SINGAPORE – Board with Commercial Stakeholder Group
Tuesday, March 25th 2014 – 11:15 to 12:15
ICANN – Singapore, Singapore

ELISA COOPER: We should probably take our seats. We have only one hour, so if folks can take a seat so we can begin on time.

STEVE CROCKER: Welcome, everybody. Let's get organized.

This is where the ICANN board engages, listens to, and meets with the commercial stakeholder group, and as is our standard practice, we're a lot more interested in listening than we are in talking, and so here we are, and I'll turn it over to you, Elisa.

ELISA COOPER: Thank you so much, Steve. And really, thank you to the entire board. We appreciate this opportunity to share with you our thoughts and concerns, and we have a couple of topics today in particular that we want to focus on.

And before I tell you about those topics, though, I do want to mention that we've already spent a fair amount of time on the whole NTIA transition and it definitely came up as a topic that we're very concerned about, that we want to engage in, but we felt that since we were already spending so much time and that there were already sessions devoted to it -- hours, in fact -- that we would be better served by

focusing on a couple of other areas that may not be getting as much attention.

And so in particular today, we want to talk about some issues that we have around the multistakeholder practices and some issues that we would like to discuss around accountability and transparency, and so we'll be hearing from a number of our CSG members their perspectives. They'll be raising some issues and they'll have some questions as well.

So our first topic again will be around the multistakeholder practices.

Our second topic, we want to go a little bit more tactical, a little bit deeper, and we want to talk to you about some issues that we are continuing to see around new gTLDs.

And in particular, these -- because we are coming from the intellectual property community, the ISPs, the business community, these issues around new gTLDs for many of us are very concerning and they take a fair amount of our time, actually, as we're dealing with them, so we wanted to bring these to you as well.

So those will be our two topics today, and as I mentioned, we'll be hearing from a broad variety of members out of all three constituencies today.

STEVE CROCKER: That's great. It's a relief to have something other than the transition of the stewardship of the IANA function.

And I also like the message that is conveyed in the way that you've got the topics displayed there. Both number-one issues.

[Laughter]

ELISA COOPER: Well, I don't like to play favorites.

So with that, I'll turn to Topic 1 of 1.

The first topic, as I mentioned, will be around multistakeholder practices, and Steve DelBianco, in fact, is going to take us through some high-level issues and then we'll be turning it over to some other members as well.

First, it will be Peter Dernbach that we'll be hearing from in terms of issues about accountability, then Phil Corwin on transparency and desire for transparency and openness, and then more specifically some issues around CEO and board accountability from Brian Winterfeldt.

STEVE DelBIANCO: Great. Thank you. Steve DelBianco with the business constituency. We chose this topic first on the multistakeholder practice partly based on some concerns that we had raised, but it dovetails perfectly with the challenge put before us by the Commerce Department and the transition, in that it's all about us becoming the paradigm of a multistakeholder organization.

So this is about us really delivering and practicing the ethic of multistakeholderism.

So the three topics we're going to cover -- and again, Peter, Phil, and Brian will cover the three -- I had to start with one, which is with respect to the high-level strategy panels.

We'd like to contrast the high-level strategy panels of appointed experts with the bottom-up consensus-driven multistakeholder approach.

Both are multistakeholder, if the high-level panel is full of folks from different parts of the stakeholder community, but it isn't bottom-up and it isn't consensus.

So our concerns were made evident over the weekend, and management at a couple of levels assured us in our weekend work sessions that the character of these analyses and recommendations from the four high-level strategy panels were not actually being handed to the board for immediate execution by management, and that was reassuring, but instead, that they were posted for public comment in the hopes that the public could assess whether there are useful findings and recommendations, and that after the reports are -- the recommendations are in, I don't know for sure whether the panel experts will revise the reports, but then the reports will simply be posted on ICANN someplace.

When we analyzed the reports, we looked at two things, their content and their context.

And their content includes some descriptive content which is an assessment of the world as it is, and we had plenty of objections to the way things were characterized but we won't get into any of that with you.

With respect to the recommendations, we had grave concerns about the way some of these recommendations would work.

And that puts us in the situation of, do we need to correct the record on the descriptions? Do we need to register our concerns about the recommendations right now? Because we're all scrambling to do a lot of other things, but here are four extra reports that are due by the end of April.

But our most important message and question to the board, the message would be that given what we heard from management over the weekend, the context of these four high-level panels is that they are simply ideas from the outside lobbed into the cyber-space of ICANN, and that whatever is in the reports carry no special significance or stature. They can't be cited as ICANN findings. They can't be cited as board-approved recommendations by others who would suggest that they want to run with those ideas.

On the other hand, if there are ideas and there are analyses in there that the community likes, we can grab those ideas and bake them into our own bottom-up multistakeholder processes and try to push them along.

So what we wanted to make clear, is that our understanding, then, based on management's clarification, is that these are just like so many snowflakes that have been cast out there, and that if the community packs it together into a snowball and rides it through the process, well, then it would have some impact, but short of that, they don't have any significance or stature. And we'd like to ask whether the board could confirm that's your understanding as well.

STEVE CROCKER: We're going to have a little trip hammer of responses.

                       My answer is yes.

BRUCE TONKIN: Yeah. Thanks for bringing this topic up, Steve.

                       I attended the session yesterday where a number of the panelists
                       presented their work, and in particular was listening to the feedback
                       from the audience, and two things struck me.

                       One was a number of comments that Chuck Gomes made in that a lot of
                       the content is actually not strategy, it's actually techniques and ideas for
                       how to implement ICANN's mission, really.

                       So if you start with ICANN's mission, there's a whole bunch of things
                       that in the bylaws are what we need to do, and a lot of the content of
                       those documents are ways to implement that mission.

                       In many ways, I -- and then the other comment which was made by
                       Dennis Jennings in that session was that these pieces of work were
                       examples of thought pieces, and I think that very much that's the case.

                       They're a group of people in each case that had a lot of expertise in
                       their respective areas, and they're fantastic thought pieces.

                       So coming back to your question, are they approved recommendations,
                       they're not. Of course they're not. The board hasn't approved those.
                       They're put out for comment.

In terms of approving our strategy, we actually have a process that has been laid out, and the community has been actually interacting through their various stakeholder processes to provide input into that strategic plan, and the output of all those -- the board was consulted. I know there are a number of sessions that have been run in the last few public meetings where different groups have provided input.

That will be published for comment, but that is the strategic plan that we're considering.

That will be published for comment, and the content that's in that plan is a collection of all the material that's come through the bottom-up processes, and all the different stakeholders.

So that's when you'll see the draft plan, and that's when you can comment on the strategic plan and obviously make changes.

With respect to your question -- I think some people raised it yesterday as well -- is there value in providing comments on these documents that have come from the panels.

Well, yes, absolutely, because those panels will update those documents based on the feedback they receive.

They're genuinely looking for feedback.

But I think that we use those as inputs into our processes, inputs into your processes. The GNSO, for example, in this group are looking for ways to improve your development of your role. Use those documents. You know, use what you think is useful in your processes. And that's probably the best way of thinking about it.

So please comment on them. No, they're not approved recommendations. The approved strategic plan will come out of the draft strategic plan that will be posted soon.

BILL GRAHAM: The advantage of coming third is I don't have a whole lot to add.

I do think that management was correct in going -- did a good thing going out and looking for these inputs. I hope you agree with me that the strategic planning process this time is being taken much, much more seriously and we're going into it in much, much more depth.

So I think having some external views brought into the system is actually quite useful.

I also think it's absolutely vital that these be seen as inputs into the planning process, and that any decision or policy development that follows from that is done in the community and in the proper ICANN way.

So I don't see these as being anything to be terribly excited about. Certainly worth correcting errors, expressing opinions in the comment period, but I don't think I'd go too far in worrying that the board's just going to adopt them holus-bolus.

I've also read through this draft that will be posted very soon of the strategic plan and I do see a few phrases in there for comment that have come out of these.

I don't -- you know, my view is that the ones that have been picked and put in the latest draft are not in any way inappropriate, but you'll have plenty of opportunity to comment on those. Thanks.

STEVE DelBIANCO: If I may, the snowflakes in those four plans fall on many fields. Perhaps only half of them landed on the strategic plan. They are very tactical and they're going to end up being potentially useful in the IANA transition, in the work we do at our multistakeholder (audio dropped). They've got broad application. It won't all just be channeled to the strat plan.

STEVE CROCKER: Fadi, did you want to add anything to all that? No? Okay.

That's probably sufficient.

Ray, you want to --

RAY PLZAK: Yeah. I just wanted to emphasize a few things.

First, regarding the comments, the comments are very, very valuable because they serve as clarification and rebuttal, because while this may be a group of experts, experts don't always get everything right. There may be some misunderstandings. So it's very valuable from that standpoint.

You know, and they are not authoritative in the sense that you identified, in that the board has not approved them nor is it intended for them to be authoritative.

So when Bill points out that some of the nuggets from those things may be appearing in the strategic plan, that's all well and good because the strategic plan is the document that's going to be implementing some of those things.

As far as some of the other snowballs that you may be rolling or getting ready to throw at people, you know, some of this snow may be very, very good and some of it may be -- may not -- may be not so good, and it's going to be strengthened by the comments.

And so it should be used as what it is. It's a resource to be used to help move things along.

STEVE DelBIANCO: One final response, Ray.

Until you said the word "rebuttal," I didn't even feel it was necessary for us to go through both the descriptive and normative segments of all four reports and rebut everything that we didn't agree with, because it wouldn't matter if we rebutted it, since it doesn't carry any stature, it won't be approved by the board, it's just out in the wild.

RAY PLZAK: But it's an idea and so it's part of the discourse. And so if it's part of the discourse -- if there's something in there you disagree about, you should say so.

STEVE DelBIANCO: Does the rest of the board share that opinion? Do we need to rebut things that we don't agree with?

STEVE CROCKER: So as I'll -- I understand your point, Steve.

I see an awful lot of stuff on emails and so forth that is, from my perspective, way off base. I choose very selectively what I'm going to respond to. Otherwise, I'd get -- you know, do nothing else and it would be an endless mess.

So I think it's a matter of judgment. You choose whether or not you want to try to respond to that.

The panels -- these panels --

Some of these comments apply not just to these panels but to the advice we get from an expert working group, for example, or from advisory committees and so forth. I mean, there's a broad pattern that we get inputs all over the place, and the question keeps coming up, what is the authority or stature of those, and to what extent those determine what we're going to do.

And the answer is basically uniform, that it's great to get that advice and it does not have any force until it's been through the appropriate processes and adopted, but there is no obligation just because some constituted set of people said so, even if they believe that it's the most important thing or whatever.

That said, these panels, I can tell you, composed of very, very sophisticated senior people, very well-intentioned, typically do not have separate agendas so they're not representing constituencies and so forth, and I would take it as a given that they are trying to get it right.

So if you think that they have misstated something factually, it would be -- it would be likely to be constructive to offer to them your thoughts about that, but there's no obligation to do that, so I -- I take your sensitivity to "rebuttal." It's not a debate sort of thing. It's intended to be a cooperative process.

Yeah.

>>   (off microphone.)

CHERINE CHALABY: So I'm with you on that, Steve. I think the only document that binds us all together is going to be the strategic planning document. Everything else is an input into the strategic planning document and if you miss your chance to make a comment on some of the input, you will have another chance to comment on the strategic plan, and that is the only document, seriously, that will bind us together and will be the formal document that sets the vision and the direction.

Anything else is an input.

ELISA COOPER: Yeah. So we do have a number of topics and I do want to make sure that we're able to touch on them, so if we can here from Peter Dernbach, Phil Corwin, and Brian Winterfeldt individually on topics surrounding accountability and transparency, that would be great.

Peter?

PETER DERNBACH: Peter Dernbach, a member of the IPC based in Taiwan.

And Steve just mentioned the strategy panels, and Phil and Brian are also going to mention some specific instances that we've seen where it seems that accountability and transparency have broken down.

First of all, I should mention that we see those accountability and transparency as interrelated concepts. They can't really be separated. And our understanding is that the CEO is accountable to the board and part of the board's job is to hold him accountable to the multistakeholder bottom-up processes, consensus-based decision-making processes that define ICANN as an organization. The board, in turn, is supposed to be accountable to the community.

And in both of these areas, whether the CEO is truly being held accountable to the board or by the board or whether the board is stamping approval on the actions of the CEO and the board's accountability to the community, whether in transparency of their decision-making processes, meetings, et cetera, there seemed to have been some serious issues in recent times that Phil and Brian are going to mention specifically.

But we want to call attention to these now because it seems like these are symptomatic of an underlying chronic issue that we want to address just as ICANN is starting to expand its focus beyond the domain name system with which we've been focusing -- on which we've been focusing for so many years.

So we -- even within this area of focus, we want to make sure that those systems are in place and that there really is accountability so that all of the actions -- the actions of the board, the actions of the CEO -- are reinforcing our commitment to this multistakeholder bottom-up consensus-driven policymaking process before we expand ICANN's role in Internet governance, IANA functions, other areas.

STEVE CROCKER: Let me speak quite frankly and directly.

We believe, speaking for the board -- I'll speak for the CEO, too -- that we ascribe completely to the principles. No daylight, no difference in opinion on the principles.

But it's evident -- again speaking quite frankly -- that there must be some irritant, some set of circumstances or observations that are motivating your speech, and we have seen other kinds of statements, and I've seen a number of statements that take as a given that we have somehow violated this, without providing any facts. And that's a very difficult position to be in, because we think that we're doing it. If we're not, then there's something to talk about.

But to have a statement just made that we've abandoned our principles or that we're not adhering to the processes and so forth, have that float

out there as if that is a stated fact is a disservice, I believe, and is not very constructive in the sense of providing us anything to deal with.

So I'm hold- -- my breath is waiting for the next shoe to drop on this to find out what it is that's underneath this.

ELISA COOPER: Yeah. So we are going to hear specifically some issues where we have concerns.

FADI CHEHADE: I think any talk of the expansion of ICANN's role should be stopped as well. Because twice you said we're expanding ICANN's role. ICANN's role is not expanding. Names, numbers, protocol parameters, period.

It is very dangerous for the world to hear when the U.S. government just handed us an important responsibility that there is anybody speaking about expanding roles. We're not. We're sticking to our knitting. That's our job.

Secondly, I will respond because when my board didn't on their behalf, when you claim that the board is rubber stamping, that's a dangerous claim. You also need to back that up with facts because that's not the case. That's not fair to our board of directors, an extremely diverse board. And I have served many boards over the years. This is a very diverse board. You cannot think they're monolithically being -- rubber stamping anybody. So please be careful. These are very dangerous words you said. "Expanding our role," we're not. The board rubber stamping, not.

STEVE CROCKER: Let me just say, I listened and I forgot to respond immediately to the claim that we're expanding. I should have caught it myself.

That's an example probably not fully intended of exactly the syndrome that I'm talking about, of saying something as if it's true when, in fact, it is an assertion that needs to be documented and expanded there. But we're not expanding our purview. We do not -- and as Fadi said, the board does not rubber stamp anything. Yeah.

ELISA COOPER: I think, you know, this is a perception. And I don't know that we mean to say this is factually happening. This is a perception that we have partially because a lot of times we don't know what's going on. And I think that is something that actually Phil Corwin wants to kind of delve further into in terms of transparency and some things that we would like to see in terms of transparency.

Phil?

PHILIP CORWIN: Yeah. Thank you, Elisa.

And good morning.

This will somewhat be similar to what I said at the microphone at the morning session yesterday. But, of course, yesterday I was speaking on behalf of myself, and today I'm speaking on behalf of the entire CSG.

Fadi recently, I forget which appearance, but he made a very correct statement. He said that legitimacy -- there is no legitimacy without accountability. And that's entirely correct. But there can't -- the corollary is that you can't have accountability without transparency, that the community cannot -- it is not enough for the community to know what the decisions are. The community needs to understand how the decisions were reached.

Three years ago in this very room, the board had a very contentious debate before authorizing the new TLD program. There were sharply divided opinions. There was a split board vote. And the fact that the community could witness that in realtime was very good for ICANN and the board and the acceptance of the legitimacy of the decision. It is okay to have disagreements in public as long as people feel the process reaches a legitimate end point.

Speaking of facts, there was a board resolution last September authorizing Fadi's outreach that led to Montevideo and other things which the board chose not to even reveal the resolution in the subsequent minutes of the meeting. And, frankly, the community reaction to that was a feeling that the board did not trust the community with that. The community was not convinced by the rationale provided. And, in fact, to the extent that those actions were driven by the NSA revelations and concerns in the board and executives that it would undermine ICANN's status and the future of the multistakeholder model, a lot of that was already out in public at the time of the Durban meeting. And if that feeling was out there, it could have been shared with the community and feedback received about

what do we do about this to preserve the multistakeholder model. But that was not done.

I think the bottom line for the CSG is the feeling that ICANN in its policy-making role -- we're not talking about opening up, you know, confidential discussions of personnel matters and things like that, but it's performing important public policy decision-making roles. And the trend certainly in the western world has been to open up decision-making bodies to realtime observation through realtime Webcasts or audiocasts so that people can see how people making decisions with important public policy implications, how they reach those decisions, what factors fed into them.

And we're not seeing that, and we think that would be good for ICANN if we saw a move toward greater transparency. If in some cases, it is not practical to have realtime video or audiocasts, then certainly transcripts of the board discussions should be released so that the community can understand how decisions were reached and that would also help us understand the positions of various board members, how the decisions were reached, how the board reacted to input from the community, what other factors, what other staff input they took into consideration in reaching the decisions.

So the key here is not just to reveal the decisions but to reveal the process by which the decisions should be made. So the bottom line for the CSG is that ICANN's commitment to transparency should be better demonstrated at the top of the decision-making process through greater transparency of the process by which board decisions are reached.

And we think that would be very good for ICANN as an institution and very good for the board in terms of enhancing the community's understanding and acceptance of board decisions, whether there's disagreements or not with the final decisions. Thank you.

STEVE CROCKER: I'd like to -- Phil, you raise two or three very specific things. And I would like to respond and call on Fadi and a few others to respond to pieces. Here are the pieces that I heard and how it's structured in my mind from what you're -- one is a general issue of the board's processes for reaching decisions, documenting those, how much of that is visible, how much is done privately, if you will. And I'll speak to that.

A specific issue was the special situation of the resolution that we passed last fall that related to the events leading to the post-Montevideo decisions and so forth, and that deserves a separate discussion.

There's probably a third element there, but I'll just leave it at those two.

In my time on the board -- and I've had the privilege of spending more than a decade sitting on the board, first as a non-voting liaison and then as a voting member and then as chair for the past three years, I have had a chance to watch the operation of the board closely and the operation of ICANN as a whole, both the staff and the larger community, the supporting organizations and so forth.

The basic model that we have in this organization is that the real work is done not by the board, that the idea of the board being a policy-making

body is one that we have tried very hard to tamp down, to walk away from.

That does not mean that there aren't occasionally some contentious issues and we don't get into some interesting kind of debates. I will come back to that in a second.

But, by and large, by design the debates that you're interested in are happening here. They're happening in the supporting organizations, to some extent in the advisory committees. And by the time things come to the board, there should not be very much that is not on the record.

Now -- and as a consequence of that, the decisions by the board are, by and large, wholly predictable and uninteresting. It's not really where the action is.

Now, that's the broad picture. Let me take it down into the fine grain of how the board actually operates. We have formal board meetings. We adhere to all of the formal processes. We put notices up, and we hold the meetings and we publish the results. Some of those meetings take place in public. There will be one Thursday afternoon, capping off the week.

And then at other times during the year, we hold them either telephonically. Or when the board has retreats, it's convenient to have a board meeting face-to-face.

The vast majority of what comes through the board is pretty business-like and moves along smoothly.

One of the syndromes, one of the patterns that I had observed and dealt with over the years was late-night drafting sessions and extended debates in the middle of board meetings. This may seem like a good sport. It may seem like a good theater. It is absolutely terrible practice for many reasons. It leads to bad decisions. It is a terrible waste of time. It is amateur time.

One of the things we have done is to become much more professional in the way that we deal with the drafting and the decision processes. We ask that our board members read documents in advance. We ask that the documents be prepared in advance. We ask that if there are issues that board members want to raise from a clarity point of view, that gets sorted out as strongly as possible in advance so that by the time we assemble for a formal board meeting, we are past that point.

That does not mean that we insist that everybody have the same opinion. We absolutely insist that every board member vote his own conscience, come to his own decision.

And it has always been regular practice for as long as I have been around that if a board member votes against something or abstains, which is a sort of lightweight form of the same thing because an abstention is counted the same as a no vote, that we regularly -- always ask if they want to put on the record the reason for the abstention or the reason for the no vote.

Usually they do. Sometimes they don't. It depends upon what their internal process is.

Under no circumstance do we want to inhibit anybody from voting his conscience.

Occasionally -- it's rare, but it happens, there are contentious issues. The instance that you cited here three years ago was one of those instances where there were differences of opinion about whether we were ready to go with the gTLD program. There have been other noteworthy instances. I remember the vote for XXX was contentious and very passionate speeches were given.

And when those happen, there's a certain amount of theatrics involved and it makes the press and you're watching things exposed, if you will. But the number of those is rare.

I have also taken it as a lesson that if there is at all any tendency for something to be sensitive, that it is better to put it in public than not. So I will acknowledge a mistake I made -- I forget precisely, on the order of a year ago, maybe more -- where we had a formal board meeting on the weekend of this kind of ICANN week and then we had a public board meeting. And there were, I think, two transactions, two resolutions, that we passed as a kind of taking care of business. One had to do with the budget, and I think the other was the dot com renewal.

There was not really any question about passing any of those. All the work had been done. They had been publicized and commented on and all of the public processes. Nonetheless, the feedback that we got was that it would have been better to do that in public. And I took as a lesson that even though I would like very much to be as business-like and efficient about our process, that where there is any tendency at all -

- or any sensitivity about something, that if it's possible, we'll put that out in public.

We are, in fact, having two board meetings this week. We're going to have one tomorrow afternoon. It is a closed session. It deals with personnel issues. So it falls exactly into the category that you're talking about, that you mentioned.

And then we will have a public session Thursday. And in dividing up the material that goes in one of those versus the other, the bias is strongly in favor of putting things on the public -- in the public forum. So you will see what there is to see. There just isn't that much to see.

Now, I will close in a second and move on, but I want to come back to the resolution that we passed last fall. There is -- in addition to personnel matters, there are specific times and appropriate mechanisms available in our rules that allow us to pass a resolution, put ourselves on the record but not publicize that record.

The reasons for doing that in addition to the ones that you cited, personnel, is that the publication of the resolution may not be the appropriate thing to do in terms of the interactions that are planned negotiations perhaps or other sensitive kinds of interactions.

The purpose of passing such a resolution is to make it clear in a very formal way that the board has been informed and the board is supportive of the intended actions that the CEO is planning and stands behind that so that as these things unfold there's no question about whether the CEO was accountable and whether the board was paying attention.

So that's the set of things that I want to say about that. We've set a course very, very clearly to try to have all of the substantive work done outside of the board -- I'm not talking about outside of a board meeting, but I'm talking about not being done by the board. And the work that the board does is really for board members to come up to speed, understand what is in front of them and to do that as efficiently as possible so that by the time we are assembled in a formal board meeting, we are taking care of business, taking care of your business in an efficient fashion and not having an endless delay because we're having individuals take up time learning in a setting that takes up everybody else's time. And that's the extent of it.

ELISA COOPER: Steve, so we only have about 20 minutes left. And I do feel strongly that I want us to be able to cover new gTLD issues. Would it be okay if we touched on those?

STEVE CROCKER: Is there anybody that needs to say --

>> Elisa.

STEVE CROCKER: Thank you. Olga?

OLGA MADRUGA-FORTI: I just want to interject real quick that we don't confuse two very distinct topics. One is fiduciary duty, and the other is transparency. So just in terms of fiduciary duty, it is very important for all the board members to share with you how it is that we exercise that. And it is a very good point, that that's not always evident in, say, minutes and resolutions of meetings.

Just thinking back in the last six to seven months of issues that are important to you which have generated a great deal of back and forth between the board and the staff, between the board and our chair and our CEO, you will recognize them: Trademark clearinghouse, reconsideration requests, closed generics, NETmundial, NTIA advice, strategy panels, GAC advice. All of that in the exercise of our fiduciary duty generates a great deal of back and forth.

That said, this is a very interesting dialogue on the separate issue of transparency and maybe new tools that we can use to make this process even more open to everyone.

ELISA COOPER: Fadi.

FADI CHEHADE: Thank you. I'm not the lawyer here, but a case was laid out clearly that there are perceptions that the Board rubber stamps decisions and things are being done. This was a case laid out, and then we were told, when Steve reacted, that there will be clear evidence to that. The evidence that was presented by the gentleman was that we had one Board resolution made that was kept confidential for a period of two

months. If that's all the evidence, we cannot build perceptions, and he used the word "feelings" three times, there are feelings. We need evidence. This Board has been very clear that we will put all of our resolutions in public. There was once during my tenure that this happened and maybe another time on lease negotiations which you would understand we cannot have public. But for God's sake, if there is no real evidence, I feel there is a campaign by some people to build that -- that perception and that feeling. And that must stop. This is not the time for ICANN to be exposed to campaigns with agendas without facts. This Board has been under enormous pressure to do its job, to deliver its value, to be transparent, to be accountable, and we should be fair to the process. We should not make accusations. And it's being made publicly, it's being made to the press, and it's being made again here without -- you showed us the evidence. Is that the only evidence? And now you know that this Board resolution had to be kept under wraps for a couple of months because if it's not clear to everyone, this was an extremely sensitive subject that led to a decision by the United States Government and we had to be very careful how we dealt with it, which I think you should appreciate on the part of that Board.

So please, let's get to our business. Let's get to the new gTLDs and the issues we need to resolve for everyone. That's what we should be doing.

ELISA COOPER: I agree, I mean, I agree we should talk about new gTLD issues. I think if you're looking for other evidence, I think that we can do that, we can provide -- again, it's a perception. And I want -- look, I want ICANN to

be successful, I want you to be successful, I want us all to be successful. And if there are campaigns out there, then let's do what we can to put the kibosh on those campaigns.

FADI CHEHADE: Exactly. And I hope --

ELISA COOPER: And if there's anything that we can do to help make that happen, I guess I would ask that we look at what we can do to make sure that the perception doesn't exist.

FADI CHEHADE: Please, call me on it. I committed to the GNSO council, I will call for a meeting for anyone in the community, between the ICANN meetings, and the first one will be scheduled shortly, called the bottom-up meeting for anyone to come to that call and say we have evidence you are doing things not bottom-up. And put it on the table and let's debate it as a community. I don't know what else to do, but we need to get to our work and stop empty campaigns. We don't need them. We have a lot of work to do.

ELISA COOPER: That I agree with. With that, I would like us to touch on some of these open new gTLD issues that in particular the intellectual property community, the ISPs, and the business communities are facing. So with that I'm going to turn it over to Kristina to highlight some of the issues. We're going to hear from Tony Holmes on name collisions, Kiran

Malancharuvil on pre-registration issues and some issues we're seeing with sunrise notifications, and then Claudio DiGangi will talk a little bit about some registration practices that we're seeing that some may perceive as being sort of discriminatory in terms of who's being allowed to have what.

KRISTINA ROSETTE: Thank you. Three years ago when we were here and after the resolution had passed Steve spoke about execution of the new gTLD program. We are now well underway with that. Unfortunately, that execution has disclosed several issues and these are issues that the commercial stakeholder group believes that ICANN is vulnerable on. These are issues that create vulnerabilities. That in the context, given what ICANN has ahead of it in the next six months to a year, we believe need to be addressed.

Just to give you a specific example on the compliance side, in January -- in the January compliance report there was a short paragraph that said, "During the month of January the Contractual Compliance team, through the informal resolution process, collaborated with post-2012 gTLD registry operators to address failure to deposit data escrow, failure to submit monthly reports, denying zone file access, failure by the registry operators that have declared cross ownership with registrars or resellers to provide a certificate of compliance with the Code of Conduct and results related in internal reviews, and failure to block name collision related second-level domain names." Here's the thing. As of January 31 there was one TLD that was in general registration, 74 that were in sunrise, and those implicated only 14 registry operators. If you

take those numbers and you take the compliance problems that were already being reported by compliance itself and scale that out to the number of TLDs that we're going to be seeing and the number of TLD registry operators that are going to be operating these TLDs, we have a significant problem. And that -- compliance is an issue that the IPC and CSG has always felt very strongly about. We just want to flag this. We think it's something, again, this is a vulnerability. We urge you to take corrective action. And with that I'll turn it over to Tony to talk about name collision.

STEVE CROCKER: Do you want responses as we go or at the end?

>> The end.

STEVE CROCKER: Okay. That one is clearly one for management, not for the Board.

TONY HOLMES: Okay. Thanks. I'll try to be brief on this. The issue of name collisions has been raised here before by us, and I'm glad to say things have moved on considerably on that score. Certainly as ISPs in business we're working in coordination with some of the ICANN staff to resolve that and we also have the JAS report. But there seems to be a feeling that that issue has been addressed, and the point I want to make here is, it's very, very difficult to address an issue when you don't know the scale of that issue. And we're still in that situation. It could be totally

insignificant. It would be beneficial if that was the case. But it could even get to the stage where the results of some of the name collisions could actually be even life-threatening. We don't know where we are with that. And even the measures that are in place, it is very difficult to evaluate how effective they are. I am going to hand over, on that basis, to Mikey O'Connor who's probably closer to this than many of us because he's actually involved in some of those activities, just to emphasize and point out that some of the measures that have been put in place, they don't appear, even at this stage, to be giving us the results that we require -- hope for. So Mikey.

MIKEY O'CONNOR: Thanks, Tony. I'm really conscious of time and I just saw the Board agenda and saw that name collisions is on that agenda. If it turns out that this is sort of an open conversation with the community, I could defer this till then. I just wanted to see if I could save us a little time here. Does anybody know anything about that agenda item?

STEVE CROCKER: I should but it's not fresh.

MIKEY O'CONNOR: Yeah, well, let me do this really fast because I know we're really short of time. What Tony is alluding to is that the JAS report has got some wicked clever ideas that are very encouraging and we really appreciate the work that the staff has done on this. It's terrific work. There is a security issue that does not bear on the new gTLD issue at all that prevents JAS from releasing the data from which they drew their

conclusions until that security issue, which I want to repeat does not have anything to do with the gTLDs at all, that has to be resolved because it's a substantial security problem. The ask here is that the comment period on the JAS report ends in a couple of weeks. The security issue is not likely to be resolved until June, and the ask is that we leave the comment period open until the data shows up. I mean, there's lots of Mikey stories to tell that are really interesting, but we're in tough time here. So that's really where we're headed with this.

STEVE CROCKER: Fair point.

ELISA COOPER: Karen?

KIRAN MALANCHARUVIL: Kiran Malancharuvil from MarkMonitor and the IPC. I'm right here. So I very quickly wanted to point out that there are a number of new gTLD compliance issues that have concerned the CSG greatly. Of those, there are problems with sunrise notifications where 30-day notifications have not been respected, not been posted to the public in the way that we were promised that they would be. There are pre-registration issues that are at the registry -- both at the registry and registrar levels. The registry level pre-registration issues revolve around bypassing the relationship that we -- that we count on for accountability between the registrar and the registrant. And the pre-registration schemes at the registrar level are extremely concerning insofar as they -- there are compliance issues surrounding trademark claims notifications. These --

that last piece is especially concerning because in the IPC we were very specific about developing the trademark claims notification in such a way that it creates a contractual relationship or an ascent to the registration but on the part of the registrant. And pre-registration notifications that are sent from the registrar do not satisfy the same legal requirement. So we haven't seen these appropriately addressed by what I would consider an overburdened compliance department at ICANN, and as more launches happen and more pre-registrations are introduced, then we -- we need to be very conscious of how compliance is going to become aware of these and how they're going to address them and it needs to be done sooner rather than later. Thank you.

ELISA COOPER: Claudio.

CLAUDIO DiGANGI: Thank you. Claudio DiGangi, IPC. So I'm going to touch on what we're calling discriminatory practices, and we consider these concerns related to subjecting potential registrants to unfair disadvantage. The two main areas that we're seeing this is in the reserved names process. The Registry Agreement allows -- it's paragraph 3.3 of specification 5 of the Registry Agreement -- allows an unlimited number of names to be reserved by the registry before the sunrise period and then it allows the registry to allocate those names after the sunrise period. So they would be subject to a claims notice but again, they would be exempted from sunrise. So the way some registry operators are interpreting this completely defeats, in our view, the purpose and the spirit of the sunrise process. Because if a trademark owner tried to register a name

during sunrise they'll get a message back saying this name has been reserved by the registry operator. That name could then later be sold on the open market.

The second area -- and we've commented on this recently (indiscernible) launched a staff contact. There was a qualified launch program that ICANN has published, and we think generally it's good. This allows registries to use up to 100 names for the promotion of the TLD. We think those parameters are pretty good, but we just think that that could be completely nullified by some of these other discrepancies.

The other issue has to deal with what are called -- I mean, we're calling them premium names. I don't think that's in the contract. But these are names where -- they are specific names that are being -- specific second-level domains that have different pricing for them. And many of these correspond to famous trademarks. And these are being sold during the sunrise period at elevated prices. We have also seen other sunrise periods where the prices are extremely high, and again the concern is that that nullifies the spirit and the purpose of the sunrise period. Those are really the two areas.

We've outlined some solutions to some of these in our comments, and I'm sure this will be coming up to the Board. We've talked about, in terms of the reserved names that the agreement allows for ICANN to require these reserved names to be published. And then we've also suggested that if the registry is going to reserve them that they could reserve names that are not in the clearinghouse, for example. So that -- you know, that seems as one approach. Or they could require a sunrise period, if they do reserve it, and then allocate them after the sunrise

period, you know, six months later have -- allow the brand owner to have a, you know, a sunrise period opportunity instead of just the claims notice, which is just a heads up that someone else got the name essentially. Thanks.

ELISA COOPER: So I think there were a number of people that wanted to respond.

STEVE CROCKER: Yeah. All of these fundamentally belong at the management level, so I think the proper response is some combination of Fadi and Akram.

FADI CHEHADE: Just to say at a high level, this is good substance. This is the kind of stuff we should be discussing. I'm very pleased. May I suggest to Akram that Maguy and I and you and whoever you want to invite from staff take the time during this week to meet with these folks, review their input more, because I don't think we have the time here, Elisa, to do it and give it a fair amount of response. And I want to give the assurance that we not only will listen, will engage, will understand your concerns, and if these are things we can do within the purview of management, if they are not policy changes obviously, we will very much want to hear these and take them into consideration. So we'll schedule something during this weekend. If it's impossible we'll schedule it immediately towards -- via telephone.

>>   Thank you.

ELISA COOPER: So --

MIKE SILBER: Steve, sorry. Can I intervene very quickly, because I think Fadi is totally correct on most of the issues, and I was very pleased that the last speaker made a comment about some suggestions rather than just raising problems. Because if it's going to be bottom-up, it's always great to have practical suggestions rather than just a complaint.

Can I push back a little bit on the question of name collision? Tony made a statement about potential loss of life, and I'd really like to ask where that comes from because I've heard that a number of times. Given that the studies to date have indicated that name collisions are already there and have existed for at least the last 15 years, pretty much every time a new TLD is introduced, if it's a new ccTLD based on retirement or the first round of new TLDs name collisions have existed, and I am not aware of a single loss of life based on a name collision based on the introduction of those previous TLDs. I don't think the security concern is so severe as Mikey suggested that the issue is a crisis and that's why data is not being revealed but rather it's prudent because you don't put out a non-security issue into the wild until it's been remediated.

So really, I really think we need to just calm the temperature of the name collision issue. It is not a crisis. People are not going to die. But we do need to take appropriate and careful steps, and that's being dealt with in the context of the new gTLD program by the NGPC and in the

broader context of name collisions generally it's being dealt with at the Risk Committee level. So I'd encourage a separate conversation which includes Risk because I really think that this has been amp'd up based on agendas without any real justification.

STEVE CROCKER: I'm going to insert, I agree with you completely, Mike. It's not Mikey's fault. The origin of this stuff comes from our esteemed colleagues over in highly technical areas for which I have some serious heartburn about all that, but that's a different subject. And so I don't know that there's going to be any resolution here, although Mikey wants to speak.

MIKEY O'CONNOR: I just want to put this in sort of an historical context. There's a really good parallel. It's not perfect. But in the Y2K discussion what we had was two groups of people. We had Chicken Little, that was what my good friend Mr. Silber called me yesterday, they were otherwise known as Pollyannas -- or doom and gloomers, and then the opposite of that which was Pollyannas. And the problem with the Y2K debate, and I wound up being the policy point for Minnesota and the upper Midwest for this so this is very close to my heart, the problem was that neither side had under -- any underlying data on which they could base their views. Now, this is an exact parallel here. I don't know whether there is any problem at all and in fact, I am the registrant of the name that was used to drive much of this testing and I will tell you that we've put the -- the JAS-recommended solution in place on that domain and it seems to be working fine. The problem is that we don't have enough data. And so this is the prepare for the worst -- hope for the best, prepare for the

worst kind of thing that we went through. This is risk management and it needs to be data driven. And the issue that I'm trying to convey here is to convey it in even terms, not Pollyanna or doom and gloom. And we just need more data.

Now just to finish off real quick, one sentence. There was a seminar -- there have been several seminars on this and leading researchers in the world, Ph.D. research people that are way smarter than me about this came to the exact same conclusion. We don't know.

MIKE SILBER: Mikey, agreed.   There's some preliminary data, but you're entirely correct, opening or keeping the public comment open or opening a new comment once the data is out makes sense. Let's have a chat. But also let's just drop the temperature of the discussion, please.

ELISA COOPER: I --

STEVE CROCKER: Kuo has been eager to speak here.

KUO-WEI WU: I just would like to, you know, raise one of the issue, you know, we don't need to actively discuss here but particularly for the business constituency, I really like to ask you to be watching. That's the one another the issues begin to generate in the new gTLD issues, the IDN variants. Okay? As I know right now the IDN variants discussion is only

the registry group, but the real impact is the registrant. It's you. But because of most of you, you maybe don't care -- well, I should not say that because you're a global company, you have a registrant in some of the China, Taiwan, Japan, or whatever. You have your corporate name in their characters, so watch that issue will be generated. So I just raise that for your notice. Sooner or later it will come up.

ELISA COOPER: Thank you.

MIKEY O'CONNOR: Just real quick, this is Mikey again. We in the ISP constituency are really engaged on this and we've got training material coming out on it, we've conducted interviews with Chris Wright who's the -- the CTO of the Shabaka registry. I couldn't agree more. IDN variants, universal acceptance, there are a whole series of technical issues that require global outreach and lots of work to do.

STEVE CROCKER: All good topics. I'm not going to -- we've got other things to do here.

ELISA COOPER: Well, I think we're at time. I want to thank the Board, all of you, all of the constituencies for attending. And we appreciate your time and your consideration of these issues. And I think that we are all committed to doing what we need to do to make sure that ICANN is a success, that we uphold the values of the multistakeholder model, and that we continue

to engage. And we appreciate all of your openness to that. So thank you.

STEVE CROCKER: Thank you very much. And thank you particularly for bringing some specifics that we can dig into and engage in. This is -- this, I think, is a useful use of our time. Thank you all.

[END OF TRANSCRIPTION]