
LONDON – ATLAS II Thematic Group 2: The Globalization of ICANN - Session 1
Saturday, June 21, 2014 – 15:00 to 18:00
ICANN – London, England

UNIDENTIFIED MALE: June 21, 2014, 15:00. ATLAS II Thematic Group 2: The Globalization of ICANN.

CHERYL LANGDON-ORR: Power boards are of a premium, are they? Okay, right.

ARIEL LIANG: [inaudible]

CHERYL LANGDON-ORR: Terrific, okay.

UNIDENTIFIED MALE: [inaudible] include me because I wasn't meant to be here at all.

CHERYL LANGDON-ORR: So we have 11 out of 17 people [meeting me] here. Right-o. Okay, let's get this show on the road, ladies and gentlemen. I assume if I project at this point with my microphone on you can all hear me clearly. I suspect I could leave my microphone on and go just about anywhere in the room and you can hear me clearly, and I may very well do that.

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

I have the great pleasure of being a moderator, with my – I’m not sure why he got the role assistant moderator. I prefer to call him my co-moderator, Seth Reiss. Seth has just stepped out to get his sign, which gives an indication of who your name is.

If you’re part of the ATLAS world and you’re part of our program, you should have your sign with you. Please put your sign in front of you. We will use the normal convention in the slightly more formal part of today’s proceedings if you want to say something.

If you’re saying to Michele, “I want to know where you get those t-shirts,” you put that up like that and that means, “I want to speak.” Okay? Put your signs out so I can see them. If you want to know where Michele gets his t-shirts, he’ll tell you about that later.

The plan that we had run today, and I’m going to hope that each of you have had the time to read what we sent to the list. If you haven’t, we’ll wing it and that’s okay, as well.

We have a couple of Subject Matter Experts who are with us today. We need to value their time today. Therefore, it’ll be a little bit more formal today than it will be later on in our session and for tomorrow. We’re going to start off somewhat more formally and somewhat more traditionally. Then, I’ll get that eroded and out of the way as soon as humanly possible.

Our Subject Matter Experts are Rinalia Abdul Rahim, and we are very, very lucky to get her out of the boardroom and to deal with what is probably a very important topic of the Globalization of ICANN. But she’s

got, of course, a very rare and particular into what's going on and what the risks and rewards are going to be.

Our second primary Subject Matter Expert is Roberto Gaetano, who apart from playing an amazing saxophone – see, I can moderate myself when I'm being recorded for the public record – who plays an amazing saxophone, has also served on the Board and is indeed has served as a deputy Chair, if I remember correctly, but more importantly came out of the At-Large world. He served on the very original ALAC. He was appointed to right back at the beginning. He's got that history that is rare, indeed.

We are privileged, if not blessed, to have our two primary Subject Matter Experts. We've dragged in, kicking and screaming, but I'll buy him a beer later and it'll be all right, Michele Neylon because there is a particular question that we know he has vital views to share. We didn't really expect him until 4:00, but we're just such fascinating people to be with he's come early. Thank you very much, Michele. We're going to pick his brains clear.

Now, Silvia's desperately trying to get my attention. I will now pause and say what on Earth do you want to say?

SILVIA VIVANCO:

Sorry. I'm supposed to just remind you that this is transcribed, recorded, and there may be photos taken for our records. It's a public meeting, as you all know. To say to all of you good afternoon and to all the remote participants, good morning, good afternoon, or good evening to the ATLAS II Thematic Group 2: Globalization of ICANN.

CHERYL LANGDON-ORR: Thank you, Silvia. You will learn very quickly, I don't operate with scripts. I ad lib. If you've got a script piece to put in, you need to tell me before we start the meeting. As in when I walked in the door, you should have said, "I have a scripted piece," and Cheryl would have asked you to do that at the beginning.

I think everything, and you need to get used to that if you're new to these sorts of meetings or if you're not actually part of the At-Large community, when it gets to be from a regional At-Large Organization meeting on, everything you say and do is recorded, is transcribed, will probably be put into three languages, and will be kept forever and is searchable. That's the norm.

We will have photographers, however. If you do not wish to be photographed, that's fine. We'll pause and you can leave. I, on the other hand? Any camera, I will be in front of the thing, "Me, me, take a photo of me."

What I'd like to also say and because these conversations are recorded and transcribed, you'll notice that even though I'm Australian, I am speaking slightly slower than I probably would if I met you in the corridor. I am trying to articulate as clearly as I possibly can.

The other thing that we would like you to do because this is going to be a written record, as well, is when you get the microphone, even though I've said, "Over to you, Tijani," the first thing Tijani is likely to say is, "I am Tijani Ben Jemaa." Okay? Because then that means that those people who are listening to the MP3 and are then typing up what we

say don't have to say "man," "woman," "man," "woman." They can say "Cheryl," "Tijani."

I have been talking at these people for so long that even if I don't admit who I am, they seem to identify my voice. But that's another story altogether.

The person I have yet to introduce to you is Carlton Samuels. Carlton is our reporter for the two days, another veteran and someone who has worked with many of you in this room quite closely. We want to make sure you understand, whilst these people are holding administrative roles, they are also full participants. It's not as if they need to be silent. They should be actively participating with you and your discussions.

May I take it that you have all read the abstract that has been on the Wiki page? Unless you're new in the room. The Wiki, what we have here in front of us. We'll give you plenty of time, if you're bored listening to me, to read what we're talking about today.

We are going to have a slightly different way of doing things than perhaps some of the other groups will do. Like the other groups, we have five questions that we will be looking at. We will be talking about those questions in a moment, when I hand over to the Subject Matter Experts.

What we want to deliver at the end of all of this is an informed opinion on where we agree or disagree on the subjects of each of the questions. We're not necessarily going to build consensus. If you have 100, if you have full consensus, fantastic. But it's okay if you don't. Because if we can report that there was diverging views on one of the questions and

we observed that there was regional difference in those diverging views, that is just as useful as trying to come to consensus.

We will be dealing with the questions tomorrow, and partly today if we've got time, one at a time. We will want to come and capture what our opinions are after our discussion on those questions one at a time. We'll be using some different techniques, which I will talk about when we get a little bit further into our agenda.

I've filibustered enough to let anyone who hasn't found their way here get here. I'm now going to hand over to our Subject Matter Experts, because I know Rinalia has some presentation material and Roberto also has some things he wants to share. Which of you two have decided to go first?

ROBERTO GAETANO: I think it's better if you start because you have also some material that you want to present. I'm just speaking orally, inventing on the spot.

RINALIA ABDUL RAHIM: Thank you, Roberto. Ariel, could we go to the document store, please? How many of you have seen the document store for this group? Anybody's seen it? You've seen it? Carlton, of course. Anybody else? You've of course seen it. Okay. That's okay; we'll just quickly run through it.

CHERYL LANGDON-ORR: Yeah.

RINALIA ABDUL RAHIM: I don't think it's too dense except for the official docs.

CHERYL LANGDON-ORR: Some of it's pretty dense.

RINALIA ABDUL RAHIM: We're not going to go through that specifically.

ARIEL LIANG: [I don't know where it's] posted. [inaudible]

RINALIA ABDUL RAHIM: Well, that's a picture from the Prague meeting. What year was that, 2013?

UNIDENTIFIED FEMALE: Yes.

RINALIA ABDUL RAHIM: Yes.

CHERYL LANGDON-ORR: I must apologize to anyone listening to this tape or remotely. We did ask, at the beginning, that everything was cued up and ready to go. We'll just recognize that handling different pieces of equipment

sometimes brings delays. Hopefully, Ariel will have the magic done very, very shortly. I can always sing.

ARIEL LIANG: We're working on that [inaudible].

CHERYL LANGDON-ORR: Okay. Under normal circumstances, prior planning prevents a piss-poor performance. Clearly, that's not the case because we've done the prior planning, but we don't seem to be performing terribly well.

TIJANI BEN JEMAA: Cheryl?

CHERYL LANGDON-ORR: Yes, go ahead, please, Tijani.

TIJANI BEN JEMAA: Thank you. While they are finding the document, I would like to say that those questions are to help the community to discuss the subject. Those questions are not restrictive. We can have other questions if the member of the group decide on. This is something to help us. We can add if we see that it is necessary. Thank you.

CHERYL LANGDON-ORR: Tijani, I respect what you say, and I'm going to respectfully disagree with you. We have set those. I understand, the questions are guidance. What we've got is a system that will hopefully allow a fairly natural and

flow of conversation. They are, yes, just the seeds from which we can grow our conversation. But I would, in fact, argue against adding in additional questions at this stage.

If by some amazing miracle by lunchtime tomorrow the team has gone through and feel they've justice to all of these questions, then I would be looking at new questions. But these questions have been in front of them for some time. These are the topics they should have been thinking about. If I come in with my little bandwagon and want to bring another question on the table, I'm not actually that comfortable with that.

I understand what you're saying, and you're being very democratic and very inclusive. But I'm running it, and I don't need to be either.

Are we ready, people?

RINALIA ABDUL RAHIM:

Yes. Sorry. You have five questions and for each question, there's some reference materials that we have prepared for you that's up on the Thematic Group document store. The first one is on globalization – are you sure this is the first slide? Yeah, okay.

Slide one is on diversity. This is based on a study done on ICANN's policy development process in, I think, 2012. It has some really interesting slides for your information. This first one is about Generic Name Supporting Organization – you heard from Jonathan Robinson this morning, who's chairing that – versus other multi-stakeholder process, so ICANN versus other entities in the Internet sphere. We have ICANN,

RIR is Regional Internet Registry, IETF is the Internet Engineering Task Force, and ITU is International Telecommunications Union.

You will see that there's some criteria, in terms of how open the processes are. You will see that ICANN is extremely open compared to all the other organizations based on the criteria of: participation open to all (without membership fee), participation open to all countries or territories, participation open to any level of expertise (formally or informally), participation for remote participants, issues can be suggested by anyone, working groups open memberships, consultation documents published, public comment exists, public comments, public meetings transcribed, all decision-making interactions recorded and transcribed. This is quite important for participation and inclusion. Next slide.

I don't know if you've seen this before, but this is the sequence of policy development process in ICANN. I would encourage that you look at it more deeply if you are interested in this topic. But we'll just skip to the next one. Next slide, please.

A typical working group size – and this is based on a sample working group – I think the highest is about 40 and the lowest is about 10. Small group to about 40, depends on management skill of Chairs. Next.

Working group participation by gender. You can see we need higher participation of women in working groups. Next.

Number of working groups joined by participants, so basically what you can see number six, there are six people who participate in – sorry, number of people less than 20 participating, 6. About 100 people

participate in one working group. There are a few people who are serious volunteers who participate in a lot of working groups and other just do one at any point in time. Next.

Working group participation by region, as you can see, North America dominates, followed by Europe and then the rest of the developing regions, a small percentage, in terms of participation. Next.

Number of participants from Asia-Pacific, Africa, and Latin American regions in working groups over time. That's just the number of participants you can see, and it seems to be going down. It's not very many. Keep going.

This is regional distribution of comments on policy development process issue reports. No input from Asia-Pacific, Latin America and the Caribbean, and Africa. Next.

Again, regional distribution of public comments on initial report on various policy development process. There's one, two, three, four, five, six, seven issues being posed. Again, no input from the developing regions. Next.

Reflection of public interest in ICANN accountability and policy development process. The majority of the respondents to this survey felt that there was a strong reflection of public interest in ICANN accountability. Strongly agree and agree. There's also people who strongly disagree. Keep going.

I'm going to skip this. It's basically various mechanisms to participate. It can be face-to-face or remote participation.

This is just basically a breakdown of interviewees by geographic region. There's more people providing input on this survey from the North American region but the rest of it is fairly balanced. Next.

Interviewees by stakeholder group. The largest group is the noncommercial users giving input. I think that's the end of it, right?

That's just a quick slide. Gives you a snapshot of what happens in policy development process based on the sample of issues the working groups dealt with. Can we go to the next slide, please?

Yes, Board diversity. What I want you to see in terms of Board diversity, and here, we don't have a breakdown in statistics. It's just a listing of Board members with their pictures. Some of them have dual citizenship but if you were to look into it, you will see that slightly more than half are from North America and Europe. The rest are split for the developing regions. It's not balanced. Can we go to the next slide?

Under SO/AC membership diversity. This is some information of the GNSO Council. The GNSO Council, if I'm not mistaken, Michele correct me, 23 people? More or less. Okay.

MICHELE NEYLON: Sounds right. Sounds right.

RINALIA ABDUL RAHIM: Twenty, yeah.

MICHELE NEYLON: I'm not an expert on that, sorry.

RINALIA ABDUL RAHIM: That's okay. But also, you will see that their regional affiliation is listed. Can you go also to the next page? Yeah. You will see, for example, registry stakeholder groups and you can see their representatives and their regional affiliation. If you do a total tally, a breakdown, again the dominance comes from the North American region and European region. The rest of the developing regions, very low, in particular from Africa, followed by Latin American and then Asia-Pacific, a little bit better. Next.

I think that's the end of it, right?

UNIDENTIFIED FEMALE: No, one more.

RINALIA ABDUL RAHIM: One more? No, keep going. This is just a – this is the ALAC, which is perfectly balanced, in terms of regional representation.

CHERYL LANGDON-ORR: [This is] perfect.

RINALIA ABDUL RAHIM: Yes, this is actually perfect. That's why I say the At-Large is beautifully diverse and representative globally for ICANN and just wanted you to appreciate that, compared to the other groups within ICANN itself.

CHERYL LANGDON-ORR: Not that we're biased.

RINALIA ABDUL RAHIM: Yes. I think this is the last slide, right? We don't have information on other advisory groups. For example, the SSAC, their membership is based on technical skills. It would be unfair to say that we look at regional balance. It's more complicated than that. I think, Cheryl, do you know about the regional balance in ccNSO?

CHERYL LANGDON-ORR: Indeed, I do. Yes, the regional balance in the ccNSO Council is very specific and, indeed, very much like the ALAC. It is balanced, but they can't operate in a way that they can make a decision at a Council meeting unless at least one member of each of their regions is present. Yes, the Council is regionally balanced. That's a maximum of two representatives from each region.

RINALIA ABDUL RAHIM: Thank you, Cheryl. Let's go to the next set. Those are the set of information, just to give you a picture in your mind about the issue of inclusion and diversity. Can we go back to document store?

Under equal global multi-stakeholder model, let's see this slide. Are you familiar? You might have seen this slide before. Have you seen this slide before? Yes.

UNIDENTIFIED MALE: Yes.

RINALIA ABDUL RAHIM: I don't need to go through that. Yeah, so let's go to the next one. You are familiar with the ICANN multi-stakeholder model. There are various multi-stakeholder entities within the ICANN multi-stakeholder groups. Let's go to the next set.

Okay. Here is, under constitutional and legal mechanisms – and this is why Michele is here – we post, it's a big document, the ICANN bylaws. If you are going to be engaging in ICANN, it would be important to have an idea of what bylaws contain. But that's basically the rules that bind the operations of the organization, right?

The next document that's included here is the RAA, the Registrar Accreditation Agreement, specifically for the year 2013 onwards.

The reason that the documents are here is because we post a question on: is the ICANN bylaws drafted with the global perspective? What do we do when we have different jurisdictions and we have agreements in force? How do we deal with the complexities when there is conflict? Michele's invited to give a perspective based on his experience on this particular topic, right? Let's go to the next set of materials.

UNIDENTIFIED MALE: Are we allowed to use [inaudible]?

CHERYL LANGDON-ORR: Absolutely, as long as you want them in the public record.

RINALIA ABDUL RAHIM: Under accountability, question number four, these are the final recommendations of the – skip this, please. You have an expert here who can talk about it off the top of his head. Under accountability, this is, again, another very, very thick document. It's the final report of one of the review teams.

You know, ICANN has mandatory review teams to look at various areas. This one is on accountability and transparency. It's very important work. We take it very, very seriously.

They've come up with a set of recommendations that I personally am very, very pleased with because they really look at the needs of end user advocates, the needs of – the disadvantaged are not very well represented in the ICANN system. That's why I think it's very important for this group to have an understanding about the recommendations in this document. Can we go to the next set?

Okay. Under operational matters, TG2, there are three sets of information. ICANN presence worldwide, public comment process, and the languages that ICANN operates in. Next.

These are the locations of ICANN offices, hubs, and engagement offices worldwide. You have Los Angeles; Istanbul; Singapore; Brussels; Washington, D.C.; Geneva; Beijing; Montevideo; and then remote workers that's operating in different parts of the world. You also have the headcount as of a particular date at 286.

In the location of the hub, ICANN is trying to cover the whole globe. With L.A. in North America, Istanbul in between Europe and Asia, and

then Singapore, that's meant to cover the entire Asia-Pacific region – which I think is impossible, but they try.

Then, you have the Brussels office. The Washington, DC, because of the association with the U.S. government previously. Geneva, because of all the international organizations and the UN missions there. Beijing, because China is such a tremendous force that you need to have an office there. Montevideo because Latin America is an important region for us. That's an idea of ICANN's presence around the world. Next.

In terms of the public comment process – yes, keep going. This slide is just to give you an idea of how many issues come up for public comment in a year.

Do we have an extra chair for our friend who just walked in? How about next to Tijani?

What this slide is meant to tell you is that there is a high demand for input from stakeholders. That's why we need a lot of volunteer support. Next slide.

Effectiveness of the public comment period and its meaningfulness to the PDP final result. This is just to give you a sense of how people feel about the effectiveness of the public comment period. The period is now at 21 days, with a reply phase. It's being changed in the next 6 months as a test of 40 days, to see whether that gives difference – all the stakeholder groups sufficient time to provide input on the various issues that's being put out. Next.

Accountability and transparency of the policy development process public comment process. Strongly agree, agree, quite high. Don't feel

any which way about it, so, 15%. The rest just agree or strongly agree. I would say it leans more towards there is agreement that the public comment process is accountable and transparent. Next.

This is just to breakdown for you. The current process is 21 days plus a minimum reply period of another 21 days. Can we go to the next one, which is the change that is impending?

These are the improvements that will happen, which essentially means that you have 40 days to provide comments. Now, they're going to test that and after six months, they're going to evaluate that and see whether that works better for stakeholder groups. I think that's the last slide, right? Oh, languages is the last one. Keep going.

I think we have all the UN languages plus English.

CHERYL LANGDON-ORR: And Portuguese.

RINALIA ABDUL RAHIM: And Portuguese extra. Okay. I think they're all trying to improve on that. Conference interpretation provided for all the sessions of the At-Large, etc., etc. Next. That's the end of it. Okay, over to you, Roberto.

ROBERTO GAETANO: Thank you. I would like to just say a few words on the different questions. But I would like to make a preliminary point. I think that when we are talking, for instance, about geographic distribution and so on, those are for sure elements that indicate the globalization. But I

think that there are also some more subtle problems that hinder the participation and that make ICANN not yet fully global.

I think that this – of course, we will be discussing about geographical distribution and all these things. But I think that the problem of globalization is not really just that. But is, generally speaking, I would say that an organization can be global when equal opportunities for participation and for the decision making are given to all the stakeholders, regardless their geographical location, their gender, or any whatever difference they have.

Recently, Fadi has brought up this concept of the going beyond the multi-stakeholder model and say the equal multi-stakeholder model.

CHERYL LANGDON-ORR: Yes, [multi-equal], yes.

ROBERTO GAETANO: What is this? This is the idea that is not sufficient to have representation of all the stakeholders in ICANN. But this representation has to carry fair weight. It's not sufficient to have one person from a certain specific stakeholder group to say, "Okay, we have covered that."

This is something that we have tried to spell out a little bit in more detail in the questions that are part of the documentation that is on the website. These question cover basically the five topics there except the ICANN globalization survey, the sixth topic.

I'm just fleshing out those questions and the points that we need to keep in mind if we want to investigate a little bit more in-depth the issue of globalization.

First, the obvious one, inclusion and diversity. This is the barrier to participation. Are there any barriers to participation of different groups? Those are language. Of course, we have to acknowledge the ICANN has been doing a big effort in ensuring translation. That is probably not sufficient, but anyway, the question is: Is this sufficient? If not, how can we address this?

I think that on this and, for instance, on translation, I would welcome to see these translation services more used in the sense that those of us who are non-native English speaker and who have the opportunity to speak in a language that is provided translation for, they "must" speak in their own language just to push this issue forward. Because otherwise if the translations is not used, and I think that the Latin Americans are very good at that because they always speak in Spanish.

Then, the second point is the equal global multi-stakeholder model. I have touched a bit on that. Basically, we need to have mechanism that ensure the participation of every stakeholder in an equal way to the policy development process.

That, of course, we have seen that. For instance, ALAC as a whole has participation only from some regions and not from others. I think that this is something before complaining about what ICANN is, I think that we can also do something ourselves in bringing forward, to the policy development process, more people, more participation to the working group.

The third thing is constitutional and legal mechanisms. Are the bylaws written in a way? Of course, ICANN was incorporated as a California corporation. Does this has a repercussion? Michele is going to talk about some issues, specifically about the contracts that ICANN is enforcing for registries and registrars and that sometimes they are in contrast with local laws in some country. But I don't want to...

CHERYL LANGDON-ORR: Preempt him.

ROBERTO GAETANO: Preempt him, and I'm sure that Michele is going to say that in a much more colorful way than I would address.

The other issue is accountability. I think that this is a crucial matter for globalization. I personally believe, and I'm making a parentheses here, I personally believe that accountability, if ICANN is the expression of the global multi-stakeholder community, the issue of accountability, the question on to whom ICANN has to be accountable to is obviously legitimacy and accountability come from the stakeholders. It has to be accountable to the global multi-stakeholder community.

But the question is: Are these accountability mechanisms globally fair? I think that there are two issues here. The global stakeholder groups, they don't have the same power to control ICANN. Secondly, for culturally, accountability might mean different things in different parts of the world. I think that we have to be very aware of this. The question is: When we establish accountability mechanism, are those fair? If they are not, what can we do to make it better?

Last but not least, operational matters. I'm talking about the footprint of ICANN. We have seen that ICANN has offices all over the world. Again, the question is: Is this footprint fair to all parts of the world or not?

Basically, the question is one stakeholder – let's pick a user, because we are in ALAC. A user that has a question to raise to ICANN, has this user the same opportunity to raise the question to ICANN wherever he or she is in the world or whoever that person is, regardless to different parameters? Yes or no? If no, what can we do to address these issues?

In short, I would be very glad if at the end of these two days, we can go and scratch a little bit underneath the surface of these problems and we don't come up with something that just says, "Okay, geographical distribution is not sufficient."

But if we go a little bit in-depth so that also we can give indications to ICANN that in the final document we can come up with a blueprint of a proposal and we can say to ICANN, "In order to improve globalization, these are the directions. Those are the things that we can do. These are the priorities that we have to address." That's basically it.

CHERYL LANGDON-ORR:

Thank you. I was playing with my camera so I could send a video for tweeting, because we've got to do our social networking, as well. Is there anyone here who objects to me sending their image out into the great, wonderful world of the interwebby thingies? Good. None of you do. Excellent.

I'd like to see if Michele can jump in and bring, perhaps, a little depth and color into one of the particular questions we have in front of us. Michele, this group is mixed in its experiences. If you would be so kind as to avoid using our letters, our ABC/XYZs and go for the full language, that would be appreciated.

MICHELE NEYLON:

Thanks, Cheryl. I know some of you. Others, I have no idea who you are. I'm going to assume that, as Cheryl says, you don't know everything, so I'll try to explain the background to all this.

I am the CEO and founder of Blacknight, which is a registrar and hosting provider based in Ireland. Ireland is a member of the European Union. Laws in Ireland, they have to be either Irish law or something which is compatible with European law at a very, very simple level.

A couple of years ago, ICANN – well, just to explain I suppose, all ICANN accredited registrars have a contract with ICANN. It's the Registrar Accreditation Agreement. Essentially, the Registrar Accreditation Agreement is made up of two things. One is the formal contract between the registrar, which is a corporate entity of some kind, and ICANN the corporate body as opposed to ICANN the community. They're two separate things. Don't confuse them, please.

CHERYL LANGDON-ORR:

Yep.

MICHELE NEYLON: The RAA, as it's called, also includes what is called consensus policy. Consensus policy is what comes out of all the PDPs, the working groups, and all that stuff. What comes out the far end of policies like this is a mutually binding on all registrars all at one go once we've agreed on when something is implemented. Cheryl and other people can probably talk to you about the operational impact of these things and how there are certain delays, but I won't go down that route.

Since ICANN's formation, there have been iterations of the contract. There was the first one, which was the Registrar Accreditation Agreement version one, 2001. That was superseded by another version, which was released and went into operation in 2009. That has now been superseded by the 2013 contract.

CHERYL LANGDON-ORR: Just [inaudible] where you are. Just step in.

MICHELE NEYLON: Sit in. Sit down.

CHERYL LANGDON-ORR: Just right there. [inaudible], just right there. Come on. Oh, you're doing photos?

UNIDENTIFIED MALE: [inaudible] camera.

CHERYL LANGDON-ORR: Oh, that's fine. If it's a camera, you can stand up and do what you like. That's all right.

MICHELE NEYLON: Just also to understand as well that a registrar, which is a company, will sign one of these contracts. The contract has a validity of a certain number of years. Until that contract expires, or until all those contracts expire with the companies who have them, they don't automatically get replaced.

Now, when the 2013 contract negotiations started, a lot of the push for it was coming from law enforcement and governments. In ICANN speak, that would be the GAC. If you're lucky, you might get one of those t-shirts saying, "Mind the GAC," which is a nice play on words.

CHERYL LANGDON-ORR: Especially for London.

MICHELE NEYLON: Especially for London, exactly. Yes. I have one of those, somewhere. I forgot to bring it for this meeting. Damn it. Anyway.

The law enforcement and governments want all sorts of things. There's a little bit of a problem here because in many jurisdictions, you have data privacy law. But the problem, of course, is that the law enforcement guys have an awful habit of not talking to law enforcement officials.

They would go, “Oh, no, no, they said it was okay.” If you push them on it, who is they? “Oh, our lawyers.” Ah, right. Okay, thanks. Did you speak to your data protection officials? “No. No, actually, we didn’t.” Okay. “But our lawyers said it was okay, so obviously that’s fine.”

As the 2013 contract negotiations proceeded, it became very evident to the registrars involved in the talks and negotiations that ICANN – the body corporate – being pushed by law enforcement and government, wanted registrars to do two things: collect huge amounts of information and, more importantly, retain huge amounts of information.

Now, I don’t know how many of you here are familiar with European data privacy laws. They are in some ways the ones which a lot of other countries and jurisdictions use as the starting point for their own. They are often referred to as a standard, as it were.

At a very, very simple level, European data privacy rules say that you collect as little information as is required to provide the service. That product, service, whatever that is. You hold onto the data for essentially the shortest amount of time possible to provide the service or the product. I mean, that’s a gross simplification. I’m sure there are people in the room who might want to go into that further, but that’s what it basically comes down to.

ICANN was told repeatedly by European and other registrars that what was being pushed into this contract was completely and utterly incompatible with European law. It was not going to work. “Oh, no, it’ll be grand.” No, it won’t be grand. It’s a problem. “Ah, you’ll be fine.” No, no, it won’t be fine. This is going to be a problem.

ICANN came up – ICANN, the corporation – came up with this wonderful process. I know the transcript doesn't catch that, but one should add for the transcript purposes, "Said with a sarcastic tone," just in case we're not clear. Okay? Just so we're clear. The "process" – please put that in large, inverted quotes – allowing – now, I mean, you have to think about this logically.

For us as an Irish company, I have to go to an American corporation – and this is just so completely screwed up it's not even vaguely amusing – and ask the American corporation, "Please, sir, can I comply with Irish law, as an Irish company, if you don't mind too much? I mean, do you mind if I have a contract which actually won't put me in direct breach of Irish law?" I mean, the fact that you even have to ask that question leaves you scratching your head, getting very confused.

You can imagine the fun and games that we had trying to explain this to our legal counsel. The legal counsel's going, "They want you to do what?" And I've got to go, "Yes. They need us to do this?" "What's that mean?" You explain it to them using short sentences, small, simple words.

Don't forget, they're billing you for this, by the way. Lawyers bill by the hour, or fraction of an hour. If they're any good, the figure per hour is going to be three, four, or five figures. If it's below three figures, they're probably not very good. You explain this to them, and they get confused. Eventually, they kind of understand. It's all a bit weird.

We started that process – I hate using the word "process." I can think of other words, but I won't say it because it will go into the transcript and I don't want to go down in history as the Irish registrar who happens to

be Chair of the Registrar Stakeholder Group who used expletives that were so strong that the translators couldn't even translate them.

We started that process back in September or October of 2013. It is now June of 2014. My company was granted its waiver – gee, thanks, ICANN, you're so sweet – about, oh, four days ago? Yeah. I'm really happy about. I mean, so delighted. Thank you, ICANN. I'm no longer in breach of Irish law. How sweet of you.

It is a real issue. It is a real issue.

CHERYL LANGDON-ORR: [inaudible] stop joking about [inaudible].

MICHELE NEYLON: I mean, I'll joke about it and I'll laugh about it, because if I don't laugh, I'll probably cry or strangle somebody. It is a real issue because the way ICANN has its contracts both for registrars and registries tends to ignore the fact that not all jurisdictions are U.S., or California specifically.

There's a lot of interesting issues here. I mean as a registrar, we get sent court orders from random courts in various parts of the world. Whether these court orders are legitimate or not, I have absolutely no way of knowing. To be perfectly frank and being completely politically incorrect, I don't care. I operate under Irish law. I am not going to start running my business under Florida law from 9:00 a.m. until 9:15, California law from 9:30 until 9:45, Bahamas law from 9:45 until 10:00. I mean, I can't do that. It just doesn't work.

We will work on the basis that if you send us something, if you send us a complaint or you send us a whatever, that's fine. We will look at it. We will examine it. If it is suitable, we will respond.

No, I'm not going to respond to every single complaint because if I shared with you every single complaint we got, you would understand why not. Because, yes, we have had complaints about blink tags on websites. That was an abuse complaint. Yes, "Please take this website down because they are using blink tags." We're like, okay, I'm not even too sure where to begin with that one.

The data retention thing and the data privacy stuff, this has impacted both registrars and registries. Obviously, there's been a lot of focus around those of us within the European Union. The way ICANN is handling it at the moment is, I think being polite about it, I would say it is more than a little dysfunctional. If I'd had a couple of beers before I spoke at the microphone, the language I would use to describe it might be a lot stronger. But it is a total mess.

As an Irish registrar, we have been granted a waiver. Any other registrars based in Ireland, you would think logically would get the same treatment. You would be wrong. You would be wrong. They have to apply on their own and ask for the same treatment. I mean, this is just so stupid; it's just not even vaguely amusing.

Of course, if you were to draft your own request without getting assistance from external counsel, you would probably get it wrong. Because, oh my God, you may have put a comma in the wrong place, which of course will then trigger what they call "negotiations."

Has anybody been in a negotiation with ICANN? It's fun. Because you're not actually negotiating with ICANN. You're negotiating with ICANN's legal team. Which isn't just ICANN's legal team. It's Jones Day, who – for those of you who look at ICANN's finances – get paid a not-insignificant amount of money annum. I mean, we're talking literally millions of dollars per year.

You're negotiating with Jones Day. You're negotiating with ICANN's legal team. ICANN's senior executives. These are people who basically spend all day doing this and nothing else. It's lots of fun – for the transcript, said very sarcastically.

For the registries, up until the New TLD Program, this kind of level of conflict only arose in two incidences. One was in relation to dot-tel, which is run by a UK company. The other was in relation to dot-cat, which is run by a company based in Catalonia in Spain. Catalonia is what might be an independent state in the future, who knows?

In both instances, the issue was around WHOIS display. In the case of dot-tel, renegotiating the clauses of the contract with ICANN legal meant that dot-tel wasn't put live for about nine months as they negotiated. In the case of dot-cat, it took them about four years of protracted discussions with both the Spanish government and ICANN and ICANN legal to eventually get something that was compatible with Spanish privacy law.

But under the New TLD Program if you look at the list of domain extensions that have been applied for, you will see there are quite a few that are cultural, linguistic, regional, geo cities.

For example, we are in London; there is a dot-London. There is no way, legally speaking, that dot-London will be able to exist with private individuals registering domain names and remaining compliant with UK data privacy law. But have they got a waiver? No. They haven't.

The reason they haven't is because the entire New TLD Program was delayed so much that if they had actually gone and tried to negotiate that, they'd probably still be sitting around a table discussing it rather than actually putting dot-London live. I'm just choosing them at random, as an example.

But, I mean, I know from talking to some of the European geo city type registry applicants, they've had all sorts of interesting problems because most of those applications are backed by government in some shape or form. It means that, essentially, it not only has to be compliant with the local law, it has to be really, really, really compliant because it's the government that's actually signing the checks or part of the checks.

Some of them have probably entered contracts with ICANN, but they're not going to go forward until they can resolve these kind of issues. ICANN still doesn't have what I would politely describe as a functional process for dealing with a lot of this stuff. They have very, very, very dysfunctional processes to deal with it.

Don't get me wrong. I mean, the reality with this as well is that ICANN has asked and demanded that registrars and registries do certain things to deal with all sorts of supposed issues on the Internet. But they never actually provide you with any real data.

It's not like they're going to actually come back and report to us and say, "Now that you've made everybody jump through hoops to do these things and hand over huge amounts of data and all this that you're suddenly going to see a drop in incidents of whatever." No. I mean, let's face it, if I was going to do anything criminal, I'd validate myself. I'd verify myself. I'd be super-validated. No worries.

I've rambled quite a...

CHERYL LANGDON-ORR: You'd have to be a very stupid criminal not to be.

MICHELE NEYLON: Well, criminals. Nobody said that all criminals were mastermind geniuses. I've rambled on quite a bit. I'm more than happy to answer any queries people have. I don't think a monologue is particularly helpful.

CHERYL LANGDON-ORR: Well, actually, thank you for that, Michele. This is obviously very germane to our question three, where we're going to be chewing the fat particularly tomorrow on constitutional and legal mechanisms. When we're looking at a globalized situation, we're going to bump up.

I mean, you're an early adopter and have discovered this little issue very early on in the process. But if we're going to help build a better model for a globalized ICANN, these things need to be thought about and prepared for. They are, by definition, going to occur.

While we have Michele here for a few minutes longer and while we have Rinalia out of the boardroom, let's open the floor for Q&A. I've thrown my agenda out the window, in other words, but I will get back to it eventually. Let's open the floor for Q&A for any of the Subject Matter Experts, but particularly I would suggest if you want to clarify something with Michele now because we won't have access to him.

MICHELE NEYLON: Or definitely not tomorrow [inaudible].

CHERYL LANGDON-ORR: Definitely not tomorrow. Okay. Mohamed?

MICHELE NEYLON: Just for the record, by the way, my inability to be available is not due to any hatred or dislike for ALAC. It's that I just have a very, very full schedule.

MOHAMED EL BASHIR: Just following up the issues that you raised. I think there's two main issues. First, ICANN is not sensitive in terms of requirement put on registrars at a global level. I mean, if you looked at the African region even the Middle East, there are about I think less than seven registrars in a massive area in population of about almost 400 million people. There's huge issue there.

ICANN is not sensitive about the requirements [for accreditation]. I mean, it's almost impossible or very difficult for a registrar – even in the

Gulf region, which is considered to be a wealthy state – to get the type of insurance that’s required by ICANN in that region. That’s number one. I think it’s ICANN requirement need to be addressing global needs of different businesses if we want really to explore that.

Second, I think it’s the procedures, as well. If you look to your example of the New gTLD Program, I mean, some of the [inaudible] TLDs are backed by governments. I was personally involved in one of them, where there was a government change and let’s say that [inaudible] the issue decrease, change the name of an entity from a ministry to XYZ.

ICANN is requesting – and I was witness that – that, “Can you please send us that business incorporation of that entity?” Basically, government entities does not have that. That’s a basic understanding how governments function. Governments are not businesses where they have company registrations. You can find those issues across the board.

Definitely, ICANN need to review its procedures, talk about the global arena. Also, need to understand the stakeholders’ requirement, what really governments in terms of procedures. One size does not fit all. That’s the main issue here what we’re facing.

That need to be really addressed, otherwise ICANN could open offices in many places – Istanbul, Singapore, Dubai, you name it. You can have those offices there. But if, let’s say the corporate back in California or somewhere, the people who are doing this, are drafting those procedures and requirements are not really catering and thinking about the global businesses and requirements and the global cases, I think that we’ll still have issues.

The globalization is not about open offices and have global presence. It's about the core and how that core could change.

CHERYL LANGDON-ORR: More of a comment and less of a question, but does anyone want to respond? Please, go ahead, Michele.

MICHELE NEYLON: No, just on the specific thing. I think what Mohamed's talking about, really, there's a report which I'm sure some of you have read, others may not, which is called Supporting the Domain Name Industry in Underserved Regions, which is currently out for comment. There will be a number of sessions, I believe, later during the week where that's being discussed.

The Registrar Stakeholder Group has submitted comments formally on that because, obviously, we are an affected party. I've also submitted comments, myself, as an affected party. The thing around that is it's an interesting thing. I mean, the insurance one's a very obvious, very clear one. I think from the comments we've submitted, we'd be supportive of ICANN reviewing the requirements.

The thing that scares the hell out of a lot of us, I mean, being quite blunt, is this kind of thing where ICANN is saying on the one hand, "Oh my God, there's regions of the world that are underserved," but on the other hand it's going, "Hey, we're going to have to raise the bar for accreditation."

You can't do both. You can't. If you're going to say to me, "Oh, well, you know, registrars in Africa need to be treated differently." I'm sorry, no. No. That's just not going to work. Why on Earth should I be at one level and you at another level? That's just not going to work.

But if it's a case of reviewing everything? I've had meetings with ICANN senior staff on this. I've been speaking to – well, everybody, actually. Fadi, Akram, etc. The question I had for them was a very simple one. The accreditation criteria, where do they come from? "We're not sure." I said, "Well, maybe you need to look at that."

Is, for example, the insurance thing, why is it at that level? Where's that number come from? I mean, is it too high? Is it too low? Is it even required?

I think in our comments, as the Registrar Stakeholder Group, we're saying, "Well, maybe some of the stuff could actually be removed, since there's a lot of things in place now that weren't in place originally." I mean, at the time that all this time was originally set up, there was no data escrow, etc., etc., etc.

CHERYL LANGDON-ORR: Just sit straight there. Just, just, just there. Perfect.

MICHELE NEYLON: But I mean, I'd say to anybody who's interested, please do have a look at that report. Some of the stuff in it's quite interesting. Some of it, of course, as a registrar I look at it and go, "You've got to be kidding me."

The comments that have been submitted so far for the most part seem quite rational and balanced.

But the thing that you don't want to see – and I just say this bluntly – you don't want a situation where registrars or anybody else are venue shopping. You don't want a situation where it's like, "Oh, I can become a registrar in country X way easier than I can become a registrar in country Y." Because believe me, that happens? We'll all move to country X.

If a registrar in country X is being held to one standard and a registrar in country Y is being held to another standard, I'll go to the one that's easier to deal with. I'm sorry. I mean, okay, maybe not me personally because I haven't got the energy to do that, but I'm sure there's plenty of other people who would.

CHERYL LANGDON-ORR: Paul, please go ahead.

PAUL MUCHENE: I'm an ICANN fellow from Kenya. You raised some very – can I call it – issues that are very pertinent to the developing countries, as well.

You mentioned that you're in the EU and you took roughly, let's say, nine months to actually get a waiver. I think it's very problematic for places like where I come from in Kenya for registrars to get a waiver, because it's a very expensive process.

At the same time, even the data protection, I mean, data collection and requirements are actually a problem also because many jurisdictions in

Africa do not have data protection laws or even conditions for data retention. It's not going to be feasible, in the long term, for many of registrars in these countries to actually comply with ICANN's requirements for the new Registrar Accreditation Agreement.

My question is: Do you see the agreement being revised to take into account all these jurisdictions that have different kinds of laws in the future? In that case, because I think you stated that basically it's more or less an American kind of mindset which is being foisted on everybody else. If ICANN is thinking of globalizing and becoming relevant to the regions it's serving, then I think this is an issue that should be tackled. Thank you.

MICHELE NEYLON:

How do I answer that without laughing? Without laughing hilariously and talking about, I don't know, something probably wholly inappropriate?

Okay, jokes aside, I'll try to be serious. I'll try to be composed and serious. The 2013 contract does contain language which outlines how the contract can be modified moving forward. Which is good, because the previous versions of the contract didn't, which led to this ridiculous situation where people wanted things in the contract or didn't want things in the contract, but there was no way to even start the process of doing anything.

ICANN has a serious issue around data protection, data privacy. Can somebody please point me to ICANN's data privacy policy? For the record, nobody raised their hand.

CHERYL LANGDON-ORR: There isn't one.

MICHELE NEYLON: There isn't one. There isn't one. Can somebody please point me to where I can find ICANN's data privacy officer or their office?

CHERYL LANGDON-ORR: Sorry.

MICHELE NEYLON: Okay. For the record, Cheryl burst into manic laughter. They don't have anybody there. This is a problem. I mean, the thing is that it would be fantastic, it would be great, and I would love to be optimistic enough to think that they're going to address this in the short term. But if they don't have any of these basic things, I don't see how they're going to do it. I mean, I don't know.

There's another comment period open at the moment. Let me find you the exact title for the damn thing because I've been looking at it quite a bit. Hold on. Sorry, the Wi-Fi's gone nuts here. It's gone and done weird stuff. WHOIS Requirements and National Law Conflicts, which is open by the way until August. I got ICANN to extend that one.

I would say to you, I'll turn it back to you. Please submit comments on that. Please, all of you, take the time. There's a paper that goes with it, which isn't very long. It gives background on a lot of this stuff. Take the

time. Submit a comment. I don't care if you think you're qualified to submit a comment or not, but please, submit one. An opinion. Please.

CHERYL LANGDON-ORR: Yes. Yes, yes, yes.

MICHELE NEYLON: I'm imploring you, because ICANN needs to address this stuff. They need to do it at a meta level, not at a micro level. That's what they're looking at there in that WHOIS Requirements thing. Because if they address it at a very, very high level, then hopefully, it'll filter down and we can all "benefit" from a better regime. Carlton can speak to you all at-length on this stuff.

CHERYL LANGDON-ORR: Oh, yes.

MICHELE NEYLON: Carlton and I had a reasonably good working relationship prior to 18 months ago. But we now know each other far better than we'd have liked to have known each other. Nothing personal, Carlton. Having spent 18 months working on WHOIS-related stuff, Carlton, myself, and a few other people know each other far too well. Far too well.

But so I think it's something that ICANN need to deal with at a very high level. I mean, the things like, say, the insurance, all that stuff, I'm not sure how they're going to solve it. But you don't want a situation,

though, where ICANN has set themselves up as being some kind of insurance agency. That scares the hell out of everybody.

ICANN's track record on some of these things is a little bit – I have to be careful of the words I get or I'll have Fadi yelling at me, again. What's the word I'm allowed to use? Is it a little bit flaky?

CHERYL LANGDON-ORR: Flaky? Is that an approved, that's an approved term, is it?

MICHELE NEYLON: Probably not, no.

CHERYL LANGDON-ORR: Okay.

MICHELE NEYLON: Anyways, sorry. I'll shut up now. The other gentleman had a query.

SETH REISS: Because we have our experts here, is there anything in the bylaws that is causing this insensitivity. In other words, nothing in the bylaws dictates that the contracting department or the developers of the RAA are not more sensitive to these country conflict issues? If that's the case, do we need something in the bylaws that would compel those making RAA policy to be more respectful to global laws?

CHERYL LANGDON-ORR: I'm going to have a little pick at that, and then the Subject Matter Experts might have enough time to think more fully.

I'm really [inaudible] the ICANN bylaws, and I believe there is nothing in there that would make this a requirement. Should there be something in there that does is something I'd like to get their opinions on. But the mechanisms for negotiating an RAA are to be between the parties that are affected by the contract.

It's really the art of the negotiation and how one sets the expectations that would guide that, I think, more effectively than it would to try and squeeze it into some subsection 5.4.3 of section J that says "thou shalt." That I don't think would be a success. That's just my personal reaction to it. But back to the Subject Matter Experts. Rinalia, you're definitely going to have to respond to this at some point.

ROBERTO GAETANO: No, I don't think that there's anything in the bylaws about this.

CHERYL LANGDON-ORR: I just don't think it's the place for it, either.

ROBERTO GAETANO: Well, I'm not really sure that it would be reasonable to have it in the bylaws. But anyway, that's a different story. I think why should it then be in the – I'm just wondering. Anyway, definitely it is not. It is not.

CHERYL LANGDON-ORR: Roberto's now actually reading the bylaws. I can see him working through the bylaws in his mind.

ROBERTO GAETANO: No, it's a different thing. I'm trying to figure out why I have this feeling that it would not be the right place to put it, in the bylaws.

MICHELE NEYLON: I'm just going to interrupt you, Roberto. We're talking about matters of national law and sovereignty. I don't see what the hell the bylaws have got to do with it. I mean, no offense, it's just – you don't need to explicitly put into the bylaws of ICANN, "ICANN staff shall not murder community members."

CHERYL LANGDON-ORR: As tempting as that may be.

MICHELE NEYLON: As tempting as that may be. I mean, I'm not trying to be facetious here. It's just that you wouldn't need to, because it's a given that you're not going to go around murdering community members, although it might be tempting at times.

When it comes to dealing with the conflicts between an ICANN contract or policy and national law, then that needs to be addressed when ICANN is made aware of it.

Now, the problem here is that as ICANN has had very much a U.S.-emphasized focus on pretty much all of its corporate activities and

hasn't done anything about addressing privacy and data retention at all. I mean, it's not that privacy is the only thing here, but I think it's the one which is quite easy to focus on, I suppose.

As an organization, as it matures, blah, blah, blah, here we go, approved terminology, it needs to grow up. It needs to deal with some of these things. But it needs to deal with it in a more effective fashion. I don't consider spending more than six months playing e-mail ping pong and spending thousands of euro on legal fees between the time I spent on the phone or in meetings with my external counsel, the amount of time they spent with ICANN's external counsel's external counsel. Yes, I'll repeat that. ICANN's external counsel took on external counsel. There are three layers of – can I use the word “crap”?

CHERYL LANGDON-ORR: You may. [inaudible]

MICHELE NEYLON: Okay. I'll use the word “crap,” because I think that's allowed. I mean, there are three layers, which is just – well, I mean, for lack of a better word, insane. You're negotiating with somebody who's been instructed to negotiate by somebody who's been instructed to negotiate.

I'm not sure how well it translates into other languages, but in English, we have the concept of Chinese whispers. I whisper something into Roberto's ear. He whispers it to Cheryl. It goes around the room, and then I end up with it back here. It'll be totally bloody different. You put that kind of thing in place and it's like, oh my God.

Anyway, yeah. I mean, I think looking at the bylaws, it's an interesting question, but I think the problem is actually much more fundamental. I mean, you cannot turn around, as an entity. Actually, I'll make it simpler. You have some kind of business, I assume? Or you work for somebody? I mean, you have clothes on your back and you probably eat three meals a day. I assume, somehow, that this gets paid for. That would mean that you enter into contracts with people and companies on some kind of basis. You're not going to sign a contract that is illegal, are you?

SETH REISS: Well, that was my other question.

CHERYL LANGDON-ORR: Microphone, Seth.

SETH REISS: Which is –

CHERYL LANGDON-ORR: Just push the buttons for [in voice].

SETH REISS: I'll eventually get the hang of it. You were in a situation where you had to comply with the laws of your country or your contract with ICANN.

MICHELE NEYLON: That's a very simple thing. I'm going to comply with the laws of my country.

SETH REISS: I wasn't going to ask. I was pointing out that you had a conflict that you had to deal with.

MICHELE NEYLON: Well, we refused to sign the 2013 contract. I mean, we categorically refused to sign it because from a very simple view there's no way I could sign that because it was going to put me in breach immediately. I couldn't do it. I was either going to break the contract or break the law.

SETH REISS: I guess I raise the issue because irrespective – ICANN is currently located as a California nonprofit. It could be in South Africa. It could be in Armenia. But if it's not respectful of other laws, then there's a conflict. The suggestion that the bylaws demand respect for other laws to me is an interesting concept.

MICHELE NEYLON: I understand what you're saying. But I think the danger there is if you look at what is legal and what is not legal across multiple jurisdictions, it becomes incredibly complicated. I'm not too sure, where do you draw the line? Because can you imagine a situation, let's just say taking a certain country which we won't mention where people's sexual preferences are basically illegal, for example. Does that mean then that ICANN should force everybody to comply with that law? I just don't know where the line is on this.

SETH REISS: You chose not to sign the 2013 so you could comply with the law of your country.

MICHELE NEYLON: Yes.

SETH REISS: Which sounds like a wise decision. ICANN probably needs to comply with the law of its jurisdiction. But that doesn't mean it can't be more respectful of other laws while still complying with the law of its jurisdiction. That seems to be perhaps one of the things missing.

CHERYL LANGDON-ORR: Now we're getting to do what we should be doing, which is get [our] juices going and get a conversation going. We're dealing with question three. It was on the agenda tomorrow. We'll deal with question one tomorrow in the place of question three. We're okay on schedule.

I have Vittorio and I have – I'm sorry, it, Frederic? Frederica?

UNIDENTIFIED FEMALE: [inaudible]

CHERYL LANGDON-ORR: [inaudible]. Do you mind, Vittorio, if our guest comes first and then I believe you also want to say something, Roberto? Yes? Little bit. Okay, so we got that order.

[FREDERIQUE DUSÉE]: Okay. I just had a follow-up question, because you mentioned that data protection and privacy. I mean, there's been the Snowden revelation and then the European Union is reforming its data protection laws. How is that likely to impact the sensitivity of ICANN to these issues?

CHERYL LANGDON-ORR: Just sit straight in. Just [inaudible]. That's perfect. Thanks.

MICHELE NEYLON: That's an incredibly pertinent question. With regards to this entire thing around the data retention, data privacy conflicts with the 2013 contract, the European data protection authorities, technically speaking they don't exist. The Article 29 working party and the – oh, I'll have to check the exact term. There's another law, data protection, European data protection supervisor or something.

Both of them – one is an umbrella organization of the 28 DPAs and the other, which I'm not too sure the exact terminology for them – have contacted ICANN. Have written to ICANN formally. Have told ICANN repeatedly, using pretty clear language, "Dear ICANN: The requirement to do X, to do Y, and to do Z is not compatible with the European directive. It is not compatible with national law in any of the 28 member states. Please do not oblige registrars in the 28 member states to jump through hoops to comply, to do this, etc., etc., etc., because we've, as we're telling you now and clearly, we do not think this is compatible."

What did ICANN do? They went, “Oh, Article 29.” [inaudible] listen, you’ve no real binding anything. You’re just an advisory body. You don’t make the law. You’re just advisory. You’re just you know.

UNIDENTIFIED MALE: [inaudible] like ALAC.

MICHELE NEYLON: Yeah. Well, now, now, hold on. I’m a dirty, filthy registrar. Don’t get me started on what ALAC is or isn’t.

UNIDENTIFIED MALE: They said they were [inaudible].

MICHELE NEYLON: It’s like, okay, so, I mean, I try to think about this. Okay, so, if the Irish data protection commissioner or his office had written to ICANN and said, “Blacknight as an Irish company cannot do this,” then ICANN would’ve gone, “Oh, right. Okay, that’s fine.” But if the 28 DPAs all together send the same bloody letter to ICANN, “[inaudible], you’re just advisory. You don’t get to make the law.” I’m sorry, that just – ugh.

CHERYL LANGDON-ORR: Okay. Slow, deep breaths, Michele. Thank you. Vittorio, please.

VITTORIO BERTOLA: Thank you. This is an interesting conversation, since this specific issue of privacy and the European laws and the ICANN and WHOIS data has

been going on for the last 15 years. Actually, I discovered that there's this public comment period on, how's it called? WHOIS Requirements and National Law Conflicts.

The background section starts by saying, "In November, 2005, the GNSO concluded the policy development processes, establishing a procedure to allow gTLD registries to comply." Actually, in November 2005, ICANN decided that they have to find a way to let European registries comply with the European privacy law. In almost nine years, we're still not at the end of it, apparently.

Actually, I first of all, I would urge whoever is on the Board now to either sack someone or, I mean, because this is not a sign of good management of a company. If you decide something in November 2005, which is causing problems to many of your customers, actually and in June 2014, you haven't solved it yet.

But apart from this, I guess that maybe the issue needs to be broadened up a little, because this is the sign that we still have a cultural problems at ICANN.

I mean, the whole idea of the At-Large, when we invented the At-Large, basically, it was 2001, 2002. The idea was to provide a way to make – I understood, now, we have to speak about globalization and not internationalization, but at that time the word was "internationalization." We had to internationalize ICANN exactly because ICANN was not able to understand the issues and problems of many parts of the world. We hoped that the At-Large would be a way to provide that insight.

Still, I think that there's a lot of diversity and the At-Large has caught on and lots of things are happening. While, in the ICANN organization, the staff, it's still not there. Maybe now the problem needs to be moved at the staffing and organizational level.

I'm happy to see – I've seen the chart, well, before that says that are now many offices all around the world. But if you looked at the headcount, it looks like 90% of the people are still working either in L.A. or in Washington, D.C.

I mean, the only office in Latin America is Montevideo. It's nice to have an office in Montevideo, but the headcount said one. What kind of office is it? Just maybe one room with one PC. I mean, maybe ICANN should move from just having outreach offices, engagement offices from actually moving parts of its core organizational structure to different places in the world.

Maybe I think it would be interesting to have in the bylaws something that says that ICANN will not try to force upon some people who are from other parts of the world contracts or rules that force them to break their own law. We should be obvious, but maybe it's better if we state it. But I think that the issue will not really be resolved until there is a cultural change or we completed the cultural change inside ICANN and specifically inside the staff and organization of ICANN.

CHERYL LANGDON-ORR:

Is it all right to reply? Because I have Rinalia next.

RINALIA ABDUL RAHIM: Thank you, Cheryl. I don't know of any organization that has it in their bylaws that they are going to be respectful of all national laws. If you can think of some?

UNIDENTIFIED MALE: The UN.

RINALIA ABDUL RAHIM: Well, apart from the UN, because it's a special entity, right? Any other organization other than United Nations, because the UN is the world.

UNIDENTIFIED MALE: Well, they're special [inaudible].

RINALIA ABDUL RAHIM: Right.

CHERYL LANGDON-ORR: Microphones or silence.

RINALIA ABDUL RAHIM: But anyway, just to sidestep the point, when Michele mentioned the point that he's having all these issues with ICANN, we also have to remember the capacity of ICANN to deal with the issue. How prepared are they for that? How aware are they? Did they start working on the problem before it was raised? I think that they did. They just could not solve it in time.

When the complainants come up, I'm just saying that there's another side to the story and we don't know what the complications are. I understand this anxiety. But remember that when you see diversity on ICANN's presence around the world, that's very, very new. It came, most of it, with Fadi Chehadé's leadership.

I see that as the beginning of professionalization, strengthening of staff, building of capacity. There is more confidence in the system now than before. There's also more awareness of what the world is like, the different cultures.

If you see the expansion of staff, you also see more diversity. When I speak to staff from different parts of the world, they are also having more confidence and saying that they have more say now in terms of how the organization is being managed. They are being listened to.

There's a lot more work to be done, but let's not just bash ICANN. Just understand that there are limitations and we're all trying to make ICANN a better place. Thank you.

CHERYL LANGDON-ORR:

Thank you, Rinalia. I'm going to move to a much calmer Michele in a moment. But I think your point is one that I want everyone to remember as you're dealing with virtually every one of your questions.

We need to be looking forward. We have to learn from history, but we don't have to drown in history. What we're trying to do is assist building a better model. Let's learn from the past and let's find ways to bring affirmative and helpful suggestions forward.

It is very easy to not see a problem when you are in the middle of an issue if you've never had experience that's forced you to look at it from another angle.

One of the tools, for example, that may be useful is in the in-service training of the key staff, Rinalia, would be to have properly facilitated hypothetical exercises where people are forced to think and interact playing the role of the party they are absolutely not. In other words, our legal people should have to think like registrars and vice versa. That can be done on any number of places. There's a bunch of ways to skin the cat. To you, Michele.

MICHELE NEYLON:

Thank you, Cheryl. Yeah, just going back to this WHOIS requirements versus national law thing, they introduced a policy to deal with this conflict years ago. The funny thing is that not a single registrar has availed of it. If you read the policy, you'll soon find out why.

In order to avail of the wonderful – sarcasm, for the transcript – the wonderful process that they put in place, you would essentially have to have put yourself in breach of local law, be in trouble with your DPA, or be in court because you were being sued by one of your registrants before you could go to ICANN and go, "Please, ICANN, can you allow me to change the WHOIS display in order to comply with local law?" It's a bit backwards.

To Rinalia's point, yes, I appreciate some of that. But at the same time, when it comes to the entire conflicts around WHOIS in the 2013 RAA, they were told about it three years ago. They had three years to come

up with a functional process. Instead of doing that, they just ignored it, shoved their heads in the sand, ended up a situation where registrars were left with a choice.

Oh, yes, because of course, the 2013 RAA's a requirement if you want to offer new TLDs. Your choice was: sign the 2013 RAA, put yourself in breach of local law or in breach of your contract, your choice, and offer new TLDs; or stick on the 2009 contract, spend six months plus "negotiating" with ICANN and all their lawyers – internal, external, and external to the external. It's not a particularly palatable place to be.

The thing about all this is, sure. As Cheryl says, looking at the history, etc., etc., probably not that productive. But whether or not ICANN, as an organization, is actually learning to deal with these things properly or not, I'm not 100% sure. Because this kind of thing, it seems to happen.

RINALIA ABDUL RAHIM: Cyclical.

MICHELE NEYLON: Yes, cyclical. Lovely word. I love that. I love words like cyclical.

CHERYL LANGDON-ORR: Thank you very much. I want to go to Lance and then, is there anyone else who wants to grill, discuss, or interact with Michele? Lance, over to you.

MICHELE NEYLON: [Nobody's allowed to].

LANCE HINDS: Thank you, Chair. Notwithstanding how we work in terms of the multi-stakeholder model, I would have to imagine – I hope – that at some stage there might have been some conceptual vision of what a globalized ICANN would look like within the various components. Whether it's dealing with the legal mechanisms, whether it's dealing with diversity, it's got to be some measurement somewhere.

I mean, I know we are going through this and are we going to pass judgment on these issues. But somewhere, somehow, there's got to be something, someplace that says that this is how we're going to build out if we want to build out, and these are the things that we're going to do. I mean, it's 2014 and a lot of these things have come up over the years. Certainly, by now, there must be some measurement or some idea of what this piece will look like.

NEIL SCHWARTZMAN: Thanks, Chair.

CHERYL LANGDON-ORR: Yes, please, go ahead.

NEIL SCHWARTZMAN: I like what we've heard from our two colleagues at polar extremes. For some bizarre reason...

CHERYL LANGDON-ORR: The scribe needs to be able to spell your name.

NEIL SCHWARTZMAN: Oh, I'm sorry. I'm sorry. Yeah, S-C-H-W.

CHERYL LANGDON-ORR: Go ahead.

NEIL SCHWARTZMAN: I'll pass it over afterwards. It's too bloody long. But global legal requirements that are in and of themselves in flux – which I think we could say the European privacy regulations are adapting to our current circumstance of technology and the way in which we interact with technology – can, at certain times, form a lowest common denominator, which is onerous to business.

But at the other side of it, we have to respect that. We have to respect that. I mean, Europe is not an inconsequential entity that we can just dismiss and ignore. How many countries are in the European Union? Thirty?

MICHELE NEYLON: Twenty-eight.

NEIL SCHWARTZMAN: Oh, you see?. I, oh, too many. Nice. We're talking a significant number of countries. Canada, by the way, is considered to be coherent with PIPEDA, our privacy law, with the European privacy directive. It is hugely important that registrars act in a way that protects the privacy rights of

the individual. I know my friend Michele is never going to debate that point.

But on the other hand, we have certainly issues at the ccTLD level where they take a very interesting interpretation of that privacy directive to an extreme, where they have – as my friend Garth would admit and support – they’ve redacted any kind of usable information within the WHOIS. That, I think, is also problematic. Certainly – no? You don’t see that? Well, let’s have a debate, then. Because I do feel that there has to be a happy medium that protects the individual on both sides of the coin.

CHERYL LANGDON-ORR:

It is germane. I think WHOIS, as one of the issues that we’ve grappled with since Adam was a little boy, probably deserves a couple of – it’s not Adam Peake, it’s Adam in the Biblical sense. It probably deserves a few minutes airtime. I’m going to give you right to reply on that, Michele, and Neil, if you want to jump in and Garth, feel free. Anyone else, particularly Carlton, for example, who may have an informed opinion on this. Let’s run this for a few more minutes. Then, we might take a new direction. Over to you, Michele.

MICHELE NEYLON:

Thanks. The entire thing around WHOIS is always one which provokes some quite emotive and not always rational responses. It’s one which myself, Carlton, and other people have spent a [inordinate] amount of time on over the last couple of years.

First off, there's a very, very big, significant, important difference between WHOIS collection and WHOIS display. It's an awful habit to just say "WHOIS" with no real context because it's all WHOIS. Which of course is technically correct but isn't particularly helpful.

You talk about thick WHOIS and thin WHOIS. Ultimately, there's two sides to it: which data is collected and then where that data is displayed and who that data is made available to.

In the case of country codes, they are all – well, with a few exceptions – most country codes use a thick WHOIS system. Which means that the registry operator, which is the country code, has the full data set in their databases. That data is there, and it is available to law enforcement and to other agencies. It is not publicly displayed to the world a lot of the time. This is where your frustration comes from. Sorry, but you're not law enforcement.

NEIL SCHWARTZMAN:

Right. But yet, the vast majority of the protection of the individual on the Internet is not undertaken by law enforcement, as you well know.

MICHELE NEYLON:

But does a normal Internet user – I would say – I'm actually going to use my mother because I've actually discussed this with her. I have my mother's full permission to refer to her with respect to WHOIS without getting into any trouble.

My mother...

NEIL SCHWARTZMAN: Her domain is?

MICHELE NEYLON: IrishFreelance.com, which is actually registered to me and she uses it for her e-mail, if you want to know. She has tina@IrishFreelance.com and has had so for, I don't know, probably ten years at this stage.

My mother doesn't know anything about WHOIS. She doesn't need to. She doesn't need to; she doesn't care. My mother does know how to look for a little padlock on a website. She knows about what she should or shouldn't give out to people over e-mail or on the phone and things like that. She's not a completely uneducated user.

But the thing where a lot of people assume – and I would say incorrectly – that WHOIS should be a proxy for all sorts of other things and that using WHOIS data, which is publicly – the publicly available part – for consumer protection and everything, I think it's a major error.

Because like, for example, if you were to take WordPress.com. WordPress.com currently is the platform for I don't know how many hundreds of thousands of blogs. How many WordPress.com domain names are there? This is not a trick question. One. How many registrants are there? One. This, of course, doesn't cause a problem for anybody.

Yet, you're expecting that the WHOIS registration data for somebody's personal blog, if they happen to have their own domain name, should be publicly out there. It's just inconsistent, in my view.

I mean, we're not going to agree on this, Neil. I mean, I know that. I know that. That's fine. We can continue this over drinks. We'll never agree.

But I think the thing is that using WHOIS as some kind of consumer protection mechanism I don't think is the way to go about it. Educating users so they look for padlocks on websites, that they look for physical contact information on a website, that they look for a proper telephone number on a website, a privacy policy. All those kind of things, that's what I would focus on. Not on WHOIS, which I consider to be mainly secondary. I mean, sure, people like yourself, myself, Garth, Cheryl, Roberto, Carlton, we all know how to use WHOIS. That's fine. That's dandy. But we're not normal users.

CHERYL LANGDON-ORR: We're not normal. We're not normal in any way, shape, or form. I've got Roberto, and then I've got Garth. Then, we'll come back to you, Neil, okay?

ROBERTO GAETANO: One of the tasks that I've been given as Subject Matter Expert is to intervene when I have the feeling that we are deviating from the theme.

I think that the purpose of this session is to find the issues that are related to globalization and to point them out and to discuss them. Obviously, we feel that in terms of the WHOIS, we have issues that are related to globalization because there are some different legislations in different parts of the world. But our task is not to find the solution today in a few hours to the problem of WHOIS that has been discussed.

MICHELE NEYLON: Roberto, you're depressing me.

ROBERTO GAETANO: Although, we have all the important people that can make a decision here. No, but seriously, I think that this can be reported as an example of the issue. But I think that we need to stick on identifying the problems but not trying to get into the problem and into a specific problem and try to find a solution.

CHERYL LANGDON-ORR: Points well-taken, Roberto. With Roberto's words ringing in your ears, you have the next speaking slot, Garth.

GARTH BRUEN: Thank you. Garth Bruen, Chair of NARALO. With what Roberto has said, which is very important and we want to stay on topic, there are six billion plus people on the planet – maybe I have the wrong count, because it changes every day. I'm not sure what the last count of how many people are actually on the Internet as users. I thought it was somewhere around two billion. Maybe it was more. Two billion users. 2.83? Can we 3.2? Can we get 3.1?

Okay, so half the planet. Half the planet is online, okay? How many of those three billion people are domainers? This many, okay? This is how many people.

UNIDENTIFIED MALE: You have to describe that for the record.

GARTH BRUEN: Okay. Yes. This is between my tiny fingers and I'm a 5'9" man.

CHERYL LANGDON-ORR: A very small measure.

GARTH BRUEN: Yeah. It's a very small measure. That's the population that is required to have a WHOIS record, okay?

As we get Africa online, as we get Asia online, as we get Latin America online, as we get rural and disconnected places in Europe and North America online, as we get islands online, the users, the consumers in these locations, are going to get pummeled with abuse and criminality, especially these naïve users who are going to start using the Internet for the first time. They have to have a way of addressing problems as consumers.

One of the ways that we address and we help consumers address these problems is through WHOIS and WHOIS accuracy. This is a critical tool. I reject the notion that you have to be an elite expert. It shouldn't have to be that complicated. It shouldn't have to be that obscure.

Now, in my colleague Neil's country in Canada, they have what I consider to be a wonderful system within dot-ca, which is that they have a division between personal and commercial sites. Personal sites have the full degree of the law behind them in terms of privacy protection. But if you're running a business, if you're selling something

that's regulated, you do not. You have to have disclosure. That is pretty much the case, as far as I know, in the rest of the world generally.

Whether or not you live in Europe, I don't believe matters. I don't think that you could have a secret bank or a secret pharmacy in Europe. I don't believe that you can sell pills that people put in their bodies and remain secret. This is the sort of situation that we're talking about and where WHOIS becomes important, where the consumer is being attacked and defrauded. This is why WHOIS is critical.

CHERYL LANGDON-ORR:

With respect, I think that the agreement that WHOIS is critical, as established. It just depends on your perspective of why it's critical. It may differ. [Where] question we are looking at is as follows, and I just want to say that before we go to you, Neil. That will be the final word on this subject because I was going to stop the subject at the top of the hour and we almost are at the top of the hour.

Are bylaws drafted in compliance with international law principles or are they oriented to a local, not global jurisdiction? Next point. Are the draft agreements for contracted parties like, but not limited to, registries and registrars, compliant with international law and in any case, not in contrast with legal systems in jurisdictions other than the one where ICANN is incorporated? The final point we're dealing with under this question is are there mechanisms to allow contracted parties to comply with the local laws enforced in their jurisdiction?

With that narrowing of the field, Neil, you have the final word.

NEIL SCHWARTZMAN: How much time do I have to think of a response? First off, my apologies for mispronouncing your name, Michele. It's the first time we have talked, even though we've known one another for at least a decade. That's the wonderful bits of the Internet that we're here to protect and promote.

MICHELE NEYLON: Don't worry. I'm well and truly used to people mispronouncing my name and I wouldn't be the least bit offended. [But only do once].

NEIL SCHWARTZMAN: Have at it. I think that the meta topic that we have heard and the one that perhaps wasn't entirely verbalized by Garth is the globalization brings with it both the wonderful aspects of the Internet, of knowing people for a decade and never having talked, but also the evil and the dark side and the people that capitalize on it.

As part of the legal end of things, do the registrars have the appropriate legal guidelines to be able to deal with the fact that there are people out there that really do want to take your money? By that, I don't mean sell you stuff. I mean take your money. I've got a computer full of them.

That, for me, is the overarching principle that I wake up and fight every day. As a facet to the topic at-hand, let's just bear that in mind. I will continue to do so. Thank you.

CHERYL LANGDON-ORR: I do mean this is for the record: we're very pleased that you do and others like you do because it is a vital aspect of ensuring that we

recognize that what happens offline all the time, right? Right? What happens offline all the time – really bad stuff happens between humans all the time – also happens online. We must make sure that we are aware of and trying to manage as best we can and reduce risk and mitigate risk online as we do in many cases – hopefully successfully – offline.

Establishing that those two things ought to have parity in at least my utopia, we are at the top of the hour. I don't know about your lower backs and feet, but mine would appreciate stand up and stretch time. We are going to be here until just a tad before 6:00.

I'd like to start bringing ourselves back in dealing with question three. To getting some outcomes or not. That's okay. Not is fine as well as getting them. Bringing any new points that we want to record. We want to make Carlton's life slightly easier than I suspect it is right now.

I want you to take a five to ten minute break, and I do mean be back here at ten past the hour, which is actually a seven minute break, now. Then, we will get into that, and we'll leave a little bit of time for preparatory work and picking up bits of the agenda that we haven't done so far.

But you've got a lot of work to do tomorrow, and I want to set the scene and do some preparatory work with you before the end. Please be back here at ten past the hour. I want to thank you, one and all, for what I think has been a very useful and very good discussion. Back at ten past, thank you.

Okay, ladies and gentlemen. In the absence of staff, I'm looking at the IT guys to say are we live and on and things happening? I mean, that is beautiful and I can live with prettiness but that's okay.

Most of the majority of us have convened back to continue on with the thrill-packed and exciting conversation, which is of our question three regarding globalization of ICANN, constitutional and legal mechanisms.

I'm very thankful to our guests that have, unfortunately, had to leave because I think even though we had people in the room who hadn't actually signed up as At-Large Structure representatives and they've looked down a schedule and thought, "Oh, that looks interesting," and they've popped in. We've had questions and contributions that I think will help you all frame your thoughts on this matter, as well. All data is good data. I guess we get to the part, now, that you have to do something with it.

Rinalia is no longer with us. I meant that, of course, in she's no longer with us in the room. She's hale and hearty, not just with us at the moment. Her Board duties have called her away.

I want to put to the record our thanks to Michele Neylon for, I think, putting a huge amount of energy and effort into giving us a small insight into what is an example, and I think a very good example of how as what we hope will be a successful globalization of the entity that we refer to as ICANN may happen that we need to be very cognizant and very cautious, perhaps, doing as much prior planning as possible to minimize the frustrations that he was certainly sharing with us.

We need to recognize probably that the fact that this has gone on has been valuable learning on all sides. The registrars and registries, parts of the domain name industry will have been watching closely with what has happened in that particular case study.

I noticed, for example, while we were talking about it today, it was trending on Twitter that ICANN has, in fact, given Blacknight this particular dispensation that he was referring to. I thought that was just a little bit of serendipity. He'll probably go out and check his Twitter feed and wish he'd been out there interacting with his social networks rather than us. But I think we should put it to the record that we thank Michele for, I think, very frankly and honestly sharing his opinions.

But they are only opinions, and you have yours. What we want to do now is looking at, but not limited to as Tijani said. These terms are only guidelines. Looking at – and yes, I am going to read them to you, again – the questions are:

Are the bylaws drafted in compliance with international law principles or are they oriented to a local, not global, jurisdiction?

The next point: Are the draft agreements for contracted parties like, but not limited to, registries and registrars, compliant with international law and in any case not in contrast with legal systems in jurisdictions other than the one where ICANN is incorporated?

Finally: Are there mechanisms to allow contracted parties to comply with the local laws enforced in their jurisdictions?

We've had a good conversation about a case study which is germane to each of those things. But now, it is over to you. We want to have your

yes, no's, or maybes on each of these points. We want you to bring any other points forward. We want you to have it in a way where if you agree with something that Tijani is saying, please indicate with "me too"s. You can put your hand up or do this or whatever.

Because what Carlton is going to try and capture is: how many of us agree, do we have full consensus, do we have totally divergent views: It's okay, regardless of what the outcome is. But let's see if we can drill down to some outcomes.

I'm also, because I was unable to escape for the [bio] break that I was desperately trying to give everyone at the top of the hour, going to pass over to Seth to herd the cats and manage the system for a short while. I shall return.

Of course, recognizing that, I want to make sure that – I did see your hand go up. Please use the same convention. If you don't have your tent card, then at least wave your nametag. Carlton's eyes are good, but it does help him to know who is saying what.

At that, over to you, Seth. I will be back shortly. If you don't see me again, it's because I've got lost. It's nothing personal.

SETH REISS: Go ahead and, I'm sorry, can you pronounce your name for me so I don't mispronounce it?

JYRY SUVILEHTO: My name is Jyry Suvilehto.

UNIDENTIFIED MALE: Jyry.

JYRY SUVILEHTO: Close enough. But you can read it here.

UNIDENTIFIED MALE: Jyry.

JYRY SUVILEHTO: Yeah, yeah. That's close enough. I just wanted to suggest because it turns out that somebody brought green and red Post-It Notes.

CHERYL LANGDON-ORR: Oh, we even ordered those.

JYRY SUVILEHTO: Oh, you ordered those, so that we might spread them around so that people can wave green or red Post-It Notes based on whether or not they agree or disagree with what's being said.

CHERYL LANGDON-ORR: What a good idea. Make it happen. Make it so.

JYRY SUVILEHTO: I will. Well, I suppose you can wave several, but I'm not sure if it matters. Yeah, I was hoping that you were going to pass them down.

UNIDENTIFIED MALE: Okay.

UNIDENTIFIED MALE: That’s probably the easiest.

JYRY SUVILEHTO: I suppose I should take one.

UNIDENTIFIED MALE: Where’s yellow for undecided?

UNIDENTIFIED MALE: There’s no yellow, just blue.

UNIDENTIFIED MALE: Wait a minute, yellow was the original color.

UNIDENTIFIED MALE: So green says I agree, and red says [inaudible], and undecided a combination of the two thusly.

JYRY SUVILEHTO: Or just don’t do anything, yeah.

UNIDENTIFIED MALE: Oh, even better.

SETH REISS: Jyry, were you going to make a comment on the questions?

JYRY SUVILEHTO: Do I have a comment on the questions?

SETH REISS: Yes.

JYRY SUVILEHTO: Yes, actually, now that you ask.

UNIDENTIFIED MALE: The first question.

JYRY SUVILEHTO: I think that, yeah, the first question in the sense are the bylaws in compliance with international law principles. In my opinion, to the maximum extent possible, they are in compliance with international law principles. But the problem is that they still have to be based at some jurisdiction. Or the other alternative would be to have them based in multiple jurisdictions, which would be incredibly complex and difficult and probably not a good idea to do at this time.

Maybe for future consideration, in 50 years or so, but I think that the current bylaws are to the maximum extent possible in compliance with international law principles. It's just that how the bylaws are represented and the mechanisms and the following questions might

have to be reviewed a little bit. But that's all that I'm going to say for now.

SETH REISS: Does anybody have comments along those lines? Tijani?

TIJANI BEN JEMAA: Yes, but Garth is [inaudible].

SETH REISS: Oh, I'm sorry.

GARTH BRUEN: I'll let Tijani go first.

UNIDENTIFIED FEMALE: Go ahead, go ahead.

GARTH BRUEN: Okay, okay. Garth Bruen, NARALO Chair. Sorry to divert. I was at a conference in Brussels last week. It was the International Product Safety Conference. It was mostly engineers who create standards and implement standards for global product safety for their products, wherever they ship them.

A lot of consideration goes into local law when people put products in different countries. They seem to find to find a way to do this very efficiently and very quickly. I would hope that ICANN could figure out a

way to do it, especially considering the fact that the Internet is so important to so many people all over the world, that this could be done in a similar way and it wouldn't take 50 years.

SETH REISS: I know Tijani's next, but just to clarify, Garth, it sounds like you're addressing the last question, are there mechanisms to allow contracted parties to comply with local law?

GARTH BRUEN: I mean, I was just responding mostly to what was said. I'm not specifically talking about contracted parties. I mean, I was talking just about in terms – the bylaws were the subject and I'm talking about making those effective, meaningful, and legitimate in local countries.

SETH REISS: Tijani?

TIJANI BEN JEMAA: Since we are addressing the first question, I think that we really need that the bylaw be drafted in more compliance with international law, rather than with local jurisdiction. It think it is not a hope. It is compulsory. We need it if we want ICANN to be a really global, we need it to be done in this way.

SETH REISS: Anybody? Vittorio?

VITTORIO BERTOLA:

Thanks. I think that the first question is not well posed, because I don't think it's an either/or situation. The bylaws can be compliant with international law principles, but they can also be orientated to a specific jurisdiction. I guess this is the problem. I mean, any kind of bylaws for any organization will be [studied] in regard to a specific jurisdiction because, of course, that's where the organization is incorporated.

I don't have the expertise to say whether they are actually in compliance or not with international law mechanisms, but I assume they are. But even if they are, they don't work. At least, they don't solve the issues that we have been discussing in the previous two hours.

I'm a bit wary of posing the question in purely legal terms, because I don't think it's only a legal question. I mean, maybe we'll talk about this when we address the other questions because I guess that maybe the situation is different when we talk about contracts. But still, I think that it's more of an issue of do you want to push the agenda, values, objectives, whatever, of people from a specific jurisdiction onto everyone else rather than a purely legal question.

SETH REISS:

Does anybody else want to respond to this issue? Which is the first question: Are the bylaws drafted in compliance with international law principles?

NEIL SCHWARTZMAN: I don't think, with all due respect to this assemblage, I don't think there's anybody in this room that can answer that question with any authority.

The fact is, there are 180 countries in the world. In the United States, there are 52 sub-jurisdictions called states. In my country, there are nine provinces and then territories and so on and so forth. The myriad levels of legality and regulatory regimes, it's impossible to say that there isn't a country or a province somewhere in the world where ICANN is egregiously out of sync with local laws. I don't think it's incumbent upon us to tell them – tell anyone – that they need to be.

But overall, we've not heard anybody raising that alarm. But I think it's impossible for me to say yea or nay to such a question, because I simply don't know every law in the world, as much I'd like to, I suppose. No, actually, I wouldn't. I mean, that's just a long way of saying I have no idea. I would assume that we are, as you said.

SETH REISS: Okay. I think the gentleman in the red cap, who I...

ALAN LEVIN: I'm sorry I'm late. Please, forgive me.

SETH REISS: We're glad you're here.

ALAN LEVIN:

I don't push buttons on Saturday, so excuse me if I don't push my button. I don't want to push anybody else's buttons, either. But I also come from South Africa. We're taught by our history to always question the law. We also have learned, through my lifetime, that laws change.

I'm involved in ICANN because we're above the law. We're not an international organization. We're a global organization, the first really global organization. I'm involved in ICANN to make the laws. I'm not worried about whatever laws exist in any country because we exist above any country. We exist at a global level. Really, I have to ask question: Why is this an important question?

SETH REISS:

Thank you. Roberto?

ROBERTO GAETANO:

Well, no, I feel I have to answer this question as the Subject Matter Expert. We have been discussing before and we have identified the fact that some of the contracts or agreements that ICANN is proposing, for instance, for registries and registrars – and we had Michele Neylon here explaining one of the cases – are in contrast with some specific local laws.

Why is this relevant? Because the subject of the workshop, of the working group, is globalization. The question was: Are all stakeholders equal in front of ICANN? One of the points was that registrars, for instance, that are in countries that have a conflict between the local laws in which they operate and the ICANN contracts, are at a disadvantage, versus other countries where there's no this issue.

From there, that was the starting point. ICANN, in order to be a global organization, should not put registrars that are in different jurisdictions at disadvantage. You see the point?

SETH REISS: Alan, can you...?

ALAN LEVIN: No, I can't. It goes against my religion.

SETH REISS: No, no, just identify yourself when you speak.

ALAN LEVIN: Sorry. Alan Levin.

CHERYL LANGDON-ORR: That's it. That's what we're asking, yes. Let me be clear, Alan. Alan, let me be clear. Because everything we say is transcribed, every time a speaker starts...

ALAN LEVIN: I know the protocol.

CHERYL LANGDON-ORR: Okay, that's fine.

ALAN LEVIN: I'm sorry if I didn't adhere to protocol. I can't push the button.

UNIDENTIFIED MALE: It's okay. I can push it. [inaudible]

ALAN LEVIN: [inaudible] question if they choose to reside in that country and expose themselves to those laws, then that shouldn't be our problem. We're not differentiating between them. We're creating new rules.

Now, we want to differentiate between anybody. They have to operate at a global level, now. Now, if they're in conflict with their local, national laws, they have the opportunity, just as anybody else who might be in conflict with local laws, to move their center of operation.

We have many examples of this in the Internet industry already. We have AfriNIC, who was constituted in Mauritius for certain reasons that turned out to be invalid. Now, they're exposed to that problem. But it's an AfriNIC problem, not an ICANN problem. AfriNIC needs to deal with it, and it's an entirely African problem, not an ICANN problem.

ICANN doesn't change the rules for individuals; we create the rules for the global benefit.

ROBERTO GAETANO: I didn't want to start a discussion. I was just explaining why the issue came up. Then, I'm calling myself out of the picture. I just observe that normally, you don't choose the country where you're born. You should

be allowed to run business in the country where you are born and reside and not be forced to emigrate.

ALAN LEVIN: Then change the local laws.

UNIDENTIFIED MALE: I'd like to [inaudible].

ROBERTO GAETANO: Anyway, this has been identified as the one issue that hinders globalization. If ICANN chooses to do regulations in a way that one part of the world is at a disadvantage versus other parts of the world, there is the general feeling that this is not fair. Anyway, I only wanted to...

ALAN LEVIN: Sorry, I had to, I had to argue that. We have an Arab Spring. I'm sure there's many Arab brothers around that understand the benefits of...

SETH REISS: Okay, Alan, Alan, just a second. There is a queue. I'll come back to you once we go to Mohamed, then Vittorio, and were you in the queue? Okay. I think it's Mohamed, Garth, and Vittorio. Then, Alan, we'll come back to you. Mohamed?

MOHAMED EL BASHIR: Basically, there's a new reality. I mean, ICANN want to be globalized. We want ICANN to be globalized. History? ICANN was born in the U.S. That

does not mean that ICANN should seek to review its bylaws to make it more international.

For example, I can [inaudible] the question. Why there is more international organizations based in Geneva, for example, not based in Washington or California? There will be some reasons, isn't it?

Basically, I think what we can call is ICANN need to review its bylaws to ensure that it's a true global organization. Yes, currently incorporated in the U.S. for legacy reasons, for the history, yes. That's fine. Abide by the U.S. law currently, yes.

But that does not mean any new approaches could be adopted in the future. ICANN could have multiple incorporations in different countries. Or it could decide at a point that, for operational purposes to be global, it's time now to incorporate in a different country which give it the freedom to be more global.

I don't think that's supposed to be a taboo or something that should not be discussed or we say now that's the bylaws, that's what it is. There's a new reality and I think we should be practical, ICANN should be practical, to address that regardless to what is required.

I think that's supposed to be our approach and being defensive in terms of should they change the law or that's why because this is the current situation. We need to change, as well. Thirty years reality is not today's realities.

SETH REISS:

Okay, thank you, Mohamed. Garth, then Vittorio, and Jyry.

GARTH BRUEN: Alan, I certainly understand and appreciate what you've been saying. I mean, I'm aware of many of the specific cases that you've cited.

I think, in terms of technology and what create here in terms of maintaining this network, it's about building virtual bridges. But if we have a bridge that has stairs on one end and a ramp on the other end, somebody who walks can go across the bridge. Somebody in a wheelchair cannot. I think that we have to have an international standard that is reasonable and takes into account what is going on in local communities. I think hopefully that's something everybody can agree on.

CHERYL LANGDON-ORR: Agree, agree, agree. Green, green. Green, green.

SETH REISS: Raise your [inaudible].

CHERYL LANGDON-ORR: Nobody gave me [colors].

SETH REISS: Somebody give Cheryl [inaudible]. Just give her green, though. Vittorio.

VITTORIO BERTOLA: Mohamed also made my point. I guess that maybe in place of the first question that is not really hitting the point. I think the only really other

point about the bylaws is whether ICANN is set up in the right place, in the right jurisdiction, to allow it to fulfill its mission. I don't have actually an answer because, again, you should be maybe more versed in international law before being able to give an answer. But that's the real point.

Things are somewhat different when you get to the second question because while the bylaws are just binding for the single organization and people who participate in it, I mean, a contract is something between two parties. Given the nature of ICANN's business, one of these parties will be ICANN but the other one will be in any possible country of the world.

I do think that ICANN has to ensure that whatever the country of the second party to the contract, ICANN is not requiring this party to break their own national law.

I disagree with what Alan was saying before. I think that people should not be moving their businesses unless there is a conscious decision and global decision that something wrong is going on there. But I still think that ICANN is not the right type of organization to push their values or make calls on whether, I mean, a certain national system of government is legitimate or not legitimate.

Even, I mean, someone mentioned a couple of hours ago the issue of sexual preferences or whatever. Which, I mean, even if I might have certain ideas on that, I don't think that ICANN is the body that should make a judgment whether, I mean, the local, national law on sexual preference is good or not and deny people or companies from that country participation according to that.

Actually, the only constitutional point I would like maybe ICANN to make in its bylaws, but maybe not even in the bylaws but maybe in a declaration of values, it's also [inaudible] in the bylaws, but it could be [inaudible]. It doesn't matter because it's not a legally binding point but it's a moral point, is the idea that ICANN wants to serve the entire world and doesn't want to push agendas on the different countries.

ICANN is going to go as far as possible to ensure that people can participate and can actually become parties in contracts with ICANN independently of the country where they based in. This is maybe the only point that I would add somewhere in whatever ICANN binding document we want to address.

SETH REISS: Jyry and then Lance, next.

UNIDENTIFIED MALE: No, I was agreeing. [inaudible]

CHERYL LANGDON-ORR: Oh, well, we've got a color theme to do that.

UNIDENTIFIED MALE: Yeah. You're confusing.

UNIDENTIFIED MALE: Sorry, what's green?

UNIDENTIFIED MALE: [inaudible] red.

JYRY SUVILEHTO: Green is agree and red is disagree. I just wanted to say because I started thinking about when Mohamed mentioned that maybe ICANN should be located in Geneva instead of Los Angeles or California, where it is now. I think that in the long run, ICANN needs to be located or situated in several different legislations because as long as it's inside a single legislation there will always be a temptation.

I'm very fond of the Swiss, but I think that even they might be tempted to change their laws if they have control over the entire Internet if the legislation is based in Switzerland. In the long term, but in the short term, in my own lifetime, I don't really see a problem. But I'm assuming that the Internet will continue after I'm gone.

UNIDENTIFIED MALE: Who is speaking?

SETH REISS: Alan's next but just on that point, Jyry, if there were three countries of incorporation, then when ICANN issues a contract, it would have to be compliant with all three? That would be the checks and balances?

JYRY SUVILEHTO: Maybe.

SETH REISS: Okay, thank you. Alan, do you want to respond?

ALAN LEVIN: My name's Alan Levin from ISOC South Africa. I agree with what other people have said, but I'm concerned about the questions though. The example of the bridge, where the one side there's ramp and the other side there's stairs, I'd like to compare that to the Arab Spring. Because people couldn't get onto the ramp on that side, as far as I understand, properly. That drove change within their country.

No one at ICANN said that there was a problem with stairs on their side. They just said that there should be a ramp so everyone can get on. The people that put stairs on their side, which was the local governments, had to change to make it a ramp because the people weren't happy with it being stairs.

Maybe the Arab Spring's a bad example, but I've seen it happen all over the place. At ICANN, we create the rules that are based for everyone. We try not to look into international laws because we're creating global laws.

If we are asking the question of how do we globalize international laws, we are making judgments on national laws. But if we don't ask the question of how to make ICANN fit into the whole model, we just make a model that is best for everyone the way that ICANN has built itself. I believe that even though ICANN may be incorporated in the United States, it's happened to have suited the global ICANN policy making process.

Now, where it gets incorporated I think has largely got to do with money. But ICANN, as an organization, is not all about money. It's about technical coordination and about making the Internet open and accessible to everyone, globally.

Maybe it's useful that ICANN is incorporate in the United States, because that's where the money is. That's where the money's flowing. The people who are paying for us to make these global rules are happy with it to be in the U.S. If the people with money wanted to be incorporated somewhere else, I bet you they'll incorporate somewhere else.

The incorporation has got nothing to do with the globalization or the globalness of the Internet. The globalness of the Internet was created by the U.S. They said Jon Postel [individual words] into 255 countries and identified individuals in every one of those countries that would not be open to government capture.

He specifically selected individuals that he felt would not be dictated to by their local governments. That was when the globalization of the Internet started, long before ICANN existed. By the time ICANN came into existence, its whole raison d'être was that policy would be made at a global level. There's no doubt in my mind that it has.

Now, I agree. Now, it comes back to my original question: Don't ask the question of how to globalize it because it is global. Don't get into international laws because then we're going to be making judgments on national laws. We don't want to do that. We want to go ahead and make ICANN work as a global organization, a global policy-making body.

SETH REISS: Cheryl?

CHERYL LANGDON-ORR: [inaudible] on. You have to put yours off [inaudible].

UNIDENTIFIED MALE: Yeah, just you. Just you, Seth.

CHERYL LANGDON-ORR: Just you. Just you, Seth. Turn off. Turn off. Thank you. Now it's my turn. It's a pity, but I need to take control. I need to wrestle control back from Seth, because we've got a little bit of housekeeping, now, to do.

But we do have a function that I hope many of you will be able to attend. I certainly would encourage you to use the list if you are able to put some thoughts together today, tomorrow, or indeed, the next day so that you can build on this question.

We're not closing off our conversation by any means on this question, but we do have a number of questions we need to deal with. Feel free to put – you've got your own dedicated list. If you're not on it, see staff, and we will get you on it. There's plenty of time to contribute.

I hope, Carlton, you've got enough grist for the mill for us make some form of reporting on trending and what we've done when we go to the plenary in just one moment. I will do my best to explain what fun and games we had and why we threw the agenda out the window, as is my wont from time to time.

But I do want to bring you back to tell you a little bit about what to expect tomorrow. We had planned on having a quite different session today. We had planned on doing some ice breaking, which would have involved each of you going around, saying, “Hello, my name is Tijani Ben Jemaa and,” or, “Hello, my name is Roberto Gaetano and,” and that didn’t happen because we were taking advantage of opportunity. There’s nothing wrong with taking advantage of opportunity. I’d encourage you to be equally opportunistic tomorrow.

But what we will be expecting on the morrow – and I will not be with you on the morrow. I will be with you in the Adobe room, though, careful. I will be elsewhere. I’ll be in an entirely different hotel for most of the day. You won’t even run into me at lunch. Or, you might, because you’re having lunch in my hotel tomorrow.

But what Seth will be doing is asking each of you in the morning to make an introduction as an icebreaker. Guess what? You’re not introducing yourself. You’re introducing the person sitting to your left. Not whoever is sitting to your left now. Whoever is sitting to your left tomorrow, okay?

You might want have a little prior planning. You might want to say to someone, “I would like to introduce you tomorrow” and you might like to get to know them a little bit better.

We don’t just want to know that you’re from a particular At-Large Structure and that you have been involved in ICANN for whatever reason for however long. We want to know a little bit about that, but we want to know something particularly interesting or particularly personal about you. For example, it might be a hobby. It might be a

book you're reading. It might be your favorite color. Matters not what it is. It just has to be true.

That should act as a little bit of an icebreaker for you in the morning. You'll get to know each other a little bit better. You will also find, if the gods and goddesses...

UNIDENTIFIED MALE: Does the person have to agree on what the other person is telling about you?

CHERYL LANGDON-ORR: They have to be probably fairly horrified that when they think they're communicating clear and unambiguous information, the person they're listening to can actually get just a little bit screwed up. That is actually part of that exercise. I've actually had anything between two and no children depending on whether people have listened to the fact that when I've said, "Hello, my name is," and then they've introduced me as the mother of none as opposed to the mother of sons.

That said, have fun with that in the morning. That'll act as a bit of a get-to-know-you exercise. We will get back to our fishbowl plan slightly better tomorrow. Tomorrow, what I want Seth to do with the questions is he can have exactly this format if you're feeling comfortable enough in it. But what we were hoping was to do something a little bit dynamic that would force most of you to venture an opinion.

I'm now going to poll. Once day I'll get you to do a fishbowl if you don't do it tomorrow. But I'm going to poll: Do you want to just stay in the format you're with today? Are you comfortable enough today?

You'll still use your red and green yea or nays today. You're all able to say "me" and "me" or "me." You want to run with this? You're comfortable? All right. Well, we'll have to show you a fishbowl some other time. That's fine. Seth, that makes your job a whole lot easier. I assume you're happy with that.

That's how tomorrow will run. You have four questions to deal with tomorrow. Why have you got your red up?

UNIDENTIFIED MALE: Oh, I was just thinking that we...

CHERYL LANGDON-ORR: It'll be your day. You wrangle your cats in whatever direction you possibly can. If they all agree, that sounds like a plan.

Have fun. Dedicate just the time we've allocated to your questions. Give yourselves at least five or ten minutes at the end of each session for summation. That is something we haven't done now. You may wish to start with that tomorrow because we've had more time with our Subject Matter Experts than we had planned. Perhaps just making sure you've got question three summed up, then go back to question one, deal with question two, blah, blah, blah.

Thank you, everybody, because I think this has gone extremely well, and it's a very new technique. We haven't done this type of thematic work

before. We now have four minutes to get ourselves to down to the Viscount Room, where you were for the beginning of today's proceedings.

Let me make it clear and for the record: Yes, you will probably be scanned again. That's okay, because we need to recognize you're going into another session. If you get scanned twice in one session, I can live with that margin of error. If you get scanned 33 times in one session, I will notice it because that data will come up. Fear not, we're not biasing the data. But you do get scanned saying, "Another person," not you but another person, "has come into the room."

Wonder, it's down the stairs, isn't it? Because we're on level two. We're on level three. It's probably better for us if – could you lead them back the fastest way?

I'd like you to give all of you a round of applause and thank anyone absent or otherwise for what has been a very good session. This session is now closed. Thank you remote participants. Thank you interpreters and translators. Thank you tech team. Yay!

[END OF TRANSCRIPTION]