

Transcription ICANN Toronto Meeting
Commercial Stakeholder Group (CSG) Meeting
Tuesday 16 October 2012 at 9:45 local time

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(Tony): If I could ask you to take your seats and we have a limited amount of time during this meeting. What we have to do is prepare the CSG input before we meet with the Board. So we have 45 minutes to cover three topics.

We have remote participation as well for this session. What I would ask is that when people want to speak you introduce yourself to start with, please.

So there are three things on the agenda for us to discuss before we meet with the Board and those things are the protection at the second level, the impacts of gTLDs from the structure of ICANN and the WHOIS review team recommendation.

We did have some discussion earlier in the CSG session earlier in the week and some substantial discussion around protection of the second level. What came out of that discussion is what we're going to present here. And there is a list of issues that is going to be presented now, jointly agreed by the (BC) and the IPC.

What I want to do to start with is just show those on the screen and ask if there are any comments before we actually move on to the next item. So this

is the joint statement from the (BC) and the IPC and after that we'll move down to the ISP position which is similar but not so detailed.

So could I ask at this stage, is there any comment on this list of issues. (Steve), do you wish to add something to this?

Steven Metalitz: Just to say that I think I'm the one that's supposed to kick this issue off in the meeting with the Board and I think I'll just say the need for this has arisen because - I'm not sure I used this metaphor before but you know, this old saying is, "No battle plan, no matter how well worked out ever survives first contact with the enemy."

We now know more about than we did about actual applications and how many there were and how concentrated they were in a relatively small number of applicants and we know other characteristics of this. And therefore, in light of that, our groups, I think all three of our groups agree that the existing rights protection mechanisms are not sufficient to avoid or to ameliorate the huge cost that will be imposed upon those outside of the ICANN contracted parties and the new gTLD, the applicants, as the new gTLDs roll out.

So we've come up with this minimum list. Some of them are specific. Some of them are more general because they need more discussion but all of these I think represent what we feel are the minimum that's required to - that is the (BC) and IPC feel is the minimum required to help reduce those extra modalities to an acceptable level.

So that's kind of how I plan to kick it off. Obviously the - I'm sure the (BC) will chime in and of course we will need to also talk about how the ISPs present this. Thank you.

(Tony): Okay. Thanks (Steve). Kristina.

Kristina Rosette: Kristina Rosette for the recording. Could I actually maybe suggest that, (Steve), if you wouldn't mind just reading them aloud for those who might not be sitting close enough to see them and to the extent that it's not available to the remote dial-in?

(Tony): Good proposal. (Steve)?

Steven Metalitz: I'm happy to, and thank you. So I think there are eight in total. The first is to extend the sunrise launch period from 30 to 60 days with a standardized process. I'll just comment -- this is one obviously that could very easily be done since sunrise is already there.

Second, extend the trademark clearinghouse and claims notices for an indefinite period, ensure the process is easy to use, secure and stable.

Third, complete the URSs as a lost-cost alternative and improve its usefulness. If necessary ICANN could underwrite the costs or some of the costs for an initial period.

This I think is an example of one where we don't have a lot of detail. We do have some specific suggestions here but the main point is to make sure the URS happens and that it is as robust as possible.

Fourth, implement a mechanism for trademark owners to prevent second level registration of their marks. Meaning exact matches plus character streams previously determined to have been abusively registered or used across all registries on payment of a reasonable fee with appropriate safeguards for registrants with a legitimate right or interest.

This fourth one was the topic of a lot of conversation amongst the constituencies and it has some - it is at a high level of generality but we think it's essential.

Fifth, validate contact information for registrants in (unintelligible). Six, all registrars - they crawled up a little bit there - all registrars active in the new gTLD registrations must adhere to amended RAA for all gTLD registrations that they sponsor.

Seventh, enforce compliance of all registry commitments for standard applications. In other words, what the applicants say in their application should be embodied in their contractual obligations to ICANN.

Eight, expand the trademark claim service to cover at least strains found to have been abusively - previously found to have been abusively registered or used.

(Tony): Thanks, (Steve).

Man: Thanks, (Tony). Just a clarification on seven, (Steve). You said it was enforced of all registry commitments for standard applications but it's not just commitments made in the application.

Seven is intended to cover commitments that an applicant makes when they're confronting say a GAC early warning or they're having a response to a questions for clarification or they're negotiating with a government to remove an early warning or forego a veto.

Those commitments might be made in a bilateral fashion with a given government but our point is that any commitments they make ought to make their way into the contract so that ICANN can enforce it.

(Tony): Okay, thanks. I think there was...

Steven Metalitz: Yes, I think my description of it was a little more limited than that so I agree, that's what it says.

(Tony): Was there any other comments on it? Yes, Claudio.

Claudio Di Gangi: Thanks, (Tony). On number eight.

(Tony): Can you announce yourself?

Claudio Di Gangi: Oh, I'm sorry. Claudio Di Gangi. I'm with the IPC. I just wanted to clarify on eight we have that "or used" in brackets and I think one of the other ones you used is not in brackets. So just to keep it consistent maybe we want to remove the bracket on number eight.

Marilyn Cade: Claudio, I'm sorry, you're going to have to repeat what you said. But then into the microphone. When you turn your head we can't...

Claudio Di Gangi: Oh sure. The recommendation number eight has the term "or used" in brackets. My suggestion is to remove the brackets.

Marilyn Cade: It's Marilyn Cade. I understand the point because in geopolitical speak the brackets are not necessarily applied. So I think that's an excellent point.

Claudio Di Gangi: Okay, thanks.

Ellen Shankman: Ellen Shankman from the IPC. I appreciate that this needs to be kicked off to the Board and we as a group has decided that getting out of the weeds and going to the higher level of explaining what the (unintelligible) reached are is very important.

(Steve) I think it's also important in how it gets framed to the Board as well. When I hear the introduction that now that we recognize the enemy and we need (data) and we need to protect ourselves more, we certainly all feel that way and I think that's an accurate way of how we feel.

What I think however, is lost a little bit in the messaging and where I think we have failed in our messaging is to convey how broadly this is needed and how broadly this is wanted and how much we all believe that this goes to the element of trust and stability of security in the internet.

I think it's important to send the Board a message not that we are an embattled (unintelligible) few that are trying to hold onto our piece of the turf against whatever else is moving forward, rather that we all are trying to work in the public interest however that gets defined.

And we believe that (unintelligible) just to be the trust and security of using all this correctly and that all these rights and protection mechanisms that we're doing is because of the abuse that's happening until now and we don't want that to spread forward. So I think it's important for us to condition ourselves as a majority and desires a man that the Board should actually recognize, not a minority foothold that we're trying to hold onto.

(Tony): Thanks, Ellen and just to remind everyone a remark I made at the start of this session we've only got 45 minutes and we've three things to get through so if you can just keep your comments brief, Marilyn.

Marilyn Cade: Marilyn Cade. Ellen, thank you for that. In the business constituency we have been asking members to come up with the one and two minute sound bytes that explain the risk and harm to their customers, their clients or their users when names are misused or abused.

So that because there is a security and stability issue related to this issue but there's also a harm to users. And one of the things I think we haven't done a good enough job on is educating the Board that we are using trademark protection to protect users, not just to protect corporate identity and that corporate identity theft.

Ellen Shankman: Absolutely. I think where we have not positioned ourselves well enough is that we're the good guys here. And I think that that has to go into the messaging to the Board.

(Tony): Okay, thank you. What I'd like to do now is to move down the screen to the part that displays the clients (unintelligible) constituency on this and for this. I'd also like to thank Steve DeIBianco and Kristina Rosette with their help in actually drafting this statement.

So there are three bullet points here. The ISP constituency endorses the intent and the critical importance of preventing fraudulent registrations and reducing costs of defensive measures.

The second agrees that the right protection mechanisms currently in the guidebook are insufficient to meet these goals and I think that statement is absolutely crucial.

And the third one, wishes to remain neutral on the specific rights protection mechanisms necessary to achieve those goals. Some of the discussions we had earlier were explained in the earlier meeting and I think some of the points that have come up here have also helped endorse for us that position that at the current time this is as far as the ISPs would want to go.

So we're fully behind the need for something to act without any doubt whatsoever. And that's the strong point that we really want to make, the details of which we have a fairly neutral position on at this point in time.

So I'd like to think we can (unintelligible) where we are on this in terms of facing the Board and move on to the next item unless anybody has any other issues.

Marilyn Cade: Sorry (Tony), just one, it's Marilyn. So this is where we're going to be with the Board in the sense that we're presenting it. I've asked (Glenn) to give us paper copies that can be given to the Board and (Chris) has those.

In presenting it can I ask how we're going to take questions because the Board will have questions.

(Tony): I think the questions with the Board, unless they're specific about the last part of this statement which I am (unintelligible) anticipating most of the questions would be on the level of detail. And I am assuming that (Steve) was leading on this - he would initially handle that. Is that correct?

Steven Metalitz: That's correct but I would welcome having a small contrary of volunteers from the two consistencies to who I could refer some of these questions. I have some people in mind. I think you know who you are.

(Tony): So I think we have that under control and I certainly fully understand and appreciate that position (Steve).

So let's move onto the next item. The one I think we should concentrate on now is the WHOIS issue because this is the issue that we never actually got to in the earlier CSG session.

And the focus of this is to raise the issue with the Board in terms of not delaying things anymore as far as we can. What's being displayed on the screen is the matrix that shows the different inputs that have come in answer to what should be required to have a PDP.

And there are a number of issues here that we can look through. I doubt whether we have the time to go in detail. What I'd like to is put each of these issues on the screen and I ask you to look at them.

You'll see as we work through that there are some slightly different situations with our constituencies but there is a strong focus on a number of recommendations where the only party that should go down the PDP route is from the non-commercial stake holder group.

I think one of the key messages we should give the Board is, whatever happens whether it's a strong consensus and I would argue that there is a strong consensus where that's the situation they should immediately be looking to implement those recommendations without the PDP process.

All the others we can maybe talk about a little more but the key message to get out of that is a message that was underpinned by (Farley) during the opening ceremony that delay on this is just unacceptable to any degree.

So what I'd ask (Mike) is if we could quickly go down the recommendations. The first one is that fell into that category where quite clearly there's a strong consensus that it doesn't require a PDP.

If we go down to the second one I don't particularly unless I have to want to get into read these out because I think that's going to be a time-consuming statement.

Steven Metalitz: (Tony) if I could just suggest. I think there are two, only two where the ISP position and the IPC position may disagree. This is Steven Metalitz for the transcript. And maybe we should focus on those and we don't have a (BC) position on any of these so maybe we should...

Woman: Actually we do.

Steven Metalitz: ...just not listed in this. Well on some of these, I'm sorry. But if you look at number eight and I think the other one was 13 if I'm not mistaken but eight was the one where I think there was a disagreement between the ISPs and any of the other constituents.

(Tony): Okay. So I'm going to go to joint. So, I'm having a job to read that on this screen myself.

Mikey O'Connor: I have younger and better eyes. You want me to read it?

(Tony): Yes.

Mikey O'Connor: This is (Mikey) for the transcript.

(Tony): Can you read please...

Mikey O'Connor: I can read it.

(Tony): ...and that would be helpful for the remote participation as well.

Mikey O'Connor: Okay, so number eight is ICANN should ensure that there is a clear, unambiguous forcible chain of contractual agreements with registrars, registries and registrants to require the provision and maintenance of accurate WHOIS data.

As part of these agreements, ICANN should ensure that clear, enforceable and graduated sanctions apply to registries, registrars, and registrants that do not comply with the WHOIS policies.

These sanctions should include the registration and/or the accreditation as appropriate in cases of serious or serial non-compliance. And just to scroll down just a little bit. I think this will fit now.

The ISP constituency and the IPC constituency differ on this one. Again this is not, this is a question of whether a PDP is required and our response and our response is, yes, there may be the need to do a PDP but only when consensus policy elements of contracts must be changed.

Proceed quickly with implementing things that can already be done without a PDP with the goal of minimizing delays. A great deal of this can be achieved here without a PDP. So what we're carving out in a nuance sub-set of (unintelligible).

In a large part we agree but we've found some things in there that are inside the picket fence and that's what we're highlighting.

Steven Metalitz: It's (Steve), can you specify what those things are?

Mikey O'Connor: I can be a guy and wing it. I'll do my best. I think the part that we were interested in is when it talks about chains of contractual agreements. As long as those inside of the picket fence part of the contracts don't change, absolutely right.

No PDP required. However if we get into this it's the clear, enforceable, graduated sanctions part where we may be inside the picket fence then at that point we probably need a PDP, that's where we're coming from.

Steven Metalitz: Yes.

Susan Kawaguchi: Susan Kawaguchi. And I was on the WHOIS review team so maybe just to give you a little background of where this came from. I'm so bad at this. There we go. So we had detailed discussions, lengthy discussions with the compliance team and their concern was that there was - if you report it inaccurate WHOIS repeatedly and they would follow their process - there was not much they can do if a registrar did not comply and follow up with the registrant.

And they actually never get a report back. Right. So they don't know when there have been compliance or there has not and it's usually up to, in my

case, I would report these and then I would harp on compliance and the registrar and the registrant.

So we just, we could see the problem. There's a process but it wasn't a complete process and they needed some sort of piece to enforce what was already there. Now I would disagree that this should not be a PDP but it might be part of the RAA negotiations.

Mikey O'Connor: This is Mikey again. (Tony), feel free to take over as Chair anytime you get tired of my winging it here but you know that was essential to the point we were trying to make. We're fine without a PDP unless there's something inside the picket fence that needs to change and that's the only time it would be required.

(Tony): And my question is do you not consider that is what this statement is saying or there is a need for us to maybe strengthen that. Because I thought reading the words here we've got that was the point you were trying to make. Okay (Steve).

Steven Metalitz: The problem is the Board - this is Steven Metalitz. The Board is looking for - they may not get - a yes or no answer. I think your answer is circular. It says yes there needs to be a PDP if this element includes anything that needs a PDP. I especially think, I don't understand your position that the sanctions would need a PDP. That's purely implementation I would think.

So I just hope we could moderate this to the point of saying that we maybe say we don't think there needs to be a PDP unless someone can point out some element that requires a change in consensus policy.

(Tony): (Unintelligible) to Mikey. I was going to make a similar point. I think maybe what we can do with this is change that answer to no, but put our concern, still list our concern in the comments. (Steve).

(Steve): As you suggest, (Tony), that concern that you're raising is pretty similar to what the registries did and their answering of no. If you scroll up to that you'll see what the registry said in the contract party. They said with regard to this chain of contractual agreements they noted, no PDP but they wanted to note that policy have to be consensus policies as defined with the agreement.

(Tony): Good point.

(Steve) That's really like you're saying is the consensus policies are defined with respect to a PDP. So I believe what I'm hearing from you, the ISPs is that you would agree with the registries on this, no PDP but a note about consensus policies.

(Tony): Yes, I think that's exactly the point. Thanks.

Mikey O'Connor: And this is Mikey for the transcript. I'm just changing it on the fly to see if I can get the wording right to follow on (Steve)'s point which is

Man: (Unintelligible).

Mikey O'Connor: Well, I think it's always useful to have slightly different words from different constituencies so if we said no in the column and then unless consensus policy elements of contracts must be changed. Kind of close enough. I think that entirely matches what we were talking about it in the constituency.

(Tony): Thanks. Could I just question at this stage, is there anyone on the remote participation now?

Anjali Hansen: Anjali Hansen from the Council of Better Business Bureaus.

(Tony): The (unintelligible) the Adobe is not streaming. Is that correct?

Woman: Mikey, are you connected?

Anjali Hansen: I don't know have...

Woman: The (unintelligible) is running.

Anjali Hansen: Oh, I don't have it. Sorry.

Mikey O'Connor: If I'm the host I have to- this is Mikey for the transcript. I have totally fallen down on the job because I'm also driving the slides to the screen. So, my apologies for that but it appears that that's the...

(Tony): Okay, what - what (unintelligible) is the...

((Crosstalk))

(Tony): You can fix it now? Sure.

Woman: I think Mikey can fix it.

Mikey O'Connor: I can fix it...

((Crosstalk))

(Tony): We've only got a very limited amount of time, about 15 minutes...

Mikey O'Connor: Yes.

(Tony): ...so I don't know whether that's justified. What we will do is make sure that we post this document after with any amendments we're making.

Okay so we're going to make them...

Man: Hi. Just to let you know that (unintelligible) from (unintelligible).

(Tony): Okay, what we will do is post this document straight after this session and so it will be available.

You've gone too far, (Mike). It's 9-B, that's not - that's the one.

Mikey O'Connor: Let me fire up my trifocals and read it for the record. Again, my apologies for the Adobe (unintelligible).

So let me read - if this - we're going to have to read a little bit more.

Man: Nine A.

Mikey O'Connor: Nine A says, "The ICANN Board should ensure that the compliance team develop, in consultation with relevant contracted parties, metrics to track the impact, the annual WHOIS daily reminder policy, WDRP."

Notices to registrants. Such metrics should be used to develop and publish performance targets to improve data accuracy over time. On that one, 9-A, we're totally lined up. No PDP required. This is about metrics and not policy, the ISP.

Nine B, if this is unfeasible with the current system, the Board should ensure that an alternative effective policy is developed in accordance with ICANN's existing processes and implemented in consultation with registrars that achieves the objectives of improving data quality in a measurable way.

Here again, we may be in the same boat that we were with the last one where if we just flipped...

(Tony): Yes, we factored that...

((Crosstalk))

Mikey O'Connor: ...so there you go.

(Tony): So I think to make that same change that we clarify the issue that we had in the note, change that to a no.

Man: (Unintelligible).

(Tony): Fourteen. Thanks (Steve).

Mikey O'Connor: I'm not going to do this one on the screen. It's too hard.

(Tony): Okay. Good, and this in detail...

((Crosstalk))

(Tony): ...isn't going to go to the Board (unintelligible) our discussions but it needs to be posted after quite clearly and resubmitted. The other one is 14, I believe. Mikey, if we can go down to 14.

Mikey O'Connor: So 14, again this is Mikey, metrics should be developed to maintain and measure the accuracy of the international registration data and corresponding data in (ASCH) with clearly defined compliance methods and targets as per the details and recommendations five through nine in this document.

And the ISP is again in a yes and we said yes as the compliance function needs policy underpinnings upon which to base its actions. However, developing the metrics is an operational function and can proceed a narrowly to go PDP that actually inserts them into the compliance framework.

So all we're saying is the metrics development is purely operational but injecting those inside the picket fence probably needs PDP to get it done. Back to you (Tony).

(Tony): So on that one I think we are slightly different. (Steve)?

Steven Metalitz: Yes, I guess the idea that metrics to carry out something that either measure whether somebody's doing something their supposed to do, it's hard to see how that is a, requires a PDP and with all due respect, a narrowly scoped PDP - our problem of course PDP is broken. And the idea that -- I would agree with you if you'd say this PDP for the time limit of 90 days but I don't think that's - what would require some changes too.

So I just don't - I mean I get the sense that some of these things really are operational. It's measuring things, it's enforcing things and I just don't see why we should be having a meeting of PDP to do that. I think our focus really should be pushing ahead and getting as much of this implemented as soon as possible.

(Tony): Mikey?

Mikey O'Connor: This is Mikey again. I spent a lot of time in the PDP so I understand the broken dimension. However I am a staunch for that process and I'm very -- this is one that's coming, certainly I was one of the folks in the ISPs that raised this with the rest of us and trying taking things and moving them out of the PDP wherever possible.

But I am pretty staunch that if something's going in the picket fence it has to be subject to the PDP process to get it there. Otherwise something much larger is broken and the trouble is the slippery slope we go down if we start picking and choosing which things go through the PDP and which don't. So, okay.

(Tony): Just one - Marilyn? Okay, so Kristina?

Kristina Rosette: Kristina Rosette for the transcription. I realize the question might require an answer that's longer than we have time for, so I'm happy to kind of take it off line. What I'm struggling to understand though are two points; the first being that it would seem to me, if I'm understanding this correctly, that the contracted party that's most likely to be directed impacted by this recommendation are going to be the registry operators for new gTLDs where they are (IDN) gTLDs and they are required to have (unintelligible) WHOIS.

And what I'm struggling with is if they don't think there's a need for PDP why do the ISPs think that there is. And the other question that is kind of related is that why wouldn't this idea of metrics kind of fall within the existing implementation compliance requirements for collecting and maintaining data accuracy.

You already have the (unintelligible) different is the data and internationalized data and are you cross checking against asking. Again, I realize we might not have time for this but it would be helpful for me to understand.

(Tony): Okay, I'll allow a couple more minutes to wrap this up and then we need to move on. Mikey.

Mikey O'Connor: Kristina, you raise a really interesting point which is that the registries are the ones (unintelligible) WHOIS, who are going to be impacted by this. That's a very important observation.

Man: And they said no to PDP.

Mikey O'Connor: And they said no. And so I - speaking to my chair...

((Crosstalk))

(Tony): Let me make a proposal on this. I think it's a difficult one to fix now. We've got an ISP meeting this afternoon and we'll take another look at that in light of

this discussion and I think that gives us the way forward. In terms of our message to the Board, it's pretty much along the lines of you need to move quickly on this stuff anyway.

There's no reason not to do that and I think that's the basis of our input today and it's not going to change on this point. So if everyone's okay with that, that's where we'll part this one for now and certainly open up a discussion with the Board about these measures and the need to move quickly.

So if you'll allow me I'd like to move to the final issue because we're stretched for time..

Man: Thanks (Tony). I mean WHOIS (unintelligible) recommendations would ask. (Brian) was running the ball on this on the weekend. Is counsel likely to have a letter that will be up for a simple majority of both houses (unintelligible)?

(Tony): (Unintelligible), can you answer that?

Man: No. No idea because it's just, it's going to be forwarded to the council right now to get a consensus on that. It's hard to get one so and I would like to (unintelligible) if it's possible because we have some constraints here in that regard.

For me the question is how should we in the GAC proceed in case this letter is going to fail. Not to get accepted on council level and we forward to the Board because we need to forward something to the Board.

We cannot do that with that risk because this excludes also the position of the other ones. So we, at the GAC are going to put forward, that's cable, which is not accepted let me say (unintelligible) formally so then we have a problem.

Maybe we could draw from this the positions of the GAC constituencies and forward that to the Board (unintelligible).

(Tony): No, that's helpful. I think the process for this is that we need to look at that final point during our meeting and then I would suggest the CSG execs need to take this on forward as to see how we can actually progress that and get this message through. Maybe we just give them the answer to our issues.
(Eliza).

(Eliza): So if we're planning to move on should we not also discuss the points of difference between the (BC) and the IPC and the ISCs?

(Tony): Sure, and that's something I think we do need today.

(Eliza): Okay, so the only point of difference that I know of with IPC is recommendation number 10. That is the only one where we recommended that a PDP be pursued.

(Tony): Okay. Let's - I'll come to you in a moment (Brian) if I may.

(Eliza): All of them. Yes.

(Tony): Okay. I'm just wondering now having realized we need to do that and looking at the constraint we have before we need to leave for the Board. Could I ask maybe that we can do this off line and compile that list, the final list after?

Maybe that's an issue that should go into the discussions and the constituencies this afternoon just to clear that away. Okay. (Brian). (Brian), go ahead.

(Brian): It might be of interest that I am the lead counselor at the (unintelligible) council who is handling this issue and we are currently putting together a letter to be sent to the Board. It is already drafted.

There is a chart that was put together by Margie Milam at the council. All of the constituents had an opportunity to review and provide their feedback. If there are going to be changes to that it needs to be done right away because we're in the process of completing and finalizing that letter.

(Tony): Okay, that's helpful. (Steve).

Steven Metalitz: Just to clarify, I think what (Brian)'s talking is a letter from the counsel and so it would reflect - and I think it's important - it would reflect that one stake holder group consistently thinks that everything requires PDP.

I think the challenge we have is, is there some communication we could have from the CSG where I think we're basically in agreement. This all this stuff on 10 I think goes with privacy and proxy services.

I think the IPC position is if there's anything that requires a PDP that looks closest to it. Our position, however, has always been that this should be dealt with in the RAA and if there is a need for repeating PDP there should be a time-limited one with a default of contractual obligation. So that's our view on it.

(Tony): (Brian), did you want to come up?

(Brian): Sure. It is definitely going to be the council communication. I think however, if the CSG can come closer together on any points that it would be very helpful to communicate that and that communication from the Board to the counsel as well.

(Tony): Okay. Thanks. (Steve).

(Steve): Thank you, (Brian). I believe based on the rules of council it takes a majority of both houses. Each house, I guess you would say to approve the letter.

So I don't know how that voting will go but if a majority is not achieved on that counsel letter it sounds like CSG is pretty close to a consensus that a letter that it could forward as well.

(Tony): Yes, absolutely. I think that was (unintelligible) point as well. (Brian).

(Brian): Yes, I just want to clarify that the counsel is not going to have a clear position. What we've agreed to communicate is that there is a great divide among different issues and we're going to basically be communicating the feedback back a pretty (granule) level to the Board that includes what each of the different constituents thinks, (unintelligible) there's movement here. It'll be very helpful to have that accurately reflected.

(Tony): Okay. So with that I'm going to move on to the last topic which is the impact of gTLDs on the structure and Marilyn, you're leading on that one.

Marilyn Cade: Thank you. Just a quick one-minute of overview history here. There's, you're hearing a lot perhaps of discussion in the halls but I want you to remember back to Prague and the fact that there was a specific request by the chair of the Board to the chairs of the constituency and stake holder groups to provide a one-page response on what we see as the impact of the new gTLDs on the GNSO and then ICANN.

So most of the constituency then stake holder groups have done that but not all. The registrars, the last time I looked still had not. Others had. The ALAC responded. A quick overview and summary of the responses from the constituencies and stake holder groups has taken an evolutionary approach. It's not a revolutionary approach.

And to make sure that the new parties coming to ICANN can get their basic needs met effectively while you're evolving to any major changes. That's just kind of the chapeau summary.

The ALAC took a different approach. I'll summarize that in just a minute. The registries described the efforts they were making by describing the new observer status group and they have now taken the step to make proposed changes in their charter and put those out for public comment.

One of the things that it's important for all of you to note which is new news is that all changes to charters now do not just go out to your constituency or stake holder group for comment. They will be posted publicly and everyone will be able to comment on any changes on your charter.

So do keep that in mind. It's important to know. Not everyone is satisfied on the Board. There's one particular, maybe two Board members who are enthusiastic about very radical changes and major changes at ICANN including perhaps deconstructing (SO)s etc. Most of the Board seems to be interested in a evolutionary approach.

The ALAC proposal is a sort of a very long term project looking at major changes to ICANN but also focusing on outreach and participation, dealing with changing the voting status of the president and CEO, getting into a wide variety of things that are probably far beyond what the original intent of the bequest was.

The ccNSO suggests that the majority of the implications for the new gTLD program are going to be on the GNSO and that an evolutionary approach is appropriate and that they feel perfectly comfortable to establish any firewalls or conflicts of interest issues when there's a ccTLD, when there's a gTLD registry backend operator operating a ccTLD.

An example of that is that verifying operates a couple of ccTLDs. The ccNSO has firewalls now and they feel they've handled those problems in the past. That's the quick story.

There's a number of meetings going on here that you should be aware of where these topics will be discussed. There's also a Chair's breakfast with two Board members to go through this and to begin to talk about a significant event which will take place in Beijing and I would anticipate that to be a two to three hour open forum during the Beijing meeting going into more detail on this.

They are separately and it's important for us to kind of think of this as two tracks. There is a GNSO review. The GNSO review is largely an administrative managerial review of how are you doing now on the things that you're supposed to be doing.

Example, do constituencies have up-to-date Web sites? Do you have contact information? Do you archive? Are you open and transparent? Those are all requirements. The review will deal with that kind of stuff and there will be a review of the policy work of the council. But those are being viewed as parallel activities.

One of course might feed into the other but the review itself is not about structural change. That is not the purpose of the mandated Board review. It's unlikely the review will be delayed and probably what will happen is there will be sort of an administrative check-the-box to start with.

But it will be very much I think a topic in some workshops not only in the Board.

(Tony): Okay, so with that (unintelligible) for views, make an account of the messages, the three messages that we want to give to the Board. (Steve).

Steven Metalitz: Steve Metalitz. Marilyn, thank you for that summary which was very helpful for me because I'm having trouble - I am having trouble teasing out the different tracks that are going on here.

I just want to say a word about why the IPC has not responded to a request for a statement about how new gTLDs will change ICANN. I think it's because - I don't want to be glib about this - but I think the reason is because we've been too busy responding to the changes of the new gTLD program has already brought to ICANN and particularly to our constituency.

And we've focused on the effect on our constituency which has already occurred; it's been immediate and dramatic and it means that we have to figure out some difficult questions regarding our membership criteria, regarding our status as a constituency.

These are the other ways that intellectual property issues could be better addressed within the ICANN structure regarding our relationships with non-ICANN entities and other topics - the issue of disclosure and conflicts of interest is also there and we're engaged in that discussion but we haven't reached an agreement on any of those points.

So I think it's great to have the heads up on how the GNSO council - GNSO review - I should say is expected to go. We'll see if in fact go that way. But our view is this is a dramatic change and I certainly would not want to go on record that no radical changes to the structure are needed.

We just don't know that yet and it's not as though the current structure is working so well and so smoothly and is so effective in articulating and bringing the needs of the business community and the intellectual property community and of ISPs into the process.

It's not working so great that we want to rule out any specific changes to it. So that's kind of the IPC position. I'm not sure how that helped. I hope that's not unhelpful in the messaging that we have to do with the Board now but I just wanted to explain why among all those comments that have been received to the question you haven't seen one from the IPC.

(Tony): Thanks, (Steve). I think at this stage it's also worthwhile saying a few words about response that's gone in from ISPs. And if you look at the commercial stake holder group the impact, the immediate impact on our constituency is probably not so strong as the impact on some of the others. We're not seeing the same response.

And the reason for that is our charter is strictly limited to ISPs and infrastructure providers and whether they have interest in these broader elements they will develop (IOWA) with any other constituencies rather than within your ISPs.

And I think we all get into a stage where traditionally members of our constituencies may have an interest in other elements of this would be an applicant are involved in the process in a different way.

So the response back from the ISPs is what we consider an evolutionary step but more the point, we would like to take this opportunity to start separating out some of the issues that are picked up in this huge bucket of issues that the GNSO currently run with.

And there have been some tensions between what is core policy development issues for council and what should sit much better in constituencies. And some of those issues are actually are far broader than constituencies as a need to involve other parts of ICANN.

There's a need to involve other parts of ICANN. (Unintelligible) they impact other elements of ICANN as well. And we would actually like to see that get in some focus at an early stage. And one of the reasons we want to do that is that we do feel that the impact on the GNSO is going to be pretty substantial.

(Steve) mentioned (unintelligible) and their ability to handle these issues. I think there's going to come a time when that makes policy development than it is currently. And if we can alleviate some of the load on council through

looking some of those issues on a much broader platform than that seems to make a lot of sense.

So that's currently where we're thinking about that. It isn't a huge change. It isn't anything other than an evolutionary start in our minds. And I'd also like to announce (Steve)'s answering remark as well and that is we certainly don't go out structural change as a consequence of this.

And I'd like to remind everybody how the current GNSO actually took its form. If you turn your mind back a few years what actually came out of the proposals to change the GNSO was a set of changes that nobody was happy with. And I think it was way back at the Paris meeting.

The challenge was given to the GNSO to go away for three months and come up with something different. And if you don't do that you're going to get imposed on what's on the table now.

Now what came out of the discussion is the GNSO that we live with today. So it was never viewed as an ultimate resolution to lower the problems that face the GNSO. It was basically making the best of what was available at that particular time. And I think if you talk to anybody who's been on council you'll fully understand the difficulties that have come out of that situation on the model that we have now.

So looking for some further changes that improve the structure isn't something as ISPs (unintelligible) at all and we certainly wouldn't rule that out at the moment. Marilyn.

Marilyn Cade: (Unintelligible) speak to the (BC) public statement and you know, it's not that we certainly rule out structural change but I think we are still using the term evolutionary rather than revolutionary.

And one of the topics in our discussion has been we're so busy trying to make sure that people are getting their needs met right now and don't fall through the crack that taking on a major restructuring at the time that we have a brand new CEO who also has some really significant ideas in mind is a worry to us.

And I think that's come in to me even more poignantly after looking at some of (Fawdy) ideas which I think are really exciting. But the position that we're trying to convey is that that we should be open to structural change in a thoughtful way but that it would be important to not rush to it now.

I will just say because I did post a response back to (Tony). There's already some changes going on with the creation of a strategic planning working group that is the chair plus one from the constituencies and the SOs, a similar group in the budget that will perform functions that (Tony) has just made reference to.

And I think one of the things we need to understand is what's happened to those and what work is actually going into those. So for right now I think I would say that we'd like to hear and examine what some of (Fawdy) major initiatives or impact those are going to have while also looking at the GNSO review and of course keeping in mind that structural change might take place in the future.

I would just say personally I am a little skeptical about blowing something up while you're in the critical path of just beginning to launch the new gTLDs and that lots of new parties coming to ICANN could find themselves without any place to hang out in the interim.

(Tony): Okay, thanks Marilyn. Just a quick response on one point. I'm aware of the issues that Marilyn raised, the issue of a chair plus one fitting into this strategic look ahead of things. But as ISPs we don't see that as a resolution for anything.

Having a chair plus one is not what we're looking at. We're looking to have a broad debate on many of these issues and being able to involve a far rule to representation than that. So that's where we're coming from on that.

What we do need to pull out in the next 10, 15 minutes is the three messages that we want to give to the Board on this particular issue. One thing that's come out I think quite clearly is that we will support any evolutionary approach.

The other is that while we may not be able to take on structural changes now, in the longer term we certainly rule those things out. So that's the starting point. And I'd like to open up for other comments on this.

Marilyn Cade: Actually (Tony) can I...

(Tony): (Mike).

Marilyn Cade: This is Marilyn, this is a bit of a brainstorm, sorry. Because of the intercessional - and I don't know if everyone here is aware of the intercessional - but I just was thinking as you said that that (Fawdy) announced a number of initiatives yesterday that I think we're all going to expect to hear a lot more about in the very near term.

Would it be worthwhile including in our statement that we are very anxious to learn more quickly about some of these directions so that we can take that into account to inform our thinking on this question?

(Tony): So you've related that back to the intercessional. What was the point in that?

Marilyn Cade: Well I was thinking that by the intercessional we should be able to get significant information for sharing.

(Tony): I'm certainly not against doing that. The only problem is with that is there is no agreement yet as to how broad that intercessional is going to be and the structure of that session. So that's the unknown part about that. That's a possibility to wrap into this discussion with the Board as an issue.

But there's a separate session here to look at the possibility of an intercessional. I don't know whether you want to take just a couple of minutes Marilyn to run through where we can't (unintelligible) with that discussion on into intercessional that might be helpful.

Marilyn Cade: So -- an obscure reminder to all of you that in your last budget process -- each of your constituencies submitted a request for ICANN support for items that are identified under what's called a toolkit. We fought for a few years to get support from ICANN for the kinds of functional support that helped all of us; conference calls, transcripts, a range of things like that.

And last year for the first time the constituencies each put in funding for specific things that may be outreach, secretary of support, etc. Each of the constituencies did ask for a different flavor of ice cream; a different version of outreach or participation.

ICANN put all of the consolidated requests from the five non-contracted party constituencies into something called an intercessional event. And the idea is to hold a two-day meeting toward the end of January is the idea right now.

And the meeting would be focused on the five non-contracted party constituencies as participants. There is no firm agenda but one of the requirements that has been put forward from the small group that's working on this with (Rob) Hoggarth is that there has to be high-level senior management participation and appropriate level staff participation to make it useful and meaningful.

The two options being considered, one is a partial, is sort of a designation group, like self-identified from each constituency that would come together from what we might think of as more of a working and strategy session. And the other is to make it much more open with larger numbers coming.

The (unintelligible) in particular, and I think it's only the (unintelligible) of the five wants to also have a more of a broad, general awareness outreach element to it. I think the other constituencies are saying well maybe a two-hour social event but not take over the purpose of the rest of the intercessional.

It's very undetermined other than there is a commitment to do something of this nature and there's a \$150,000 budget which is the top budget and has to cover all of the costs including the facilities, the transcripts, the translations, staff travel and representative travel.

(Tony): So one of the proposals I think that we could make is that if that session is going to cover a broader range of topics that we'd consider a priority. Is that what you're suggesting? Marilyn.

Marilyn Cade: (Unintelligible).

(Tony): Yes, up to date. Okay. So (Steve).

Steven Metalitz: If we wanted the Board to identify two other topics

((Crosstalk))

Steven Metalitz: I'm sorry.

(Tony): No, go ahead.

Steven Metalitz: Okay, you know, we sent in our topics quite a while ago and then a couple days ago we got the Board's list of topics; two or them they wanted to talk about. Two of them are the policy review team final report and the impact of the new gTLD program on ICANN structured processes. So that's an overlap.

The other two points they raised are input and comments on the security, stability and resiliency of the DNS review team final report and quote, "Seeking input about whether the community sees a need for a policy with respect to declaring patents in policy development or contract negotiations."

So I don't know the background of this

Man: I do.

Steven Metalitz: ...and so maybe those who do can but I do know that we haven't discussed this within our constituency. And I don't know if the other constituencies have. And then on the SSR point, again this is not going to focus at large but I know it has been of the other two constituencies.

(Tony): Okay, certainly the last one is that we picked up on either so maybe we can deal with that one quickly. Marilyn, you said that you had some input.

Marilyn Cade: So maybe you need to go back and talk about it and maybe that's the answer, that now it's been called to our attention we'll certainly take a look at it. So the underlying issue seems to have come from someone who is objecting to a certain filing for what would be called sort of a business...

Man: (Unintelligible).

Marilyn Cade: Thank you.

But there is a larger issue that has come up before and that is that we just never dealt with it and that is some of the solutions that are proposed from

the technical community sometimes do include work that involves proprietary standards or patented solutions.

And I think it's probably something we need to say, thank you for calling it to our attention. How urgent is it? We'll take it back and talk about it this afternoon. Is that okay?

(Tony): We're not going to do it this afternoon but we will talk about it. For sure. Yes, no commitment to this afternoon. Yes, if you go on to the other one.

Marilyn Cade: Sure, Jeff Brueggeman from AT&T was the CSG representative to the SSR review team. He is here and will be in the meeting with the Board and I'll catch him and make sure that he's prepared to make comments.

But in general we've reviewed the SSR review team report and let me just summarize one of the implications of that report for you and some of your companies may have looked very hard at it.

There is a concept that is inherent in that report. It sort of meshes with work that is going on in another working group that is a working group but a very important one and that is the DSSA.

But one of the inherent underlying messages in this report is that the decisions that ICANN takes in the coordinating or managing any of the identifiers has significant implications for the people who run and operate the Internet. And those who work at the edge or in an application layer can also be significantly impacted by the decisions that ICANN makes.

So if ICANN engineers in risk and threat in a decision they make then the people who bear the costs for that will be the Microsofts and the AT&Ts and the variety (Angie)'s clients and the variety of others so ICANN should think about those implications and take that into account as it develops not

changes in what it does but making sure it interacts those other groups and keeps them informed and provides an exchange of information.

That to me is the takeaway that's probably more applicable; there's lots of other core stuff that I could talk about but that to me was the kind of implication that also came out of that is be aware of what you're doing.

Engage in outreach and participation and don't just assume you live in a very narrow technical silo called the DNS or DNSSEC. DNSSEC is not enough. Be aware of larger issues. (Russ) did you?

(Tony): That's thanks, Marilyn. You referred to the DSSA as well as part of that. (Mikey) do you want to add anything from that perspective?

Mikey O'Connor: This is Mikey O'Connor for the transcript. I think the way the DSSA would like to be positioned in this, we would certainly, we're at a essentially pausing point in our work while there's yet another one which is the Board DNS Risk Management Framework project which is just spinning up.

So there are multiple SSR-related initiatives like this. I think one of the big topics that we would like to discuss with folks in a session like this would be ensuring that the gaps and overlaps between all these different projects are addressed and coordinated.

So for sure this DSSA stuff to talk about but it's primarily coordination sorts of topics right now rather than content kinds of topics.

(Tony): And Marilyn maybe you have something we can actually add to that response back, that there is a need to address those issues, the other option is not. I'm sure where the Board are coming from on this. I know they're going to vote on this and that was the focus I think of them asking us if we had any input.

But what we're taking here is a slightly broader spread than that. What are your thoughts?

Marilyn Cade: I'm not sure if Mikey was asking us to position the DSSA which was not - could you just clarify what you meant when you said where the DSSA wants to be positioned?

Mikey O'Connor: Let me re-state. I wasn't paying any attention so when (Tony) threw the ball to me I made something up so pay absolutely no attention to what I said.

(Tony): Catch.

Mikey O'Connor: I'm a guy. I can just make stuff up and deliver it with gravitons and hope I get away with it. In this particular case I didn't.

Marilyn Cade: Yes, but you almost did.

Mikey O'Connor: Okay.

Marilyn Cade: Okay.

Mikey O'Connor: Okay, so...

Man: He's just making it up now.

(Tony): Yes, (Edna).

(Edna Vincent): (Edna Vincent). Marilyn, just what's the point that I get your attention and try to understand and that's what I did. One of the big takeaways that I got from Friday's opening speech yesterday whether or not it proves to be true obviously needs to be seen is that he cares very much about moving the silos and I can find cross issues.

And I think to the extent that we can identify any as being things in which have been silo'd but he may - he and the Board may not have appreciated how silo'd they were or may have broader impact. I think even flagging that can be helpful even if you don't have answers to what should be done with it.

I think the mere flagging of it is very valuable.

(Tony): That's good input.

Marilyn Cade: (Tony), (Tony), not you. (Tony). Sorry.

(Tony): (Tony), confusion of the names. (Tony).

(Tony) Could you repeat that. I'm sorry I was reading something.

Marilyn Cade: Sorry, I thought you wanted the microphone.

(Tony): No.

(Tony): More confused. Okay I think with that we...

(Tony): See, I think that's what I should've done.

Mikey O'Connor: I apologize in the breach in propriety.

(Tony): With that, we need to wrap up here. Stop the recording. Thanks to everyone participating. Please make sure you've signed the sign-up sheet and we need to go and join our colleagues in the Board.

Woman: Where are we going?

Man: Metro.

(Tony): Metro, yes...

Man: East.

(Tony): Metro East.

Recording: Thank you for calling the digital replay service.

END