
LOS ANGELES – Enhancing ICANN Accountability
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ICANN – Los Angeles, USA

MATTHEW SHEARS: Good morning. We are missing a couple of speakers, but I think we're going to get started so we remain on track.

If Bruce and Finn and Keith are in the audience -- it's a bit difficult to see people because of the glaring lights, but if you can come up, that will be great. Thank you.

Good morning. We're here to talk about enhancing ICANN accountability. My name is Matthew Shears. I'm the director for global -- Internet -- global Internet policy and human rights at the Center for Democracy and Technology.

This is a session where we bring it all together. We've got a distinguished panel here, many of -- or most of whom I'm sure you all know, and this is where we bring the pieces together. What's happening on the new cross-community working group on enhancing accountability, what's happening in the ICG, views from government, views from business, talking about stress testing. And this is also the opportunity for you to ask those difficult questions. What are your expectations of this process, how would you like to see it evolve, how do you get involved, the questions that you probably have been thinking about all week

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and this is your chance, really, to get the clarity that you wish and to clearly tell us what your expectations are, going forward.

We have -- I don't see the slide, but we have -- there we are -- remote participation. We have 11 hubs. We will be taking questions from the hubs, and we'll go through -- we'll go through the panel and then we'll come to Q&A.

So as you hear things that come up, please jot them down so that you can come to the mic and -- once we've heard the last panelist, and we'd really like to know what you need from this process, what you think success would look like when it comes to enhancing ICANN's accountability.

So we're going to jump straight in and turn it over to Theresa. Give us an update on where things are in terms of the recently announced process. Thank you.

THERESA SWINEHART: Great. So I'll be very brief, given that I think everybody's probably heard a lot from me this week.

So first of all, this session really is to have the opportunity to start focusing on some of the substantive dialogues that have been occurring all this week.

One theme that has come up is: Accountability in the context of what?

In the IANA stewardship transition, accountability amongst the operational parties in the context of their relationship with the IANA function. I think Alissa might touch on that briefly. That's also a topic that is being discussed in the names cross-community working group, and that's really specifically accountability in the context of the operational parties and the IANA function itself.

But the other topic, as we know, that's come up in these discussions has been accountability in light of the changing historical relationship with the U.S. administration, and that sort of area that is a deliverable together with the IANA stewardship transition proposal meeting, the criteria set out by NTIA.

And that is a more limited scope, but as many are aware, the proposed process notes that there's two work streams in relation to the accountability process. Specifically, the one on accountability and the changing historical relationship, but also given the wide range of topics that have come up around accountability in discussions to enable a second work stream which can either run in parallel or sequentially, whatever the community decides, that is the opportunity to ensure that all other accountability issues are also addressed.

One question that's come up during the week frequently is, "Well, what goes into the first work stream and what goes into the second work stream?" And that's really part of the conversation today.

And in addition, I think one area that might be worth looking at is, when the community commented in the public comment period, a lot of issues were identified, and also proposed solutions.

Those have been compiled and had been posted on August 14th, together with the revised -- the proposal that has now been revised, as many know, on Friday.

That's worth looking at as examples of issues that have been raised by the community during the public comment process, and some proposed solutions around that area, and that might be a useful resource as the community is looking at how they might categorize things into the first work stream versus the second work stream.

So with that, I will -- happy to answer any questions or contribute to any dialogue, but will pass it on to Avri.

AVRI DORIA:

Thank you.

So I was sort of asked to look at sort of the accountability and transparency review process that we've already got and how that fits into the enhancing accountability, and I'm really going to go through three different subjects: The ATRT itself; the report that we came out with; and then looking a little about how we move into the cross-community working group on accountability and the dual-track process that's been laid out.

One of the things that I ask myself when I look at this is sort of to say, "So when we're accountable, who are we accountable to?" We're accountable, essentially, to our stakeholders. The stakeholders that are here, the stakeholders that are in the Internet environment that we serve.

And to my mind, there really is no one else that we can be accountable to except the stakeholders and the users of the Internet.

And when I look at that, I'm glad that we're talking about enhancing accountability because I believe that the ATRT mechanism is a good mechanism and, as such, is something that we need to build on.

I think it was a very clever way of solving accountability to the stakeholders.

But with NTIA leaving -- NTIA has been a guarantor of that process and of its legitimacy, so with it leaving, we obviously need to look at ways of sort of enhancing that.

We need to consider, you know, the whole notion of affirmation of commitments with ICANN. Perhaps a broader network of them. That's one of the issues that we need to resolve is how do we maintain the ATRT and its functionality.

While the ATRT is good and it's necessary, I believe, one of the issues about it is that it is not sufficient, and one of the things that

is missing is -- was defined by the last ATRT, and that's sort of workable, viable methods of redress. Viable methods of appeals.

Now, Section 9.2, Recommendation 9.2 of that basically recommended that we had to explore notions for restructuring the current review mechanisms.

When people are talking about the NTIA leaving, the transition of stewardship, and the other program problems, one of those issues that comes up frequently is review and reconsiderations, appeals, how is that --

So that's one of the things.

Now, 9.2 mandated that a -- and how was it put? -- a special community group would be established to discuss the issues of redress, to discuss the issues of reconsideration of the independent review process and such, and how to make those more feasible, more workable.

So that seems to me part of this accountability two-track.

Now, which of those two tracks it falls into I think is one of the issues that still needs to be discussed.

My initial belief is that parts of it will fall into one, parts of it will fall into the other.

And when I look at the two tracks, what I see is that the first part needs to be the tracks sort of undifferentiated, trying to figure out

where a particular issue falls and what parts of an issue pertain primarily to the IANA transition, or at least pertain to allowing for the IANA transition to be accountable, and then which one of those are issues that pertain mostly to the long-term viability, the long-term accountability of ICANN.

So when I look at the two-track, I tend to see the need to start with the tracks undifferentiated and then from there branch off into the two.

Now, whether they need to be completely parallel or whether there will be dependencies that parts of one need to happen before the other so there can be parts of the IANA-dependent -- the IANA -- the stewardship-transition-dependent accountability that need to be resolved before some of the issues in the longer-term ICANN can be resolved, so that would also be one of the tasks of the first part. You know, where we sort of build the trunk of the tree before we branch off into parallel or perhaps sequential.

So that's sort of a quick view of we have the ATRT mechanisms, they are good, they need to be improved, we need more, and let's start the process by figuring out which item, which task needs to be in which branch.

Thank you.

MATTHEW SHEARS: That you, Avri.

Bruce, there's been some discussion about the role of the board. Maybe you can update us on where things stand on that in this process and any other thoughts you may have on it. Thank you.

BRUCE TONKIN:

Sure. As board members have presented a few times this week to different groups on this topic, essentially our plan is to treat the recommendations that we get from the cross-community working group in a similar way that we would treat recommendations from the supporting organizations such as the GNSO and the ccNSO. And there is slight variations in the way the bylaws work for those two supporting organizations. So on Thursday we will pass a resolution that basically sets out the process we intend to use, which will have all the legal text in it.

But to give a very high-level, non-legal view, basically if the board thinks that a particular set of recommendations is not in the global public interest, we would send it back to the cross-community working group for consideration and would articulate why we would think there is an issue there. And then we would set up a meeting with the cross-community working group to go through that. And then as the changes come through, you know, again, the board would consider those.

One thing we will commit to do, though, is that the board will not make any changes to the recommendations and then send them on to anyone else. Essentially, if we think there needs to be a change, we'll have that conversation with the cross-community working group, and the cross-community working group would need to agree on any change that we might propose before we, in turn, would try to approve that. So essentially it would be by agreement between the two sides.

MATTHEW SHEARS:

And just to follow up, I assume the liaison role would be the one that keeps the board fully apprised of what's going on so there won't be any last-minute issues that arrive.

BRUCE TONKIN:

That's right. We have never yet -- although we have these mechanisms in the bylaws for the ability for the board to reject a recommendation from a supporting organization, we have never actually done so. And the expectation is that there will be iterations of the report. There will be public meetings with the community. The individual board members will have the opportunity to raise any concerns they have as the process goes on. So we think it is highly unlikely it would ever get to the point we would reject anything from that cross-community working group.

MATTHEW SHEARS: Thank you. Ambassador, you've spoken eloquently on a number of times on the issue of transparency and openness and the need to involve the global multistakeholder community. Maybe you could elaborate on that a little bit and, indeed, on any other thoughts you have on the process. Thank you.

AMB. BENEDICTO FONSECA: Thank you. Thank you for inviting me. Good morning to everyone. First of all, I would like to clarify that my comments are made on a national position basis. It is not on a GAC consensus position. And basically they refer to comments that we offered for the process. And those comments, I understand, are also online, so I will not refer extensively to what Brazil has already commented on this.

But just to indicate upfront, their entire understanding of this process is we are fully aware that there are two distinct tracks: One that has a very specific timeline attached to the end of the contract with the U.S. government by September 2015 and another one that is -- as of now, has not a very precise timeline. As it has been said, it is a long-term objective that extends beyond that do address accountability issues and governance issues.

I think sometimes governance is dropped, but I think governance is also a very important aspect of the discussion. But this would instead could be tackled after that.

In our vision, both processes should converge. It would be an ideal solution that a proposal would come forward in September 2015 would address both the IANA transition per se and the accountability elements attached to IANA but also the more encompassing issues. This is because I think we are in a foundational moment for ICANN. We are basically changing the basic aspects of its working. So we think it would be insufficient to deal with one aspect of the operation of ICANN and not the other. We think it's not only an issue about finding a technical solution for this -- to replace the U.S. oversight role but also to enhance ICANN legitimacy.

And if it is not done -- if those two processes do not converge, we do not think this will be obtained.

We are also fully aware that there are so many complexities, so many issues attached to the accountability and governance exercise that it might not be feasible to achieve by September 2015 such a comprehensive solution. But in our opinion, the package -- and I have referred to this word, the package that will be adopted by September 2015 should ideally address those issues related to the IANA transition and the accountability measure that should be implemented immediately but also have an indication of what are the measures and actions desired to bring ICANN in line with the accountability and governance changes that are needed.

And this should be -- to this should also be attached that there is a specific timeline. So by September 2015, we have one solution that we will address. The IANA will allow for the oversight transition to take place. But we are also indicating for the future what we want in a way that will address the community interests in a more comprehensive way, including governments' interests.

We think this is completely in line with what we discussed at NETmundial. At NETmundial, we basically refer to what is -- I will just read the second paragraph of our comment that says Brazil believes that the main goal of this exercise should be to ensure ICANN is fully accountable to the global multistakeholder community after the U.S. government's role ends. In other words, the challenge ahead would be to ensure that once the transition is implemented, the right checks and balances are in place for ICANN to abide by the highest levels of accountability and transparency. And I also have that there are some governance issues that are to be addressed.

So if we -- I think in doing so, we are in a way implementing what we all think agreed at NETmundial that would be a way forward. And we think that would be a good outcome for September.

Just by finalizing, I think that this entails maybe a very specific call for the academic community to step in and maybe to propose some models. I think this has not only been a technical issue but also an issue that will require some thinking on what model we

want, one that is multistakeholder but at the same time in accordance with international law.

So we are not talking about an U.N.-type model. I think no one is thinking about this. We fully agree it should not be an intergovernmental institution but one that is anchored in international law that is responsive to the multistakeholder community at-large. So, of course, as I said, this is a very complex decision but one that by September 2015, we should have a clue and maybe a roadmap in the timeline to achieve that. Thank you.

MATTHEW SHEARS:

Ambassador, if I may, there was a great deal of talk about ensuring the openness of the process and how it remains accountable to the multistakeholder community. How do we ensure that happens? And how do we reach beyond those that are in these halls and ensure that others participate as was intended? Do you have any thoughts on that?

AMB. BENEDICTO FONSECA: Yeah. One of the -- well, upfront I'd say I do not have an answer to them. I think it is up to the community itself to engage and to decide.

One of the things that was said in one of the discussions we had is that in the context of these accountability/governance exercises, those that are involved -- and it is an exercise open for all those

interested stakeholders, so it would be very open, that in the course of this, they should identify what are the issues that should pertain to the 2015 timeline, what are the issues that should be dealt with later on so we think this is a constructive thing to be built collectively.

As we did in NETmundial and, therefore, we do not have upfront a solution for that. We will be more than glad to engage and to look into possible alternatives that would satisfy the full global community.

MATTHEW SHEARS: Thank you very much.

Steve, you brought stress tests to the attention of everybody.

[Laughter]

Maybe you can walk us through a couple of examples. Give us a real sense as to how that's going to work and what the need is for those stress tests. Thanks.

STEVE DelBIANCO: Thanks, Matthew.

Next slide, Hillary.

Let me just propose a definition that I think we can work with. A stress test is a plausible and challenging scenario that helps us

design and test a new mechanism or a process. So it is plausible but that doesn't mean it's got to be probable. So the likelihood is of less concern and whether it is an interesting scenario that really helps us to test whether our mechanisms and processes will stand up.

This idea came to us at the business constituency in Singapore meeting because a lot of us were former programmers, drew on our experience of using extreme-use cases to really test whether a piece of software or process we were designing would stand up to users who don't behave in the usual way because users tend to do that.

I said: Why do stress tests? Why would it make sense in this context? I have three bullets up here. The first two are the most important one.

A stress test let's us be creative about a future scenario. Instead of being defensive about things that have happened in the past, if you look at past problems -- and everyone will have a different view of what actually happened -- we get into a blame game. We get wrapped around the axle on what happened instead of how to move forward and make we sure we can respond if it were to happen.

A second important benefit of stress tests is it can give critics of transition a very productive way of expressing their concerns about transition so they can express in terms of stress test as in:

Can we handle this situation? What happens if? That allows us to develop responses. Those of you who watched the congressional hearing might recall that the chairman of the House Commerce from U.S. Congress was very responsive to this idea and sees it as productive way forward. If we do it right, it should help us designed an ICANN for the future and not worrying necessarily about the past.

Hillary, could you go to next slide.

Here's ten stress tests that NetChoice presented to Congress earlier this year and that the business constituency polished and improved and proposed in the comments we presented in June. The actual stress tests I have put up on the business constituency Web site, bizconst.org/stresstests. Obviously, Matthew didn't give me nearly enough time to go through them all so I will focus on just two.

I should say the light blue ones are those that involve IANA directly. The rest involve all of accountability.

So number one, let's focus on number one. Let's say that ICANN unilaterally canceled the Affirmation of Commitments, which it may do so with just 120 days' notice. Not everybody knows that. Well, presently the discipline that's imposed by ICANN needing to win the IANA contract every three years is obviously contributing to the fact that ICANN would never cancel the Affirmation of Commitments under the current environment.

Once IANA is gone, a future ICANN management, a future ICANN board might cancel the affirmation for whatever reason. Well, Avri described the Affirmation of Commitments and the ATRT reviews that she's done. Those are there because of the affirmation. And if affirmation reviews are to remain a part of the ICANN accountability framework, we need to find a way to continue them. Some have suggested perhaps you take the date out of the affirmation reviews, been this is still a bilateral agreement between ICANN and the U.S. government.

I have heard other suggestions that it become a web of Affirmation of Commitments and virtually every government and organization could sign on. That's going to be complex. What the BC proposed in June was that we move the affirmation obligations into the bylaws, things like the reviews. Make sense?

So let me go to another one. Number 10, let's say a government telecom minister is instructing ICANN to redelegate or transfer a Country Code Top Level Domain and taking it away from perhaps a private sector entity that was running it with the government's blessing and moving it someplace else. Suppose there were vocal and nearly universal objections from the registrant and user community in that particular country. Faced with that re delegation request, what response options would ICANN and the IANA functions authority have? What measures would be available to the entity that has to handle that? Now, that's one

that the naming functions group of the IANA stewardship transition coordination group is dealing with.

So I did have it in here as one that we need to think about further on. So scenario planning, it really is just a tool. There is no insinuation in doing scenarios that the current board or the current management would act badly. And there is no prediction that these bad things are going to happen.

There is no need to stress out, in other words. Don't stress over stress tests. Let's just think of some good ones and use them as a tool in the year ahead. Thank you.

MATTHEW SHEARS:

Steve, thanks. Sorry about giving you limited time. Just a question, though. Where in the process do these stress tests start to -- have to be applied?

STEVE DeBIANCO:

I feel they should have already been at work in the IWG on the IANA stewardship. But in truth, they are most likely to show up in the naming functions thread which is just beginning. And it should show up in the cross-community working group on accountability transition, the broader one, that really begins its work today with the drafting team.

So the drafting team presumably would even follow the staff recommendation to do stress testing. That was in the staff plan. And we would insert stress tests as an element. But I really believe it is up to the community and the cross-community working group to collect stress tests from the community that, again, are plausible, interesting scenarios that help us to design a better one. So I think it should occur very early in the CCWG.

MATTHEW SHEARS:

Thanks. Alissa, you talked a lot about the work of the ICG this week and you have a meeting after this one as well, I believe, but there's been concerns about timeline and the ability of the various parts to pull things together in time. Maybe you can talk about that and what you need from the community.

ALISSA COOPER:

Sure. Yeah, I'm happy to do that. So I think folks are fairly well aware that as the ICG we issued in September a request for proposals for transition plans from the operational communities. So for the DNS root zone that would be a request that went to the recently formed names cross community working group and similar requests have gone out to the operational communities that are dealing with the other IANA functions. And I think it's important to stress that there are several sections of that RFP that ask very specific questions of the communities about accountability. So we can get a little bit more concrete about

what, at least the ICG is expecting to see in the transition plans. In particular, I would point your attention to sections 2, 3, and 4 of the RFP.

Section 2 asks the communities to describe the existing pre-transition oversight and accountability arrangements, and that includes the entity or entities that already provide oversight over the IANA functions, how the individuals that constitute that entity are selected, and how they may be removed from participation in an oversight body. It asks for a description of the mechanisms in place to conduct oversight or accountability, including contracts or reporting schemes, auditing schemes. Whatever already exists, we want to see a description of it. And also a description of the consequences if those mechanisms show that the performance of the IANA function is not meeting expectations. And finally, it asks for a description of the jurisdictions in which the mechanisms apply and the legal basis on which they rest. So we're asking for lots of specific details about the existing pre-transition arrangements.

Then in section 3, we ask for those same details about the proposed post-transition arrangements. So for all of those different aspects, we want to understand what are the communities proposing to change from what exists today.

And then finally in section 4, we ask the communities to detail the transition implications, and these are perhaps linked to some of

what Steve was talking about. We want to understand what the operational requirements are to do the transition, if there are any, if there are any operational continuity risks, if there are any requirements that need to be met based on the legal framework that is being assumed by the community. We want a workability evaluation. We want the community to explain why they think their plan is workable. And we want them to give us an expected timeline for implementation, including intermediate milestones and how each of the proposed changes will get done and when. So there's a lot of specific detail that we're asking for from the communities.

For the names piece, we expect that information to come from the names cross community working group. To the extent that some of that may overlap with what happens in the accountability working group, that is something that those communities need to work out amongst themselves. We did set a target deadline to receive proposals from the operational communities in the first instance by January of 2015, which in some ways is quite soon but actually allows, you know, some months to get this together. And we've all known about the transition for some months now, in any event. So it's not as if we're starting from scratch right now.

And just the other thought that I would offer, with regards to timing, and this is not really an ICG view but just, you know, something I mentioned the other day from an IETF perspective

where we're working on the protocol parameters proposal. In the IETF we have a working group working on the transition plan, just the same as there's a working group here working on the transition plan. But we also have separate entities who are accustomed to dealing with contracting and legal aspects. And so the approach that we're taking is in the transition plan in the working group we are laying out, to the extent that we want to ask those entities to do things on the accountability front, we're putting those in the transition plan. It's not necessarily the case that those entities will have firmly acted and had their work complete by January 15 when the transition plan hopefully will get sent to the ICG. So that's a way of kind of separating the work through the names working group working on the transition plan. They might put things in the transition plan that say, this is what the accountability group needs to meet -- you know, these are the requirements they need to meet, even if the accountability working group hasn't, you know, fully completed its work by January of 2015. So just a thought of how that could go. But that's just a personal view.

MATTHEW SHEARS:

Thanks, Alissa. And the NTIA in its announcement in March established four specific criteria that have to be taken into account. Where in the process is that going to be, are those four criteria going to be addressed? Thanks.

ALISSA COOPER: So there's an additional section of the RFP that asks the communities to describe how their plans and processes have met the NTIA criteria. When we receive the proposals from the communities, the ICG will conduct an assessment of that section and determine if we think that the explanation provided by the communities is sufficient. If it's not, just like if there's any other gap or issue that needs to be clarified, we will send the proposal back to the community to have that fixed or rectified.

MATTHEW SHEARS: Thank you. Finn, I was wondering if you could give us a perspective on the Danish business association on accountability at ICANN and what you would like to see and what the steps may be. Thanks.

FINN PETERSON: Thank you, and thank you for inviting me here. Let me just underline, I'm a member of GAC but I'm not a spokesman for GAC in this connection. I come from the Danish government, and I will give a Danish government perspective on this issue.

First of all, I think it's really an historical time. I've never been dealing with a subject which is, as I can see, so important. I've been in telecom and regulator business for 30, 35 years, and this is actually the most important thing that we have been dealt with.

And it's also one of the most difficult things that we are dealing with.

First of all, the IANA transition and the accountability, we think that has to go hand-in-hand. And from our point of view, we have difficulties to see that we can have the transition, if we do not have the accountability settled. It might not be settled in every detail, but we at least must have a roadmap for having that. From our point of view, we have not yet a clear picture of the end game of this, but we hope that it will emerge soon.

As this link between the two things is -- it is, of course, unfortunately that the accountability track is -- is a bit late in the process. We hope it will be now running fast and we can see there are two tracks there. Of course, dividing it in two tracks is also challenging in itself.

We don't think that the IANA transition and what is connected with that is -- it is, of course, a technical and administrative matter but that is not our main concern. I am fully aware that other are more capable to handle that in -- than we from the government side and our input to that.

Talking about enhanced accountability, of course, we have a good definition from Sao Paulo, and that is to have independent check and balance and, you know, review and redress mechanism. So just to touch upon check and balances, there's of course different ways, and we would like also to see -- to see the advisors and

others come up with models how this can be done. There's different things, one can separate IANA function from ICANN or we can have an oversight. I know that the word "oversight" is not always a positive word to use. But anyway, in Denmark the talk that has been is also the community thinks that should be certain oversight. It should be independent oversight. It should be a small oversight. And it should not be government, not at all, but multistakeholder-driven oversight. We need to have certain trusted people who can review and auditing things and take things up in ways that the board must take account of whatever this trusted entity are putting on the table.

On the redress mechanism, I think it has been said before, we need really effective redress mechanism. We can see during the process with you the new gTLDs that have been really lagging of effectual redress mechanism.

There are also things which are important for us. We are very aware that the situation after the U.S. government must not lead to a situation where there could be capture in any circumstances. No interest group, commercial, government or other, should be able to capture the -- and use it up. And it is also important for us that the scope of ICANN is -- limits to what it is today. There must be no expansion of that. So that is important. The AoC, which have been touched upon, is vital that we have it. Whether it can be an AoC multilateral we will doubt, but whether it can be in the

bylaws, we think it should be in the bylaws. It should not be something which can be canceled. It is very important.

It was also touched upon the national -- we have our ccTLDs and in Denmark we were in the process of redelegating it and it was difficult and it was government who have after due process in Denmark with the community have to explain everything. So we actually think that the ccTLDs should come under national rules and what national rule, it could be national legislation or other rules which are in place in that country.

And lastly, just to that which Steve explained, the stress test is important. It is not the stress test of codes and software. It's the stress test of the organizational setup and see that we will not be in a situation no more than what will happen here in 20 years or how the political situation in the whole world are changing. We will not see that there could be any capture or interests which are running this important Internet (indiscernible). So that is our perspective.

MATTHEW SHEARS:

Thank you very much for that broad overview. Greatly appreciate it. Just a quick question. It sounds like in Denmark there's a good outreach mechanism to players, business, and others. How important is that? And obviously there's been a call for governments to reach out to stakeholders as well. Just tell us how that works, perhaps, just quickly.

FINN PETERSON:

Well, I think from a government perspective, or at least from the Danish perspective, outreach is very important. Not only in the Internet but we are civil service and politicians which are not there to have answers to everything. So we've got to be inspired and have different views and also be ready when we take decisions and take policy decisions, to be ready to explain why we are doing something. So that's rather important. And for us within Internet governance we have a group where we are discussing it. We had it before we came here, we will have it afterwards, and we will work closely together with this. Government do not have the answers, but we will be -- be part of the work and we will be hopefully instrumental in the -- in the solutions.

MATTHEW SHEARS:

Thank you very much. And right down at the end, Keith, thanks for stepping in. Please, let us know what your thoughts are on GNSO.

KEITH DRAZEK:

Great. Excuse me. Yeah. Thank you, Matt. Good morning, everybody. My name is Keith Drazek. I work for VeriSign. I'm the chair of the registries stakeholder group within the GNSO and I'm here today stepping in for Jonathan Robinson who had a conflict. He sends his regrets and me.

So I think I'd like to just take a moment to sort of map out like I think what we view as next steps on this very, very important and relatively urgent ICANN accountability process.

So I'd first like to take a moment to thank the ICANN board and the ICANN staff for responding favorably to the community's call for a cross-community working group.

I believe we now have a process that we can trust to deliver a bottom-up, consensus-based community recommendation on the ICANN -- on ICANN's accountability reforms.

So now that we're aligned as a community on the process, it's time to get to work in earnest, to finally begin the substantive work of developing the bottom-up consensus community recommendations.

So that end, I can report that the GNSO is preparing its representatives to the cross-community work- -- sorry, cross-community working group drafting team, and we look forward to working with our colleagues from the other SOs and ACs to develop a charter for the working group in the very near future.

Fortunately, we have a recent framework that we can utilize.

As many of you know, we recently formed a cross-community working group on the IANA stewardship transition, so there's a cross-community working group on the IANA stewardship

transition and we're now in the process of forming a cross-community working group on ICANN accountability.

So I'll just pause here for a moment and make sure that everybody understands that these cross-community working groups are open to all, by necessity. They are open to everybody.

If you have an interest in these two processes, which are interrelated and interdependent, volunteer. Speak up. Reach out. Get on the mailing lists. Participate in the phone calls. Because that's the way we work in the bottom-up, consensus-based processes.

So the time to have your voice heard is now. Don't wait. Contribute to the discussion.

So I think that the IANA stewardship CCWG charter will actually help guide us, and I believe that there's a lot of good work that was already done there that we can either replicate or re-purpose or sort of pull into the discussions, at least in a framework. The scoping issues will need to be addressed. Those will be a little bit different, or maybe substantially different, but I think that's certainly manageable.

So a key issue for the cross-community working group charter drafting team will be the scope question that Avri mentioned at the beginning in her remarks.

NTIA and ICANN have encouraged two tracks within the accountability process, so this is an important distinction. There's two tracks, one for IANA stewardship transition, another for accountability. But within the accountability discussion there has been a recommended two subtracks, if you will.

One track for reforms necessary for the IANA stewardship transition to take place, and other enhancements that might wait or might not be so urgent or might not be a dependency or that could be handled through other existing community processes like ATRT or ATRT3 or whatever comes next.

So a key question for the charter drafting team and the members of the cross-community working group, once it's formed, is how and where is that line drawn. How do we determine as a community what's necessary and what can wait.

So -- but it is up to us as a community to determine that and to develop the processes for determining that. It's really important that we start to address these questions now and that they don't wait or drag on.

So to wrap up, we look forward -- I'll speak for the GNSO at this moment. We look forward to working with the entire community to move forward on this accountability reform effort and to work diligently to deliver a consensus recommendation in time to meet the September 2015 target date for the stewardship transition. And that's a target date, it's not a deadline.

NTIA has been very clear that they have the ability to extend the contract, the IANA functions contract, by two years, four years, maybe some other combination or subset, but the key is that we have this target date and I think there is a tremendous amount of goodwill in the community right now to get to work, to deliver a timely recommendation, and to get it right. Thanks.

MATTHEW SHEARS:

Thanks, Keith. And just to come back on one point, the process is open for the global multistakeholder community. How do we ensure that voices who are not part of the ICANN community have a role and say in this cross-community working group? Thanks.

KEITH DRAZEK:

Yeah. Thanks, Matt.

So as I understood the question, it's like we obviously have an ICANN community that has its structures and has its groups, and we need to -- as a community, as our independent groups, need to be sure that we're doing outreach and that as we develop the charter of the cross-community working group, that we're providing mechanisms or pathways for others who may not already be part of our community to provide input, to have a voice, to engage in these discussions.

You know, I think -- my feeling about this is that there's probably a home for everybody in our multistakeholder model in the ICANN community today. I believe that we have a really robust and well-rounded community structure.

So I think there's probably a home for everybody. But folks may not know where their home is and they may not be prepared to pick, for example, where they participate or how they participate in one of our structures.

So it's important that we all, as a community, make sure that there are pathways and avenues and opportunities for input for those who are new or who haven't been with us for the many years that some of us have been here. Thanks.

MATTHEW SHEARS: Thanks very much.

Let me just check. Grace, do we have Brian? Is he going to join us? Is that right?

Brian, can you hear us?

BRIAN CUTE: Yes, I can. Can you hear me?

MATTHEW SHEARS: Brian, would you like to -- thanks for joining us. Would you like to give us an update on where things stand with regards with the expert advisors?

BRIAN CUTE: Certainly. The PEG, public experts group, met on October 14th this week and we met for the purpose of clarifying amongst ourselves what would be the areas of expertise that we think are most critical to our evaluation and selection of advisors, and then in closed session we began to look through the candidate names and bios that were provided to date; to take a first pass, if you will, make an assessment of the candidates, and prepare our process, moving towards selection hopefully by the end of October.

So with respect to the criteria or areas of expertise that we are focusing on -- and there is a summary of the meeting that will be posted later today -- we narrowed down to the following five groupings of areas of expertise.

The first is board governance and corporate management. For example, operational, finance, or risk management.

Second, global accountability and transparency. Theoretical, practical tools and metrics.

Third, global ethics frameworks and human rights. For example, consumer protection.

Fourth, government engagement and relations on multistakeholder governance.

Fifth, international law or jurisprudence. For example, choice of law.

And the reason we have gone in this direction in terms of our task is that we recognize there are certain areas of expertise that will be critical to both work streams to ensure that all aspects have been addressed.

I'll give an example, and I think speaking just for myself, one of the words that was used in the past was "outsiders," and I personally struggle with that word as I think like most of us we believe, as Keith stated, the ICANN process is open to all.

And the example that I'll use to explain how the approach is about areas of expertise, not necessarily whether someone is inside or outside the ICANN tent, in ATRT1 when we were addressing the structure of the board, board governance and operations, and wondering conceptually how we might improve the structure and the quality of directors, in conversation we looked at an organization, for example, in Australia that is a group of corporate directors, and that organization focuses on best practices for corporate boards.

The reason we looked at that organization was we were trying to figure out whether the appointment of independent directors would be a positive improvement for the ICANN board.

Again, it was a conceptual discussion, it wasn't part of a recommendation coming out of ATRT1, but that's the kind -- that's an example of the kind of expertise that may not be readily available in the ICANN community that we know is going to be important in the overall process.

So in keeping with that example and that thinking, we have defined those five areas of expertise that I've cited as the areas that we are going to focus on as we look at advisor candidates, ultimately select the up-to-seven advisors, as we are tasked to do.

Over to you, Matt.

MATTHEW SHEARS:

Brian, thank you very much. If you can stay with us through the end of the session, that would be great, in case there are any questions directed to you.

Okay. I see a mic. I don't see anybody standing there. So please bring your questions to the front.

Before we go to the mic, though, Grace, are there any questions from remote hubs that...

Oh, okay. Could you please state your name, keep it brief, and to whom you would like to direct the question. Thank you.

OLIVIER MURON:

Thank you very much. I'm Olivier Muron. I'm a member of ISPCP, former member of ATRT1, and speaking on a personal capacity.

I have a question about the two tracks of accountability. We already discuss that with Theresa at the ISPCP meeting but I assume it's not very easy to say if you take, for example, the list of all the things that have been proposed, the list that has been compiled by the staff this summer, you should take each of the solutions that have been proposed. Sometimes -- sometimes clearly you can say they would be in Track 1 or sometime in Track 2 but some of them it's sometimes very difficult to say.

Another point is the feasibility and the legal feasibility of the solutions that are proposed and the time frame when this solution can be implemented.

So in fact, I think -- I'm okay with the two tracks, but really they need to be very, very closely interrelated. There should be a very pragmatic approach of moving one topic from one track to the other, if necessary. And that's how I think we can do it with two tracks. (indiscernible).

MATTHEW SHEARS: Steve, do you want to comment?

STEVE DelBIANCO: Thanks for the question, Olivier.

The inventory of potential accountability mechanisms that the staff presented earlier this summer, as you know, is not necessarily the full list of measures that the cross-community working group could come up with, but to your point of how will things be allocated to before transition or post-transition -- those are the two subtracks -- it's up to the CCWG to do that. It's not up to staff to tell us how, or the board, but the community. We need to work that out. And I would propose that we pick up on what the majority of community comments have said, including what -- what Finn Petersen noted earlier, is that Track 1 are mechanisms that need to be addressed -- perhaps not fully implemented, but committed to -- before the transition, and then all the others fall to post-transition.

So that distinction is entirely based on leverage. It's leverage because the measures we want in place before transition are those that may be extreme in positions of the community's will upon the board and management, and as such, the board and management are not likely to accept them if they've already got the IANA contract in hand.

So it's -- I think it's really just about leverage, to put it in the simplest terms possible. The things for which we need the leverage, we better put in Track 1.

MATTHEW SHEARS: Okay. Thank you.

BRUCE TONKIN: I hope I get my voice back.

I just want to address one point that you made there about addressing the feasibility and legal issues associated with particular solutions.

I think that's one of the benefits of having some outside experts, because hopefully an outside expert could say, "This particular proposal has actually been done and has been implemented in this other forum," and that it's sort of almost an existence proof that it has been done and has worked. That's really why I think we want to get some outside expertise.

MATTHEW SHEARS: Avri?

AVRI DORIA: Yeah. Thank you. I just wanted to comment on the interaction between the two tracks.

I very much agree with you and, in fact, I think it's one of the reasons that I tend towards thinking of the two tracks as sequential.

But, you know, be that as it may, I very much agree that if they're not sequential, then the ability to transfer an issue from one to the other does become important. I would prefer to see sequential.

MATTHEW SHEARS: Steve?

STEVE DeBIANCO: One tiny add-on to what Bruce has suggested.

Bruce, you're exactly right. We need outside experts to contribute ideas, things that can work, not just experts to contribute ideas, things that can work, not just experts who will cite California law and say, "Here's why this won't work." We need positive.

But it doesn't just have to come from the public experts group, the PEG. It is an open cross-community working group now thankfully. Since it is open, if any of us, yourself included, know of experts who have a creative legal mind with that, we should bring them into the working group now and they can contribute just like the PEG designates.

MATTHEW SHEARS: Okay. Thanks. Just because we have very little time, we will close the line after Milton. I think that's Milton in the back, please. I want to disappoint people if they get up and we don't have any more time.

So please, next question. Thank you.

JONATHAN ZUCK: Jonathan Zuck from ACT, The App Association. I guess, Steve, one of the things you should add to your list of stress tests is the stress of having an IANA transition and not having gotten everything you need afterwards. So I'm wondering, do any of those stress tests apply to before IANA transition versus post? Or is it more just a question of leverage? Is it also possible that things that might go in that first track are things of which there is some consensus, like the AoC commitments or something like that might be another criteria. Did you have any ideas about what kind of things would go first or did anyone?

STEVE DelBIANCO: Thank you. The business constituency proposed six measures, and what it really proposed was a permanent cross-community working group. We're used to cross-community working groups that convene and then go away after a year or two. But consider a permanent one where each constituency group including the GAC, of course, would appoint members and pull them down.

If that were in standing all the time, the BC suggested that that group would have the ability to appoint members to the independent review panel, that that cross-community working group could designate issues that should go to the independent review panel as Avri talked about.

We think that group to should be able once a year to review and approve an ICANN budget. It should -- whenever the bylaws are being changed, the cross-community working group should have a say on the bylaws. And, finally, if the board ignored the cross-community working group on these matters, it could vote to spill the board, to terminate the terms of all the members of the board of directors, and then there would be new directors elected by each constituency group.

So that's just an example. To be sure, there are other folks who will come up with ideas. But the business constituency wanted to sort of seed the discussion with things that we believe would fit perfectly within a pretransition track.

MATTHEW SHEARS: Thank you. Go ahead. Malcolm.

MALCOLM HUTTY: Malcolm Hutto, London Internet Exchange, personal intervention. And I'm going to phrase this more in the form a comment,

although in reaction. Although I would, of course, be interested in any reactions from the panel.

I'm detecting a consensus that -- a developing consensus that the most urgent accountability question is to identify what must be addressed before transition can proceed, even if the implementation of what's identified could follow transition?

And I would like to suggest that the most crucial, the most essential, the number one priority is the accountability of the board for acting within the scope of ICANN's limited mission and honoring its core values. If ICANN were able to act outside the scope of ICANN's intended mission, or if it could redefine that mission at will, then any other accountability protections would be a castle built on sand.

Now, at the moment, ICANN is accountable to the U.S. government for these fundamental principles. And that's given effect by the choice to award the NTIA functions contract to ICANN.

With this changing historical relationship, it is essential that there are effective mechanisms to hold the ICANN board accountable to the community in the event that it seeks to amend or act inconsistently with the current mission and values set out in the bylaws.

Now, the NTIA has, I believe, identified this as an essential issue itself implicitly. The original announcement states that any transition proposal must address four principles. The first of those principles is to support and enhance the multistakeholder model. The fourth such principle is to maintain the openness of the Internet. These two principles clearly go beyond the narrow issue of the operational performance of the IANA functions on which many in the community are currently focused and demand that broader considerations are addressed.

Yet, clearly the transition proposal cannot include everything that everybody would like to see done in the name of enhancing the multistakeholder model or of maintaining the openness of the Internet.

So I would suggest that the appropriate way to address those key requirements identified by the NTIA as essential for any transition proposal is to make provision for curative measures should the board seek to act inconsistently with the current mission and values or to seek to change them without community consensus. And I would be very interested in any reaction from the panel.

MATTHEW SHEARS: Anyone want to take a -- Keith?

KEITH DRAZEK: Yeah, thank you. This is Keith Drazek, now speaking in my personal capacity. I agree.

[Laughter]

MATTHEW SHEARS: Anyone else? Okay. Steve.

But briefly, please.

STEVE DeBIANCO: It will be brief. Malcolm, thank you very much for that. And you might note that on Monday morning, Fadi Chehade talked about a new strategic initiative to define public interest in order to keep a limited scope. We'll see how that goes. But just in case, scenario Number 4 is exactly what you described, if you click on bizconst.org/stresstests, scenario Number 4.

The BC had proposed three ways to remedy that. One is budget. If this cross-community working group could approve the budget, we could stop spending that was exceeding scope.

And Number 2 is an independent review panel if the decision of management and board flew in the face of the community's will. And then, finally, if they ignored on 1 and 2, we would spill the board.

MATTHEW SHEARS: Okay, thank you.

If the questions could be brief, that would be great.

Bill, go ahead.

BILL SMITH: I will try and be brief. Bill Smith. First comment. two things. First is a comment on the IANA stewardship. I hope that we use as a foundation SAC067 and 68. They are excellent documents, and they lay out in very clear terms what the contract -- the NTIA contract actually does and what the requirements are.

I'd also suggest we consider the minimal nature of that contract despite the page and word count. There are actually very few things that IANA is responsible for.

Again -- and then I would also suggest that the no-fee nature of the contract might suggest to a business person the intended complexity of any stewardship agreement. So I hear us doing a lot of work about what we need to do, but let's keep it as simple as possible.

Secondly, I have a question on accountability more generally. I believe that's the topic here in this session. When will the next WHOIS review team spin up? RT1 was staffed at about this time in 2010. That's four years ago. And as a recovering member of

that group, I expected reviews on a three-year cycle as specified in the AoC.

MATTHEW SHEARS: Thanks. Who would like to take a stab at that? Alissa, yes.

ALISSA COOPER: In case anybody didn't hear him, read SAC068 and SAC067. They are excellent documents. If you don't want to read the NTIA document, which you should, you should read SAC068.

BRUCE TONKIN: Just on the WHOIS review, yes, there is a three-year cycle in the Affirmation of Commitments. And I expect that will kick off again and the focus of that particular review is the current policy in place at the time. So there's been a few changes since the last review.

But, yes, absolutely, I'd expect that that review team would be reviewing the changes that have been made and the effectiveness of those changes.

REMOTE INTERVENTION: We have a remote hub question.

While we are prepping that, I am going to go ahead and read Kiev hub's question as well, and then we will have one right after the other.

So Kiev hub's question is: In London, it was proposed to strengthen the role of the ombudsman in ICANN accountability. Any progress with it?

And then we will also bring in the Trinidad and Tobago hub.

AVRI DORIA:

All I can say is that's a really good question, and I would love to find out the answer.

But it is one of the things that was in the ATRT2 recommendations also. The board said that they supported all those recommendations, so I am hoping. It could also be something that was included within these accountability issues and accountability improvements moving on. But I don't think anything's been done about it yet that I've seen.

MATTHEW SHEARS:

Thank you, Avri. Next, please.

REMOTE INTERVENTION:

We've got the hub.

Hi, everybody. My name is Andre Thompson. I work at ICANN through the DSSA, the DNS security and stability working group.

I was looking at the ATRT2 report some time ago, and I noticed that our whistleblower policy, page 56, it says that while we have the whistleblower policy, it was not used effectively. So a question came to mind as to the accountability group, should it not have been a separate group from ICANN itself because if I want to say something about a board member, I really can't because the board member is the one ultimately responsible to address that.

The other parts of the ATRT2 report I was looking at is on page 42 where it talks about the GSE engagement is pretty low. Is it because the GSE themselves have not been contributing or is it that there is not enough outreach from the ICANN group to get the GSE involved? Because at the end of the day, the GSE has made other suggestions such as financial issues to look at for ICANN and accountability as well as the public comment -- there are some public comments as well about the same thing. That's my concerns.

MATTHEW SHEARS:

Fantastic. Thanks very much. Who would like to take a go at those two questions?

BRUCE TONKIN: Well, I think they are basically questions about the implementation of the ATRT2 recommendations. The board's approved those recommendations, and they will be implemented. And, you know, the staff will be reporting on progress. I'm not sure whether there is a current report for this meeting, but certainly we'll be responding to that.

AVRI DORIA: And if I can add one word, I had thought about including them in my original presentation of ATRT2 items that should be considered. And I'm -- as I said with the previous question, I think they are part of the formula also that the accountability group can look at.

MATTHEW SHEARS: Thank you. Please.

JOHN CURRAN: Good morning. John current, President and CEO of ARIN, the American Registry for Internet Numbers. I have a request for Mr. Stress test, Steve DelBianco.

First, for clarity, the ARIN region is busy considering whether it has any position on ICANN accountability and they are off making a survey and answering that. Until that comes back, I don't know whether ARIN has a position.

But personally in thinking about the challenge that we have doing this, it might be helpful -- and I'd request if it was at all possible, that when you're doing the stress test, you think about not ICANN today but ICANN at potentially a future time. So, for example, identifying the IANA operator as the IANA operator, even if it is ICANN and identifying a policy body as a policy body distinct from ICANN staff or ICANN the board, the organization, because when you actually look at a stress test, for example, a stress test that identifies -- this is, you know, an example -- that the board directed to make policy that the DNS community didn't want for a certain output is different than the board directing staff to implement a policy a different way and is different than the board directing that the ICANN IANA operator put an entry in.

All three of those may have the same result but there may be different mechanisms of accountability that get triggered. So to the extent you can be specific and some of those may have multiple cases if you do that. Thoughts?

STEVE DeBIANCO:

Just a five-second response is, yes, thank you. Please send us scenarios and stress tests. And you may note on Number 10, the ccTLD redelegation, I didn't actually say ICANN in the writing. It said, quote, the entity charged with maintenance of the root zone. So it could well be a non-ICANN entity. Please contribute to the stress tests as soon as you can, John.

JOHN CURRAN: I would recommend elaborating the ones that get contributed to make sure you take them from different cases.

MATTHEW SHEARS: Thank you very much. We are going to have to make this very brief to get through the last four. So go for it.

JAMES BLADEL: I will go quickly. I'm James Bladel from GoDaddy speaking personally. And, Steve, this is about your stress tests. So no good deed...

I'm reading through these, and I do support the concept. And I think it needs to be a critical part of the naming community proposal, but I would point as that I'm reading them, I'm a little -- I'm not always clear on how we're protected from some of these scenarios now under the current engagement.

STEVE DelBIANCO: Why would that matter, James? We're not trying to look back in the past and solve things. This is simply saying we have one point to get it right.

JAMES BLADEL: If we removed the IANA transition from NTIA, how does that protect us against ICANN insolvency? Do we expect NTIA to bail

out ICANN? I'm not clear on what we're trying to say with these stress tests and how they should be included in the IANA critical path if they don't have any relevance under the current model.

STEVE DeBIANCO:

So here's a very short answer. It has nothing to do with what IANA does today. It has to do with the fact that the IANA transition is our last best point of leverage to get the accountability mechanisms we need for the ICANN of the future. Not the current board but the future board. So none of this has anything to do with the words on the paper in the IANA contract. It has to do with the presence of a piece of paper that is leverage on ICANN today that will be gone as soon as they turn over the contract.

JAMES BLADEL:

So of your list, I think that the most important one was the first one, the ability for ICANN to kind of opt out of the future AoC agreements. I think the rest of them can all be boiled down to -- and this goes back to Malcolm's point -- the rest of them can all be boiled down into one issue which is, how do we hold the board accountable. Everything else can roll up into that. Thank you.

MATTHEW SHEARS:

Thank you. Any more remote, Grace, or --

REMOTE INTERVENTION: We have a question from Robert Takacs. His question is, "in respect to participation for the ICANN accountability work stream, what I heard this morning is that consideration will be given to external participants who may not be affiliated with an external group. Is that correct?"

KEITH DRAZEK: Yes. This is Keith Drazek again. Yes, that is correct. The community working groups, the cross community working groups on both IANA transition and ICANN accountability will be open to external participation, folks who don't already or have not already identified with a particular structure. The details of that participation all still need to be worked out by the various groups, but they will be open. Thanks.

WOLF-ULRICH KNOBEN: My name is wolf-Ulrich Knobén. I'm with the internet services provider constituency in the GNSO, and I'm also a member of the ICG. The two extremes became clearer and clearer throughout this -- this discussions this week. That's okay. On the other hand, it turns out through the discussion that the accountability-related issues are mainly related to the naming community. That is also reflected on that panel, I would say. We have three members from the GNSO here and only one member from the technical community on this panel, Alissa up there representing all of the ICG. In the end the ICG has to deliver a single common proposal

to the NTIA or to the ICANN board or whomever, to the NTIA which comprises also the all accountability issues related to the naming part and throughout the technical part. So what I would like to say is here there is a -- from the very beginning here is a communication needed between these different parts, naming parts and the technical part, with regard to the impact of the -- of the recommendations which are come out from this cross community working group on accountability on this -- this IANA stewardship transition. So it is very necessary that this communication starts as soon as possible, that we are not faced in the end to have two or three boxes which are separate from each other and are not related to each other. That's my concern. Thank you.

MATTHEW SHEARS: Alissa.

ALISSA COOPER: Yeah. Thank you, Wolf-Ulrich. That is a very important distinction that you draw and I just want to reiterate that the RFP that the ICG put out asks each of the communities to detail oversight and accountability mechanisms. That includes ones that are specific to ICANN and other ones, right? Someone asked me earlier in the week like why doesn't the RFP say something specific about ICANN accountability. Well, each of the communities, they might choose or they might already have some oversight relationship

with ICANN and they might have other bodies, entities, mechanisms that enable them to hold the IANA functions operator accountable. And so for the transition plan, I agree with you, needs to cover the full scope, both accountability mechanisms related to ICANN and other ones, if other ones are proposed. The -- I think the scope for the ICANN accountability working group is probably specific to ICANN. But in the names cross community working group, the broader issues need to be addressed, if that's what the community wants to do.

MATTHEW SHEARS: Sebastien.

SEBASTIEN BACHOLLET: Hello. My name is Sebastien Bachollet. I'm still a board member for a few more hours, and I'm going to speak in French. As you can see, I do speak French, and I hope you can hear me.

Two points I would like to raise. I feel like this organization doesn't trust itself. That when we say that we need another group to supervise the other group, we already have a multistakeholder group, several of us. You do elect the board and the board members. So if you need another organism (sic) to supervise the first one, we can create 50 of those organizations. You do not have to reelect board members. You did do it. This is

a true possibility. So I do not understand why we would need something new.

My second point, let's start with ATRT 3 as soon as possible to work on what is necessary for our transition, IANA function transition and its oversight. We should start our ATRT 3 with all the elements that are linked with accountability outside of the IANA transition. Thank you very much.

AVRI DORIA:

-- so I regret that I cannot respond in French, but I agree with you. And basically it's what I've been calling sort of the infinite regress of accountability. As we start superimposing other oversight groups, we keep saying and who are they accountable to? The same multistakeholders that ATRT and the rest of the board is already accountable to. So I think we have a lot of discussion to go before we get to the point of creating a cross community working group that's other than the board, which is kind of cross community and such. So I very much agree with the point. Thank you.

KEITH DRAZEK:

Thanks, Matt. And Sebastien, I'd just like to respond. I agree with your first point. I think it's actually premature at this stage for anybody to have reached a conclusion that we should have some external body sitting over ICANN as an accountability mechanism.

I think that's certainly a topic that will be discussed. But I think there's two ways to approach this. One is evolutionary and the other is revolutionary. And I think the evolutionary approach, which I ascribe to, is that we need to find mechanisms within our community, within the existing structures, to ensure that there are redress mechanisms and that the board is held accountable to the community. So we'll have these discussions, but I -- I just wanted to support your note that, you know, I think it's a bit premature to say that we need to have some external body that is superior to the ICANN board. We just need, I think, the meaningful accountability enhancements and reforms to make sure the board is accountable to us. Thanks.

MATTHEW SHEARS:

Okay, Steve --

[Applause]

Steve and then Finn.

STEVE DeBIANCO:

I will agree with Keith and back it up one more way. Just read the bylaws. The minute the community elects a board member to represent that piece of the community, that board member is accountable to the corporation, not community. The bylaws say directors are individuals who have the duty to act in what they reasonably believe are the best interests of ICANN and not as

representatives of the entity that selected them. That is fine, that's the way the corporation has to run. But the fiduciary duty of directors is to the corporation and not the community. So the community simply wants to maintain a permanent voice and a way to recall the entire board or to challenge their decisions.

MATTHEW SHEARS: Finn, did you want to comment?

FINN PETERSON: Yes. The question, why do we need that? Well, the answer is the U.S. government is not -- not any longer there and we got to think about something. We are open for suggestion. I think I -- I mentioned that we got to have certain check and balances. And one way is to have IANA function outside ICANN. Another thing is a kind of oversight. There might be other things, and we are open to -- to look into that. I think look at from our point of view, historical has shown that it is not function right at the moment. And we are going to -- to enhance it and there might be different ways and we are going to seek that out during the next 11 months.

MATTHEW SHEARS: Grace.

REMOTE INTERVENTION: We have a question from the New York hub and it asks that in the interest of time we hold responses until after Milton's question and then respond to both, if possible. Thank you.

JOLY MacFIE: Hi, this is Joly MacFie at the Internet Society New York chapter. And my comment is brief and it's about timing, really. I don't really see the urgency on the IANA transition. It's not broken. I know that, you know, there's a time when the contract is signed again, all they've asked for is proposals. It's quite likely, it's quite possible, they won't accept the proposal and we'll just roll over another account. What is urgent, more urgent, is to do the accountability business and other matters of jurisdiction and sort those out. So I'd say, you know, what's the rush on IANA? Thank you.

MATTHEW SHEARS: Thank you. Who would like to respond to that?

MILTON MUELLER: You want me to ask my question first? That's what you said -- or do you want to answer his? They're totally different questions. Okay. So I'm Milton Mueller, Syracuse University, and also a member of the ICG and the noncommercial stakeholders group. I want to express support for the ideas that Malcolm Hutty put before you regarding what we like to call constitutional limits on

ICANN's mission, and this is an idea that unfortunately seems a bit too easy for everyone to agree with. What we tend to see is everybody says yes, of course, that should be there, and then there's no talk about how we actually implement this. So I just wanted to point out two things. One is that we -- the Internet Governance Project sort of fleshed out that idea with a particular sort of verbal formulation of how you could have such a constitutional limit on ICANN's mission and secondly, we believe that these limits should be enforceable not through an all powerful parallel board cross community working group, Steve, but by any member of the community. If you have clear rules regarding what is in and out of mission, there's no reason that that group should be empowered to enforce them as opposed to this group. I think anybody should be able to. It should be like human rights law in that respect. And I -- the thing I want to get your reaction to is, if you have some kind of severable contractual relationship between ICANN and the IANA and you have these constitutional limits, do you think that's sufficient for track one? To my mind that would be sufficient. That's all we need to do in track one of the accountabilities process. But I just wonder how many of you agree with that.

STEVE DeBIANCO:

Thanks, Milton. And I suspect the six measures we came up with really are all designed to help limit the scope with the ultimate

measure of spilling the board. And as I gave that answer to Malcolm, so it may be sufficient. But I did want to say that the Independent Review Process or IRP is invocable by anyone. It isn't just the cross community working group. My fear is, though, that if the board doesn't accept an IRP referral, they would be able to block it. And that's the point of my -- of B.C.'s mechanism of saying this cross community working group could override the board by sending a decision to the independent review panel. It could do that to supplement an individual citizen of the world who was being ignored.

AVRI DORIA:

I think that that's probably a necessary part of the solution, but I don't believe that it is sufficient for the entire solution for the IANA. Simply because even when remaining within the so-called conscribed constitutional scope they could still do the wrong thing, and I think there needs to be a strong appeals mechanism and some sort of binding nature in an appeals mechanism to go beyond just, you know, that. So I think that's a necessary component but not sufficient.

MATTHEW SHEARS:

Okay. We need to come back to the question that was asked about timing.

ALISSA COOPER:

So yeah. I've -- this question about timing has come up a few times this weekend, since the ICG has proposed a time line of specific intermediate milestones between now and September 2015. I can try and speak to it a little bit.

To me, what this question sounds like is, "How dare you try to succeed?" Right?

There's a date that was given, which was more than a year away, when the time line was published, and to me, I think we should try to hit it and we call all of the deadlines in the R -- in the timeline target deadlines.

Why not give it a go. Sometimes time pressure is useful.

If we don't make it, we will have to re-evaluate sometime next year, but given the amount of time that we have, let's attempt to be successful at least from the beginning. I mean, that's kind of standard good goal-setting practice, so I think that's what we should do and I think that's what's reflected in the -- in the ICG time line that was put out. Why not try.

MATTHEW SHEARS:

Ambassador?

AMB. BENEDICTO FONSECA: Thank you.

In regard to timing -- and I think the discussion has shown that there are two approaches, two possible approaches. One, that by September 2015 we would look into a proposal that would address mainly technical aspects and the accountability aspects attached to those, and another more comprehensive approach in which some more what I call accountability and governance plus would also be addressed.

In regard to the first approach, I would say -- and someone has said -- the system is not broken. Technically it's working well. I don't think that this whole process was treated by any technical issue and we fully -- we have full confidence that the ICG will be able to prepare a proposal that will enable the system to continue working perfectly as it does today.

So there is no, let's say (indiscernible). In that light, I think it would be a missed opportunity if we lose that -- the golden opportunity that was provided to all of us by the U.S. decision to try to improve on the organization, to improve on its accountability, governance mechanisms.

Maybe, as I have indicated -- and it is a personal view, it's not my government's view -- thinking about something that would have different speeds but that would nonetheless be agreed to by September 2015. So we'd have some measures to be implemented by September '15 but others that would entail a

roadmap but with a firm time line attached that would lead us to where we want. Thank you.

MATTHEW SHEARS:

Would anyone else like to touch on that or...

Okay. We've completely run out of time. Thank you very much, everyone, for coming and for your questions, and thank you to the remote hubs for participating and to the panel, and we wish you all the best during the rest of the day and if you have any questions, I'm sure that the panelists will be happy to chat with you afterwards.

Thanks very much.

[END OF TRANSCRIPT]