ICANN

Moderator: Gisella Gruber-White
January 15, 2015
1:00 pm CT

John Berard: And now we get to the heart of the meeting. All right, it's two o'clock. Is everybody awake? Everybody happy? Has everybody bought their commemorative I Visited Washington DC t-shirt or fleece?

So I didn't know what the question was when I was asked but I said "yes" and now I find myself up here with a microphone and Rudi. And I don't know which is more discomforting. However, we have an hour, two hours, six hours, we have two hours to discuss these two issues each of which we probably can dispatch in about 10 minutes.

Rudi Vansnick: I don't think so.

John Berard: Laughter is ascent. And so we - that's cool. I sounded good there. I think that we're going to start Rudi with, as the slide indicates, new gTLD issues. And I will monitor the queue manipulating placement for people I like and don't like. Yeah, yeah. Avri, no reason for you to be here, Avri, you can head out.

((Crosstalk))

John Berard: And so we should begin with a point of entry on the new gTLD issues. Chatted with a few of my CSG colleagues; I think the point of entry is there are a number of analyses, both programmed and on the fly, that are taking a look at the first round of new gTLDs so as to help inform a potential second round or open window.

And so why don't we start there with a discussion of what those issues might be and how the Non Contracted Parties House can participate in the various discussions. And we start with Kiran.

Kiran Malancharuvil: Hi, everybody. Kiran Malancharuvil from MarkMonitor and the IPC for the transcript. I think at the highest level what I would like to try to reach agreement amongst the NCPH on is - and I think this might actually be really easy - is the need for an active and predominant role of the Non Contracted Party House in the new gTLDs reviews.

I think we've seen, throughout the application process and the delegation process and just really in general over the last couple of years that the Contracted Party House has taken a predominant role in new gTLD issues with the Non Contracted Party House seen as a somewhat, you know, an annoyance, a hindrance to the progress and the success of the program.

So I think it would be possible - if it were possible at this meeting for us to kind of understand that we need to take and insist on a predominant role; I think that would be really helpful. And we could start with kind of a united front on that piece.

I think when we look at what that predominant role may - like what form it may take I think that we should look to the Affirmation of Commitments and examine what the purpose of the new gTLD program really was, how it was

presented to the community. I think that there's some discussion about returning to looking at that piece of the puzzle and we need to make sure that we have a very clear view and point of view on that.

And I think as the case may be happily, it dovetails a bit into the priorities and the discussion that was presented by our colleagues in the NCSG about public interest. And I think that in Section 3 of the Affirmation of Commitments ICANN has committed to ensure its decisions are made in the public interest and are accountable and transparent.

And I think that when we look at the success of the new gTLD program we need to start by seeing if the program lived up to those ideals and those standards.

And then of course in Section 9 of the Affirmation of Commitments the mandate was to assess the impact of the new gTLDs on the public, including whether ICANN's program promoted competition, consumer trust and consumer choice. And I think these are all also issues that are very much in the public interest insofar as at least us on the - in the IPC seek to engage in activities that protect consumers.

So I guess I'd kind of like to launch off the discussion in that way. I think on the line is my kind of co-conspirator on these issues in the IPC, Claudio. And I think he had some ideas about how the - how he envisioned that the Non Contracted Party House may take a leading and predominant role in these - in the new gTLD reviews in order to kind of serve our common goal in the NCPH of serving the public interest. Claudio, are you actually online?

Claudio DiGangi: Yeah, yeah thanks, Kiran.

Kiran Malancharuvil: Great. So I can just turn it - can I turn it to you? Is that okay, John? Is there...

John Berard: There's no one else seeking time.

Kiran Malancharuvil: Cool. Thanks.

Claudio DiGangi: Thank you. And, Kiran, I thought you did an excellent job of summing it up. I think the Affirmation of Commitments provides us all a (unintelligible) what ICANN sets for, you know, its obligations to the public in terms of how it's going to operate.

And obviously we have the new gTLD review coming up and the composition of the review team is something that's obviously important to our house as a whole so I think that an important part where we could come to an agreement on and also in terms of the public interest with new gTLDs there's also somewhat of a framework there in the Affirmation as well.

There's reference to that ICANN acknowledges that there's a unique set of stakeholders that are represented more generally than Internet users as a whole. And so I think when we're looking at the public interest we're - we should be - we should take into account that there are certainly private interests of stakeholders that should be assessed. But we're really looking at the broader public and assessing the impact of ICANN's decisions on the broader public.

And so, again, it fits into the purpose of our house and our stakeholder groups and our constituencies within ICANN to be represented and be at the forefront really of these deliberations. So I think it's (unintelligible) it's a high level

document. And it's, you know, to me it's something that lends itself well to perhaps, you know, some agreement on if, you know, that's the sense. Thanks.

John Berard: Thank you, Claudio. Perhaps to maybe stimulate some more discussion in the room, I think I heard a number of different words and phrases in these first two comments that really speak to the role of the user. And if you recall our discussions yesterday, it was from that perspective that I think many people in the room thought that we could/should begin to converge our efforts and perhaps devote some of our time. Is it - where does the user fit in the new gTLD issues?

Steve, you first and then Jonathan.

Steve DelBianco: Thanks, John. Steve DelBianco with the Business Constituency. In the walk-up to this Affirmation of Commitments that we're all speaking of, the review of the new gTLD program, the Board had asked in the Zuck resolution in 2010, they had asked the community to come back and define consumer trust, consumer choice, competition and indeed define consumer. And they'd also asked for metrics to come up with and goals.

And we did work closely with many members of the - both sides of the GNSO on this and the ALAC. That work, Jonathan can talk a little bit more, he was chair of that group. But I wanted to share one definition that's responsive to John Berard's question.

So the word "consumer" shows up all over the place there; consumer trust, consumer choice. And our group, and GNSO Council agreed with this definition when we endorsed the advice, we said the consumer were actual and potential users and registrants. So it would be a mistake to omit registrants

from any definition of consumers that we're going to look at. So we had actual and potential users and registrants.

And that's a rather broad definition. And I suppose by having the word "potential" in there it literally includes everybody on the planet, right, every entity and individual on the planet. But it was added on purpose because the working group was struggling with are we only interested in people who are already an Internet user or already a registrant?

Well, no, at the time we were looking at things like the IDN TLDs so there's a whole host of people that would become registrants and presumably users if they could type their entire domain name and email addresses in the native script from right to left with their own keyboards.

So that's where this notion was we wanted to attract the next billion users out of the 7 billion earthlings so we couldn't just be on actual but it had to be on actual and potential users and registrants. I hope that helps with your definition.

John Berard: Thank you, Steve. Jonathan.

Jonathan Zuck: Jonathan Zuck for the transcript. Yeah, just to follow on what Steve was talking about, I mean, obviously the notion of a user or consumer is pretty well embedded in the review specific to consumer competition, choice and consumer trust.

And so, I mean, a lot of those seem to be about people's willingness to come on the Internet that haven't before, for example, and so that's why I think "potential" became very important there.

We were tasked with - by the Board to come up with a set of metrics to measure whether or not the new gTLD program had contributed to enhancing consumer trust, and also enhancing competition and choice in the Internet - in the domain space.

And one of the more interesting challenges for us was measuring trust. It was very difficult to find, you know, objective measures that were just in the form of available data, if you will.

And so one of the things that's happening as we speak is that Neilsen is fielding a global consumer survey on their trust in the DNS and the Internet generally to create as a kind of a baseline to see where people are. And they're going to do another survey a year to 18 months out to see if there's any kind of a delta between them.

So there's a lot of questions about how you're gaining access to the Internet, why you're doing the things that you're doing, etcetera, and how you feel about things and so some of that soft data is going to be the result of that survey. But it's literally getting in process now at Nielsen.

John Berard: Thank you, Jonathan. The level of enthusiasm for this subject makes me wonder if the predominant thinking now is that the metrics have been established, the process is underway and we should just sort of wait and see what the results are. Is that the consensus of the group? No. Steph.

Stephanie Perrin: (Unintelligible) grab your microphone rather than...

((Crosstalk))

John Berard: Well you can have that. I don't know about...

Stephanie Perrin: Forever? That's so risky, you know that. Stephanie Perrin for the record. I'm just a little confused by this definition of consume because at the risk of offending the brand owner for Gerber here, you know, babies are our business, our only business, maybe I'm showing my age when I quote that ad.

Domain names are our business, our only business; right? And if you start measuring consumer trust in the new gTLDs what's you're really measuring is consumer understanding of the use of names in - the use of language in those new gTLDs.

Interesting to measure maybe but opening up a vast, vast scope for ICANN to have influence. To me our consumers are the domain name registrants and potential domain name registrants, which, admittedly includes everybody but users of those Websites or services or emails or all the rest of it not within our bailiwick. And that bright line is hard to draw and hard to hang on to, you know?

Jonathan Zuck: Can I maybe respond quickly?

John Berard: Sure, a response from Jonathan.

Jonathan Zuck: I guess - I want to say two things. One, to your comment, John, I don't think that this metrics activity in any way is the totality of that review. Once that review team convenes hopefully we've put some tools in place that they might use to allow data to be a part of what it is that they discuss. But there's going to be plenty of subjective measurements and discussions that take place within that review team and it's sort of up to them what they use and don't use from the work that we did.

Now as far as the definition of consumer though, I think it's a more complicated thing. And I will say we had a very broad spectrum discussion on this for the better part of a year, having this conversation. But if you look at the world of PIC Specs, dotTrust, dotBank, etcetera, there is a lot that we are doing in the domain program that have to do with the trust of people that are not registrants or potential registrants.

And it was very important for people, and many of the people in this room, that consumers be more broadly defined than just people that might buy a domain name for themselves. And so consumers are a part of that definition and I suspect were intended to be in the Affirmation of Commitments and will be by the review team when it convenes.

John Berard: Be back to you in a second. Let's go to Steve and then Sam and then Marilyn, to Kiran and then we'll come back to Stephanie.

Steve Metalitz: Steve Metalitz. I just wanted to respond briefly to John, to your - the issue...

John Berard: The provocation?

Steve Metalitz: Yes, thank you, your provocation. I mean, I think what the work that the metrics team has done is extremely valuable but, as Jonathan said, it's only a part of the picture. And as in anything else, I guess, you know, ICANN or any other organization, a lot of the outcome will depend on who's engaged and who contributes, who steps in.

And I guess the point of putting this issue on the agenda was really to explore with our non commercial colleagues whether they agree with us that as non contracted parties we have a particular interest in making sure that this process

is not dominated by or, if I can use a more loaded term, hijacked by the contracted parties.

The many - there's a lot of concern that the last new gTLD program was designed and executed primarily to benefit those who wish to establish new gTLD registries and not necessarily for the benefit of the public that was supposed to be the beneficiary of it.

So let's take a look at what's happened and let's take a look at what will be done going forward but in that role I think the non contracted parties have an important role to play. We hope to be very deeply engaged and we hope that our non commercial colleagues will be there. Thank you.

John Berard: Thank you, Steve. We'll go to Sam now.

Sam Lanfranco: Okay, thank you. Sam Lanfranco, NPOC. This is from an NPOC perspective and with respect to some of civil society potential registrants. And it's something that has fallen off the table thus far and we don't know if it goes on the table or how to handle it and that's that at the gTLD level if there are competing applicants for a string they can negotiate with each other, they can hold a private auction, they can let ICANN hold an auction. They know who each other are.

At the dotCity level in the dotNYC the community groups that wanted something like communityhealth.nyc have been told there are other people who want communityhealth.nyc, we're not going to tell you who they are and you are going to have to go through an auction. They don't have the option of knowing who the other players and doing the same negotiations as the contracted house people do at the gTLD.

I recognize this a second level domain name issue and the question here is, is this something, you know, sort of ethically I think it's something we should be worrying about; legally we're claiming we don't have to worry about it but it is a real problem. You've got community groups having - potentially having to compete with each other unless they figure out some private way to disclose who they are.

And it would seem to me that ICANN could say, in the contracts with those strings, with those six strings in particular, that there has to be some degree of transparency with respect to those competitions.

John Berard: Thank you, Sam. We'll go to Marilyn next, then we'll go to Kiran, then back to Stephanie and then to Greg, Kathy and Steve.

Marilyn Cade: Marilyn Cade speaking. I want to agree with Stephanie's comments about - I think we need to scope this issue of what is the definition of user of ICANN's unique identifiers.

They have been called consumer in the past but I think the real issue for us is we're trying to evaluate the new gTLD program as it has been implemented under the present guidebook and identify issues with it and the implications for areas that need to be changed both perhaps in the existing program, because harms may be done, but also to set the stage for having a improved approach and a better approach should there ever be another round.

And I think my concern is we - our voice is going to be lost as the non contracted party, non applicants, if we - unless we also, in addition to what else we're doing, also figure out how we then are going to go talk to the GAC about their concerns about these studies. And I just want to park that thought for us to think about later.

John Berard: All right, thank you, Marilyn. Before we move along the queue, Stephanie, I don't want to let too much time go before you have a chance to respond to Jonathan. Do you still want to?

Stephanie Perrin: I think I'm just going to agree with what Marilyn said because in response to Jonathan, I think this is why we have to rewrite the guidebook so that we can clarify...

((Crosstalk))

Stephanie Perrin: Yes, I know, I wasn't here for the first round so easy for me to say. And I don't have comments ready on it so easy for me to say so far. But if it's been messed up now's the time to fix it; don't wait until we mess up another round because what we've gone through on this round strikes me as just nuts, coming in as a newbie, looking at it from outside doesn't make any sense.

John Berard: Kiran, we'll go to you and then Avri.

Kiran Malancharuvil: Hi. Kiran Malancharuvil for the transcript. I'm a little confused about limiting the definition of consumer to domain registrants and potential registrants because it just seems like you're stopping the discussion of the terms too soon because you have to then look at why people are registering a domain name and what purposes registering a domain name or potentially registering a domain name or thinking about registering a whole portfolio of domain names is.

And then it broadens the definition into other purposes and other - it makes the definition go further. And I think that's important. For example, some of our clients own thousands of domain names for the purpose of protecting the

broader definition of consumer, out in the real world as opposed to the definition here at ICANN, in order to prevent consumer confusion, which is the entire purpose of trademark law.

So I think that we need to be very careful about stopping the analysis too soon or else we're going to forget what - why we are domain name registrants and why we are included in this discussion as a community. And I truly believe, as Jonathan says, that the Affirmation of Commitments contemplated much more than just domain investors and people that are engaging in defensive registrations or whatnot. It means more than that.

And hopefully when we get to the discussion about public interest that, you know, may become more clear. And I think also, you know, Marilyn speaks about losing, you know, our voice in these reviews.

And I think that if you limit yourself to you've got to be a registrant or a potential registrant that we're definitely going to lose our voice because, you know, what does that really mean? If we're not in the business of registering domain name, if we decide that, you know, from a defensive perspective registering tons of domain names isn't, you know, what we want to do does that mean our voice is excluded at ICANN then and out of the definition of consumer?

If, you know, if you're a domain name registrant does that mean you're engaging in a commercial activity and then the entire non commercial interest is wiped out of the definition? I'm not sure. I think that this is becoming a little too narrow. And maybe I don't understand your point but I think that consumer protection has to look at the bigger picture of everybody that this is impacting.

And certainly I consider myself as here representing consumers insofar as users of the domain names, people that are typing in and clicking on domain names. And whether or not, you know, we're fostering an environment which further confuses them and further creates problems in the domain name space. So thanks.

John Berard: Thank you, Kiran. I was going to go to Kathy next but I'm thinking that maybe I want to go to Avri next because there's probably an opportunity to expand the definition of consumer in what you might say.

((Crosstalk))

John Berard: No, no, go ahead.

Avri Doria: Yes. Avri speaking. First of all I'm loathe to say I want to say the contracted party house hijacked the process. If anybody hijacked the process it was the portfolio applicants. I think same people that were referred to as the massive investor applicants.

I don't see it as that. I definitely am very supportive of anybody that wants to rewrite the application guidebook because as far as I'm concerned that book did not match the GNSO's recommendations for what the process should be like. That was a runaway process controlled by someone that's no longer here but runs a domain name association. And it's...

Woman: Who would that be?

Avri Doria: I don't remember his name. It slips my mind. But I see real problems in the application guidebook so I think essentially, yes, that does need a rewrite.

The discussion of who's a consumer is one of those rat holes that I've seen ALAC get stuck in for years. We got stuck in it as the NCSG for a while when a group of people tried to start a consumer constituency within the NCSG.

And we still have a candidate consumer constituency but it never fully fleshed out simply because people - partly because people don't have the same notion of what it means to be a consumer and who qualifies and who consists. So it's not a discussion, I think, a consumer is someone that says they're a consumer almost. And, you know, it's a user, it's a registrant, you know.

But so I see a very strong need for NCPH to be involved as part of a GNSO process. I think we have to go through a full and proper evaluation of all these aspects. I mean, my pet issue is, you know, the small applicant, the community applicant, those that don't approach this with millions of dollars in a war chest who want to get a gTLD who really had very, very hard obstacles placed in their way.

And I know as part of the GNSO group that came up with the recommendations it was never our intention that they should be blocked but that they should be facilitated, enabled and have - assisted. So as far as I'm concerned the ABG actually turned the GNSO's recommendations on their head and gave us something that was almost a mirror image of what we should have had.

And so I'm very supportive of us being involved but I probably have slightly different set of concerns than what happens at the second level. I'm much more concerned about what happens at the top level and who has access to these things and in what form they can get them.

John Berard: Thank you, Avri. Let's go to Kathy.

Kathy Kleinman: And to follow up on what Avri said and what Kiran introduced, guess what? The discussions are already taking place on the new gTLD and what the next round will look like. I'm not there. I don't know if anybody around the table is there but one of the talks is to ban communities. And I was shocked when I heard that.

((Crosstalk))

Stephanie Perrin: Yeah. Donuts is leading the charge to ban communities in the next round.

((Crosstalk))

Stephanie Perrin: Donuts.

((Crosstalk))

Avri Doria: If I can comment...

John Berard: Yeah, can we get a point of information on that?

Avri Doria: Right.

((Crosstalk))

Avri Doria: ...a point of information. In the group there's actually also people that are saying we should have a round that is just for communities and developing economies. So there's competing - there's competing issue.

John Berard: So just for my sake, Avri, when you say "on the group" are you talking about the one being conducted at the GNSO level?

Avri Doria: In Bret's group and also within...

John Berard: Okay.

Avri Doria: ...an At Large group that has talked about it.

John Berard: Right. And I didn't ask earlier but are the Council members from each of the house - are you guys involved in those discussions? You are. And you? Okay. All right, so, Kathy.

Kathy Kleinman: So I'm not involved in it. And so I raise it to you to share that there are discussions already taking place even while we're working on other things, we're very busy with the proxy privacy accreditation working group and other things. But there seems to be kind of a, you know, a small group working on rules going forward. So, yes, we have to wake up and get involved in that because - or urge it to be more formal and, you know, and more...

John Berard: Well I - my assumption is that it's - that the mandated review is pretty formal, that the GNSO Council investigation is sort of kind of formal. But I would think a first step would be that the GNSO councilors make a conscious decisions to participate or not in the discussion. If you're not there now then you probably do need to jump in to participate. Avri, would you agree with that?

Avri Doria: Very much so...

((Crosstalk))

Kathy Kleinman: I still have more that I was...

((Crosstalk))

Avri Doria: Right, that group is open. I mean, I'm in it not because someone picked me to be...

John Berard: Right.

Avri Doria: ...but because I signed up.

John Berard: Right.

Avri Doria: And its results - it's outcome is something that does go to the Council for discussion of what do we do next with that stuff.

John Berard: Great. So...

((Crosstalk))

Avri Doria: So, it's not going anywhere beyond...

((Crosstalk))

John Berard: Kathy, you want to finish? We'll go to Greg and then we'll head down to the iron triangle over there.

Kathy Kleinman: Great, thanks John. But my thought is a lot of people don't know it was going on. And I didn't. So this is something we should know about and seek more

formal, you know, it's interesting that it's going on before the review is going on. So that seems to be the idea. So let's watch that and think about that as an area we can work on together.

In terms of the consumer issue, words like - registrants defined, consumer, user, I don't think these are very well defined terms. But if I were to, you know, I'm Kellogg, I'm selling cereal. My consumer is the person who buys that box of cereal.

If I'm a tobacco company I'm selling cigarettes, my consumer is the one who purchases those cigarettes but I may have an additional obligation to the public because of issues of passive smoke, because of the burden of the cost of lung cancer on families, on communities, on, you know, the health system.

So I think we've got a lot of terms that are being used a lot of different ways by people and we do have to scope it, as Marilyn said.

John Berard: All right, thank you, Kathy. Greg.

Greg Shatan: Hi, Greg Shatan, IPC for the record. The - I think the whole discussion of what a consumer is, is by and large a red herring. It's important at some level. I think briefly to answer Kiran, even if the end users are not users, for our purpose, they're still our customers so we still need to - we're still relevant no matter how you cut it. But as I say, I think that's the red herring so I'm not going to go follow the red herring myself.

The issue really is more one that Avri brought up which is we are united in this room in the sense by what we are not; we are not the domain name industry. They are the domain name industry. And if the domain name

industry runs the new gTLDs that is a big fat mess. And it came very close to being that the last time around.

And a lot of the protections that we thought where there, well, there are loopholes for a lot of those protections. A lot of exciting, interesting, you know, strange things happening in dotXYZ and dotTop and some, you know, Chinese one that's giving away things and dotCEO, all kinds of things that are on a policy level at least seem reprehensible or bizarre.

But the point is that if we don't shape this process it's going to be just about selling as many domain names to as many people for as much money as possible and anything that gets in the way of that should get flattened like a bug. We need to watch out.

Not that we're going to get flattened, we're too strong for that. But if we unite we'll be a lot stronger on those issues. There may be issues on which we diverge but a registry/registrant run domain name program is one I think we can all agree is trouble. Thank you.

John Berard: Thank you, Greg. I don't know whose flag went up first so I've got Steve, Bill and Jonathan. Bill, I don't think you've spoken yet so why don't you go first?

William Drake: I don't think I have either. I, you know, I'm very happy to see the possibility of greater coordination and collaboration happening across stakeholder groups on issues of common concern. I thought that was one of the main purposes of doing this meeting. And I think we certainly have areas of commonality here that we can pursue.

At the same time, my ears also went up like Avri's at the use of rhetoric like hijacked in part because simply I know, you know, NCSG has a lot of diverse

views in it. And we're perhaps less uniform as a block than perhaps some other groups could be.

And some of our members have tended to be very strong supporters of expansion of the gTLD space with fairly minimal, you know, mission creep for ICANN into anything that could be construed as regulation or, you know, consumer protection activities that go beyond a very narrow remit for ICANN.

And so it's possible that we could go - we could go back to our colleagues and say we had this great meeting with the CSG and we all decided that we should talk about this. And they'll go, wait, hold on. So in order for us to be able to process this effectively and be able to bring people on board internally and make this move forward in a useful way, it would be I think important for us to address this in a very kind of bounded and systematic way.

So for example, if, as a practical step, you guys could give us a list of specific issues or, you know, dimensions that you think could be areas of commonality that we might want to pursue or work on that we could take back to folks and say do we feel that we have enough commonality with CSG on this to go forward? And then we can start an internal conversation and then flip back to you. That could be a useful way of getting it started.

But we have to - we have to recognize that some of our folks won't immediately take to this because, you know, let's face it, in ICANN we have a very variable geometry of interests; right? Sometimes NCSG is more aligned with the registries than it is with CSG. Sometimes it's more aligned with CSG than it is with the registries or the registrars. This is true in every possible direction in the Council and more generally.

So given that that's the case we have to be focused and calibrated and be precise. So if you guys can give us something concrete that we can take back as a starting point for that conversation that would be one thing that might be useful.

A second point, just as way - as a process point, you know, we had this Non Contracted Party House leaders' email list that is completely unused. It's just sitting there. We...

((Crosstalk))

William Drake: I think it was chairs initially but then really we started talking to each other more in the SO AC chair list and the list is just sitting there. There's no reason in the world we couldn't expand that space and create a space where we could have dialogue between the two stakeholder groups on a more ongoing basis when relevant to try to carry this forward.

So that might be two practical steps trying to move this in a kind of step by step way. But if you just want us to jump on board right now and say, yeah, we're with the whole thing and, you know, we're against the contracted parties, it's going to - that's going to be a hard thing when we go back home.

John Berard: I don't think anybody is expecting you to jump on board right away. We haven't distributed the life vests. Anyway you prompt the question before we get to Steve. Who is the recording secretary for this session? That's it? So we're all going to get an unedited transcript and decide from that what we've agreed to or not?

((Crosstalk))

John Berard: Rudi? Rudi?

((Crosstalk))

John Berard: Steve, why don't you go next.

Steve DelBianco: Steve DelBianco with the BC. The BC who supported giving communities preference as well as assistance, Avri, and disappointed as you are that it's so difficult for them to prevail especially at things like auctions. I wanted to remind folks that however we may want to individually revise the application - Applicant Guidebook there is another document that is a little tougher to revise, it's the Affirmation of Commitments. And currently, at least, it's an agreement that ICANN needs to live by.

A number of us working on the Cross Community Working Group for Accountability want to bring it into the bylaws so ICANN couldn't just quit the Affirmation. But it's going to be with us for a while and it'll certainly be with us for 2015. And this review is going to go on.

And in that review the word "user" is mentioned is five times. The word "consumer" is mentioned nine times. For all the good intentions of those who crafted the Affirmation of Commitments, they're almost interchangeable. But right up front it talks about global Internet users, global Internet users, it's only later in the Affirmation where the word "consumer" as in consumer trust, choice as in consumer choice, show up.

So we're going to be confronting both of them and any attempt to exclude users will run smack into the Affirmation and it'll also run smack into the GAC whose citizens are the Internet users and never mind the ALAC which is

a real hornets nest if you kick it like that and suggest that users really aren't stakeholders.

So I don't think it's productive to go there. Users will be part of the conversation. And when you look at what the DNS coordination really is about the DNS only does two things; it does registrations and it does resolutions. And resolutions are done every time I resolve a domain name or an email address.

Just ask the ISPC, who's in the room with us. They're not here for registrations; they're here mainly because they're in the business of providing the resolutions that make the DNS work.

So let's come together about that. We'll revise the Guidebook to the extent possible. But as we move into the Affirmation review when Bill Drake asks, "Give us something in writing," we'll do that, Bill. I mean, NCPH folks all participated on these metrics programs and it would be great to get that document back in front of you as soon as this Affirmation review team kicks off because it's full of things, not just the definition of consumer but metrics.

And the beauty of the metrics that were designed is that they weren't driven by the contract parties. In fact, they resisted many of them and tried to get a lot of them taken out. And with the help of the ALAC, NCUC, NPOC and the CSG we were able to keep them in.

So there are metrics in there that will avoid the need to resort to rhetoric like was the program hijacked? The word "hijacked" doesn't show up in the metrics because that's not what we're talking about; we're measuring 50, 60 things that you can actually look at and say, wow, did we improve consumer trust? Did we improve choice? Did we improve competition?

And when you do that you're never going to get an up or down answer: yes we did; no we didn't. There'll be some metrics that indicate improvement, others that indicate no improvement. It'll be a mixed bag and we'll use all of that when we design the next round. We already know where we're going the only question is how much we can unite to make sure we arrive at a better place then we're in today.

John Berard: Thank you, Steve. We're going to go to Jonathan and then we're going to go to Robin who's online and then Steve, back to Kiran and then back to Greg.

Jonathan Zuck: Yeah, I wanted to actually go all the way back to what Marilyn was talking about in making sure that these reviews are used for revisions to the program going forward and what Kathy said. And I think if we're looking for something that we can be unified on it's actually having the redesign process based on the reviews. And so the fact that they're happening in parallel I think is somewhat perilous to begin with.

And I think we could probably get some consensus on kind of slowing down the process of having this junior varsity version of a new gTLD review program prior to the actual comprehensive reviews that are mandated by the AOC.

And so, I mean, if there's something we could achieve some unity around maybe it's about trying to push that process back so that it is fact-based and less rhetoric and anecdote based the way it - by necessity is today in its current form. So, I mean, that's something I feel like we could be - we could reach consensus about.

John Berard: Thank you, Jonathan. Robin, are you still with us? I cannot read that. What does...

((Crosstalk))

Steve Metalitz: ...she just typed that she's not in the queue but...

((Crosstalk))

John Berard: Who's hijacked my queue? If Robin is not in the queue - did she post a question earlier to the - no. Let's see if someone with a computer can find Robin. In that case we'll move to Steve.

Kiran Malancharuvil: She says she doesn't have audio. And she had posted a couple of comments. They weren't questions. I think if she had a question she would probably type it in. And she said she's indicating she's not in the queue, I would suggest moving on unless she types a question.

John Berard: Okay. So I've gotten counter-information. So, Steve, go ahead.

Steve Metalitz: Thank you.

Kiran Malancharuvil: I have it on my computer. I don't have bionic sight or anything.

Steve Metalitz: Thank you. Steve Metalitz. I'd like to hijack one of Bill's remarks - oh, strike that. I'd like to endorse what Bill said. We're not asking the NCSG or its constituent parts to sign on to a manifesto at this point. We don't have one. Certainly in the IPC, your request for a written document is - or a list of issues is very appropriate; we don't have that yet. I hope we will. But I just - I think the value - at least in some sense the value of having this discussion is simply

to move this back in a little more to the center of everyone's screen in an environment in which accountability and the transition are pushing a lot of things to the corners.

And so we were - on the IPC - were not disappointed when ICANN announced it would delay by six months one of the reviews that the GNSO actually asked for, I believe, on rights protection mechanisms, in order to gather more data. But it also enables us to, you know, get our act together a little bit more on how to approach some of these things.

I just wanted to mention that, you know, the blueprint here is this new gTLD program review and assessment draft work plan which ICANN published last September in which I understand they're going to be issuing in a revised form. So let's all keep our eyes out for that because that will have some of these timetables and different entry points. It's quite complicated and it isn't intuitive exactly where the best entry point is.

But let's all be sure to keep this on our radar screens because over the next year or two regardless of what happens and at what pace on accountability and on the IANA transition, we know this is going to be moving through the process and the whole issue of what have we learned from this huge round that will be wrapping up and how should we take those lessons forward in the future is one I think that concerns all of our groups very fundamentally so I would hope that we would be ready to deal with that. Thank you.

John Berard: Thank you, Steven. We've got about 15 minutes left in the hour devoted to this subject so Kiran and then Greg and then whoever follows - Avri - if you could, as part of your conversation also suggest perhaps a step or two forward as Steven as just done, it may help us when we review the transcript. So, Kiran.

Kiran Malancharuvil: Thanks, Kiran Malancharuvil. I just - I want to first of all second what Steve said. I think that was a very succinct way of putting the intention of this topic which, you know, I think should - you should have gone first, no because that was the best way to put it. I think this is just an effort to let everyone in the room know that this is a priority for us in the coming year. And we're eager and anxious and willing to work with you on it.

And that - and we don't have a list to give you yet, Bill, partially because we don't know yet what the reviews are going to look like and there was some promises from Karen Lentz about what the timeline is going to look like as far as the review documents that are going to start coming out. And I think one of the documents is coming out next week hopefully in anticipation of Singapore. So maybe we can start working on lists to share and communication at that point.

I think that way back to Kathy's comment, I was a little bit inspired to be slightly more clear about what I meant earlier by using an analogy that was actually first brought up by Stephanie. So if you look at Gerber baby food, the person who's buying Gerber baby food, the domain name registrant, in our scenario, is actually the mother but the person eating it is somebody totally different entirely.

And so while there are a number of things that the Gerber folks think about when marketing it to the person purchasing the food like price and availability, packaging, things like that, what goes in - like how they make the food, what goes into it, what nutritions are in it, you know, all of these things actually has to do with who's actually using the food.

And I think that that's how I view domain names myself. And maybe that's incorrect and we need to have more discussion about that. But the domain name registrant is often registering the domain name in service of the users of the domain name which may be their clients, their consumers, etcetera.

And so we have to think of them as well and we have to think about are we registering domain names defensively to protect them from going to a Website that's selling counterfeit pharmaceuticals, for example? And so that's when I'm saying the definition expands to not just registrants and potential registrants.

So I hope that makes my earlier point more clear and I hope that as we move forward in this process and work on definitions we can kind of keep that in the back of our minds whether we understand it clearly and dismiss it or not it's a point of view that I would like to be on the table because I think that that's where we're coming from when we talk about the term "consumer." Thanks.

John Berard: Thank you, Kiran. Greg.

Greg Shatan: Greg Shatan again. Just to kind of clarity my earlier remarks in response to what Bill said a bit. Not advocating a complete kind of us and then approach; I think we're all in this together and frankly I think the registries and the registrants need us because without us ICANN isn't legitimate.

At that point it becomes the DNA and Fadi, you know, does something else and Kurt Pritz runs the Internet instead. So that's not good for them or us or the legitimacy of this or the IANA transition or any of those other things. For ICANN to be legitimate it needs to represent the multistakeholder community.

So they need us to be the opposition in a sense, to be the check and the balance. So it's not us and them, it's all of us protecting something that if it's just them will not really work.

Finally, you know, this is very much as in a way is a self-regulatory body and self-regulatory bodies exist to keep the government from getting their hands all over the regulation of that industry. If the self-regulatory body fails then you get government regulation which will come on a country by country basis and the ITU will get involved and that's all sorts of other - raises all sorts of other issues.

So it's important that we, you know, remain, you know, focused on our kind of role in being that self-regulatory body and kind of echo - say that this is an issue we need to keep very much on the table because the folks for whom this is the life blood and this is their only business or their major business will be paying, you know, complete attention to the new gTLD process even while they make sure that they have people on the CWG and CCWG and listening in on other things.

If we get stretched too thin and don't get - make sure that we're on top of the basic core issues we could find ourselves, you know, way behind. So just again echoing the call for focus. Thanks.

John Berard: Thank you, Greg. And Avri.

Avri Doria: Thanks. Avri speaking. First of all I'm - I was almost in a full agreement until the ITU came up again. And I really - I really don't see that threat. The government, the US government and other governments getting involved in a local sense, that perhaps, but raising that specter again all of a sudden, maybe not.

Greg Shatan: I was just scaring people: it's not true.

Avri Doria: Exactly. And it does the opposite of scaring me. But I very much agree with - and I think that there's a large sentiment within the various non commercials for slowing this down and making sure that there is a proper review. And I do recommend that those of you that don't know about this review discussion group, I think it's called a discussion group now, that - within the GNSO get involved.

I think within the GNSO Council we do have the ability to keep it from moving ahead too quickly, moving ahead until the proper, you know, review has been done and I think that's something that we may need to coordinate and cooperate on. As much as I hate the house structure and this - voting structures, if one whole house doesn't want to proceed then it's a little bit more difficult to do so.

So one of the things we do have to watch out for is that ICANN, as a company, built up a staff and such with the notion of rolling into the next one. So they built the machine and there's a strong urge to keep it powered.

And that's - that's the impetus that, at the moment, we need to stop and sort of say no, you know, you're going to have to rebuild your machine, you know, take it apart carefully; label the parts. Remember that digital archery doesn't work. And, you know, stop and figure out how to do this properly after a proper review.

Within the review I'm sure there'll be times when we're in complete disagreement but I think that, again, we've hit one of those agreement points

that sort of says but doing a complete review and getting it all out is necessary.

John Berard: All right thank you, Avri. I suspect everybody is now going through the back catalogue of Rage Against the Machine. No. It is 2:55 and in the spirit of new gTLDs what am I bid for the last word?

((Crosstalk))

John Berard: Well I think that until - oh, Stephanie. Until I review the transcript I think the best first step is to make sure that each of our groups has a conversation with our councilors to make sure that they are participating or not on purpose and that we pay attention to the documents - to the notices that Steve has said will be coming shortly and that we follow up, as Bill has suggested, with energizing the NCPH mailing - leaders' mailing list so as to see if we can move some of this stuff forward.

                  And so with the last word.

Stephanie Perrin: Thank you. Stephanie Perrin for the record. And it's another naïve question, and I'm painfully aware I'm about to do my, what, third Council meeting so I can only ask naïve questions for so long. But I would like someone to explain to me how you stop this - what I would call a wholesale money-grab of these defensive registrations? And, you know, Susan Kawaguchi mentioned a pretty flagrant example yesterday. And we have other apparently.

                  How do you do that without psychoanalyzing the purposes of registration? Can you catch it in some kind of accountability principles that you put into the new guidebook like - I really have no clue how you police it. I can see it's a bad thing but I don't know how you police it.

And just coming after it and forcing the legitimate owners of a mark to go after it and chase it that - that must be expensive. So can we come up with something?

John Berard: We'll close with that not as a rhetorical question...

((Crosstalk))

John Berard: ...but I'm suggesting that perhaps this might be a bridge into the public interest discussion. But, Susan, you feel compelled? Go right ahead.

Susan Kawaguchi:Well just another point is 95% of our portfolio is not used, it is - they are defensive registrations, 95% of what I spend on domain names goes for naught and that has been, I mean, I did - I worked at eBay for nine years - that is my experience since 1997; it hasn't changed. So it's a big problem.

John Berard: Well thank you for participating in that half of the discussion. Now I'll turn things over to Rudi who will lead us through a discussion on the public interest.

Rudi Vansnick: Thank you, John. And I think it's a good bridge to the issues that we have been talking this morning with Fadi during our session on the public interest - I would say public interest and human rights going closely together.

                 We all know that, as was just said, there is a lot of abuse of the domain name space. And that is creating a lot of damage to let's say the global public. I'm not going to define consumer or user whatsoever. Each individual is in fact concerned on what is happening when they are using the Internet just for instance taking the case of an email.

When you're using your email in many cases you have to take care of the fact that it could be hacked or hijacked. And if we look into what are the rights that we have to get back our property, if I may say, or our rights to take back that email and that email address to us as an individual, I think that's the first issue that we need to think about especially if we look into the new - the next round of new gTLDs, that's something that has been forgotten already in the first round.

And I think we need to catch that back for the next round so that there is a protection for every individual in the use of a domain name, whatever use it is and that the use is not an abuse.

And I'm referring to the first summit that ALAC had in Mexico in 2009. We had a very good discussion, we had that e-crime panel where we had all these groups sitting around the table and trying to figure out what are the issues that ICANN is responsible for, what are the issues they are not responsible for.

And that's, in fact, something that I would like to launch in the group. Is ICANN responsible for the content? Because that's the big question? ICANN is addressed in many cases because - and the example that Fadi was giving this morning is somebody bought a drug on a Website and the person died. Is ICANN responsible for that?

So that's the big issue that many of registries and registrars are also getting on the table. Are they responsible for the content? And how can we better split and make the individual understanding that it is not ICANN that is responsible but it is another body. The question I have, who is that other body? Do we have a clear view on that? Is there anybody who wants to kick off on this one? Marilyn.

Marilyn Cade: Marilyn Cade. I'm going to recall dotXXX for a minute as an example. When a registry says that they are going to end their agreement, and in how they define themselves, that they are going to limit who can register in the space to people who meet certain characteristics - and dotXXX is an example of that.

In fact that registry accepted responsibility and put into their agreement with ICANN and publishes in their marketing material that they accept responsibility for policing the space. They have an advisory committee to define it, etcetera.

To me, the strings that are from regulated industries, and dotXXX are examples, where a registry may in fact have agreed to be responsible for content.

I'm going to use dotBrand registries who have agreed that they will only register names that are a part of their trademark family or that they are going to - so I think in certain instances, Rudi, where the registry applicant has put into their agreement with ICANN and they market the space as a defined space, they are stepping - they are saying they will accept responsibility for policing the space but within those definitions, within those restrictions of what they have contractually agreed to.

I'll come back and say something later about - well actually I'll say it now. I used to work for - I helped launch AT&T Worldnet's ISP. And so I did a lot of work in ISP-land. And I'm, by no means current like the other ISPs and connectivity providers who are here. But we introduced a family-friendly channel, so to speak, on our ISP and we took responsibility in the subscription for adding filters to that space. And we marketed it differently than the rest of our ISP.

So I think, you know, we need to be more precise as a group when we are looking at what are you responsible for and how did you get that responsibility. Thank you.

Rudi Vansnick: Thank you, Marilyn. Kiran.

Kiran Malancharuvil: Hi. Kiran Malancharuvil. I don't know the answer to your question and partially that's because I don't know what you're asking. So I guess I - this is a question to the group: What do you mean by responsible for? And I think that I've been at ICANN for long enough that I've heard the term a lot and it kind of just recently, I'm sad to say, occurred to me that I don't know what people are asking.

Because, you know, we've asked ICANN to be, quote unquote, responsible for a number of things and sometimes they say yes, sometimes they say no. And I don't even think they understand what is in their - what are we calling it, bailiwick? I don't know what that means; it sounds pretty cool.

But the question is - seems sort of complicated because if you look at the contracts that ICANN is responsible for kind of drafting and implementing and, you know, fostering and maintaining, if the contract has a provision in it that restricts activity that's arguably content, then I suppose they are responsible for that kind of content like malware, for example.

And then even within that definition these contractual provisions are open to interpretation. I say all the time that IP infringement that's content-based is prohibited by some of the contracts, you know, and others say no it's not. And we're talking about the same provision in the contract. You know, terms like

"reasonable efforts" are up to, you know, mountains of documents of interpretation.

You know, so I guess we have to ask - and I don't want to get too philosophical because, you know, maybe this is a rabbit hole that we're headed down. But what do you mean by responsible for? And can we kind of start sketching out and understanding what that might mean and go from there as opposed to trying to jump into the substance of the discussion without understanding what four corners we're operating within.

Rudi Vansnick: Well when I say "responsible" I think that's one of the first questions that when you are talking to people in the street and they have a problem with their domain name, whatever it is, is it mail or a Website or whatever, the first thing they will ask is who is responsible for the fact that somebody is abusing my domain name? Is it those who are using it in itself, the abusers? Or is it the organization that allows that it happens?

So I'm looking more for where is the level of definition of separating the responsibility of a provider and the responsibility of, if I may say, ICANN as a provider of the domain name space? That's two...

((Crosstalk))

Kiran Malancharuvil: So as a further clarification to my question, just quickly, I think that I may start with asking who's - what do you mean by "responsible for"? Do you mean preventing it from happening or policing it after it happens? So that might be sort of a threshold question that would help me understand what you're talking about because that's also - I'm not sure. I mean, who was responsible for preventing this or who is responsible now that this has happened? Is it, you know, lawmakers who are trying to prevent criminal

behavior or is it the policemen who are trying to get criminals off the street and into jail? Like what I still - I'm not fully wrapping my head around it, it's been a long two days though so it's possibly my fault.

Rudy Dekker: Okay. I have (Monika) in the queue and then Greg.

(Junita Sacar):   It's (Juanita Sacar) for the record.

Rudy Dekker: Okay.

(Junita Sacar):   Probable I will get more into a philosophical debate, it's more to do with how we see the mission of ICANN.

And if we - if I take an analogy here and compare renting an apartment just like any real estate owner you can rent apartments to people and there would be certain regulations of what you're expected to do with - through this is that paying your rent which is the annual fee for example. Therefore in terms of the acting or violating the agreement then there is repercussions. There would be actions to take place. Take for example today earlier we had the very useful discussion with the Fadi about where ICANN took action. For example when they were tracking pedophile content providers.

And he said immediately that this is something we had to do something about. So we can see that there is - there are examples here. And so where do we draw the line, I mean where can - I mean if there's no question that ICANN has done something and feels that it's indeed obliged to do something. But the question that I often get from my students at the university when they ask me, okay where does ICANN draw the line?

Where do the regulations come from in terms of knowing if harm, let's say the philosophical question of preventing harm from happening, you know, the harm principle, a million harm principles that we understand that there will be a limit that we cannot tolerate after that. So this is the question to be raised, I'm not answering it right now but I'm just preventing it - simplifying it to you that there is need for ICANN to - it's not merely a technical body.

If you were to sell a domain for life then it's totally out of your responsibility, but you're not doing that. You are actually still the principal owner of the domain, so this is merely a renting operation, so there is a connection here.

Rudy Dekker: Thank you, Tony.

Tony Harris: Well probably we had got an example as I said with my day job and basically we spent an awful lot of time in the ISP industry in Latin America working to preserve what we call the non-responsibility of intermediate risk.

Because I mean thinking about how to prevent the misuse of domain names is a little mystifying because that would involve surveyance. So what do you do, do you read some - the emails of your users and see what they're saying on their emails? Do you investigate each and every Web site and every - on a daily basis to see what they're doing with it? It seems a little beyond the remit of anybody including ICANN. I mean when you buy - I mean cell phones are a good example.

Cell phones are used for kidnappings and asking for ransom, terrorists use them to plan whatever they're going to do. But is the cell phone company responsible because they're doing this? I mean it's a communications resource so I think that whatever is done for the domain name as with the cell phone or with any other communications tool or resource, if there is let's say criminal

conduct eventually it ends up where it should end up with a judge order for a notice of takedown of the Web site or whatever is involved.

Which is precisely when we as ISPs step in and take - and proceed, but until that happens I mean what can ICANN do, really? It's mystifying to me, thank you.

Rudy Dekker: Greg.

Greg Shatan: Greg Shatan again and in listening (Karen) and I was thinking that maybe rather than responsibility for it should be accountability for, I mean a little different accountability than we're talking about in the cross-community working groups.

But even there I guess, you know, and listening to Tony the question of accountability even if you say it's accountability, non-accountability also has - is legitimate and depending on the role that is played as well. And the question of what can ICANN do, it can - can ICANN be accountable and/or what kind of structures could be set up so that the issues can be resolved. I don't know that you'd sue ICANN for, you know, a domain name that you (held by her) that was not accountable in that - it's not accountable - accountability in that sense.

But it's accountability in the sense of setting up responsible structures that those who believe they're harmed can seek solutions.

Rudy Dekker: I have Heather and then Marilla.

Heather Forest: Thank you, Heather Forest for the transcript. I'll channel (Karen) as well and pick up on the comments that Tony and Greg just made.

And I think part of the problem in this is we're not served very well by the terminology. When we say responsible for I think really we need to make very clear in this discussion just to frame our own thinking that we have three possible things that we're dealing with. Number one we have legal responsibility which is, you know, what must ICANN do, what's the liability (what is ICANN responsible for under the law)?

Number two, what can ICANN do and that picks up the points made by Tony which is potentially a different thing from what is - I would hope not I suppose - but what is ICANN responsible for. And the third thing is what should ICANN do, which is a triangulation of those two things. So when you ask the question is what is ICANN responsible for I don't frankly the word responsible is helpful. And I think that points to the discussion that (Karen) raises and that Tony and Greg have picked up on, thank you.

Rudy Dekker: Thank you Heather, when I used the word responsibility is because that's what you hear in the street, that's what is most common. They are not thinking - talking about your accountability but who's responsible. So that's the reason why - yes Heather?

Heather Forest: Heather Forest again, if I may follow-up with that. I suppose we're perpetuating that problem.

We in the community, the terminology that we use then gets taken out to the streets. And if we want the public to use a different term around this then we need to use a different term ourselves. I think that same comment can be applied to any number of areas that we'll touch on in our day-to-day responsibility within ICANN. If we want someone outside of ICANN to use different terminology we need to start by using it ourselves here.

So I think we start from this meeting, if we have issues with the word responsibility and we go forward in this discussion from now can we use a different term and use it consistently?

Rudy Dekker: Okay Marilia

Marilia Maciel: Thank you, this is Marilia Maciel for the record. I think that maybe instead of proposing a definition that would please and make sense to everybody because that will lead us in my opinion to a member discussion and to a pretty philosophical one as what's said before.

Maybe one idea was try internalize in reach of the policy areas that ICANN tackles, what are the correct (basics), what are the steps that should be taken into consideration to make sure that we do not deviate from the public interest. That we stay - and stay as close as possible to the public interest. So develop a kind of list of bullet points or a list of correct (unintelligible) that will keep us on track that will be more practical and oriented to the correct basics of each policy area itself and for a broad definition that we try to compass what we are trying to understand in all of the different policies that ICANN puts in place.

Other than that in my opinion there is something that is really at the cornerstone when you talk about the public interest is to respect people's rights - to respect human rights. And to me this is a baseline for everything because by the end of the day we're talking about individual users. But we have people, we have people behind companies, we have people behind everything. And one of the things that I think is a great legacy and achievement that we have in terms of legal protections are internationally recognized rights that all of our countries are a part of.

So this is something that we could start from, when you think about public interest how two areas that we put in place in ICANN. The policy development process and the implementation of the policies that we approve, how are they touching upon human rights and regulation? How are they (in fact) on human rights on the ground in terms of implementation? I think that we do not have a very good idea about that and I think that this is an are to be further explored in the continuously and sustainable basis.

Maybe we depended very much in the past, depended on the expertise or on the availability of people that had human rights background. But maybe this is time for us to develop a more sustainable and constant look into that. And try to assess - it's not to look at the broad human rights perspective. We're not talking about human hangar or piece of security or famine or anything. It's in the specific (realm) of ICANN's specific policies, how are we touching upon privacy for instance when you talk about the whole (ease) or the registrars agreement.

How are we touching upon that? So try to be very specific and to assess and to evaluate that, I think that it could be a very positive move forward. In terms of the non-commercial consistency, we have started a discussion some meetings ago. We had promoted a session about that in London, in LA and we're going to hold another session again in Singapore. And we would like very much to invite the commercial stakeholder group to be part of the discussion. We have created a mailing list - a dedicated mailing list for that.

And we would like to start a cross-constituency effort. We need to try to assess and evaluate, is it necessary to have this look into ICANN policies. And if it is, how can we do it more sustainable? How can we do an effort that is not based on people's expertise but really something that is consistent in the organization. So we try to understand what the problem is, if there is a

problem and how can we evaluate and assess and create solutions for that thank, thank you.

Rudy Dekker: Thank you Marilia, (Dan).

(Dan):   Just a very brief observation to follow-up on something Tony said, ICANN's not the only group trying to resolve this issue.

And entity that provides online services has exactly the same set of questions and I would suggest that there is value in finding commonality across those group.

Rudy Dekker: Steve, sorry yes Tony?

Tony Harris: (Unintelligible).

Rudy Dekker: Yes okay, first Steve

Steve DelBianco: Steve DelBianco BC, Marilia a question on the scope. You brought up privacy as a human right that you felt was within the remit of ICANN, I presume it's the notion of disclosing registrant data who was in (red).

I think we made a lot of progress in coalescing around that and things like the expert working group - are you familiar with that project? Yes to where we're all backing the idea that there can be levels of access as well as no access and total anonymity - a (distant end) for somebody who really needs protection. But beyond privacy are there other rights that you want to bring into that conversation?

Many rights would involve heavily policing the content that is hosted at a domain if rights to be free from discrimination for instance or freedom of expression. That is all about the content on the site, whether it should be prohibited or promoted. And I just want to give us some sense as to how wide of a scope of rights and do they extent into the content or only into the limited remit of ICANN which is just registrations and resolutions.

Man: (Unintelligible).

Man: (Unintelligible).

Man: Okay yes.

Marilia Maciel: I think that is complicated, I can talk about content and I would prefer that we stick to the (remedy).

So when we talk about for instance sensitive (trends) let's stick with respect to what. How do we harmonize this concept with freedom of expression issues for instance? So what I think is that it isn't necessary to have this look early in the policy before the policy's approved. So I think that a sustainable effort should be put in place when the policy is being developed are we touching up on issues that are related to human rights?

For instance when we talk about sensitive (things) are we creating a clash or not? And this should happen in two movements of the policy development. One before which is being discussed, so have this (wording) in our mind. And another one when it's been implemented, because sometimes on the ground things do not happen the way that we expect and it's important to have a second evaluation.

But I would agree with you not content but specifically and circumscribe to the things that relate to ICANN's remit, not falling outside that, but...

Steve DelBianco: But which human rights in the long list of universal declaration - which of them do you believe are the ones that we have to be sort of diligent for to be sure that our policies and decisions don't trample them?

Marilia Maciel: To me the most important ones would be privacy, freedom of expression as I said and freedom of association.

I think that when we talk about community application for instance it's not very clear and sometimes we did not get to the point of preserving community, access to domain names. I think that we did not reach the balance between community interest and making sure that we have petition when we register domain names. So this would be in my view the three ones that I would list from the top, not to say that there are not others.

Rudy Dekker: Kathy you had a reaction to Steve's (unintelligible)?

Kathy Kleinman: Yes I want to respond to that and then I want to be in the queue for some other comments. But freedom of expression of course privacy is fair use - use of words by everybody.

Freedom of Association and let me add due process - that you can't loose your rights without some kind of due process. And regarding the remit of ICANN being domain names or content, mostly, you know, we work with domain names and that these are domain name issues. And so I just want to share that and then been in the regular queue, thanks.

Rudy Dekker: Thank you Kathy - Tony?

Tony Harris: Yes Tony Harris here again, this is interesting your position on human rights. My question is what is the Internet?

I mean you have this amazing tool which is for many people they can do practically everything free of charge which did not exist, believe me, many years ago. I am a veteran so I can tell you that you had nothing like this available. So if you want to go down the road of saying how can I bring this under control so nothing bad happens to me, I mean that's a challenge. Because everything is so wide open, it's so available that it's not going to be an easy job. And you may end up with something you didn't wish for - that's just a comment.

Rudy Dekker: Thank you, so I'm going back to Kathy and then we are going to Steve, Cheryl, Avri and (Karen).

Kathy Kleinman: Great. Thanks, Kathy Kleinman. I should have preference my comment with seconding what Marilia said which is we're still working on this, this is a really important issue.

I come out many years of the telecom world and the Federal Communication Commission operates under a mandate that run the frequencies, the airwaves in the United States for the public interest, convenience and necessity. That public interest is defined differently than a banking public interest law. So here too we have to figure out what the overlap is, the human rights and bring that into the public interest definition for the domain name system that we're dealing with. And that seems to be an issue we're all dealing with together which is great.

And so I look forward to that discussion together and it sounds like we have to do it earlier rather than later. But as Marilia said it's a conversation at two levels, one in the definition of public interest to the extent it is defined and the other in the implementation. For every kind of policy development process I think we need that overlay. If we look at intellectual rights we need to be looking at human rights for everything that goes through. It may or may not be applicable but we need to have that filter as we go through it.

And I just wanted to say and I hate to say it Steve but you may have exaggerated the consensus on the EWG. There's still a lot that's being reviewed on that so maybe I misheard what you said, but I think we're still evaluating that kind of unlimited access to data.

Rudy Dekker: Okay. Moving over to Steve

Steve Metalitz: Thank you, this is Steve Metalitz, I appreciated Marilia's comments about human rights and I attended that session in London which I found quite interesting.

I'm still a little - I'm a little bit uncertain about where - what our goals are in the conversation or what are parameters. Just to back up a second, as we develop the agenda for this meeting it developed that each side of the house could have one topic that wasn't necessarily by the other side of the house or proposed by the other side of the house. And we had our topic which is the one we just discussed, new gTLDs.

And then we waited for the next topic and I think it was Thursday prior to the - to this meeting starting Monday that Rafik told us that that topic would be public interest. So I say that just to say I'm not sure that our side is very well prepared for this discussion because it came up so late in the process and

because during this discussion I didn't hear the phrase public interest in the first 15 minutes.

But now I'm hearing public interest and human rights used somewhat interchangeable or at least I'm not clear on what people think is the boundaries between them. I think human rights is a category which has some pretty specific if you look at the universal declaration or the international conventions there's some things listed as - within the human rights ambit and it would be worthwhile and I appreciate your doing this to identify which of those seem to have the most relevance to the ICANN world.

I think when we talk about other issues that may be good things and some things that we all want to see they may or may not be internationally recognized human rights. So I think as - I guess I would ask in the short term what folks hope to produce at the end of this discussion. But secondly as I'm sure this will be a continuing discussion, let's foc- you know, I think it would be a lot of value to defining our terms.

And to focusing on if we're talking about human rights that are internationally recognized which one's in particular and how this relates to the public interest. Because I'm not - obviously I see that there could be some relationship but I'm not very clear on what the non-commercial side thinks that relationship is, thank you.

Man: You want to react to Steve's intervention?

Man: Yes thank you, I too was very unclear - sorry Avri you're making a face?

Avri Doria: (Unintelligible).

Man: Now you are.

Bill Drake: I too was unclear about where we're going. The conversation started out in a
                very different direction from the one that I was expecting.

                The conversation we had had in our meeting prior with body and also within
                the NCUC meeting yesterday was about the fundamental question of, you
                know, public interest underlying so much of ICANN's bylaws, AOC,
                operations in every way that - and the issue is becoming vey contested.
                Different parties are appropriating the term and trying to use it in ways that
                suite their particular interests.

                It seemed to me and to others that it would be useful to us to try to finally after
                all these years have a principled and structured consideration of this issue.
                Looking as Kathy said starting from the standpoint of the way in which the
                term has been used in telecom and other regulated industries just as a
                beginning point - not just in the United States but abroad. Internationally there
                are cognate concepts even if the terms aren't exactly the same.

                But try to draw on some of that prior history to identify some elements of how
                this concept has been understood previously in ways that may be relevant.
                And then say which elements of those could be relevant in the ICANN context
                and how could we perhaps have a structured conversation around that. Not to
                arrive at a single bounded, one sentence definition that we will all agree on
                because we won't get there.

                But at least to have some sort of indicative list of dimensions considerations,
                etc. that are relevant to this topic so that we can have a more principle
                discussion about it in the accountability working group and in the various
                other context as well. It just seemed like that would be a useful thing to do.

And one of the things I suggested the other day was that this could perhaps be something that we would do and if we did a conference in Buenos Aires to have a discussion from different standpoints about how different stakeholder groups would view the question of public interest.

What they think the key parameters are and whose respon- the different responsibilities. Different actors have different responsibilities with regard to the public interest, whether you're a provider of registry services or ICANN the organization or so on and so forth. So conflating that - to me conflating that with human rights is problematic. My colleagues disagree, I know and you can say so - so it's been done.

Man: (Unintelligible).

Bill Drake: I didn't jump ahead, he called on me - I'm sorry. The human rights is certainly an important standard again- that nothing we do should contravene.

And to the extent that that's true any discussion of public interest should be, you know, in synch with that. But conflating by definition the two concepts to me I think then adds into a whole discussion, all of the problem that people might have with discussing human rights. And understanding exactly the scope of what human rights discussion in the ICANN context might be.

We've been a part of this conversation with the people from the Council of Europe and the Swiss Government and so on and so forth and we're trying to move forward the consideration of that. I think that's a whole other enterprise. I'd rather personally keep that separate and bounded and move that forward, have this separate and then we'd look at how they intersect if they do. If we start out by putting them together I think we get lost immediately and we end up waving our hands around in a lot of directions.

Rudy Dekker: Avri you have the human right to speak now.

Avri Doria: Thank you, I even have your permission which is even more important in this
                 room - Avri speaking.

                 I think that if you don't so to speak conflate them then you have no basis for
                 public interest discussion. I think any public interest discussion that isn't
                 rooted in the principles of human rights falls out at just then its public once
                 discussion and public grab discussion but not public interest. Public interest is
                 something that is rooted and needs to be rooted in human rights, those
                 established by international court as the basic principles.

                 Now the human rights are not adequate in terms of answering the specificity
                 of every question. So the public interest questions get into specific details that
                 deal with the real world but - and as you did indicate - always have to be
                 consistent with them. But until we have a position from which we understand
                 the pertinence of human rights - and by the way I think the notion of do we
                 want nothing bad to happen on the Internet is sort of an absurdum take on, you
                 know, the human rights discussion.

                 I think that the human rights discussion is not - we want nothing bad to
                 happen but we do want the actions we take to be consistent with the
                 international human rights to which we as an organization acting in the public
                 interest are accountable. And so the reason for actually taking the discussion,
                 it's easy to say that. It's hard to enumerate the issues of the public interest
                 because it's a dynamic, it's something that, you know, evolves over time with
                 the situations that you're dealing with.

But that rooting in the human rights has to remain consistent. And there are many - and I agree with Marilia that there are a primary three, you know, that we're talking about at the moment. But that doesn't mean that the rest of them may not also enter the discussions at various points.

So, you know, I think that it's not that they're conflated it's that they're inseparable and you cannot adequately discuss the one without the other. And ICANN is committed to the global public interest and as any international organization is committed to human rights.

Man: Quickly in the whole history of regulatory action around public interest, I'm not aware that anything was ever (unintelligible) the terms of human rights. So how is it not possible to do that? I don't think so - I mean...

Avri Doria: (Unintelligible) in front of everybody.

Man: Huh, I'm sorry?

Avri Doria: I said gosh you're jumping in front of everybody now - I'm kidding, go ahead.

((Crosstalk))

Man: I will yield to Bill to jump in front of me.

Man: (Unintelligible).

Rudy Dekker: You're still in the queue, go ahead.

Woman: So I think that that - that's actually a really interesting point of view Avri and thank you for sharing it.

I'm happy to hear from Kathy that the definition of human rights does include two provisions that refer specifically to intellectual property and there is some really good papers out of WIPO and other organizations about that. So I'm glad to hear that, you know, as far as human rights are concerned as it's defined in kind of internal law and treaty and norms that we are invited to the table so to speak on that issue.

And I do think it would be a mistake, especially in this environment to limit our discussion on human rights on the three topics that were proposed - I'm sorry what's your - Marilia, is that correct? Yes so I think that, you know, we need to make sure that if we're going to discuss human rights we don't place importance on some over others. The whole concept of human rights is that they're all equally important because they're human rights.

As far as conflating the two issues and them being inseparable or not, I think that - and maybe this is just my training and my background, human rights seem to be very well defined in treaty and in law. And in, you know, discussions from bodies like the United Nations and whatnot. Where as public interest while it may include elements that are also included in the definition of human rights is often more - maybe more broad or more open to additional discussion, additional kind of provisions, additional fix, you know, whatever that may be.

And I think that in that regard our discussion of public interest is more open to interpretation as we work on what that might mean in our context. And so I'm personally quite snobby about the - about how my work - I mean quite self-congratulatory I guess - about how my work protects the public interest so far as I'm protecting consumers. But is it a human right to not be (duped) on the

Internet into buying a counterfeit pharmaceutical that makes you sick? Probably not. Is it in the public interest to prevent that? Yes.

So I think that I wouldn't necessarily limit our discussion on public interest to determine human rights as I understand it as a lawyer and as somebody who kind of looks to the law and to international treaties to find that. So I guess in that regard I suppose I agree with Bill, although again I appreciate it and am challenged by it and thinking about what Avri said as well - thanks.

Rudy Dekker: Thank you. I have Greg in the queue, then I have Steve, Kathy, Stephanie, Jonathan, Laurie, Cheryl - so Greg you have the floor.

Greg Shatan: I'm Greg Shatan, I think it's obviously hard to be against human rights. And I don't think - I certainly wouldn't say that I am, I'm all for them.

On the other hand to say that because there's a public interest commitment in ICANN's charter that they by definition they have committed themselves to (falsify) human rights as I think to conflate the two. And to use as kind of a Trojan Horse to try to open up public interest and say, here human rights is inside, you've already committed to this. It's not to say that one should not discuss ICANN's commitment to human rights.

But to say that it's kind of a foregone conclusion just because there's a human interest commitment is I think too - is to simplify the discussion in an attempt to kind of stop it, so I think they should be viewed separately. And while it's hard to be against human rights in the abstract, the question becomes a little bit more nuance when you look at in the concrete. Which is what are you trying to actually accomplish in terms of prohibitions and protections and making choices between conflicting public interest and conflicting rights of different parties when you're trying to bring in a human rights commitment.

In the abstract it's great but concretely if that means that Whois should be deleted in its entirety and all domain names should be owned anonymously - I'm not saying that's what's trying to be accomplished - but if one were to be perhaps a privacy, absolutely maybe that is what you're trying to accomplish. So are you saying are you for human rights? Yes I'm - okay great I've just deleted Whois, I'm glad you agreed, then all of a sudden I'm not for human rights in that context.

So talking about human rights in the abstract does us no good because it's so - obviously something that should be supported. But talking about what we're trying to actually do or have - or not do in the context of supporting human rights is where the rubber hits the road. And I think that's where we need to make sure we're - we understand what it is we're getting ourselves into, thank you.

Rudy Dekker: Thank you, Greg. Steve.

Steve DelBianco: Steve DelBianco on the BC, I shared a recent experience over the last four weeks on this cross-community working group for ICANN's accountability.

It came up early that the chairs were trying to get us to answer the question, well what is the public interest. I don't remember if it came up on a phone call or the list and I put out a definition the BC had endorsed, it's a short and sweet on. I said it was the availability and the integrity of registrations and resolutions, that's it. Well that won a bunch of fans on the Adobe chat and over the next 12 hours a lot of people liked that because it was limiting, simple.

And we thought we could check that box and move on - well it's never the case, right Avri. It was a - that email trail just evolved into just a maelstrom of conflicting interpretations of human rights of laws - applicable law - it was an entire sidebar on applicable law. But where does that ever end? Usually people run out of steam before it ever concludes. And I don't know how we could ever end to Bill Drake's point. There's no reason that human rights is restricted expressly to that one list.

I mean when you open this box it could include those who claim is a right to affordable Internet access. And ICANN when they write contracts maybe no ISPs should be allowed to do resolutions unless their monthly Internet access charges are affordable in the countries of origin. Maybe ICANN shouldn't do any registry contracts unless the servers on which they're running their registries are using renewable energy. Look, how could it ever stop? When I said that in an ICANN in Singapore (Mike Sink) said I'm up for that, put me up for that.

So look it doesn't really end, the - whether its conflation or enumeration or it's automatically included, this is a very dangerous path to go. And often I'm hopeful that that will lead us to conclude that we ought to have a rather constrained definition of what it means to ICANN who's only remit is the DNS. And the DNS only does two things, registrations and resolutions. But nonetheless we have to ask it from time to time, the affirmation of commitments and an ATRT, the Accountability and Transparency Review Team - Avri's on a few of them, a number of the rest of you probably have

But it says in its remit, this is ATRT, it says what you're supposed to evaluate ensure that the outcomes of ICANN's decision making reflects the public interest. So that's in there, so two times we've gone through this 12, 14 month process and doing an ATRT, was there ever any resolution of what the public

interest is? And the answer is no, it was sort of just skipped. And the accountability and transparency headed down a different path.

So we've dodged the question a few times and I would welcome us to resolve it if we thought we really could. But I believe there are huge hazards in front of us and it would be impossible to stop the envior- global warming enthusiasts or affordable act enthusiasts, they're going to have the same claim. After all international accords Avri was the word you used. There's an international accord called the Kyoto Treaty and why won't they claim that that's just as relevant as a universal declaration of human rights, thanks.

Rudy Dekker: Stephanie.

Stephanie Perrin: Stephanie Perrin for the record, I actually have to agree with Steve. I think this is a very difficult topic and possibly that's why we were rather late in bringing it forward and there's a vigorous debate and discussion about this.

But I think we have to set this in the context - well, A, it's on the table whether you like it or not. There's now a COE report so, you know, maybe we can have a better discussion than has happened in the past, I hope so. B, UN Declaration of Human Rights is a logical start. There's plenty of other things but nothing is as well accepted as the UN Declaration, so you start there. C, we all know we have our favorite rights in there.

Law enforcement who is not necessarily representative in this room unless I've missed somebody is going to say the security of the person is their right and they're there to give it to you and therefore cough up all your data. So, you know, everybody has their favorite human right. The Council of Europe Report did not go into law enforcement's favorite - I urge you to read that

report and it's at least a basis for discussion because they kept it kind of narrow and you can go everywhere.

There are people who think freedom of movement, now that the Internet has come, should mean freedom to roam around the Internet. I mean we don't want to go there; right? Well (Tom) will, but we have to get started on this in a logical way and I think the logical thing that we have to keep the fence around is the limited remit of ICANN, you know. Babies are our business, our only business - it's about the domain names. As you said you're talking about resolution and, you know.

That keeps it a little confined and gives us a modest hope that we'll be able to get somewhere with this. And I think (our insistence) - and I'm that Marilia has left, that she's not here to hear this. The reason we want to make sure that human rights are on the table is that in the discussion of public interest it has not thus far been illuminated by what we consider our two basic human rights. But there's others but privacy and free speech and freedom of association, those three are kind of fundamental and they're in that report.

And we'd just like to put them on the table and make sure they're included in the discussion of the public interest.

Rudy Dekker: Thank you, oh you want to react to Steve?

Steve DelBianco: The NCSG is on record as asking that in this accountability review that we take the affirmation line that says in the global public interest and replace it by saying, for the protection of human rights and freedom of expression.

And so it's just one of sixty things that we're all looking at and it's not clear that there would be consents to do that. But it was provocative and it's

certainly going to be part of the conversation. So the NCSG is sort of on record at wanting that change to the affirmation at this point.

Rudy Dekker: Kathy.

Kathy Kleinman: Yes, the first question I was going to ask has already been answered. I wanted Steve to put the definition on but - so thank you.

And let me as a procedural question if I might which is if there is - there does appear to be great interest in. As Stephanie said we have to deal with it, Steve is dealing with it right now and everyone else who's on the same - the cross-community working groups and the other IANA and accountability groups - which I'm not because I'm on some other working groups. What - how do we go forward in doing this together? It seems like there are parallel tracks in which this question is being evaluated.

Clearly as you've seen the NCSG it's still working out how we feel about this. I mean the CSG at a consensus or are you still working it out? And if so are there ways to work it out together or at least sit down and continue the discussion together? Or should it...

Rudy Dekker: (Hey Kathy)...

Kathy Kleinman: ...be through these working groups?

Rudy Dekker: ...I'm keeping an eye on the clock and we still have ten minutes to go. I have Jonathan still in the queue, Laurie. I have (Sherry also) and I have Avri also in the queue. I have David also and Marilyn so we have to keep track on the fact that we have ten minutes left - so Laurie.

Laurie Schulman: Hi it's Laurie Schulman, oh sorry. I want to echo Stephanie and Steve and I don't - I may be repeating but I might be expanding, I'm not sure at this point.

But I think context is everything and when we look to the mission of ICANN these are the human rights, we're looking at security and stability - that's it, security, stability. Now is it as now as the domains and where they go? It very well could be and arguably is. But at the same time the security and stability extend a little bit further understanding that policies that are implement - and actually now I'm speaking very specifically - to like new gTLD programs where there are absolute consequences to policies that are implemented in the name of that security and stability.

It - I'm a little tired and I apologize, but the idea is this, when you delegate names then you're also delegating consequences and those consequences may have human rights implications. But I think it's really important to keep it in that narrow context of security and stability. If it's not affecting security, it's not affecting stability then I think it's somewhere else on the spectrum - that's all I want to say.

Rudy Dekker: Thank you, I'm jumping back to Cheryl and to Jonathan, David - Cheryl.

Cheryl Miller: Thank you, my name is Cheryl Miller and I also agree with Stephanie and Steve with respect to the limited remit but I very much appreciate this discussion, I think it's very interesting.

And I do think that, you know, as I am still thinking through this but from - I did study human rights law way, way, way back. But I see the human rights aspect of it as being broader than the public interest and I can also see what I would call fundamental difficulties in the relationship between rights and the public interest. I think there are times where we can run into situations where

we'll actually have competing version of the protections that certain rights might be afford - afforded.

So some things that come to mind for example, you know, with respect to freedom of speech and hate crimes, you know, there are certain instances there where we call that exceptions, etc. And so for the boarder context of the discussion I would just point that out. But a really interesting this - I didn't think that we were going to be talking about this, it's really interesting - thank you.

Rudy Dekker: Okay Jonathan.

Jonathan Zuck: Jonathan Zuck for the transcript and I guess we run the risk of saying sort of the same thing different ways.

But it occurs to me that if I made bicycles that I could be required to make bicycles in such a way as to be in the public interest. And so that could include for example reflectors or something like that to make them safer, but it wouldn't include the promotion of free speech, right. I mean I'm making bicycles, that's not part of my remit to promote those things. I know I'm upsetting you and I don't mean - and it's an extreme example but I think the key here is the lens through which we look at these things.

And I think it's about not treading on them more so than promoting them and that's all I'm trying to get to is trying to find that distinction as opposed to trying to be like engaged in what might be considered activist policies around human rights. As opposed to thinking of human rights as a construct within which we're operating which I think was Bill's point at the outset. And so that's sort of where my head is, is that I'm - that everything we do has to just be in the context of our remit.

And defining that remit as carefully as possible which is something we've all been trying to do for the last couple of years. That ICANN I think will create the lens through which we narrowly look at what is otherwise a very broad spectrum of human rights that folks with other remit would be more actively trying to pursue.

Rudy Dekker: Thank you, Jonathan. David.

David Cake: Yes so what I just sort of wanted to say, if we think about the way we think about security stability and resiliency which we've all agreed, you know, we all agree are very important principles.

We don't actually try and come to a ridged definition of what security, stability and resiliency are or exactly how they apply. They - and, you know, there's a - when you sort of get down to it when - where those apply to ICANN's mission is - can be quite complicated. I was on the security, stability, resiliency review team and we had to think about that quite a but. You know, how do - is ICANN - what are our responsibilities with the protocol itself, with, you know, there's a whole bunch of things.

And the way we probably think about the public interest should be - I think should be we need to think about it more like that. We will not necessarily come up with a perfect definition, what we need to come up with is processes by which we consider that and frameworks with which we work. Bill was pointing out that, you know, human rights is certainly probably one (that you like) and that they're a universally agreed upon aspect. But there are also economic ways to look at the public interest in telecom's law and so on.

But that's what we need is processes by which we examine the impact of public interest on our decisions. And a similar way we don't have - like I said we don't have a rigid definition of stability, stability and resiliency. We have, you know, a bunch of experts who both, you know, in defined roles and just generally within the community who look - dive deep into that. We probably need some of that for the public interest as well. Human rights we sort of wave around but it is actually a complicated area.

And, you know, there are human rights commissioners and so on who are very - have developed the significant expertise in balancing those different rights and understanding how they apply. We - I think we don't - thinking about it as, oh if we had the public interest we need a definition of the public interest that is, you know, singular and neat and we can all agree on may be the wrong idea. It may be with knowledge that the public interest is a complicated area and instead what we need is a framework and process for how we consider that.

What I think we don't want is what we have now where the public interest is, you know, baked in to some of our work and some of our processes. But we don't have a definition and we just kind of wonder on with ad hoc processes. And I - so I think we - I mean we've got a bit of work to do on this but we do have work to do on it. We I think it's not going to be - it's not going to be simple but what we have now is messy and occasionally causes problems. I mean and that's what we have now in the public interest commitments.

Because we didn't, you know, we baked that into our policy without working out what it was if it's - and that's not a good way to proceed.

Rudy Dekker: Avri, you're next.

Avri Doria: Thanks, Avri speaking again, I agree that it's difficult and I seem to be arguing the position pretty much especially with Marilia having left a fairly lonely one.

The point - in fact in some ways I feel that absurd argument -that absurd arguments have captured the discussion. You know, because we can all make up and add absurd arguments - that the Kyoto agreement is going to impose itself on ICANN. The point was not about rights driving what we do and it was about rights being the underlying principles with which we must adhere. And I think Jonathan came very close to it when he was talking about that there is something we need to adhere to.

So it's not driving - so human rights don't drive the agenda, human rights don't say that we exclude other issues from the agenda. What it is that we argue that they are an essential part of the discussion and that they're an essential part of the discussion that we need to sort of spend some time on and work on and understand. Now when you get to the public interest I actually believe that it is our processes where we in our multistakeholder manner keep bringing to these discussion, keep coming back to them that actually finds where the public interest actually lies.

It doesn't get defined a priori, it's something that after the discussion sort of emerges and we have a multistakeholder notion of where the public interest lies. But what I'm saying is that has to be an adherence to the various human rights. And that without discussing those human rights, without treating them in many ways like we treat stability and security where we have a bunch of experts who actually look at what we're doing and say hum, you know, we see some security issues you might want to think about here.

In that same way I think we need to have some human right experts that look at what we do and say hum, you know, we think there may be a human rights aspect here that you need to look at in order for you to be in adherence to them. But by no means am I saying that rights are what's driving the agenda. And, you know, and so I'd really like to try and avoid all those sort of absurdum cases that say I have a right, you know, my bicycle has free expression. You know, no, you know, that's not what I'm saying.

But if there was some aspect like safety, like whatever that came into it you'd have to give that consideration. And that's really, you know, the point and that we can't give it consideration unless we discuss them, understand them and have some, you know, expert use like we do in stability security. We all sort of understand stability and security, but we also have some experts that seem to understand it better than the rest of us and can give us advice on it from time to time. And that's really where I'm driving - human rights as underlying principles we need to adhere to, thanks.

Rudy Dekker: Thank you Avri, we are on the top of the hour so we have still Bill, Marilyn, Stephanie and Steve and I will close with David - okay go ahead Bill.

Bill Drake: Don't feel lonely Avri, we are - I think the notion that anything we should do should be compatible with internationally recognized human rights is not contested by your colleagues.

It was - the only issue was whether those two sets of issues and this of course is - are entirely coterminous and should be taken up at exactly the same time in the same context. And I was suggesting you could bracket one and have - try to focus on drilling down on the other and try to ensure that when you do it's consistent.

I want to go back to Steve's point though, if I were to think of your definition of the public interest in the context of telecom I guess it would have been then that (all of the) communication commission ever had to do was make sure the phone network worked, right - that peop- that...

Steve DelBianco: (That it was available throughout the country - availability).

Bill Drake: ...that it was available and people could connect to it.

Steve DelBianco: And that it worked properly when you used it - that's availability and (unintelligible).

Bill Drake: Right and the Federal Communication Commission has done an enormous amount of stuff, far behind that in order to promote other kinds of values because those reviewed as being good public policy and in the public interest.

Whether it had to do with the pricing that people paid, concentration of market power - a lot of things, a lot of things okay. And the point is obviously not all of those things would map directly into the ICANN space and nobody's suggesting that they would. But it's worth at least doing the intellectual exercise of asking what are the different dimensions of how this concept has been used elsewhere? And are there relevant analogs in our space that would - where it might be useful?

And on some of those we may disagree, so that's fine. So let's say you developed an indicative list of dimensions of public interest and there were 12 and, you know, fine. The people from CSG said, we don't think these six really apply, and other CSG people said, well we thing these ones apply. That's okay - that would still be part of a sort of a framework thing that then

we could have a structured conversation with the rest of the community going forward around.

And from the point that I would want to make is, you know, at the risk of (unintelligible) academic, just because something's intellectually complex or messy or whatever else doesn't mean you shouldn't dive into it. I, you know, as David said we can't avoid this thing, I mean it's been laying there forever, it underlies all these documents. And it's ridiculous to have, you know, bylaws and (unintelligible) commitments and all these other things that are referencing the public interest as their fundamental underlying principle and nobody can say what the hell it is just makes no sense.

I mean at some point we have to tackle this and we don't have to all agree on it but at least have a systematic principal conversation about it. And it would help to have some research that backed it up. But I mean I think we can do this in an attractive way if we - if people engage in a discourse around this in a way that doesn't fall into (added) assertive and kind of arguments in reducing each other's positions.

And instead just really try to seriously look at how the concept has been institutionalized in other spaces and ask what's relevant in our space. Then we'll make progress, I think.

Rudy Dekker: Marilyn.

Marilyn Cade: This is Marilyn Cade speaking, so we're - we started out talking about public interest and then we kind of morphed into, you know, what are we going to talk about when we talk about public interest and now we've talked quite a bit about human rights.

I have a couple of thoughts, one is in the five year strategic plan - and I'm probably not the only person who's going to say this - the question is what does it mean for ICANN to act in the public interest? That's the question and ICANN probably interest the business constituency member along with my colleagues here in that question because it's in the five year strategic plan. I'm not sure - and I will say I've been in many, many UN meetings where the topic of human rights comes and the decision is taken to defer the meeting until the experts can be imported from Capitol.

And huge debates go on between member states, some of which I won't name who cannot even though they say they've signed on to the Universal Declaration on Human Rights, they can't bring themselves to put language in UN documents that recognize everything that's in those declarations. I am reluctant to jump into a rabbit hole that is undefined. Or I think in order to talk about human rights implications that the implications of the Universal Declaration on Human Rights for activities at ICANN, that it is important to try to scope that.

And focus it on ICANN's mission, ICANN's activities and how it relates to the definition of public interest. I'm - this is not a BC position, I am just grappling with this from trying to think about how I go back and talk to others from business about why we would dive into this.

Rudy Dekker: Stephanie.

Stephanie Perrin: Stephanie Perrin for the record and I would agree it's - anybody who's seen the latest topic or the last one - number two - it's more like a dragon slayer than a rabbit hole. Because this could become very difficult as you describe.

This is why we have to scope it in a really simple way and - but the fact is some of the decisions that ICANN makes are (flaunting) human rights. So Article 12 is the one for privacy, we have an RAA process, an agreement and contract that basically says violate your local data protection law until you get a judgment from your data protection commissioner that says you violated it and then we'll think about giving you a - I'm channeling (Makali Malin) her who has been as we all know pretty vocal on this.

That's - what we're trying to do is to get ICANN to recognize some basic human rights that we know over the years have an impact on ICANN processes, procedures and decisions. And so the ones identified in the COE report and I kind of put a square bracket around their comments on the top level domains - Council of Europe, I beg our pardon. That's a good place to start and that's what we are really promoting. It has to be scoped, I agree with Marilyn on this, but we're in this discussion.

And the reason I raised my flag originally was to echo what David had said, some of us feel very strongly that defining it, because of all the different context, defining it is almost impossible. We need a framework for evaluating it. We need to know whether we're talking about a bicycle here or we need, you know, which particular rights have an impact on ICANN with respect to its core mission within those boxes. Otherwise we are in the dragon's den I would suspect.

And we actually want this to happen within the five year plan that we're supposed to come up with this consensus on. So I think it's more important to take some baby steps positively then to jump into chaos.

Rudy Dekker: Thank you Stephanie - Steve and then I have David to close the (role).

Steve DelBianco: Kathy you asked about what's the next step, where do we go from here on the - I don't think that the CCWG on accountability will attempt to resolve it.

I sort of touched that third (ground) and I don't think we'll really go back to it - I don't know, I doubt it. I don't think the CWG is going to tackle it either. But on October 13 in Los Angeles with the Monday opening ceremony Fadi announced one of his new strategic objectives to "develop and implement a global public interest framework founded by ICANN's mission." Framework, not definition and the word framework - I want to make sure that I understand - that doesn't mean a single static definition, it could be a framework, a checklist.

The minute you start a checklist and you say anchored was the word you used in your blog, it's anchored in the human rights to achieve some special significance. And I don't know why they would but I understand the point you're making. It's a framework but it's a framework where you want to fill a bunch of that frame with the current UN Declaration of Human Rights. That gives rise to a lot of the discussion we're having here today.

(Peter) then gave thrust for a period of about six years and I used to go to the microphone and say let's define the public interest. It would always just sort of put me off the way (Peter) did.

Man: Remember that?

Steve DelBianco: Yes and afterwards I hand a chance...

Man: Been there.

Steve DelBianco: So one time after he left his chair we had a drink together and he explained why he said it.

He said look if we have good processes that are open to the public that's all that we need. Because when a question comes up with a public interest it's whatever the public says they're interest in. So just by having an open process everything is solved - that the way he wanted to do it. But Fadi started this strategic objective on this and I - he announced it on October 13 and I'm looking to the rest of you, I can't find anything on the Web site to where it's been fleshed out yet.

Man: It's under strategic plan (unintelligible).

Steve DelBianco: And is that framework - are they - did they announce how they're going to form and when and what we have to do?

Woman: No.

Rudy Dekker: David you're the last in the queue.

Woman: He's still working out the details because we asked him a little bit about this today, so thank you.

David Cake Thank you, David Cake again. Okay (but) I just want to thank - thanks Steve, that was one of the things I was exactly going to point out, it's easy in the strategic plan.

So something will happen like it or not we may as well, you know, get involved and guide that process. The other thing I wanted to make a point of in discussing this and when we talk about again to use the comparison to how

we currently deal with security, stability and resiliency. For one thing is that security and stability, resiliency and not all the one, right they're three different things. And they do on occasion conflict, not much but somewhat and we already have to do that process.

And it's similar where we balance human rights and other (cup pert) - other ways of looking at the public interest I think is how we get there. But one of the things we do with - I also wanted to mention, one of the things we do with security, stability and resiliency is that we have - ICANN has identified a number of places where there is a security and stability issue and it is in some way relevant to ICANN. And ICANN has still chosen not to do it. Often - I mean the GNSO was a good example, it was - we all - no one went home, you know, that - no one argued that it was stabil- an SSR issue.

No one argued that it wasn't a good idea to happen but we still went - but we don't have to do it and in fact there are other people who were doing it and doing it well. And that may well end up what we end up doing with a lot of public interest issues, we may end up going - actually we understand that there's a public interest issue and we understand that it is in some way relevant to the DNS, but actually ICANN isn't going to do it.

Man: (Unintelligible).

David Cake   Yes we are going to acknowledge it and maybe we sometime as we go, oh yes and, you know, this is something that, you know, I don't know WIPO or something will - has more, you know, is already doing that job or something and we will have that framework.

And having that sort of consideration of what - the things that we do that are relevant to the public interest, well Whois already doing them, where ICANN

should and should not stop. I think that's something we - would be very helpful for us to have and we do not as yet have. So - and I think particularly this has become very obvious in the whole, you know, significant streams and big issues.

There are things in there where we have - we've sort have gone - well this is a, you know, this is a public policy issue and there's a public issue where. But we haven't had that conversation in an organized way about where ICANN's responsibilities stop and start and that I think is a very valuable conversation for us to have probably, yes.

Rudy Dekker: Okay I guess we can close the session I think. I have heard a lot of ideas, proposals, thoughts and I think this topic needs a second session.

Man: (Can't we see your summary)?

Rudy Dekker: Yes well I think the summary is going to be a very complex thing or it could be very simple. There is no consensus, there is not definition today so I would like to thank you all as I see that the pubic interest is lowering below the level of the public interest. And I think I'm going to hand it over to (Robert) for the next session.

(Robert): Thank you Rudy, the meeting planners have consulted and there's consensus that you all should have a five to ten minute break before the next session.

Woman: Yes.

((Crosstalk))

(Robert):   The chairs of the next session ask that you please be back very quickly in that five to ten minute window, thank you.

END