MARRAKECH – At-Large: Introduction to the Empowered Community and ICANN Community Working Group reports
Monday, June 24, 2019 – 13:30 to 15:00 WET
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MAUREEN HILYARD:	…presentation. We'll look at how we're involved in a high-level decision-making body within ICANN called the Empowered Community. And in the second half of the session, we're going to be having a look at how we're participating in and contributing to cross-community activities and impact we're making at the chalkface level. Those are the two parts of this particular session anyway.
	So, first of all, I'd like to welcome Stephen Deerhake from the ccNSO and also representing a domain name in my Pacific region, which is really cool, the .as. He's going to explain the role of the Empowered Community and what can and can't do.
STEPHEN DEERHAKE:	There we go. Thank you, Maureen, for the kind invitation. And thank you also for the At-Large community to having me as well. As Maureen said, I'm Stephen Deerhake. I manage the .as (American Samoa) ccTLD which is indeed in Pacific Ocean terms pretty close to Cook Island. I'm also a ccNSO Council member representing the North America region, and you might want to

know why American Samoa is in ICANN's North American region. It's because many years ago, they were geographically challenged.

As you can see from the title slide, this is an overview introduction I call the Level 1 course on the Empowered Community and the Empowered Community Administration. Next slide please.

With regards to this whole Empowered Community thing that came into effect, a short answer that drove it all was the IANA transition that was completed in October 2016, and the purpose, the overarching purpose of that transition was to remove U.S. government oversight over the IANA function and it had been something that the global community had been striving for for well over a decade as well as to make some changes to the then current Bylaws. So I call that result to this effort, which was really on the part of the community, a massive, massive amount of work, ICANN 3.0. When the new set of Bylaws was adopted, they came into effect immediately on, I think it was October 1ˢᵗ, it would have been 2017. Next slide please.

This is what actually happened. Oh, it was 2016 – sorry. It was a big shift from U.S. government oversight to what was coined by the Cross-Community Working Groups – at that time, community oversight – and one of the components of the new

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Bylaws was the establishment of an entity within ICANN called the Empowered Community or EC. And believe it or not, it establishes the California non-profit association, and precisely what that is, I don't know but it does not have people as members, it has organizations. You can see from the membership list that we have the ASO represented – you guys are represented. The ccNSO is represented. GNSO is represented, and the GAC even has representation in the Empowered Community.

In further Bylaw 3.0 terminology, the SO/ACs that are members of the Empowered Community are collectively known as the decisional participants. So if you feel the need to start reading the Bylaws when you see that phrase, that's what it means. Within the Bylaws, this established a specific structure that organizes the decisional participants into what's known as the Empowered Community Administration or ECA. Next slide please.

The relevant Bylaws involved with regards to Empowered Community are Article 6 which defines the Empowered Community and sets forth the Empowered Community Administration etc., and Annex D which describes in exquisite mind numbing detail the specific procedures by which the Empowered Community through the Empowered Community

Administration can exercise their rights under the new Bylaws and you have a reference there to the Bylaws. Next slide please.

I put this slide up in every presentation because the ECA has had in the last three years rather large turnover, the exception being myself the only remaining charter member dating from 2016. In large part, the reason for this turnover of the Pacific representatives on the ECA is because, with the exception of ccNSO, all the other SO/ACs seem to want to appoint the head of that organization to be their representative to the ECA. So, as those elected leaders of the various SO/ACs turnover which is of course due over time, the representation from those SO/ACs changes as well, which banks for rather continuous churn of the ECA membership. Next slide please.

With regards to the actual responsibilities enumerated in the Bylaws with respect to what the Empowered Community can do via actions of the Empowered Community Administration which ultimately makes the decisions on behalf of the SO/ACs and the community's members as a whole, they can appoint individual directors. They can also approve Bylaw amendments. Under the new Bylaws, there are two types of Bylaw amendments – a fundamental and a standard – and there are some differences, which I'll get to shortly.

The Empowered Community Administration is also responsible for approving any changes to the actual articles of incorporation of ICANN and also it has to approve any asset sales by ICANN. Further, the Empowered Community through the ECA has the right to a bunch of other good things including rejecting ICANN budgets, IANA budgets, operating plans and strategic plans. And lastly, it has the ability to reject standard Bylaw amendments. Next slide please.

The previous slide described things that are pretty generic and, in my view, are not of concern, suggesting that the relationship between ICANN and the multistakeholder community is heading towards the rocks in a storm. This slide however gets darker. If we ever get into a situation where the community is advocating any of these actions, I would submit that a multistakeholder community and ICANN overall are in deep, deep trouble.

Among the additional things that the Empowered Community can do is to reject governance actions that are undertaken by PDI, which manages the IANA function at the moment. We can also require the ICANN Board to re-review IFR recommendations that have been rejected by the Board, and so Special IFR recommendation decisions, SCWG decisions and recommendation decisions. And this is really getting into the

weeds if we ever get down to this level of community unhappiness with what ICANN is doing. We're all in big trouble.

As you can see, it gets even darker with regards to forcing ICANN as fire up for community reconsideration request or community but lead IRP. We also have the ability to remove individual directors, so if you don't like whoever is representing you, you guys can self-organize and submit your request – your petition as what they call it in ICANN Speak – to the ECA and to the other decisional participants. The odds of succeeding with that are rather low based on the specific mechanisms outlined in Annex D.

Getting even darker, the community can spill the entire Board, throw them all out. And last but not least, the community, if it's really, really upset with ICANN, can sue them, and this was never possible before. The actions on this slide are actually kind of mind boggling in the increasing level of darkness, so to speak. Next slide please.

This is just a page of some useful links for those who want to pursue this a little further. We do have a decent website on the ICANN website overall. One of the big things with the Empowered Community is there's a lot of correspondence which you'll see a slide about shortly. And all of that correspondence is documented and posted on the ICANN website, both the

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correspondence coming from ICANN to the Empowered Community Administration and our correspondence going back to ICANN, which is invariably the ICANN Corporate Secretary. That page is really nice because it also ties the various bits of correspondence together with the underlying action that triggered that correspondence. Next slide please.

You get around to the question, what does the Empowered Community Administration actually do? Really, the answer is paperwork, as I mentioned. We send paperwork to the Corporate Secretary, he sends paperwork back to us. Because the ECA has the obligation and authority to appoint Board directors, there's a lot of correspondence that goes back and forth reporting on SO/AC election results of Board members and certification via appointment of those elected Board members.

We also correspond with ICANN regarding the budgets that we are, in theory, able to reject. There's correspondence regarding strategic plan revisions, standard Bylaw changes. And last but not least, notification of approval actions. With the ICANN – all these items, the ICAN PTI budget correspondence, the strategic plan correspondence, etc., they're triggered by the publication of ICANN of public comments. Public comments come out, they wait for a community review, which is usually like 45 days, and then there's a period after that closes, where staff summarizes it.

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Then the Board takes some sort of action. They approve a budget, they make a Bylaw change, whether it's a fundamental Bylaw change or standard Bylaw change, and that triggers a lot of this correspondence.

The other major thing that the ECA does – and we've only done it once but it's likely that we may be doing it again – in Cancun is we hold what are known as community forums. These take two flavors. The approval forum is when the ICANN Board has made a change to a fundamental Bylaw. If they want to change a fundamental Bylaw, they have to submit it to the SO/ACs for their consent. The level of consent required for that approval by the community to be given to ICANN is to vote three SO/ACs, and we did one of these involving a Bylaw change for Board governments. I can't even remember what it was now, but we ran our first public forum at the Johannesburg meeting in June of 2007, which was not that long after this whole thing came into effect which was back in October of 2016. We actually had a Board member come and do a song and dance show for us for about 45 minutes to justify this really arcane and non-controversial Bylaw change. So, we can do this actually. Next slide please.

With regards to the community events that occur – and again, as I mentioned, these are most often triggered by essentially all the

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time triggered by Board action that is subsequent to public comment on the proposed Board action going through the public comment period and staff summary period.

There are two types of community events overall. There are ones that are predictable. Election of Board members come under this example because they are put up by their various sponsoring SO/ACs at a predictable interval based on when their terms are expiring. Annual budget cycles come under this, both the PTI budget which is now separate from the overall ICANN budget, any ICANN budget itself. And last but not the least, the set of predictable events that the ECA handles are the annual planning updates which includes the operating plans for ICANN and the strategic plans as well. Next slide please.

Where it gets more interesting, really, is the unpredictable events and under unpredictable events I classified Bylaw changes because we just don't know when one of those will come along and whether it's a standard Bylaw change or a fundamental Bylaw change, because procedures the actual mechanisms for handling a standard Bylaw change differ significantly from the procedures used to handle fundamental Bylaw change as you can see there, and the standard Bylaw change triggering a rejection action petition period is much more in favor of the community failing to prevail and ICANN

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prevailing. Whereas, with the fundamental Bylaw change where the ICANN has become and actually ask part permission, we do hold the upper hand, so to speak, but the threshold is the same for the most part. There's slight difference which I'll get to you. But the default with the fundamental change is ICANN has to convince us with a pretty liberal timeframe as to getting approval of the threshold SO/AC. Whereas, with the standard Bylaw change and the rejection action process, the collective community, the various SO/ACs really had to be on their toes, act proactively, be nimble, and so the odds of success of the community rejecting something that the Board has done that they'll entitled to reject is much lower in reality. Next slide please.

What I want to do now is give you a somewhat detailed walkthrough of an approval action because this is so far only real world experience and we probably, as I mentioned earlier, will have one of these forms coming up at the Montreal meeting depending on if the Board makes this Bylaw change that they're contemplating making. As I pointed out earlier, the Board need the approval of the community for fundamental Bylaw change, the asset sale and articles of incorporation changes. Next slide please.

This is typically how this action works. The Board proposes a change, the changes I mentioned earlier is published for public comment usually for 45 days, staff does their thing, writes report for the Board and the community, it gets published, the Board gets it, and at the end of the day presumably the Board will vote to approve the Bylaw change. At which point, the ICANN Corporate Secretary puts in motion the whole approval action process by notifying the SO/ACs, which I mentioned earlier, referred to as decisional participants, as well as submitting written notification to the actual Empowered Community Administration itself. Next slide please.

What happens after that is the Empowered Community Administration directs ICANN to set up an approval action forum. We set the precedent for this with the approval action forum that we had in Joburg, which I mentioned previously. The reason for insisting on an actual approval action community forum at an ICANN meeting is to, in a nutshell, have the community flex some muscle and give a fundamental Bylaw change the respect that it needs. This was a precedent that I came up with and so far I've gotten not push back from any of the subsequent members, and we'll see again what happens coming up to the Montreal meeting, if in fact we have one of these in front of us.

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During this 21-day period that starts after the Board has taken action on whatever it is they're doing, in this case, let's say fundamental Bylaw change, the various decisional participants that is the SO/ACs have 21 days to figure out what they want to do, whether they want to approve it or oppose it. They need to consult with each other and anything they decide to do, they have to notify both the ECA and the ICANN Corporate Secretary in writing, so as noted previously, there's a lot of correspondence flying back and forth. At the end of that period, decisional period, if at least three SO/ACs have said yes, we're okay with this particular action that the Board has taken, then that Board's action prevails. Next slide.

The second thing that comes under the approval rejection action is the actual rejection action. And as I noted earlier, the way the actual mechanism that is used by the community to carry out a rejection action process against the ICANN Board is very biased in favor of ICANN prevailing. It's a lot more complicated than an approval action. It's got crazy little deadlines here and there. As noted in the slide, you have to specify a rationale in your rejection action petition, and if it's involving a budget item or operating plan, that rationale needs to be tied to a public comment that was made during the public comment period on this proposed action.

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That's why I emphasized particularly with rejection actions, if you see something in the budget you don't like, really don't like, and you want to challenge it, you best are talking to your fellow SO/ACs very early on in the 45-day window – 45-day plus staff time which is about 18 – with your fellow SO/ACs to start planning a coordinated plan of action, solicit support from them for your objection, and if you get some support then you need to plan a coordinated plan of action and be ready to strike as soon as possible once the petition period begins. Next slide please.

I'm not going to go into rejection action in huge detail. I just want to point out some of the bigger differences here. As noted, there are different voting thresholds and the voting thresholds are different depending on the type of the rejection action petition. As you can see from the slide, if it involves the community objecting to a standard Bylaw amendment, the community has to solicit and provide evidence of support for that rejection from at least four other SO/ACs to prevail. If you recall, with an approval action, ICANN only needs to get the approval of three SO/ACs to have their position prevail. So, this is a concrete example of the biased built into the rejection action petition in ICANN's favor. If it involves something other than a standard Bylaw change, however, it's the same threshold of three SO/ACs to reject, to block it. And again, the rationale has

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to be tied to a public comment. Can you scroll down just a little bit? Sweet. There you go. Yes. Okay. Thank you. Next slide please.

There are a few other things to note with rejection action as your summary items. Feel free to start reading Annex D. Good Luck. There's the 21-day. There are multiple processes, each had their own 21-day time limit. The really important thing to note here is that at any point, if a deadline is missed and that step is not completed, the process fails, it comes to an end, and ICANN wins. They prevail on whatever it is. And like approval actions, the ECA can direct ICANN to hold a rejection action petition forum, community forum, the same way we can for approval community forums. Actually, they could be held as teleconferences or two-way webinars made available to the community but most likely given our precedent that we set in Joburg, we would force these to be carried forward to the next ICANN meeting so that community can meet in present and converse among themselves and present at the forum and discuss the results as well. Next slide please.

In summary, as you probably have deduced from what I've been saying for the past few minutes, it's a really complicated procedure. Depending on the SO/AC, their internal procedures may actually effectively preclude them from effectively

participating in this process, and the prime example of this is the ccNSO where we are so tied up with internal rules involving pre-publication of council agendas, seven-day review period by the ccNSO community of council decisions that it's very, very difficult for the ccNSO to effectively challenge a rejection action, that challenge something the Board has done in the form of rejection action, or indeed even put themselves in a position to support another SO/AC that is mounting a challenge, that may have much greater simplified rules and be able to take action much quicker. The ccNSO has their hands tied. This is something we are looking at but it's not going to change for a long time, in my guess on that. Next slide please.

To give you a rough review of what's actually happened since Kobe, to give you some sense of the ECA's workload, we fill a couple of Board seats, as you can see. Those Board members were elected by their various constituencies, put forth by their various constituencies to the ECA which certified the elections and actually did what's called in the ICANN Bylaws the "selection." We noted via correspondence back and forth with the ICANN Corporate Secretary that the rejection action periods for the FY 2020 operating plan and budget, there is some updates to the five-year operating plan. None of those were challenged since Kobe. The public comment periods went out,

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stuff came back, the Board did what they needed to do, and no SO/AC was sufficiently upset with the Board action to actually try to mount a rejection action Petition. In fact, in the entire history of ICANN 3.0 since October 2016, there has never been a rejection action petition submitted by any SO/AC on any ICANN action. So, I think that's some indication that so far at least in this, coming on three-year honeymoon period, things were still going fairly well between the Empowered Community and ICANN Org. Next slide please.

As I mentioned earlier, the ICANN Board is contemplating a change to a fundamental Bylaw. It has to do with the IANA Naming Function Review Team and it's really kind of sticky and in the woods. It's pretty obscure what's going to happen but it needs to happen because currently the IFRT cannot be constituted, the ccNSO members cannot be appointed and they need to be appointed for this group to their work. And the fact that this group has not yet begun their work means that ICANN Bylaw – I believe it's section 18 – is being breached at this moment, so we do have a bit of a period.

As you can see from the slide, there seems to be a decent schedule here for what's going to happen. The public period just came out about 12 days ago, 14 days ago now. You can see when it's expected to end, when the staff is expected there to vote or

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to issue their report. Board approval will trigger an approval action and if they do so, it's very likely unless my fellow ECA members think otherwise that we will force the implementation of this Bylaw change until after an approval action forum in Montreal. And I cite this section here that it fiddles with. Next slide please.

Also after public review and these all drop on the same day, the 10th of June, and I was not actually aware that these two particular standard Bylaw changes were going on. Again, depending on how swiftly the Board moves, it's possible that we could have a rejection action community forum for these two Bylaw changes as well. They're very obscure as you can see. They involve SSAC and RSAC. You can see the proposed schedule there, which Bylaws are specifically being changed. As I recall, SSAC wants to change their governance structure from two co-Chairs to a Chair and a Vice-Chair and RSAC wants to do something with terms or it's the other way around. I frankly don't remember. It's that obscure. Next slide please.

As I mentioned, that just summarizes the – yes, it is, the limit on the leadership team. Okay. This just summarizes what I just said basically but it's there for the public record as to what's going on in the specific Bylaws involved, so that's now on the record for this. Next slide please.

That's basically it. Historically, I've held the pen for the ECA and it's not that much work but I do have to be cognizant of deadlines and make sure that I get what I'm supposed to get. The ECA gets what we're supposed to get from ICANN and make sure that on behalf of the ECA get to ICANN what they're required to get from the Empowered Community, via the Empowered Community Administration. So, thank you. I'm open for questions.

JOHN LAPRISE: Satish?

SATISH BABU: Thank you, John. Thanks, Stephen for a very informative presentation. I'm Satish Babu from the APRALO. I have two quick questions. First, I'm very curious to know, given that this entire structure is to safeguard the new after the post-transition ICANN structure, why is there such a heavy tilt towards or bias towards ICANN?

The second question, is there a direct link between PTI and Empowered Community? The PTI and the Empowered Community.

STEPHEN DEERHAKE: Let me take the second one first. That link is actually through the submission of PTI budgets to the ICANN community for review. Those budgets still come to the community as a potential rejection action, so the ability of the community to object to a PTI budget is biased very heavily. It's remote, it's really remote. So, that's really your linkage.

With regards to the question why, the rejection action mechanisms are written so strongly in ICANN's favor. In the run up to the transition in the summer and into the fall of 2016 when all these was being hashed out, I would say politely there was a lot of sausage making going on – I was involved in some of it but I wasn't involved in the actual writing of the Bylaws, which was a very intense and very short period – but I would guess that there was probably some serious, serious pressure from ICANN and their attorneys as to getting the community to accept what was the final work product in Annex D, Section 2 which is rejection action stuff. Thank you.

SATISH BABU: Just a follow up, if I may. Is there a review of the Empowered Community structure itself?

STEPHEN DEERHAKE: I'm sorry, could you repeat that?

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SATISH BABU: Is there a review procedure for the Empowered Community structure itself? For instance, can someone reconsider or alter this later, this bias towards ICANN?

STEPHEN DEERHAKE: That would be extremely, extremely difficult. And the reason that would be so difficult is because the structure is embedded in the Bylaws. So if you're going to try to change the structure, you got to change the Bylaws. And all this stuff is standard Bylaw, it's not fundamental, and so it's really locked in place and its current form.

JOHN LAPRISE: Olivier?

OLIVIER CREPIN-LEBLOND: Thank you very much, Mr. Chair. I have a question and a follow-up question. They're actually closely related. You mentioned earlier that some of these powers that the community has might be used in cases where the community would be particularly unhappy with the Board, let's say, one of them being of course the spilling of the whole ICANN Board.

First question, how likely is it that something like this might happen? I mean is this really just a nuclear scenario?

Second question then is when it comes down to PTI being related with ICANN, would PTI be able to operate without ICANN existing?

STEPHEN DEERHAKE: The answer to the second question is there are mechanisms whereby PTI's function can be spun off from ICANN. There is a periodic review process regarding PTI and its performance. In fact, that's coming up very shortly. The odds of successfully pulling the PTI/IANA function away from ICANN, even in the face of extremeness behavior by ICANN I still think is very small. It's all theoretically possible.

With regards to you question about the dark stuff such as spilling the Board and so on, that second slide where in my book the relationship just goes further and further downhill, again, since all those mechanisms revolve around rejection action petitions and non-approval action petitions and the mechanism employed is heavily biased in ICANN's favor, I would suggest – well, actually, when you get into the Board stuff, it's a little different. That's the Level 2 course, but the stuff is really biased in ICANN's favor and I would suggest, with all seriousness, that

you'd have a better chance winning a national lottery than seeing this successfully carried out on behalf of the community. It's all theoretical. You can do this.

JOHN LAPRISE: Actually, I chime in here substantively. One of the things – and this also goes to Satish's question – is that this kind of mechanism in an organization is extremely rare. The capacity for a community to actually spill a Board is a very rare sort of function just generally. We're not liar in that respect.

STEPHEN DEERHAKE: John, if I may follow up on that comment. You're absolutely right and in fact, there is in the run up I'd say a year plus before the actual writing of the new Bylaws and their adoption, there is this intense amount of cross-community GAC involvement trying to sort out what would work and what would not, and there are actually phenomenal legal bills run up both by ICANN with John's day and with not one but two law firms on the part of the representing the community that specialized in this crazy stuff and there was just so much hair pulling and hand wringing trying to figure out how this structure that we actually ended up with [was it] legal under California law? If it wasn't, what could

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we do along these lines that would pass muster? So, it's a tremendous amount of work that was done in that.

And John's correct, this is a very, very unique structure. Its long-term success I think remains an open question. But as I said, we're still in the honeymoon period. It's under three years, so we'll see.

OLIVIER CREPIN-LEBLOND: Thank you. That's very helpful. So, let me just be blunt. Could PTI continue to exist if ICANN was to cease existing?

STEPHEN DEERHAKE: The short answer is yes, it has to, and there's a mechanism but I cannot tell you exactly what that is because that's way deep into Annex D, how that works. It has its own board and its "wholly owned" by ICANN. So in theory, it's an asset. But if ICANN itself ceases to exist, one would think as to wind down ICANN as we know it, ICANN corp., that there'd be an asset transfer to a new owner.

UNIDENTIFIED MALE: Yeah. The asset can be spun off effectively.

STEPHEN DEERHAKE: Yes. I couldn't tell you the details on how that would work but it's in Annex D somewhere, if I'm not mistaken.

JONATHAN ZUCK: Hi, Jonathan Zuck for the record. Some of us were pretty deeply involved in trying to come up with the principles behind this Empowered Community and then it got handed over to a lot of lawyers to figure out how to actually implement them in the Bylaws for sure. But I guess one point that I want to make is it was not really meant, designed to be a new way of ICANN operating. These are really literally meant to be a backstop of accountability for the Board in the absence of the role that the good United States government was playing through its MoUs and things of that that took place over the number of years.

So it's not supposed to be the community taking over for the Board. The Board is supposed to, whenever possible, to continue to act as a Board. So it's supposed to be hard to change that fact. It's supposed to be the result of the community having reached some consensus that the Board has gone off the rails. It's like if we were part of FIFA and the things that started happening there, and that is this kind of situation where the things you were describing is dark might come into play. The idea isn't to spill the Board once a year to flex our muscles or to

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get every Board resolution to go through the community because the Board is meant to still play the role of the Board.

When we talk about something being biased in favor of ICANN, I feel like that's sort of the wrong nomenclature because what it's really meant to mean is that the system is biased in favor of ICANN's normal operating procedures. The normal operating procedures for the budget, for example, involves a very long community consultation with lots of feedback and lots of opportunities to influence the budget, and that's the way it's supposed to work unless something goes wrong and it's in that context that the community gets together, tries to build allegiances and alliances necessary to get the Empowered Community to veto a budget, to bring the organization back to its minimalist state so that everybody feels the pain necessary to drive things to conclusion. But that's not meant to be the normal operating process of ICANN. It's meant to be extreme circumstances. But in theory at least, the fact that those powers exist means that the normal processes of consultation will be more effective because the organization is dealing with a community that has those powers.

STEPHEN DEERHAKE: Thank you, Jonathan. Within response, that was a great description and that is really how it's supposed to work. My use

of the nomenclature comes from having been involved with ICANN for over 20 years and having had some really aggressive actions taken against the cc community by the early ICANN organization and as a result, I'm a little cynical to this day about ICANN, so that's where that use of my language comes from.

SÉBASTIEN BACHOLLET: Merci. Thank you very much. Jonathan, I agree with you. You're right, but we have to realize that after the IANA transition, the ICANN doesn't function the same way. It has deeply changed. Maybe we don't realize it that the Board has less power. The ICANN Board cannot do as much voluntarily and unvoluntarily.

If I'm looking at one example, we have not one President and CEO of ICANN. We have the ICANN staff. When you hear him, he is the President and CEO of ICANN Org, not of everyone. We do not have a CEO. We do not have a President. We have Board Chairman. This is the same word in English. It's confusing but it would be very important to not discuss it today. We're talking about policy during this week but what changed after the transition. And the question is, should we give more power to the Board? Whatever I think about the Board today, it might be good for the Board to have more power.

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STEPHEN DEERHAKE: Well spoken.

ALAN GREENBERG: Sorry, I'm not used to this pointing regime. I was going to address the same issue that Jonathan did about what this mechanism is designed for with one or two exceptions. There are a few exceptions in terms of approving some of the Bylaws where we actually have prior approval as opposed to veto right.

But the most of the mechanisms really are effectively an escape hatch. They're the escape hatch that you blow off something to escape. They're the jet pilot's ejection seat. It's not designed for normal operation and you have to be really desperate before you use it because there are consequences of using it that could be very negative also. And they were very much designed with that concept in mind. Thank you.

STEPHEN DEERHAKE: Thank you, Alan. I think you're quite correct. As I pointed out in the periodic stuff, there is a possibility of the community objecting to the budgets and the plans, but so long as ICANN is interacting faithfully with the community and listening community concerns particularly in the budgetary areas, there should never be a need to see one. We haven't yet on either of the operating plans or the various budgets, and I give a tip of the

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hat to Xavier and his finance people because over the last five or six years, even before we got into this transition, they were doing such a better job of paying attention to input from the community on the budgets and the plan than they were 10-15 years ago. It's night and day and it continues to get better.

In that sense, Alan is correct. It's like on the second slide where you're spilling Board members or the whole Board filing other things, it really means that things have really gone off the rocks, and it should be hard. But in theory, it's not impossible to take any of those actions.

MAUREEN HILYARD: Okay, I think we've really created a bit of a hornet's nest here and I think it's great. [Inaudible] here more about what it is that we are a part of and responsible for, so thank you very much, Stephen, for that introduction.

STEPHEN DEERHAKE: Thank you, Maureen. Thank you, everyone, for the opportunity. I'm happy to come back and give a Level 2 course which would, I think, focus on explaining the intricacies of the rejection action because that's the one about budgets and plans. The other ones I'm not sure you want to hear about because it gets even crazier.

But again, thank you all very much for the opportunity to present to you on behalf of the ccNSO and ECA.

MAUREEN HILYARD: Thank you. Thank you, Stephen. We'd like to now move on to the reports from the ICANN community working group leads. The first one we're actually going to have is Alan Greenberg because he has popped in from another session specifically for this. Alan?

ALAN GREENBERG: Thank you very much. I'll start with a brief synopsis of what the auction proceeds are. The first round of this era of new gTLDs had a provision that if multiple people applied for the same string and they did not come to some agreement ahead of time then an auction would be held and the proceeds of the auction would go to ICANN for use for good stuff, not particularly well described.

There were a number of other ways of settling to such disputes. In many cases, the applicants held their own private auction and whoever won paid a bunch of money and the losers all divided it. But in the case of the auctions held by ICANN, ICANN got the money. There had been a number of such auctions, all of them but one, have added to about $100 million and there was one

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other one for .web which yielded about $130 million. That one is still under dispute. So, whether we'll ever see all of that money or not is not clear. So at this point, we're talking about auction proceeds which range from about $100 million to about $240 million, plus or minus or something in between. So it's a good pile of money. That's the first point.

A Cross-Community Working Group was put together to try to decide how these proceeds would be made available to the community. That CCWG has now been running for two and a half years. So it hasn't been the speediest process around.

Eight or nine months ago, we issued an interim report. Unlike some interim reports from PDPs or CCWGs which essentially make proposals which the community can comment on, and then they get refined and issued as a final report, this report essentially gave a whole bunch of options because the community within the CCWG had not been able to really come to closure and make decisions.

We have now spent the next 10 months reviewing the comments and we're now pretty much at the end of that phase. Of course, since we'd now been running for two and a half years, we have people who have dropped out, we have people who have come in, who of course want to hold the discussions over again that were held in the first year or two.

Where are we right now? I believe we're now at the stage where either we have to declare failure – and no one has proposed that – or we actually have to make some decisions. I hope over the next number of months and not too many months, we actually will make some decisions. It's not going to be easy because there are still strong positions being held on a number of key questions. Because we're talking about a huge pile of money, there is not unexpectedly a lot of distrust about can we trust ICANN to use this money properly? And what mechanism do we set up to make sure that it used properly? Of course, there are very significant discussions going on on what "properly" is.

For instance, it is quite clear that because of the new Bylaws that came into effect after the accountability exercise, there is a strong belief within ICANN and the Board that we can only use the money for things that are within ICANN's mission. On the other hand, we don't want to use the money for things that ICANN does because we don't want ICANN to have the ability of saying, "We'll take something off the operational budget so that auctions can fund it." We'll save money by putting the expense there. So we have this quandary that we can only do things that are within the mission, i.e., that ICANN could fund if it wanted to out of its own budget, but not things that it funds out of its own budget.

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We still have some challenges ahead, but as I said, we spent two and a half years and it's time for us to make some decisions, come to some closure, and I'm not quite sure how we're going to do it but it's going to be interesting. Thank you.

JOHN LAPRISE: I believe Alan has to depart shortly, so we'll take a few questions now. In general though, for this session we'd like to hold questions until the end of the session. Sébastien?

SÉBASTIEN BACHOLLET: Thank you. To all the members of this group here in the room, even if Alan left, I guess we can answer. I am one of them, Maureen also. But I am happy that Alan takes the lead to make the report. I have just one question. If ICANN collapse, can we still distribute the money?

ALAN GREENBERG: Technically, it is ICANN's money. ICANN can as its current Board has segregated that money and said it will not be used other than in specific ways, but it's ICANN money. And if ICANN were to go bankrupt, for instance, and be subject to U.S. bankruptcy laws, I believe that money would be counted as part of its assets. That's my belief. I'm not an accountant and I'm not a

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bankruptcy lawyer. But as far as I know, although it is segregated within ICANN, it is ICANN money.

SÉBASTIEN BACHOLLET: It was half a joke. I only think that we spend too much time – and yes, it's a lot of money but if we look at part is already used to go to the budget of ICANN, therefore, maybe the best – and I'm sorry to say that but maybe the best is to add that in place where we can use it for not decrease the budget of some travel not to use. But we are spending time from volunteers to distribute money. At the end of the day, I have the impression that we will distribute very small amount of money. But that's my bad mood of the day. Thank you.

ALAN GREENBERG: I don't disagree with Sébastien. We spend a huge amount of money – not ICANN money but volunteer time – in these deliberations and I'm not convinced that was the best way to have gone about this, but that's where we are.

JOHN LAPRISE: Jonathan?

JONATHAN ZUCK: Just a quick question because I haven't been following the auction proceeds process that closely. But at one point, some people were advocating and I imagined it was registries that that money should all go toward new gTLD, new rounds, things like that, marketing for new TLDs, etc. Has that gotten resolved? It's not that specifically within the remit of ICANN. Because there was an argument being made because it came through that program that it should all be there to fund that program.

ALAN GREENBERG: I would suspect marketing is not within the mandate being used to provide funds to those who are deemed to be needy. That is applicant support type stuff I think is within the mandate. That was certainly one of the examples that was originally used. How that could happen within our current structure, I'm not 100% sure. It's an interesting world that I don't see with the mechanisms we're currently proposing a way to use the money for applicant support even though that was one of the original intents. Good question. I don't have a clue on the answer.

MAUREEN HILYARD: Thank you, Alan. Okay, I know that you're rushing back to another –

ALAN GREENBERG:	I can stay for another few minutes if there's a need. Otherwise, I will go back.
MAUREEN HILYARD:	If there are any other questions, because we do have four other reports as well. The next one was going to be Olivier on the Cross-Community Working Group on Internet Governance.
OLIVIER CREPIN-LEBLOND:	Thank you very much, Madam Chair. Olivier Crepin-Leblond speaking. Indeed later on this afternoon, there will be a Cross-Community Working Group on Internet Governance face-to-face session with the ICANN Board Working Group on Internet Governance. The Chair of the ICANN Board Working Group on Internet Governance is Leon Sanchez and he'll be also helped with the presence of Matthew Shears who was the previous Chair. Leon? Leon, there you go. He just appears if you say his name. Great.
	We'll be discussing first the strategy and discussions that the Board have had in the past few days with regards to Internet governance and how they would like to view the relationship between the Board Working Group and the rest of the ICANN community. Then we'll also be having a part of our session focusing on the recent Internet governance activities, both of

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the United Nations but also European Commission in Geneva. So, effectively Brussels, Geneva, New York, and elsewhere. There's a lot going on and a lot of these discussions are currently completely affecting the ICANN environment and ICANN itself have the potential to be very counter-productive for some of the things that we do here.

That's really in a jiffy what we're going to deal with. I'm not sure if Leon wanted to say a few additional words on this. He knows more about what he's going to say than I do.

LEON SANCHEZ: Thank you, Olivier. I usually don't know what I'm going to say. You are pointing some important issues in regard to what's happening in the Internet governance arena. Just a sneak peek on what I'm going to say on this meeting because otherwise I would spoil it for you and it wouldn't be fair.

One of the strategic objectives for the Board is to create a mechanism that is able to provide interaction between the community, the Board, and the organization in regard to identifying potential opportunities or threats to the ICANN ecosystem. And by this I mean any, for example, regulatory or legislative initiative that could impact our mission, that could impact the way we do policy, that could impact the way the

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multistakeholder model within ICANN works. We are trying to have a broader look at this, not only in regard to the traditional, so to speak, Internet governance environment but to, as I said, have a wider or a broader scope of observation to anticipate or to react accordingly. I mean we saw what happened with GDPR. It's something that have been there for years already but we just decided to look the other way. And then all of a sudden, we were in a hurry to solve things and you know the rest of the story.

One of the purposes of the Internet Governance Board Working Group is to prevent that from happening again. So we feel that by establishing this mechanism of feedback, coordination, and general interaction between Board, organization, and community, it could help us dodge the next bullets to come that could actually harm what we're doing here in ICANN.

So this is a top priority for us. It has also been added to the CEO goals. So what we're trying to do here is to encompass or include the three layers, so to speak, of ICANN having them on the [stand] of this as the Board, the organization, the community to interact and to coordinate and to build these synergies that can allow us to just be up to the challenges. We understand that because the interests of the different stakeholders might not always be aligned, and that is a good thing, they don't have always alignment in interests. The outcome or the positions

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could be diverse, and as I said, that is a good thing. But it would also carry the benefit for the rest of the community and the stakeholders of avoiding having surprises. When we coincide in spaces and conversations, we would know what the ALAC thinks, we know what the non-commercial users think, and so on so forth. This is the kind of space we want to create and we want to invite the rest of the community to join.

OLIVIER CREPIN-LEBLOND: Thank you, Leon. Just to close off on this, ICANN does not operate in a vacuum. Therefore, this platform – I think we can call it a platform, this interchange of information – will hopefully help with not only the Board or staff but all of the ICANN community to also be aware of what's happening. Thank you.

JOHN LAPRISE: Satish?

SATISH BABU: Thanks, John. A question to Olivier and maybe Leon. Does something like the UN High-level Panel on Digital Cooperation that just came out with a very interesting report be within the ambit of this platform?

OLIVIER CREPIN-LEBLOND: Yeah. Thank you very much, Satish. Indeed, yes. There are aspects of the findings of this panel that are likely to affect ICANN . There are a lot of other panels and a lot of other processes that are taking place outside these walls. And thankfully, we have excellent ICANN staff that are paid to go and attend these meetings and track these. The question is, how do we provide this information to the whole ICANN community? So, that's the platform we're focusing on.

LEON SANCHEZ: If I may add, this is a good example, Satish, of the kind of input we would be having for this group because if you look at the document that was published by this high-level panel, it proposes three ways of probably addressing the challenges that the IGF for the multistakeholder governance model is facing at the time. In the frame of the evolution of the multistakeholder model within ICANN, there could be some bits and pieces from those models that we could say, "Okay, this could be reasonable or this could be applied to our work." Or maybe not in the form of a statement but more in a fashion of a question to say, "Could this be useful for us? Should we be looking at analyzing this approach?" That is the kind of conversation that we want to have within this Internet Governance Cross-Community Group or whatever the form it takes in the end.

MAUREEN HILYARD: Okay, no more questions? Olawale?

JOHN LAPRISE: Olawale, go ahead.

OLAWALE BAKARE: Thank you. Olawale Bakare for the record. My question is this with regard to the Internet Governance Cross-Community Working Group. What are the key components that you're actually looking for in certain [inaudible]? That's one.

Then two, would this group try to build the kind of multistakeholder [unilateral] agreement with other organizations? And if you are going to do this, what are the things/plans do you have in place in order to be able to achieve this? Thank you.

OLIVIER CREPIN-LEBLOND: Thank you very much, Olawale. The group has already been in operation for a number of years. It was chartered originally by the different Supporting Organizations and Advisory Committees that were taking part in it. Some of the Supporting Organizations have withdrawn from the charter as such because

of various reasons. So this group would be not a charter group per se. Now, with regards to the discussions taking place, yes, we would continue the discussions that we've had so far but really the focus today is being a platform for interchange of information especially coming from staff, from Board, and from the community. With regards to the more philosophical arguments about the multistakeholder model, I think we might leave this to the IGF. I'm not quite sure it's for ICANN to deal with the philosophy of what's the best multistakeholder model out there, but you're very welcome to come down to the meeting later on this afternoon and discuss it with the peers. Thank you.

MAUREEN HILYARD: Thank you, Olivier and Leon, for that update. Thanks you, Olawale, for that question which will be ongoing answer. I suggest that if anyone wants to go to the session, which is actually next, it's after this one.

LEON SANCHEZ: Just to add more into what Olivier said really quick – I'm mindful of timing issues here – I would say that what we're trying to look, recognizing that this group has been an ongoing group and working and doing a lot of progress in many aspects, the intention of Board Internet Governance Working Group is to try

to encourage this group to revitalize itself, and we would be looking at some principles of having a group that is open, that is diverse, that is substantial in its discussions. So we're looking at having a very rich group that actually adds value to the discussions that we hold within ICANN.

I concur with Olivier that it's not up to us to define which is the best multistakeholder model. I think the richness that we need to create out of this group that everyone that wants to contribute is able to do it, that all the different regions that we are formed by are guaranteed to participate in the group and the different ideologies are able to reflect it.

MAUREEN HILYARD: Thank you. We do have to move on. We've only got just over 15 minutes left. We've got three more speakers. Hadia, I'm so sorry. While we're waiting for the slide, just to let you know I think we might have the presentations and then have some questions after. Thanks.

HADIA ELMINIAWI: Thank you, Maureen. This is a brief about the Expedited Policy Development Process.

I will start from the very beginning. On the 17th of May 2018, ICANN Board adopted the temporary specification for gTLD Registration Data which basically was to modify the Registrar's Accreditation Agreements and Registry's Accreditation Agreements so that they would comply with the General Data Protection Regulation that came into effect May 2018.

I must say that the temp spec is only valid for one year, that is, it expires on the 25th of May 2019. So for that reason, on the 19th of July, the GNSO initiated the EPDP (Expedited Policy Development Process) on gTLD Registration Data.

The team was chartered mainly to decide if the temporary specification should become a policy as is or with modifications. The team was also chartered to examine the possibility of having a standardized access model for accessing non-public registration data.

The team actually was established, I'm part of it. I'm representing ALAC, of course. We published on the 21st of November the initial report for public comments. After receiving the public comments, the team started analyzing those comments and we also sought legal advice or guidance, and we were finally able to publish the final report on the 20th of February 2019. The final report included 29 recommendations to the council. If I may have the next slide please?

Basically, we had 29 recommendations. The first of which spoke about ICANN purposes for processing the registration data, so we actually identified seven purposes for processing ICANN purposes for processing the data starting with activating the domain name and establishing the rights of the name holder. The second one was in relation to maintaining the security, stability, and resiliency of the DNS. The third was in relation to be able to contact the domain name holder in relation to the domain name. The fourth was safeguarding the registration data in case of technical failure. The fifth was in relation to contractual compliance. The sixth was in relation to ICANN operationalizing policies like URS and UDRP. The seventh was to make sure that the registered name holder meets the registry's optionally adopted criteria.

On the 4th of March, those recommendations were actually approved by the GNSO Council, after which, there was another public period for commence. After that, there was the Board resolution. The Board adopted the final report as is except for two recommendations. The first one was in relation to Recommendation 1 Purpose 2 which spoke about maintaining the stability, security, and resiliency of the DNS and enabling it through the disclosure of this data. The main concern was with regard to the clause through enabling, basically that we put in

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the means through which we are going to maintain the security, stability, and resiliency of the DNS.

The other recommendation that the Board did not approve as well was Recommendation #12 which spoke about the organization field.

I'll be really quick. Anyway, the gTLD Registration Data Policy will take effect on the 29th of February 2020. Until then, contracted parties have the option either to continue with the temp spec or to apply the gTLD. May I have the next slide please? I'm very quick.

We just started Phase 2 and we are mandated to start looking into a standardized access/disclosure model for non-public registration data. We are also going to examine issues deferred from Phase 1.

I have one more slide in relation to end users and I think this slide is really important: end users' interest. As representing ALAC there, I think one thing that we could all agree on is that end users need to trust the network. They need to trust the Internet. End users do not expect phishing sites. They do not expect their credentials to be stolen or used. So, DNS preventing fraud and DNS abuse I think is of direct concern to Internet users.

Previously, registration data system was used to maintain the integrity of the registration data and the ownership of the domain names. It also assists in preventing abusive use of the Internet including illegal abuse and others motivated by discrimination, hatred, or intolerance.

JOHN LAPRISE: Hadia, I have to ask you to cut because out of respect for the other speakers.

HADIA ELMINIAWI: Yes, I'm done. Thank you so much.

JUSTINE CHEW: Can I have my slides please? Justine speaking for the record. I'm supposed to give an update on Subsequent Procedures.

What is Subsequent Procedures? "Subsequent procedures" is basically the term that we used to refer to the rules and procedures that's supposed to apply to the new round of gTLD applications that hasn't been called for yet because the PDP is still working on it.

The subsequent procedures, as I said, the rules and procedures, they are distinct from what was applied to in the 2012 round.

That was the last round that was called for. But it is also based on the work that has been built up towards the set of rules and procedures that applied for 2012. The working group is reviewing the experiences out of 2012 program and trying to build on it to see whether there are improvements that need to be made or adjustments to the set of rules and procedures that's supposed to apply for the next round.

The working group itself was initiated in December 2015. It's a purview of GNSO Council, chartered in January 2016. Effectively, the work started in February 2016, so it has been going on for a number of years. As I pointed out, it's [charged] to consider changes as necessary to existing policy recommendations and implementation guidance for the set of rules and procedures that's supposed to apply to the new and upcoming round of applications.

The working group itself has tackled more than 40 over separate topics, so it's a huge working group. It's a huge PDP area. It's basically broken up into several tracks in the past including Work Track 5, which Javier is going to talk to us about.

Between November 2018 and March 2019, the group itself undertook high-level checks because we've had a number of public comments that have been called for. So public comments have been submitted and we've been going through that. Now

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we are in the midst of reviewing the merits of those comments for reporting purposes.

I just came from a SubPro session earlier. We had set the timeline for the work to finish by way of a final report in quarter 4 2019. But one of the co-Chairs of this PDP Working Group has just unofficially said that that's not going to happen. It's going to proceed even further because the working group still has a lot of work to do and we don't think we're going to meet the timeline for quarter 4 to produce the final report. Next slide please.

As you can see, in terms of the left side is where our original inputs come from. That's the materials that the working group has been looking at, taking into consideration, debating it, and coming up with several work tracks in the middle blue column. The first instance of the output of the working group are three reports, one initial report for Work Tracks 1 to 4. There's a supplementary report in addition to the earlier initial report which covers five additional topics that wasn't included in the initial report. Then there was a supplemental report on Work Track 5 itself.

As you see, At-Large participated in terms of providing comments to all three reports. Obviously, some of the topics don't relate specifically to end users' interest so we took care not to comment on things that didn't involve protecting interest

of end users, but we did do substantial comments on all three reports, I would say. The final report is coming out probably sometime in 2020. Next slide please.

This gives you an idea of the breadth of topics that we've covered and the breakdown for each Work Track. I'm not going to go through all of them. You can read them at your leisure. Next slide please.

This is the high-level list of topics for Work Track 5. Next slide please.

At this point in time, as I said before, the working group is deliberating the merits of all the public comments that were received. So far we have touched on the non-bold topics, bullets. And we still have the bold, underlined topics that we haven't gone through yet, which partly account for the delay in issuing the final report. In fact, that's probably going to be additional things onto this. It's not only going to be another round of public comments so there's going to be work to be done by At-Large and ALAC. It serves as another opportunity for us to comment on the program. Next slide please.

Yes, okay. I'm not going to go into this because time is short. The next slide basically talks about the At-Large positions to have

come out from the three statements that ALAC has put to each of the reports that I mentioned. Next slide please.

This is cool because I'm going to do a plug for some of the other sessions. One of the areas that we really need to look into is Competition, Consumer Choice and Consumer Trust, and also Rights Protection Mechanism. This relates specifically to DNS abuse. Of course, other areas [involved]. But there's going to be At-Large Workshop on Consumer Safeguard Issues. So, come join us. That's on Wednesday. Next slide please.

Geonames. Geographic names – I'm going to leave Javier to speak to that but there's going to be a workshop on geographic names tomorrow morning and I'm going to be talking to you about that. So if you're interested in geographic names, please come along. Thank you.

MAUREEN HILYARD: Thank you, Justine. I think Javier's presentation is an ideal follow-on from that.

JAVIER RÚA-JOVET: Just quickly, Javier Rua for the record. Everything Justine said is also true for Work Track 5. We're just a little bit behind the main

PDP. But now that Jeff Neuman says they're going to do more process, we'll probably catch up.

Generally, just to say the main PDP has great At-Large participation. One of the overall co-leaders is Cheryl Langdon-Orr, so we'll cover there. Then Work Track 5 also follows this type of cross-community type of feel. We are different leaders from different communities, which is great. I'm there for all of us. There's also representation from ccNSO, from GNSO, and from GAC. GAC, Olga; ccNSO, Annebeth Lange; and GNSO, Martin Sutton.

As Justine mentioned, there's several work tracks. Work Track 5 has to do with geographic names at the top level, just right off the dot. Not anything else. Again, we're going through how to build upon change or not on the experiences of 2012, the 2012 Guidebook.

Moving to the next slide, the scope of Work Track 5 in general is two-character ACII letter-letter combinations, country and territory names on the ISO lists, capital cities, capital city names, sub-national names in the ISO list, UNESCO regions and also the statistical UN regions, then the elephant in the room, non-AGB terms which is a point of contention.

In terms of all these categories, I can say in general that in the first four – ASCII letter-letter combinations, country and territory names, capital cities, UNESCO – generally, the sense of the Work Track has been to follow the policies that are already in place in the 2012 Guidebook and generally there's some variations. But generally in terms of geographic names that are not in the AGB in the 2012 Guidebook, there's quite distinct views, some views that deny any type of claim or protections to these types of non-AGB names like rivers or geographical indicators, geographical regions, and other positions that really place into the table postures regarding protection of these names like the previous categories, sometimes maybe letters of non-objection from relevant authorities, etc.

I have another slide, Slide 10, which is really just what I said. I guess the big takeaway from this is if you really want to learn about geonames, come tomorrow morning and learn from Justine. We'll be there to answer questions. We have great At-Large participation in the working group in the Work Track 5. Justine is an active participant, voice of reason in there. We have Greg Shatan with great positions. Christopher Wilkinson and other people working in there. Alan Greenberg was very active also. We had two meetings today. We're very good. So come join. Anybody can join. We're far along in the process but it's still

open. You're going to have to do a lot of catch-up reading but you can still join. That's it.

MAUREEN HILYARD: Thank you very much. There's a lot of work going on in that area, I know. Are there any questions? We're actually right on time. We've got another session coming up a quarter past, so if you'd like to have a break. Did I see that card go up, Olawale? No? Good.

Okay, so thank you very much for our presenters today. What I wanted to show was the fact that At-Large is very much involved in Cross-Community Working Groups. You probably heard GNSO mentioned a million times. When Stephen was here, it was ccNSO. It just shows that we are very much involved in that whole multistakeholder model within the ICANN community. I think that we're very active and I'm very proud and very pleased with our members.

Okay, break time.

JOHN LAPRISE: 15 minutes for coffee and then when we're back at 15:15 for the At-Large review and ATLAS III updates and reports from Regional Chairs. See you in 15.

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[END OF TRANSCRIPTION]

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