
SINGAPORE – Board with Non-Commercial Stakeholder Group

Tuesday, March 25th 2014 – 15:30 to 16:30

ICANN – Singapore, Singapore

STEVE CROCKER:

We should get started. This is a meeting of the ICANN board with the noncommercial stakeholder group. We -- speaking for the board, we enjoy these interactions and seek to use the time productively by getting directly into the issues, skipping over generalities and platitudes.

So let me turn things over to Rafik, and I think we want the agenda -- the next slide -- up, if we can.

RAFIK DAMMAK:

Thank you, Steve. It's a really good opportunity to interact with the board.

We have several questions to ask the board, and really we would like to get a clear, concrete, and detailed answer to our questions, so we proposed basically four topics and we have leaders for each topic.

So we would start with the IANA globalization, then about NETmundial, about then the globalization advisory group, and more at the end is about the privacy and data protection.

And just kind of to -- at the end, really kind of any other business, and we just want to help maybe follow up on those issues.

So starting with the IANA globalization, we have Milton -- Professor Mueller who will lead this topic.

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MILTON MUELLER:

Hello.

So we participated in the morning session yesterday in which you tried to get some kind of feedback about process, and we'd like to focus our comments on that was because our judgment was that you didn't come out of that meeting with any actually implementable or even useful suggestions about process and mechanisms.

We did feel it necessary to set some groundwork, such as, you know, we should listen to all options, no reason to rule out NETmundial or other places to discuss the idea, and I think by the time people cleared that kind of cruft away, there wasn't actually much time to talk about process.

So our first question for you is: What do you have in mind for a process and how do you plan to go about getting people into it and structuring it?

STEVE CROCKER:

So you -- I know you understand well that if we had come out and said, "Here's the process," we would have gotten creamed by saying, you know, "You structured this top-down, you didn't involve us, how come we don't get to participate in the process."

The statement from NTIA was very clear that this is to be opened up for general consultation. The formal role that ICANN has is to facilitate that but not to control it or -- or set it up.

So that's where we are.



My guess is that bits and pieces of process will set in quickly enough. Perhaps some have already. And the -- from my point of view, in a generic sense -- and you can figure out, after I finish, how to map that into some specifics -- there's two broad phases.

One is generation of -- well, generation of what I call principles and issues. Principles are the ideas that we want to hold fast to and preserve, and issues are problems that we think need to be addressed or solved.

And -- followed by proposals for solutions, mechanisms, and so forth that address those issues and adhere to the principles.

So that's two broad phases, but within each of those phases, the natural cycle of things is generation of ideas similar to a brainstorming and then a sorting out and collating of ideas and then a focusing and consensus-building around a selected set of those.

So to say all that once more from front to back, we ought to be in the phase of trying to identify principles and issues and having people contribute what their views of that are, and that -- then rapidly move into sorting out which things are essentially the same and different and which ones we want to hold to, and then move into the solution space.

At the same time, we understand that it's very natural for people to propose solutions first, and often with the idea that the problem is obvious, and I've found myself already in some of the lists saying, "That's your solution. What's the problem?"

And so it's reasonable to challenge people who propose solutions to say, "Okay, exactly what problem is that solving," and try to extract



those so that we have some clarity about why it is that that's being proposed.

The other thing that personally my taste is, is minimal solutions rather than maximal ones. First do no harm.

We've got a running system. IANA works day in, day out. And so I think we need clarity about exactly what problem we're trying to solve.

Mapping that into the specifics of what are our deadlines and who's in charge and what the mechanics are, I'll stay away from because there are a lot of people are doing things and lists are being created and comments are being selected and so forth, so I -- there is a process that is in effect organically coming into existence.

MILTON MUELLER:

Can you tell me who in the ICANN staff is in charge of that process and would you be using things like the 1net list? Are you creating new lists?

Some real specific things about the process would be helpful here.

FADI CHEHADE:

I can do that.

STEVE CROCKER:

There we go. Fadi, thanks.

FADI CHEHADE:

Yeah.



So first of all, let's not confuse the 1net list with what we're doing at ICANN.

1net is not ICANN. 1net is a community of people and it's a good list, and please feel free to discuss whatever is needed there.

As it relates to this process and your question about the input, we have actually received quite a bit of input during the public consultation session and we have staff that is now already ferreting all the record of the things that were said and putting them into a document.

We also have, as announced yesterday, an address, an email address, and a place on our Web site where we can continue providing input besides these kinds of sessions and everything we're hearing. We have people taking notes so that we can take all the input possible.

But by the end of the ICANN meeting, we will start on the process of taking all that input, figuring out what came out of it, putting it all into a single document, publishing it to all the communities publicly, and this is all about process still -- right? -- not substance, where we will say, "Here's what we heard on the process. Give us input on what we heard or other ideas that didn't come out."

So there will be continuous opportunity for everyone to participate, give input on the process, in the weeks ahead.

But certainly right now, please if you have very specific ideas on the process, until March 27th we have an email address. It's on our Web site. We published it yesterday to the whole audience. Write to that email address, please.



>> (off microphone.)

FADI CHEHADE: I don't know the email address off the top of my head. I'll pick it up from our Web site and share it with everyone.

MILTON MUELLER: So the deadline for those submissions is March 27th?

FADI CHEHADE: This is the first deadline, Milton.

And then we will put everything into a document, put it out, so that everyone can then comment again, not just in the ICANN community but in the global community, "Okay, here's a starting point of a framework. Does this make sense?"

So that document will have everything we heard so far for everyone to listen to and tell us more. So we will make sure there's ample time for everyone to give us input on the process. That's our commitment.

VALENTINA PAVEL: Hello. My name is Valentina Pavel from the Association for Technology and Internet in Bucharest, Romania, but I'm speaking for myself.

To be honest, what I didn't hear in the first session and today when people lined up to do comments was that maybe it should be advisable to do an audit and to check what is currently good or not so good with



the model we have in place, and then start to draft some principles and the actual process.

So I was thinking if somebody from ICANN thought of doing some audit or some external review on the current mechanisms we have in place. Thank you.

STEVE CROCKER:

We -- there's probably no process that is watched more closely than the IANA process.

There's reports generated regularly. The -- every transaction is logged and tracked.

If there were a problem with putting the wrong information into the root, for example, which would be one of the more striking and unacceptable kinds of errors, the news would be known quickly and broadly.

The statistics are quite positive. They're stellar and compete with any operation anywhere, and they're published. They're all on the net and lots and lots of data going back over a long period of time.

So I would say the basics of what you're asking for is there, and if -- if you have in mind something in addition or different from what's there, then that would be useful to bring out, but I think the first thing would be to take a look at the information that's there.

RAFIK DAMMAK:

So we can move to the next agenda item.



LORI SCHULMAN: Hello. My name is Lori Schulman. I'm from NPOC, and I have three questions and perhaps more, depending on how you answer, regarding engagement with NETmundial.

The first question is: Does the board have a specific strategy of how it will approach the NETmundial meeting, given the USG announcement?

STEVE CROCKER: This is yours, Fadi.

FADI CHEHADE: Okay. And by the way, the address is ianatransition@icann.org. That's the address to submit any additional input. It's on the Web site.

NETmundial is not an ICANN meeting. It is a global meeting organized by some very specific committees that you can read about on NETmundial.org.

One of our staff members, Dr. Tarek Kamel, is on the high-level committee, and some of our other staff members are on the logistics committee, et cetera.

So just to be clear from the beginning, this is not an ICANN meeting.

The -- I was asked by the president of Brazil to be a co-chair of the meeting. There are five co-chairs to the meeting: one from business, one from civil society, one from academia, one from government, et cetera.



So we have all the stakeholders as co-chairs, equal co-chairs.

The plan for NETmundial is to come out, with consensus, we hope, with some Internet governance principles and with a roadmap for global Internet governance of both technical and nontechnical issues.

That's the hope.

And that hope is important for all of us because NETmundial is the last global meeting on Internet governance before most governments would have submitted their input to Busan's plenipotentiary.

So the IGF in September is too late for ensuring that people, in their submissions to the Busan meeting, appreciate that the global multistakeholder community, of which we are part, has actually energized another path, or a path, towards true multistakeholder participation.

Therefore, our hope -- if you ask about our strategy, our hope and strategy as a community, all of us -- and this is not the board or Fadi; this is all of us; we are all involved in NETmundial -- is to ensure that the outcome of NETmundial is one that gives hope -- gives hope -- to the many people around the world, who went to the WCIT and came back empty-handed, that there is a potential for a true multistakeholder mechanism or environment of addressing Internet governance issues.

That's our strategy.

Now, as it relates to our work, yesterday I made a statement that some people frankly misunderstood.



I said we should ensure that we do not have all the oxygen of NETmundial completely taken by ICANN and IANA issues, because then we would have missed an opportunity to tell the world, "Here's another way to handle all Internet governance."

If all we did as ICANN was IANA, we will end up again at Busan with people saying, "How do I solve issues of Internet governance for cyber-security? How do I solve issues of, you know, cyber-bullying?" and on and on, and the list is long. And we will tell them again, like we did at the WCIT, "Not here because this is not multistakeholder."

So what have we done in two years?

Therefore, our strategy should be to leave enough oxygen.

Having said all of that, my final point on this -- and Milton is right, we cannot just tell people what to say and what not to say. Obviously, people can say whatever they want. But as co-chairs of the conference, we have a job to ensure that the conference ends in a positive, successful ending.

So what we will do is: One -- and I'm talking to my fellow co-chairs -- one, we will acknowledge and welcome the U.S. government announcement; we will acknowledge the processes that are in place to discuss ICANN globalization and the transition of U.S. stewardship for IANA; we will mention to people, "Here are all these things going on which are started as we speak"; and then finally, we are considering -- and this is just considering -- I emphasize "considering" -- that maybe in Brazil, either during, around, or something, the conference we would actually have an IANA stewardship transition public consultation so all



the people there have a chance to participate in that and have a chance to direct all their energy and input into that, thus leaving oxygen in the conference itself for the larger and broader issues.

Is this helpful?

RAFIK DAMMAK: Thanks, Fadi, but I think we would like really to hear the board position and involvement in NETmundial, so -- but I heard it's more about yours and the ICANN staff.

STEVE CROCKER: Bruce, you wanted to speak to this?

BRUCE TONKIN: I just really was just looking for a bit of a survey.

How many people in this room from civil society or the noncommercial stakeholder group will actually be there? Just give us an idea.

So -- I'll say that a bit more slowly.

How many people in the room will be attending the NETmundial event? Just a show of hands. Just give us a feel.

RAFIK DAMMAK: I think we would like to attend, but --

BRUCE TONKIN: Well, I mean, actually attending. I realize -- yeah. It's a fair number.



LORI SCHULMAN: I have a question that follows that up, please.

It goes to what Fadi said and what you're saying, Bruce, about we are all involved.

Well, Fadi did talk about staff. We are absolutely interested if any board members specifically will be attending.

>> (off microphone.)

LORI SCHULMAN: Okay, okay. Good. Okay.

STEVE CROCKER: Yeah. A handful of us are going to be attending.

George, did you want to say something in addition?

>> (off microphone.)

STEVE CROCKER: Yeah. There's a handful of board members who will be there.

But let me emphasize. I mean, you're asking about the board and I'm interpreting the question is, what is -- how is the board engaging and driving in all of this --



LORI SCHULMAN: Correct.

STEVE CROCKER: -- and the answer is, fundamentally: This is not an ICANN meeting. This is a worldwide Internet governance meeting.

Fadi is doing extra duty as a co-chair there. A few of us will be attending. But it's very, very important that NETmundial be a much broader meeting than the parochial issues of ICANN.

We have plenty of opportunities for dealing with ICANN issues. That's what we're doing all week here. And to take ICANN and port it down to Sao Paulo is, as Fadi said, a wasted opportunity, in a sense, to deal with the larger set of network governance -- Internet governance issues.

That meeting is -- should be viewed through the lens of how it compares with IGF meetings, with WCIT, and so forth, and not how it compares with an ICANN meeting.

LORI SCHULMAN: Yeah, I don't think that we implied that at all. I think quite the opposite, that yes, we were very clear that it's not an ICANN meeting, but there is a question now on the table that is about engagement and using the board as ambassadors for a very broad, world-changing effort, you could argue, in terms of governance as governance.

STEVE CROCKER: Yeah. So maybe I need to burst a bubble here.



We have a very capable board, with people with lots of experience, and we do a fair amount of ambassadorial work, but that's not the role of the board.

It is kind of extra duty rather than the official role of the board.

The official role of the board is to oversee the processes within ICANN.

So over the last several years, we have tried to professionalize the staff. We have an extraordinarily capable, world-class staff of people who do global stakeholder engagement, and quite a few of us on the board do one sort or another of ambassadorial work, but it is not the first assignment. It's not part of the job description.

LORI SCHULMAN: Again --

JANICE DOUMA LANGE: If I could just interrupt, if you could, this is Janice Douma Lange, for the record. I'm working on the Adobe Connect. If you wouldn't mind, please, to make sure you say your name for the scribes who are trying to do the transcription. Thank you.

STEVE CROCKER: Thank you. This was Steve Crocker.

LORI SCHULMAN: No. This is Lori and this is certainly not to imply that we don't understand the role of the board but we look to this as an opportunity



for the board as a -- to do something outward facing beyond, simply because of the nature of the IANA tradition -- transition, pardon me, and the fact that we are being asked to basically take the pulse of the world, at least how we see it, in terms of what is the right process. What is the right process for the transition.

So we completely understand that it's broader than ICANN, but at the same time, we do have concerns, too, about -- and I'm going to ask a follow-up question about we're all engaged, unless you want to stick to the board role here and to the sense that to go and to gather information and consensus and perspective in terms of the question, because the question's going to be rotating around NETmundial. It can't -- you know, it won't be ignored. That's for sure. And I know there's a lot of other issues as well. No one's saying that this will be the overarching issue, but it is an opportunity.

That being said, in terms of the engagement of staff and the engagement of Board, we also have concerns about the engagement of the multistakeholder community, at least as it's represented here in ICANN and that we were wondering whether the Board is taking a position on funding the participation of some of the -- of the NCUC constituencies, specifically NCUC and NPOC. We have members that have applied and received letters of invitation but can't commit to going because there's a question about funding, and we were wondering whether or not ICANN would be willing to commit funding to have the participation of civil society from ICANN go to NETmundial.



STEVE CROCKER: I'll have to defer to Fadi on resources, and it hasn't been a formal commitment by ICANN that we're going to send a full spectrum of ICANN constituencies to NETmundial.

LORI SCHULMAN: I would certainly make the argument that having civil society there is very important. And I will follow that up with saying that there is -- the reason the question is coming up is that there is some doubt about how funding will work. There's been different messages coming across about there might be funding for NETmundial, there might not be funding, there might be corporate funding, there might not, and what we're trying to get to here is if there are no other funding resources can we look to ICANN for those resources.

STEVE CROCKER: Mike?

MIKE SILBER: Yeah, very quickly. I think that's a very useful request. I think it's an entirely reasonable request. One of the issues in terms of Board attendance is exactly around this question of funding. What I think we should do and will engage with staff in terms of a budget, attendees, what the budget looks like and how that should be split. You certainly have our assurance as a Board that if we have some budget to travel, it's not going to be for the entire Board to travel and for the community to be left behind. But let's look at that in the Finance Committee, let's engage with staff and get back to you. But I think it's an entirely reasonable question to ask.



LORI SCHULMAN: Thank you. And we have one more follow-up question about engagement of everybody. This is another piece of information where we're not -- we don't have clarity but we heard today that Cisco Systems pulled out of supporting the technology that would allow for dial-in and remote participation. We see this as extremely concerning, for without remote participation we see that meeting becoming another bubble. And would ICANN take a position on this issue, if there were no remote dial-in, how would that affect ICANN's participation, understanding that Fadi is a co-chair.

FADI CHEHADE: Okay, Cisco did not pull out. Cisco is still committed to do this. The problem is not Cisco. The problem is technical. Having these screens requires hundreds of thousands of dollars because the Cisco system requires that obviously both ends have the same telepresence equipment. Right? So they offered to give us, at zero cost, rooms around the world for people to congregate in and dial in. The problem was that we needed hundreds of thousands of dollars to set up telepresence rooms in Brazil for this to work. So let's be careful with what we said.

Secondly, there will be remote participation equal to what you see happening in any ICANN meeting. And even better. We're trying to even use newer, better technologies. And this, by the way, was donated by ICANN. So we know that we are contributing to the meeting. We donated the remote participation and the translation to the conference. Largely to make sure that all are served and people



from around the world can participate and languages are -- so this staff that you see here will be flown with their boxes, with their equipment, from Singapore, we're shipping all of this straight to NETmundial as a show of our support.

LORI SCHULMAN: Thank you.

FADI CHEHADE: Thirdly, if I may, sorry, I don't know --

RAFIK DAMMAK: Fadi, please, so final conclusion and then we can move on.

FADI CHEHADE: Thirdly, because the woman was mentioning travel support, we will follow through on our Board member's suggestion that we should look at our budget. Having said this, it is important for us to work with the NETmundial committee. We are not the organizers. So if we are going to offer travel support, we have to coordinate with them, make sure that it's fair, that we're not -- there are also apparently over 60 governments that want to show up but need assistance from developing countries. We need -- so I need to make sure that ICANN's involvement in this has to be measured, has to be within budget, and also has to be somewhat coordinated with the organizers so we don't cause a problem for them. So I am meeting with the organizers tomorrow to discuss specifically travel support.



RAFIK DAMMAK: Okay. Thanks, Fadi. So I think, because of the time, we should move to the next item. We may kind of switch and we will start with data protection, and we'll ask -- Stephanie is taking the lead. Yes, Stephanie.

STEPHANIE PERRIN: Thanks very much. My name is Stephanie Perrin and for the record and the transcript, if you see Stephanie Perrin further back in the transcript it was probably Lori Schulman. So you might want to make that correction. The NCSG was absolutely delighted to see, in the opening presentation, when Fadi indicated that there was going to be movement on privacy, it was whited out on the slide so we're not getting it yet so we would like you to elaborate on that. But we have a proposal. Perhaps I could explain our proposal first. And I -- I should perhaps say that we also put in enthusiastic comments to the EWG report, and I'm sitting on the EWG so I must declare that conflict there. But we were very enthusiastic about the privacy protections that we saw in the EWG report including the recommendation for some form of binding corporate rules. And our -- we recognize in the NCSG that that report is not done yet. Even when it is done, we're a long way from implementation. Personally, I'm sitting on the HLMC as a representative of civil society for the NETmundial and we note that there is considerable pressure and support for privacy. So we really think it's time that ICANN show leadership and accountability. And accountability in the 21st century also means accountability for data protection, for the personal information that is with -- under its care. So

as a multistakeholder that actually protects its stakeholders, that's kind of a basic.

So we think that it would be a terrific idea if ICANN would not wait any longer for the recommendations on the WHOIS changes but go ahead and create a privacy policy that governs the protection of information within its reach, not only the data of its staff, the data of its -- the personal data of its stakeholders, but some sort of policy that governs the -- what the Europeans would call the controllership of data that it enacts through contract.

So that's kind of it in a nutshell. But we'd be happy to elaborate on that, if you're interested.

AMR ELSADR:

My name is Amr Elsadr. I'm a GNSO councillor for the Noncommercial Stakeholder Group. I would like to second everything Stephanie has said, and there are obviously some marked improvements in some of the ideas coming out of the status update of the expert working group on the current WHOIS model. And I would also like to point out that the ICANN community -- I'm not talking about staff and the Board -- but the ICANN community has repetitively fell short -- fallen short of addressing privacy concerns when it comes to WHOIS. I'm not sure if you all actually read the final reports of the thick WHOIS PDP working group but anybody on that working group would have told you about half the time we spent was on the topic of privacy and data protection, and that was just one out of, I think, eight or nine topics. And this is the one topic the working group was chartered to address that the working group failed to address. Our report on that was that we lacked the capacity to



address it adequately. And then you have the Expert Working Group status update report also trying to address jurisdictional concerns and applicable laws on privacy and data protection, and again, they are recommending further research on this because they have fallen short of addressing it adequately.

So what I am hoping to do and what I am hoping you would do as an ICANN Board and what we as NCSG have actually not been able to do through the GNSO is that I hope you could ask for an issue report addressing this topic and a Board-initiated PDP specifically to this. We're talking about taking the WHOIS model to a completely different level. And to change it we would like that to happen, but happen in the right way. Privacy needs to be addressed, it hasn't been addressed forever. Now is a good time to do that. So thanks.

STEVE CROCKER:

With respect -- what you've just articulated is one of the absolutely central reasons why we initiated the Expert Working Group and privacy issues are one of the core concerns in there. So I would say we are preceding a pace with precisely what you've just formulated. You know, it remains to be seen whether the output of that is what you would want and meets your highest expectations, but it is -- it is one of the primary concerns, one of the -- getting hold of the WHOIS model and going down to the core and rebuilding that from scratch with several different things in mind but particularly with privacy in mind is one of the things that drove that effort. And that's moving along. And Stephanie has done Yeoman work on that. I'm -- I'm formerly a member of that group. I haven't been active in the last several months but I've --



I was active for a while, and Stephanie is the world premiere privacy expert and one of the most important contributors within that group.

AKRAM ATALLAH:

Yes, thank you. We've actually -- Fadi in his opening remarks mentioned that some of the GDD tracks that we're working with the community on, one of them was in white and that track was actually about the data privacy and the reason we see this as something that we have to start looking into and engaging with the community with is because there is a lot of things happening right now that are questioning the WHOIS, they are questioning the RAA requirement, they're questioning -- and all of it is about the data privacy. And addressing each one of these in a silo, if you want. So we need to very quickly, after we move forward with -- solve the RAA issue which is happening now, after we address the -- the Board addresses the Expert Working Group recommendations, we need to take stock of all of these issues and analyze where we are, see if there are any gaps left, see if there are anything else we need to address or if we need to do something bigger than that to look at all of the data privacy across all of the ICANN data issues. And then start engaging the community and maybe the GNSO for a policy development. So we -- we've got our eye on this and we're -- we're going to do an assessment and figure out where we are and what we need to do to move forward. Very quickly.

STEPHANIE PERRIN:

Thank you for that. This is Stephanie for the record again. And thank you, Steve, for your kind words. Would it be helpful if we were to prepare a report that looked across ICANN and helped you out by



identifying the areas where you needed more data protection? Because there's certainly a number of areas. The RAA is a data collection instrument. The RAA is a data retention instrument. The HR data is -- we haven't seen any sign of that being governed under data protection law, even though Singapore and Brussels are clearly under data protection legislation. There --

AKRAM ATALLAH: Absolutely. Signed. Any help that you can provide would be greatly appreciated. This would be a great initiative to kickstart the review. Thank you.

STEPHANIE PERRIN: Perfect. Thank you.

BRUCE TONKIN: And yeah, we'd certainly support that as well. I just want to come back to your suggestion of an issues report. And you suggested that the Board can call for an issues report. And certainly it can. A couple of comments. One is have you read the issues reports on WHOIS already because they go back over about ten years and nearly all of them -- I'm just looking at Kathy Kleiman there, she probably half wrote one of them, but they covered -- they do have a lot of privacy stuff in them. It would be interesting to review those first and see if there's something that's missing in those reports. But I think the -- it's really going to the next step, isn't it? Because I thought what we really had is a number of issues reports that have been done on WHOIS, then we've asked an expert group to come up with some ideas for how to address some of

the -- some of the issues. And the next step in my reading of the process would be the formal initiation of a Policy Development Process, I would have thought is next. But if you don't think it is, in other words, if you think there needs to be another issues report, again, wouldn't the starting point be the NCSG raising that as a motion on the council and then if your motion fails, then come the Board? I don't understand why the Board would be initiating a policy process. You are part of the policy body, if it's filed, so I'm interested in maybe you can answer some of these questions. But yes, we would certainly be willing to do that. I'm just questioning why. There have been issues reports and you can put a motion on the council to form an issues report.

AMR ELSADR:

This is Amr again. The reason I asked the Board to take this step is because as an NCSG member who has participated on working groups. Admittedly not since the beginning of the days of WHOIS, but as a member who has participated, I have personally not been able to get GNSO recommendations out of the working groups that are dealing with WHOIS to that effect and I have tried. So that is why I put that question to you. And I also framed it in the context of that even though we haven't been able to address the issue, no one else has either. On more than one occasion that I have pointed out on the thick WHOIS and the Expert Work -- Expert Working Group status update reports, we haven't been able to solve privacy issues. And we've admitted that. And so okay, we're not getting the work done that we have been chartered by the GNSO council to do on this working group and by the Board on the other. And so maybe we need to take a closer, more focused look on this. And not include it as a subtopic amongst a larger

set of topics where the working group final report will go through because everything else seems okay, it's just this one thing that isn't working out. So that's why I would like more of a focus on this than anything else.

BRUCE TONKIN:

So, you know, I guess I'm just questioning the mechanism but not the reason for the work, yeah. I suspect it's not issues report that's been the problem. It's been sort of getting focus at a working group level and maybe it's about creating a very focused PDP on that. Yeah. I just wonder whether -- the issues report seems further back in the process than you need to be. I actually think you probably could move the issue further forward more quickly by initiating a very focused PDP on the privacy issue. Because you've already got issues reports, I would have thought. I'm happy to be -- you've got experts in the room that could tell you whether they do or not. I don't know.

RAFIK DAMMAK:

Okay. I think we've got -- we have Chris and then Kathy and then Stephanie.

CHRIS DISSPAIN:

Thanks. This is a really interesting discussion. I think it's very important that we make a clear distinction because we're combining a couple of things here. One is the privacy rules in respect to WHOIS, binding corporate rules in respect to WHOIS, and that sits, at the moment anyway, fairly and squarely in the experts working group work group. And the second is -- is the necessity for binding corporate rules or

whatever in ICANN, which is not the same as in WHOIS. WHOIS is all about what we do, registrars do, registries do, et cetera. Binding corporate rules for ICANN are a completely different thing. There is not an agreement that there is -- sorry, that's not correct. There are differing views, for example, on whether in respect to WHOIS ICANN is, in fact, a data controller or not. I don't know what the answer is. But I don't think it's actually set in stone yet. But my point is that we need to be very careful what we're actually talking about. If we're talking about WHOIS, for the moment, that's sitting in the experts working group. If we're talking about ICANN, then, well, that's a matter for the GNSO, I guess, or -- no, actually it's not. It probably isn't, is it? It's a corporate ICANN issue, and, therefore, that can be dealt with in a slightly different way. So as long as we keep that separation, thanks.

KATHRYN KLEIMAN:

I wanted to second what Chris said actually -- this is Kathy Kleiman -- that data privacy was such a wonderful bullet to see on the list, that it is a much bigger issue than WHOIS. That is only one part of data protection/data privacy issues within ICANN. So it seems like something that would cross and be part of a much larger umbrella within ICANN.

In terms of former -- past reports, with data protection, we're talking not just about policy making or consensus policy but law. And, Bruce, as you know, this has been one of the holdups within the GNSO over the years and part of the questions about jurisdiction and harmonization and safe harbors and laws and the new data protection law.

The GNSO needs help, and they could really use some expert help. We have been stuck on this issue for a long time. The expert working group



is pushing through part of it. But I think Amr's call is for expert help to help us because the proxy privacy accreditation working group is still in progress. I think WHOIS reported out.

We still haven't had that really deep, legal international global data protection help. And I'm hoping that's what your bullet was talking about. Thank you.

FADI CHEHADE:

Just to confirm that, that this is precisely why I had it there. I'm sorry we chose white. It is simply to say this is not in place. We didn't want people to think we had a privacy effort and no one knew about it. We were just signaling to people that we have two or three activities that we're about to start. That's one of them. And, indeed, we will do these assessments. So you have our focus on this now.

Please do give us input. We will take your input that was offered with great -- with great respect and great appreciation. And Akram will be setting this up soon so we can get to work.

BRUCE TONKIN:

If I can just add further on what Kathy is saying, if you did kick off a policy development process and formed a working group, then what you're talking about is how do we provide the right assistance and expertise to help in that working group. This is a bit of a theme I saw in the ATRT2 recommendations as well. It is like the GNSO policy process needs to be properly resourced, and part of that resourcing is to deal with what you're saying.

And what we're saying is these processes haven't converged. Those that have been involved in it for some time know that a lot of these things have been discussed. There's actually probably several hundred thousand pages in the GNSO Web site on this topic. But they haven't converged, and we need to help make that happen.

And I think the way to do that, let's get the process started. Let's form a PDP, form a working group. And then let's really sit down and work out how do we make that working group successful. Maybe we need facilitators because we know this hasn't been solved in the past. We need experts. Let's work out what do we need to make that working group successful.

VALENTINA PAVEL:

Valentina Pavel from the Association for Technology and Internet in Bucharest, Romania. I'm a first-time fellow at ICANN.

In the meantime while we wait for this working group and these reports and everything, I also want to highlight a more urgent matter that while we are working on these data protection issues, currently registries need to decide whether they want to break European laws on data protection or they want to break the contract with ICANN.

So this puts them in a very difficult position, and I'm not sure if everybody in ICANN is actually aware of this but this is a huge conflict.

Okay. I'm new to this environment. But somehow I didn't feel it was emphasized enough. Yeah, sorry if this intervention was --



FADI CHEHADE: No, no, you shouldn't feel sorry. First of all, welcome to ICANN. We're glad to have you as a fellow and you should -- really.

[Applause]

I think you ask actually a very good question. You know, we have some registrars who've been at this for 15 years who ask the questions. So you should not feel bad about asking the question at all.

I think we were just reacting to the fact that it's a hot issue now and a lot of people are talking about it.

So let me be clear. We are deeply aware of the issue. We are not -- no one is running around doing this. We are aware. And agreement with the registrars and registries included language from the beginning so that we would work with them in the case some of the requirements in these contracts conflicted with local laws, right?

Now, on the specific issue of data privacy, on our Web site you would see that, for example, there is one French entity that just got a clear break from ICANN directly on these particular issues because they submitted all the information they needed to. So if people do --

BRUCE TONKIN: (off microphone).

FADI CHEHADE: Hopefully that's a template for others. But we are working -- I just met with the French authorities, for example, head of privacy in Paris and we discussed it. And I think everyone understands that the directives that



came from the European Union are being translated into different regulations and laws across all of Europe. And these regulations and laws have applied the directives in different ways, not in a common way unfortunately. But that's how it is.

We have now engaged a top law firm to help us understand how the nuances and how that European directive was applied in each country impacts our contracted parties in Europe in order to help them, you know, not to give them direction.

But many of our contracted parties, frankly, are throwing their hands in the air saying, "We don't know how to get all of this solved." So we're helping them. We went and got that opinion.

So this is work in progress. We're working on it. And any inputs or insights you have specific to a country or part of Europe that could help us, please tell us because we're trying to solve it. We're not trying to force any contracted party to feel like they have to pick between us and their governments. Obviously, that wouldn't be right to them or to their business, you know. They will pick their governments obviously. They won't pick us. And it would break the system. I hope this is helpful. But, please.

RAFIK DAMMAK:

Thanks. I think we have two people in the queue.

VALENTINA PAVEL:

Please.



RAFIK DAMMAK: I would suggest we will need really quick interventions. So please, Valentina. We have Stephanie. Okay. Please.

VALENTINA PAVEL: Thank you, Fadi. Valentina speaking. Thank you, Fadi, for the reassurance and for the explanations.

Also, I want to highlight that a waiver from ICANN does not -- well, the question is to keep it short. I think maybe ICANN needs to reconsider the legitimacy to make such a waiver and to put it in place because still, okay, makes exemptions for some states. But it's still -- the RAA applies to other jurisdictions in its full force. So I think ICANN should consider a global position on this, and it should not have exceptions in the general rule. Rather, it should focus on data protection as a fundamental human right which is universally accepted. And it should not be pushing for a longer data retention period because, as we all know, there are lots of misuses with data. And especially in the Snowden revelations context, this should be -- I think you can have a firm position on it.

Second, we're expecting (indiscernible) regulation on data protection. So that means we're not going to have data protection rules apply differently in European countries. That was all.

RAFIK DAMMAK: Thanks. I hope the others will be much more shorter.

STEPHANIE PERRIN: Stephanie Perrin for the record. I just want to echo what Chris has pointed out. There are two separate issues here, and we are concerned



about both. The WHOIS is one problem, and the lack of a consistent policy is a separate problem. We're going to offer you help on that.

But I just wanted to pick up on two points I didn't mention. We're very interested in the accountability framework and the ATRT results.

No good accountability framework today fails to address your accountability for data protection. So we haven't given you comments on that. I think we're probably late by now, but we should.

And, secondly, the whole issue of risk management framework, no risk management framework should be without the identified risks on privacy which are significant for ICANN, not in terms of data breach but in terms of criticism, criticism that we are, in fact, enabling a surveillance regime through the policies that we set in place here.

So those are the sort of two -- from a maturational point of view, as a multistakeholder model, we're not there yet until we address these in our view. Thank you.

RAFIK DAMMAK:

Thanks, Stephanie.

So, Gonzalo, you will have the last word on this topic.

GONZALO NAVARRO:

Thank you. I'm going to be really brief. Valentina, we had an interesting meeting with the registrars one hour ago. And if you want to know more about our interaction or what we said, I think that you will find interesting to review the records of that meeting from the scribes. And



perhaps you will have a better idea about that interaction. If you have further questions, we can take it in the future. Thank you.

RAFIK DAMMAK: So I think we have a few minutes left.

Milton, you wanted to ask a question?

MILTON MUELLER: Do we have time?

RAFIK DAMMAK: If you are enough quick.

MILTON MUELLER: Okay. So this is about the globalization advisory groups. There apparently are six of them. Very little said about them. What are their mandates? What decision will they be able to take? Above all, public participation and interface with them? Will they make reports or other outputs? Will they be public? Will the community be able to participate in any way, for example, through public comment periods?

RAFIK DAMMAK: Fadi?

FADI CHEHADE: We will be making a recommendation to the board of directors to retire these Globalization Advisory Groups this week. As I announced on the



first day, we believe that the events that occurred in the last few weeks have kind of changed the landscape. We believe that the focus should be on the bottom-up public consultations, on the areas of transitioning the U.S. stewardship as well as ICANN globalization which were two of the six anyway.

So -- and given the clarity that the community is overwhelmed with all the things, or at least is overheating with all the activities going on, we decided that -- we didn't decide. We proposed to the board that the board consider ending the advisory groups that were just about to start here and instead to work with the community bottom-up on the public consultations that we announced yesterday.

RAFIK DAMMAK: We did have two quick interventions from Marie-Laure and from Robin.

MARIE-LAURE LEMINEUR: Thank you, Rafik.

Marie-Laure Lemineur speaking for the record.

Regarding the NomCom, we believe the fact that NPOC is not being represented as a constituency is a clear violation of ICANN bylaws because it triggers a situation where there is inequity and inconsistency in the NomCom composition.

So we do think that for the board to delay on our request for a limited resolution is unjustified, and it goes really against ICANN's fundamental principles and truly embracing civil society in the not-for-profit ICANN multistakeholder models.



So we would like to request the board for a -- to take action basically and create interim seats. Thank you very much.

RAFIK DAMMAK: George, do you want to respond?

GEORGE SADOWSKY: Thank you very much for the suggestion. If you look at the board agenda for the Thursday meeting, you'll see a resolution that is to create a board working group on looking at the results of the NomCom committee review and to look at the size and composition primarily of the Nominating Committee.

A little bit of history here, the current Nominating Committee composition was formulated in 2003. And the initial -- my initial attempts to find out the reasons why the composition was created as it was have been met with failure. It's too long ago, and the reasons are unknown. If anybody does know them, I would like to hear about them.

Now, it's clear that between --

>> (off microphone).

GEORGE SADOWSKY: It's clear that a lot has happened between 2003 and 2015. Every unit in ICANN, as you know, is required to go through a periodic review. Reviewers are selected, their units evaluated, a report is written, and given to the board and shared with the community and action is taken.



The NomCom was reviewed in 2007/2008, and the report was acted upon by the board in the year after.

The issue of composition was delayed because at that point, I believe it was the GNSO that was going through a fundamental restructuring. And it didn't make sense to restructure NomCom representation or even think of it while one of the major units of ICANN -- of ICANN was being restructured.

That has now passed, and we've decided it's time to take some action and look and do some thinking about how the NomCom should look given the changes of the past 12 years. Thank you.

Oh, let me add one more thing. When the report comes out, naturally if there is any change, this will require a bylaws revision. We'll go through a normal ICANN process, public comment, et cetera. So there will be plenty of time for people who want to put in their views to do so. Thank you.

RAFIK DAMMAK:

Thanks, George.

We have -- yeah, last intervention from Robin.

ROBIN GROSS:

Thank you. It's Robin Gross here and back with the same issue, which is bottom-up policy-making process and trying to encourage ICANN to follow its corporate bylaws which require to adopt the policy recommendations of the GNSO.



So let me just very quickly draw your attention to the bylaws -- ICANN's bylaws, Section 9 of Annex A. And I quote, "Any PDP recommendations approved by a GNSO supermajority vote shall be adopted by the board unless by a vote of more than 2/3 of the board, the board determines that such policy is not in the best interest of the ICANN community or ICANN."

And then it goes on to say that the board has to draft a board statement to articulate its reasons, submit that board statement to the council, have a discussion with the council about that board statement. Then at the conclusion of those discussions, the council meets to affirm or modify its recommendations.

So this is what's in the bylaws. And corporations don't have discretion as to whether or not they have to follow their bylaws. They must follow their bylaws.

So the specific issue up there is the trademark clearinghouse +50. The GNSO Council said three times to put only exact matches of trademarks into the trademark clearinghouse. Staff decided to change that to trademark +50. So my question which we've been asking for over a year now, and we still haven't gotten an answer on, is: What happened? How did that happen? How is it that these -- this vote didn't happen of the 2/3 supermajority -- excuse me, the 2/3 of the vote -- of the board to overturn that GNSO policy?

So how did that happen?



STEVE CROCKER:

So thank you, Robin. So we've been through this more than once already. And at the last ICANN meeting, we had this interaction and met with you to go into it in some depth.

And the follow-on was to recommend that the ombudsman take a look at this.

We asked the ombudsman this week --

Yesterday? Day before? I can't remember which day, but quite recently.

-- what the status of this was, and I was personally interested to know where this was.

The answer that -- I'll be careful with my words here. The answer that I heard -- I think this is what he said, but the answer that I heard is that the ball was back in your court and was -- and had been sitting there for some period of time. That -- so I see you shaking your head no and that's why I wanted to be very careful about the fact that it's what I heard and it's what I think he said. It may or may not match with what you think, but that's -- but one fact is that it did occur to me, at least, to know what was going to happen if we got into this conversation.

So that's where things stand from where I'm sitting, and we should go sort that out.

The ombudsman is here, and we should -- you know, I would counsel you to have that interaction with him because I don't have any better information than that.



ROBIN GROSS: Thank you, but actually, the experience that we've had with this is the ombudsman has been telling us that he's getting delay from ICANN legal, and then just a couple of days ago said he would meet with us here this week.

However, these are really two separate questions.

We've asked the ombudsman to review whether or not the bylaws were violated in this case, and that's a separate question.

I'm asking you: How did this happen?

STEVE CROCKER: I'm sorry. You're making an assertion that it did happen and then telling us that we have to account to you for that, and I'm telling you that it's sitting in the ombudsman's hands.

ROBIN GROSS: Well, it's been sitting in various people's hands for over a year now.

STEVE CROCKER: Yes.

ROBIN GROSS: But these are supposed to be the accountability mechanisms that keep ICANN in check, that makes sure ICANN follows its processes and its bylaws, and I mean we keep hearing about bottom-up accountability, but then when we try to use these mechanisms that are supposed to ensure that, it's sitting in people's hands for over a year.



MILTON MUELLER: Just a minute.

Steve, are you asserting that factually that the bylaws are not violated?

STEVE CROCKER: I'm saying that that's an assertion.

MILTON MUELLER: I know. Is it a true assertion or a false assertion?

STEVE CROCKER: Not for me to say.

FADI CHEHADE: May I comment on this, please?

Okay. Let's keep things in perspective. There were 28,000 trademarks registered in the clearinghouse. Of these, only 150 put anything above the trademark.

Of the total 150, even though we gave them TM+50, of the total 150 that added anything, all of them added less than two, on average.

So let's keep things in perspective.

Now, if the issue is process, that's a different discussion. If the issue is this, the reality of the matter is, this has not been an issue.



As to the process -- as to the process, we've already discussed this many times and we agreed that some people have different views on how this was handled. Robin, you were there. You attended the day. Of course we went later that day than you could stay. You had to leave.

There were different things that happened in that particular consultation discussion, and I was -- I discussed this with you and with everyone here before. We've done everything we can. Now, if we repeat this, have you seen that behavior repeated twice? Three times? Anytime?

So let's keep things in perspective.

This was a particular moment. I understand you were upset. I know that. You know that I -- I know that you did not like what happened. And I appreciate you going to the ombudsperson and let's work through him. Let's make sure that process finishes. I mean, even now we're having different views as to what the ombudsperson is believing. Let's work through that process. But if this is behavior that repeats, I agree with you that we should address our chairman with this intensity, but it's not a behavior that's repeated. It happened once and we understood it, we had different views on what we were doing, and again, on the substance side, let's be clear. This is -- I mean, I remember discussing with David Cake that, you know, maybe 25 would be fine. The reality is, not even two. On average, not even two. Two. And the percentage of the 150 out of 28,000 is negligible. It's almost a rounding error.

So let's keep things in perspective and let's keep focused on the great work we have ahead of us, and if that behavior returns, I hope with the



same passion and intensity you call me on it and you call us all on it, but it -- we're clear. I think you've made it very clear. Your contribution in that regard is well noted and that you've made it clear to us that this is not something we should be even entertaining. Okay?

ROBIN GROSS:

Well, let me just say this really isn't about this specific policy. You know, how many trademarks are being used. That's really not the issue.

The issue is our dedication to the bottom-up process. And the bylaws require the adoption of the policy made at the bottom-up process. And so if you can do it here, you can do it there, you can do it everywhere.

So this is about setting a precedent that will apply always that ICANN has to follow the bylaws bottom-up process.

So I mean, we can't just say, "Well, it's that big of a deal because there's only a few trademarks."

FADI CHEHADE:

I didn't mean to do that. Sorry, Rafik. Just to -- I didn't mean to do that. I was just giving facts on that particular case because we were concerned about it, to give you a sense that substantively this is not an issue.

But on your question of process, I was not belittling that. I'm -- I'm very clear on it. And in fact, your contribution to make me clear on this is noted, is appreciated.

But let's -- let's carry on. We have a lot of work to do.



STEVE CROCKER: Thank you. David's got his hand up.

DAVID CAKE: Yeah. I just wanted to -- I mean, one way to -- perspective on this issue is simply to say we -- this is one where we clearly think the wrong process was followed and we have tried all of ICANN's accountability mechanisms and we have found all of them really quite seriously wanting, and that is base- -- and we are continuing to do so, and that is pretty much the big takeaway to get from this.

FADI CHEHADE: And, Rafik, just a closing comment to David.

You are right, David, and this is why we opened the consultation yesterday at 5:00 p.m. This is the purpose of that consultation. That we must talk about ICANN organizational accountability as a whole.

If the mechanisms that are in place are not -- as you said, they frustrated you. Let's strengthen them. This is -- we need you to be very engaged in that process. Please. But that's -- we opened that process and the Affirmation of Commitments was frankly put on the table as a result of that.

This is the moment we can all do the right things and strengthen these accountability measures for now and the future.

So please get involved in that and please share your frustrations in that process so we can benefit from that.

RAFIK DAMMAK: Okay. Thank you. I guess it's time to close this meeting. Thanks for everybody to attend and it was a lively discussion, I guess, but still there are still open issues that I think we have to follow up after this.

STEVE CROCKER: There's always open issues, right?

RAFIK DAMMAK: They never close.

STEVE CROCKER: Yeah.

Thank you very much. Exactly as expected, a frank and focused and very pointed discussions on a number of topics. Thank you.

[Applause]

[END OF TRANSCRIPTION]

