groups meetings.

And they proved really hard to develop because we had a lot of conflicting issues around that. For instance, the ISPs, we wanted time to meet with the CEO, with ALAC, with the contracted parties house, with the non-contracted parties house, as well as our own discussions within the CSG and in constituencies as well. And it was always a case of that there were moving parts. Whenever you shifted one part, it affected all the others. And even when we got here, we found there were still moving parts as well.

And this isn't offered in any way as a criticism. I'm well aware of the hard work that was done by the meetings teams and I'm also aware of the terrific work that was done by the secretariats that support us as well. They did a fantastic job. But we really would like to make this easier and also provide some certainty to the process because it's very hard to get people certainly from business to commit to come to ICANN when two weeks out you haven't got a settled schedule that's posted. And, ideally, it needs to be done quicker than that.

What we would like to propose is that moving forward it would be very helpful if we could hard bake some of the these meetings that always occur, that are real ICANN core business meetings into the schedule and then work around them to fill in the other slots that we require. To help do that, to actually help fulfill that ambition of filling in the slots in an easy way, we would suggest it would be very helpful if we gave some thought to forming a committee to work with the meetings team and the scheduling team before the next meeting with one representative from each of the SOs, ACs, and constituencies so we have one point of contact. Because quite -- in quite a number of cases here, we had people who were really conflicting the schedule within our own organization or own part of the organization and to try and progress that way. So one representative to work closely and fill in around what is a hard-baked schedule of core meetings.

Chris.

CHRIS DISSPAIN: Thanks, Tony. Yes, so I understand -- I understand everything, and I know that there have been some challenges, not least of which is the fact that the days are all wrong because we're used to having...

There is a review going on, I know. Sally Costerton and Nick Tomasso are working on looking at all of this and so on. So what

I -- if I might suggest, if you could put what you just suggested in an email and you can send it to me, if you'd like, and then I will contact Sally and Nick and we'll talk through them.

And there is a session at the public forum on Tuesday, I think it's the first 15 minutes of the public forum, which is headed "meetings." So you can also quite happily, if you are able to, make that suggestion at the microphone. Is that okay?

TONY HOLMES: That's very helpful. Thank you.

So for the final part of this meeting, we mentioned -- at the beginning Chris mentioned we are coming back together on an issue that is of serious concern for all of the Commercial Stakeholder Group. And the best way to present that is, rather than do it three times, to do it once. So certainly we have people at the table from all three constituencies. And I'll hand over to Steve DelBianco to introduce that.

Thanks, Steve.

STEVE DelBIANCO: Thanks, Tony.

This is a heads-up to the board so we can avoid having you be really surprised when something so good as the transition can

create such bad feelings in the business community. It's about the exercising of the rights and responsibilities in the new bylaws, things like the empowered community, the reviews, CSC, PTI, and document discovery, all these fantastic new powers that were designed there and how the exercise of those would be done particularly by the business community in GNSO. After the 2014 transition was announced and the business community kind of digested it and the community digested it, it came back up at the London meeting. You'll remember when all of the ACs and SOs including all the GNSO constituencies and stakeholder groups all went to the mic at the public forum to say, Wait a minute. Don't do the transition unless we also first do an accountability track. That's where that was born. And then the business community dived in headlong to make sure that Work Stream 1 was all worked out. And as you know, the business community was instrumental in getting it through the U.S. Congress just barely. I mean, it was Goran and Larry left a pound of flesh in Ted Cruz's committee room but so about Becky Burr, Jonathan Zuck and I on the same panel.

The good news is each of the ACs and SOs is supposed to go back and decide how it will exercise the powers and rights and responsibilities.

So I will just focus on GNSO. There's a hundred places in the new bylaws alone referencing these new powers. 60 times it's

the "empowered community" but 40 times it references specifically "GNSO" or "GNSO Council." And it's a split between the two. Half the time it says "GNSO." Half the time it says "council." Well, all along for the past year and a half of Work Stream 1, all the ACs and SOs just are referred to as their generic names, so the GNSO. There wasn't a lot of thought given must it be council or could it be the GNSO groups.

So this presented a golden opportunity -- as the GNSO works out how to handle these new rights and responsibilities the opportunity to let the constituencies and stakeholder groups that you created in GNSO, we created, let us speak directly on how GNSO wants to exercise the powers to block a budget, block a bylaw, spill a board member.

But, in fact, what happened is that council itself, GNSO Council, created a drafting team and its report must be approved by council. So naturally, no surprise, council, if this is approved tomorrow, will end up being the body that speaks for the GNSO. And what's wrong with that? Council is composed of the GNSO. Yeah, it is, but due to the restructuring of eight years ago, the council operates on a split house. So everything council does has to be voted for by at least a majority of each of the two houses. That's what this drafting team ended up recommending. And I chaired the drafting team, so I was well

aware of the business community concerns. But you go with the majority when you are designing and implementing a team.

So this split-house structure means that the contract parties, for instance, can veto anything the GNSO might have a significant majority of -- the entire rest of GNSO might be there. All of the rest of the noncommercial stakeholders group may be in flavor of blocking a particular budget item to the contract parties because the split-house voting would be able to block it.

So why are we telling you this? Because the bylaws change will probably come your way in the next two months, meaning that after staff reviews, they will have to come back with specific changes in the bylaws, empowering council to exercise the split-house voting on powers it's never had before. And that change to the bylaws will be subject to your review and public comment.

And when it comes back, we wanted you to be ready, that there will be a lot of public comments and powerful passions from the business community. We'd like you to be aware of that, be sensitive to the business community concerns. And if you have ideas on how to solve this, we are all ears. Thank you.

STEVE CROCKER: Thank you. I listened as carefully as I could to -- it gets a little deep. What I was trying to untangle here was whether the bylaws with these hundred references and they are split between empowered community and GNSO and GNSO Council and so forth, whether there were unintended errors in the drafting and you want to make the case that that should be cleaned up so it's more uniform. Not that. So those choices were specific and were agreed to -- no.

STEVE DelBIANCO: Choices were somewhat arbitrary. The use of "council" sometimes and the use of "GNSO" other times. It may have been that legal staff just assumed that council speaks for GNSO, but that isn't necessarily the case.

So let's just say it was innocently ambiguous. And now we want to say, It's up to us, GNSO, to make the decision. The way we're making the decision, Steve, is that we're letting council drive how the decision gets made. So naturally if council drives the whole process, it's going to be council that speaks for GNSO.

STEVE CROCKER: So I still don't have clarity about which way this issue is. Is this an internal matter within the GNSO which is -- would be totally

consistent with everything we've ever seen about the GNSO, that there's --

[Laughter]

UNKNOWN SPEAKER: Yes.

STEVE CROCKER: Or is it an ambiguity that should be cleared up -- this is -- the board is empathetic with your problems.

[Laughter]

CHRIS DISSPAIN: I have just a question, again for clarity. Steve, are you -- this is coming to us because it's going through the process in the GNSO and is effectively approved and what you're telling us is that it's -- it's still not acceptable to some people and we're going to hear noise about it, is that in essence what you're saying?

STEVE DelBIANCO: It is.

CHRIS DISSPAIN: Thank you.

STEVE METALITZ: Excuse me. This is Steve Metalitz. Can I just add a word here from the standpoint of our constituency? I was also a member of the drafting team that Steve chaired so ably. This is a heads up. This is going to be coming to you. It's a foregone conclusion that the GNSO Council will -- will say it wants these new powers that -- that are outside of its remit in the bylaws. So there presumably will be bylaws changes and it will come to you in that form, and it's -- we know that when you get policy development issues that are coming up through the process you quite appropriately say, well, if it followed -- if it commanded a consensus within the GNSO and they followed all of the procedures, we should presumably approve it. This is not a policy development issue. It is not a policy development issue. It should not even be in the GNSO Council under the current bylaws, but it's going to come to you in that way. So we're giving you the heads up. Please don't treat it as a policy development recommendation to which you should defer on a consensus basis because it's something quite different, and as Steve indicated, the council's self-interest in getting these new powers really pretty much make this a foregone conclusion. The structure that's in the GNSO Council, the two-house structure that Steve referred to, was imposed on us eight years ago solely to solve some perceived problems in the policy development

STEVE CROCKER: So again, just for clarity, did I hear you say the magic word "a bylaws change"?

STEVE METALITZ: Yes, we assume there will have to be a bylaws change.

STEVE CROCKER: Well, if there's a bylaws change, then that triggers a heavyweight process. So the board is not going to be casual about that. It doesn't matter in some sense whether it's a regular bylaw or a fundamental bylaw, there's -- there's less of a difference, from my perspective. It all has to go out and get fully vetted.

I do want to make a more general comment. The hundreds of pages of bylaws, no surprise, has a bunch of rough edges and ambiguities and other kinds of things in it. And I'll just speak personally, this is not an official position, but I'm fully expecting that this will not be the only clean-up process that we'll have to

process. And whether that structure is right is really a -- a discussion for another day. I think you know we have a strong view on it. But let's not -- that's not the issue here. The issue is, is that structure right for these new powers that have nothing to do with a policy development process.

face. There will be other bylaws changes coming from other quarters, including even from the Board itself, and some amount of our tension collectively in the whole community will be working through all of that as a way of cleaning up --

STEVE DelBIANCO: Steve, if I could clarify, there may be clean-ups, but this isn't a clean-up. A clean-up is when everyone sort of agrees what it should say and it doesn't match what it does say and we fix the words. This will be a disagreement on what it should say.

STEVE CROCKER: Well, okay. We'll take all that on. And as you have both have indicated, this is intertwined with the long-standing contention about how GNSO is organized and so forth and that has to be dealt with at some point and --

CHRIS DISSPAIN: So just for absolute clarity, because I want to make sure I've got the message, and I may not be using exactly perfectly good language, but what you're basically saying is, what comes to us will not have the weight of policy development coming to us and so should not be treated that way and thus it -- we could refuse it, refuse to accept it, without the consequence -- the same

consequences there would be if we rejected policy, that is in essence what you're saying. Okay. Thank you.

STEVE CROCKER: We have come to the top of the hour, which means we're done, yes?

TONY HOLMES: Yes. Thank you very much for your time.

STEVE CROCKER: Thank you all. Spirited discussion, and

[END OF TRANSCRIPTION]