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SINGAPORE - Joint Meeting of the ICANN Board and the Registrar Stakeholders  
Tuesday, February 10, 2015 – 15:30 to 16:30  
ICANN – Singapore, Singapore

MICHELE NEYLON: Okay. Good afternoon, everybody. This is the meeting between the registrar stakeholder group and the ICANN board. My name is Michele Neylon. I'm chair of the registrar stakeholder group and I'm joined today obviously by the ICANN board but also by several members of the registrar stakeholder group who are spread throughout the room.

Thank you to the board for allowing us to come and see you, as we always do at these meetings, and we've sent you through a list of topics that are of interest to us.

STEVE CROCKER: You're not coming through very well. You've got to eat the microphone.

MICHELE NEYLON: I've got to eat the microphone? Okay. Is that better? Can you hear me better now?

STEVE CROCKER: Yes.

MICHELE NEYLON: Okay. So I'm really having to shove my mouth on top of the microphone.

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*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*

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So there are a number of topics we would like to discuss with you. They're up on the screen now.

And in time-honored tradition, we will not do them in the order that we sent them to you, because that would be far too logical.

So the first one we'd like to talk to you about is community workload, which is going to be teed off by Tom Keller, who is over there, so Tom, over to you.

TOM KELLER:

Thank you, Michele. Tom Keller speaking, for the record.

Yeah, one thing I want to talk about today is about the workload of what we see from the registrar perspective currently.

So I don't really want to be seeing that as a complaint. It's more an observation and I want to talk about what we see and how it affects us.

So currently, what I've found out is that we have 22 active initiatives ongoing which are of registrar concern.

A lot -- of those 22, six are around the topic of WHOIS. And if you go through them, these initiatives, you can see that we do have things like PDPs, we have joint working groups, we have implementation working groups, board expert working groups, cross-community working groups, contractual working groups, budget working groups, projects, pilots, surveys, studies, and a couple more things.

And the funny thing about that is they all have different kind of statuses, they all have different kind of procedures.



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It's, for the most time, very unclear what their goals are and what would be the consequences for the registrars or the contracting parties.

So sometimes it's just advice, so what does advice really mean? We don't know.

Sometimes it's implementation. What exactly is implemented? It might be difficult to figure out from time to time.

What is a PDP? Where does it stop, where does it start?

Is it invoked by the GNSO Council or is it invoked by the board? That was one discussion we just had for half an hour to figure out what the process is there.

So there's a lot of things going on which are very in-transparent, so we as a registrar group have very big issues in terms of participation, just understanding what all these issues are about and where they come from, basically.

Another thing I just want to quickly touch on is if you see that we do have currently the 22 things -- and I'm pretty sure I forgot some of them -- to really work properly on that, I would assume that we would need three persons per topic, which would add up to 66 people to work on that. And plus that, we would need a lot of time to circle that back to the registrar constituency to look into it, to debate it, and come up with something that the representatives can actually represent.

This is not happening today, and it cannot happen.



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So if you have a good look at the numbers how many registrars are represented in Singapore today, it's somewhere around -- depending on how you count -- between 25 and 30.

So what I'm trying to say is you can put more and more work on us, but it will not be done. We will not be able to participate because the workload, as it is, is too high.

So I think what I want to do is I want to ask you, as the ICANN board, ICANN community, to do something which most of the people never want from you, and that is not to do more, but to do less.

We have to do all that stuff but we don't exactly have to do it in parallel, and so that would be my -- my plea, basically, that we kind of think about a new system, how we can structure this work better so that at the end of the day it gets done. Thank you.

MICHELE NEYLON: Thanks, Tom. Now, over to you, Steve.

Sorry. Go ahead, Volker.

VOLKER GREIMANN: Volker Greimann, registrar, GNSO Councillor.

I would not say that all of this is on the board. This is certainly also on the council agenda and responsibility of the councillors to make sure that we know what the capacity of the GNSO is in order to not overload ourselves with topics and tasks, and we've -- I think the GNSO has, in the past, done a suboptimal job of that.



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What we really need on the level of the GNSO, and maybe also the other SOs and ACs, is to analyze what the capacities are that we have available for our tasks, and then maybe also step on the brakes here and there and say, "Look, we do not have any people available at this time. Come back in a year and then we might have people freed up from -- that are currently working on other things so they can devote some time to that."

Because the way I experience it is that unlike other SOs and ACs, as registrars we have a very limited pool available of people that can actually do stuff and be active and are also willing to do that.

We see the same people all over -- every working group over and over again, and that, at a certain point, is not healthy because it leads to burnout. I'm not saying that this is already the case, but it's a different - - it's a definite specter on the horizon.

MICHELE NEYLON:

And I believe James wanted to jump in.

JAMES BLADEL:

Just to add to what Volker was saying, you know, we said this over the weekend when Fadi and executive staff came to speak to us. It's not really a staff problem. So now we're meeting with the board and I can say it's not really a board problem. But it's something you need to be aware of that, you know, the bylaws call the GNSO the managing body for the policy development process and I think I asked a very basic question this weekend, which is: What is the capacity of the GNSO for concurrent PDPs? And I think it's interesting that we don't know. We



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just continue to add new -- new items to the stack, and I'm picturing that at some certain point there is a -- similar to a popular nightclub, there's going to have to be a rope and there's going to be someone saying no one can come in until someone comes out because there simply is just not enough capacity to do that kind of work, and certainly when the volume increases, when the quality -- quantity increases, the quality becomes elastic for the output and I think that's one of our chief concerns.

And, you know, I think that it's time as a community -- and probably, as Volker said, at the GNSO level -- to start in a constructive way, and it is constructive, to say "no" or maybe more appropriately "not now" to some of these new initiatives because there's already too much going on.

MICHELE NEYLON:

Bruce, go ahead.

BRUCE TONKIN:

Yeah. I think I just wanted to reinforce or accept what you're saying there, James, that we need to work across the community on an appropriate prioritization process, and I think you're right. I think if you were to look at a software development team, you'd say, "I've got X number of developers, I can handle five projects this quarter," you have a meeting to decide which of those five projects and you don't add more projects until they're done sort of thing.

We don't kind of apply that process to policy development at all. In fact, we have many processes that kick off more things to do.



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One of the things in the meetings yesterday is we had a session on the reviews from the Affirmation of Commitments and also the organizational reviews in the bylaws, so the review of the GNSO and so on. And there are eight of those coming up in the next 12 months, and if you start multiplying that and say each of those eight will feel the need to come up with 20 recommendations so we'll have 160, you know, recommendations out of that, and then some of those will then require policy development work, so we'll probably end up with 50 things for the policy team to work, and then when you go and ask the GNSO "Can you do 50 of these," they'll say, "No. We're currently struggling to do three," or whatever the number is.

So I think we've just -- as a group, we've really got to start structuring this and work out, exactly as you say, what is our capacity.

Obviously, we can perhaps add capacity from the staff point of view for support, but we're still running up into a capacity for volunteers as well. We don't have enough volunteers to do more work.

MICHELE NEYLON:

Ray, go ahead.

RAY PLZAK:

I just want to twist a little bit what Bruce just said.

You have enough volunteers to do the work. You don't have enough active participants is what you don't have.



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MICHELE NEYLON: Thank you.

STEVE CROCKER: Just to echo and reinforce, we have -- we do planning within the staff with some precision, to make sure work gets done. Perhaps a comparable mechanism of some sort could be used with the volunteers, with the participants, taking into account, of course, that they're not under -- they're not employees and they don't work to exact schedules and so forth. But the numbers are big enough that I would imagine that some rough climbing like that, assisted with some tools, even, would help bring a greater degree of predictability and capacity management.

MICHELE NEYLON: Thanks, Steve.

Michele, for the record.

I mean, just so you are aware, there has been some work going on since the Los Angeles meeting between the, quote-unquote, community leaders and the ICANN senior staff, the global leaders, to look at some of this prioritization and everything else, but just I suppose what we're trying to do is just make you aware of the fact that there is -- there is a bit of a blockage in the system. There's a lot -- there's a helluva lot going on, not as many people as might be -- as we might like to be able to do it all or there's too many things to do at one go.

And moving on to the next topic, unless there's something else on this one. No? Okay. I'll move on to the next topic.

This one is around contract interpretation, so I'll hand this over to Bob.





BOB WIEGAND:

Okay. Thank you, Michele. My name is Bob Wiegand with web.com.

And so the topic of conversation is really about unilateral contract interpretation, and one of the issues that I believe the registry stakeholder group has already brought up to the board on occasion, and our EXCOM did the same to the board recently this week, but the concern that we're having is that ICANN compliance is unilaterally interpreting the registrar accreditation agreement, which is detrimental to the registrars.

And, you know, when you look at, you know, contract law -- and the RAA is governed by U.S. law, but when you look at contract law, where there are areas in the agreement which are not clear and there's not a meeting of the minds, then, you know, no party has interpretation rights, and if there's a disagreement, then the amendment process needs to take hold.

And we have a number of specific examples where this has occurred and we have a letter drafted that we'll be sending to the board so that they can identify and see some specific examples. I'm not going to go into those here.

But what I will say is that in my personal opinion, the unilateral interpretation has created more of an adversarial relationship with compliance, as opposed to a collaborative relationship.

And I say that because as they unilaterally interpret certain provisions, they then espouse that to their compliance team, who then goes to the registrars and says, "Well, this is how you need to interpret the



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agreement," and there's obviously disagreement on a number of areas there.

The other thing that's, I think, causing some problem is that clarifications and best practices documents are being issued by ICANN compliance without consulting the registrar stakeholder group, and so again we have this same issue.

So the compliance team will say that they're interpreting the agreement in a particular manner, we're in disagreement on a number of the provisions, and what they're using, as I like to say, the -- you know, the three-strike rule is becoming kind of a club to, you know, beat the registrars into submission and kind of railroad them into a position that's not in agreement with how we're interpreting the RAA.

So I'm sure a lot of, you know, the board will say, "Okay, well, what are you suggesting? What do you want us to do?"

Well, I think that what we're looking for is we want predictability of the process, we want clarity in the process, and we want to be more collaborative.

You know, we've reached out to Allen Grogan on a number of occasions, talked about some of the issues that we've had, some of the concerns that we've had, and we're just not seeing a meeting of the minds, and we would like to have much more collaborative discussions, try to get clarity around the RAA and a lot of the provisions in the RAA, so that we're completely aligned.

And one other thing I would mention is that I was reading a portion of the transcript from earlier with the IPC was in here, I believe, talking to



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the board, and I think was addressing you, Fadi, that they -- they have concerns about how compliance is interpreting the contracts as well, and I think that -- you know, I -- I respect their opinion. The community has an opinion on the agreement, but, you know, at this point in time the agreement is between ICANN and the registrars and we need to come together, and in those areas where the contract is unclear, we need to come together and work through the issues, and if we can't, then we need to go to a third-party arbitration or some sort of other legal amendment process in order to get these issues resolved.

MICHELE NEYLON: Thanks, Bob. Fadi, you came up and sat beside me so I suspect you might have something to say. No? Okay.

FADI CHEHADE: No.

MICHELE NEYLON: Okay. Sorry.

FADI CHEHADE: Happy to submit to you anytime.

MICHELE NEYLON: Okay. Thank you.

Does anybody else want to weigh in on this topic? Volker.



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VOLKER GREIMANN:

Volker Greimann speaking, for the transcript.

I just would like to add just one point to what Bob has so eloquently stated, which is that as you know, Fadi, and everybody who has been part of the contract negotiation knows, the contract, the RAA as we have it now, was the end result of a very painful -- for both sides -- process and sometimes very hard compromises have been reached and the contract language that we have agreed upon in every single case mostly there's a reason why it's written as it's written and if there's a certain vagueness there, that's intentional. I.e., we were not able to reach an agreement on certain points to the last bit of detail, so we agreed in principle and left a certain vagueness there.

Now compliance is starting to fill those vagueness -- those points of vagueness in with their own interpretation and that's not in the spirit of what we agreed on and that's problematic.

FADI CHEHADE:

Okay. Your chair is asking me to answer, or at least be proactive.

And thank you, Bob, for, in fact, very clearly putting your finger on the issue we're discussing internally right now.

There is no question we want to get past this as fast as possible, so that you know what you need to do to run your business.

So there is a -- there are two points of view on how to interpret some things in the contract. I have asked Allen Grogan to finalize this and get on with it, because you all need to know where you stand.



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I think -- I think this will happen very quickly, and we -- if there is then disagreement, like you said, we need to find some other way to -- to address it. But my guess is that Allen took a little bit of time to listen to both interpretations of the same, you know, vague or -- as you called it, or some ambiguity in that clause, and I think he's coming -- he's reached out to get some counsel also on that.

Allen is very deliberate, very careful, and I think before he moves forward, he will reach out to all of you, discuss this, and I'll make sure there is as much open understanding and collaboration on where he is with this, and quickly, so that we can move to a predictable 2013 RAA as soon as possible. So you have my commitment on that.

BOB WIEGAND: Fadi, I appreciate that. And when you say "finalize," what does that mean to you? When you say "Allen will finalize," what does that mean?

FADI CHEHADE: Well, there are a couple of areas that I think you know we are -- he's trying to interpret in the contract, and by "finalize" I mean get to some finality on the interpretation so we can move forward and have some predictability on how this will run.

BOB WIEGAND: Right. And I think that's our point is that we would like him to come together with us --



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FADI CHEHADE:                    Yeah.

BOB WIEGAND:                    -- in the spirit of collaboration --

FADI CHEHADE:                    That's what I meant --

BOB WIEGAND:                    -- to --

FADI CHEHADE:                    -- he will come to you.

BOB WIEGAND:                    -- to collectively --

FADI CHEHADE:                    I see.

BOB WIEGAND:                    -- come up with that interpretation.

FADI CHEHADE:                    I see.

BOB WIEGAND:                    Our concern is that they're unilaterally interpreting --



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FADI CHEHADE: No, no.

BOB WIEGAND: -- the agreement --

FADI CHEHADE: No, no.

BOB WIEGAND: -- which is --

Well, that's what's happening now, and as I said, we're going to send you a letter with some specific examples.

FADI CHEHADE: Good.

BOB WIEGAND: But where the agreement says "reasonable," we have our definition of "reasonable," they have their definition of "reasonable" --

FADI CHEHADE: Yeah.

BOB WIEGAND: -- and what's happening is that the compliance department, after they've come up with their definition, is forcing that down onto the



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registrars and they're using the three-strikes-and-you're-out rule to push registrars into a position that is not in the spirit or in compliance with the --

FADI CHEHADE: Okay.

BOB WIEGAND: -- registrar accreditation agreement.

The larger registrars are more prone to push back and say, "Hey, we're not going to do it that way because we're not legally required to do it that way. We don't agree with what you're saying or how you're interpreting it." And a lot of the smaller registrars that I talk to are frustrated because they say, "We're just scared. We're scared of compliance and so we just do what they tell us to do."

And that goes back to my point about how I think it's become kind of become this adversarial relationship as opposed to a collaborative relationship. And I'd like to see that change and I think a lot of the registrars in the room would like to see that change as well.

FADI CHEHADE: Okay. Fair enough, fair enough. I've known Allen for 20 years. I've never heard anyone call him adversarial. He is actually one of the most collaborative lawyers I've ever met.

So if it's coming through this way, I'm hearing you and I appreciate your frustration.





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Here's what I'm going to propose. I will reach out to Allen -- if he's not in the room, I'll find him -- and figure out a way for us to engage with you while we're here, since we're all here, to understand better the interpretations and the frustrations you have, and resolve this before we leave, if -- I hope before we leave Singapore. If not, I'd like some progress on it here. So I will reach out to him.

BOB WIEGAND:

And I appreciate that.

And in Allen's defense, the issue may be the fact that he has a large compliance department and you have individual personnel down at the ground level, at the front lines, pushing, you know, certain interpretations out to the registrars, and maybe Allen isn't aware of some of that -- how that's --

FADI CHEHADE:

That I can assure you is not happening. We have a highly tuned machine there. So I would not assume that people are just on their own, let's say, initiative doing things. If you sense that or feel that in a specific case, frankly write me directly because that shouldn't be happening.

My sense is what we need to do is get to the top of the department, understand how this decision or these decisions have been made, and do it collaboratively understanding that they have a job to do. And we want to give you a predictable environment and in good faith.



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So I will arrange for this before I leave. And if I can, I will be there myself. If not, I will make sure Allen is there. And I want to report back that I can report back to you all through your chair on how things are going.

BOB WIEGAND: Thank you.

MICHELE NEYLON: Rob and then Bruce.

ROBERT HALL: Thank you, Fadi. I want to follow up on this and what you just said. When we negotiated this contract, I sat across the table from you. And I remember very clearly the discussions of we had all the experience of -- this is what we are worried about the past. This is what your compliance department has done in the past. You very clearly said, I'm new here but I assure you, I won't let that happen.

And we are here today to say it is happening. And so I do think you do need to be at that meeting and you do need to be involved certainly in understanding this. Because we are at the frustration level of bringing it to the board and to you because it's not happening.

And we've got third parties out there writing handbooks on how to trick compliance into lodging a complaint against us in their view as opposed to what the contract actually says. And that's a problem for us because there's now blogs being written and articles being written on, hey, if you send this wording to compliance, they will go lock the registrar.



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And your compliance team does a very diligent job of following up on cases. But they're running a playbook that says, Well, you have to take reasonable steps to investigate and that includes these ten things. And if you miss one, we are not closing the case, even though the other nine is maybe all that's needed because there is no definition of what that is. And there is purposely no definition of what that is because every case is different.

And so we meet with Allen once. He asked for information. We gave him a lot of cases and a lot of examples of this. That was back in the fall.

The executive of the registries -- or, sorry, the registrars met with him again a few weeks ago. We got the same, "Oh, we need more information." We are like, "We already supplied it and you are still whacking us in the compliance department." So my registrars have gotten very good at these are the ten things. I'll just say yes and we will do those and nothing else. That's not what you want from us. You want us actively investigating into this clause. You want us participating with a compliance department that understands us as opposed to just checking the boxes.

So I would encourage you to attend that meeting and set it up because I don't want to be back here at the next meeting saying, we're still having issues.

In the past, what ICANN has done is issue interpretation documents. And what we found out with the first meeting with Allen was they were working on one and about to issue it. And that's why we pushed back and said, What are you talking about? You are going to go out to our



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whole community without our input and issue how ICANN's reading this document? Then we have a fight on our hands, and we don't want to fight.

So this is us saying we would really like not to fight. Please help us not fight. But it is going to take some high-level discussions about where we're going to land on this because it's over the line right now.

MICHELE NEYLON:

Bruce.

BRUCE TONKIN:

I just wanted to sort of add when you add new contractual language into a contract that has new requirements on registrars, registrars then start to develop best practices amongst -- particularly the larger ones because they are generally dealing with quite a bit of scale. So they are not just dealing with one complaint a year. They are dealing with one complaint a day. So I think you would find the big registrar staff building up processes.

And then to the extent we can then work with the ICANN staff on that and say, Look, this is how we have sort of operationalized that requirement that's in the contract.

We also heard today from the particularly intellectual property constituency in an earlier meeting, they've got a particular interpretations of exactly the same language.

So I think almost the starting point is each group to write down what their current interpretation is.

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So I think as Bob was saying, as a registrar constituency, the registrar constituencies can say, Look, based on our current best practices having now been operating this for a year, this is the kind of stuff we do. And the staff might say, Well, these are the kinds of things we though you might be doing. And maybe intellectual property says, You didn't take someone's thumbprint. That's what we thought that meant.

So I think if we can at least get the interpretations. And then what the registrars and, I think, the registries are saying, then once you have got those on the table, then you need a process to go through those. And then jointly, the contracted parties in ICANN can say, yeah, we jointly agree this is the standard practice.

The other thing you'll see -- and I see this with new registries and new registrars -- is that ones that are brand-new, they have only started as a registry. They are in a very different space. They might ask the staff, I don't understand this. You just write something. And as long as we follow it, we know we are complying. That's great.

Whereas, a registry or registrar that's been doing very similar things for 10 or 20 years has actually got a huge bunch of processes that have been refined and now work. And then if the staff said, Well, actually that's not the way we wrote it up, those guys are like, What do you mean? We have been doing this for 20 years. I think we know what we are doing. You have got all those different combinations.

FADI CHEHADE:

Thank you, Bruce.



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I will just close by saying, look, compliance is here to make sure those who behave badly are dealt with. But when I hear from registrars like yourselves that I know are serving the market with great care, I get worried.

So I think we need to have a sit-down. We do not need you to be so alarmed. Quite the opposite. We want to give you the environment where we are understanding each other. So I'll pay attention to this. I already sent notes, and we'll move on it. If I could ask you to be flexible, I'll communicate through Michele to get together in the next 48 hours.

MICHELE NEYLON:

Thank you. Thank you, Fadi. That's very, very helpful. And I look forward to getting emails from you or your staff. Thanks.

We've got a couple more topics we want to have a quick look at it.

The third one on our list is WHOIS-related initiatives. Who did we say was going to tee up? James.

JAMES BLADEL:

That was me. I drew the short straw on that one. So one of my jokes -- I don't know if you guys heard my joke. I use it a lot, is that you can always spot the newcomers to ICANN because they have a great idea on how they are going to fix WHOIS. Not to tease the newcomers a little too much, but -- yeah.

[ Laughter ]



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We know. Yeah, it's to tease the newcomers a little bit. But I think the point is that WHOIS is one of those topics that is a lightning rod for controversy. It's deceptively simple on the surface. And the more you start peeling back layers, the more you realize it is not as simple as it looks.

This ties back to the first topic about workload and community overload. We have, as Thomas enumerated, several issues and PDPs and cross-community working groups and other efforts underway. A big chunk of those relate to WHOIS. And in some cases, they're working in harmony with each other perhaps, I assume. I don't know if that's been checked. In some cases, they may actually be working against each other or in incompatible manners.

I think this is concerning for us as the folks who deliver WHOIS and make those services available and operate those systems. It is obviously concerning to other areas of the community. We heard the GAC raise this issue in Los Angeles, that they'd like a clearer picture, an overarching picture of everything that's going on to WHOIS.

And not just looking back at how we got here and what's on our plate now, but let's look forward a little bit at what's coming down the pipeline. Hopefully some of you had a chance to take a look at the EWG roadmap that's coming. And while we can talk about -- I know some on the board are working with some on the GNSO, myself included, to help drive that effort.

The roadmap for that just procedurally, setting aside the material and the substance, just procedurally, that roadmap is going to be possibly one of the more daunting undertakings that this community has ever



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undertaken, maybe something sort of new gTLDs and the IANA transition but it is going to be a close third on that list. Let's keep that in mind while we are also, as I think also was mentioned earlier, coming up against one of these commitments in the AoC for a periodic review of the WHOIS systems, which is kind of like -- you know, I was joking over the weekend that I made a wrong turn in my career at some point because I used to have a love for astronomy. And you would point very powerful telescopes at objects in space, and you would see where they used to be. And I'm afraid that's what the WHOIS review team would be. It would be measuring where WHOIS used to be because we have so many efforts underway and then, of course, we have this complete next-generation replacement under development or at least the concept for one.

So I want to make the board aware -- and I think some of you are very aware through -- your communities and through this cross-board/GNSO working group that WHOIS in particular is kind of the stuck gear in this machine.

We need to find ways either to work through it, unstick it, or work around it or find ways to move through it. I'm particularly -- well, I'll hold off there. I have more to say about the EWG maybe over drinks. Thanks.

MICHELE NEYLON:

Thanks, James. Somebody else want to weigh in on WHOIS? No? Okay.

I see Allen has joined us.





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ALLEN GROGAN: I heard lots of complimentary things being said about compliance, and so I decided --

MICHELE NEYLON: We wanted to celebrate you. Unfortunately, you weren't in the room so I decided to admonish you instead.

[ Laughter ]

ALLEN GROGAN: I see. I'm kind of walking into this cold, but let me tell you what I have been telling other people at this meeting, the registries and a couple of the other constituent groups.

There are kind of two facets to my current role. So one facet of that role is the contractual compliance part of it, which is in some ways the easier of the two to define. Basically we've got contracts with contracted parties at the registries and registrars, and we need to interpret and enforce those contracts.

There's a lot of disagreement within the community about appropriate interpretation of those contracts, particularly some of the sensitive provisions. And some members of the community take one extreme view of how those provisions should be interpreted and other members of the community take another view.

With the contracted parties, as some of you know, I have reached out and encouraged you to engage in a dialogue with us kind of identify where you think there are disconnects between the way that we



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interpret some of those provisions and you do and let's sit down and talk about them.

I think I've actually -- I or compliance have reached out and asked for people to kind of come up with a list and then let's have a meeting and sit down and talk about it.

At this meeting, it became apparent in discussions with some of the contracted parties that one of the reasons that hasn't been forthcoming is because of sensitivities about disclosing compliance matters to competitors, or the details of those.

So what I encourage people to do -- and I encourage you to do -- is if there are specific examples of provisions that you think we're misinterpreting or you disagree with our interpretation, contact us, give us some examples that are concrete enough that we can address them. Let us turn that into an anonymized kind of case study so we remove any identifying information and then let's schedule a meeting and talk about it. Talk about your interpretation, talk about our interpretation, and try to figure out who's right.

And I think we do owe it to not only the contracted parties but to the community to more clearly state how we interpret and how we intend to enforce some of those contract provisions.

I will tell you there are people who are not parties to that contract who are part of this community who would also like to be part of that dialogue. What I've told them is, you know, these are really contracts between us and the contracted parties. We have a 2013 RAA that was - that's really between us and the registrars. There's a long history of



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negotiations, mostly predates me, but with back-and-forths on drafts and meetings to negotiate. And I think there is a history there that the people who weren't party to those negotiations were not part of, and I don't think they stand in quite the same position that the contracted parties do.

But I've told them, I'm willing to listen to their position, too, because some of them are interested in how we intend to interpret and enforce the contracts.

So I'd like to have that dialogue with the contracted parties and the other people in the community in the coming weeks and see if we can put something out in terms of clear public statement on some of the more controversial provisions of the agreement as to how we intend to interpret and enforce those provisions.

I can't tell you we're going to do that for every provision in the contract because we would end up writing an encyclopedia about the contract. But I think most of the focus is on a handful of provisions, and I think we can get there.

On the consumer safeguard side, that's a little harder to define and a little less clear. But let me tell you what I'm thinking about and what I have in mind there.

There are clearly areas that are not within the four corners of the contract where ICANN cannot look to the contract, say that a registrar or a registry is in breach of the contract. Therefore, we can take an enforcement action. Therefore, we can require you to do X, Y, or Z or pursue a remedy but that are still issues of concern to the community as



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a whole, intractable problems that a lot of people have been trying to solve without a lot of success. And I don't think that ICANN can say, Go away. It's not our problem and leave it at that.

I think we need to try to figure out ways that we can engage with other people in the community and try to solve those problems. And those are not problems that we're going to solve by saying it is a breach of the contract for you to do X, Y, Z. But I think we can establish a dialogue with the contracted parties, with law enforcement, with regulatory agencies, with civil society, with civil libertarians, with all of the diverse interests and talk about how can we solve some of these difficult problems. What role can ICANN play? What role can other people play when we get a complaint from a party and it's not a matter that we can enforce through the contract? To whom should we refer that party? And what role can we play in trying to solve that problem? And what role can other people play?

And I want to also take some steps in the coming weeks to set up a forum, for lack of a better word, to try to encourage that kind of communication and dialogue and see if we can tackle some of these -- some of these difficult issues. We may not be able to solve them at ICANN, but I think we can play a role in helping to solve them. So that's the message I've been trying to consistently convey to everybody here. So I wanted to come in and say that to you.

FADI CHEHADE:

Allen, thank you for coming. I think that I have committed us when you were not in the room that we will meet with the registrars while we're



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here in a calm setting with hopefully a lot of whiskey or something else, and we will talk about their concerns.

And I want to hear them with you and just make sure that we are in sync just in an effort to make sure that we understand each other and they feel comfortable that we are fully engaged and understand their position. So we'll do that. We'll schedule some time.

MICHELE NEYLON:

So as an Irishman, I'm very interested in any meeting that involves whiskey. Thank you. Thank you. That's now in the record, you know that.

[ Laughter ]

We hopefully can move forward with this and move towards having good, positive relations and maybe it will make everybody happy.

And the last topic that we wanted -- Sorry, yes, go ahead.

ROB HALL:

Just quickly, Allen, thank you for that. And I look forward to this meeting.

I'm worried we're still using terms like "ICANN is going to put out an interpretation document."

And I think that's something that gets our back up right away. I would much rather say, The registrars and ICANN have agreed on a document that goes out defining what both of our interpretation is of it.



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If we can't agree, then we may need to do something else. But I think the last thing you want us doing is us putting out our interpretation document. We would rather work towards one that informs the community of this is how we both think the contract reads and should be interpreted. I think that's what we should be working towards.

When we hear ICANN saying they are going to put out a document, we start talking about should we put out a document, and then what? Then we end up with a fight. I am really hopeful we can come to some middle ground in this meeting.

(multiple speakers).

ALLEN GROGAN:

Let's discuss that further. I did not intend to suggest that we are going to unilaterally put a document. That's the reason I want to have this dialogue.

At the end of the day, it may be that we don't agree. And it may be we have one interpretation and you have another. If that's the case, there are other mechanisms in the contract to resolve those. I'd rather not go down that path. I would rather have a discussion and see if we can reach some common ground on how to interpret some of these things.

And when it comes to enforcement matters, I've also said, look, there are -- a lot of the people in the room who have dealt with compliance for a while know that when we reach out to you with a first notice or a second notice, if you need additional time to -- you know, for whatever reason to respond, we're pretty flexible as long as you're collaborating and cooperating.



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And that's true. As far as I'm concerned, if you want to reach out to me and say, you know, I think your interpretation of this contract is wrong, I want to have a discussion of that. I want to bring our legal team in or I want to have our business team talk to you before this escalates to a second notice or a third notice or a breach notice. I'm open to doing that. I don't want that to extend out for six months or a year, but I'm open to taking the time to have a dialogue and see if we can reach an accommodation.

BOB WIEGAND:

Michele, this is Bob. I appreciate that, Allen, because we've had where we had several instances where we have said in our responses that we would like to have a conference call with ICANN. Please do not escalate this further. And it's gone from first to second to third. And that's where I was saying to Fadi, it feels adversarial. It is not working for us. And we'll have our conversation.

But I just want you to know that I'm thankful you're here and you have said that, and I think we can work through it collaboratively. But I just think you need to know that there is a history in compliance where it's been a challenge and it feels like we are getting railroaded into a direction that we shouldn't be railroaded into. Thank you.

MICHELE NEYLON:

Okay, thanks, gentlemen. Don't worry, we'll get to have a little chat with compliance after this interaction with the Board. So I'm sure Maguy and her team are looking forward to that.



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The last topic I want to touch on very briefly is one that has come up in other arenas at this meeting -- I'm sure people will raise it again throughout this week -- is one on universal acceptance. And I think I'm calling on James again for this one, aren't I?

JAMES BLADEL: Uh, sure. Can't remember who was volun-told to take this one.

MICHELE NEYLON: Or was it Volker?

UNKNOWN SPEAKER: (off microphone.)

MICHELE NEYLON: Was it me?

JAMES BLADEL: Yeah, it was you. I can see when you look at me and you think, you know, mirror.

MICHELE NEYLON: Maybe I don't need the whiskey. No, I think -- sorry, you're correct, I had actually put myself down on this and I managed to pass it off onto one of you.

I mean, I suppose the thing is this, we realize it's a very, very important issue. It's one that's important to us, but also we're very conscious that



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it's very easy to raise the topic of universal acceptance within the environment here at ICANN and we can all bring people together, sit around and discuss and agree it's important. But we're not really the people who need to be doing that raising awareness. And maybe the thing is to look at which venues are the correct places to do that. I mean, should ICANN be doing outreach to, you know, web developers, app developers, all that, and, you know, can we help you with this? And if so, using what avenues? I mean, who should we be talking to on your side and, you know, if there's opportunities for us there to collaborate with you, we'd love to do so. Cyrus, go ahead.

CYRUS NAMAZI:

Thank you very much. Cyrus Namazi with ICANN staff. Yes. So about -- actually this is very timely because about four weeks ago or so we assembled a group of community volunteers in Washington, DC to have this very discussion. We've had here and there efforts focusing on addressing the issue of universal acceptance but, you know, my feeling was, and I think that of the community, that the needle is just not moving fast enough on this.

So a large group of volunteers actually showed up in short notice in our Washington, DC office and the result of which was three subcommittees were formed to address the various facets of, you know, how we can actually in an organized fashion move this process forward.

Universal acceptance is a very complex issue that extends far beyond the reach of our community. It really touches on a global basis on many, many, many systems. The resolution of it is fairly complex. It's



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time-consuming. It's going to be a multi-year effort on the part of all of us.

Yesterday we actually held an open session to essentially share with the community this draft of the blueprint that we have put together. The level of energy, enthusiasm, and volunteerism -- if that's a word -- has been absolutely great, actually. Shortly you will actually receive a letter from the interim steering committee of this working group, it's actually the steering group, yes. We don't want to call it a working group, which will essentially announce the formation of a group, this group, and ask for volunteers to come in. We at ICANN actually have hired someone who will be dedicated in supporting this initiative, Don Hollander. I don't know if he's here or not. He just started working on this. (saying name) actually put a proposal together to take to our Board to get dedicated serious funding for this effort. But keep in mind, this is an effort that requires all of us to participate. It is not something just for ICANN. ICANN's role is going to be that of a coordinator, convener, educator, and we're totally prepared to do that. I'm so happy that you bring this up because I want everybody to hear this. This effort needs all of us to volunteer and put our effort and energy into it to really get it -- you know, the message out there. I'm going to ask Fadi and Steve Crocker even to start incorporating this message into their speeches when they talk to governments and then other places so that the awareness goes up that this issue needs to be addressed. Thank you.

MICHELE NEYLON:

Thank you. That's very helpful. Does anybody else have anything to add? Yeah, James.



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JAMES BLADEL: Thanks, Cyrus. And I just became aware of that meeting and the letter and the steering group. It's all those efforts, it's great. I'm glad to hear that ICANN is going to support the community on this. I think, you know, at some point we're going to have to have a discussion about -- about money. You know, because I think that can help move the needle a little bit faster than it's going currently, and I think that that's certainly a well-intentioned use of some of the proceeds for this program is to help build awareness, build acceptance, and I think that that's -- that's a conversation that we look forward to.

FADI CHEHADE: Spot on, and this is the budget season. Just to say that we can no longer simply say it's somebody else's issue at ICANN. So we are engaged. We are going to continue to be engaged. How -- how much will we invest in this and grow this program, I'll look for Cyrus to lead us on that. But we are in a -- in a posture now that says, we have a problem and we cannot just say it will get solved on its own. We are taking an advocacy initiative. It's called the Universal Acceptance Steering Group that was formed, and I will start through my own also engagements as well as our team's pushing this after we get some direction from that steering group. But we're on it. More than we were before.

MICHELE NEYLON: Steve.



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STEVE CROCKER: Thank you. So me too. But with -- with a bit of detail. It will be helpful - - and I expect that this is the natural thing that will come out -- to have some specifics as to what issues are, who has to take what action, what the metrics are about how far we are proceeding and so forth. I expect all of this will be very natural and so forth. So speaking for myself, I'd be happy to speak to it. And with those kinds of details, it will be possible to speak in a substantive way that as opposed to just a vague generality and to put emphasis where that emphasis is needed.

MICHELE NEYLON: Thanks, Steve. Mike Silber.

MIKE SILBER: At the moment the issue of universal acceptance ended up in the Board risk company and has remained on our work plan because it didn't have a home elsewhere. So depending on how the steering group proceeds, we may handle or it may stay with us. But you're welcome to raise the issue with us if you feel that it's not moving quickly enough.

And while I've got the microphone, I also just wanted to thank this community for their very useful engagement with law enforcement yesterday. It was a very positive session, and I think it was Volker who said that I would be pleased that we weren't going to have the same to and fro on law enforcement statistics during this session. I'm kind of missing it.



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MICHELE NEYLON:

We can compensate. It's not a problem, Mike. If you want us, we can do that. No, just suppose we should have touched on it because it is pertinent to previous conversations we've had with the Board. Yesterday we had -- had a meeting between most of the registrars I think who are in this room, various law enforcement agencies, and Mike Silber was also there. We did obviously discuss some of the pain points that many of the registrars are feeling in relation to the 2013 RAA. Not all of the engagement was 100% positive, but we did kind of manage to move things forward and hopefully we will have continued engagement with them at future ICANN meetings or possibly outside that. So it wasn't -- it wasn't entirely positive, wasn't entirely negative. There was a bit of dialogue, which was kind of -- which was quite helpful. I think we're -- I think we're wrapping. Okay. If anybody has -- anybody have anything else for us? If not, I'll hand this back over to Steve. Oh Volker, sorry. Go ahead, Volker.

VOLKER GREIMANN:

Yes, just a brief comment. One of the underlying topics maybe that runs through everything that we've discussed today is communication, lack thereof or lack of understanding, talking past each other. Today we also had an unpleasant discussion with the GDD where basically we were of the same opinion but had differences on details. Had we maybe both sides aired them in a different way, all that could have been avoided. So I think communication is key to understanding each other. That's the key of the -- that's the question of contract interpretation, were we to talk to each other where we have differences instead of antagonizing each other this could have been avoided.



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Universal acceptance is a different form of communication. It's communication with the outside world but it's still communication. Community workload has to be communicated within the community where the limits are, and the same goes to WHOIS-related initiatives where we have to communicate with each other and see how we can go about it.

Another topic that we need to discuss at the meeting of the GNSO with the Board is the perceived distance between the Board and the community. That also is a communication issue. So by solving the internal communication issues that we have within ICANN, we will be probably solving a lot of the problems that have different faces but have the same underlying basic problem.

MICHELE NEYLON:

Thanks, Volker. I mean, just as a comment on the communication issue, just personally I think it was great to see a Board member such as George attending an event like NamesCon in Vegas earlier this year and encouraging, seeing Board members going to different types of industry events and talking to -- to people there. It's helpful. The more the communication raises is always going to be positive. And thank you all for your time, and we look forward to seeing you again in the future. Thank you.

STEVE CROCKER:

Thank you.

[ Applause ]

**[END OF TRANSCRIPTION]**

