

**Transcription ICANN Dublin
Tuesday 20 October 2015
IPC**

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On page: <http://gnso.icann.org/en/group-activities/calendar#oct>
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Greg Shatan: Welcome to the Intellectual Property Constituency meeting here in Dublin, October 20, 2015. We have a few minutes before our first quest which is ICANN Compliance. So we'll go around the room quickly, introduce ourselves so that we know who's talking to whom.

I'm Greg Shatan, President of the IPC.

Steve Metalitz: Steve Metalitz, Vice President of the IPC.

John McElwaine: John McElwaine, Participation Coordinator for the IPC.

Kiran Malancharuvil: Kiran Malancharuvil, IPC member.

Todd Williams: Todd Williams, IPC.

Bradley Silva: Bradley Silva, IPC.

Charne Le Roux: Charne Le Roux, IPC member.

Dusan Popovic: Dusan Popovic, IPC.

Helen Sheely: Helen Sheely, Irish Recorded Music Industry.

Jannik Skou: Jannik Skou, of Thomsen Trampedach. IPC member.

Sylvain Hirsch: Sylvain Hirsch, IPC member.

Griffin Barnett: Griffin Barnett, of Mayor Brown, IPC member. My voice is going.

| [Marc](#) Trachtenberg: [Marc](#) Trachtenberg, creeper trarick, IPC member.

(Laughter)

Mike Rodenbaugh: Mike Rodenbaugh, Rodenbaugh.law, IPC member.

Ken Taylor: Ken Taylor, Marksman, IPC member.

Paul McGrady: Paul McGrady, Winston & Strawn, IPC Member and forthcoming GNSO counselor. For everybody in the room or heard my name you must expunge it from your memory before you leave the European Union.

(Laughter)

John Dixon Cooley: John Dixon Cooley, IPC member.

Patrick Charnley: The IFPI and IPC member.

Clark Lackert: Clark Lackert at Reed Smith, New York; IPC member.

| Nick Wood: Nick Wood, Com Laude IPC member and representing [Marques](#).

Allistair Payne: Alistair Payne, Matheson Solicitors, Dublin.

Torsten Bettinger: Torsten Bettinger, representing AIPPI, IPC member.

Petter Rindforth: Petter Rindforth, representing FICPI, IPC member.

Anne Aikman-Scalese: Anne Aikman-Scalese, Lewis Roca Rothgerber. I'm an IPC member and primary delegate to the Standing Committee on Improvement Implementation; which I currently chair.

Jonathan Zuck: Jonathan Zuck from ACT Association, IPC member.

Stephen Stolfi: Stephen Stolfi, Corsearch [Wolterskluwer](#), IPC member.

Colin O'Brien: Colin O'Brien, Partridge & Garcia, IPC member.

(Icy Usigee): (Icy Usigee), ICANN staff.

John Rodriguez: John Rodriguez, U.S. Patent and Trademark Office.

(Zukeres Ala Jonleway): Hello, (Zukeres Ala Jonleway), ICANN staff.

(Edith Clairbaugh): (Edith Clairbaugh), ICANN staff.

Sylvie Destenave: Sylvie Destenave, ORDIPAT / ACUNMASS

Edel Brady: Edel Brady, ORDIPAT

Jennifer Korn: Jennie Korn, ORDIPAT

Russell Richardson: Russell Richardson from the ICTA in the Cayman Islands.

(Maria Ferbits): (Maria Ferbits), Hamburg University.

Paolo Beffagnotti: Paolo Beffagnotti from Nike.

Toe Su Ayng: To Su Ayng from Elite, London.

Sendar Kyi: Hi, Sendar Kyi from Shell.

Martin Kuechenthal: Martin Kuechenthal, Lemarit, IPC member.

Katrin Ohlmer: Katrin Ohlmer, dotBERLIN.

Dawn Shackleton: Dawn Shackleton, Sky plc.

Jennifer Bryant: Jennifer Bryant, Sky plc.

(Charlie Rusbot): (Charlie Rusbot), Sky plc.

Jenny Kaye: Jenny Kaye, HSBC.

Brian Beckham: Brian Beckham, WIPO.

Kristine Dorrain: Kristine Dorrain, National Arbitration Forum.

(Nina Rahim): (Nina Rahim), ICANN Staff.

Paul Livesay: Paul Livesay, VeriSign.

(David Genisosio): (David Genisosio).

Luca Bessi: Luca Bessi, Checkmark Network

Clay Entsminger: Clay Entsminger, UNH Law.

(Signoli Zerites): (Signoli Zerites), Deloitte.

(Tolly Volamfasay): (Tolly Volamfasay), (Internet).

Carisma Hampton: Carisma Hampton, U.S. Patent and Trademark Office.

Greg Shatan: And next?

Adrian Alormaloney: (Adrian Alormaloney) with (unintelligible).

Briand Simone: Briand Simone, IP TWINS.

(Alsa Sagee): (Alsa Sagee), IP TWINS.

Mary Wong: Mary Wong, ICANN staff supporting the GNSO and therefore the IPC.

Luca Grandi: Luca Grandi, Ferrero.

(Kevin Jones): (Kevin Jones).

(Syphadium): (Syphadium) from (la feensee city of registry).

Robert Newman: Robert Newman, Winston Strawn.

Jason Gordon: Jason Gordon, Winston Strawn.

Lori Schulman: I'm going to say my name because I missed. Lori Schulman, International Trademark Association, incoming IPC Treasurer.

Greg Shatan: Thank you. Any other late arrivals that didn't get to introduce themselves? Let me know when you're ready.

Woman 1: (Unintelligible).

Man 1: (Unintelligible).

Greg Shatan: Yes.

Ozan Sahin: Ozan Sahin, ICANN staff.

(Lydia Icanseo): (Lydia Icanseo), ICANN staff.

Jennifer Scott: Jennifer Scott, ICANN staff.

Greg Shatan: Sorry, we're having some technical difficulties with the presentation for our first presenter. We'll be up and running in a moment. I'm looking for another item that's not going to take a half an hour.

Greg Shatan: Just very briefly to talk about outreach and engagement. I sent around right before Dublin, which means that none of you read it a copy of our Outreach and Engagement Strategic Plan; which is in a - let's call it a stable draft form. Appreciate it as you recover from Dublin if you could read it over, look at it, think about the Outreach Engagement Plan so we should be operationalizing.

We have an Outreach and Engagement Task Force which will get back on track again after Dublin and work on more outreach engagement. We have several specific outreach and engagement efforts that have borne fruit at this particular meeting. So Steve if you could say a word about Fellows and introduce our Fellows.

Steve Metalitz: Yes. I'm very pleased that we have two participants in the ICANN Fellowship Program here; Charne and Dusan who introduced themselves earlier from South Africa and Serbia respectively. So welcome to you. We're glad to have you here and we have encouraged more IP aware people, let's put it that way to apply for the Fellowship Program; which brings a number of people to each ICANN meeting.

The application period for the next meeting has just closed. So I guess it's too late to apply for a fellowship to attend the Marrakech meeting. And at some point in the near future the application window will open for the Panama meeting. So we'll of course put out word of that on the list as soon as we get the date. But we certainly encourage - this is a way of bringing more people with awareness about intellectual property issues into the ICANN process.

So we should be doing what we can to make use of it. Thank you.

Greg Shatan: Exactly. I encourage us to look at the Fellowship requirements and think about people that you could interest in being Fellows. It's an opportunity that is waiting for us to exploit it. Clark?

Clark Lackert: Yes, Clark Lackert for the record. One point about - and I did read your memo Greg so - it was on the plane though. When you talk about legal associations I think we should look at it some form - I'm not saying I endorse it but just look at some form of co-memberships because as the former president of the AIPPI in the U.S. we found it very helpful to partner with AIPLA. Of course there are other organizations.

Obviously INTA and so forth; and by doing that we had both co-awareness and also increased our membership. So that was a significant boost for us at AIPPI U.S. Thank you.

Greg Shatan: Thanks Clark. A second highly fruitful area in which we - ICANN supports our outreach and engagement is in the CROPP Program. And Brian has been - Brian Winterfeldt is our CROPP coordinator. I see Brian's over there but we do have one CROPP participant. If [s](#)he could say hi and introduce herself?

Thank you. Glad to have you with us, get you across the Irish Sea to be with us here. It looks like our presentation is just about ready to be up and running and we have our presenters - many of you know quite well Maguy Serad and

Allen Grogan. And we have Owen Smigelski in the audience but part of the team.

So I'll now hand it over to Maguy and Allen.

Maguy Serad: Thank you Greg. Good afternoon everyone. My name is Maguy Serad, the VP for Contractual Compliance. I've been working with this constituency group for the past 4-1/2 years of my present at ICANN. Always good to be with you. With me in the audience Greg mentioned Owen but I also have additional staff - compliance staff members with me.

I have Jennifer Scott, she is mostly responsible in the registry space, very knowledgeable in both her (unintelligible) and registry but mostly her area of responsibility is registry.

And then I also have - I'm looking for - yes there she is - (Leticia Castel). She is part of the Los Angeles team. But also have some of the (sample) team members with us; (Zurah Salecheenova) and (Eleef Karapok) with us.

So again thank you for this opportunity. Also have my big boss next to my right. But before I get started I've really had the opportunity and the pleasure to work with you for the past 4-1/2 years. I follow your frustrations and I was at the Board Meeting this morning, so yes Marc I still love you.

I understand the frustration but I think, I hope that with what we heard this morning and through Allen's leadership we're going to try to bring some more clarity so that is in appreciation if nothing else at least to some of the reasons why some of the things happen.

Allen do you want to say anything before we start?

Allen Grogan: No. Why don't you go ahead and then if there's time at the end I'll be happy to address some of the questions that came up in the Board Meeting.

Maguy Serad: Okay. So I understand we have 30 minutes. What I'd like to do if you will allow me about not less than five minutes to share with you what's the slide deck I have for you, not going to take you through every slide. But I want to highlight a few items on the agenda.

You know, on the ICANN.org we have observed that over the last six months there's been a lot of questions that come through communications and through the community, what is compliance? What do they do? And, you know, from domainers, from organizations.

So we launched an initiative and if you follow us through the portfolio reporting that we launched since Fadi came, so to bring more visibility to the projects that ICANN works on.

We launched an Online Learning Project with a video campaign and infographic campaign in eight languages. And we promoted those campaigns through paid advertisement, YouTube promotions and stuff like that. And about a 14 day promotional campaign. We had about 53,000 hits on the video.

And if you're interested in the statistic breakdown, join us Wednesday morning at the program update. We will go more in depth by language and hits on that.

But I wanted to share with you because that has been helpful in bringing more better understanding to - if I'm a domainer where do I go instead of just sending emails left and right within the organization.

The next thing I wanted to share with this team relates to - next slide please - continuous improvements. You know, now that we've launched the foundational efforts of the systems and the processes and the template we

continue to improve on our delivery of the service from a compliance perspective.

And usually those continuous improvements are driven by three factors. Somethings like from the system, if there's a security updates. That's not optional. We make sure that the system stays - remains secure because we do have a dot dot that is confidential whether it's on the reporter or our collaboration efforts.

But we also have improvements that are based on community feedback and I look at this audience but basically you would qualify under the reporter section where - or the complainant. We heard from many reporters that you close our complaints but we don't understand - you're not telling us what.

So what we're trying to do is add a resolve code or a brief result description. Keeping in mind that the complaints we receive are so unique, believe me they are unique. And there is no way you can customize a response to every one of them.

We tried to provide a general response and a resolved description to help address it. But if there are follow up questions I think everyone in this audience knows to send an email back to us, let us know if you need or you require further clarification.

So hopefully that's an improvement that's going to bring real clarity to the reasons some complaints are being closed or followed up on, whatever. Also we have initiatives that are led by the different policy efforts underway. And we launch those in order to be able to be ready, not just the contracted parties have to be ready. We also have to be ready to be able to follow on the compliance aspect based on the different policies underway.

Next slide please.

Other activities, of course it depends which side you're sitting on. Contracted parties do not like auditors. If within your own business you've experienced auditors - I have in my previous life have always looked forward to auditors. Because no matter how passionate and focused you are on your business, you are always bound to miss something.

So we conduct audits on the contracted parties. We also conduct audits internally on ourselves. I have a risk and audit manager who is isolated from the operations team. And we continually conduct those. But the audits I want to bring to attention is we continue to run audits program and the audit program is two-fold.

You know, our goal here is to be able to serve and make sure that the internet is safe and secure and stabilized. So the audit allows us to proactively work with the contracted parties. And that work is, not saying that they're bad or real good or - it's not about that. It's about if we can proactively identify issues we can proactively be better prepared and avoid issues in the future.

So we continue to launch the program. We tried to head two audits by contracted party - two rollouts. We just completed a new registry agreement audit what was conducted in March. And the scope was 11 registries. And we went across scope that included IDN, registry operators, you know, different areas.

We tried to pick a sample size that's kind of going to give us an appreciation of the lay of the environment. We also focused for example we noticed many of our registry operators have a back end service provider that's common to all.

So guess what? If you focus on an audit in one area and it's the same back end service provider. And you, for example, you identified that escrow issue.

You work it and you by default address that task to assure across other areas.

So we concluded the audit report. By the time we published the report we had one registry operator who was still in the remediation phase. We published the report. We are not going to go back update the report that this remediation phase has been completed, no, because at the time of the closure of the audit report that was the status.

We followed up with a registry operator and they fulfilled their obligation and completed the remediation. And the audit report is published. It will give you not only statistical information but it also will give you a list of the registry operators that were in scope and the phases. And some of the high level issues that we encountered.

And the reason you don't know who did what or we did not do what we call some community members call name and shame is because they collaborated. We allow for this informal resolution even in the audit phase to allow for mistakes to be corrected if they are identified. In the past we have breached contracted parties if they don't respond to audits or they don't fulfil their audit obligations.

But not until we give the opportunity to correct or address. Sometimes we may be interpreting a response differently. So we also have to give our self the opportunity. The business models are so different out there. There is not a cookie cutter.

The registrar audit we just launched in September. I'm not going to read the stats on that. All I know is as of this morning I got the latest updates from the Risk and Audit Manager, from the (unintelligible) we have zero enforcement notices going. That means all 69 registrars have fulfilled their obligations of uploading the data requested of them in the initial phase for ICANN to review it.

So zero enforcement at this point and stay tuned for future updates.

We are in the process of globalizing the risk and audit page; globalizing it because today only the reports are provided in eight languages. We're going to provide everything within the audit page and the global languages. We're also going to provide templates. We have received a lot of push from the community.

What does the audit report look like to a contracted party? I'm not going to print out the audit report that I sent to the contracted party but we're going to print you a template. We're going to redact the name.

So you know what an audit report looks like when we send it to the contracted party. That one is a standard one and we kind of like have a checklist and we let them know which area did not pass.

And keep in mind every audit is unique. Sometimes we do a full scale audit on all provisions. Sometimes we pick it based on the risks or the issues that we're seeing and observing from the community.

So we're in the process of doing that. In addition to providing you the templates we're going to provide you what it looks like, what the notices look like, so you know when we are collaborating what happens behind the scenes in that space.

Next slide please.

I've been asked in hallway conversations about audit selection criteria. How do you select the auditees? You know, for the past three years and you heard Fadi on Monday's session report on the three-year program result. We're done with that program. That was a one-time effort to baseline the environment that existed when I came onboard.

There were no fully set audits. They were just spot auditing before my arrival. And we launched a full audit to baseline the environment of the 2009 and the 2001 registrars at the time. And what's referred to as the legacy TLDs. That program is concluded and done. Going forward we're going to be launching what you hear me say, the March audit or the September audit.

That's going to be determined by the month when we launch an audit. So how do we select our auditees? We select those - first of all our first priority is have we missed someone from being audited. The other opportunity is we look at contracted parties; if there's a high volume of certain notices within their area.

Again we're in the collaboration phase with the contracted parties. If we reach a short notice that means something is not going well. We're one step away from enforcement, right. So we pull those as part of the sampling site. Another sample site into the audit; if a contracted party has received a breach notice in the last 12 months they automatically rolled in.

Another opportunity which is considered a high risk area is also if they are high risk (unintelligible). Because we depend for the stability of the interest is that of (escrow). So if we have a lot of issues by default they fall in there.

And a couple of other options, again, we read blogs, social media, we keep up with all the different things that are going on and based on that we might roll in a few contracted parties and the audit scope. Or another option - another criteria could be we have, even though in the collaboration phase if you read some of our breach notices we have contracted parties sometimes, they just ignore informal resolution. And when we go through that we enforce it and we breach.

So we try to provide all means of communications. But there is a process and a frame work that we work within.

With this I'm going to stop but I want to let you know there are a lot of efforts that will be relevant to this audience. I've provided an update and both the registrar space and the registry. Efforts as simple as some of the efforts that ICANN has taken on the responsibility of doing additional who is validation, effort internally. And those will roll into compliance.

Efforts around some of the UDRP enforcement and URS enforcement. And the topic that's near and dear to this audience is the abuse reporting.

So with this I'm going to stop presenting unless there's a specific slide you have access to the slides. Let us know we'd be happy to present to you.

Allen Grogan: I'll jump in if I can for a couple of comments real quickly, mostly related to things that came up at the board meeting today. So I think Maguy has already addressed one of the comments that came up which is more detailed on how and why we go about closing complaints. And we are working on some codes that will give a little more clarity around that.

There was a question raised about whether we intend to enforce Spec 11 which I was actually a bit surprised by. So the answer is yes we do intend to enforce Spec 11. I've always said that. It's part of the contract.

It's binding on the parties the same as any other provision of the contract. We have audited compliance with Spec 11. We have gone after people who didn't comply with provisions of Spec 11 during the audit phase.

So the answer is yes, it's part of the contract like anything else. There are - there is a unique procedure that applies to Spec 11 which doesn't apply to other provisions in the contract with is the big DRP. So if you believe there's a breach of Spec 11 and you're not seeing compliance taking action on that breach there's a procedure for you to file a PIC report.

And if you file a PIC report that could result in either ICANN compliance taking action on that and/or the convening of PIC DRP Panel.

And if a PIC DRP Panel is convened that doesn't prevent ICANN compliance from taking action as well. So I think that's the answer on that.

On the discussions on voluntary efforts to try to combat abuse and illegal activity; which there've been some already at this ICANN Session that I'm having a session tomorrow on those. So I appreciate the point of view that was expressed that voluntary somehow needs to translate into enforcement through contracts.

I think we're at the early stages of sort of raising with the community, the whole idea of how voluntary practices can potentially address these issues. So I'm not fully prepared to discuss now, how or when that might translate into something that would result in contractual compliance issues.

I think that's a longer term discussion. And I think the voluntary solutions that have been used in other industries have been voluntary and that's the reason they're called voluntary.

And I'm not sure exactly what the mechanism would be to translate that into something that's mandatory in this community without a lot of public discussion and comment and - but I think it's cart before the horse at this point. I think first we need to have the discussion around people voluntarily agreeing to some practices that would address these issues.

And then the next step would be to talk about could that eventually translate into that being a failure to comply with at least some level of voluntary commitments potentially being a compliance issue.

And I'm happy to take questions or have Maguy take questions.

Greg Shatan: Thank you Allen. Marc?

Marc Trachtenberg: I guess I'll start with Allen. Just for, you know, just for clarity I don't know that we are necessarily suggesting that voluntary standards would somehow translate into being mandatory. Of course we would love that but, you know, we understand that there are issues and that's why we try to offer some suggestions.

You know, one being that, you know, perhaps there be a presumption of being in compliance for those contracted parties that abided by the voluntary standards. Or, you know conversely, you know, perhaps the presumption that you're not in compliance if you don't comply with the standards. But I just wanted to make that clear.

For Maguy I had a question about the new gTLD registry audits. And just looking at the audit report one thing I don't see in there is whether there was a review of whether the registries are in compliance with their own policies. You know, I see whether they're in compliance with consensus and temporary policies.

But I think an important issue for us is whether they're actually applying with their own policies. And, you know, I'm wondering if that's something you look at and if not, why not.

Maguy Serad: Are those policies incorporated in the RRA? That you're referring - so anything that is binding, contractually binding we refer to it. And we refer to it up to a point of what we call an operational. For example we receive complaints whether it's about code of conduct or about professional treatment.

So it's like we conduct any other review. We ask for the correspondence. We ask for a copy of the contract, the RRA; because as you know from the get-go we don't have it. So we ask for a copy of the RRA from both parties; the

reporter and the contracted party. And if there is a policy embedded within that contract that also implicates the complaint or the alleged complaint.

We ask for a copy of that and we review those within the realm of that framework; but up to a certain point where it becomes really more of an operational aspect for the contracted party. So let me clarify what I mean by that. We do not dictate what goes in that policy but we make sure if you signed an agreement with a contracted party to accept the service whether as a registrant or as a registrar or vice versa.

Whatever's in that agreement that you signed up for we stop on what's written there. We cannot and we will not tell the contracted party well, your process should be this or you should be that. It's whatever they wrote in there that you signed up for is where we stop and draw the line. So I hope I addressed your question?

[Marc](#) Trachtenberg: To clarify I was talking about the policies, the registration policies; the policies for operating the registry itself. And so I'm wondering what compliance's view is on what or whether there is any sort of obligation to ICANN for a registry to follow its own published registration policies.

So not the policy between the registry and its registrars but the policy generally for - its registration policies. I mean that's one of the things that you require before they can operate the registry. You have to see a copy of their registration policies.

And so my question is, you know, what obligation does that registry have with respect to ICANN to actually follow those policies?

Allen Grogan: So I'll take a stab at answering that. I mean it's difficult to answer a hypothetical question and I'm not really trying to duck the issue. And I think it would depend on what the registration policy is that they're not following and

what the impact of that is. And it might depend on whether or not they have reserved the right to change their registration policy.

Well I mean there, you know, there are a whole bunch of variables there. There is a provision in Spec 11 that says they have to establish, publish and adhere to clear registration policies or something - that may not be exactly right but that's pretty close.

So if they've failed to do that that would certainly be a compliance matter. Assuming they do establish and publish and adhere to clear registration policies then I'm not sure what other provisions of the registry agreement would be implicated.

[Marc Trachtenberg](#): I mean I don't think any other provisions but I just want clarity that what you're saying here is that if a registry does not abide by its published registration policies then you would view that as a compliance issue because they would not be complying with Specification 11 which requires them to adhere to the clear and transparent registration policies. And that you would take action in that regard.

Allen Grogan: So the answer is yes they have to establish, publish and adhere to clear registration policies and yes that could be pursued as a compliance matter. And as I said the Spec 11 is subject to this unique PIC DRP proceeding. So if you believe that they are not establishing, publishing and adhering to clear registration policies and we're not taking action then you do have the ability to file a PIC report; which could either result in our initiating our own compliance action or it could result in a PIC DRP Panel to resolve the issue.

Maguy Serad: If I may add, again, hypothetically speaking it could fall also under Spec 12 for registration restrictions. So without having some more facts - and let me tell you something. When we receive a report the reporter may say it's this one, here's my issue or here's my alleged non-compliance issue.

We read it very well; we follow up with the reporter to obtain clarification. But we do not just focus on that one issue. We look at it in the content of the entire contract but also with the policies that it might fall in it. And, you know, this contract has, well you know, it depends what kind of TLD it is.

It has many specifications. So we don't focus on just the report itself, staff makes sure we follow up with the reporter to make sure we understand the port that's been filed but we take it beyond just what's been filed to make sure we are also covering because it could be addressed in different areas.

Greg Shatan: Thank you Maguy. Kiran, I think you're next in the queue.

Kiran Malancharuvil: Hi Kiran Malancharuvil here for [MarkMonitor](#). I'm still confused about what you're saying about Spec 11. And enforcement because at first I heard you say that of course contractual compliance has a function. And then I heard you say at the end that we would have to follow the DRP. And that from that filing contractual appliance may take action.

So can I just one more time, not to beat the dead horse, hear from you whether or not we could approach compliance directly without filing a DRP in order to enforce the PICs in Spec 11?

Allen Grogan: So the answer - the short and simple answer is yes. ICANN compliance on its own initiative might take action to enforce Spec 11 with or without a complaint being filed. If a complaint is filed ICANN might respond to that complaint by initiating a compliance action.

If for whatever reason you file a complaint and ICANN compliance does not take action and you still believe there's a violation of Spec 11. Then the PIC DRP process gives you another opportunity to have that resolved. And if you filed a - if you read the provisions of the PIC DRP process it could lead to a PIC DRP panel. It could also at various stages lead to action by ICANN compliance either before or after the convening of a PIC DRP panel.

Kiran Malancharuvil: Okay great. And something you said is a good segue I guess into my next question; which I fear is probably more for Maguy than you but I'm glad you're both here for it. I heard Maguy say that we get a firm response from an ippease complaint for example or a complaint due to compliance about non-compliance under 38.1 for example. Or, you know, registry for Merck monitoring that we've sent things to compliance that deal with a registry issues and RA discrimination stuff.

We get a firm response back from you guys, oh we've examined this complaint and we've closed it. And what I heard Maguy say was that we're welcome to approach compliance after that point to get more details. And at that point we should be able to have some transparency with compliance to understand how you came to the decision that you did in those regards.

And I'm happy to hear that but it's contradictory to my experience and to my company's experience in the matter. So I think we have gone back to compliance on a number of occasions asking for more details about why the complaint was closed and how compliance felt that, you know, the registry or the registrar in question had appropriately addressed the concerns in the original complaint.

And have been told that that's not information for us to know. And so, you know, we brought this up obviously in the Board Meeting about transparency and clarity particularly valuable for the community because the more we understand about how you're making your decisions in regard to these contractual provisions, the more we understand about how you're interpreting it. And the more we can all come together as a community with like - and stop operating in our sort of what appears to be polar opposite understandings of the interpretation of some of this language.

So it's sort of - it's a question to you and also then tags along like a statement and a plea for transparency and clarity.

Maguy Serad: Thank you Kiran. I would like to clarify. I heard you well. But again we come from such diverse backgrounds and we can all take a sentence or a verb and interpret it differently.

When I say follow up with us for clarifications if you have additional questions, yes, I meant it. And we have received those. But we also have received where people want to see all the documentation that we reviewed or the certificates that were shared with us and the analysis. That's in the operational aspect.

And we will not put those out there because that's part of the informal resolution process to help us review and assess to come to a conclusion. So when we are doing these analysis we have either received information or we reviewed communication, it depends on the case we're dealing with to help us make that determination whether a contractor's party is either in compliance or out of compliance.

And if they are out of compliance we follow through with the contracted party - sometimes it requires a remediation plan that is a system that impacts or something that they need to follow up on to correct. And we do that.

But so clarification on questions we're happy to address. But I will not in the compliance practice and the informer resolution we will not give you the documents we have received.

Greg Shatan: Thank you Maguy. I think we have one more question on this side.

Helen Sheely: I'm Helen Sheely, Irish Recorded Music Industry and to be quite honest I don't really have a question. I just have a statement because I'm the Irish representative of the IFPI here today.
And so just a few words and I won't be very long. I have struggled with the Irish Recorded Music Industry due to internet piracy, a well-known. Ireland

has suffered greatly. I want to share with you the words of Mr. Justice Charleton, a judge of our Supreme Court. I'm going to read this, it will be very short.

"I'm satisfied that the business of the recording companies has been devastated by internet piracy. This not only undermines their business but ruins the ability of a generation of creative people in Ireland and elsewhere to establish a viable living."

It is destructive of an important native industry. He goes on later on in this quote to say, "The implications of this are that those involved in creative work will get a substantially and unfairly reduced return for the expenditure of their talent in creative work."

Now the record industry is the main investor in artists. And despite falling revenues and everybody knows who the disaster has been faced in the previous years it has maintained its investment. Investing over \$20 billion U.S. in artists, repertoire and in marketing internationally in the last five years.

Almost half of the Irish music - the entire Irish music industry's revenues now come from digital services. So a safe digital trading environment is vital to the future of the music industry, to the future of continued investment in artists and also to the future of innovation.

All participants in the digital environment have a responsibility to contribute towards the creation of a safe and legitimate internet and the issue of compliances at the very heart of that.

All of society should be any as concerned - that they should be able to depend upon the rule of law in the online environment. That's all I wanted to say. Thank you.

Greg Shatan: Thank you, always good to get a local perspective.

Allen or Maguy have any thoughts and response to that?

Allen Grogan: No, I appreciate the perspective I mean we're concerned about piracy too and want to work with the community to try to figure out ways to address it.

Greg Shatan: Thanks. I have Anne.

Anne Aikman-Scalese: Very quickly, Anne Aikman-Scalese, Louis Roca Rothberger. I want to encourage you to attend the human rights meeting tomorrow morning and ready out your statement because whenever I've been in with those human rights meetings have been an advocate of author's rights. And it would be very good if you would attend that meeting.

I in terms of the universal declaration and what it says about authors' rights but that wasn't my question but I'm expecting you should go there.

I admit I'm not very knowledgeable at all about the question I'm going to ask. And so if I sound stupid, fine. First of all if anybody in the room doesn't know what a PIC is it's a Public Interest Commitment. I don't know if we have any first-timers here. If anybody doesn't know what a PIC DRP is it's a Public Interest Commitment Dispute Resolution Procedure.

And I guess my question relates to the area that [Marc](#) raised which was about the registry's own policies. Many of us here - most of us maybe, I don't know, are trademark lawyers. The subject of safeguards and consumer protection and how trademarks are linked to those and licenses are linked to those protections, and to maintaining quality on the internet.

Those are very important questions. You know, for example, I noticed also that the registries are having a meeting this afternoon about fake internet pharmacies. And that certainly is a very big public safety issue.

So I'm going to raise a hypothetical I guess about an audit. And I'm not picking on banks. I don't personally represent any banks, our firm does represent banks. Many of them have purchased in the in the dot bank TLD.

I'd like to understand with respect to those TLDs that involve safeguards such as dot bank which I understand that the use is dedicated to actual licensed banks. Does anybody know? I think that's correct from what I've heard.

Would your audit scope in connection with that TLD include monitoring as [Marc](#) has said whether the registry is enforcing, you know, the qualifications for use of the registry, that it's really a bank? Qualified by some country's banking regulations.

Allen Grogan: So I'll take a stab at it and then defer to Maguy who is actually more directly involved in the audit process than I am.

But the answer is potentially yes. So when do an audit it's not practical or even possible to audit compliance with every provision of a, you know, of whatever it is - 50 page document or something.

What we normally do is we selectively audit compliance with certain provisions. And so it's entirely possible that at some future date our audits could include an audit for compliance by some of the TLDs that have agreed to specific restrictions to determine whether or not they are complying with those restrictions.

And if we - even it weren't part of an audit - again if we've received a complaint that said they're failing to comply with commitments that they made that would potentially be a compliance matter that we would pursue to determine whether they're in compliance.

Anne Aikman-Scalèse: It would just seem appropriate in connection with TLDs that have safeguards that there would be a regular schedule - a scheduled audit of

those TLDs for - because if the safeguards are to be effective if at all, you know, yes we have the PIC DRP but actually the PIC DRP during the process of negotiation of that was changed from a third party processed like where we would take it to waiver or whatever and changed into a direct process within ICANN.

And so, you know, those of us who remember that and I think Steve Metalitz was pretty key in that whole process as well. You know, feel that there should be a positive obligation with respect to safeguards. Thank you.

Maguy Serad: Anne, if I may add to what Allen said. So to answer your question, yes, we do same - like when we receive a complaint Allen described it well and I think you all are familiar with that process.

From another prospective we do the same. We usually have a sample that we usually request information about. And the sample from that TLD could relate to domain names, could relate to agreements, could relate to policies and we review and try to validate and we follow through on those. Yes. But again if there is a specific case, file a complaint with us and put us to the test.

Anne Aikman-Scalese: I'm actually suggesting when you have a list here of the, you know, that here are the people that we audit. But I actually don't see the Safeguard TLDs on the list. I'm suggesting you might want to consider it.

Allen Grogan: And just to be clear that the PIC DRP Panel and thank you for reminding us we need to stop using acronyms, but it's hard to do in this community. So the Public Interest Commitment Dispute Resolution Panel is not made up of ICANN staff. It's a standing panel, it's established. So it's a third party, it's not ICANN, right. It's not WIPO but it's not ICANN.

Anne Aikman-Scalese: Right. But we don't initiate it in the private sector. We initiate it here with you. So which is very different from the other dispute resolution procedures.

Allen Grogan: Okay and real quickly on - going back to [Marc's](#) - one of [Marc's](#) questions that I didn't address or one of the comments that I didn't address. On whether for example voluntary practices could devolve into some safe harbor provision or something that says if you comply with these you'll be presumed to be in compliance with the agreement.

In the abstract that's a possibility it's very hard to talk about it when we don't have something concrete in front of us to say here's what the practice is that - because I'm not prepared to say without knowing what practice we're talking about whether that would be presumed to be in compliance with the agreement or not.

But we have a process in place now to try to define what amounts to a safe harbor or presumption of compliance with respect to the provisions of Spec 11 that call for periodic scanning for Malware and botnets and those kinds of things. So there is a precedent at least in progress for something like that potentially to be done.

Greg Shatan: Thank you Allen. We have Paul McGrady waiting patiently at the end of the table there.

Paul McGrady: Thank you. Paul McGrady for the record. Just a note to both Allen and Maguy; although the robot is a little bit maddening when we get the automated responses - I just refer to it as the ICANN compliance robot at our firm.

Thank you for making your people accessible because they are accessible and they are responsive and they do explain things. In terms of a customer service book and field change could you make the robot at least wait 20 minutes before it writes back.

(Laughter)

Paul McGrady: Because that, you know, even though the robot knows instantly, you know, what it's going to say. I feel back because it's so quick. Thank you.

Maguy Serad: So getting a compliment from you is much appreciated, because I have not in the past. Thank you very much.

(Laughter)

Maguy Serad: Much appreciated Paul. You're right, our robot jumps. And I think if you've been part of some of the sessions, some of the challenges, you know, you hear about IBM, you hear about, you know, our robot is programmed to the ask key. And we get some interesting combinations and our robot's going crazy.

So we're faced with an opportunity here as I would like to say, Allen knows, I don't like issues. Issues make you age. Opportunities are wonderful, they keep you going. Adrenaline. The opportunity here is both sides.

I think you heard if you attended the GDD update from [Akram](#). ICANN has launched an enterprise solution. Ultimately you should not be dealing with filing a compliance complaint in a different platform than a GDED case. ICANN is working towards a globalized, centralized place. And hopefully that robot's going to be much more friendly.

Because the robot we have is old. So we're trying to be patient with it to get us through till we get to the next level. But as you know, you've experienced it. If I may say if it's closed Paul sends me an email and my team knows, Allen knows, Paul knows if you want to know I don't go to bed with an email in my mailbox, even if it means staying up all night catching up.

Zero in my mailbox and I can show you how that now is accumulating. I'm talking at different forums. But escalation to me I will make sure we work with

it. And if the best approach is also to the compliance at ICANN.org our staff is global. We work around the clock almost. We have an amazingly passionate staff.

So you don't need to escalate to me. They'll update me. They keep me informed. But if you want to talk to me, I'm here too.

Greg Shatan: Thank you Maguy. And thank you Allen. I don't see any more questions in the Adobe Connect. Any other hands in the room?

I'll give you one quick line Kiran.

Kiran Malancharuvil: Thanks Greg. Kiran from [MarkMonitor](#). For - I actually want to thank you guys. I think the dialogue between the IPC and compliance has become a lot better in the past few meetings. And I really want to thank you for that. I think that's all down to you guys.

And so I appreciate you continuing to work with us on these sort of tough and contentious and sometimes emotional issues for some of us - me. My quick line to you is I'd like for us to work in the future, now I'm not asking you for a response now, on helping us understand the applicability of the contract to the environment that we're working under.

I hear a lot from the registrars about how oh content is Websites and we're here for domains. But yet in the contract that the content of the Website matters and it's often in their terms of service that the content of the Website matters and is applicable to the domain name and our management in it. And I think that that is also an area that could use a little bit of clarity so that we can skip over these like what I'm calling threshold sort of issues, to get to the meat of the matter.

So that we can stop having these discussions and back channels about what are we talking about - a domain name, a Website, a content and dah, dah, dah, this, that and the other.

So clarifying the applicability of the provision to what we're actually discussing so that we can get to what we're discussing would be helpful. And I think that needs to come from you guys in compliance. Thanks.

Allen Grogan: I think that's a constructive suggestion to all.

Greg Shatan: Thank you Kiran. Thank you Allen, thank you Maguy, thank you team, team compliance for being here.

Next we have on our agenda GNSO Council Update and discussion of motions. So I'd like to invite our Councilors who are coming up to the table now to present to us.

You can walk Heather, you don't have to run.

Heather Forrest: I'm coming.

Brian Winterfeldt: Thanks everyone. We have a few updates. We're going to talk briefly about what went on during our GNSO working weekend for those of you who were not able to join us from 9:00 am until 6:30 pm on Saturday and Sunday.

If you had been there or for those of you who were there we were regaled by several presentations by various parts of the community. The first one was the purpose of gTLD Registration Data Directory Services, Next Generation Registry Directory Service to replace who is. We also had an update on new detailed eAuction proceeds.

We also had an update on new gTLD subsequent procedures. We also discussed a review of all RPMs and all gTLDs. We talked about Privacy and

Proxy Services, accreditation issues and we also talked about GNSO Review.

In addition we met with the Global Domains Division, ICANN Compliance, the Board, body, Theresa Swinehart and the GAC. Very busy weekend. We talked about RPM Review and Competition Consumer Choice and Consumer Trust Review with the GDD.

We talked about the recent EU Court of Justice decision rejecting the U.S. Safe Harbor Scheme for data transfers and potential impact on ICANN with ICANN compliance. We talked about how to improve community communication and engagement with the Board in view of body of experiences as CEO.

We talked about the search for a new CEO to replace Fadi once he steps down for the next role with the Board. We also got to hear the Board's views on the fairly new Cross Community Working Group structure and its approach to participating in such groups and considering the outcomes from these with the Board.

And we also had updates involving GAC Early Engagement and the GNSO policy work primarily with respect to the QuickBooks mechanism previously adopted on a pilot basis by the GAC. And that was mostly what we covered when we met with the GAC in their session. We went to them as is traditional.

The council will be holding its public meeting on Wednesday during which we're going to consider two timely filed motions; which we'll discuss in a moment.

We're also going to talk about the letters from the Standing Committee on improvements regarding possible updates to the GNSO Operating Procedures pertaining to overlap between the rules on resubmission of a motion and the council's ability to waive the deadline for submission of

motions and to document the council's existing custom and relation to the proposal and seconding of motions for voting.

We also are going to talk about the possible action response to the Ford request concerning possible policy work on replacement insurance requirements for credit registrars, possible action and response to the Board request concerning possible policy work on exclusive registry access to generic TLD strings.

We're going to be looking at the final GNSO review report and possible implementation issues and at new ICANN meeting strategies.

So there were two motions that were timely filed and then we're going to talk about the motion that was untimely filed.

So the first motion that was timely filed is to adopt the final report from the data and metrics for Policy Making Working Group, metric man is very excited about that one. There was some concern raised during the weekend session that this motion may be premature and that the council and community should be given more time to digest the final issue report and charter before approving them.

Mr. Zuck do you have any comment on that?

Jonathan Zuck: I guess I didn't hear that until this minute. So there was a public comment period. There were nine comments that were submitted.

Brian Winterfeldt: Oh, I'm so sorry. You're right. That was for the next one.

(Laughter)

Woman 1: Never mind.

Brian Winterfeldt: I know, my print is very tiny on this screen. I need to make it very large. You're right. I apologize. There was no controversy. We're ready for you. What we are not ready for is the second timely filed motion to adopt the Final Issue Report on Next Generation Registration Data Services to replace who is in the attached charter.

And that's the one that people felt like we needed more time to digest. And there's some debate. And I know that Susan Kawaguchi I think was not happy about the idea that we would not move forward with that work. And so there was definitely vigorous debate about that.

The [BC](#), the BC is the one who made the motion and believes that we should really move forwards. I know that previously at least some IPC members had voiced support for the motion. But then these reservations came up and I guess we're actually looking a little bit for direction on what to do. I believe that at some point Susan had come to us to ask us to second that motion. And we weren't really sure whether there was really like clear consensus for us to be able to do that.

And I think we were trying to decide well how to handle that. So if anyone has any feedback for that or thoughts on that motion I guess definitely I can see on the one hand where people who were - have been very involved in this for a very long time are ready to see the work kind of move forward. Other people feel like it's a lot to digest and to move forward with. (Bob) do you have anything to contribute?

Fabricio [Vayra](#); Yes I would just say I second that, having spent a year and six months working on that after being told by CO that this was the initiative, that all of the world was looking to see if we could be adults as a community to get something done. And we spend a year and a half, we were told three months, a year and a half on that. Right? We put out 166 page report with 186 recommendations. What's the hold- up? I just don't think (unintelligible).

((Crosstalk))

Brian Winterfeldt: I think reading all those pages is part of the hold-up.

Fabricio Vera: I mean at this point it would take - what we're saying is it's taken people longer to read the report than it took us to develop the report. That's insane. Right? So I just don't understand what the hold-up is. And if it's to - if we're saying it's because we have too much work it's - it's insane to think that we're going to do a PDP or even suggest a PDP for a second round of TLDs before we correct the problems from legacy TLDs, new gTLDs.

So again what's the hold-up?

Greg Shatan: Heather I've got you next in the queue.

Heather Forrest: No, if you want to ask (unintelligible).

Greg Shatan: Okay.

(Laughter)

Greg Shatan: Do you have an answer for Fab or other remark.

Heather Forrest: I do thanks. Sorry. Just need to get my notes. Thanks very much, Heather Forrest for the record. I just wanted to pick up on two points that Brian raised (unintelligible) very much. Little people, we have trouble.

Two points that Brian raises and I have my sort of future planning hat on here. Two issues that I think we need to keep very much our finger on the pulse. One is in relation to auction proceeds. I think that's going to very rapidly grow into an issue of some note within the GNSO community.

As well I think we want to be thinking very strategically about the CCT Review and specifically the CCT Review Team. So I would put that on our menu. And I would also ask Greg - I realize I'm a bit of a broken record on this, but I also think we need to think in a constructive way about new meeting schedules, new meeting format and how we - if we have any input that wants to go into council on that it seems for better for worse that the GNSO is sort of leading this idea of how we conduct ourselves in the new meeting structures.

And with that in mind then I suppose there's this expectation that we're going to have a sense of what we're doing first. And we've been invited several times by council; I've had it in my notes each time. You know, we need to think about this. If we have any concerns it's not going to help us if we decide next year that, you know, we have a comment and we didn't raise it.

This is really last call for comments on that one. Thank you. And if anyone has any questions about the notes that went around over the weekend, if you didn't get the notes that went around over the weekend or anything that Brian or I have said please do ask.

Greg Shatan: We'll have Steve and then Anne.

Steve Metalitz: Yes. First I want to thank Heather for the notes. And extremely timely; which is great. But you mentioned the CCT Review. And that is very important. That call for volunteers is out now and through October 30 I think. But the real issue is since the IPC has never had anybody on any review team how do we make sure that that does not occur this time. And in fact I think we should be bold and suggest that we get several people on this review team.

And I think it was well raised at the Board that we may need to be, the Board may need to be a little more flexible, rather the CEO because he makes the appointments. May need to be a little more flexible about the size of the team and the composition of the team because, you know, this is, you know, why

we should have to worry about taking a seat from the RSSAC or from the ASO on this issue; which has nothing to do with anything that they do.

And instead say well, you know, all of the companies, all of the potential TLD operators and, you know, all the people most affected - all the rights owns, the most affected by this have to, you know, fight over one seat or something with the ISPs is just, you know, I don't think we can tolerate that. So I think we should push pretty hard and I think we should also push our GAC members because the GAC chair is the co-appointing authority.

And although in the past that just meant the GAC appoint - the chair appoints someone from the GAC I think we should ask the GAC chair to appoint right-holder representatives from there - to put forward right-holder representatives from their countries. And let's get - I think we should really push on this one in the hopes that if we are successful we will at least get one or two people on that team.

Greg Shatan: Thanks Steve. Anne?

Anne Aikman-Scalese: Yes thanks. It's Anne Aikman-Scalese for the transcript. I'm not sure how we passed so quickly over the Registry Directory Services and the motion that was made by the business constituents.

Greg Shatan: Still we haven't passed (unintelligible); we're still discussing it.

Anne Aikman-Scalese: Oh because a lot of other things came in between.

Greg Shatan: Well other people had other remarks but that doesn't mean we're done with it.

Anne Aikman-Scalese: Well, okay. Please do let me know when it's the appropriate time to comment.

Greg Shatan: Now.

Anne Aikman-Scalese: Good. Okay, great.

Man: Real quick. Before you - just to show the level of importance I think on the official Whois, I mean clearly talked about this.

How many people at this table have participated on some level in a Whois Review process? You, me, you. I mean this is how much time it's taking out of this group alone.

We've had AOC Reviews, we've had a proxy review, we've had a directory service review. I mean if you look at the chart there are so many ongoing reviews of Whois, and apparently this has gone on for at least 15 years; fifteen years.

I mean the CO told us this was a make-or-break issue. If we cannot resolve this -- paraphrasing here -- the community is going to laugh at us.

And now we're sitting here saying, it's possible. You know what? Let's just put this off because we've got a bunch of other reviews going on. It's incredible.

Man 2: So (Unintelligible), do you think we should second the motion?

Man: Correct, thank you very much.

Greg Shatan: That idea seems to be bubbling up. So I've got Anne and then Kiran.

Anne Aikman-Scalese: Well I definitely we think we should second the motion because we complain all the time about the current inaccuracy of Whois information. And I know that there are some aspects of the last Whois Review Team recommendations that are being implemented.

But, you know, there's an awful lot - there's a balancing act between the need-to-know and the privacy issues that have become so big within ICANN. And that is what the Expert Working Group -- or the EWG -- really fought so hard to establish with, you know, compromises. And I'm sorry that there work wasn't actually a PDP because there's a lot of good work there.

Now it's been pointed out, and especially by those who are most concerned about the privacy issue, that this is a very complex subject. And so there may be some reluctance among those who are most concerned about the privacy issues to go forward.

But I think we need to second it, and I think if there are issues in the charter which is something I kind of heard in the hallways, then we need to address whatever issues there are in the charter that Susan put forward and move this.

I mean I can't believe that this would not be top priority for IPC. I don't know. But educate me; tell me why?

Greg Shatan: Steve.

Steve Metalitz: I don't disagree that this issue is a tough priority for IPC.

Let's just talk frankly about the, you know, politics of this. And that is that at least what I heard in the GNSO Council room was efforts by the Non-Commercial Group and by Registrars just to stall this.

So, you know, one thing that is a little bit unfortunate here, and if we second this, this kind of feeds into this viewpoint, is that once again it's the Business and Intellectual Property Constituencies against the Contracted Parties and the Non-Commercials. That may be an unavoidable that we get into that situation again.

But I guess what I'm saying is it would be better if someone other than the IPC or the one to second it. But since I don't see any line forming of people prepared to do that and, you know, maybe before he exits the Council, Dan Reed could do something -- period.

You know, maybe there's some other person who could actually step into this. But failing that, unless our councilors have other ideas, I think certainly on the merits we should second this. But, you know, I'm really just talking about the politics of it.

And I realize this is an open meeting and it's being transcribed, so be it. But I think that's kind of what I saw developing in the Council Meeting on Saturday is kind of the old battle lines and I'm kind of sad to see that.

Greg Shatan: Brian.

Brian Winterfeldt: Steve I agree with you 100%. I think your read of the room is very accurate and I actually concur with your sentiment about being - I don't know if I'm quite sad, but it is, you know, not great to see the same kind of faction sort of aligning.

And we could find someone outside the IPC to second the motion; I agree it would be ideal. If it gets down to one of us having to do it, obviously since I'm the outgoing councilor I think it's much better, given the other things going on in the agenda, for me to be the one who seconds it between Heather and I.

So maybe we can think creatively about who we could inspire to second the motion. Maybe we can do some on-the-ground work. And if we can't find someone, do you think we can come to consensus that we will look for that and then the alternative I have the ability to second the motion then?

Greg Shatan: I think yes. Maybe our good friends in the ISP constituency might give us a little house love or CSG love.

Anne Aikman-Scalese: I would support that. I was thinking exactly the same thing. I think the ISPs might be the logical seconder because they're not the Registrars and Registries. And they have an interest in IP as well as we do too at some level.

And to echo Fab's thoughts on this, I strongly agree; we've got to push this forward. I don't think you can talk about any meaningful forum of anything without getting to reforming the Registry -- the Registry or LD or whatever you're calling it; RGS.

Yes, but what I'm perplexed about is the report itself clearly states there's a need for privacy protection as well is acknowledged. There is an acknowledgement that gated access is the way to go; there's a compromise here.

So what I guess I'm failing to understand is the working group reached a compromise position, it seems reasonable, and there is still pushback.

Kiran Malancharuvil: So this is Kiran for Mark Monitor. I think that Steve's comments about politics are really important to understand.

From my experience, I think it's been three years in the Privacy and Proxy Service -- two years? (Unintelligible)? I don't know I had a whole baby in between (unintelligible). She's definitely like 16 months old now, and we still haven't figured accreditation standards for privacy and proxy standards. She's going to be in college guys.

So, but that group, it does make me sad because we - and this maybe a dangerous thing to say in an open meeting, but whatever. It's a really good example of capture in the ICANN community I think.

I think that the privacy interests have captured and refused to compromise. I think that the Registrars and the self-interested service providers have captured that group.

And we had - I don't think you guys realize this. The IPC comment, the BC comment, the IACC comment - I remember the IPC, they're not here; they're having their conference right now. The INTA comment, huge stakeholders in the IP community and Business community asked the group, "Just please can we work on this issue a little more?" One of the issues, it was the accessibility to privacy and proxy services.

Asked them to explore the issue further, and they said, "Absolutely not." They wouldn't even let us talk about it, not even to come to a conclusion about it one way or the other. We weren't even allowed to bring it up.

So the politics around some of these issues are so bad that we don't even have our voice anymore. And that's 7:00 am once-weekly conference call for me in California. And I've stopped going because there is no point.

I follow the transcripts; I go on the list. Steve Metalitz has our back in the IPC, but it's a painful process. And the politics are seriously harming IP and Business interests and it's exhausting to follow it; it's exhausting to be a part of. But it's very very important that we get people stepping up. As you know, fallen soldiers get taken down.

So to be aware that that's happening and the IPC needs to really get behind us and help us follow these things through. Thanks.

Greg Shatan: Kiran, there are others. Do you have any idea about solutions to this problem more concretely?

Kiran Malancharuvil: No (unintelligible), I give up; I'm done. No, I'm not done; I'll be there tomorrow morning at 8:00 am.

But I mean we're trying. There's new blood in the group. There's Todd Williams and Turner -- bless his heart. And, you know, Steve is still plugging away and we've got Vicki Scheckler and Alex Deacon and Val Sherman. And, you know, some really dedicated IPC (unintelligible).

Paul McGrady: Paul McGrady.

Kiran Malancharuvil: Paul McGrady. What? I didn't see you back there Paul; I got you.

Greg Shatan: (Unintelligible).

Kiran Malancharuvil: Yes, and we're trying. But have we come up - every time we put forward a compromise position, we are getting shot down on every little thing.

And the big issue right now guys, please, as IP lawyers understand that this is out there, they're trying to make lawyers who register domain names even briefly on behalf of their clients using the firm now, now we have to accredit ourselves as Privacy and Proxy Service Providers.

Like anyone in this room think that's a good idea because if you do, you can go down the hall to that meeting. But if you don't, speak up, you know, and be a part of this group because the IP interests in regard to Whois and Privacy and Proxy and these issues, we are getting absolutely steamrolled and flattened.

And everybody talks about capture at ICANN as if the business interests are the ones capturing the groups, and it's absolutely not the case. And the Privacy interests actually now are starting to capture the Public Safety Working Group which is the Law Enforcement Group.

And they even made a comment yesterday in their meeting that was completely contradictory to what the Public Safety Working Group had put

forward in their comments for Privacy Proxy and their comments for the Whois Accuracy Specification, and it's completely eroding all of the support that we have on Whois.

We don't have Law Enforcement anymore, we don't have a footing in these working groups to speak of, and it's really hard and it's become a very very very serious uphill battle. So the IPC really needs to like stoke the fire under our butts on this issue and really push on the Whois stuff, because I'm about as stropy about it if not more so than Fab is. And, you know, we've been working on this for a long time.

Greg Shatan: Fab?

Fabricio Vera: So Kiran, I feel your pain because my two-and-a-half year old is only 11 days older than the EWG report.

I left on the 11th day after she was born to do this report being told it was going to be a three month project, and a year and-a-half later. So I spent half of her life doing this report which is a sad thing that I hope I can make up for someday in her life. Right, mathematically that will end up working out -- maybe -- if we don't, you know, that's why I'm so vehement (sic) about this motion.

But I will say this. So about the politics, you know, Steve you're absolutely right.

But listening to Kiran, I mean the reality is this. Politics only work when doing something other than being direct is going to change the outcome, and it's clear it's not. It's clear we've tried. I mean this is the same story we have every time.

Well, we should, you know, take a different tact here, but the reality is no matter what tact we take the response is always the same; no. that's what we get from the other side; no, we won't talk about it.

So why not do anything other than just be direct? I mean if the reality is we think this is absurd and we need to go forward, and doing anything other than saying, "We think this is absurd, we need to go forward," isn't going to change their response or the response back, who cares?

Greg Shatan: I tend to agree if diplomacy only goes so far. I think, you know, we also have to think about ideas how either other alliances that we can possibly look for in the community in some fashion, and also think about outside, you know, getting more grassroots support from members of our member organizations, clients of our law firm, clients/members, et cetera, et cetera, to more, you know, clarity and sunshine on this.

Anne?

Anne Aikman-Scalese: Thanks. I agree with what Fab said. I think Brian made a very practical suggestion about be willing, you know, to second if we can't find somebody else.

And in terms of clarity, I'm just reminded that, you know, Whois Review is in the Affirmation of Commitments - I resisted saying AOC. And that, you know, there's Transition coming up and the community's willingness to address Whois.

I mean what was stated was, "Whois is outdated. We really need a new system and we really need, you know, some people to really focus on this." And so a bunch of experts did for 18 months.

And so if we - I disagree (sic) we need to push it, and clarity and shedding light on it might be, you know, outside of the ICANN community per se; it

might be through governments, it might be, you know - because current information in Whois is what, 40% inaccurate? I can't even remember, you know. And it's in the AOC.

Greg Shatan: Thanks. So I think we've got clear marching orders at least on the RDS which is to look for a second, and second in the absence of finding one.

And I think we have Avri's motion and we'll get it up on the screen which is the motion regarding Accountability.

Oh, Mr. McGrady.

Paul McGrady: Mr. McGrady. Just to put some -it was sort of conflated that Privacy Proxy with the Whois thing, and I think that's fine because it's all part of the same thing. But just to put a practical aspect to what Greg suggested which is how to bring outside light onto the situation, I really think that the attorney issue is an attorney of privacy service or not.

The folks on the Privacy/Proxy Team are pushing this weirdly enough are the alleged privacy advocates. But they're not open to discussion on this point. They are [gleefully](#) pushing this; they're not going to budge no matter how much we try to reason with them. We will continue to try to reason with them because that is the thing that reasonable people do, but I don't think they're going to budge.

And so in terms of shedding outside light on it, I really think that perhaps Greg's signature of the IPC should send a letter to the ABA alerting them to this. And I would be happy to do a first draft of that.

Greg Shatan: Thanks. I think not just ABA but I think with INTA we can get more traction; [AIPLA](#), et cetera. You know, they are obviously, you know, we can get a whole bunch of people out there, you know, righteously pissed off.

We have Avri's motion, but before I forget, we have Lauren Kapin from the Public Safety Working Group coming up, so you want to, you know, welcome her.

Kiran Malancharuvil: I welcomed her in her meeting; don't worry.

Greg Shatan: I don't know who wants to speak to Avri's motion, we did talk about in the CSG. We have the - it's up on the screen.

We have a very small friendly amendment in the last paragraph that just takes out the making any resolutions, so that it merely reads that the GNSO - (patatey-patatah) as Kavouss would say - to working through the process as agreed upon in the charter before declaring support or opposition to possible outcomes.

And I think, you know, as it stands, I'm comfortable with it, but I'm just one person. So I'd like to see is there any thoughts on this or we could even do hands in the room at least from members?

Let's do it this way. Does anybody object to this...

Steve Metalitz: Just to be clear. So it would be with that change or without that change or?

Greg Shatan: We're proposing that we would approach Avri with this as a friendly amendment and assuming - and we'll have a chance to talk informally about this at the Council as a pre-session this evening.

Steve Metalitz: And is it clear - it wasn't clear to me originally that this last paragraph in the resolve clause is about what GNSO.

((Crosstalk))

Steve Metalitz: About GNSO declaring support or opposing.

Greg Shatan: Right. It should be the CCWG charter.

Steve Metalitz: No, what I mean is this is not applicable to what the IPC might wish to say; this is applicable to what the GNSO might wish to say. Is that right?

Woman: It's the GNSO, yes. GNSO reiterates...

Steve Metalitz: Okay, I mean that's fine. Thank you.

Greg Shatan: Yes, that's right. So yes. Anne?

Anne Aikman-Scalese: I strongly support and I think we should get out our seconding of both this motion with the friendly amendment and asking Avri about the friendly amendment, and the second on the waiver -- on the 10-day waiver -- as quickly as possible so that what we don't get from the rest of the parties is, "Well we didn't have enough time to consider this."

Greg Shatan: I agree with that.

Anne Aikman-Scalese: NCSG has - the BC and ISP are good to go on this.

Greg Shatan: Yes I think and we are as well. And I think that if there's competition to second this unlike the other motion, we should try to win that competition. This is one we should get ahead of the other competition as opposed to looking for someone to get out ahead of us, so I think there may be some who are looking to get there. So we might as well, you know, give a nice warm hug to this particular motion and send the right message by doing so.

Any other comments on this? Any objections? I will say that the I's have it or we have consensus and a lack of objection.

Brian?

Brian Winterfeldt: So I just want to make sure we have clear instructions on all three motions.
So the first motion we are going to vote yes.

Greg Shatan: (Unintelligible).

Brian Winterfeldt: That's (unintelligible) we're in support.

The second motion - I know, where's the cape. For the second motion that we just discussed, I think I have clear instructions on trying to find someone else to second it, if not I will second. But then are we also voting yes. I think that was implied but we didn't actually explicitly state that?

Greg Shatan: I would say that we vote yes.

Brian Winterfeldt: Okay. Yes, I thought that was implied but we didn't really actually explicitly say that so I wanted to make sure.

Greg Shatan: (Unintelligible) specifically vote (Cha).

Brian Winterfeldt: For the third motion, I know Greg you've been very actively involved in this, so I'm just unclear. Who is approaching Avri about the amendments. Are you going to talk to her about that?

Greg Shatan: I can certainly do so. Do you have some thoughts Heather? I'll be at the pre-meeting this evening as well. So we could all or some or one approach?

Heather Forrest: This is Heather. I'm happy to do some work here; I think it's logical.

Greg Shatan: Okay. Heather...

Anne Aikman-Scalese: Any chance any of that work can be done before night?

Heather Forrest: The thing is Anne, sorry, this is Heather Forrest for the record. I know you came to push. We can get an email out, but in terms of face-to-face, everybody is in rat holes right now until the whole reason for the timing of that informal council session as its immediately after we all break out of these things.

So they're all head down right now talking about us as a matter of fact and how much they love us. So we'll get an email out, but in terms of a dialogue, not between now and that session but that's the point of that session.

Anne Aikman-Scalese: It would be good.

Greg Shatan: Thank you Anne.

So in terms of Council, other than that, the only other thing I would say is of course as some of you might know, Heather is a candidate for Council Chair, something that will work itself out in the next 48 hours or so -- or 24 hours or so. And obviously we have, you know, high hopes.

So if you see anybody from the NCSG with an empty glass, buy them a drink. If you see anybody from the Contracted Parties, buy them two drinks because they have two votes each.

Steve.

Steve Metalitz: Just before we leave this topic, I think this is probably the last IPC meeting we'll be having in which Brian will be representing us on the GNSO Council. And I hesitate to try to count up how many IPC meetings we've had in which Brian has been representing us on the GNSO Council. It's probably a dozen - four times - well anyway, it's a lot.

So this is probably an appropriate point at which we can thank Brian for his service and express our appreciation for all the time and effort and bandwidth

that he has put into this. And assure him that we will be counting on him to remain very active on these issues as we move ahead.

Heather Forrest: May I add? So this is Heater. Please clap again.

Brian Winterfeldt: Brian.

Heather Forrest: I didn't talk before you got to talk - no, I want to before you say something. I wanted to add to Steve.

The reason I wanted to piggyback on Steve is I want to offer a very personal thank you as well for making my first year in Council obviously reasonably productive if I am where I am tomorrow. Thank you very much for showing me the ropes, thank you for all that you've done for me, for us on Council, and I will miss you. Thank you.

Greg Shatan: Brian, you're saying you're welcome?

Brian Winterfeldt: No, I really - I thought you were going to say something else Greg.

Greg Shatan: I do want to say something else. And I just want to thank you for all that you've done. And I say that, you know, as a new president and coming in in the mid-stream and having an experienced Councilor and having, you know, kind of an A Team that we have had has been invaluable.

I consider you one of the most quorum members of this constituency. And whenever, you know, as I said, you need to be one of those most key role players. And whatever roles you're going to play in the future -- and I'm sure they're going to be very significant -- that, you know, your perspective, your experiences, everything is something that's just been very important to me coming as the new guy and having you, you know, working with me.

And it's going to be strange in the sense not to see you at the Council table, but I know that we're going to be seeing you a lot. And it's been a pleasure but the pleasure is going to continue.

Brian Winterfeldt: No, thank you so much. I really want to thank everyone actually at the IPC for supporting me for the past four years and giving me there opportunity to represent you at the GNSO. It has been an amazing learning experience.

It's one of those things where you are at that table, I kind of don't know what I'm going to do at the Marrakech meeting when I don't have to be change at the Council table for the whole working weekend to start the meeting off. And I might actually feel refreshed when they Opening Ceremony come across, because the way it is now you go to Opening Ceremony and you're like, "Opening Ceremony? I'm exhausted."

But it really has been an honor to support all of you. And I, you know, have had a lot of people in this community obviously provide a lot of support. I've learned so much the past four years.

And Heather, it's been a pleasure working with you as well. And I've worked with Heather before that and with David Taylor, and it's been, you know, really great colleagues. And I do look forward to being engaged in the IPC and looking for opportunities to continue to help out. So thanks so much.

Greg Shatan: Thank you Brian and thank you Heather. So our Councilors still relaxed.

Heather Forrest: Yes, we (unintelligible).

Greg Shatan: You can go back to back-benching and relaxing. Thanks, I don't have to spend two days chairing a meeting of the IPC; that would be quite interesting.

Next on the agenda we have John McElwaine. Do we not? No?

John McElwaine: (Unintelligible) agenda.

Greg Shatan: We're bringing up a presentation.

John McElwaine: Not sure what I'm talking about.

((Crosstalk))

Greg Shatan: Next we have discussion of IPC policy positions and responses to open comment.

John McElwaine: Okay, so you want to know about the open comments.

Greg Shatan: We basically want to go over the open comments. And what's important here is not just to know which comments are open and who's working on them, but if we have some policy points or decisional issues, it's good to know and get them out here so that we can - if it's something that we need to be thinking about or talking about while even at this meeting.

John McElwaine: Then I'd be completely unprepared, okay.

Greg Shatan: And you'll note in the other side of the agenda, it says, "John McElwaine and comment drafting team leader."

John McElwaine: Right, that would be helpful to facilitate.

Greg Shatan: So if any of you are on with the drafting teams for one of these open comments and think that you're the leader, then I'd like to hear from you. But at very least we need to know what's going in the spaces.

John McElwaine: Kiran, why don't we turn it over to you?

Kiran Malancharuvil: I don't know if anybody here knows me or has ever heard my voice. I'm Kiran Malancharuvil from Mark Monitor for the record.

Greg Shatan: Could you spell Malancharuvil please?

Kiran Malancharuvil: I can but I won't because we don't have that much time. So I'm the facilitator of the Preliminary Issue Report on new gTLD's subsequent procedures.

And we were lucky that that public comment period did get an extension to the 30th of October. Where are my notes? My computer died but I'll try my best.

And so we are currently drafting. I'm waiting on some sections; you know who you are. I won't publically shame you, but I only have two sections. So those of you who don't have your sections into me, if you get them this week that would be great.

The goal is to get this out to the list yesterday, so it will come hopefully by the end of this week or early next week. We will have the requisite six days if I have to kill myself or somebody else to get this report out.

And so the preliminary issue reports are easier to comment on than I think others because our goal with the preliminary issue report, in general, is just to make sure that the issues are scoped properly and that ICANN Staff has properly identified all of our concerns in any given area and then properly presented it to the community in a way that makes sense for us to examine those issues in a sort of organized fashion.

So if anybody is looking to get involved in comments and, you know, they want to just sort of dip a toe in, whenever you see preliminary issue reports, that's a really good time to get involved because those are the easier of the

comments in my opinion, and so we should be getting that out to the list shortly so that we can get comments from you.

And if you have any concerns about things like RPMs, things like who is available to apply, things like batching of applications or restricting, you know.

There was some discussion about that in the CSG Board Meeting today about allowing Dot Brands to go in one batch and GOs to go in another batch and not to allow any more generic applications, for example, those types of issues.

If you have opinions on how the next round should go, and the way that translates, also any strong opinions about how this round went, then this is something that you want to pay attention to when this report comes to the list.

Read the comment with a mind not to make a policy decision about the issues that are in the report, but rather to make sure that the issues that you have about the rounds or the opinions that you have about the future rounds are properly represented in the report, and that the IPC has made comments, has identified where things are missing, has identified how things are organized.

And then, you know, that way when we start the policy development process about subsequent rounds, we know what we're going and nothing is left out because they will draft the charter then for the concurrent policy development process working groups, and there will be multiple in this space -- in the subsequent round space -- based on what the issues we've identified in the preliminary issue report.

And by the way, this Issue Report is a mess; it's a mess. ICANN did a very bad job. (Unintelligible) many more, right. They did a really bad job.

Oh hey Mary. It was Steve for the record. Don't tell him I said that okay.

You know, they really tried very hard I will say, but the issues are just - they're just messed up. They're disorganized and they're like in pieces like part of an issue is here, and then we thought that they were missing. And an examination of another issue and it was somewhere else in the report. So we have a lot to say about this Preliminary Issue Report and hopefully you guys do as well.

And just I didn't mean to talk this much about this, but just at the end I'd like to say there are the usual suspects on - I lead a lot of comments for the IPC; I facilitate a lot of them. I'm decent at organization so I volunteer that skill set here.

And it's always the same people volunteering and sometimes we have a hard time getting sections out of people or making deadlines because we're all super overworked because we're all leaving the same comments and working on comments.

And so let me take the opportunity in an open meeting to encourage some of our members that we haven't heard from as much to get involved. It's really - it is not rocket science guys like it's so simple. And there's so many opportunities to have good mentors to guide you through this comment drafting process. And then once you're good at it like you're good at. So it just takes a very very - it's a very short learning curve.

So please volunteer more so that we can sort of be more efficient and effective and use our bandwidth more efficiently. Okay, that's it. Thanks.

John McElwaine: Is it still doable to get a comment circulated by this Friday with all this going on here? Anything that's going to be more like pushed to Monday?

Kiran Malancharuvil: I'm going to need to just go back and send evil email number two to the group members about getting me their sections (unintelligible).

I think so because at this point it's just a question of stitching together the sections because the intro and the conclusion that I drafted are already kind of in place and I'm just waiting to slot things in.

So it is possible, but if it's likely then I guess that remains to be seen.

John McElwaine: Yes, I think Monday with everything we've got going on. Even if it went around, it's not going to get a whole lot read; maybe on flights going back. But that would be great.

Kiran Malancharuvil: Yes, the goal is to get it out this week so that we have the flights going back to look at things because I know that, you know, that's like the cone of silence and you get so much work done.

But, yes, I mean the problem is that we had planned to circulate it on Monday of Dublin week. And so now that we're in Dublin and it's clear that sections aren't finished being drafted, the likelihood of Friday is looking slimmer and slimmer. So yes, I guess I would say Monday.

So just watch for it, and like I said, its Preliminary Issue Report; it's not hugely substantive. So it should be pretty easy to review and digest as the IPC. And maybe we can get a couple of new people commenting on the draft that comes through; I will really look forward to seeing new names on the list and then hearing your opinions and edits.

Greg Shatan: Thank you Kiran. Let's move on. The next one I think is Auction Proceeds.

John McElwaine: So we - ICANN put out for comment a discussion paper on the use of proceeds from the ICANN conducted auctions. We heard Heather mention that as being an important issue.

We have a draft that has been prepared. I think (Breanna Lewis) was going to send it around today, but I don't think I've seen it.

Greg Shatan: I haven't seen it.

John McElwaine: So we should have something coming out to the list very soon on the use of auction proceeds; we've got some time on there. So that's going to be out early.

And I'd just encourage people to review it, make their, you know, let's have some discussion on the IPC List of other potential uses.

I was just going over my notes and somebody - I asked them to claim credit for it actually, had a really good idea of setting aside money for combating cyber-squading or lowering right protection mechanism fees. So we've got a really good opportunity here to make some points that could be beneficial to the IP community.

Anybody have any other issues on that?

((Crosstalk))

Greg Shatan: Ken is on the team.

Ken Taylor: I think she sent two drafts of that out already for comments. So there was a draft sent and the comments on her draft was that she was beating them up for not streamlining this, so she dialed that back. So it should be out for comments.

((Crosstalk))

Greg Shatan: Oh, we'll have to get that recirculated on the list. Obviously we have...

John McElwaine: Yes.

Ken Taylor: Maybe she didn't get it on the list but I think you sent it out. I can forward that to you all.

Greg Shatan: We'll look for that, okay.

Ken Taylor: It's mostly, you know, process instead of suggestions for where the money goes except for they were talking about maybe charitable organizations. But our suggestion was, like you said, put it towards something that's useful. I mean not that charitable organizations aren't useful, but something applicable to ICANN.

John McElwaine: And not to put Heather on the spot, but is there any more color - is Heather still here? Do you see her? No, all right, forget it.

Steve.

Steve Metalitz: Yes extensively, I think this one is just about the process. And I think we said on the weekend that if suggestions come in for things to be done with this money, that would go in an annex or something or on the backburner.

So yes, I'm sure we'll have a lot of ideas but I think the focus of this is what process should be used.

John McElwaine: Right, good. Want to move onto the next one?

This is one we're still seeking volunteers for. We've actually got zero volunteers for it and after all of the chatter we've had today.

This is ICANN seeking input on the Implementation Advisory Group's proposal to improve the current Whois Conflicts Procedure when it's conflicting with privacy laws.

And Fab, you looking forward to helping out on that one?

Fabricio Vera: I'll join that one.

Greg Shatan: I see Steve has a finger in the air.

Steve Metalitz: Yes and I'll yield to Bradley because Bradley and I and Patrick Charnley were active on this group.

First of all, I saw on the list there are two people stepped forward to participate, not to lead; Jim Bikoff and Marina Lewis.

But yes, this is another battle in the Whois wars and it deals with a consensus policy that was adopted over about ten years ago that the IPC instigated which was to set up a process if a registrar who - registrars even then were of course complaining that everything they were being required to do is a violation of European data protection laws; it was primarily the Europeans.

And so we said, "Okay, if that's the case, here's a process you should use to bring those conflicts to ICANN's attention and ICANN should try to find a way, as much as possible, to preserve both the contractual requirements and, you know, respect your legal obligations."

So that's the policy. And the policy said it would be reviewed - well, not the policy, the procedure that was then adopted which is a little bit different said it would be reviewed annually. And of course that's never happened.

So now ten years later, we are having this review. And in the current environment of course it is, you know, it's a target for everything we've spent the last half hour talking about.

So I'll stop there. I'm happy to help on this; probably should not be leading since I wasn't very involved with the group.

Greg Shatan: Brad.

Bradley Silver: Hi; Bradley Silver, Time Warner. I'm happy to step in and lead if there's a spot for that.

Woman: Yay.

Bradley Silver: My inaugural...

((Crosstalk))

Bradley Silver: Yes, I would just say that the response for that could be dwelling on past RBC positions on a number of these issues that have come up a couple of times before and lessened this particular procedure. So I don't imagine there will be much reinvention of the wheel unless on this particular response.

Except that obviously in this case, given the politics as you've just mentioned, there is an expression of minority views that came out with the report that are attached on the underlying policy itself. And I think that's something that we should obviously respond to as well.

So I'm happy to take the lead on that.

Greg Shatan: Thank you Bradley. What's up next?

John McElwaine: Okay, the next one is the Preliminary Issues Report and the review of RPMs on all gTLDs. We've got a good group of people that have volunteered for that.

We do need to maybe get people together in Dublin. In fact, Brian just emailed me about doing that and get a person pointed as sort of a leader. Thank you for designing t-shirts of that effort. So we are well underway with gear in that regard.

But yes, I really think it would be important to find 10 or 15 minutes to get this group together and get its work started.

Kiran Malancharuvil: I would like to note that that is in alphabetical order; I have not agreed to lead that group.

John McElwaine: And I intentionally did that.

Greg Shatan: Well we'll look for somebody else to lead since Kiran has clearly has been leading, you know, another important one just now, so you get a little break between leads.

John McElwaine: Okay and then moving on to the next one is the cross-community working group on these country and territory names, these (unintelligible). Again, we've got a good group of people that have already agreed to help out here.

We don't have a leader for this group yet either. We were looking at trying to find some time -- I think it was on Wednesday -- to meet. And this is the group that Heather is actually chairing and she's kind of given us a pass on extension on the deadline to get comments in.

So we do need to get something more set in stone as to what I currently have up here, but get that group together and get a deadline and get to work. That should be easy to do during Dublin.

Susan Payne: John?

John McElwaine: Susan?

Susan Payne: (Unintelligible) correction.

John McElwaine: Yes?

Susan Payne: I'm on that cross-community working group but I'm not a volunteer to draft that comment just because, as I mentioned, I drafted the comments from the registries and I didn't really feel it was appropriate to draft both.

John McElwaine: Deleted.

(Ed): John, if you want I'll volunteer for that.

John McElwaine: Thanks (Ed).

(Ed): I could lead it as well if you want.

John McElwaine: And as a leader.

Greg Shatan: Thank you. Go straight to the top on that one.

John McElwaine: Go ahead.

Man: I just want to say that we provided some - sorry for my voice - we provided some personal feedback for that group, Brian and I. We'd be happy to circulate it to the IPC to take a look at it in case it would be helpful for drafting that.

John McElwaine: Anybody else? Okay, so the last one that we have the Assessment of the Competitive Effect associated with the new gTLD program.

This one, if I have all my records correct, we also need some more volunteers. Michael Graham has volunteered to be on the group but not to

lead it. So if there's anybody else interested in that, speak up now/see me later. I can send out another email to the list but we really need to get some people helping on that one.

Colin O'Brien: I can help with that.

John McElwaine: All right, great.

Greg Shatan: Thank you Colin. We should get at least one more person on that one. Just trying to think if we have Graham and two others, we can make s'mores out of it.

Does that take us to the end of your report?

John McElwaine: That's it. I think, hold on.

Greg Shatan: Thank you and I also thank Kiran for giving us...

John McElwaine: And one more; one more. Next page; scroll down.

So we've got the very last one is the new gTLD Program Implementation Review Draft Report. This is one that just went out to list on the 17th, so three days ago.

ICANN is seeking input on the Draft Program Implementation Review Report. This contains ICANN's observations from their observational experiences in administering the 2012 round of the new gTLD program.

I have a feeling that we'll get some people to respond to this. It just went out while everybody is in Dublin. And I'll send out a reminder for that and for the Assessment of Competitor Effects one.

Greg Shatan: Right. Yes, let's just keep reminding people. And, you know, I think obviously on this last one there's going to be - everybody who has complained about the new gTLD program should volunteer for it which means we'll have about 70/80 people on that comment period.

John McElwaine: I was surprised we didn't have more people yet, but I'm sure it's because they're all here.

Greg Shatan: Thank you John.

We've kind of fallen behind our agenda and it's now 3:13. At 3:15 we have Nora Abusitta who is already in the room.

So why don't you come up next. What we'll do is we'll do our guests and then put Accountability at the end. Maybe we won't hear about the Leadership Training Program but (Lori) can tell us about it over drinks.

Thank you (Nora) for joining us, we've very interested to hear about what you're doing. We just spent a lot of time in here talking about the public interests and also worrying about what other people are saying about the public interests because they may be different than the things we say. So but in any case, looking forward to hearing from you.

Nora Abusitta: Thank you. Thank you for giving me some time to speak to this group.

Two things that I'm going to talk about. First one is general which is what the Department of Development and Public Responsibility does. And I think we have some slides that will come up.

And then secondly, I'll touch on public interests and conversations that on the Staff level have been taking place and also exchanges with community on how best to tackle that tricky definition.

So the Development and Public Responsibility Department essentially is an incubator for new tools and programs that allow for the participation of new people within ICANN, but also tools that will allow them to participate better.

Many of these efforts existed in the past, but they were not streamlined; there was really no defined strategy about how we're doing them. So a couple of years ago there was a decision to bring all these tools under one umbrella and to also leave room for the development of newer programs.

So our focus really is in three main areas. I don't know who is controlling the slides but we can move forward to the next one.

The first one is we create tools that help with academic outreach and education. So we have the online learning platform which has been a very successful tool so far. A lot of the courses are available in the six UN languages, they cover anything from how to survive an ICANN meeting to IPC to anything you can think of.

We look to the community to provide the content for it. All we did is curate the content. We also look to the community to identify the courses that are needed.

So if you have time to go on the OLP and its Learn Dot ICANN Dot Org. and if you have courses that you can provide us with or any courses that you want to follow but are not there, please let us know.

We also create a lot of the content that is used by our colleagues from Global Stakeholder Engagement Team in their academic outreach. So we do a lot of visits to university and we create the content for those visits.

The other area of focus for the department is the next generation of ICANNers. We oversee the Fellowship Program which a lot of you are aware of, but we also oversee the newer Next Gen program. And I know that there

are some Next Generally-ers in the room and those are our youngest ICANN community members.

We try and target the region that we're having an ICANN meeting at. We invite people aged between 18 and 30 who have very little of experience with ICANN but a lot of interest in what we do. And we design a program for them that kind of gently introduces them to this apparently complicated world, and it has been one of the most successful entry points to ICANN.

So if you haven't met the Next Gen-ers yet, I urge you to speak to them and explain to them why ICANN is relevant to your work.

We also - so I've covered ICANN Learn, I've covered our kind of investment in the next generation. We also oversee a lot of the collaborations that ICANN has with external partners. We have done a lot of work on the (Unintelligible) Initiative, we look very closely with the World Economic Forum, and so essentially represents ICANN in those initiatives and to make sure that we are aware of what's going on outside of ICANN.

I'm going to move to the issue of public interest or the definition of public interest which I think interests a lot of you here.

Greg Shatan: Before we move to that, there is one hand in the room. I just figured before while we're switching sections.

Paul McGrady: Thank you; Paul McGrady; just a quick question.

For the ICANN Next Generation, as part of what you do with them, do you have a session on how intellectual property rights interact in the ICANN space? And if you don't, I'm sure that any number of us around this room would be happy to put such a presentation together and to deliver it at the next meeting. Thank you.

Nora Abusitta: Wonderful, thank you. We do have that information available. I believe we have invited someone to speak to them, but I will take you up on that and connect you with (Jessica) who runs the program.

It is very important because a lot of them are interested in that in particular. So for Marrakech perhaps we can touch base and see if you'd be interested to speak to them. Thank you.

Greg Shatan: And let us know who is speaking to them about it.

Nora Abusitta: I believe right now we're providing them with a lot of the content that we have on the OLP, but perhaps some of the Next Gen-ers, did someone talk to you from this group this time around?

Man: (Unintelligible).

Nora Abusitta: Not yet. Okay, wonderful.

Greg Shatan: And I don't know that anybody is scheduled because I haven't heard.

Nora Abusitta: Yes, I know that we have - we kind of covered that in the online learning platform with the content that we give them. But thank you for volunteering.

Greg Shatan: And I will say that we are interested in getting much more involved in the Next Gen program and finding Next Gen-ers that kind of, you know, may come from our world or being interested in our world, and looking even perhaps have student membership option for the IPC so that it will be a more natural entry point even into our constituency for people.

Not that they couldn't join just as a person but, you know, a student membership might encourage a Next Gen, you know, to join us. I'll let you move on.

Nora Abusitta: Certainly. And I mean we've found that a lot of these constituencies and these groups are much more welcoming than things seems to be, right, because one of the things that we're looking at as well right now is a newer mentorship program where we identify volunteers from these groups that take some of the Next Gen-ers under their wing for about six months and kind of walk them through the whole process. So there's been wonderful reactions from the community to this program.

The origins of the Department also came from a panel that was established to take a look at the definition of public responsibility. So this panel was established a few years ago and it was chaired by Nii Quaynor and we had a few people on that panel.

And their initial task was to take a look at what public interests meant for ICANN. And the group very quickly decided that the topic is extremely broad, and before we even start talking about the public interest, we really need to look at what ICANN is doing on an operational level to kind of fulfill its responsibility to the community.

And their first recommendation was to establish our department PPRD.

They did attempt to develop a definition of public interest. And a few years ago in Buenos Aires, they shared their findings with the community. There was some public comment.

For one reason or another, there wasn't enough buy-in from the whole community to this definition that was developed by the panel.

So since then, we've decided to kind of revisit the question of what does public interest within ICANN's remit, but the approach is very different. We believe that this undertaking should be led by the community, should be a bottom-up process, but the community seems to be very busy lately.

So in the meantime until the community is less busy, what we've done is try to understand what public interest means within ICANN. So what does it mean for a GDD, what does it mean for operations, what does it mean for global stakeholder engagement?

And we embarked on serious research within ICANN to understand what these definitions would - how they would impact our operations.

And so we are in the process of creating a Wiki space where we're just depositing all our findings, all the background information, so that when the community is ready to take a more formal look at public interest, at least they will have access to this background information.

And there are several definitions floating and none of which have been adopted it seems. But there is what I know for a fact is that there is a will to take a closer look at this and see on these perimeters for a definition.

From my experiencing with this topic in the last three years, it's very easy when you have a very broad kind of definition; the more and you try and make is specific, the more run into you (unintelligible).

One thing that I saw was well, perhaps we should have several definitions depending on who you are talking too. Well, that will create even more confusion.

At the end of the day everything that I believe we do in the public interest. We just need to sit down and agree on what that is. And at least from the Staff perspective, we're here to provide you with support once you're ready to do it.

Greg Shatan: We're certainly interested to contributing to the discussion on public interest although, you know, at least some of us think its maybe even to try and pin it down and compartmentalize it is almost impossible. So I think that - and that if some of these things can be fluid over time, but certainly, you know, the

public interest and certainly you want to think about the, you know, that intellectual property, creators, owners, distributors and consumer who depend on intellectual property for consumer trust and who consume intellectual property, at least copyrights -- not too many people consume patents, but they're not very tasty.

But in any case, that these are integral parts of the public interest. Sometime people think about the public as being on the other side of this. But, you know, it's important to us, you know, what we do and what we represent is very much in the public interest and part of, you know, communication, innovation and education and entertainment, you know, part culture.

Nora Abusitta: We developed a survey that we had been using with our staff to try and see what their understanding of the public interest is. And I would be more than happy to expand that a little bit and circulate it perhaps amongst that group and make that the findings at least available to you so that we kind of - I would hate to waste time and do nothing until the community is ready embark on a newer project, right.

So whatever you can think of that we can do in the background to better prepare the community, we're ready to do.

Greg Shatan: Thank you. Any other questions for Nora? Nick?

Nick Wood: Yes, Nick Wood for the record.

I missed discussions earlier this week on budget. Just for the sake of clarity, is ICANN spending any more money, for example, on things like (Windeal) or I seem to remember selling something like \$3 million once disappearing in that direction.

Nora Abusitta: The \$3 million number I'm not very aware of so I apologize for that.

The next NetMundial initiative, which is a separate thing from the next NetMundialMeeting, was established in a partnership with two other entities; (CGI Dot BR) and the WEF. For that project, ICANN did commit \$200,000 and then there's no intention or there's no plans yet to renew.

I oversee part of the secretariat as also ICANN's contribution, but the \$3 million number doesn't ring a bell.

Nick Wood: Maybe that was a cost for the whole program. But my question just for clarity on these things is do you have a budget to spend on these initiatives? Does that go before any part of the community or do you have a dedicated budget for this?

Nora Abusitta: So I have a budget for the Department, and you saw the three areas where the Department concentrates. And my budget gets divided on that, and partnerships are part of it.

So I don't know if we can go back to the slide where we have partnerships. It covers our membership with the World Economic Forum, we sponsor some events like the World Summit Awards and so on and so forth. (Net Mungel Initiative) is just part of that.

And if there is agreement next year that we need to keep our spacing then we would. But it falls under the GPRD, it's not a specific (Net Mungel) budget.

Greg Shatan: Thank you Nora. Anybody else? Seeing none, I will thank you Nora for coming and visiting with us. I'm sure we will be hearing from you again and we look forward to working with you on both, you know, sides of the initiatives you're doing as I think it's very important and important for IPC to be involved in these. Thank you.

Nora Abusitta: Thank you.

Greg Shatan: Next, not a first time visitor to the IPC - oh please, thank you for Nora.

Next we have Karen Lentz who will come up to the table, give us a brief update, take questions on a little thing called the New gTLD Program.

Karen Lentz: Good afternoon everyone. Thank you Greg. It's nice to be back here with IPC.

I only have one slide. I know we that have something like 15 minutes so I'll try to be quick. I thought this sort of represented the topics that would be of most interest to this group.

This is actually a slide from the session that Mary is doing tomorrow on the RPM Issue Report, but it's trying to capture sort of the interaction and plans for all of these related activities.

So if you start at the bottom with orange line called Rights Protection Mechanisms Review, that is meant to capture the Staff work that's been occurring over the past year in terms of compiling data on usage of the RPMs, getting some initial user feedback through sessions and through public comment, and then turning that around into an updated report which we envision will be an input to the review team that's in the yellow bar. But, you know, is related to several other efforts as well.

And so as you can see, that type of work is kind of wrapping up. And what is gearing up is some broader discussions within the community about RPMs and about how they might be considered in the future.

The green line is a little bit independent of any of the other efforts although I think it is kind of well set up by the work that's going on so far on RPMs.

Part one of the reviews that's intended is an independent review of the Trademark Clearinghouse that was initially recommended by the GAC to look

at some particularly areas. And we've developed terms of reference in - excuse me - and published an RFP for that. So we are currently looking at the proposals that we've received to do that review and expect to be able to kick off that review process in Q4.

The yellow line of the Competition Consumer's Choice and Trust Review you've probably heard about this week. The call for volunteers was posted on the 1st of October and is open through 30th of October. And so we are in the beginning now of kicking off that process by convening the team.

And as I mentioned, one of the - if I have mentioned throughout the week, one of the areas that that review team is asked to look at is the effectiveness of safeguards built into the program to mitigate issues and obviously a key part of that is the RPMs. And so this preliminary work is intended to give them some information to feed into their considerations.

The top blue bar, as I think most people know, is that there is a GNSO issue report - preliminary issue report - excuse me - that's currently open for public comment. And that is - will lead to possibly a policy development process on all RPMs. And I've, you know, we've been try to be clear throughout the week and will be tomorrow as well that, you know, while there are a lot of RPMs that were developed for the new gTLD program they're sort of - you know, the status of looking at RPMs as a whole is kind of an independent issue of the new gTLD program.

So - but that's kind of where the discussion is turning now is to be on the policy front and there's a set of issues that are specified in the issue report that are - that is open for comment now.

I think that covers most of what I wanted to say so happy to entertain questions.

Greg Shatan: Now it's time for some Q&A. I see Susan Payne and - Anne, did you have a hand up or did you. I'll have...

((Crosstalk))

Greg Shatan: Susan, why don't you go ahead?

Susan Payne: Yeah, I just wanted to ask about the trademark clearinghouse, the independent review of the TMCH. I know you've put the RFP out and it had some pretty aggressive timelines in there for that review. And I just wondered looking at the timeline on there, has that shifted a little bit?

Karen Lentz: Yes, a little bit from what we had in the RFP which actually I think had - having asserted already before we came to this meeting so we're, you know, we got a good amount of substantive proposals that were, you know, looking at. So I think we intend to wrap that process up when we - once we wrap up this meeting. Thanks.

Greg Shatan: Any other questions for Karen? Seems like everyone is so well informed that they have no questions. A few meetings ago there were like 20 questions so I guess that's a good thing.

Karen Lentz: Progress.

Greg Shatan: Yeah, it's progress. Any other kind of IPC specific things that you thought we were going to ask about and you can give us the answers without us even having to ask the question?

Karen Lentz: No, but I would, you know, I'm sure I don't need to encourage you to do this but one of the questions that I get in different groups is well how can we be involved and what are the opportunities that we should be aware of. So you know, the two key ones are obviously, you know, in the policy space helping to shape the PDP if there is one to cover the issues that are important to you

as well as, you know, representation on the CCT review team which does have a key area that impacts you as well.

Greg Shatan: Great, and that's a limited membership team. And, you know, we have a member that we think is highly motivated and qualified and also we have Jonathan Zuck as well. Steve.

Steve Metalitz: Yes, thank you. And I apologize if this question was already covered. But are the same ICANN staff staffing the CCT review as are staffing all of these other activities? Or has that been determined yet?

Karen Lentz: Thanks, Steve. It hasn't really - sorry, I don't know what's wrong with my voice. So it hasn't really been determined at the, you know, individual staff level. I'll say that the, you know, departmentally speaking the - all of the AOC reviews are managed by the group called Strategic Initiatives that's led by Theresa Swinehart and that group. So I think from the GDD standpoint we're expecting to provide sort of the subject matter support to that team. But in terms of the individual staffers I think that hasn't been determined.

Greg Shatan: Thanks. I also see a hand up from Aaron Pace. Oh it's in the chat, okay. That's Aaron Pace from (Wespesite) Domains. Not sure what a (Wespesite) is. Anyway. The question is, "Is the TMCH looking at next round applicant stuff right now?"

Karen Lentz: So thank you for the question. In general, you know, the context for all of these activities is to, you know, obviously capture the experience that was gained in having been through an application round in the program. And to figure out what considerations might be applied to future rounds.

You know, but the - in terms of where the discussions are currently they're very much looking at, you know, assessments of what's already occurred rather than, you know, how and when, you know, what are the things that should be changed and how should they be changed at this point so that's

true of most of the review activities I think and not just the clearinghouse piece.

Greg Shatan: So I guess in a sense it's look back in order to look forward time so now we're in the look back and then next - we have the subsequent rounds planning and we have other things coming up and certainly we'll - future planning will be coming so that's probably the answer to Aaron's question probably it sounds like not yet but eventually yes.

Anybody else with any questions for Karen? Maybe we'll give you a chance to save your voice. Go get a glass of water. In any case I want to thank you for coming and visiting with us, it's always a pleasure. So thank you, Karen.

Kiran Malancharuvil: Greg, before we get to our next topic, can I give the room a piece of breaking news?

Greg Shatan: Sure.

Kiran Malancharuvil: From the Registries and Registrars meeting with the board. So they've made a statement to the board that the IPC this morning in our meeting with the board called for ICANN to police and regulate content, which we specifically did not. They are asking the board to reject everything that we asked them to do and not even give it any mind. I guess this isn't really surprising but it's offensive I guess because we're, you know, calling once again for compromise and they're saying, you know, fly a kite but not as nice.

And they are saying that we're asking for rights that we haven't secured in legislatures and that we have no business in their contract and etcetera, etcetera. So just when we walk out of this room I got like 15 text messages from people about it. So it's going to be a little bit of the talk out there so just gird your loins, people.

Greg Shatan: Steve, I guess we wish we'd talk about the Whois reviews for a half an hour with the board perhaps.

Steve Metalitz: Right, yeah. I think the - no. I've looked at this scribe feed also and I think the thing we need to keep - the ball we need to keep our eye on is what is ICANN saying about this. You know, what is Fadi saying about it. Again, while, you know, not encouraging, I'm not real surprised by some of the responses and especially, you know, we've actually seen this happen in our meetings too. You know, you get in a room and one person's comment feeds on another person's comment.

So I'm less concerned at the moment about what the registrars might be saying and more concerned with how ICANN senior leadership and board members are reacting to it. So let's just bear that in mind.

Greg Shatan: I guess we could have expected this eventually. I guess it's just happening now. On that note, let's see, are we ready for Laureen Kapin? Come on up. Come on down. So coming up to us is Laureen Kapin from the US Federal Trade Commission and the Governmental Advisory Committee Public Safety Working Group as you can see in the slide in front of you so.

Laureen Kapin: Hi, everyone. I'm also here with my colleagues from the FBI, Bobby Flaim and also our newest colleague, (Aronga). So we're a team, if you can't catch me or Bobby then there are also a lot of other members of the Public Safety Working Group, which is a new group that we have launched to focus on issues that affect the public when they're doing business on the Internet. And you can speak to any one of us.

This is just going to be an update about some of our recent work. If those - if anyone was at the public session yesterday I'll apologize in advance because this will sound very similar. So it's going to aim primarily at those of you who didn't get a chance to attend that session. And then also I'm happy to take questions either in the room or separately.

And I'm going to skip past some of the history because our time is short. But basically the members of the Public Safety Working Group are composed of consumer protection, civil and criminal law enforcement among others. And although there is now this newly formed working group that focuses on public safety in the Governmental Advisory Committee a core of folks have actually been working together for quite some time on issues that really go to the core of people keeping safe when they are conducting business or communicating on the Internet so it's a little bit of old wine in new bottles.

So these slides keep moving without me. It's like magic. So here is some of our recent work. Thank you magical person who came to just the right slide that I wanted to. We have provided formal comments on several issues. And you'll see that a lot of these particular comments on the 2013 RAA, Whois accuracy specifications, privacy proxy accreditation issues, next-generation Whois, they're all Whois related issues. Those are the only issues we anticipate working on but it has been the focus of a lot of current ICANN work which means the we wanted to provide comments on those.

Next slide. This is just a little bit more of a granular look at some of our comments. Basically we want to make sure that the information for Whois is accurate and it validated. The registrars had submitted some proposals which we had some concerns and questions about and that was the thrust of our comments. We had reservations about expanding the amount of time that registrars have to respond to reports of inaccurate information over three times as much time, from 15 to 45 days.

There were also proposals to add qualifications to the current language of the contract which in our view is not only unclear but probably would allow a lot more wriggle room and lead to arguments about well what does substantial mean, what does substantiate it mean. So we expressed some concerns about that. And of note is a lot of these qualifiers were really added to the

situation where there's a total failure to respond so it's not as if there hasn't been already a failure to abide by the terms of the contract.

Next slide. In the privacy proxy working group report we expressed some concerns and proposed that a distinction should be made about the availability of these services depending upon when the domain in question is involved in a commercial transaction were not. We think there's a real difference between domains that are basically seeking to sell people things and taking sensitive public information like bank accounts, credit cards, etcetera. And that for those categories of services the public has a right to know who they're dealing with.

We're advocating for more transparency and accountability for privacy proxy service providers and we also think it's very important that when law enforcement makes the request for information that that be kept confidential because law enforcement has an interest in making sure that bad guys and gals don't run away with assets and evidence when they are under investigation. And that confidentiality actually can be required or permitted by local law.

We had hoped to get our comments in sooner on that point but since we are a newly formed group that is primarily -- that's all composed of government representatives sometimes our ability to work quickly is impeded by necessary reviews. But we certainly hope to be able to be involved earlier on and more timely in the future.

And then finally we submitted a comment - next slide - on the preliminary paper on next-generation Whois for that policy development review process. And here this is the start of this PDP. And we really signaled that it a complicated issue about what the problems are with the current Whois system and what any potential next systems should look like. There's a lot of balancing involved and that's why I have the image of the little rocks on the

seesaw trying to achieve balance and equilibrium as we all do in life. Right, not necessarily.

But there is a real interest in protecting the rights of the public and preventing crimes on the Internet and being able to investigate adequately. And also securing the personal data of Internet users. And those balances are going to have to be struck. And if anyone was at our public session yesterday there was a pretty robust exchange because there are a lot of different views and perspectives and approaches to privacy.

Certainly the European perspective is different from the United States perspective is different from other parts of the world and it needs to be a balance because no right is going to be absolute. So we really advocated for a lot of consultation to try and figure out where the balance should be struck. So that's kind of a highlight of our recent work. Next slide.

And then also we have joined the drafting team for this Specification 11, Security Framework Drafting Team. This is to come up with a set of voluntary standards really focusing on what should be the meat on the bones of the contractual requirements to conduct security checks to address whether there is abusive behavior going on in gTLDs, like pharming, phishing, malware, etcetera.

So we have joined that group to try and come up with a framework and make sure that whatever standards are being agreed upon that it's actually going to be something that's effective for that task that's required.

Next slide. So what about our future work? The Public Safety Working Group is hoping to have a member selected for the upcoming competition, consumer choice and consumer trust review. We think that's going to be a very important review team and we hope to have some membership on that review team.

In addition to Whois accuracy for domain names certainly Whois accuracy for IP addresses is a crucial topic. And we hope to become more involved in existing ICANN working groups that impact public safety.

And finally, we want to continue to reach out to our public safety partners around the world, other governments partners. We're still trying to basically make sure that the GAC representatives are able to know who the experts are in subject matter areas that deal with the consumer protection and safety and other related issues so that when these issues, they have folks to turn to.

And finally of course we have other ICANN stakeholders who share our interests who also disagree with us and those are people we need to actually have a dialogue with so that we can work together and at least find some area that we can agree on. We may not agree on everything but we really would like to be focused on useful and productive discussions as opposed to taking grandstanding positions in public forums that aren't nearly as effective as since their conversations about trying to work together. So we're really focused on outreach.

And that's kind of the quick update. We really appreciate being invited to tell you about our work because we're very aware that in many areas our interests align, we turn to the people in this room for guidance on complicated issues which we may need a little more background on and have always found this to be a very collegial and cooperative set of folks to help with questions. And we're also happy to serve as a resource for you if you have questions or issues that you'd like to discuss.

Greg Shatan: Thank you very much, Lauren, Bobby and team. Any questions? Kiran.

Kiran Malancharuvil: Hi, Lauren and Bobby. Thanks for coming. Hi, (Aronga). Kiran Malancharuvil from Mark Monitor. I am super excited about the work of the Public Safety Working Group, I think that I was very pleased with the substance of the comments if not the timing, which you know.

I would like to sort of echo the comments that make a sordid important distinction of actually David Cake from yesterday's public - this has never happened, I have never agreed with David Cake. But that comments come from the Public Safety Working Group in a timely way because particularly in the example that he highlighted in the privacy and proxy services group, by the time we got the Public Safety Working Group comments the issue that was most important have been disposed of and not in favor of the comments that you had had put forth.

And we were on the side of your comments. We happened to be in that regard and so it would have really been very helpful for us to have forwarded - or continued with that work if we had gotten the comments in a more timely manner. Now I know that you know that about that issue and about others.

But my question is whether you had given -- oh by the way, I would say that I distinguish my comment from David's in that he did say that the working group position was that we had taken a completely contrary position on all of your input - that is not actually accurate, I would like to correct that mis-presumption. We didn't completely dispose of your comment. It's just that a couple of issues have been disposed of by the time we got them so an important clarification on that.

Have you guys given any more thought in the Public Safety Working Group to developing and opening up more formal and consistent channels of communication with stakeholder group and working group members to ensure sort of consistency with your position and like within your own group like with the groups that you're working with understanding where we're at, where you guys are at.

And also then using those same lines of communication to make sure that you know what's going on in working groups even when you can't necessarily

have an official representative present so that for example we can avoid things like issues been disposed of before law enforcement weighs in.

And then I have a sort of - that's it for now. Yeah, for now, Bobby.

Laureen Kapin: So, you know, you raise several good points. Yes, we're working on all of those things. As a group we are comprised of a lot of different governments and we don't, you know, like you and I'm sure like many working groups you don't have a monolithic view. So we have a process to share our views and get comments so that we can come up with something that reflects a consensus of the group. That's within the Public Safety Working Group.

In terms of, you know, outreach I'd say that's something we can be more systematic about. And we're working towards that. And in terms of the -- in terms of participation on working groups as we're getting more members we are placing people into different working groups so I believe we now have a replacement for Dick Leaning on the privacy proxy working group. We're happy about that. We have someone on the Specification 11 security framework. We're hoping to have someone on the competition, consumer choice and consumer trust.

So the short answer is we are aware of these issues and we're working on it as our resources expand. Are we there yet? No but we're definitely sensitive to the issues.

Bobby Flaim: You know, the other thing that we did in the Buenos Aires meeting was to meet with all of the different stakeholders so maybe that's something that we can revisit to see if that's going to be, you know, sustainable to actually what we're doing here to do with all the stakeholders on a more consistent basis at all the meetings and intercessionally as well.

But to echo what Laureen said, yeah, it's kind of a resource problem. But we are getting a lot better. We're having a lot more dedicated members who are

actually doing work which before was a challenge. And when I mean work I mean following the issues, participating in the working groups and actually writing documents and participating in meaningful ways.

Laureen Kapin: Yeah, I think everyone is really eager to help the Public Safety Working Group gets off the ground. And I think that in a lot of ways so it sounds a little counterintuitive. But the more you guys spend the time to work with us the more we can be a resource to you in a lot of these issues and not just our constituency but others. And in all fairness it should be all who are interested.

And, you know, I think it would actually help you guys to reach out more. And I think everybody is super stoked to do that and to sort of -- the number of people that you had at your public session yesterday was great. I mean I wasn't -- I gave a comment that I wasn't super thrilled about one thing that was said there because it was very consistent with positions internally. But to see more and more members in the Public Safety Working Group like representing different agencies and different perspectives from law enforcement was really encouraging and I wanted thank you for your hard work on that. It's great.

Greg Shatan: Thanks. I've got Steve and then [Marc](#) and then our next presenter but obviously leaves time for answers.

Steve Metalitz: Thank you. Steve Metalitz. I just wanted to echo what Kiran said is we're glad to have you here and we're glad that your group is participating more and hopefully over time some of the problems of integrating your activities into some of the working group activities and so forth will be eased.

I also want to thank you for mentioning again the Whois accuracy specification comments which, let's make sure that doesn't get lost in the shuffle. And that's an area where I think the IPC comments were probably - I think they were very closely aligned with yours.

And, you know, we talk a lot about contract compliance and enforcing the contract. This is an area in which there is an active effort under way to weaken the contract and I think it's essential that we be vigilant about that and push back against that. And I'm taking your comments as a reminder to check on what's happening with that because I haven't heard anything really. And we need to find out what's going on. Thanks.

Bobby Flaim: Well one of the things we're also doing is we're also trying to track our own comments that we've written. And we actually are getting formal help with that, you know, with the administrative functions. And so far as maintaining our website, tracking our comments, where they're going, you know, ensuring that the timelines are met. So we're getting better. We're finding our legs so to speak but we are working on all those. And, you know, thank you for that because we're wondering the same thing.

Greg Shatan: [Marc](#).

[Marc](#) Trachtenberg: [Marc](#) Trachtenberg for the record. Thank you guys, very much, for coming today. I guess just a really quick comment which is that as I'm sure you guys know, brand owners are often the first line of defense for maintaining public safety. I mean, you guys, regulatory just doesn't have the bandwidth nor the desire to investigate every complaint and every fraudulent scam that goes on out there. And as a person who deals with a lot of them I know that, you know, unless the scheme is of such a gigantic magnitude there's just no bandwidth to do anything about it.

So, you know, just hope that you guys keep in mind when making comments and taking positions that it's very important that we have access to accurate Whois information as brand owners or at least, you know, legal representatives for brand owners because, you know, if we don't have that information if you're interested in public safety you lose that gigantic first line of defense because in many cases we'll be unable to do anything about the problem.

Greg Shatan: Thank you, [Marc](#). Thank you, Lauren. Thank you, Bobby.

((Crosstalk))

Greg Shatan: Oh, I'm sorry. We have somebody at the mic. I - like go ahead.

Arthur Zonnenberg: Thank you. Hello, my name is Arthur Zonnenberg. I'm - I work for Hostnet BV, a registrar from the Netherlands. Yes, you heard it right, a registrar is in this lion's den. I was a bit shocked by what Kiran was saying about the - about us or things we were involved in.

It's too much and it's similar to the comments I made yesterday, a little too much to respond to all of it. Let me just try and convince you that is not a pure unwillingness or like a black and white no we never want to do anything for you, it's just that when we - as a registrar trying to get - give you a feeling of how difficult this is, when you run into a situation where there's not a clear case of illegal behavior or a clear case of intellectual property infringement, we are then left with the decision of disabling the Website or disabling the user or whatever or not.

So we can at some point say, okay, well this is an activist Website, so it would not be wise to disclose their privacy details publicly. At the same time they have a payment option on their Website so that would make them commercial. So the lawyer is telling us that we should then disclose their privacy. And then if we turn out to be wrong, and judge rules in favor of the infringed party, we're the first in line to get our asses kicked. We're the first in line to be liable - held liable under registration agreement regardless of whether the registry steps in and takes responsibility with their registration agreement. Really doesn't matter.

So I also want to be here to listen. I spent most of the time listening and trying to understand intellectual property concerns. And I definitely want to know

more about the reasoning protecting intellectual property rights. But from the other perspective it's just a very - you just run into very difficult situations where you have to be a judge and frankly, we registrars, we are not judges, that, you know, that can decide according to the law what should happen on the Internet. It's - we're not in that position.

So I would like to ask for your consideration.

Greg Shatan: Thank you, Arthur.

Arthur Zonnenberg: Thank you for your time.

Greg Shatan: I'm sure we'll have a longer set of conversations about this. But just briefly, and listening to you, I think I would say that what we have here is a failure to communicate.

Arthur Zonnenberg: Yes.

Greg Shatan: Because I think that what we're looking at and what we've been talking about are ways to actually make your life easier so that you don't - essentially looking perhaps at even creating something like a safe harbor or at least a set of standards where you know that if that a complaint has to meet a certain standard so you won't sit there and wonder about a complaint so much.

They'll be either above or below a line more often so that you'll have - you know, you won't get so many complaints that are either half-baked or maybe almost all baked but that the idea is to create standards that help both people on both sides so that there's more clarity about what would happen in a case.

Because if you're sitting there looking at something that's, you know, difficult, you know, look at the cases where perhaps more understanding at the outset by the person providing the information would have given you more clarity but since there's no clarity about how to put together an abuse complaint and

some, you know, registrars may have an abuse complaint format on their Website but many don't, so basically everyone is free lancing and some, you know, people who are skilled know - and want to make a good case will do so and others won't.

So I think the idea is to try to work together in a collegial manner so that your lives are actually filled with a lot less ambiguity and also with a lot less potential liability.

Arthur Zonnenberg: Absolutely.

Greg Shatan: Susan, I see a hand. [Marc](#).

[Marc](#) Trachtenberg: I would just respond quickly that I mean, I definitely understand the difficult position that you're in and I have registrar clients. And I think it, you know, me personally and I think generally we're less concerned with those cases where it's in the middle, I think a reasonable attorney or brand owner hopefully could appreciate that, you know, you're in a tough spot in that situation. I think personally and probably generally we're more concerned about situations where it's not in the middle.

Arthur Zonnenberg: Yeah.

[Marc](#) Trachtenberg: It's clear fraud. It's clear counterfeiting. It's clear malware, spam, whatever it is, I mean, it's just so directly obvious.

Arthur Zonnenberg: Yeah.

[Marc](#) Trachtenberg: And, you know, whereas your registrar may take action many others will not. And so it's in those situations that we have the most concern and why we want, you know, some minimum set of standards. I mean, I agree with what Greg said but that's our concern.

Arthur Zonnenberg: If I can share with that a positive development in the Netherlands is that we have a full notice and takedown procedure between registrars and governments and Dutch local actors where we can quickly take down a Website where it is clear illegal behavior. And I don't need to worry about being sued as a registrar because I can just capture the screenshots, tell the story, say okay well this - you're clearly trying to abuse this trademark or you're clearly trying to do phishing or scamming or whatever, got the proof here. Don't need to further discuss it. We disable you, clear. So...

[Marc](#) Trachtenberg: Right. The problem is the majority of our problems are not in the Netherlands. And - no, I mean, not to be funny. But to the extent that other countries create laws that are similar to that, then the bad actors are just going to go to countries where those laws don't exist. And that's - that's really the problem that we have where we're trying to get something done, it's - I don't want to name any countries and offend anybody - but, I mean, there are some countries where this type of activity is more prevalent.

And it's, you know, those registrars in those countries are still accredited through ICANN. And so to the extent that there are some rules in ICANN that gives us the ability to get a remedy and to stop fraud and other actions that are harming the public.

Arthur Zonnenberg: Perhaps it can serve as a model for the international input. Yeah.

Greg Shatan: We're falling behind our schedule. Thank you, Arthur. And, you know, let's continue to talk. What I would say is you're already aware we want everyone to be, and has your business suffered disastrous consequences because of this model?

Arthur Zonnenberg: (Unintelligible).

Greg Shatan: Well if we can deal with the black and white cases better than I think...

((Crosstalk))

Kiran Malancharuvil: Since my name was associated with this alleged slander, can I just make one quick statement? Mark Monitor is a registrar as well as a brand protection company. And so I am well aware of the issues on the registrar side. And we're not coming at this without having worked on this actually for many years already. So happy to talk with you further about this but maybe let's not use words like slander.

Greg Shatan: I don't think he used it about you. No, you misheard him. Sorry, he wasn't at the mic.

Kiran Malancharuvil: No, when he came up at first he said - I think it was a joke. But just in case it wasn't let's just clarify. Thanks.

Greg Shatan: From that we'll move on to human rights. Seems like a good segue.

Kiran Malancharuvil: Free speech anyone. Arthur?

Greg Shatan: No, we've certainly spoken freely.

((Crosstalk))

Steve Metalitz: Thanks again, Laureen and Bobby. Appreciate it.

Greg Shatan: Susan, while Niels is coming over why don't you speak?

Susan Payne: Thank you. I don't want to talk about substance, I just wanted to say thank you very much to Arthur for coming. I think it's really nice that there's a registrar here listening to our discussion. I think it's a failure of the ICANN meeting structure that it's not possible in order for Arthur to be here he's missing his Registrar Stakeholder Group meeting. And I actually think, you know, we're doing a lot of talking about the structure of the ICANN meetings

and I think a great deal of common ground might be reached if the meeting structure was altered so that people could actually sit in each other's meetings.

Greg Shatan: Here, here. And now present you with Niels Ten Oever from the - from Article 19 and also NCSG CCWP on Commercial Responsibility and Human Rights in ICANN. And we'll get a presentation up.

((Crosstalk))

Greg Shatan: Niels, why don't you go ahead and introduce your colleague as well.

Niels Ten Oever: Thank you very much, Greg. And first of all I would like to thank the IPC very much for this time to - for this time to present and to have a conversation about the work that we've been doing. I'm Niels Ten Oever, I'm with the NCSG and I work for an organization called Article 19. And I am facilitating the Cross Community Working Party on ICANN's Corporate and Social Responsibility to Respect Human Rights.

With me today is Motoko Aizawa from the International Institute - the Institute for Human Rights and Business. And we'll be giving you a short overview of the work that we have been doing as well as give you a short overview of our new report for which I also brought some copies for you if you might be interested and prefer a paper copy over a digital copy.

Are my slides...

((Crosstalk))

Niels Ten Oever: Yeah, yeah please. So I'll start off. So with the Cross Community Working Party on ICANN's Corporate and Social Responsibility to Respect Human Rights we're continuing a discussion that started pretty much at ICANN 50 in London with a report by Thomas Schneider and Monica [Zalnierute](#) which was

facilitated by the Council of Europe about which there were sessions held, also sessions at ICANN 51 in LA and also in ICANN 52 in Singapore where the Cross Community Working Party was established.

But also the GAC Working Group on Human Rights and International Law. And there, there was a report presented - published by Article 19 on this issue as was the case for ICANN 53 in BA where we had several sessions with the GAC working group with the cross community working group and also meetings with different constituencies where I was also able to present here so I'm very happy that I could come back.

And right now we're here at ICANN 54 in Dublin where we'll have two sessions tomorrow. One will be nine o'clock in the morning, we will present the report in more in depth and have a discussion of our work. But also a session on five o'clock where we will discuss how we will go forward and how we will plan our work, divide the work and see how we can take this further.

Why are we doing this? Well, as you know ICANN's policies and operations have the potential to impact human rights which might also create risks for the business. So we think instead of dealing with these issues post hoc it's better to have a proper framework and examples of a framework are in the report which I'll be present in a bit.

The cross community working group has been chartered to raise awareness, map the policies, provide information, propose procedures and develop and explore corporate social responsibility guidelines and produce position papers and statements where appropriate.

So as you know different processes are ongoing at the same time. As I mentioned, there's the GAC Working Group on Human Rights and International Law, which is currently still working on its terms of reference. There is the Cross Community Working Group on Accountability working on a possible commitment to human rights in the bylaws and especially Working

Party 4 is working on that. And you have been - some of you have been providing real constructive and real great input in there and we are having - good work is being done there. And then there is the Cross Community Working party on Human Rights.

You're also of course very much invited to follow or join the work via the mailing list and via the sessions tomorrow. And we'll now go over to Motoko to shortly present you the report.

Motoko Aizawa: Shall we do the video now?

Niels Ten Oever: Oh yeah, could you start the video now? Would that be possible?

((Crosstalk))

Niels Ten Oever: One minute.

Motoko Aizawa: So I'll talk a little bit but if we could have the video that would be great. So good afternoon everybody. Again, my name is Motoko Aizawa. Very pleased to be able to present the cross community working party's work on human rights.

So how many of you are aware of the United Nation's Guiding Principles on Business and Human Rights? Great, thank you. Okay so maybe I won't dwell on it too much. But for those of you who might be new to the topic there's an excellent three-minute video that was produced by the Danish Institute for Human Rights and so I just thought at the expense of eating into the limited presentation time it's worth it to run this video. You can find it on the YouTube if you like.

| [Video:](#)

(Unintelligible) wherever and however they operate. Local government is unable to unwilling. Businesses impact human rights wherever and however they operate. These impacts can be positive or they can be negative. These

days companies are global and that means their impacts are too. Companies operate in poor countries, in post-conflict countries, in countries where the local government is unable or unwilling to enforce its own laws.

With all this complexity it's not always clear who's responsible for preventing companies from violating human rights. Is the company's fault for paying less than a living wage? Or is the government's fault for setting the minimum wage below the poverty line. Victims of corporate human rights abuses find themselves trapped between...

[Video:](#)

You have no interest in making things right. In 2011 the United Nations issued a set of principles that define the responsibilities of government and this is a pathologist of them appear somewhat to this principle say. There are three pillars.

The first is the government has to make sure that businesses don't violate anyone's human rights. That means passing laws that prevents human rights violations but also making sure these laws are implemented. Some of the world's largest multinational corporations are owned and operated by states. The guiding principle says that government has to prevent human rights violations by businesses either the state itself is acting like one.

The second pillar says that business have to refrain from violating human rights wherever and however they do business. That means is not enough for companies to simply follow the law where they operate on to audit a few of their suppliers. Even in countries where the government doesn't take up its own duty copies have to note that human rights in fact and take concrete steps to improve them. The guiding principles don't offer any loopholes. Companies are responsible for all human rights. Doing things like building a school or digging a well doesn't get them out of their basic responsibility not to make the workers and communities worse off. Companies have to perform human rights due diligence. That means talking to the people whose lives they might be affected by the government responsibility respecting human

rights is at the switch the companies can turn on and off. It's a continuous process.

The third pillar of the guiding principle is about what happens when something goes wrong. Is a copy abuses human rights governments have to make sure that the court system or some other legitimate process allows the victims to file a complaint and that that complaint is investigated and settled. Companies have this obligation to. Part of human rights due diligence is allowing people affected by the company to file grievances and participating and processes to make them right. Whatever route they choose remedy mechanisms should fit with the effectiveness criteria defined by the guiding principles. If the complaint system is slow or cost too much money or is far away it doesn't count.

So that's what the guiding principles on this is a human rights say. So why are they important? First the principles were unanimously approved by the UN human rights Council. Since then they've been endorsed by governments and business factors all over the world. Before we argued over who was responsible for preventing human rights abuses by companies. Thanks to the human guiding principles we know who's responsible. That means that instead of arguing over the rules we can get to work implementing them.

[Motoko Aizawa](#): Thank you very much. For the next slide please. So I think there are number of questions that are in front of us such as whether ICANN to demonstrate its respect for human rights and its operations. And if so, how it does that? And whether ICANN can focus on CSR, human rights. Those are some questions that I thought I would just capture.

So the next slide basically describe the guiding principles you already heard what the video had to say was that the endorsement by the human rights Council in 2011 is a very quickly supported by governments, businesses and civil societies. And for this community perhaps is relevant to know that a lot of the ITC sector companies have very explicit policies that are aligned with the

guiding principles. Now, why do they do that? I got to ask this question early on. I think it's because they are very aware of the repetitional risks that they encounter and those maybe just repetitional. It could be more than that. It could be commercial. And then maybe some impact in terms of availability of finance. There's also a lot of pressure now coming from not just the NGOs, not just the management, but also the board because we see these corporate governance principles have been amended and those principles make it explicit that companies board have to take into account - stakeholder positions. And companies have to do risk management including managing risks to others to stakeholders. And so now the board is putting a lot of pressure on companies to incorporate human rights considerations and the operations. And not only that investors - particularly institutional investors are starting to ask a lot of awkward questions about a company's human rights performance. Now, we're of course talking about ICANN here. It's a nonprofit organization. But there's a lot of similarities. The next slide please.

So you've already seen the three pillars the flight mentioned. I often get asked what kind of human rights? Is it everything? In principle, yes. The human guiding principles make it very clear that at the minimum we have to be aware of the international bill of human rights and the eight core ILO labor standards conventions. And the responsibility entails responsibility to carry out due diligence. And in part that means not just looking to a business enterprises own activity that may cause or contribute to human rights violations but it also means looking into contractual relationships, business relationships that the business enterprise has with third parties. And this is where the tricky challenge comes in connection with contracts with registrars.

Now, also the UNTP's a very practical. So it doesn't say that if you find human rights violations potentials and a business relationship that you need to digit. It just says you need to weigh the severity of potential human rights impacts and you also need to engage in order to improve that relationship to the extent that that's possible. So allows prioritization. But it allows you to

spread over a period of time how to deal with potential human rights risks.

The next slide please.

So why these relevant for ICANN. Well, ICANN has many characteristics. Is a nonprofit organization but with characteristics of a business. It has significant business relationships. It can influence Internet content by way of domain inflection. It can and it does I think influenced business in many significant ways. And also I think it's already mentioned that the fact that ICT sector companies are paying attention to this also means that ICANN may have similar risks that it may want to pay attention to... About ICT sectors are very clear about the human rights that they need to focus on. Those are usually privacy and data protection challenges and by speaking to the community working party those are also the core rights that are most relevant. Although there are others as well. So the last slide please.

So what the paper essentially recommends even though it has a lot of verbiage to it the paper would like to recognize the fact that there is a lot of energy here with and ICANN to tackle multiple governance challenges that are within ICANN and human rights are also a governments challenge within ICANN. So what we are recommending is that we all built on this current momentum and take a measured and consistent approach to address human rights. And so to start with something very concrete, for example, to look at the potential human rights issues and a policy development process may be piled on approach - a review approach taking one or two or three policy areas and perhaps report publicly on the outcome of that experimentation. And eventually to create a long-term roadmap to address more ambitious things like a human rights policy at the corporate level. And perhaps that would be depended upon ICANN carrying out a corporate level human rights impact assessment in order to understand what the potential human rights issues are including ICANN's contractual relationships. And also look into ICANN's CSR strategy, CSR reports, transparency reports; this is some of the potentials. Regardless, our recommendation is that the human rights discussions not take place separately some kind of a separate space but to

make sure that these conversations happen within the overall discussions of ICANN values and risk management as it is the case with a lot of the corporations. That's the only way to get traction. So with that thank you very much for this time and we're happy to take questions.

[Greg Shatan](#): Thank you. Do you have any questions for our presenters? And we're running unfortunately behind but we have Paul was that a hand? Go ahead.

Paul McGrady: So I'm looking at the Bill of Rights and in that Bill of Rights it makes it pretty clear that - well, I mean ICANN just read it, a few of these if it's okay? This is under the place of lawyers in the system of human rights. I'm looking at specifically, if ICANN give you a site it's even better. Access to lawyers and legal services, principle number 15 lawyers are always, loyally respect the interest of the clients. And then there's number 22, governments to recognize and respect the communications and consultation between lawyers and their clients within the professional relationships are confidential.

The reason why mentioned these is because right now there is a movement by some within the privacy proxy services accreditation team to require attorneys to have to disclose confidential information and essentially treating attorneys as if they were privacy proxy services. Do you have a view on that?

[Paul McGrady](#): Go ahead with the answer.

[Motoko Aizawa](#): Thank you. So I don't have direct answer on that. What I know is that both the American Bar Association and the [International](#) Bar Association have significant programs that are designed to help explain how the guiding principles apply in the legal profession. And from what ICANN tell at least from the [International](#) Bar Association's guidance to lawyers is a very clear that client confidentiality is paramount. And therefore the [lawyer's](#) role is to explain to the clients what risks they might encounter as a result of not observing the guiding principles and to work with the client and enable the

client to make disclosures to the extent exclusions unnecessary. I hope that somewhat helpful.

[Paul McGrady](#): So in other words it is to me that if we were to adopt an obligation for ICANN to express with respect to human rights than a policy development process couldn't it require lawyers to divulge the names of their clients. Perhaps they were registering a website or something of that nature? Hypothetically.

[Motoko Aizawa](#): So I have not studied the particular situation and so [I can](#)not answer that situation. But again I think there are ways to work around a challenge. And also I think what we're advocating years potentially for ICANN to make certain disclosures of dilemmas as I see companies do with their own dilemmas when they are under government obligation to do certain things that just disrupt services and disclose certain information.

[Greg Shatan](#): Thanks, any of the questions? Anne?

Anne Aikman-Scalese: Just a couple of quick questions. On page 29 I don't know if we can display that electronically but this is sort of a listing in Annex A I guess other areas in which you feel that ICANN should be conducting the human rights review in these areas with respect to pages 28 and 29.

[Niels Ten Over](#): It was an early mapping conducted by the cross community working party to see which rights could be addressed as potential rights. This is by no means a finite list but we wanted to go into a scoping - and I'm getting a little bit ahead of myself because you like to make case studies. And we would like some specific things and try to get that out.

Anne Aikman-Scalese: I just have two questions on this - on page 29 could you elaborate a little bit more on the UDRP and other thing that the potential rights at risk and UDRP just two of them there so that we have a little better understanding. This is an area that a lot of us practice in.

[Motoko Aizawa](#) n: So again this will put together by the community. These are fairly impressionistic I would say. And that they're not necessarily they are described as rights at risk but basically these are rights that are most relevant and a particular practice area. And so I think what needs to happen is as Neal's mentioned already is we need to dig deeper and examine exactly how these rights come into play. Are they in a positive or negative way?

Anne Aikman-Scalese: I see.

Woman: And the follow-up question was where we stand and accountability with the status of the human rights language. I apologize. I should know this but you guys probably do right cause your leading that?

[Greg Shatan](#): I hate to do this but its 4:33. We were supposed to have in this presentation at 4:15 and we were supposed to talk about accountability. It's a work in progress. That's the answer to your question Ann. I know we had one question from back there. (Unintelligible) do you want to come up? Just come to the mic at the table.

Woman: Thank you for your presentation. I think the only point I wanted to make is that we've had a lot of discussions in this community about the roles of registrars and the responsibilities of us registrars in relation to IP crime. And there's a lot of discussion about is the registrar accountable for was that something that they have control over etc. And I do see that there's a lot of similarities between the work you're doing and human rights and actually IP. So I would encourage you as you continue with your work to make sure that you reach out and connect with the community because it's not obvious that actually is a huge commonalities between those issues.

Greg Shatan Thank you. And that's exactly why we're here. I think those were good less worse. Thank you Niels thank you. So I know time is - were over time but we need to take a few minutes just to see if we can take the temperature on some of the accountability issues in front of us. And we may not have enough

time to do with them credibly but it was I want to introduce them to the room and then we can maybe come back to them later. Can you put up the stress test? I think these out so you see them now and then we can try to talk about them.

The first issue that needs to be dealt with his relation to a set of stress test that I think probably many of you are aware of in 29 and 30. Blow that up a bit. These are the stress tests that gave us a lot of stress and reading them. And what you see in front of you is the proposed redraft proposed by the stress test working party but it's still a work in progress. Basically the only changes here were to change the consequence of the strong enforcement of registrar contracts to say that ICANN's enforcement of registry and registrar contract terms might be blocked by an IRP ruling citing amended mission at core values. So I think this identifies the issue in a sense which is that some of the proposed changes to the mission and core values could be used to allege that ICANN was becoming a content regulator. But I think in fact one of the things that has been discussed at least several times is that enforcement of contracts themselves should be explicitly ruled out of content. The idea that its regulation at all. That enforcing contract is not a regulatory act. So therefore this really doesn't go quite far enough. If you could just scroll down to the bottom.

And these are the changes made is the proposed measures of would be adequate to challenge ICANN's enforcement actions. But is unlikely that IRP panels would block enforcement of voluntary contract terms and consensus policies. So I think at the very least first of this is very vague. It doesn't say why they would block it or why they wouldn't block it. And clearly voluntary contract terms is a bizarre phrasing. It only makes sense if you know about the voluntary pick specs and doesn't really relate to traditional contract law. So I think there's a way to go on these stress tests yet. Steve?

Steve Metalitz: Yeah and obviously these are improvements but I think the board voluntary is just extremely ambiguous and this context because you know we've just

spent a while talking about voluntary standards of voluntary initiatives this morning and how do they relate to contracts. The voluntary pick specs are not voluntary their mandatory at least Spec 3 is. So it's kind of - I just think it's confuses more than anything else. So I guess my recommendation would be to take out voluntary. And I still think it's important to have a provision in the fundamental bylaws that says that ICANN have the authority to enter into, interpret and enforce contracts necessary to carry out its responsibilities.

Greg Shatan: Thanks. Any other comments on this? Bradley and then Lori.

Bradley: So Bradley from Conway. So in terms of priority the stress tests are not binding; right? I mean the illustrative. So it almost doesn't really matter what the stress tests say if we can fix what the bylaw amendment says. So just in terms of what we go back with all what we asked for all where do we ask for anything at this point in time cause I think that's also a question as to whether or not we want to go back with incremental improvements only wants to shoot for something better. Steve's been a great advocate for us but there may be a limit to what he can achieve on his own. So that's a question I guess as far as strategy is concerned.

Greg Shatan: That's a very good point. [Jonathan](#), we're discussing the mission to get the bylaws changed at the table today - the brown bag?

[Jonathan Zuck](#): Yes. I attended the work party [two](#) brown bag that Becky called and - I mean obviously it's a head to head thing between our interest and again our friends that contracting parties. And she believes, and I'm not a lawyer so I perhaps wasn't the right person to be there. I just happen to be the only person there. But she believes that that's giving a third-party rights to sue if there is a breach of that. Like if we felt - if somebody felt like ICANN wasn't enforcing its contract to give a third-party rights to sue ICANN over that. So that's her concerned with that particular language. So we went back and forth and back and forth on this issue. Anything that Becky coming back to is that ICANN negotiate the contract, goes to a public consensus process, etc., and then at

the last minute says oh, here are some changes, sign this or you don't get to be a contracted party this year.

And my point was that the time to say no, I won't sign this. And she says, oh yes, but then there's 10,000 people and 9,000 of them don't care what they sign and there's 1,000 of them that actually intend to try and comply with what they are signing and they are the ones that have an issue. And so I kept pushing back at the time to fix this was at the time of the signing of the contract. But they really believed that they were signing [these](#) contracts under duress at some level.

And so we were trying to finesse the language and I guess what I got to is that there has to be an issue that - and she's trying to write a language that she hasn't yet gotten to me yet but the idea that you can raise an objection at the time of signing that you plan to go back and object to this language or something and that would give you the opportunity to undo the contract later. But they should never be something happened that the enforcement level of ICANN. So that's what I kept pounding on.

Whatever needs to happen it can't be the compliance people that are deciding what to enforce or not to enforce. And so I think it was rough consensus about that and that there needed to be some kind of process or protest in place for people to feel that they've been abused by the contracting process so that they can get some kind of amendment to their contract but that didn't work but that didn't work. So whatever was in the contract needed to be enforced? So that was a line that I held and so she's trying to put the baby there and come up with some mechanism of appeal post signing for a contracted party.

Greg Shatan: Thanks, Steve and Lori?

Steve Metalitz: That's very helpful and promising but the other point to remember is that unlike the third-party situation the contracting party has numerous

mechanisms available to it to challenge enforcement actions within the contract. You don't have to go outside and say I'm going to sue you over this. If you've read any of these contracts that such a protracted procedure is almost like entering a policy development process to actually enforce these contracts against these parties.

There's arbitration - and the registry agreement that this gigantic - has of the agreement consists of some Annex that basically requires ICANN to stand on its head and spit three times while orbiting the moon before you make any changes to the contract. I mean there's just mechanisms out the wazoo here to protect the parties who contract. So the idea that they would then also, after all of those types at the apple have the opportunity to go to an IRP, that's what's problematic. So in a sense maybe we're looking for parity here. Either nobody can use an IRP on both sides can use an IRP.

Greg Shatan: Lori?

Lori Schulman: Hi I have a process question and it might not be a quick one. But I'm a little confused. I've never negotiated a contract with ICANN so I don't have that substantive knowledge. I'm going to tell you that right now. In your previous life many here represent contracting parties okay. So that's why I'm prefacing what I'm saying. That being said my members announced speaking of an INT as a member very often complain that they do feel that the negotiation process is not a negotiation process.

And that these are contract confusion. And what confuses me is we have a bottom-up process for principals and policies but does that mean we have to stick to every letter and the contract or is that latitude built into the policymaking process itself? I think that's important to understand. There's zero discretion or some discretion? I mean that's the whole point and I get that. But I hear what Steve is saying but I don't think I understand what those mechanisms truly are.

Greg Shatan: I don't know some of us were represented registries are applicants might have an answer to that if it's a quick answer.

[Paul McGrady](#): Is this a question about the process? Yeah, take it or leave it.

Paul McGrady: The only thing that I heard was that in some cases where you had rented didn't quite fit into Spec 13 that they would allow you to negotiate basically some version of Spec 13 or at least potentially. But there are few obvious back brands that don't fit what was defined as a Spec 13.brand. But see that the only negotiation I've ever heard of and that was a very specifically basically to take or leave something slightly different. [Marc](#)?

[Marc](#) Trachtenberg: I agree with Paul it's take it or leave it. I mean these are contract of adhesion. If you want to be registry is only one place to go. If you want to be an accredited registrar is only one place to go. So if you don't like the contract you have the option to not be an accredited registrar or operator registry.

Paul McGrady: Wait a minute. That agreement was the subject of years of close to negotiations, the RAA. Yes, they all have to sign the RAA. But they sat in rooms for years negotiating that. They came out with a terrible contract in 2011. The community went ballistic and said you've got to redo it. They said for another two years. We asked to part of that conversation. We were refused every time.

It's take it or leave it, they had used to negotiate this contract and I agree at the end it's a take it or leave it. But the concept that the major registrars in particular that had no input into this, had no influence over this or were unable to fashion this. And of course now are using the ICANN processes to try to weaken this to the accuracy specification. This is a far cry from take it or leave it.

[Marc](#) Trachtenberg: I'm not suggesting that this problem with the contracts. I mean just for clarification at the end it is take it or leave it. So with questions of flexibility, I

don't think we want to be in a position where we advocate now the flexibility and the contract of when they can be enforced and when they can't because their whole position now, the bases of our entire compliance argument is that there is no flexibility. That ICANN's obligation to enforce those provisions is - so I think we have to be consistent with our arguments and our position should be that there is not flexibility. If there's an obligation it was not enforced.

Greg Shatan: I see Paul and I see Vicki had her hand.

Paul McGrady: I just wanted to clarify that my comment was only about the registry agreement. So Steve let [Marc](#) have it.

Greg Shatan: Now we've had a quick education on the process both how form contracts get turned into form contracts no matter how they treated once they become form contracts. So going back to stress tests 29 - Bradley I see your point. If we clean up the bylaws and the stress test probably pretty much has - not only doesn't it matter so much but it pretty much has to change. But something that's clear the stress test what have a bunch of false results in it as opposed to true results.

And the reason the stress test, I think are important because they're basically illustrative of how this would work in practice. And if the illustration says this means that that won't get enforce because it's against the bylaws that's not a good illustration for our purposes. So it is kind of like the manual in a sense. So that's why I believe the stress test to actually matter. But you are right. The stress tests are a downstream results of what's in the bylaws.

So you think the pollution not the source - not downstream where it's too late. So anyway that's the point. I don't know if anybody has any other comments on the stress test but clearly we're going to work to A, focus on the bylaws and B focus on cleaning up the stress tensor reflects what the bylaws changes. Reflect appropriate bylaws changes and not get hung up on words

missing stress tests while missing chance actually to change the law that the private ICANN bylaw on that. So I think that's clear.

I know now we're way over time so I want to maybe let you go with a homework assignment which is the second thing that was emails. I emailed this and one other thing to everyone and I tried to keep both our private list in the list of Dublin email addresses I had. But if you don't have it either way let me know. Is just a quick couple of page charts with comparatively sole designator models and the sole member models as it applies to community powers that have been at the core of the decision.

So to be frank I think that while everything is in flux there's increasing interest in looking seriously at the sole designator model that I won't be more committal the back. But we should take that into seriously ourselves and look at it and think about issues such as whether ICANN - or something really bad. If at every level of enforcement and dispute resolution failed and we had a choice as a community to try to pull ourselves together and litigate against ICANN and keep a board in place while we litigate it or to dump that board which was ICANN be better suited to do.

You need to look at the chart and see that what has been happening and non-negotiations is that the sole designator model has become stronger in order to try to match as many of the powers of the sole member as possible and try to be at least practically decent an alternative under the circumstances. So very much a work in progress and I'm not going to do what the (ALAC) did and commit before any choices are made. And I think that it goes down to respect and to work for the CCWG accountability but I'd like you all to be aware and I'll redouble my efforts to keep you aware of what's going on and the CCWG on these things especially over the next couple of days where there seems to be a great desire to try to have some massive breakthrough.

And if that breakthrough is that we're sticking with something awful moving to something either way in a sense it's a breakthrough. But right now I think everything is in flux. But there is a lot of good deliberations going on. In order to move toward a single designator model I think it's fairly clear that has to be as robust as possible and that anything we're losing has to try to be made up in some other fashion. So the member's right to inspection if we're losing that by not having a member we need more transparency built-in in some other way.

So those are the kind of things that are being plugged in I think now is to try to see if we can't get to a point where it doesn't feel like we're losing a lot if we were to move that way and just see if what we lose is still something worth fighting for. So that's where I see things going but try to predict what hundred and 20 people in a room of incredibly diverse viewpoints will to certain people with very bright line specific issue. So don't ask me how this will end up. But I think right now there's at least people trying very hard to make major strides. So being in the last week of a - try to negotiate a an ideal all of a sudden issue start falling. I'm hopeful that's where we're at. Any comments or questions on that?

Jonathan Zuck: I'll just say two things. Briefly I guess what is your comments about the decision the litigator not really do mirror [Marc's](#) comments after the very first draft and the CCWG that we're crazy if we think we're going to go take them to court to enforce some of these powers. I mean I think there is this rational voice there that says that the point that at which we're trying to go to a litigative process with support we would just dump them rather than go to court to get them to do something specific.

[Greg Shatan:](#) And the other thing that is sort of percolating as well is building and the ability to change models in the future. So sometimes it's called Plan B or something like that. But it's this idea that if we build enough power into the designator model that we can propose and move to a membership model down the road. We would have the power to enforce that, reform if we wanted it once we had a better chance to understand it. So essentially it's building in safeguards

which John modestly did not mention that he's one of the three co-authors of the (ZAB) model.

Try to have a contingent [springing](#) membership might be the way to describe it if you're a lawyer try to confuse everybody. So any other comments or questions? Anybody just want to chat about accountability for 800 hours or so? I've done it. Jonathan is done it. Anne is caught up. You're getting your accountability hours in.

Anne Aikman-Scalese: I'm just keeping my mouth shut because I've said too much already.

Greg Shatan: Anyway, I will call this meeting officially hyper adjourned. Thank you for sticking with us.

END