
LOS ANGELES – Board with the Non-Commercial Stakeholders
Tuesday, October 14, 2014 – 15:45 to 16:45
ICANN – Los Angeles, USA

BRUCE TONKIN: Okay. If we could just get started. Otherwise, we will burn up your time.

Steve, if you could join us up front here.

And if the audio-visual -- if there's a slide with the topics on it, if you could put that on the screen, please. I'm not sure if there is a list of topics.

Other than that, if there's not a list of topics, I'm sure you'll tell us what they are, Rafik.

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BRUCE TONKIN: I'm not sure. I don't know what they've got.

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BRUCE TONKIN: Okay. So human rights is Number 1, I'm seeing

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RAFIK DAMMAK: Yes. We -- okay. First -- okay. I want to thank for this opportunity that we have every time to interact with the board.

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RAFIK DAMMAK: Yes, yes.

-- this opportunity to interact with the board and share, I mean, some questions and to get your feedback and your response.

For this time, we thought that maybe we should discuss about four topics.

The first one is human rights consideration at ICANN, and this will be presented by Avri Doria.

Then to talk about what does multistakeholder bottom-up process mean at ICANN and this will be presented by Bill Drake.

Then deep concern about expert working group report and the process by which WHOIS reform is translated into policy, and this will be introduced by Kathy Kleiman.

And then we will end with a discussion on outcomes to date from the ATRT2 report, and this will be done by Lori Schulman.

So let's -- I guess we can start with the first topic and this will be introduced by Avri. Avri, please go ahead.

AVRI DORIA:

Thank you.

Yes. So the topic comes out -- wow, quite a bit of echo.

The topic comes out that the CoE report came out and discussed various human rights issues that are basically human rights that are impacted by various policy decisions. And this goes beyond the privacy one that we've talked about a lot and looks at issues to do with freedom of expression, freedom of association. And what it really gets into talking about is, one, you know, the -- ICANN's obligations, certainly not the obligations of a state, in terms of protecting human rights.

But as was indicated by the Human Rights Council, basically there's an obligation on all businesses to behave according to human rights in all of their dealings.

So CoE came up with a paper that we think is really quite worth spending in time looking at, talking about, taking the issues.

Now, one of the things in that paper is that they recommend that because the GAC is composed of governments, that there's a special responsibility on the GAC for taking certain role in this, and we had a reaction, one of our members -- Roy Balleste -- basically wrote another paper that said instead of the GAC being the one that is responsible for human rights considerations in ICANN policy, that perhaps we needed to look at a notion of a human rights advisory committee.

Now, in terms of that, as soon as we basically started talking about that, there's, "Wait a second. You know, you're jumping a little too fast." And, you know, I acknowledged the reality of that.

And so at the moment, we're basically looking at a -- working through the community, through a bottom-up community process, to look at the requirement for such a thing.

There is a meeting tomorrow. We -- you know, through the grace of many people on staff, we managed to get a room and a meeting.

I don't know that it's on the schedule yet, but be that as it may, there is a meeting at 1:15 to 2:45 tomorrow to look at the CoE report and to look at what we do next.

One of the possibilities being to put together a drafting team to come up with a cross-community working group that looks at human rights issues, including all of those issues that are brought out in the CoE report, and perhaps look at the possibility of going beyond that and recommending some sort of human rights advisory committee.

Now, one of the things that comes up in this discussion is that, you know, looking at the full range of human rights that are pertinent to the work that we do at ICANN, that are pertinent to the decisions, the policy work that is done at ICANN, very often we get some of the picture -- because some of us are specialists, most of us are amateurs at human rights, that we get some of the picture and we look at something like SSAC and we see when it comes to stability and security we go out and we get the right people. We get experts that can analyze the situations

facing and we can, you know, then deliver a well-considered report on issues, if there are any.

And what some people believe -- there are some that still question the idea, so that it's still an ongoing discussion, but wanted to basically let the board in on the discussion and hopefully get the board to participate in the discussion -- is that we need something perhaps more considered, something that has the same level of expertise in human rights advising the community as we do in stability and security.

So that's the idea. It's the beginning of a conversation that was initiated by the CoE paper, which we recommend strongly to everyone, but that's the idea. Thank you.

STEVE CROCKER:

So I thought it was on. Yeah? Thanks.

We have a mission, and security and stability of the identifiers and so forth is part of that.

There's an awful lot of important things in this world. Conservation of energy, greenhouse gasses, et cetera.

Where is it that -- I mean, human rights is sort of even stronger than motherhood and apple pie. You get to say "human rights" and therefore everything comes to a stop because that has preeminence and importance, but I don't see the connectivity, except in the most narrow situation, dealing here.

AVRI DORIA:

And if I can respond -- this is Avri speaking again -- I actually see that that's almost one of the reasons we need to talk about it further, because people think of human rights as sort of this undifferentiated big basket of, "Oh, my God," the way most people think of security. And what we have seen, what the CoE paper points out, is that there are specific things, policy decisions we make, that impact human rights, impact human rights in an Internet -- in an Internet ecosystem in the work that we do, but we are really not in a position to recognize them.

So much so that we think that we're talking about something general like greenhouse gasses when what we're really talking about is the impact of our work on --

You know, we've seen it begin very much in the privacy area and, you know, perhaps it took the Snowdens of the world and others to make us start paying attention to that one more broadly, but we have seen how privacy very much impinges on the policies that we make. But we're arguing that perhaps there are more. You know, there's freedom of expression that does get -- is impacted by our policy decisions. There's freedom of association that is impacted. We're not talking about the full range of them. We're talking about the fact that our policies have a human rights impact.

STEVE CROCKER:

Fair enough. How do we move from where we are to something specific and so forth. I think that sounds like an incredibly apt and relevant thing for the NCSG to bring us into that area.

AVRI DORIA: It's actually -- and I'll stop speaking. It's actually broader than the NCSG. The NCSG was actually second to the game. It was first brought to the GAC, and the idea when it was brought to the GAC is, "GAC, this is your job."

I think there's a large community that's saying, "Wait a second. It is not just the GAC's job. It is a multistakeholder job. It is broader."

So actually, our initial response is that we're looking at something and we're saying, "Yes, they're right. The CoE paper brought to the GAC is right. There are considerations, but we don't necessarily want to leave this in the hands of just the GAC."

RAFIK DAMMAK: Okay. I think Ray wanted to comment.

RAY PLZAK: Yeah. Thank you. It might be well worthwhile for this stakeholder group, in particular, to take a long look at the GNSO policy development process and look and see where in that process you could inject a consideration look at human rights and therefore it gets embedded into the policy. And that way, it would happen much further down. You would actually broaden the awareness of it because if you're working truly bottom-up, then if the people at the bottom are thinking about this because at some point in time there's going to be someplace in the process where a check is going to be made and see if those kinds of things have been considered, it's well worthwhile to think in that direction.

And if a particular policy doesn't have any human rights impacts, considerations, or whatever, then it should so be noted.

But that is one way that you could internalize it inside the -- inside a -- inside the GNSO. That's just a whiteboard suggestion right now.

RAFIK DAMMAK:

We have Bill and then Gonzalo who want to comment.

Yes, Bill.

BILL DRAKE:

It's an interesting suggestion, Ray.

When I was on council and particular issues came up that some of us thought of as having a human rights component to them -- you could take, for example, WHOIS and privacy -- and we would raise this, the general pattern was that colleagues from the private sector who were not used to thinking about human rights issues in relation to anything they do were kind of puzzled and didn't quite see what the point was, how was this really integral to our activity.

And so I think that the point of what Avri is suggesting here is, if we had a group that would actually work through thinking about this, that would make it -- and bring other parties on board, into the conversation, that would make precisely the thing that you're talking about us doing viable. Because right now, if we just do it piecemeal, we could say "We think that's a human rights issue," but then people coming from other sectors kind of say, "We don't under- -- you know,

we don't work on human rights. How is that human rights?" You see the challenge.

RAY PLZAK:

But that's why I specifically targeted the GNSO policy process, the one that exists in the bylaws and the one that has an annex that goes through the whole discussion of what the steps are along the way.

I mean, that's not just the NCSG. All I suggested was maybe the NCSG should take it upon themselves to initiate a change to that -- to that process, and then you would have a debate amongst everybody about it, and like I said, if there are some things that come from someplace that do not have that, then people will say that, but at least they will have thought about it.

BILL DRAKE:

I don't mean to have a back-and-forth with you bilaterally, but let me -- one of the questions there is, is this something we want to just limit to GNSO conversation when there are many other parts of the community that have a strong interest?

RAY PLZAK:

The answer to that is no, but it's like growing grass. You plant a little patch and it will spread. This is a grass roots movement. That's how it works. You got to get it started someplace.

RAFIK DAMMAK: Okay. Just to check, so we have Gonzalo. Who wants to speak after? Avri, Stephanie, and Wolfgang.

So let's start with Gonzalo first.

GONZALO NAVARRO: Thank you, Rafik.

Well, I think that Ray was making a good suggestion in terms of a starting point to initiate this process because as I understand correctly, that's what you want to do.

I have a second comment on this. I was at the IGF when the report of the Council of Europe was presented. Actually, it's a report sponsored by the Council of Europe. It's not, per se, a report of the Council of Europe. And when I was there, I had the impression that for some people attending to that specific panel, the issue was beyond ICANN. I mean, they were mentioning actually human rights in the Internet space. The report is focused and narrowed on ICANN, but it deals with so many issues that perhaps are not precisely falling into our mission.

So what it will be interesting, you know, as we are -- we are going to have this discussion, is to rethink or think carefully, you know, what we want to address, where -- or what human rights, you know, fits exactly, you know, in this equation, and let's move forward.

RAFIK DAMMAK: Okay. Avri, please.

AVRI DORIA:

Yeah. Thank you. I think that what you've described is part of the work that we, indeed, intended the cross-community working group that we're trying to put together to, you know -- to actually do, because you're right, it is -- and I -- we find that it is very difficult for ICANN to sort of understand, indeed, how human rights meshes in with our mission, and in fact, the work of this cross-community working group, which I think is the true grass roots effort. It isn't just GNSO that we're going to try and pull into this effort. It's, you know, the wider community and stuff. But I think it's also a very good suggestion to look at, you know, the GNSO procedures and sort of see is there a place where we should do a considerations check and, you know, my -- I like that suggestion, too, for the GNSO.

But we -- we're really just -- we're part of a grass roots effort with a larger grass -- playground of grass to try and grow this in. A -- the cross-community one, as opposed to just GNSO.

RAFIK DAMMAK:

Okay. So we have a quite long list. We will start with Stephanie. Yes.

STEPHANIE PERRIN:

Thank you. Stephanie Perrin, for the record. Is this thing on?

Okay. I was following up on what Mr. Plzak had said about starting it in the policy process. I just wanted to say that that's a great place to start. Sometimes when you do impact assessments they're very like risk assessments, they're going to have to be holistic. So one of the places you actually see whether the policy got delivered is in the

implementation groups, where you might want to have a lens there to see whether there's an impact.

So I could see it very quickly developing into something where you do a cross-check.

And on that score, in terms of it starting in the GNSO, I think it would be really good if the SSAC, who are engineering-minded and can see how a particular implementation might have an impact on human rights and particularly in the privacy area -- oh, I guess I was choking that thing -- they're going to pick it up quickly, so you would want it to be that broad a cross-community working group, I think.

RAFIK DAMMAK:

Okay. Thanks, Stephanie.

Wolfgang.

WOLFGANG KLEINWACHTER:

I'm very thankful that Avri gave a very balanced and differentiated approach which -- when she argued, you know, we really do not yet know exactly what could be the outcome but we have to start a debate and we have to reduce -- or we have to concentrate on ICANN-related human rights issues and not to take human rights as a whole.

I think this would be -- lead to a misunderstanding. ICANN is not a human rights body, but according to its articles of incorporation it operates in the framework of international law and we have the international treaties on human rights and we have to make sure that

policies and contracts ICANN has with partners do not undermine or ignore or violate these international human rights treaties.

I think in the debate in the previous consultations we had with the registrar constituencies, we had the debate about the LEA recommendations which made its way into the contract. And now registrars are struggling, you know -- Elliot Noss told us more than 1 million problems they have Web sites.

I think this is an interesting case, and it is not directly related but indirectly related to the debate we have here on human rights. Insofar, Ray made really, I think -- put the finger in the right direction by saying, okay, the GNSO, with the registrars and with contracted parties have problems which are not so far away from the problems you have raised.

And to come together in the GNSO as a first step to find out how this could be moved forward is probably the right recommendation at this moment. Thank you.

RAFIK DAMMAK: Okay. Thanks, Wolfgang.

I think Mike wants to comment.

MIKE SILBER: Thanks very much.

I really think the characterization here is incorrect. You don't make a chocolate chip cookie by baking the cookie and then trying to sprinkle the chocolate chips on top of it. I'm fully in support of bringing human

rights contemplation through our policy processes. But I don't think that you can have a vetting mechanism, you know, everybody does all the work and then it goes through a human rights audit, if such a thing could exist, before it's released into the wild.

I really think that we've got to bake this into the process, into the policy development process. And I'm inclined to agree with Ray, believe it or not, is that this is primarily a GNSO issue because within the ccNSO, we have national laws to focus on. We do not accept ICANN-imposed policy. And so for a third party to impose its requirements on the ccNSO is going to be contrary to the bylaws and not accepted.

I suspect the NRO may have a similar view when it comes to the RIRs. They have their own internal processes. And I think what we need to do here is set best practice, create a precedent which other people may be encouraged to follow.

But what you can't do is say, oh, no, no, we are going to audit and vet everything that happens in this organization because there are very few parts -- there are very few of the moving parts that would actually allow that perspective to happen.

And then the other thing is, I don't think you're correct. We don't go out and select the best and the brightest for SSAC. The best and the brightest arrive on our doorstep volunteering saying "how can we help." And, yes, every so often when there is a need for additional expertise in an area, then that grouping of best and brightest may go out and select a few more and bring a few more into the fold. This is not a recruitment drive that ICANN has for SSAC or RSSAC.

RAFIK DAMMAK: Okay. So we have Milton, Niels, and then Avri.

Milton?

MILTON MUELLER: I've heard several arguments from the board members. It seems that Ray and Mike sort of understand what we're saying and proposing to push it down to the GNSO level. But it seemed like Steve and Gonzalo did not understand that there is a connection between human rights and ICANN policy at all. So I want to address that.

It seems this is all laid out in the Council of Europe report. Of course, we've been saying the same thing for ten years beforehand. But with the Council of Europe showing -- having an international human rights lawyer explain how certain kinds of suppression of expression can or cannot take place and be legal under international law and how the privacy implications of WHOIS and so on are human rights issues, I think the question of what the connection is, Steve, is very clear now.

Whether or not we need a new advisory committee on that topic is a procedural and organizational issue to be discussed. But it does alarm us when we hear indications that there doesn't seem to be a connection that you understand. So if ICANN, for example, tells somebody that they can't register a .SUCKS domain name, that is a violation of freedom of expression just as much as when cybersquatters squat on a trademark domain. That's a violation of somebody's trademark rights.

We certainly understand how ICANN relates to intellectual property rights. It doesn't seem that much of a stretch to say that their policies intersect with other kinds of rights such as privacy, freedom of expression, and other classic human rights.

STEVE CROCKER: Are you asserting that we did tell somebody they couldn't register .SUCKS?

MILTON MUELLER: Yeah, there is an analysis of that in the Council of Europe, of very specific cases in which your policy processes make decisions that do, in fact, violate standard freedom of expression rights.

STEVE CROCKER: I wasn't sure I got a direct answer to the question. You asserted, you know, in the example that you used that we have refused registration of .SUCKS.

MILTON MUELLER: No, I think in that case, the issue was there was objection from the GAC that said you should not do this. And the -- you know, if you had decided to accept that advice, you would have been doing that. This is simply an example of how human rights are implicated in your policy decisions.

STEVE CROCKER: Thank you.

RAFIK DAMMAK: Okay. Niels and then Avri, Carlos, and then Gonzalo.

Yes, please go ahead.

NIELS TEN OEVER: Well, we should not forget that there is a corporate responsibility to protect human rights. I'm sorry this is Niels Ten Oever from Article 19 for the record. So there is a corporate responsibility to protect human rights.

And human rights processes are not like grass. It is more like the weather. We simply need to deal with it. And this is not something that governments should only deal with or only civil society. They should be a multistakeholder endeavor, and that should be a reason to look into drafting this charter for a cross-community working group. And pushing it back to a GNSO level would imply that only GNSO policy affects human rights, which is not completely the case as the COE report clearly points out.

And, furthermore, there are many, many human rights experts within my organization but I also heard from Human Rights Watch and others that are very happy to engage outside of our current policy processes on these specific efforts.

So I think that will be a great way to also get more people engaged with ICANN in a very relevant way, which would also increase the legitimacy of the organization and its decisions.

RAFIK DAMMAK: Thanks, Niels.

Avri?

AVRI DORIA: Thank you. Just a brief comment. There was no talk of any kind of structure that imposed anything from above on anyone. I've never seen SSAC impose a security, you know, mandate on the rest of the organization from above. I see them write very good, considered reports that we then all read and say, "Hmm, there's something we need to think about here. There's something we need to work with." And it is certainly that model -- I've never noticed the board take an SSAC report and say, "You may not do that any longer."

And so the notion that having advice given on these are considerations and these are the risks and these are the problems as being any sort of imposition. Acceptance so far is education imposes the obligation to think.

RAFIK DAMMAK: Thanks, Avri.

I think we close the queue, but we will finish with those who are -- so Carlos and then Gonzalo.

Carlos?

CARLOS AFONSO: Yes, Carlos Afonso here. I have seen for a number of years we in NCUC/NCSG dealing with the issue of human rights in the ICANN

environment. And it seems a thing that is going sort of in circles. And I am afraid that we are going to have another case of WHOIS, the never-ending WHOIS debate or discussion.

I would like to propose more or less bluntly that ICANN makes an effort in the short-term to establish in a multistakeholder fashion, of course, a civil rights framework for the governance of names, numbers, and protocols. These would be the framework of human rights that ICANN would have as a reference for all its work, all its coordination work, all its operational work, et cetera, et cetera. Otherwise, we'll never end the discussion.

RAFIK DAMMAK:

Thanks, Carlos.

Gonzalo?

GONZALO NAVARRO:

Thank you, Rafik.

I think I need to clarify my previous statement because I think that I was not completely understood. First of all, I said that I do believe that the GNSO is a good starting point to initiate this process. That's a reaffirmation of my first statement.

Second, I do believe that human rights are very important and we need to have a discussion inside ICANN about this issue.

What I said is that in my opinion, when I hear the report sponsored by the Council of Europe, I thought perhaps the scope of the report was beyond the mission of ICANN.

My suggestion was to read the report and to analyze to what extent that report or the suggestions made in that report fits in our mission and the things that ICANN does inside the Internet environment.

I'm not denying the fact that there are issues beyond what we think initially as human rights impacting ICANN, like privacy or data retention, which are the most common. Perhaps an analysis about trademarks implication is necessary.

In my opinion, on the top of my head, this has to go beyond what ICANN does. But I'm not saying that the report or the human rights or we should not take it, Milton. Thank you.

RAFIK DAMMAK:

Okay. Thanks. I guess we spent 30 minutes on that topic. I'm using here my authoritarian powers to move to the next item on the agenda.

Niels, can you start? I don't understand French at all.

Okay. Let's move to Bill. Can you please introduce the topic?

BILL DRAKE:

We're not going in the order of the questions? We're not going in the order of the questions? Okay.

I got drafted to ask the board about what does multistakeholder bottom-up process mean at ICANN, i.e., accountability and trust. What

is the background of this? Obviously, it's a question that we have discussed with you over the years in varying ways. And easy it's easy to imagine a question like this yielding fairly pro forma responses that would not be terribly interesting to either side. And, obviously, we don't want to do that.

I think, though, that the context has changed a bit since times we talked about it before, given everything that was experienced with the accountability process, the back and forth that we had between the development of the staff proposals, and the responses from all of the chairs of the SO/ACs, et cetera, Fadi raising a lot of issues about trust, et cetera. He has characterized several times the Istanbul meeting as having been a boiling point.

And there have been discussions and reports about various things that have been said by leading personas about whether or not bottom-up really has any particular status in ICANN as a guiding set of principles.

And it is interesting, if you look at the bylaws, the "bottom-up" does not occur in the bylaws at all, nor does, by the way, "multistakeholder." In fact, "civil society" occurs once only in relation to the NomCom.

So I guess what we wanted to talk with you a little bit about was two specific points: Operationally how you see the bottom-up process working in terms of the steps where are things initiated and who participates at what stages and the -- using the kinds of examples, for example, of the accountability thing that we just went through. Was the accountability process a good example, in your mind, of the bottom-up process at work? Just as an example.

And then, secondly, related point, I guess, is: What would you think about the possibility of adding the term "bottom-up" to the core values in the bylaws? I mean, from an internal point -- standpoint of giving sustenance to the community and an external political standpoint in terms of our relationship to the governments involved in various international organizations and things like that, could it be useful if ICANN were to officially sort of establish the bottom-up process? It is, indeed, the starting point and a standard of behavior for the conduct of our work.

So Chris has many ideas on this, and I will stop there.

CHRIS DISSPAIN:

Well, I actually -- I want to address the two questions you asked. First of all, yes, I do think that the accountability process was a good example of bottom-up because the way it's ended up was through -- it was fixed for want of a better term in the right way in the sense that something happened, you didn't like it, it was opened back up again. And so, therefore, yes, I think that's right.

I also wanted to just address "bottom-up." You have talked about bottom-up, bottom-up. The two things are different. Multistakeholderism doesn't necessarily mean bottom-up. So I have got a question for you.

I don't understand -- maybe there isn't a difference. But if you think there is, I don't understand why there would be a difference between a group of board members putting out a paper on the NomCom and you

putting out a paper on the NomCom because I view it as being a multistakeholder model that we're all in.

And so I'm not sure what the -- and we've had some pushback about that. And I'm not sure what the fear is, and I don't understand the difference because it strikes me that if you did it, you could do a strawman and say, We've been thinking about the NomCom. Here's some thoughts. And we can do the same thing, which is what we've done.

So I'm asking you to sort of a question back. And maybe I'm saying it shouldn't -- maybe I'm saying I'm interpreting bottom-up as actually not being a good thing in the sense that it should be cross-up.

[Laughter]

If you see what I mean.

BILL DRAKE:

I do understand what you mean. I guess in my personal view, the structural relationships and positioning of the different actors within the system is such that to consider the board of directors, which is the ultimate authority for decision-making in the organization to be on an equivalent level with other parts of the community, and, hence, its actions being bottom-up is strange.

CHRIS DISSPAIN:

That would be the board, and I accept that. But I'm talking about a situation where you have a small group of board members produce a document. So I don't get the difference. That's my point, I think.

Is it about the hat? If I had done it and said, This is a ccNSO hat I'm wearing, would that be okay? That's what I'm trying to figure out.

RAFIK DAMMAK: Thanks.

So, Avri?

AVRI DORIA: And then you have hands down there after me. Okay, yeah. I wanted to answer that one.

I believe in some respects, especially with the NomCom paper, which was an effort that came out of a working group and then it was sent to the bottom to be reviewed, I think that that one definitely does act within my definition.

There's two restrictions you can put on "bottom-up": Either all issues must rise from the earth, from the bottom, or all issues must always return to the bottom.

So that was one where you put out the NomCom paper and you basically asked the world, including the bottom, to give its opinions on it before you acted on it.

With the accountability process, there was more of a design and an information that this is how it's going to be. And it took a bottom-up revolution, as it were, to turn it into bottom-up which is probably not an optimal way of running a bottom-up process.

But so -- in looking at this and, in fact, you know, the last thing I wanted to say on that was looking through the first part -- the first topic we went through, I don't know how often the word "bottom-up" was used when, you know, take this and go be bottom-up about it.

But -- so, indeed, I think that in looking at the definition of "bottom-up," I think that's where it becomes valuable information, a valuable discussion. And the idea of is it one of our principles? If it is, can we state it and can we actually come to an understanding of what we mean by it?

RAFIK DAMMAK:

Okay. Sebastien.

SEBASTIEN BACHOLLET:

Thank you. Do we have interpretation? I think that we have interpretation, so you can accept to use the languages, the tools that we have at our disposal. Thank you.

The report made by a group from the board about the NomCom, we've been discussing this for hours in different groups. There is a moment in time where I cannot continue to just say -- just say nothing and let things go like that.

There was not -- at least the work group was not multistakeholder. It was a small portion of the board. The NomCom was working on a -- a paper to propose reforms. So we told them to stop working. I don't mind if we take examples, but we need to be together on the reality of life and the situation as it is.

We can discuss this, is it bottom-up, is it multistakeholder. But when there's a paper written that kind of directs the discussions, the problem is there. It directs the discussions.

And it would have been interesting to have maybe another paper to direct the discussion differently, and then we wouldn't be in a situation where we are now.

Therefore, I would like to -- that we all are very conscious that the paper was written by a small group of the board, and that's it. The rest -- it cannot be an example of good practice. At least it seems like that to me.

Thank you.

RAFIK DAMMAK:

Thank you, Sebastien.

Bruce?

BRUCE TONKIN:

Thank you, Rafik. I think to answer your questions, Bill, I think the process on some of those -- the accountability process, you said is it optimal? I think no.

I think as Chris and Avri have pointed out, that there are certain elements that are certainly put out for the community, the community provided feedback, so you're certainly engaging the community.

I think if you go back to when that process was first kicked off, I think it was at one of the public meetings the staff actually had a session -- and I

was at that session -- and they were asking for feedback on the process. They got no feedback from the process, pretty much. Everyone dived straight into their view of what accountability should be.

So they were kind of working and that came. Then they put something out. My only criticism on that was it was too slow to react to the feedback. You know, not that they didn't get feedback but they sort of kept with their model. Which is common. Any group -- we see that throughout the organization, whether it's a review team or whatever. They personally invest a lot of their own team, they can produce something, they can be a bit slow to take criticism, so I think that could have been better.

But in terms of the -- who initiates -- sorry. I'm just getting a glass of water.

In terms of who initiates policy development work, as you know in the bylaws there's a mechanism for the board to request an issues report and then there's also mechanisms for the community to produce issues reports, but in either case, the policy work is actually done in the community, not in the board. All we can do really is say "We think this is an issue. Staff, go out and produce an issues report."

It's actually the policy council that decides whether to do anything with that issues report, so to that extent, I think it's bottom-up.

With due respect to the core values, I agree with you. I was just re-reading the core values. And bear in mind these were written back in '98 and '99, and I think the terminology we use and the language has changed over that period, but Core Value 4 says "Seeking and

supporting broad informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making."

You know, I think that could be adjusted to sort of capture the bottom-up concept.

And the other one, Core Value 7, is, "Employing open and transparent policy development mechanisms that, one, provide well-informed decisions based on expert advice; and two, ensure that those entities most affected can assist in the policy development process."

So I think both of those core values are getting at that you need the affected parties involved in producing that policy development; we need to get functional, geographic, and cultural development in that; but I accept your proposal that, you know, they could be incorporating some of the new language we're using, "bottom-up," "multistakeholder."

I mean, "bottom-up" has a different definition for me in Australia, but I accept it has a different meaning in the ICANN world, and so, you know, I don't think there's any issue in putting those sorts of things in the core value.

RAFIK DAMMAK:

Okay. Thanks, Bruce. Everything is different in Australia.

We have Rudi, Mike, and then Ray.

Rudi, please go ahead.

RUDI VANSNICK: I don't know. Does this mic work? Oh. Does this one work? Yes. Okay.

My name is Rudi Vansnick. I'm the chair of NPOC.

Indeed, multistakeholder bottom-up process has a lot of faces, and I think one can like the face of some and others can not like the face.

I would like to enter another angle of the discussion, and the question should first be: Who is the bottom? Who are they? Are they here? Are they not here? Are they missing in the discussion?

And I'm taking the example of the group that we think still is missing in the discussion and doesn't have yet a voice. That's the NGOs. We need them also because they are impacted by any decision that is taken and we have several examples we can bring to the table of NGOs losing their domain name because they don't know how to manage a domain name, how it has to be renewed. For instance, just a small example. And if we don't give them space to talk about what their concerns are, then I would say the multistakeholder bottom-up process doesn't work because they're not there, they don't have a space to work on the issues in the policy development.

There should be policy for them, too, that allows them to have the right to have the domain name and not be in a corner because they are not aware, they don't have the knowledge, they don't have the competencies to be able to participate in the ecosystem as it is today, and I think that's also part of the discussion. Who is the bottom? And I would like to hear maybe from the board if the board considers that there are stakeholders that are still missing in the discussion.

I think it would be good to have a good view on who do we miss in the discussion in order to be able to say this is the full model. I would like to hear something on that point.

RAFIK DAMMAK: Okay. Yes.

BRUCE TONKIN: So one element missing is software application developers that develop software that uses domain names.

So the answer is no, I think we need to get broader participation.

RAFIK DAMMAK: Thanks, Bruce.

I think we have Mike, then Ray.

MIKE SILBER: Thanks very much. Just on a stylistic point -- and please, this is not a criticism of this group. I've raised the same issue with multiple groups at multiple meetings.

My colleagues in the ccNSO, maybe just because I have a little bit of pull over there, seem to have gotten the message. Others still keep doing the same thing. And that is, this interaction is meant to be an interaction, it's not meant to be a Perry Mason cross-examination of the ICANN board with questions which cannot be answered within the period.

I think it would be really useful if, going forward, we try and get an explanation of what is being spoken about, what people are thinking on some of these issues. And if you need a specific board reaction to them, that's great. Then we can talk about whether we can react on the fly or how it goes. But I'm far more interested in understanding some of the thought process around this.

And Rudi's question is a perfect example. I've got an off-the-cuff response to who is missing, but I don't know if this is the right forum to do that, or rather, to get into a discussion in terms of is everybody around the table, what do we mean by bottom-up, and I think these are fantastic topics. I really think they're incredibly useful. But trying to do this as a quasi-cross-examination of what is the board's take on this and why -- it's not helpful. We're not getting into the actual substance of the discussion.

And I really would encourage, for the next session, that we have a couple of PowerPoint slides, because many of us are visual, or just a brief presentation on some of these issues instead of launching straight into, "Why are you not doing this? We want to do that. That's what you're doing wrong. Explain yourselves." Because it doesn't get to where we want, which is getting your input on process, on policy, on the way forward, so that we can try and improve collaboratively.

And I would really just request that, going forward, if we can -- even if half the session is interrogating us about what we got wrong, at least half the session present to us what you would like to do better going forward and that would really be appreciated.

RAFIK DAMMAK: Okay. If I could just make a comment here, I think for the topics we sent -- more than two weeks ago, we shared them with the board, so I think you have some time to check, and if you wanted clarification, we could do so.

Anyway, so I think we really need to move to the next topic, so we have Ray --

BILL DRAKE: Ray.

RAFIK DAMMAK: -- Bill -- yes, Bill. I was saying that we will have Ray and Bill, and please make really short comments.

RAY PLZAK: Thank you.

I want to speak on the notion of the origin of ideas.

Somehow, I'm hearing people say that if an idea originates from an individual or from a group of like-minded individuals, it's not a good idea because it wasn't a multistakeholder idea. And so people have said that or intimated that.

You know, the way things start is for one person to have an idea, convince a few people around that person that are like-minded that it is a good idea, and then engage people who are not like-minded in the same thing and move it forward.

That is a multistakeholder process.

You're never going to get a group of dissonant people together and have them sitting in a room and all of a sudden the same light bulb goes on for all of them.

So let's not be concerned about necessarily the origin of ideas. And I'm speaking in particular about some of the concerns and comments raised about the fact that the NomCom working paper was a product of four individuals on the board, and that's been said here and it's been said at other points in time today too.

I mean, in the end, the members of the board are end users of the Internet like everybody else, and we happen to like to think that we were put on the board because people think that we might have some ideas and it might be useful from time to time for us to put the ideas out to the community for discussion.

And so the bottom-up process doesn't say ideas have to initiate at the bottom. It says that the work has to be -- at some point in time get to the bottom.

And so there's nothing that stops, for example, somebody writing an article in the newspaper and somebody picking it up and saying, "Hey, this is something we should work on."

And so I think that we sometimes get too hung up on the notion of multistakeholderism, what is it and have we included everybody in the group and so forth, and we tend to miss what we really want to do.
Thanks.

RAFIK DAMMAK: Thanks, Ray. So yes, Bill, and then we'll close.

BILL DRAKE: Thank you. Some very interesting remarks. I just wanted to say two things.

First, in response to Ray, we did not raise --

>> ---

BILL DRAKE: I know.

We did not raise the question of the board working paper at all. This is not our topic. This is not what we were thinking about. It has nothing to do with our conversation. What --

>> ---

BILL DRAKE: I didn't use it as an example. Chris did, okay? So -- just so you know.

>> ---

BILL DRAKE:

It's not what we came wanting to talk to you about.

And to Mike's point, I hope that there's not a -- an a priori assumption shaping this, but I just want to be real clear.

We certainly are not here with the idea that we are cross-examining anyone. We are here to engage in dialogue with you precisely because, as Ray says, we think you are qualified people with lots of ideas and we want to know what you think about something.

And this is a specific issue that has ramifications across the community, through a lot of different processes. It's a knotty problem intellectually. It's one that you've just -- Ray just interested an interesting observation. You said it mean -- it doesn't mean ideas have to come from the bottom, it means that the process gets to the bottom. That's a different understanding of "bottom-up" than some other people would have.

So this is an analytically and operationally important point that we simply wanted to get a sense from you what your thinking is.

Nobody is cross-examining. Nobody is challenging. Nobody -- there's no Perry Mason. I just want to be clear about that.

RAFIK DAMMAK:

Okay. Thanks, Bill.

So we have the challenge to talk about the next topic in five minutes, so Kathy? Yeah.

Kathy, please go ahead.

KATHRYN KLEIMAN: Hi. I'm Kathy Kleiman, and speaking of bottom-up --

>> Can't hear.

KATHRYN KLEIMAN: Okay. It says it's on so I think I'll steal Bill's.

BILL DRAKE: It's my intellectual property.

KATHRYN KLEIMAN: Can you hear me now? This is Kathy Kleiman.

RAFIK DAMMAK: No, not really.

KATHRYN KLEIMAN: Can you hear me now?

RAFIK DAMMAK: Yes.

KATHRYN KLEIMAN: Okay. Very good.

So speaking of bottom-up, I wanted to talk a little bit about --

>>

KATHRYN KLEIMAN:

-- about the expert working group.

Close?

BILL DRAKE:

It's quite close.

KATHRYN KLEIMAN:

It's pretty close.

Okay. What the slide said is "Deep concern about the expert working group report," and we wanted to talk with you about the process by which WHOIS reform is translated or entered into policy.

So just very briefly, and just by means of an introduction, the expert working group did an enormous amount of work, and a lot of it was between the inner -- was between the interim and final report where many things were added and many things --

Can everybody hear me in the back?

>>

KATHRYN KLEIMAN:

Okay. Can the translators hear me now?

>> ---

BILL DRAKE: Can you hear me now?

>> ---

KATHRYN KLEIMAN: Okay. So here are some of the questions about the expert working group. Where are some of the new points of input? Where are some of the new points for critique, for evaluation? Many people think it needs an SSAC review, a human rights review, a freedom of expression review.

There I am. Hey! See, you say "freedom of expression" and it goes all over.

>> ---

KATHRYN KLEIMAN: There were -- it's an enormous report. There -- it raised many questions, particularly in the final version. Things that were optional became mandatory. Enormous implications of what's being offered here.

So the question is, how does it go out to public comment, which it needs very much so, and how does it get entered into policy, especially in light of the very many WHOIS proceedings already taking place.

And you've already -- and you know about most of them. We're working on validation verification through the registrars and the 2013 RAA. Many of us in the room are working on the proxy privacy accreditation working group for standards of relay and reveal of the proxy data. The thick WHOIS working group is going on. The issue -- the question was raised yesterday, what's the roadmap, how's it all incorporated, how does it all work together, and so that was a question for Chris Disspain and others. Thank you.

STEVE CROCKER:

Let me jump in here. Yeah. Thanks.

So Kathy, thanks very much and let me note the excellent work that you and everybody did on the WHOIS review team report. So the expert working group report was -- came out in June and has been out for public comment, so I'm not a hundred percent sure I know what that aspect of what you said leads to.

CHRIS DISSPAIN:

I think what Kathy is saying is that it -- that in between the last full public comment and the finalization of the report, stuff was added, slash, changed.

STEVE CROCKER:

Sure.

CHRIS DISSPAIN: That's what she's saying.

>> ---

CHRIS DISSPAIN: Yeah.

STEVE CROCKER: But haven't we subjected the final report to a public comment period?

>> ---

STEVE CROCKER: No?

CHRIS DISSPAIN: I'm --

STEVE CROCKER: How did that happen?

>> ---

STEVE CROCKER:

All right. Well, not too late.

So tomorrow, a working group which Avri is on, for example, of GNSO people and board people are going to sit down and take up precisely the set of questions about how do we get from here to a policy development process and getting -- and the initial thing to do is to gather exactly the set of questions that includes the ones that you've just raised.

So let me make sure that we capture that bullettized list of the various reviews that you have in mind so that's fodder that goes into the discussion that we're going to have tomorrow.

We have made no commitment about what the timing is going to be. We've made no commitment about what the final result is going to be. We're now at the point of trying to look at what issues are raised by the expert working group report before we move forward in any particular direction.

Yep.

KATHRYN KLEIMAN:

Is this working now?

Okay. But before we delve into the issues raised by the expert working group report, is there the opportunity or how do we create the opportunity for public comment on some of the concerns and issues raised in the final draft?

CHRIS DISSPAIN: I think --

>> ---

CHRIS DISSPAIN: So -- and I understand that point and there's a challenge here. You've got -- you've got a report -- you've got to sign off on the report at some point.

So every time you iterate and go back to public comment and then you come back out and you write your -- you write your report, at the some point you've got to say, "We've signed off on it. Our job is done."

So I think -- I think -- and that's what -- that's what actually happened. If I understand that your --

Well, part of your concern stems from what you perceive to be significant changes in the report and I understand that.

I think that the answer to your question is actually we do need to go to the step that we're going to now, which is to start talking about the process, because actually the place for this work to be done is in the GNSO and it was always intended that this work would be done in the GNSO. It was intended that this report would --

And so what we're doing is we're going to sit down with a selection of GNSO folks chosen by you guys, and a selection of board members, and talk about what are the next processes.

So one of those might be, well, why don't we start with a -- with a public comment. But I'm not sure that that will necessarily -- I don't know, but I'm not sure that that necessarily would be the most helpful thing to do.

The point is, we've never done this before, so our point now is what do we -- what is the -- what does the GNSO want us to do process-wise now. And that's what we're meeting about tomorrow, and that's going to be the discussion -- and we're not going to make any decisions tomorrow. We'll start talking about it tomorrow. And I forget -- I know Avri is on there but I can't remember who else is.

So nothing is -- and one thing's for sure. We're not -- what we're not sitting down to talk about is how do we implement this report, because we're way, way before that happens. There's a whole series of things that need to happen. And if you remember -- well, you may not have been in the room but one of the questions that I asked two GNSO Council meetings ago was, "To be most helpful, you could start thinking about what would you like us to do before we do anything -- what would you like us to bring as companion pieces to this report?"

And one of those might be a risk review or a legal review or a human rights review or whatever.

So we've asked that already. And the purpose of having the small working group is to start working through that and figuring out what to do next. Okay?

RAFIK DAMMAK:

So Bruce will have the last comment.

BRUCE TONKIN: Yes, just very quickly. Kathy, just to be clear, to implement that new proposal requires policy development, and that policy development occurs in the GNSO per the bylaws to be absolutely clear. So there is no sudden jump that report goes to the board and the board says, "Go forth, Community, and build one of these things."

As Chris said, it is a report which is a proposal from a group of experts of a possible model of how to implement a directory service that they believe addresses many of the issues that people have raised over 20 years. But now the time is to actually bring that back into the GNSO and say, right, what is the policy that's necessary as a result of this information that allows us to move forward.

And as you said the other day, it is a bit like we're doing iterative versions of the system which is WHOIS and at the same time we want to start a larger project to create a new directory service. And that new directory service has got to be very thoroughly scrutinized on all the aspects that Chris raised: Legal, privacy, human rights, anything else you want to add.

STEVE CROCKER: I will just emphasize, Bruce focused on, you know, this is not going to happen unless it goes through a policy development process. And it is not yet going to go into the policy development process without the kinds of discussion you're talking about.

I'm looking at Avri who's going to be in the meeting tomorrow. Let's take the opportunity to make sure that we have a full list, and I assume you guys can talk to each other.

AVRI DORIA: We often do.

RAFIK DAMMAK: Okay. Thanks. We need to close this meeting for today because board members have to run to the GAC meeting. Thanks. Thank you for the interaction. Yeah. That's it.

STEVE CROCKER: Thank you, all.

[Applause]

[END OF TRANSCRIPTION]