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CR – BOARD / Commercial Stakeholder Group  
Tuesday, March 13, 2012 – 11:15 to 12:15  
ICANN - San Jose, Costa Rica.

STEVE CROCKER: We should get started. I always find it pleasurable to be hosted by Marilyn, and once again we're together.

As far as I'm concerned, this is your meeting and the board is primarily in listening mode, but I think the format is that there's prepared questions from both sides, and the real value is to get past the formalities and to dive right into content.

So with that, Marilyn, would you take it away and run this in your usual inimitable style.

MARILYN CADE: Thank you, Steve. Well, I'd like to say that I'd like to recognize the fact that we're actually a trilogy.

There are three of us. We just act like one.

And you all know Tony Holmes, who is the chair of the ISPs, and Steve Metalitz, who is the chair of the IPC.

The commercial stakeholder group --

And I am the chair of the BC.

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The commercial stakeholder group works together on some things and then we work separately, and so this afternoon we will be meeting separately, and for any of you who have spare time because Rod and Steve have not booked you up to the nanosecond, feel that you are welcomed in any of the constituencies' meetings.

We have remote participants and I know Janice is monitoring remote participation, so I will look to her, as we go through the questions, to raise her hand so we can recognize any remote participants from the three constituencies.

Janice.

JANICE DOUMA LANGE: I just want to clarify. Marika has now taken this over, as she knows the players so well, and I'm here in support of her.

MARILYN CADE: Thank you.

We propose three questions, but we got an excellent question from you all, so what we're proposing to do is to focus on two questions and make short statements about the other two topics.

The first question that we proposed for an exchange of views is -- and I think Steve is going to take the lead discussion with one of his members,

but Steve, do you want to just field the question and then call on your lead member?

STEVE METALITZ:

Thank you very much, Marilyn. I think the question -- I don't have it verbatim, but I think the question had to do with implementation issues in the new gTLD process, and I'd like to -- just to kick off the -- this is obviously a big topic for the intellectual property constituency, but also for the other constituencies here, and so maybe I could ask Stacey King, who is in leadership of the IPC and is with Richmond in the U.K., to kind of just kick off the discussion of this topic of implementation issues in the new gTLD process.

STACEY KING:

Thank you. It's a pleasure to be here. I think there were a few questions -- (microphone feedback squeal) -- that we wanted to bring up in this regard.

I think the first relates to the second level. I think among brand owners and IP constituents, there's still concern that within the second level --

STEVE CROCKER:

Stacey, is it it's possible to project a little more or get closer to the mic?

STACEY KING:

Sure. I think there are continued concerns that within the second level, we need some enhanced protections for brands, and really want to be

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working with the board moving forward on the applicant guidebook on how we can institute some enhanced protections.

The other issue that I think we have some concerns with relates to compliance. We very much appreciate all of the attention that the board and the ICANN community has been giving to compliance, and the additional resources, but we would encourage the board to continue to provide more resources. Compliance is going to be an even bigger issue as we go forward and more entities start getting involved here, and there will be new issues that come up there as well.

And finally, I think along with this, I also wanted to mention the registry agreement.

For a lot of companies that are going to be coming into this environment, they're going to be signing a registry agreement that they're not going to be used to, and I think as much time as we can give brands to actually take a look at this agreement, understand what they're signing, and have some ability to negotiate on that agreement itself, the better.

Thank you.

STEVE METALITZ:

Thank you very much, Stacey. I think we're all acutely aware that we're working within a framework here of an applicant guidebook that's been approved and a program that's ongoing, but we think there are

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significant implementation questions that are still in the board's lap, if you will, and Stacey has mentioned -- has mentioned several of those.

I would just add, because there's been some discussion about the -- the top-level domain issue and defensive applications there, and we've put in our comments on that. I'm not going to repeat what was in the public comment period.

But I think at this meeting, there's also been a lot of discussion about the question of batching, and it seems likely there will be a need for batching of new -- of the processing of new gTLDs, and we've made, informally -- we do not have a constituency or CSG position on this, but I would just encourage the board to look very, very carefully at what the staff is proposing to do to implement the board's resolution on this, and also really to look at that resolution and see whether there are other ways of implementing a batching methodology that may be more focused on increasing the -- or stressing the benefits of this program, the potential of this program, while minimizing some of the risks of this program.

I think there's -- from my perspective anyway, there's a lot of room for the board in its implementation decisions to achieve something positive in the batching area, rather than simply having a mechanistic process which seems to be what the staff is proposing.

MARILYN CADE:

I think we'd really like to have any questions from any of the board who are here.

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Before I try to encourage you to think about questions, I'm just looking for Steve DelBianco, who I see, and I might ask Steve to add a bit of additional comment to this topic by just briefly mentioning, Steve, the formal positions that the BC has put forward through public comments but just a high idea on them, if you don't mind.

STEVE DelBIANCO:

Thank you, Marilyn. Steve DelBianco. So I'll just summarize two of them, one at the top level, one at the second level, that are implementation issues.

At the top level -- and the BC has been articulate about this -- a lot of governments and to that extent other applicants will rely upon registry restrictions to know whether they want to file an objection or ask governments to file an early warning. And if they make that reliance, on an application, on promises that aren't enforceable by ICANN, we will disappoint everyone down the road if ICANN cannot enforce it.

It turns out that the registry restrictions in 2.18 are only applicable to community-based TLDs, so that if an application comes in for Apple and they don't qualify as a community, their registry restrictions -- and let's say it's the apple growers -- their registry restrictions wouldn't be enforceable if they failed to be a community. That means they could sell second-level domains like on iPad.apple or computer.apple without actually having anything to do actually with Apple Computer. That's one.

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At the second level, I'll just bring one other highlight. Trademark claims notices.

It's possible that they might work quite well. It's possible that if a registrant is warned that there's a trademark clearinghouse record that corresponds to a string they're seeking to register, there's a chance that it might dissuade people from heading down the road that could result in cybersquatting or URS or UDRP. It benefits everyone if these warnings actually work.

So what a shame, if they actually work, if on Day 61 the registry operators can simply shut it down.

I'm addressing the point that the guidebook requires it only to operate for the first 60 days.

We don't understand how and why that limitation is in there. They ought to run permanently, especially since it's a fully automated function, and it actually will take more effort to shut it off than it would to leave it on.

Marilyn, is that sufficient or are there any others you want to go into?

MARILYN CADE:

I think what I mostly want to do is tee this up so that the board members, if they have any questions for us or they want any further elaboration -- Stacey, you, Steve -- may be able to respond in more detail.

So can I entice a board member to ask a question, or do I have to ask the questions myself?

STEVE CROCKER: Oh, come on, surely somebody else will ask a question other than me.

[ Laughter ]

>> (Speaker is off microphone.)

MARILYN CADE: Ahh. For those of you who didn't hear the comment from Judith, do you want to make it on the microphone?

JUDITH VAZQUEZ: Your questions are my questions as well, and I don't speak for the board. Thank you.

STEVE CROCKER: I'll make a kind of stray comment. I'm empathetic with Steve DelBianco's question and the problem that he poses.

I think it's a fair question of, if somebody reads the restrictions and offered protections associated with an application, what assurance do they have that those assurances will be enforced.



I, frankly, don't know enough about the details of how we've constructed things. I just haven't delved into that.

But I think that's a fair question.

I could imagine a number of possible useful solutions. It's probably not appropriate for me to try to speculate or propose new ones at this point.

But I do like the -- the question very much.

STEVE DeIBIANCO: Steve, would you allow a follow-up?

STEVE CROCKER: I'm sorry?

STEVE DeIBIANCO: If you'll allow a follow-up, we brought this up in Dakar in the same interaction and then had an extensive interaction with Kurt and with counsel at ICANN.

So by now -- Dakar was several months ago -- we actually thought there would have been a little more progress on this. So it's not a new objection. It's not a new topic. The BC submitted it in writing at least three times.

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So I welcome your attention to it and if there's still time, let's see if we can get this fixed.

STEVE CROCKER:                      Noted.

STEVE METALITZ:                      This is Steve Metalitz. I guess I would like to, if I could, ask the Board members a question. There are a lot of issues about implementation of the guidebook, implementation of the structures that are already in there like the trademark clearinghouse, the uniform rapid suspension, where things stand on that, as well as some of these other questions that Steve has raised and as Stacy mentioned with the registry agreement and so forth. It's not clear to us how the Board is planning to conduct oversight of what the staff is doing in this area. I mean, this is obviously a huge program with thousands of moving parts, as many people have said, and I'm just wondering if we could ask how the Board plans to provide this oversight to make sure that -- that it's done right and that it's open to, you know, the mid course corrections that are inevitably will be needed in one or another area. And I guess I might as well -- I mean, I ask this in particular because I know that many members of the Board are recused from making decisions on the new gTLD program. So -- and I'm not criticizing that. In fact, I'm -- I would commend them for recognizing those -- you know, their conflicts and acknowledging them, but I just wonder if we could ask how the Board does plan to conduct oversight of a very big program that's at a very key point of beginning implementation with a bit of a skeleton crew on the

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Board to be able to do it. So I'd welcome any guidance you can provide us or insights about how the Board plans to do that.

CHERINE CHALABY:

I think this is a very good point. The crisis at the moment of recusing the Board members who are conflicted is going through and we're separating that. I don't think we have put a detailed oversight group on top of it and I think this is a point we have to seriously consider doing that. I think we are -- the Board is continuing to work hard in trying to respond to issues and so on as opposed to having a detailed oversight group on the staff that does make sure that the implementation is done accordingly. So I think this is a very good point and we should take this on board right now.

MARILYN CADE:

I meant to -- anyone else who responds might respond to both Steve and to me. I made a comment yesterday, and I will make it again in my individual capacity. I think it's really important that the Board have the ability in this particular time to retain outside independent experts to support the Board members who do not have -- who are -- do not have conflicts. I myself do not believe it's possible to run an organization like this one with Board members who will not have conflicts. So I think, myself, that we should not try to eradicate all knowledge and experience at the Board level, that we have a nice mix. But we need then to be able to supplement the Board members with retained independent experts as that's required. That is my personal view.

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STEVE CROCKER: Cherine.

CHERINE CHALABY: Marilyn, I think I agree with that balance. I think we spoke about that, having a Board of two or three independent members who have no experience or knowledge about what this is all about is not good. Having one with only technical and completely technical with no independence is no good.

So I think finding the right balance in order to make sure that the organization functions without taking conflicted risks. And that's the balance which we seek to reach here. I think we're getting there. The point of retaining some independent advisers who are experts is a point worth considering. The question we need to ask ourself is once we have all of those quite interested parties not participating, do you have in the core left sufficient expertise, right, to actually make sensible decision on behalf of the organization? That's a very key point as well.

STEVE CROCKER: Bertrand, and then there was a question back there. So first, Bertrand and then --

BERTRAND DE LA CHAPELLE: Thank you. Bertrand de la Chapelle. One point that I want to raise is related to the question that Steve was asking and others. One of the challenges that we have in the new gTLD process is that there have been many iterations and many sub-discussions on specific points, and because the result of all those discussions was each time incorporated

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in one single big document, we never had along the line the kind of determination of closure on one point, then closure on the next one, then closure on the next one. So this is a lesson. It's not a criticism. The process was extremely complex and this is, in retrospect, something we need to take into account when we develop that kind of thing, that whenever there is one topic, we need to have a determination of the moment when the discussion is over, whether because there is consensus, there is rough consensus, there is disagreement and we cannot go forward, whatever.

The problem we're confronted with now, collectively for the community and as a Board, is that a certain number of those issues are being put back on the table when theoretically they were supposed to have been discussed at length and still be in the document as a conclusion and the stage of need discussion.

And I want to take one example that I mentioned in the Board GNSO interaction the other day and that is particularly dear to my heart. I have been -- I must say -- extremely puzzled by the reemergence of this topic of the defensive registration at the top level. Because I made personally, even before I joined the Board in Cartagena, a specific effort to put that topic directly to the IP constituency. I did it in writing, I did it orally, in lengthy discussions in Cartagena. I made a specific proposal that had probably many flaws, doesn't matter. I came back to the IP constituency interlocutors I had, asking them to circulate this, test it with their constituents. I came back once, I came back twice, and I explicitly mentioned in a mail that if there was no particular feedback or interest, it was basically implicitly telling that there was no concern in

that community. And I have been extremely surprised to see this time of concern regarding top-level defensive registrations for brands reemerging at a stage when the program has already been launched.

So I don't know if there's an explanation is there, but there's a problem of process in general, and for the Board it is extremely important that we can consider that all the different constituencies within the structure are vehicles for conveying information back and forth. Because otherwise, we make assumptions that may not be true in the end. Thank you.

STEVE METALITZ: I just got -- if I could just respond to that briefly.

J. SCOTT EVANS: I want to respond to Bertrand.

STEVE METALITZ: Okay, J. Scott why don't you go ahead, and then I'd like to also because I think you've raised some questions about the IPC. J. Scott, can I just mention one thing first?

J. SCOTT EVANS: Yeah.

STEVE METALITZ: I think it's important to make it clear that the concerns about defensive applications at the top level are not -- are not originating with the

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intellectual property constituency of ICANN, and so I hope you're not under that impression. We were asked to respond to a public comment period, and we said, here's why we think some people have concerns and here's some suggestions. But we also said we think a far more significant problem is at the second level, not the first level. So I just want to make it clear, it is not -- if the problem is reemerging, which I think is the word that you used, it is not reemerging at the behest of the intellectual property constituency, and I'd like to yield to J. Scott on that point.

J. SCOTT EVANS:

I am on the board of directors for the world's largest association for trademark owners. We didn't sign that letter. We participated in the IPC process and in the ICANN process. But we told you folks in March 2009 that you needed to sit down and listen to us because the reasonable owners were here to participate. We spent millions of our hour time that if we had been compensated we would probably have earned about \$1.5 million on the IRT for the lawyers who were in the room trying to help the Board put this together to bring reasonable solutions and then we did present -- we never got to present it to the Board of Directors in June. You threw us to the wolves. We were screamed at. Yelled at. I even brought the president of INTA to that meeting to stand up and speak, and it was so vitriolic and awful her PR people said, you can't stand up in a room like this. Our company will not let you stand up and get involved in this. This invective is awful.

So you didn't listen to us. You watered down what we asked you to do when the reasonable people were there, and as Paul McGrady told you

all, you think we're the bad ones? We've got a crazy aunt in the attic and we're going to let her out, and that's what happened.

[ Laughter ]

That's what happened. You didn't listen. You didn't listen. We told you. And so you find yourself in a situation that you yourselves created because you wouldn't listen. We've tried, we've been here. We've been telling the community, we've been talking to the community, I've been at ICANN and INTA meetings since 2008 telling them, Kristina, me, Stacy, Fabricio, all telling them this is coming, you need to work in the system. But not everybody listens to us. We don't remember every company. We do the best we can. We're still here. We're still trying to help. We're still trying to find solutions. We weren't ignoring anyone.

MARILYN CADE:

I'm going to come back to this topic. But first of all, yeah, I know you want to recognize Bruce, but we have a remote participant that I want to make sure we get in the queue. And then if we could recognize Bruce, is that okay?

STEVE CROCKER:

Yep. And then Cherine.

MARIKA KONINGS:

So this is Marika. I have a question on behalf of Ron Andruff.



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MARILYN CADE: You'll have to be -- you'll have to be louder.

MARIKA KONINGS: This is Marika. I have a question on behalf of Ron Andruff. It's a follow-up question to the one Steve Metalitz made before. The June 2010 Brussels meeting ICANN CEO told the community that all resources necessary would be provided to ensure that compliance is fully staffed. We're still three people short and a new gTLD program is underway. Is the Board aware of this continuing problem?

MARILYN CADE: So I think I would propose we park that question for right now and go back to the one we're talking about and then come to that one, if that's okay, Steve?

STEVE CROCKER: Yes. And Rod really is the one who ought to respond to that, I think. Yeah, Bruce and then Cherine.

BRUCE TONKIN: Marilyn, I just want to make sure I'm on the right topic. I just wanted to provide a response to Steve Metalitz's comment about the oversight. Is that the topic we're still on?

MARILYN CADE: I think, actually, I would be happy to park the question about the views that have been expressed by my constituency, by members of my constituency individually, Steve's constituency and members of his

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constituency about defensive registrations and why we are still talking about them. I think we feel we are still talking about them as opposed to they're reemerging. So it might be better if we offered to have a side conversation with interested Board members and us in more detail on that and be sure that we cover some of the topics, if that would be agreeable. And then we could go to the topic about oversight that Bruce had --

STEVE CROCKER:

Yeah, my concern is that the Board is not really the switchboard for brokering all of these things and there has to be a different way of getting the parties to talk to each other rather than insisting that the Board be right in the middle of everything.

MARILYN CADE:

Sorry. My only purpose was to provide a small group right after this to answer the question, not to ask the Board to negotiate but to answer the question, unless you wanted us to continue to debate this question now.

BRUCE TONKIN:

So, Marilyn, let me comment on oversight and it might touch on that topic anyway. I think with oversight this is a very critical year, and there's two areas of oversight that I think the Board needs to consider. One is oversight of the request for the proposals and the evaluation of those proposals. That's actually quite a significant amount of work in its own right. So there's a degree of oversight and at some point there will be disputes that come through, there's reconsideration requests.

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Ultimately there will need to be members of the Board that are not conflicted that would look at those evaluation issues and help resolve disputes that might arise. So that to me is basically saying with the existing rules we have, there is a staff process with external support to evaluate those things and some issues will come to the Board. So there's oversight of what I would call, in business terms, essentially attend to process.

In parallel, and this is the nature of this community, in parallel we have a very vigorous discussion about improvements to the rules. And I think, Steve, you're partly asking what's the oversight on all these different suggestions that come continuously to improve the rules and how should that be managed. And if you look at the rules, there are three phases, I think. The first phase of the rules is the Applicant Guidebook which sets the rules by which people are applying for top-level name. The second set of rules is encapsulated in the new gTLD agreement that will be signed when applicants pass evaluation. And the third phase is the consensus policies that all registrars and registries of gTLDs must adhere to.

So defensive registrations kind of breaks into those probably three areas. There are calls to add stuff to the Applicant Guidebook to deal with that topic, there are calls to add things to the gTLD agreement to deal with that topic, and there are calls to create new consensus policy. And I just think we need to separate those really three sets of rules and then what's the right forum to deal with each of those sets of rules.

MARILYN CADE:

And I think that's an excellent question. I will -- our next full topic is actually the discussion about restructuring. I see Alan back there, and I think the question that Bruce has asked is a question that if we can take that up more deeply when we talk about the -- because really, the question of what implications does the new gTLD program, the changes it is bringing -- you know, we've reached a stage in ICANN where we are -- we're doing really important work and that means the work is really hard and we probably identified some limitations in our Policy Development process, whether it's resources or -- or structures or processes out of the gTLD program in particular, Bruce, I would say. I don't know exactly the answer, but I think it's going to consume us in the discussion about what are the implications of this program and the fallout of this program in terms of the processes that we went through to get to the implementation.

Let me ask if Tony or Steve or anyone in the community wants to say anything else about the examples of the implications of the implementation on these constituencies. And then I'd like to move to the two short statements and then to the last topic. And I'm sorry. Kristina, I'm sorry. I did not see you. Please.

KRISTINA ROSETTE:

Next time I'll wear all green. I think just generally and I think I've said this before, I think this whole organization is going to change fundamentally. You know, current estimates -- and I have no information as to whether or not they're true -- but that upwards of 60% of all new gTLD applications are going to be dot brands. Are they going to participate in the IPC or are they going to participate in the

registry stakeholder group? Are they going to want to participate in a registry stakeholder group where the rules on voting were determined two years ago -- four years ago rather, and then in most cases dot brands will have very low vote. Are they going to be willing to travel around the world for basically ten days at a time three times a year? I don't know.

But what I can tell you and what I thought was very troubling was Ray Plzak's view that the GNSO should now -- when we are so close to these entities coming into the process the first time --

(Dropped audio )

But before they actually do, that now is the right time to change all of those rules. I could not disagree more. And I think, frankly, this organization is going to have enough issues to deal with without being accused of manipulating the membership rules shortly before the membership changes entirely.

MARILYN CADE:

Let me do an interpretation for just a minute. We are going -- Kristina. Yes. So I'm going to offer a response to that because I do want to move us into that fuller topic and I think you are -- I didn't -- I didn't hear Ray say that, although I was in the same room, so I think we'll have an opportunity to talk about that.

I think, though, Kristina is pointing something out that is really important for all of us, for you as the Board to understand. And we do

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not mean to be a filter on this, but I -- we kind of feel like you have no other access, you have no other scouts other than us because we are in the forefront. We are out there talking to businesses, interfacing with businesses and associations, and we're very aware of the lack of full understanding, and yet we're able to convey information as Kristina has just conveyed which is perhaps very different from what you may be expecting.

So I think if we can wrap up this particular topic and move Kristina's comment into the next discussion about what are the implications -- I'm going to skip the two statements for now. What are implications of this massive restructuring on our constituency, on our -- on the CSG, individual constituencies, on the stakeholder group, on the house, and on ICANN overall.

I look at it perhaps differently than my other co-chairs do in that I think that Kristina is right. The nature of the participants and the interested parties is going to look very, very different but not just because of new gTLDs, because of IDNs and because of the strengthening and deepening of the participation of people and organizations from developing countries and more governments participating.

So I personally think we have to think about this in a broader way than just thinking that it's driven by the new gTLD program.

And you may have been thinking that when you gave us the question, but I'm reformulating the question from my point of view. I thought what Ray and Thomas said was be aware in the background that there is

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a board-mandated review that has a particular schedule, and that is what I thought Ray had said. But I might ask Ray before we open up this for further discussion.

RAY PLZAK:

Thank you, Marilyn. Yes. And it is an important topic because, as you noted, things will change in the future and it is not only going to change because of the new gTLD program. And so it's going to require some open-minded thinking in areas and looking at things that may have to structurally change. So we should have an open mind to them because the current methods and ways and governance of doing things may not work in the future. So the remarks were intended to start the conversations, and I can see that I have.

TONY HOLMES:

Certainly I cannot speak for the ISP constituency at this stage because this is an issue that we have talked about a little bit in the corridor but we haven't talked about as a constituency.

But the one thing that's clear is that we certainly recognize the points that have been made and the impact is going to be pretty significant, not just on our constituency but on all of the other groupings that Marilyn referred to, right the way through ICANN itself.

And I think recognition of that, it's right -- we certainly will have some discussion on this now whilst we're here, and the important thing for us is thinking about how our input into the broader discussion is actually facilitated. We very much want to be part of that. And involvement at

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an early stage I think will help us initiate some of the things that need to be considered but take that in the broader context. And we are certainly committed to do that.

MARILYN CADE: I wanted to go back to Kristina in case she wanted to say anything further because I think you introduced some additional information, Kristina.

KRISTINA ROSETTE: No. Obviously, I can't purport to tell you how many brand applications there are going to be and whether they're going to go through or what's going to happen. But I think we all need to understand that the organization is going to change. You make an absolutely brilliant point in terms of the scope of the change.

And I guess my general view is we need to be thinking about it, but I also think that we also need to recognize that there could be some really significant disadvantages to trying to make any changes now before those new ICANN participants are actually here as opposed to waiting until they've arrived.

MARILYN CADE: I'm seeing actually Ray is nodding his head, so I think he's agreeing with you that there's more to talk about.

RAY PLZAK: (Speaker off microphone).



MARILYN CADE:

Yes. I know we have J. Scott who wants to say something. I wanted actually to ask Ayesha Hassan to think about making a comment after J. Scott speaks about from her experience of trying to interact with companies from the ICC perspective, of trying to reach companies, and educate them and about how long it takes for things like this to percolate.

I know you are seated beside the chair of Camtic here who is the chair of the chambers here. And the two of you may want to make a comment about difficulties and challenges to Kristina's point about there will be a time when business becomes more aware, but we may make decisions before they get here.

J. Scott.

J. SCOTT EVANS:

That's exactly what I was going to get to the point of. I have been talking about this since June of 2008 to every conference I can go to, everywhere I can go to, to businesses. And I think the people in this room, the people in this conference are always in this bubble. And we talk about it all the time and e-mail about it all the time. But the marketing departments are trying to sell the goods and services for whatever company they have, and that's all they are worried about, is what their quarterly numbers are going to be because that affects their bonuses.

And I think some of the push you are hearing now from outside of active participants in the ICANN bubble, Bertrand, is because marketing professionals are waking up and they're not happy. It is not because we weren't out there trying to tell them it was coming.

And I think it is fundamentally going to change because if -- in my estimation, if Kristina is right and you have a huge amount of brand owners coming in owning dot brands, they are coming in angry about the system and the way they've been treated by the system.

So you've got not just new participants, you've got new participants showing up at the door with pitchforks and lit torches.

I'm not saying that's correct. I'm just saying when you look at what's -- your question is where is this coming from? Why is this coming from? I think because people are waking up finally and they realize this is really happening. I've talked to -- they've called me, companies outside -- I'm not even a lawyer outside anymore -- who last week were saying, "Should we file a new gTLD application? We've heard about this program."

So I'm just saying they are just waking up, and I think it is going to be a very fundamental change.

MARILYN CADE:

(off microphone) -- something and then I will go to Tony. I didn't know if Alex wanted to say anything, and I have Bertrand.

AYESHA HASSAN:

Thank you. To build on what J. Scott has said from an ICC perspective, we do a lot and have been doing a lot over the years to raise awareness about what ICANN is about.

We do extensive briefing notes and raise this in various conferences and events and meetings throughout the ICC network.

However, what we are seeing right now is with the launch of the new gTLD program, there are companies and associations that are getting in touch with ICC.

And just to be very clear about my role here given everyone's knowledge of my partner being on the ICANN board, I do not take those calls and they go to my colleague who runs the IP commission who also follows ICANN from various angles.

That said, it is very difficult. The questions that come are often so uninformed because they just are brand new looking at the situation, panicked in some situations. And I think that over the course of time, through the various efforts of many different associations and organizations and ICANN itself, people can be brought into the fold.

That said, as Marilyn alluded, sometimes we take on a few key business people from a region or try to shepherd them through this. And it really takes a cycle of at least three to five meetings for somebody to be comfortable, depending upon the experience base they're coming from.

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So it is a collective issue, and it is something that I think goes to what Kristina and Marilyn have said, is that we are watching some of the impact right now but we're not actually sure how all of that's going to pan out.

So there will be new business actors coming into the fold, and then how we help them to be constructive and voice their concerns or views will be part of the challenge. Thanks.

MARILYN CADE:

Tony had a comment on this. I didn't know, Alex, did you want to comment? Okay.

Tony had a comment, and then Bertrand had a comment, and then I think we should turn to Rod to respond to the question about compliance that we received earlier.

If that's okay, Steve? Is that okay?

STEVE CROCKER:

Yes, indeed.

TONY HOLMES:

Okay, thanks, Marilyn. I just wanted to say I don't think we should be scared of looking at this now because -- I wasn't in the room when Ray initially raised this. But I wouldn't think what Ray was proposing was something that was going to happen immediately. And what we're

looking at here is a change that impacts the whole structure of ICANN, I believe, not just part of it.

And if we look back, our track record at GNSO reform isn't that good. It took us a hell of a time to actually work through the restructuring requirements that are really just coming into place now.

And based on that, I think the earlier we start having this discussion the better but with the intent that we don't have to do everything within a really fast, set time frame when we're all incredibly busy doing other things which are just as important, if not more important, for this organization.

MARILYN CADE:

Alex, I think you did want to make a comment.

ALEX MOORE:

Yes, just a comment, Marilyn. I guess there is a lack of information out there, and the gap between the information and knowledge that ICANN, you know -- regular participants have compared to outside of this bubble that has been mentioned have, it's quite significant and it's growing. And that's something that I think should be addressed somehow.

I guess, you know, local associations, like my association or business associations, can contribute here. And my suggestion here is if there is a way to involve these local entities more directly into a program, to improve somehow information and participation in probably much

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more -- much less potential activities and see how all these technologies and all these resources we have can leverage on that. Thank you.

MARILYN CADE:

Thank you very much. And for those of you who have not met him face to face, Alex Moore will be joining us. He is the chair of the Chambers of the ICTs here in Costa Rica. He will be joining us at the board reception this evening, so you will have a chance to talk to him and several of his board members. Thank you, Alex.

And I think we wanted to go to Rod and respond to Ron Andruff's question.

Rod?

ROD BECKSTROM:

Thank you very much, Marilyn. Thank you, Ron, for the question about contractual compliance. I believe your question was: Are we three headcount under and how are we managing the situation?

Let me just update you on three things I have done as the chief executive officer in the area of compliance in the last year, year and a half that have fundamentally changed that program and then specifically answer the headcount question.

The first thing I did is that when I came here, compliance was being managed alongside stakeholder relations. So in the same group that

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registries and registrar relationships were being managed, then right alongside under the same senior VP, compliance was being managed.

And it struck me very clearly that that was not a proper separation of duties in terms of heading up into the same or reporting into the same executive.

So I moved compliance out of stakeholder relations and I moved it into the legal department, also to give it more teeth and more strength and because J.J. -- John Jeffrey has been a very strong executive manager on the team.

The steps John then took is the first thing was to hire Maguy Serad as a director of compliance. Maguy comes to us with years of major compliance of management in large organizations with large teams. So she is prepared to scale that team up very significantly.

The next point is we're developing systems. Under Maguy's leadership and with the team, we're developing new software systems and online systems to handle the many thousands of compliance complaints we receive, many of them computer generated by sophisticated parties in our industry.

And so we've changed the leadership. We've changed reporting lines. We've changed the systems. I've heard some feedback in the community that some people don't feel compliance should report into legal. That is a design choice made in many organizations and often

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viewed as a very good design choice for compliance. But that's not an essential choice. And that could be done differently or changed.

And I would seek the community's feedback on that. If there is any concern, it would be very good to hear that and to hear the suggestions for alternative structures.

In my own view as CEO, I believe it is the right place for it to be. (Dropped audio). The general counsel also manages compliance. It is a separate function within the organization.

The last point to headcount, if you go on to the icann.org and do a search on "contractual compliance newsletter," you will get the history of updates. And we just posted one in March. And it details that since our last meeting in Dakar, we've added four headcount in compliance.

Specifically, we've filled the roles in performance measurement and reporting, risk and audit management, and compliance analyst and manager. But four positions in total.

There are still two positions posted on the ICANN careers page. I believe those are already filled. But in talking to the hiring manager online here, he said they still want more applicants for the future -- for future hiring because clearly we will be growing compliance with the new gTLD program.

The other question I put to the community is we discussed in-depth the compliance issues and the model for growing compliance with the new



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gTLD program. There will be an additional investment. But I think if it's something the business constituency and others have a strong interest in, certainly could be opened up again for discussion, particularly at this time as we're about to move into financial planning -- operational and financial plan or are in that phase for the next fiscal year.

We've made real progress. I think the team is stronger than other. When John Jeffrey inherited the team, it had three staff members. Today it has 12. We've quadrupled the size of the compliance team since John Jeffrey took over.

And we hope that parties here will support further growth and investment in that area in the future and express that voice in our strategic plan and in support of the operating plan and budget to do that. Thank you.

MARILYN CADE:

I said earlier that -- Sorry. We're going to quickly make the short statements and then turn to -- back to Steve Crocker for a wrapup.

STEVE METALITZ:

I just wanted to say the board adopted in 2009 a resolution on document preparation for meetings. And it basically said any issue that's going to be discussed at an international meeting has to be distributed three weeks in advance so that people could have a chance to discuss it before they come to the meeting. And that applied as well to agendas.

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There's been a high level of compliance with that, since that resolution was adopted, until now. And for this meeting, for the first time in several years, the agenda was not available till five or six business days before the meeting.

We were told, of course, that the board had ordered that amendments to the Registrar Accreditation Agreement be available for discussion at this meeting. And we couldn't even get an answer about whether that would happen. It was only much later we were told, no, we are not going to have those. We will have a status report.

Frankly, as someone who tries to encourage to come to meetings, they are eager to come and talk about the Registrar Accreditation Agreement. They are not going to get on a plane and spend a week here to get a status report.

I think there was a serious breakdown of compliance with what I see in retrospect is a very important part of the accountability and transparency menu, which was giving people time in advance to actually look at what they are going to be discussing rather than have a data dump.

I would encourage the board to look very carefully at this. And we would like to hear who will be held accountable for this failure. Thank you.

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ROD BECKSTROM: Thank you for bringing that to my awareness, Steve. I was not aware of that. I will look into it and will report back in writing. Thanks.

MARILYN CADE: So our other statement is very short. It's somewhat a repeat, but we really urge you to take us and our invitation very seriously. We are very aware of the external environment that ICANN must succeed in, and we are very aware of the risk and threats that exist in that external environment and that are growing.

There was an excellent workshop on Monday. I was pleased to see a number of the board members there.

There are real experts in these three constituencies and in their extended contacts that are actively engaged and are highly influential in those environments and bring a depth of knowledge that cannot exist except in a collective manner.

We would ask you to look seriously at how you can use us and work more closely with us.

Steve.

STEVE CROCKER: Thank you very much. As you said at the beginning, there are three groups here acting as one. That is a striking lesson to us, and I would like to see more of that across all of ICANN.

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Clearly, there is some open issues here that people feel strongly about. On this last one of compliance, there is much more to be said. But there's a high degree of attention on staffing and metrics and so forth. And we look forward -- there is action already internally, and we look forward to more reporting and more feedback on that as well as all of these other topics.

It would be better if we were all facing each other instead of in classroom style here. But, nonetheless, I think it has been a very vigorous interaction. And I thank you all and thank you on behalf of the ICANN board.

And Marilyn is pointing out that there is drinks tonight, a reception. And while we're at it, let's repeat what the details are. Where and when? And what's going to be served?

MARILYN CADE:

I know when but I can't tell you I know where. 7:00, 7:00 to 8:30. So you'll have -- And it will be the full membership of all three constituencies. And I think there are 17 special guests that Alex is bringing from the Costa Rican business community. So that's a rare opportunity and treat for all of us. And it is okay if you ignore us to talk to them.

In the meantime, Steve is looking for the location.

STEVE METALITZ:

I think it is in --

STEVE CROCKER: Yeah, this is an example of what we were just talking about. It says "Cocktails, business stakeholder group, TBD."

STEVE METALITZ: Mine says the Bromelias room.

STEVE CROCKER: Good. And I have it on here, as Marilyn said, from 7:00 to 8:30. Judith?

JUDITH VAZQUEZ: "Fortune" magazine defines "innovation" as the ability to do the impossible. We are going to do the impossible, and your constituency is going to make sure we don't fail. Thank you.

STEVE CROCKER: Thank you, everybody.

[ Applause ]