

**ICANN**  
**Transcription ICANN Copenhagen**  
**GNSO Non-Commercial Stakeholder Group (NCSG) Meeting**  
**Tuesday, 14 March 2017 at 13:45 CET**

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Tapani Tarvainen: Okay let's get on with the agenda. This is the Non-Commercial Stakeholder Group open session. I'm Tapani Tarvainen, an NCSG Chair. And you can see the agenda of up there. I hope we can hold reasonably well to it although things tend to stretch but I will try to be brief. I have just a few announcements I'd like to make at this point of things that are going to happen in the near future or are going on, had things that should have happened before but are delayed us. Things tend to be one we have the constituency review going on, our charter course for constituency review every two years. We're actually conducting the very first one scheduling it to be complete by Johannesburg meeting if possible. We already sent questions to constituency chairs to ask and we'll review them when the NCSG ExCom when we get them.

And the second project long in the tooth has been we are getting the new member database. As of until now until just a few weeks ago actually the NCSG member databases was a Google Docs spreadsheet. But now we have a CDC RM-based proper system up and running at the moment. It's we're not moving more than minimum outreach features but still new applications are going there and we are not dependent on Google Docs anymore.

And a third thing that sort of started last fall that we have a number of elections related processes to define and details to hash out we discovered, you know, at the last election that there are number of processes that are not well-defined had been ad hoc basis and people had different understanding how things were so we are trying to work those out in time before the next election. But those are just things that you can expect to be visible in our mailing list from the next few months.

And I won't take more time at this point. I've invited here the ombudsman of ICANN. He promised to speak for 30 seconds. I am giving him two minutes. Let's see if he holds to that. Please (Herb) explain.

(Herb): Thank you very much Mr. chair. That's true I promised a minute last year and almost ate up three of your precious of your time. So I look around the table and I recognize most of you so I'll keep this short. And it's always nice to drop in on the constituency meetings and say hi. Just so that you can see my face and if you ever want to drop into my office to chat or discuss any of the issues that arise in ICANN you now know my face.

One thing I would like to point out is that and congratulate but around the table there are a lot of new faces in many of the executive and the groups, the chairs and so on. So congratulations to those of you who have moved up into these leadership positions and specifically pointing out the – my friend across the table my friend who I was one of the very first people to meet him at his first ICANN meeting a few years back in Buenos Aires.

And I remember I had rarely seen so much enthusiasm and excitement in a newcomer to the organization. And I told him to hang around. I said he had a future in this organization, the organization needed people like him. The community needed that enthusiasm and that excitement about coming to an ICANN meeting. And it's so nice to see you finding your place and your direction in the organization so's congratulations specifically to you.

I have been advised that I'm going to be the point of contact for harassment issues in the organization and the community. So that's a new role and I'm very excited to look into. I have extensive experience in that in the past in organizational harassment dealing with harassment. So it is something that I look forward to and hope I'll be able to assist the community with.

And I'm also very happy to see the front and center of the expected standards of behavior and how they are showing up on Adobe Web pages and being used by many of the leaders and the chairs in the organization to point to that document to keep decorum and online behavior and in person behavior to a respectable, you know, it's important to keep people – help hold people accountable and question the decisions and things that are made by the leadership teams but at the same time it's very important to keep things respectful and constructive. So I'm very happy to see that and I wish you all an exciting and fruitful meeting today and welcome and enjoy Copenhagen if you get a chance to get out.

And please drop into my office. I have boxes of maple cookies and candies to give away. And I always invite people in because the ombudsman's office is not like the principal's office at school. It's a nice place to come chill, relax, have a cup of coffee and just chat. So thank you very much and have an excellent afternoon. Thank you Mr. chair.

Tapani Tarvainen: Thank you (Herb). So you have there's a nice guy here giving candy out. So without further ado we're still in schedule hand over to Robin Gross. Please

tell us what's going on in the accounting community on Cross Community Working Group.

Robin Gross: Thank you Tapani. My name is Robin Gross and as Tapani mentioned I represent the noncommercial stakeholders in the Cross Community Working Group on accountability. And we are a couple, almost two years into the process now. We completed Workstream 1 the end of last year and that's being implemented. And so now were working very hard on Workstream 2 which has nine sub issues. And each one is working someone independently of the different subgroups and some of them are beginning to come to conclusion at this point. For example the one on transparency, the sub group on transparency has completed its reports, it's set of recommendations. And it's been put out for public comment now. And public comment period goes until the 10th of April. And I think this is a really important subgroup and a really important issue so I would really encourage the NCSG to file a comment as part of this comment process supporting these recommendations and maybe even asking that they go a little bit further in terms of promoting transparency at ICANN.

The next one that is also coming to a conclusion at this point is the guideline for good faith for removing ICANN board members. So this has to do with indemnity indemnifying community members who want to remove their board members. This group has also finished its draft report and it just went out for public comment as well and that is open until April 24. I don't see anything terribly problematic with that particular issue either. So, you know, that one seems to be moving along. The next track is the SOAC accountability. And much of the work has been done on that. Now there was a sort of a bit of a fly in the nest. I'm not sure what the analogy is here but in the ointment I guess, a fly in the ointment where they thought they pretty much wrapped things up. And then at the meeting just before coming in here are some board members came in and had problems with some of the recommendations that were being made and so there's some pushback now. And so I'm not entirely

confident saying when that issue is going to come to conclusion. But it's moving forward.

The Human Rights Subgroup they have finalized the framework of interpretation and achieved consensus on that. So they will be putting out their report soon. The other reports that are coming soon probably in June will get diversity staff accountability, the ombudsman's office. The review of the CEP not too much has happened on that one yet. We need people to put input people who have participated in CEPs in the past who to provide us with some data and some facts about what that experience was like and how that can be improved. So if anyone here was involved in the CEP or knows someone who was find Ed Morris and let them know so he can give you a questionnaire and ask you about your experience in that process so that one can actually move forward.

And then of course the final subgroup on jurisdiction which remains extremely contentious. And there's a lot of discussion about what can be discussed and what's in scope. There are some people in the group who would like to see ICANN headquarters move overseas outside of the United States. And there are – and that's somewhat may be their goal with this – for this group perhaps. There are others who for whom it's almost like a sacred cow and that ICANN can't leave the United States in their view. So as you can imagine there's a bit of a tussle going on in that group. So they've sent out a questionnaire to the different groups in the community to seek some information about people's expectations and belief on this. And the questionnaire response time goes until April 17. So if anyone would like to participate in that questionnaire it's open to anyone that's a good opportunity to get engaged on that. So that's sort of the real quick high level in terms of where the different groups are now.

I expect that we'll have – this hasn't been decided yet but I expect that we'll have individual, periods for each one of the subgroups and then at the end sort of put it all together in one big package. And then it goes out in public

comment in a package format whereby groups will mainly be looking for inconsistencies between some of the work that's been done in the different groups and make sure that everything is all coordinated and on the same page. It won't be a time to be bringing up entirely new issues to try to get into the reports but it'll be mainly about looking for conformity and that their package holds together as a package.

So that's sort of where we are on all these issues and a bit of a timeline. I expect we'll probably have public comment on the package towards the end of this year. It's not for sure, you know, because we're still waiting for a lot of these groups to finish up but that's an estimate that I would give at this point. So I don't know if anyone has any questions on any of these issues or comments?

Tapani Tarvainen: Thank you Robin. I see that (Niels) has a question immediately.

(Niels): A small correction. The Human Rights Subgroup hasn't got consensus on the framework interpretation because the framework interpretation should also consider a considerations document. So that's why is the framework of interpretation was retracted. And currently it's working on the considerations document. But the drafting team within the Human Rights Subgroup now has consensus when the coming weeks we'll discuss the considerations document within the subgroup. When we have consideration – consensus on that it'll will be merged with the framework interpretation documents and then forwarded to the CCWG plenary.

Tapani Tarvainen: Thank you (Niels). And that's actually a very good example of the complex process within ICANN. Anybody else have questions about this or comments? I guess Robin and (Niels) they're comprehensive enough together to cover this as well as anybody needs to do that now. So let's move on Kathy?

Kathy Kleiman: I have a question...

((Crosstalk))

Tapani Tarvainen: Okay. Okay.

Kathy Kleiman: Kathy (unintelligible). What help do you guys need?

Robin Gross: I think at this point it really depends on what the different subgroup is. Like for example on the CEP one on the jurisdiction one we need data. We need voices from the community to tell us about their experiences. On some of the other ones where the reports have already gone out like the transparency and the good faith conduct we would need drafters for NCSG's public comments. So, you know, kind of depends on what the specific issue is. But that's pretty much what we need are drafters and people to provide answers to the questionnaires. And again if you've had experience in the CEP just talked to Ed and make sure you get your data, your experience in the record for that.

Tapani Tarvainen: Thank you. I see (Desiree).

(Desiree): Yes I have a follow-up question in terms of then you also need a deadline. It seems like good things happen when you have a deadline. So I wonder if the working group has one?

Tapani Tarvainen: Kathy do you have a comment? No? Okay.

Woman: (Unintelligible) questions.

Tapani Tarvainen: Robin do you have an answer?

Robin Gross: Okay so it's not like a drop dead deadline but we're hoping by the end of ICANN 59 that the report will be completed and then we could do the package for public comment.

Tapani Tarvainen: So non-dead deadline okay. Any other questions, comments?

Woman: (Unintelligible).

Tapani Tarvainen: Oh (Matthew) please go ahead.

(Matthew): Thanks Robin, just a general question. Are you saying across the working the work effort here that kind of exhaustion factor setting in to you think? Do you think we need to rally the forces for a last push I mean or do you feel it's basically in the hands of those who have the stamina to see this through to the end which I think is a decreasing number of individuals?

Robin Gross: Yes I think that for those issues that have not wrapped up yet in terms of their recommendations like the jurisdiction and some of these thornier ones yes you can still participate. And we need people to be participating in those groups that haven't quite wrapped up yet. But with some of the other ones like the transparency and the good-faith that package or that subgroup's material is pretty much done. It's out for comments now. So if you want to work on that issue really the thing to be working on is a public comment and as opposed to joining the group to work on it.

Tapani Tarvainen: Thank you Robin and since (Patios) (unintelligible) typed we'll move on to the next topic at this point. Now Kathy and Martin please go ahead about RPM. And for reminder to everybody please introduce yourselves when speaking.

Kathy Kleiman: Kathy Kleiman and Martin and I flipped a coin. I lost so I get to start. This is about the Rights Protection Mechanism Policy Development Process Working Group otherwise shortened to RPM Working Group as opposed to the RDS Working Group, the Registry Directory Services. So this is RPM rights protection mechanisms. And I'm the co-chair of the working group along with Phil Corwin and J. Scott Evans. Phil's with the Business Constituency and Jay Scott Evans is with the Intellectual Property

Constituency. And I kind of thought we needed to balance it out with, you know, some noncommercial stuff. And what I'd like to know is who around the table is actually a member or an observer of the Rights Protection Mechanism Working Group?

Fantastic. We need more. We need more people. What we're looking at now this is a very, very long and big PDP. What we are looking at now is something called the trademark clearinghouse. And the trademark clearinghouse is a database that was created in the old days before we had new gTLDs. If someone rolled out a new top level domain like .biz or .info they asked trademark owners who were interested to submit their own trademarks. And each affiliate from Nuestar each created their own trademark database. And you had to pay to put your trademark in there and then you had to pay to use it in a special period. Some called it a sunrise, some called it others but it was right of first registration for those who were in the trademark database.

And the trademark owner said, "Wait a second you're going to rule out 1000 new top level domains. We don't want to be in 1000 new databases. Just create one database. Make it efficient. Make it cheaper for us."

And so we did. And this was about five years ago in a set of rules called the STI recommendations that were adopted by the GNSO council. This is special trademarks initiative adopted by the GNSO Council and the board. And now we're reviewing what we created. And it turns out we created a secret database of a lot of trademarks that we can't look out. But apparently they include words like love and the letter M and it's interesting. And this is used for two things. One is the right of first registration and all new gTLDs regardless of their top level use hold a sunrise period And that's a right of first registration for anyone in the trademark clearinghouse.

And then for 90 days after the – so you'd have a sunrise period. You may have something called a land rush period where everyone else who's kind of

really interested in that top level gets to register even if they don't have a trademark in there. So if you want computer.tech you're going to come in the second period called the land rush and you'll pay extra for that word and you'll get it during the land rush.

But then you get general availability. And for the first 90 days after general availability our ICANN rules say that if you are registering with a registrant right, so if you are registering a string and that string happens to match something in the trademark clearinghouse so if I register L-O-V-E.tech I'm going to get a trademarks claims notice because that word is in the trademark clearinghouse. And it will say, "Hey you're registering something identical to something in the trademark clearinghouse." And they will show me the registration, kind of basic about the registration and the trademark clearinghouse. So the trademark that's there, the categories different services in which that trademark is registered the jurisdiction of that trademark. And then I can decide know mylove.tech is a completely different use and I want to go forward with the registration or I'm going to turn around.

We have a new study that says 93.7% of registrants are turning around. That's a massive chilling effect which Robin told us about years ago that there would be a chilling effect of this database. So it turns out that there is but may be everybody's a cyber squatter. I'm not so convinced but I'm going to let Martin give - but that's what we're looking at now is the trademark clearinghouse database. We're reviewing it. We're thinking about it. We're debating it. We have 16 questions that we're looking at. And we invite you to join us in that evaluation.

Martin's also going to share but then we go on to looking at the uniform rapid suspension and the uniform dispute resolution policy which are domain name dispute policies. So Martin please kind of the NCSG take on what we're trying to do. Thanks.

Martin Silver: Okay well may we - I would like to first address what are which we are discussing now so you get an idea of what are the things that we are trying to address and then the specific NCSG review of that problem.

I'm going to choose - or we're not going through 16 questions. I'm just going to choose...

Kathy Kleiman: Sure.

Martin Silver: ...some of them. For instance in Question Number 8 if you want to follow it later the question is how are geographical indications what are the definition of origin and but those applications of origin going to be handled by the trademark clearinghouse provider? The draft indications or they protected design of origin are usually the products that are made within a region. The classic example is champagne. There are several like Wisconsin cheeses you can find a lot of them.

And the thing we did is that traffic indications are not trademarks. And by definition they have a different set of laws protecting them. And so one of the questions is the trademark clearinghouse as it says is for trademarks. And one of the questions we are doing is should we also protect the geographic indications? For instance the champagne region that protects the champagne name in every part at all these are very timeless case. I mean they will go to adjudication if someone outside, a producer of sparkling wine outside champagne produce champagne they champagne let's call it Korbel will come after you and will sue you. And they're protected by treaties and laws all along the world.

But this is not about the trademark. This is about confusing the consumer trying to sell something that is not because the uniqueness of the region, the uniqueness of the culture that makes it maybe it is the soil, the different (unintelligible) that give that geographic place a specific (unintelligible) to that product that's what the (unintelligible) is trying to protect. So if I'm buying the

champagne I don't only want to be the method of champagne. I want it to be in the soil of champagne with the water of champagne with the people of the community of champagne producing it.

So the question is why should we or should we not protect these people that also have product that have protection that protects consumers and producers both from confusion? Why shouldn't we allow them as well to get into the same (unintelligible) because at the end it may seem that they were – might be some similarities between one - a trademark and a traffic indicators. That's the discussion.

Right now and the SDIs their recommendations are - he said that, "No, we're not going to handle traffic indicators in the trademark clearinghouse and the trademark clearinghouse is not handling them." But we are asking the question, "Should we handle them?" And the discussion behind this would go "Would say what is the risk of letting champagne people, people that produce fresh champagne to get into the trademark clearinghouse and be able to block champagne from different things?" From a non-commercial stakeholder perspective -- of course this is a personal opinion -- is that they decreases the community that is for instance in champagne. Other people that merely don't produce wine they also want to use champagne for registry purposes. Maybe they have a school, they have an NGO, they just live there. So what is – what's really the – where do we put the end on to who we give priority and protection when it comes to this?

So in my opinion the problem at this – this is - I used this example because it really always use the same sort of test. You know, what's the dangers for the civil society if we let this go through?

And the risk of this is we're going to be expanding the trademark training clearinghouse scope even to places where it's not even secure who is the owner, who owns champagne as a traffic indicator? No one. It's right. And we protect it to the both consumers and producers. But the fact is we couldn't

really address who has the right to effectively go to the trademark clearinghouse and register champagne and who doesn't. But because we are (unintelligible) to wine but we could also say that we have champagne for other problems.

Kathy Kleiman: In fact in the US we use champagne of as a phrase. The champagne of cheeses, the champagne of schools. We use it as a general kind of noncommercial phrase.

Martin Silver: So this just is more example but we can also go for design marks. We are also discussing the difference between marks, trademarks that only have strings of words between the ones that have string of words associated with a specific image, logo or (direct) expression. That's the same thing.

Are we broadening the scope of a trademark clearinghouse? Are we endangering – in danger of being abused and being even more ostracized from the system of the trademark clearinghouse? That's – I think that's – I tried to summarize what that example is. Anyone has in a specific question I would...

Tapani Tarvainen: Thank you Martin. Our time is very short. Some quick comment if somebody wants to intervene at this point. Okay please introduce yourself.

(Eric Vashover): (Eric Vashover), (unintelligible) Vienna. Just a qual question. Is geographic denominations are they part of the trademark clearinghouse or not?

Kathy Kleiman: In the United States geographic indications can get a trademark. In Europe they're protected under treaty and statute. It was our understanding that only trademarks would go into the trademark clearing. Actually let me just quote the United States GAC that appeared before the working group on our Saturday session and what we understand from Deloitte who is the provider of the front end of the trademark clearinghouse are the ones who take it in they – that they are accepting geographic indications that are not trademarks.

They can't tell us what they are because it's confidential but they are – we're understanding they're accepting geographic indications. And there's indications they want to accept a lot more. Does that answer your question?

Tapani Tarvainen: Thank you Kathy. And we...

Kathy Kleiman: Do we have any volunteers? Anybody want to join us in this deep dive into the right to words, right to trademarks, the right to...

Tapani Tarvainen: And that's a question after every questions session we have. More volunteers are needed. But as we really don't have more time we have I hope Larisa Gurnick from the staff to present a bit update on your stuff. Can you come over here?

Larisa Gurnick: Hello everybody. Thanks for having us this afternoon. That is not my slides. It's the reviews. Welcome to the year of the reviews. There's 11 reviews going on and I'm here to give you a brief overview on what's happening with the reviews. Oh here we go. Okay next slide please. (Unintelligible) Are you in control? Who's controlling the slides?

Man: (Unintelligible).

Larisa Gurnick: I don't know.

Man: Right here?

Larisa Gurnick: Oh good thank you. I don't realize that. Thank you very much. Okay let's just keep going to the next one. Thanks. So I think this group already knows the purpose of reviews and we're talking about organizational reviews as well as specific reviews. And ultimately at the highest level it's reviews support of culture of continuous improvement. It's a process of looking at what's working, what's not working, how to improve it in an effective and productive

way so that positive changes can happen on a go forward basis. Next slide please.

So we have two types of reviews that are going on. The orange color designates organizational reviews. All of these reviews are now mandated by the ICANN bylaws. The orange colors are the reviews such as the one that the GNSO had gone through several years ago. And the blue reviews are what used to be called the affirmation of commitment reviews which are now also part of the bylaws. Both sets of reviews are in a five-year cycle now since the bylaws were adopted. Essentially every five years all these areas and organizations are reviewed with some exceptions on the organizational review side which allows for some flexibility and the timing at the discretion of the board with community input.

So it's a very busy schedule. And if you're wondering why it's staggered the way it is the reviews are supposed to take place five – within five years from a trigger date which is triggered by the last review. So it's not – it's kind of the schedule had been set in motion. Yes?

Woman: Beginning of the last review at the end of the last review? Thanks for taking the question.

Larisa Gurnick: Sure. The end of last review. So it doesn't consider the fact that a particular review may have taken let's say two years or three years and it certainly doesn't consider how long the implementation work took. So I think for a lot of people in the community it feels like there's always some review related activity underway. And I think the review of the GNSO is probably a very good example. The final report of the examiner was published in the September 2015. Then the GNSO itself went through some consideration of the recommendation, some prioritization and assessment which then went to the board, board took action then another group worked on the implementation planning.

And I think it's just in March just now that the implementation work on the report that was published back in September 2015 is being planned. So you can see how – you can now understand hopefully why the lines are so long and duration is somewhat arbitrary because we never know exactly how long it's going to take but it's meant to show that it takes a long time. Next slide please. And I am happy to take questions as we go through this. I hope to be as interruptive as possible.

So this is – oops, sorry one back. So the purpose of each of the reviewers outlined here or the high level topics again the blue reviews are what we now call specific reviews. And what's different about them from organizational reviews is that they're conducted by community members. The orange, the organizational reviews are conducted by independent third parties that are brought in to do the work. But essentially organizational reviews look at the effectiveness of the different structures or groups within the ICANN – don't want to use the word organization, within the ICANN structure and whether that particular group has fulfilled its mission and fulfilling its purpose and mission and operating effectively. Next slide please.

So quick status on organizational reviews. We have three that are currently in planning phase, RSAC SSAC and ccNSO. We have the GNSO review which you're probably most familiar with. I already talked about that. It's in the implementation phase. The At-Large review is going on right now. Actually there will be a public session tomorrow with the independent examiner (Etems) for everyone in the community to provide feedback and have a discussion with the independent examiner on the draft report that they put together for the At-Large review. The review of the Nominating Committee is about to get kicked off. We launched a request for proposal. Proposals have come in and evaluations need to be take – need to take place before the review actually begins in the next month or so. And the ASO which actually manages their own review process but just for to give you all a complete picture of the review of the ASO managed by the NRO is underway currently as well.

Stephanie?

Stephanie Perrin: Thanks very much Stephanie Perrin for the record. Just wondering in the contracting process its staff that manages data and lets the contract correct?

Larisa Gurnick: For organizational reviews.

Stephanie Perrin: Right. So for instance I think it's no secret that we were not very happy with Westlake's performance. And to my shock I discovered that they'd also reviewed ALC several years previously and ALAC wasn't happy over that review. If you were to decide that Westlake has the experience with the organization and should do the I don't know, ASO review there's no real appeal period during which the stakeholders can say what not again or right?

Larisa Gurnick: Well yes so let me explain the process as it is now which may not have always been the case. For some reason this isn't – hopefully everybody can hear me. Okay. The RFP is run by ICANN staff in accordance with the procurement best practices. The process usually begins by us working with the group under review to agree on several key items that are included in the RFP. And that's scope of work. It's selection criteria for the independent examiner and it's the timeline and the deliverables. So we do not begin the request for proposals until there is agreement. And in the case of selection criteria that's a very important consideration.

After we follow the selection criteria that are established in the RFP there is a team within staff that conducts the assessment. And then we present the outcome of our final assessment and all the due diligence to the Organizational Effectiveness Committee whose job it is to oversee the process. So a lot of the questions that you mentioned we actually are now in the position to explain and work with the board members whose responsibility it is to oversee the review to make sure that we've considered and that there is institutional knowledge about past experiences and whether they – and

starting with the GNSO review I think that was the first time that people that were on the Review Working Party actually completed a survey. And the survey addressed satisfaction with the independent examiner, satisfaction with the process with which the review was run, the work of the staff, my team and others as well as the review working party framework itself because that was the first time that we used that framework. And the responses were it clearly indicated the concerns and the dissatisfaction.

And the work continues to come up with some sort of a quality framework so that when examiners are brought in they are knowledgeable and familiar with the ICANN organization that's under review but also independent and can deliver the quality. And there's actually some other process improvements that are getting implemented that we think will address some of these concerns which is to separate the assessment phase from the recommendation phase. What we found is that it helps for the independent examiners to determine what's working, what's not working, get agreement with the group that's being impacted on that first before they start working on recommendations. That will also enable community itself to have a more leading role in providing solutions to the problems because for that phase clearly that internal knowledge is much more key. We're testing it out in the NonCom review next and we'll see how it goes. Next slide please. Oh I'm sorry.

Stefania Mllan: Stefania Milan for the record. I'm just curious about the separation in the assessments on the recommendation. The recommendation writing up write-up will still be with the independent examiner though. Am I correct?

Larisa Gurnick: That's correct for this cycle of reviews because as you can see we're working through the number two review for all the organizations. Any future considerations for changing the model or looking for a different way to structure this would be considered after we completed the cycle. Okay. Next slide please.

I'm not going to talk about this in too, too much detail. I think the interesting data point here is the diversity information on the right-hand side. This is sport for specific review teams. And you can see the representation of the members that have served. So this covers the current review team which is the SSR and NCCT as well as the past reviews which used to be the AOC reviews.

Man: (Unintelligible) speaking. Just regarding those data is it possible to send them to the Diversity Subgroup because we are collecting data about the different SOAC? And I think we're – I was thinking about the case of review teams because we want to improve the diversity there.

Larisa Gurnick: Absolutely.

Man; Hurry up.

Larisa Gurnick: Hurry up. Okay speak clearly quickly. Next slide please. Okay and this is the last slide so it's going to go pretty quick. Operating standards are called for in the bylaws. This is a new feature to help guide how specific reviews and reviews in general are conducted. So there was a session yesterday and we've had several sessions with the community recognizing how conflicted the schedule has been. You'll be hearing a lot more about operating standards so that people have a chance to weigh in. But fundamentally it's supposed to be a roadmap to help guide the reviews, specific reviews and organizational reviews to a certain extent. But I think that the drama if you will or the level of interest is definitely in the specific reviews because there's many new processes. There's some new processes that – well they're new so we don't have best practices. We don't have the experience to fall back on. So it really has to be developed from the start.

And the super challenging part there is we're fixing the plane while we're flying it because we have four reviews. So basically every specific review that is mandated by the bylaws is in some state of motion at the moment as you

saw from the first side. So more information to come on this but this work is undergoing and we'll continue to have community consultations on this topic.

Woman: Could you go back to the timeline slide for a second all the way at the beginning? Check - yes there. The CCT just put out I just wanted to see its - they've been meeting since 2015. Shouldn't they be like close to the end of their timeline? They just put out their draft recommendations.

Larisa Gurnick: Yes. So I think they got kicked off. The process got kicked off in October of 2015. They really convened in the beginning of 2016. They just published their draft report and I think the expectation is that they would wrap up sometime later this year.

Remember what you see is also the implementation phase. The line is indicative of the review, the approval by the board and then the implementation effort. That's why you're probably thinking that it looks like it's it should be closer to completion but the implementation of their recommendations is likely to take some time.

Woman: Okay the group itself will be convened at a certain point close to where this line is fairly.

Larisa Gurnick: Yes so the line is where we are now and I don't have the latest estimates of when they would conclude their work but it's expected it would be later this year.

Stephanie Perrin: Thanks, Stephanie Perrin again. I noticed that the Whois review the AWG just sent out an email saying, "We're still looking for volunteers for the Whois review." How long is that process of rounding up potential members going to go on? It seems to me it's been quite a while and is there a problem?

Larisa Gurnick: Well I think that the challenge with that review was that it was launched at the end of October based on bylaws mandate right after the new bylaws were

adopted. So under the new bylaws the decision-making, the selection process for the review teams is done by the SOAC leadership. And there's a whole new process.

And there's been some discussion about the scope whether there – that review should be under limited scope or not. So it's that open discussion that resulted in the call for volunteers getting extended because there was some concerns that people might apply under the assumption of one type of scope or another and this was just to give everybody a chance.

Tapani Tarvainen: Thank you (Larissa). I'm afraid we don't have any more time for this but...

Larisa Gurnick: No problem. We can come back anytime.

Tapani Tarvainen: Yes. Thank you very much for you.

Larisa Gurnick: Thank you. Thank you for your time.

Tapani Tarvainen: Now next on our agenda is a little interview of a board member candidates. We thought of various ways of setting up model dual and the things like that but figured it's better to give you each chance separately. We'll kick Matthew out and Markus will speak for his 15 minutes and then swap after that if that's okay with you? I guess it's perhaps the easiest to do that way. And we are a bit behind schedule. We are eating up on our coffee break but we'll survive.

So I'll give Markus a brief time to start and then we'll have questions. We had one question sent out in advance expect to have figured out how to reply to that but start with a brief introduction.

Markus Kummer: Thank you Tapani. Hi everyone, great pleasure for me to be here. I'm off to do something I'm not very good at. That is selling myself. That's one thing I A, don't like it and B, I'm just not very good at it.

But I have known many of you for many years and some of you only for the past three years. And had a first discussion in Reykjavík for those who were there. And my point was I am ready to serve for another three years always assuming that you are comfortable with me.

It takes for a board member it takes some time to find his or her way around the board and I think after three years you are beginning to be able to reap the fruits of your investment in time and effort. And it seems that the NCPH has a tendency to replace their elected board member every three years. And in my humble view this is not necessarily to enhance the impact you may have on the board work.

I also think well first of all let me say my motivation has been involved in this area of Internet governance multi-stakeholder operation for the past 15 years. I'm a firm believer in the importance of that. And at the same time I'm a firm believer in the importance of ICANN's mission. And I'm willing to contribute to that.

And I do realize that there are some structural issues that really came to the floor in our discussion we had in Reykjavík, I mean came to the floor I think every ICANN meeting. When we have the Constituency Day meet with the various components of the GNSO but it is not a very happy marriage and there's I think a strong desire to look at the broader picture of how the GNSO works.

This is also one of the issues we discussed in Reykjavík. And I tend to agree. And I do understand that many of you and from both sides of the NCPH don't like to have a compromise candidate that they would rather like to select someone from their own group but that is what it is. And it seems difficult for you to agree on a candidate that comes from within the groups.

So if I'm the smallest common denominator between the two sides so be it. I accept that but at the same time obviously I'm not only a strong believer in

multi-stakeholder cooperation. I'm also a strong believer in democracy and it is of course you're right to change the board member you are selecting.

During the transition I argued against the right to recall a board member at any time because I consider it disruptive. But I also said you have the opportunity not to reelect a board member you are not comfortable with. And that is the phase we are in. And obviously I'm ready to accept your verdict and I'm happy to answer your questions. But again I think my track record also before joining the ICANN board shows that I have been able to listen to various groups concerns and in an impartial way.

And I have a government background but I have experience with working with other stakeholders that your group is what in UN languages usually called civil society and that your members are a government representative to the World Summit on the Information Society the first encounter with civil society were not always smooth. But I did learn to appreciate their contribution and their role as a watchdog of what governments do. And in that sense I also appreciate your role maybe more than other board members because I do understand the importance you guys have in making the organization accountable as watchdogs of the broader crowd of Internet users. So with that I'm happy to answer any questions.

Tapani Tarvainen: Thank you Markus. I think at this point since we have one question sent to you in advance we go to that and then open up the floor for open questions. (Miriam) can you show it in the screen? Okay we wanted to know how you interpret this thing.

Markus Kummer: Well this is a lovely text. I would say could have been drafted by diplomats. It has on the one hand a very affirmative language, ICANN shall that is a command. And shall do what? Shall seek. It shall try. So this is very nice. It's aspirational in many a way. And there is another nice word which is open for interpretation that is meaningfully participate. It doesn't say what meaningful

participation actually means so there is a clear commitment that ICANN shall try to do something and that is make meaningful participation possible.

Now this I think is difficult to learn in the abstract. I think my approach to that would be to wait for a concrete case and you have a nonprofit claimant wants to be part of it but then discuss what it means. But they are obviously various aspects to that this open this transparency of the process. That does it mean that the claimant has to be physically present and whatever? So my approach to that would be a very pragmatic approach and look at what is actually the best way forward. And obviously it was have to look at budgetary implications. These things are not always neutral from a budgetary point of view.

Tapani Tarvainen: Thank you. Ed this was your question. Would you like to comment? No?

Ed Morris           Both candidates have the option to come up with some sort of plan. I just wanted to see how this aspirational thing may be actualized. Is – we will be dealing with this during the next term. Thanks.

Tapani Tarvainen: Okay. Then open floor for questions. What do you want to know? Sam?

Sam Lanfranco:   Okay Sam Lanfranco for the record. I have a question about improving board accountability. The – there are currently processes underway to introduce ways of removing the board or removing a board member. I think of those as the nuclear option. In most organizations there are other means. If the organizations are stakeholder organizations, shareholder organizations it can be done through the AGM and shareholder motions and so forth. What are your views on ways of increasing ongoing board accountability outside the fiduciary area?

Markus Kummer: Thank you for the question. I think transparency is a big part of the game. And I think a lot of the frustration within the community with the board has been about perceived lack of transparency. The board meets somewhere

behind closed doors and you don't know what the board is discussing. And then obviously that has raised a lot of speculation. I think by enhancing transparency we would go a long way in enhancing accountability.

Now we have been discussing this since I joined the board. We agreed in principle to make all board sessions open almost a year ago. And for the first time we had an open board sessions this weekend when we discussed the anti-harassment policy that was open on Adobe Connect and also the budget. But it's a long way to go and it has proven very difficult for various reasons.

But I also felt I think the Helsinki meeting which had more unstructured time and allowed for more informal interaction of the board with various members of the community had a positive effect. And by coming out from the ivory tower and to interact more with the community I think would go a long way in also enhancing the accountability apart from all the measures that are foreseen in the bylaws I would put that at sort of heart of the matter.

And the board actually has set up a trust working group because there is a feeling that there is also a lack of trust. But at the same time I feel the IANA transition has had some unintended consequence, had a positive impact as it taught the community to work together sitting around the same table at the same time. So these are my off the cuff reactions on your question.

Tapani Tarvainen: Thank you. I see Stefania next.

Stefania Milan: Stefania Milan for the record. Thank you Markus for the nice presentation for a very honest open presentation of yourself and why we should vote for you. Now the angle I take here is its strategic. So as you know it's always (intra) house negotiation issue. And worrying all about that I would like to ask you why should the other half of the house want you, vote for you?

Markus Kummer: Well there is a saying that for the devil you know then the devil you don't know. It's – but at the same time I think one as I said I have now been on the board for three years. I'm in various key committees where I can actually have an impact. And I do understand the structural problem you have between the two sides of the house.

And I would say I may be more credible as an outsider to argue in your favor than somebody that comes from within your group who argues for changes and the reaction will be yes he or she would. That's normal, you always ask for more. Whereas I have a little bit more independent view on that. I don't argue for myself. I would just be - but I would argue for somebody else.

And also I think I would not seek a third term. I think two terms two times years is enough I think. And that I would say is exactly the same speech I will give it a few minutes later I will meet the ICP Constituency. And that's I mean I can say the same thing to them look I'm not a trademark lawyer but I have working for the government I had things to do with intellectual property. I do understand the importance some groups attached to it as I do understand that other groups have other positions. But I'm not from the particular tribe but I can be a kind of neutral auditor arbiter between some firmly entrenched positions.

Tapani Tarvainen: Thank you. In the name of fairness I will be cutting this short. We have 15 minutes. Poncelet it's yours.

Poncelet Ileleji: Poncelet for the record. My question to you Markus within your three years of your service on the board what do you think will be your major - has been your major landmark in regards to what you think you have done that has influenced the work of or maybe the work of the NCSG much better? Thank you.

Markus Kummer: Well not surprisingly I have been fairly engaged in the area of Internet governance. And I argued strongly that the board set up a group on Internet

governance. Precisely there is and you also have a Cross Community Working Group and many members of this group are a member of the Cross Community Working Group on Internet governance.

I think before there are too many initiatives happening without having any - without getting any guidance from within the community. And I think by having reestablish that principle that staff does not go off on certain tracks without having an interaction with the board but also then with the community. I think I at least would consider that important. But I saw Ed had a question and he made it clear that he doesn't dislike me personally he would like somebody else as a board member. I would like to listen to your question.

Ed Morris:

Markus I'm still undecided. I know you're laughing at that but there is - you know, that's not fair to me. And that's - I'm wrestling with this. I like Matt a lot. I've worked with Matt. I've known you since 1992. But one of your votes does disturb me. And I wanted to give you an opportunity to explain it to me and others who had charged with actually making the vote.

So I want to take you back to February of last year -- a long time ago. I haven't prepped anyone for this question. We had just finished a yearlong life devotional on Workstream 1. We had a report out.

One of the big battles for the NCSG was in terms of governing power. We had our final report. Public comments were closed. We had some called the GAC carve out which came from the NCSG, still didn't go far enough for some of us. Robin Gross wrote a brilliant minority viewpoint in the final report as did Olga Cavalli from the other side.

The report was getting ready to be printed. I even have the time. I remember it was Valentine's Day weekend. I wound up spending that dealing with ICANN stuff and that was not popular in my family and with friends. And - but Friday afternoon Steve Crocker sent an email. He said basically, "This isn't

an acceptable. You're taking too much power away from governments." This is after the deadlines.

And so the tri-chairs of the CCWG did their best. They schedule a vote, four votes. And two of them were related saying, "Should we have sent the report we approve as a community in the bottom-up process or do we not send the report and change it according to the board's wishes?" And the board at this time was sending message, well maybe we won't send this to NCI...

Tapani Tarvainen: Ed we're running out of time.

Ed Morris: Okay so Milton Mueller wrote that clearly the board is laboring under the mentality of the pre-reform ICANN in which the board had completely unchecked outcomes regardless of the bottom-up process. Now here's the problem. We had the vote. Ten members of the NCSG all voted not to send the report, ten of the 14 who didn't. Some of them are in this room. I won't go down there names. There was no NCSG member that voted not to send it as is.

And in terms of those who voted to send to stop the report to not send it so we could alter it for Dr. Crocker and the board 29 people supported that including 11 board members and two staff members. My concern was that on this issue which was to me it really goes to the heart of who we are. We have dealt with this in a bottom-up matter. We have this report. It's ready to go. Oh, the board says no.

You sided with the board, Matt Shears sided with the community. Can you explain that vote please?

Tapani Tarvainen: Need a coffee break.

Markus Kummer: Well first my apologies if I misinterpreted that with you but I thought that's what I had heard in Reykjavik but as I said my apologies. And the other

question is well again that goes to board dynamics. They - life is made of compromising. Sometimes well there's is a saying in diplomacy you always say everybody is equally unhappy. Now here I take it that one side was unhappier than the other side but I can also assure you the board was not particularly happy about the situation. But it was felt at the time to be a risk of capsizing.

But look we could discuss I think for hours on that. And mistakes I think have happened in the process of the transition but at the same time we went through it and I think we came out of it stronger than we entered. But again that's...

Tapani Tarvainen: Thank you Markus but really can't afford any more time.

Man: All the board members...

((Crosstalk))

Tapani Tarvainen: Your mic the sound is cut off. And I'm keeping it cut. Please we don't have time.

Ed Morris: You showed up for the CCWG sessions more than any other board member to participate other than (Liz) so thank you for doing that.

Tapani Tarvainen: Okay thank you Markus. And now we have exceeded our time so much. Thank you for giving - thank you. Yes. With this all the time we'll have a - a five minute coffee break which was supposed to be 15 but we'll make do. Thank you.

Man: Thanks so much.

Tapani Tarvainen: Thank you.

Woman: (Unintelligible).

Tapani Tarvainen: Okay everybody now we are continuing with our next board candidate. Since Markus exceeded his time we'll give the same amount of time to Matthew which means the coffee break will be short but there will be time for coffee break, about five minutes.

Man: Five minutes yes?

Tapani Tarvainen: Not now, after Matthew's presentation.

((Crosstalk))

Tapani Tarvainen: I said not now come on.

Man: I'll be the (unintelligible).

Tapani Tarvainen: Yes you always do. But so Matthew tell them what...

Man: Matthew.

Tapani Tarvainen: So Matthew tell them what they want to hear.

Matthew Shears: Great thank you. They want their coffee Tapani so I suspect. Okay so let me say from the outset that two things, one of which I'm meeting with the business community tomorrow morning. And I think I'm much more nervous talking to you now than I would be to them because you know me.

And the second thing is I sent around - I'm not sure it probably didn't go to everybody and I apologize for that. I did send the road a little bit of information about me, my background and what I've done so I can probably start there if that will be useful otherwise I'm happy just to jump into questions or okay, so background.

So I have had about 2/3 of my career has been in the commercial space working for companies. I've worked for AT&T, Cisco (Teledesax) which is a satellite startup. But I moved to ISOC and spent five years at ISOC in the technical community doing public policy. And then for the past four to five years I've been with CDT in the space that you know me in. I started out with CDT at – in 2012 at the IGS in (Bacu) and have been mostly focused on Internet governance in working for CDT, doing some human rights work and some development work but mostly focused on Internet governance. And that's what brought me into ICANN as I think you all know obviously when NTIA made its announcement back in 2014. And that's what I have been largely focused on since that time.

From a personal perspective I'm a British national. I think there have been some concerns raised as to whether or not I was a Brit or from the US. I am a UK passport holder. So I'm married I have two kids. They're now either in university or going to university which is a relief I can tell you, spend most of my life outside the UK. Was - lived in the UK till I was 10, lived in France, US, Belgium for a long time. I did European affairs in Belgium back in the 1990s which shows how old I am and then the Netherlands, Denmark and now back to the UK. So always had a bit of a peripatetic lifestyle.

So that's my kind of personal background. I try as you probably noticed to try and keep a separation between my work and my personal life and if anybody else - if anybody wants to know more on that I'm very happy to share.

My time at ICANN as I think many of you know has largely been on the accountability work. And I hate to say it and Rafik has prevented me from using this term in the past but the accountability work has given me a governance bug. And that's really what fascinates me now. I mean I love the policy side to it of course but the notion of being able to look at an organization, change the structure of that organization, replace a government's role in the DNS, change accountability of ICANN which is a

unique structure is – has been from my perspective from a learning perspective fascinating.

And that's one of the reasons why I put myself forward for the board because in many ways the, from my personal perspective the governance dimension of the work that we're doing is increasingly important for ICANN going forward. We have this new ICANN in place. But we haven't got the communities haven't got around to truly grappling with it. The board I don't think has fully recognized its new role and I think there will be time and it'll take possibly years for us to come to a realization of what this ICANN is like.

And just at lunchtime Ed and I and (Stephani) were dealing with GNSO bylaws change and it just goes to show how much work we have to do across – on all fronts with this new ICANN. So this is what's driving me to go to the board.

And there are a couple of other things. I noted in when we were at the intersessional in Iceland I put my name forward. I said I was thinking about it. What kind of tipped me over to it was the discussions that I had in Iceland but also the thought that we need people to protect what we've achieved right? We can't have situations where we have parallel policy processes going on. We need to ensure that the roles and responsibilities are clear going forward. And that's one of the things I think that this role should have as a primary concern and occupation.

And the other thing is, is I'm recognize the - there are fiduciary responsibilities for board members. But on the other hand this is a community or half of the community that puts this board member in place. And so it seems to me that there is a responsibility for that person to understand the concerns of the community to spend more time with the community and to take those concerns and make the board and the organization aware of what those concerns are. I don't think it breaks that fiduciary responsibility but I think it's important in terms of communicating to the board and the organization where

the NCPH is, where this community is, where CSG is. So those are kind of the motivators if you will for me to want to seek the board position.

And I think there are a couple of other things there as well which are more personal and perhaps skill-based which is I feel myself kind of a hybrid even though I'm sitting in this community. Given my background and what I've done I feel a little bit of a hybrid in that I've got the technical community experience, I've got the commercial experience and now this experience. And I think that puts me in a good place to hopefully nicely represent the views or should I say communicate the views of this broader community to the board and to the organization as a whole.

I put down on the paper a couple of motivations. The first one was really protecting and ensuring that we do get the ICANN 2.0 or 2.1 or whatever we're calling it that we want. The second one is really being able to deliver and notify people about the concerns and the challenge and the opportunities for this community. Those were the two main motivating ones. There are a couple of other ones as well.

We fought very hard in the accountability process for transparency and for the organization to be able to grow in terms of its transparency and accountability. And those are things that I think will be critical for this role particularly board transparency but transparency as a whole from the organization.

We've talked a lot about diversity. We've talked about it today. We've talked about the influence of getting new people into the organization. And I think those are very important things that the board should be concerned about. And today we got a good indication of that. And I think that's something that needs to be reinforced. So those are some of the other motivations as well. So maybe I'll stop there.

Tapani Tarvainen: Yes thank you.

Matthew Shears: I've gone on too long.

Tapani Tarvainen: And next we have asked for both candidates we have one pre-prepared question how you feel about this piece of the bylaws?

Woman: Probably nothing because we just got it.

Matthew Shears: I think this is a brilliant piece of bylaws writing. Whoever did it was a fantastic addition to the IRP process. But there are a couple of things here. So the most important thing I think here is in order for this to occur and clearly it should be worked on, there are a couple of things here that we need to look at which is what meaningfully participate in means because that can be interpreted many different ways.

What are the best practices in terms of meaningfully participate in these kinds of processes or appeals processes and I think that's a good place to start. I'd love to see a multi-stakeholder group address this with different people from different parts of the community where the issue of affordability may be an issue, the issue of geographic diversity maybe an issue in other thanks. So that's my quick answer.

Tapani Tarvainen: Okay. Thank you then let's open the floor for questions, comments I have Sam first and then Avri. Sam?

Sam Lanfranco: Okay just to be consistent with the previous one I asked about the how would you address our concern about ongoing nonfiduciary accountability to the board? We're developing procedures for a nuclear solution which is remove the board or remove members but my concern is all about an ongoing monitoring. The annual general meeting is not a place where that happens like it would in a shareholder company. So I'd like your views on that.

Matthew Shears: I think one of the purposes for putting in that nuclear option as you said was to reinforce with the board the knowledge of the community held that responsibility and it would not back down from using it in a worst-case scenario. I think we've always recognized that that is a worst-case scenario and we must do everything to avoid it but if it gets to that point then obviously it's a tool that should be used.

I think we got a sense of that well some of us got a sense of that today which is a real need for the board to spend more time with the community to have a more of an ongoing dialogue with the community to be more aware of what's going on, not to indulge in policy fantasies but to really get a sense as to what the key issues are and to understand where the community is more on an informal basis than on a formal basis.

I mean I could imagine that we should see more transparency from board discussions. For example that would certainly help open that up. Maybe there's a need for having more informal sessions with each of the parts of the community on a more regular basis. I mean it's done now but it's perhaps there's a way of kind of checking in with a more structured approach, you know, what's a sense of a scorecard if you will perhaps, not quite a scorecard -- something like that but that could culminate in a discussion on how the board is doing it in a - not in a measured way but in a formal way perhaps at the annual general meeting -- something like that. I think openness is key. That would be a thing that I would be striving to achieve.

Tapani Tarvainen: Thank you. Avri?

Avri Doria: Thanks. Avri speaking and please forgive me for my question. I'm asking for forgiveness before I even ask it. You know that I've often spoken of a problem with the board having a hive mind. And you also know that I've spoken to you about you being way too nice and not being disagreeable enough when I felt that disagree ability was necessary.

So I'm wondering do I – would I need to worry about you getting sucked into the hive mind too quickly and how would we know? How would we see that it hadn't been the case?

Matthew Shears: I would hope you'd tell me Avri. No, but seriously...

Avri Doria: I would tell you but what would that matter?

Matthew Shears: Well I don't know. You know, I think parts of the way that I operated over the past couple of years has been very much in recognition that you need people to speak up and stand up and speak out. But you also need people who just want to do and get on as well and try to find ways forward. And I think some of us are very good at doing both. Some of us are very good at doing the former and some the latter. So I'm not a hive mind kind of person. It may not come across that way but I'm certainly not. So I can't say, you know, I can't - I don't have a way of convincing you that I'm not going to be a part of that hive mind but that would certainly be something I would resist.

I think that some of the newer board members are finding it are not part of the hive mind or less so than some of the other ones. So I think there's also a little bit of a culture change their hopefully. And certainly I will resist.

Tapani Tarvainen: (Chris) is (unintelligible) sorry. We have one remote question. "What candidate say if you are selected what are your immediate focus for the noncommercial?"

Matthew Shears: That's a great question. So one of the issues that devil's all of us is resourcing and support. And that's something I think that we really need to look into almost immediately because I think that we're – this - we are straining under the ability to address the issues, the ability to find the people and the resources. So that would be my probably if I had - if I can that would be the thing that I would focus on almost immediately to try and bring that as

a priority to the attention of the rest of the board because I don't think they're aware.

I think people talk about volunteer burnout. I think they say, "Oh yes we understand there's volunteer burnout," but I don't think they actually really understand what it's like to be in this community toiling away and, you know, and working as hard as we do without I think the adequate kind of support.

Tapani Tarvainen: Thank you. Any other questions? Ed please.

Ed Morris: Yes actually Avri asked me asked the question that was actually my principal concern. Now when Markus was here we talked about a vote way back when where Markus pretty much voted with his board friends against the community. I'm not going to go into that. That worries me. But there's another hive forming on the board that's if you're place on the board, Becky Burr's on the board, Leon Sanchez is on the board. There's one or two other alumni of the CCWG that may be on the board. How do we also guard against this sort of mini hive where you guys know each other? And it's a concern at least of members that are not part of the CCWG.

Matthew Shears: It's a great point. I think there's a certain inevitability the people will come from that process. It was such an all-encompassing process that you'll find people who are interested in going into the board from that process. Will that be a hive mind, a mini hive mind? I'm – I suspect with characters like that on the board you'll find less of that hive mind mentality.

I don't think that we're going to see the same kind of board behavior over the next three years as over the years prior to the transition. I think there's a fundamental change. And I think there are people who are in there now who are going to work to ensure that stays in mission, the board doesn't trespass on other things that will change that kind of hive mind.

Tapani Tarvainen: Thank you. (Niels) you have a question.

(Niels): Matt we've known each other for a while and you have been doing great work in working with governments in the Freedom Online Coalition. I remember once I think it was in Buenos Aires is when we talked like what was your - the best part of your career? You thought working on satellites and setting up a company. And so your heart is, you know, very well (out right) with government and business and within our drafting team or a subgroup on human rights. We often jokingly call you the voice of reason.

It was like when we go off and it's like you're like a touchstone for being very reasonable, you know, and not too progressive in that - and so after this morning now switching to the current configuration of the board and listening regularly to Lousewies but also to Goran you almost see a Fadi inversion where Fadi was extremely progressive. You now see the board and the CEO hanging back, hanging back, hanging back and all getting a total process of session where the highest CEO priority is a document management system.

And I think that is not what leadership is. I do think that the premises should be with the community but it doesn't mean there should be no leadership. So with your focus on transparency as well how do we ensure that we're still driving somewhere and if so where to (Clovadis)?

Matthew Shears: I think it's a very good question (Niels) because it worries me when I talk to members of staff and they say, "Well we can't do anything because we're not being prompted by the community." I mean there is a fine balance. I suspect that we're - we are and as you say kind of responding to Fadi right? I mean this is kind of going the other direction.

I'm assuming that there will be a return to that point where there is leadership. There has to be leadership. You know, leadership from the board comes in specific places. So we have to be a little bit careful about how we define that but certainly for Goran maybe, you know, maybe he is focusing in

on the what he might consider to be the fundamentals before a restart so he's doing a reset I would say right now.

We are going to – if we don't see that leadership then the board is going to have to strive and achieve that and see that through because at the end of the day ultimately that's their responsibility right? So you're going to have to see change. It will have to come from the board if Goran doesn't decide that he's going to show that leadership.

Tapani Tarvainen: Okay, thank you. We are probably running out of time. I have to get the last question to Kathy.

Kathy Kleiman: Should you go onto the board Kathy Kleiman? That balance that you can bring knowing our community which often doesn't express itself as well or as often or as frequently or as consistently as other constituencies but have professional people here. I wanted to give you a flag to a new thing that it - there it looks like Jamie Hedlund is going to get a director of consumer safeguards whose job it is to conduct outreach to a variety of constituencies including intellectual property owners, law enforcement, regulatory agencies and consumer advocates on domain name takedowns for registrants.

The board needs to hear that – needs to not just respond to the people who keep asking them for things like one side of our stakeholder, one side of our contracted party house but to the groups that aren't that don't speak with such a loud voice this balance, please bring this balance to the board should you go on it. Thank you.

Matthew Shears: Kathy thanks. And I, you know, this is where this starts to get a little bit kind of kind of gray area for me in terms of the board responsibilities. But I'm going to need to look to you as well right for that – so this can't be – this is where I think the notion of the shared responsibility across between the community and the board for ensuring that those kind of functions do what they're

supposed to do. So if it's not then tell me if I'm the board member but I'll be coming back to you to ensure that it is. Thanks.

Tapani Tarvainen: Thank you. And now you're getting almost to the second as much time as Markus spent so thank you for being with us Matthew. And I'll note that we didn't touch over so much that we'll be having to now our coffee break. If you really must run and grab a coffee and come back but we really have to move up with our schedule so apologies for that.

Woman: (Unintelligible) coffee.

Man: You don't mean that.

Tapani Tarvainen: Okay people try to get seated around the table, try to get started soon. Okay everybody let's get started. That was the signal. Now we are starting. So Stephanie what do you take (unintelligible) for introducing our guests?

Stephanie Perrin: Thanks very much Tapani. This is Stephanie Perrin for the record. And we're very honored today to have the UN special rapporteur for privacy, Professor (Joe Kamatchi) who presented the other day at the community panel that we had on Monday afternoon. And we're very, very pleased that you've been able to find the time to come and speak to us. To his right is (Sophie Quasi) of the Council of Europe Data Protection. And over here Peter Champion also of Council of Europe. Thanks very much.

Woman: (Unintelligible) first.

Stephanie Perrin: Yes.

Tapani Tarvainen: So you want to go first...

(Joe Kamatchi): Yes thank you. We - so good afternoon everybody. For those of you who are in our time zone and for everybody else on the planet the - we can say hello

too. And for those who are outside the planet I suspect GNSA and GCHQ and various other agencies are making sure that they get our messages too.

Do you have a clicker so that I could get the...

Stephanie Perrin: I don't have...

(Joe Kamatchi): It's not on yet but is still loading? Okay. So I don't know how familiar all of you are with the what are called the special mechanisms of the United Nations. Let me explain okay. I'm going to make a joke. Joke alert so you shouldn't take me too seriously now just in case anybody goes and tweets this.

The – so please don't tweet because otherwise you're going to land me in trouble. So you know what they say about bureaucracy's right? And where you have 20% of the people doing 80% of the work and 80% of the people hopefully doing the other 20% of the work.

And so the United Nations has 44,000 people working. But then I got this wonderful idea that perhaps if it doesn't pay people they will actually work better. So and I understand there are a lot of volunteers here so you will understand exactly what I'm saying. So welcome to my world and I'm so happy to be in your world because I am an unpaid volunteer right?

This is the United Nations got this lovely idea that in order for you to be independent then perhaps we better not pay you. So the only thing it does is it pays for two conferences I go to every year and two country visits every year. But if you see that I do 20 country visits a year you might wonder what I'm also doing which is apart from volunteering I also have to find ways to raise the money to do the job. But hey, who cares, you know, it's this is what we call rainmaker right? So we have to do that too.

I – I'm a lucky man because I was chosen and I'm honored and privileged to be one of these 47. There are 47 of us just to prove that, you know, insanity

is not a lonely position who are appointed by the Human Rights Council of the United Nations to tackle specific themes? So there's a special rapporteur for freedom of expression. There is a special rapporteur for the rights of children. There is a special rapporteur for, you know, Burma and Myanmar. So there are special rapporteurs which are country specific and there are special rapporteurs which are thematic.

And, you know, given the audience I have here you might have heard of a certain gentleman called Mr. Snowden. And so what happened is that following Mr. Snowden the United Nations realized although it had, had a special rapporteur for freedom of expression for the best part of 20 years and a special rapporteurs for the best part of 40 years it never had done anything much about privacy. So it said, "Let's do something about privacy."

And then March 2015 so that's nearly two years after Snowden first broke the news on 6th of June of 2013 the United Nations appointed, decided to create the Office of Special Rapporteur right? And this is where I take the opportunity to note that some of the most committed, let me qualify the joke I made earlier some of the most committed bureaucrats I have ever met in my life are in United Nations right?

But you might want to ask also as to the conditions of work as to the security of tenure because there's - that's yet another story which it's not my job to go into but I have to deal with these people every day. And I would like to say that in my case I was – I had the honor to be appointed as the first Special Rapporteur for Privacy. And what's happened since then? It was a clean slate.

So I had to learn if you look at the slide for a minute you will see at the logos at the bottom three of them or two of them are what pays the rent. That's my University affiliations. The other is United Nations is what gives me into more trouble than I should be in. And the well if you had to look at what we're supposed to be doing you might want to Google and see what's actually

happening. So last week right last week I'm just going to ZDNet here but we can go to any other source which carries Reuters or other reputable news agencies.

Last week I presented my report to the United Nations Human Rights Council because one of my job as a rapporteur, you know, it says it in the name is twice a year I present a formal report. In March I presented a report to the Human Rights Council in Geneva. And in October I presented a report to General Assembly in New York.

Should this be a kind of state of the union report? It's not no. It's basically it's what I decide it to be which is good. I mean at least the fact that nobody pays me means that nobody gets to really interfere in what I do. So as I'll explain in a minute after a year of listening last year I came up with what I've called my first set of five priorities. And I'll explain those to you in a minute.

But one of those priorities is surveillance and security. No prizes for guessing why. And what I've done last week is I've just presented the report, the first of four reports I plan to present on surveillance if all goes well. And you can see that what I'm saying basically is that I have A, little or no evidence that mass surveillance works. I have I'm very concerned about mass surveillance because amongst other things not only does it cost us a hell of a lot of money without much to show from a cost effect point of view I think that we are being shortchanged in citizens because what we do have is a number of populist politicians and Lord knows we have enough of those around the world who indulge in what I call gesture politics right? They want to be seen to be doing something. It's different to tell your security services and your law enforcement agencies no if they want more stuff and instead of properly asking whether this is not only cost effective because if we were the - as shareholders if we were paying for this -- and we are paying for this in our different countries -- we would say hey perhaps it wasn't such a wise idea to spend so many billions in privacy inclusive measures on so many computer centers and hovering up everybody's stuff. Perhaps it might have been an

idea to employ 10,000, 100,000, 200,000 more agents and use them to infiltrate and use them to follow people because I don't know if you read the same news that I are.

But the news that I read suggests that more than 90%, 95% of all the people involved in terrorist activity were already known to the cops. They were already known to the secret services. So if they were known why wasn't somebody following them? And if the answer is the money. I don't know which you do in your home but in my home if the roof is leaking I fix the roof. I don't demolish the foundation so which is kind of what I see because, you know, there are songs which go on about life being worth living. I don't think that life under surveillance is worth living? So if we want to reclaim our space that is believe me I would like to think I'm normally quite a measured guy who doesn't tear his hair out just because somebody's hacking my mission, you know?

When I was interviewed last week about the day after this went out when I was interviewed last week about the CIA leaks and wiki links so on and so forth I said, "Well what's the story? I mean why did you find that surprising? If I go into a carpenter's shop I expect to find a carpenter's tools. If I go into a spy agency I expect to find spy tools. So hey what's the story here? I'd be surprised if they didn't have them." What's the story is that somebody can actually go in and get them. That's the story right? And that's what worries me.

And that's the second point that I'm making in the report that you seem referenced there which is the risk. Not only has the government not demonstrated to us that the measures they are taking are too privacy intrusive in other words they are not - they don't meet the test. They fail the test of proportionality never mind filling the test of cost effectiveness. They also create a risk which is vastly disproportionate to the risk they're supposed to manage. So hang on. Is security a risk management exercise because in my book it is. There is a risk and you manage the risk. What's the risk, they're

going to shoot you? They're going to blow you up, et cetera, et cetera, but hey that's the risk.

So await a minute. So we're hovering up everybody's data in a number of countries at least and we're claiming that we're not creating another risk by having this pool of data. Now there are 194 governments on the planet, more or less. Do you guys trust any of them as being completely invulnerable because if you do please tell me who that wonderful government is because I don't. I'm saying it plainly, I don't. I think that all of them have their vulnerabilities and that just by putting a whole bunch of data there you might as well have labeled the target and called it honeypot because what people are going to do are going to try and get in.

Have we seen examples over the past six months never past the six years, never mind the last six years of people allegedly hacking into other people's databases, possibly influencing elections, finding out about - yes I mean in my world that's what's happening but apparently not in the world of some politicians. So one thing that you will perhaps seeing me see last year, last week is -- and, you know, I don't think I'm cuckoo -- there are some things which you can do it multi-stakeholderism. And I'm a great believer of multi-stakeholderism. But has anybody tried to take a pencil and white wash an all with a pencil?

What's the moral of the story there? That there are some things that multi-stakeholders can do. So if you want to drop a beautiful sketch take your pencil. But there are some things which multi-stakeholderism can inform but cannot do because some things can only be done by governments. And that is something which we have to recognize, take them forward and get the governments to do their job because the Internet presents us with some unique challenges.

It presents us with the challenges of borders and the lack of them. It presents us with the challenges of jurisdiction and having multiple jurisdictions or only

one of them and it presents us with other problems like territoriality, localization and a whole bunch of other things. So we have been having some arguments around the world as to whether the Internet is a common good, does it form part of the common heritage of mankind and has anybody actually asked you - how many people here know where the term common heritage of mankind comes from? Okay we have one person. Should I help them out with the answer?

Woman: Yes.

(Joe Kamatchi): Okay it was another loony (multis) who came up with it. But that person stood up in 1967 at the United Nations and said, "You know guys we have another space." It's not cyberspace. They hadn't thought that term up. It's not outer space. They were still going to work on that later. This was two years before we got to the moon. But it's that thing which has been around more or less since the beginning of time the sea.

And this is how the law of the sea was born by somebody who stood up and said, "We've got to solve the problems that we've been having with the sea. And to do that we have to get away from a situation where just because we have a number of countries who are the only countries with technology for deep-sea mining for example that doesn't mean that the seabed belongs to them," which is how he came along with the common heritage of mankind.

And it took more than 25 years until we got the law of the sea going in 1994 but was it worth it? Yes. So the fact that it's difficult, the fact that it could take a long time and the fact that people will tease you and tell you it's crazy doesn't mean it can't be done, doesn't mean that should be done, doesn't mean it should be – shouldn't be started.

So that's why I think that now that NATO has officially declared the fifth war zone right as of July of last year now it's official. Before the OD and other people didn't want to discuss this. Is cyberspace a separate space or not?

They didn't want to do fine thing in those terms. But now heck is it a separate space. It gets its own cyber war command. The NATO has its own separate command.

So now we've added it. Think of it in these terms. Now we no longer have only land, sea, air and space. We now have added cyberspace. So if cyberspace is good enough to be declared a war zone I think we need to put our thinking caps on and see what we can do about what I call appropriate state behavior in cyberspace because your privacy, my privacy is being infringed in the name of security.

But then I ask who's security? Is it really state security or in many cases not all of course a bunch of people who want to remain in power because there are some countries where that's the motivating, great motivator. I'm deliberately not naming countries. And please don't get me wrong I don't wish to trivialize the problem. It's not a difficult problem to handle but unless we sit down and call a spade a spade and stop having a whole load of shenanigans in cyberspace we're not going to tackle the problem properly.

Well last year - I'll quickly zoom through because you've been generous with time already. Last year I was for example tackling the UK law. This is what I'm talking about here. A quick caveat. Some of the examples I want to give here are simply for time purposes -- UK, France and Germany. It doesn't mean that only UK, France and Germany have problems it just means I've been asked to keep my presentation to ten, 15 minutes.

So we have been told that we're living in the Golden age of surveillance. But in that case what's been happening? Just a quick look over the past 12 months Germany passing a new data retention law. First in France this is July 2015. France's surveillance law goes into effect but then it's found to be unconstitutional.

So where are we going? Yes these headlines aren't mine ladies and gentlemen, how do you get past the most invasive surveillance law in democratic history? Is that wrong? Is it hype, as a title? Possibly not, but at least the UK has a fairly or relatively robust discussion about it. I'm not saying it was perfect far from it and I thought it was far too short as a discussion and not enough time was left. They only gave 15 days 15 working days, 21 days more or less in all notice for people to read the best part of 300 pages of legislation right? Yet they give - keep on extending by one year slightly simpler things like deciding whether to have a third runway in Heathrow or not. So I don't know who to believe there right?

But what I do know is that this is made in the context where their own court is found GCHQ to have spied on human rights NGOs and acted unlawfully, where their own - the UK's own tribunal because the UK is a democracy in this healthy discussion right? It's not perfect but it found that the UK security agencies had unlawfully collected data for 17 years.

So this situation is very serious. And I'd like you to see also what we're doing about it right? So I - what I do is I've done I present a number of reports. You can go and see them. They're available on my Web sites one to the General Assembly too. I've also spoken about other things like privacy and smart phones so it's not only the Internet.

So I now have to connect - one of the reasons why last year or was it the year before now? The year before I was accused of exaggerating because I said, "It's worse than 1984 now because at least Winston Smith could go into the countryside and not have the screen as it was called." Now how many of you go into the countryside and don't take your mobile phone with you?

Man: I do.

(Joe Kamatchi): You go without the mobile phone at least twice a year so we have at least one, you know, person who takes their privacy a bit more seriously because if

you're taking your mobile phone with you, if you're taking your tablet with you you are taking the screen with you apart from the fact that if you go into the councils in many other places which I love in the UK countryside they're littered with cameras right?

So there is a lot going on which we have to think about. But I'd like to draw to a conclusion my setting out and informing you of the set of five priorities that we're handling. In no particular order so I'll just start at the bottom right we're looking at personal data held by corporations because one of the things which we really have to look at - and don't get me wrong, I'm not necessarily accusing the large corporations of doing things in a way which is intentionally out to infringe people's privacy. In fact you will notice that one of the good pieces of news over the past two and three years is the corporations which were previously accused of surreptitiously taking clients' data have now made a major selling point out of privacy and are publicly standing up to governments plural -- not only the US government, the Brazilian government, other governments -- in the name of privacy.

So where there's life there's hope right? The - and it's clear because if people have become more sensitive to privacy then corporations recognize that if they are perceived as not giving enough attention to privacy they're going to lose business. Hits their bottom line so if privacy hits your bottom line then you're in a problem. We're looking at health data which is a very sensitive area especially in some countries where health data is treated as a matter of form. Too many Europeans this might seem strange but the United States has developed a system where since 1952 you haven't yet left your pharmacy and your prescription data has already been sold. We're looking at big data and open data. We're looking at security and surveillance. And one thing I'm trying to look at is a global better understanding of privacy because while I have worked hard to make sure that the right is universal there are different understandings of privacy as we go around the world.

I have a few more slides but I'm going to stop on this one. Some of you have heard me say this many times and I think it would keep on saying it way past my term in office. In an Internet without borders what do the people expect? They expect safeguards without borders and remedies across borders. And this is what I would invite you to join me in trying to achieve. We have lots of work going on. I need lots of volunteers. Please feel free to come and speak to me about anything that you may need and within the limits of 24 hours a day and seven days a week I'm more than pleased to engage with any and all of you. Thank you ladies and gentlemen.

Tapani Tarvainen: Thank you. I see Marilia you have a question. Your hand is up but...

Woman: (Unintelligible).

Tapani Tarvainen: Okay Stephanie.

Stephanie Perrin: I have a long and philosophical question. So maybe I'll ask Marilia to speak.

Marilia Marcel: Thank you Stephanie. This is Marilia Marcel speaking for the record. So actually my question is related to an initiative that we saw some weeks ago. Microsoft called for a digital Geneva convention to address issues related to protection of critical infrastructure, trade secrets and the private sector. And this is a trend that we have seen in different spaces the private sector calling for governmental revelation or intervention and this is quite new.

However when this calls an effort to help them to self-regulate is a call for regulation they usually have a trademark and copyright protection issues embedded into them and we see that very clearly in ICANN. So this morning we had a discussion with registries for instance and they are self-regulating. But what is driving them is actually the desire to protect copyrights and trademarks. Right next to us there's a discussion on DNS abuse that is pretty much fostered by law enforcement, the GAC Public Safety Working Group is getting together but usually these meeting should not include that protection

so there is clearly silos there. So how would you recommend that we can break the silos? I'm sure that you encounter them in your work and we are encountering them here too.

(Joe Kamatchi): Okay. Firstly the way that I'm tackling it is in the following manner. I am actively engaging both within my day job on various parts of my day job which is as you know not the UN though one could be forgiven for thinking that it's consuming too much of my life. The - what have we done?

So for example in the mapping project -- and I referred to this in my last report -- we have taken because we have engaged with Apple, Google, Microsoft Yahoo, Facebook --- all of the big guys right, we've engaged with them. And I have openly ask them the question, "Hey you have a Web site called reformgovernmentsurveillance.com right and you have five principles there. Are you serious in pursuing them?" And they have and I must say they've pretty consistently and this is outside the IP right? This is outside the IP area.

So I'm convinced the their main interest it was not in intellectual property but they are openly publicly requesting for developments of international law which could handle the issue of government surveillance. The call that (Brad Smith) made if I'm not mistaken in San Francisco in the middle of February is a bit different. It's not completely divorced from what the work that we've been doing in mapping. And for those of you who are interested let me just say that we now have a legal instrument which can take the form of a recommendation, a treaty -- whatever people decide to do with it. But it's already approaching 25, 30 pages. There's a - it includes an explanation memorandum and those of you who are interested in following that discussion please let me know because we hope the discussion to go public in a public forum by January of next year so that people can come in.

We are engaged with civil society and discussing things with civil society too. They are contributing to the text too. So those of you who want to join the process please come after the session and let me know.

That the mapping project is preparing that on the context globally but for Europe to have a big part of the European roadmap want to take a forward. But I have said openly in my report that once I take, submit that to the European Commission next year and I take off my European hat and put on my UN hat again at this moment in time there's such a consensus between the companies and civil society that I really am tempted to take it on in my UN capacity because I have a met one member of civil society or one corporation which doesn't want developments in civil and international law in this sphere.

The treaty that you mention is slightly different right? It's linked to can be seen as being tangential to what I've just said but it's and the very wording suggest that it's taken as kind of protecting people's rights in a war zone right? That's what the digital - that's what the Geneva Convention is all about. So there what you have is it's assuming that cyberspace is a war zone and therefore please protect us poor civilians.

I am taking a slightly more ambitious approach or much more ambitious. It depends how - what your metric is. I'm saying we shouldn't live in a war zone. I'm saying we should aim for cyber peace rather than cyber war and therefore what we should do starting off with a bunch of civilized countries what we should do is lay down the terms for the peace right?

Okay we might also need to think about the war, fine. I'm not allergic to that. But I see these as being complementary issues rather than mutually exclusive. And I must say that up till now when it comes to surveillance the corporations have been very forthcoming. We've also engaged, started engaging with a number of corporations when it comes to business models and there we can expect to see a much more complex discussion. Why is that, because even if you take the big guys right they don't have the same

business model. Apple does not have the same business model as Google or Facebook for that matter right?

So we shouldn't try to make the discussion too simplistic. We have to understand one thing which is over the past 20 years we've had a monetization of personal data without a proper public policy discussion. This is the problem.

Nobody came along. I mean it's an open secret that I have three daughters right? And it's an open secret that they're on Facebook and I'm not but that's how I know what's going on in Facebook. I asked them. You know, they're not going to friend me are they? But it doesn't mean I didn't have a Facebook account in the past but that's another story. And I was paid to do that. It was a research project.

The difference is this. When my kids went onto Facebook right nobody told them please come onto Facebook so I can make lots of money out of you right? They were told come along because we love connecting people. Now don't get me wrong I'm not knocking down entrepreneurial effort but what I am saying is that's happened right because people love convenience and they love some of the services that are offered online.

So it's been a bit of a Pied Piper seduction going on right? The people have kind of sleepwalked into the situation where we are now and we resulted in a situation where we suddenly realize that there are hundreds of billions now going towards trillions of business which is being done. For historical accident a lot of that is coming out of the United States. And I always tell my European friends just imagine that those companies were all located in Germany. Do you think the president, that Mrs. Merkel would be taking a line which is much different from President Obama then or whoever the incumbent may be in the United States and my answer I think is no right?

And I think that these things had to be born in mind in order to keep the complexity going. I could go on because you've touched very much the heart of the problem but I'm conscious that there are other questions. I know that the time is limited and (Sophie) hasn't even started yet. And we're good friends you know?

Tapani Tarvainen: Yes thank you. We are indeed rather badly out of schedule and have a long queue here. I must think I have to pretty much close the queue at this point but it's Stephanie, Rafik, Sam and I forget your name.

Stephanie Perrin: Thanks very much. I'm sure we could talk all day because we - there are many, many people in here who are interested in this topic. I'll try to be brief. I'm very interested in your reports on surveillance. It would be my observation that governments like to be perceived to be in control and they may not be in control.

Citizens at the same time could be forgiven for feeling the whole world is out of control when they get on the Internet and look at the news or the lack of news and the situations we're in. So bringing it home to ICANN we have at ICANN the usual fight over who's going to control the data the end-user the customer? Will it be which stakeholder, the registries, the registrars, you know, or the end-user?. And we hear fight for the rights of the end-user.

But we also have governments in the form of the public safety I would say putting pressure on ICANN to be the one stop shopping for getting information about who is on the Internet. It's difficult for them to get information about ISPs. The ISPs come here. It's difficult for them to get information about end-users. Most of the big intermediary like Facebook and Google come here.

I'm not saying that any of that data is in our systems as yet but I detect a hunger from the worlds law enforcement agencies not to sign up to what you're talking about in terms of a treaty but instead to figure out how to get all

the data easily, cheaply. And I do understand their practical considerations -- finance time, a desire to use robots instead of humans.

So I'm just wondering if you've have any observations on how we can guard the line here? We already arguably get into trademark and fraudulent, you know, things like fake Gucci bags being sold online which is over the line in content on the Internet. And we're very worried that we'll get deeper and deeper into this because a lot of the arguments for no privacy bring up things like job trafficking and basically me space crimes that are not - really very little to do with domain names, you know?

Tapani Tarvainen: May I suggest that we collect all the remaining questions and then you reply to them all at once because we are already short of time? And please be brief Rafik.

Rafik Dammak: Thanks, Rafik speaking. And always happy to speak with the neighbor who's a Tunisian to Maltese. So really quick question. So are you kind of coordinating the work with a special rapporteur on the Freedom of Expression because maybe there is the question about the balance between the freedom of expression and privacy?

On the other hand since you attended the ICANN meetings this ICANN meeting and you see the discussion how do you see or do you think that there is some space in the report to talk about the case of ICANN and maybe how you can use that as an example? Because why I mentioned to both the other rapporteur because I heard that he was interested by the ICANN case but that's in regard with whole like other companies and Internet organization and so on.

Tapani Tarvainen: Thank you Rafik. Sam?

Sam Lanfranco: Okay Sam Lanfranco for the record. I have two questions. You can deal with them now or they can be followed-up later because we haven't got a lot of

time. The first is we've been talking about the big data by big organizations being accumulated in large quantities. We're on the edge of the Internet of things where there will be billions of data points about time, place, activity being collected by thousands of organizations. That's a whole different constellation of dealing with the data. And that's the first one.

The second one is this notion that within the Internet ecosystem that there's some notion of citizenship and the rights and obligations of citizenship whether it's individual or organizational citizenship. Any comments on those two here or later?

Tapani Tarvainen: Thank you. And miss please introduce yourself.

(Cirillo Belto): (Cirillo Belto), first time fellow. I was looking at one of your slides where you were pointing to cyber surveillance treaty and then you brought up Facebook in the discussion. So it got me thinking about the former safe harbor between the UN and US and nowadays that we have the Privacy Shield. So I was wondering if from your perspective would this be a good starting point or are we still behind a lot of work to be done? Thank you.

Tapani Tarvainen: Thank you. And I have one short question from the remote change the list from (Juan Manuel Rohas). "You talked about big data and open data. How much - how this must be analyzed as a security or privacy priority? How is this IoT intrusion in their lives could be safe for customers?"

(Joe Kamatchi): Okay if it's all right I'm just going to reverse order perhaps because it was also a good question certainly. Firstly insofar as big data and open data is concerned I'm going to repeat something which I said in the main session I - or one of the other sessions. I think that the major risk we have there is not big data analytics. I mean we've been doing big data for a long time. The problem is policies like open data which multiply by several factors the amount of data sets we have out there which are exploitable.

So one of the things which I think we need to do is consider - I'm not saying let's do it but consider the need to reverse policies or at least freeze policies on open data. And I hope to be able to speak more publicly about that by October of this year when the results of some of the work on the task force on big data and open data would be first ready in an interim manner.

So the second thing that we need to look at then is the issue mentioned by the lady who asked about Facebook and Privacy Shield. Privacy Shield is a step forward. I think it's it was an improvement but not necessarily perfect. I think it's still early days to come up with an assessment of whether Privacy Shield is the best way forward. We don't even know if it's going to work in practice. The new incoming President of the United States they had one of his chosen members of cabinet have indicated that they might not be too keen on Privacy Shield so we've got to see how that's actually going to work in practice.

But that doesn't – Privacy Shield is a bilateral arrangement right? And one of the things that I've been harping on about is that everybody has a right to privacy. It's not only European citizens. Everybody has a right to privacy.

The UN declaration doesn't say only US citizens or only German citizens have a right to privacy. It says everybody has a right to privacy. And I think that in the same way as ICANN would be trying to make sure that the safeguards apply to everybody that's one of the things we have to keep in mind.

Going back indeed to (unintelligible) about come again the - I forgot my pen and paper otherwise I would have taken it down. But I hope to get back to it. Let me quickly go on to Rafik. Rafik asked about the collaboration with the rapporteur. Yes I am in touch with the rapporteur for Freedom of Expression. And I've invited him and we're going to continue to invite him to join in some of our activities especially where there's intersection between the two rights right? So that's my clear answer.

When it comes to the question of how do you get people who don't want to do something right? By a combination of measures, one in the same way as I've always advise my daughter is say no. Right? Say no, don't be shy to say no just say no. And if they don't understand no you ask them so what kind of know don't you understand right? No, because the action that is required must be proportionate.

Privacy is not an absolute right. Privacy and the delegations are clear. Privacy is a right which can be delegated from for the purposes of prevention detection or investigation of crime. Yes but and the but a lot of people often forget the but. But there must be safeguards and the measures must be proportionate in a democratic society.

Let me repeat that. What I have just said was not proportionate in a tin pot dictatorship. What I just said was not proportionate in a police state. What I said was proportionate in a democratic society right? Now if you repeat that long enough to the law enforcement agencies and the security services and believe me they have a difficult job. I'm with them on this one right? I'm with them in the sense that any tools which are reasonable in which they should have we try to give them.

But because of a number of factors we have to keep on questioning this is the healthy tension which the founders of the Constitution have spoke about in the United States, the healthy tension that we create here is one where we query their need and then say yes it would make your life easy - easier to have this. But my job is not to make your life easy. My job is to ask you that basic question is this must have or is it nice to have right?

Keep asking those questions and you'll be doing your job. And when they convince you that it was nice to have, that it was must have then please forgive us Stephanie if we are going to ask the question what was she smoking and then we're going to asked the question we're going to check and

check and check. And finally if it's really must have we say must have. But it's not an easy job. We can't discuss that but I think that that's the way we have to approach it.

Tapani Tarvainen: Thank you. We are unfortunately rather behind schedule but please go ahead and...

(Sophie Quasi): Yes, good afternoon to you all. Thank you very much for the invitation. I will not enter into lengthy details about the convention. I know many of you are already know well the convention. So rather I will try to give you tools and arguments that you can use in an ICANN context about the convention.

First of all this was a picture taken yesterday. (Joe) I'm sorry but there were so many on the panel you're not on this one but I knew they would have you on (sharing) on this so you're not on this. This is the picture taken yesterday in the cross community discussion between the data protection commissioners and representatives of various constituencies that was supported by the GAC and GNSO.

I want to think deeply and sincerely Stephanie for having helped us in doing that. And (Michael) and (Peter) I think without them this wouldn't have been the success it was. So please applaud them.

So for this the Council of Europe tried to basically serve as a facilitator bringing everybody at the table. And I think the results showed. About the convention, so the arguments are there that you can use. It's a unique tool. There is no equivalent. We just have the special rapporteur of the UN with us. He can confirm there is no UN equivalent. So convention 108 at global level is the instrument that should be used. It's open and, any country can exceed. And it's been influential in the sense that for the 36 years it's been on its principles have been developed throughout the world.

So today it's representing 50 parties already, 50 countries that have ratified and you see reproaches we've actually had in organizing the panel yesterday was or you're European. No convention 108 is no longer a European instrument. We have Uruguay, we have Mauritius, and we have Senegal that are already bound by this provision.

We have another number of countries that have been invited. That's Morocco, Tunisia and Cape Verde and now (unintelligible) SSO that's made the request and should hopefully be invited still this month. On top of the parties that - the countries that are bound we have a number of observers in the committee that participate in the work. So you have mentioned USA, Canada, Australia, South Korea, Mexico, Indonesia and just recently request by Japan and Philippines. So in total we have over 60 countries we're meeting (Hazbul) to discuss privacy and data protection.

We've drawn up this map that I think shows clearly it was based on the study by Professor (Graham Greenlee) from Australia that gave the overview of all jurisdictions in the world with data protection legislation. So it counted 120 of them. So out of those 120 as I mentioned already 60 so it's half have a relationship with convention 108 are participating in the work.

This is really key. And this is growing. We're not stopping there, more countries are coming. This will de facto imply that for now organization like ICANN Convention 108 will be the data protection reference to be based upon. So here you have just a list of some of the aspects of the convention I wanted to point out to your attention. You can have the text online.

If I just focus on one particular article of the convention it would be Article 5 that deals with purposes. And you heard it yesterday that is one of the key aspects being discussed also in the PDP RDS. So you have the text there and you have the reference to the accuracy of data that is also key in a ICANN context.

So just to inform you of the fact that we have been modernizing this convention for a while. It's not finished yet but we're at the final stage of the modernization and the committee of ministers. And in doing this work we try to keep it as general with its global potential and ensure consistency with other frameworks in particular the EU framework. That's also why you have seen EPU's referring to Convention 108.

So in one word the committee of Convention 108 is a forum for cooperation bringing 60 countries also bringing non-state actors because we have observers on the committee that are non-state actors. I would mention Internet Society Privacy International. We also have the International Chamber of Commerce. So this multi-stakeholder forum specialized in data protection is there to respond to questions you may have so please use that as you wish. More information online on our Web site. I hope I was very (synthetic) and matched the time. Thank you.

Tapani Tarvainen: Thank you any questions, comments? Kathy?

Kathy Kleiman: Kathy Kleiman. Thank you for being here. Okay purpose. We have a whole bunch of data that was collected for one purpose used for many other purposes because it was open data and now everyone tells us that their purpose is the purpose for the data. It is kind of the blind man and the elephant.

What for those of us who don't come from a country that has to define purpose how do we help ICANN understand? I know you tried to do this yesterday but as we look at the domain name data standing on one foot how do we help ICANN? How do we help a number of people who don't understand what purpose is understand what purpose might be for the countries that have signed on to Convention 108?

(Sophie Quasi): Yes so indeed I recall Article 5 of the convention. That's the basic principle. You cannot process any data with a specific and a clear purpose. So you

need in the way you're going to conceive your whole processing the series of operations you need to know why you're doing that. You need to know what type of data that you are going to collect for that purpose, limit the quantity, quality of data to that purpose.

So from the starting point you have to have the whole chain of operation in mind, what are your objectives? Then if after that so in a ICANN context we know why ICANN wants to have data for instance of domain name registrants. The sharing of the data it's also processing. So for that sharing you need a purpose.

Is it compatible with the original purpose for which you collected the data? Those are all questions that need to be asked from the starting point responded to if there is incompatibility with this initial purpose and further processing that is done that would not be legal.

(Joe Kamatchi): So an I chip in quickly on this. By the same token you need safeguards for changing the purpose. Can the purpose be changed? Yes but. And the but is only for the purposes sorry no joke. This is for those precise purposes which are outlined in Article 9 of the convention right?

So Article 9 of the convention says you can dedicate from the purposes provided however that this is for the purposes of suppression of crime, national security, economic interests of the state and only if (unintelligible) only if you have a law which permits you which provides the appropriate safeguards. So in for example a law enforcement context what you have is a law provides the safeguards and according to European law that would mean did – was a warrant issued? Was it for reasonable for the key thing is reasonable what, reasonable suspicion right?

Was this targeted surveillance? Was it in the case of where the safeguards perdition of the warrant? Was it issued by an independent authority? Once the law provides those safeguards and those safeguards have been

respected the operator whether it is Europe or outside Europe than is safe right because the request is legitimate request.

Let's however remember one thing which is a problem we all have to think about which is the same problem but Interpol has to deal with right? Interpol has 190 countries. Do you not think that some of those countries are rather let's put it this way naughty countries that they will declare (Sophie Quasi) or (Joe Kamatchi) to be a renegade from justice and try to issue an Interpol red notice even though those two people are quite innocent? And so what you have a whole section inside Interpol vets those requests and says no this is not this is political. It's not really in a criminal case.

So you have to apply this. And you have to have the same kind of mechanisms or some analogous ones which are appropriate to the situation which can vet it at every stage. And as ever ladies and gentlemen the devil is in the detail. So drill down into the detail of each individual request. In the end it's a process which takes more time, will it cost a bit more but will it give a better deal for the citizen? Yes and that's what we're here to do.

Tapani Tarvainen: Thank you. Any other questions? Stephanie?

Stephanie Perrin: Thanks very much, Stephanie Perrin for the record. We really, really appreciate you coming Louisewies these from the board said this morning when she was meeting with us that she thinks the oil tanker of ICANN is turning. Unfortunately my Spidey senses tells me there's a whole fleet of tugboats coming out to push it back on course as it were.

So we would love to have you back. We know you're busy. But this unfortunately I think is going to take a sustained effort. And we really, really appreciate the messages. I'm going to take all the little clips and play them in the PDPs in which I participate because you were very clear about how all these things fit together. And there's a lot of meet there. But we would sure love to have you back.

Tapani Tarvainen: Thank you for me as well, very nice to have you here. Unfortunately we don't have any more time. It would have been wonderful to spend another extra hour with you but if there is anyone from a very quick question? Okay (Raul).

(Raul): I always have quick questions. So what would be the sort of reasoning behind freezing opening data all together?

Tapani Tarvainen: Very quickly it's clear to me and this is something that I think I need to speak to (Tom) about later. This morning let me give you an example of why I'm saying this concrete case. So this morning at seven in the morning I had a conference call with my colleagues in Australia who are telling me how fast they re-identified supposedly anonymized data in a health context in Australia right? So when I get cases like this it's clear that we have that the governments were sold an apple, you know, a motherhood and apple pie concept of open data. It's good for humanity. You should let it go. Make it available its taxpayer money, et cetera. But they didn't properly think through the consequences of re-identification right?

So freezing would give us the time to examine things a bit more because I for one that part of me which comes from a software development environment says 30 years ago, 33 years ago when I first started in this business in Strasburg in the Council of Europe I used to think that anonymization was an appropriate safeguard. Let me make it clear I don't think so anymore. It's changed because given the ability to triangulate data, and given the ability to triangulate multiple data sets with all the powerful computers that we have and the whole range of big data and analytical procedures that we have it stops being a safeguard.

So that's why I'm saying that we need to examine where we're going because if the safeguard is that we should no longer repurpose data the purpose for which originally was one purpose because remember that's what open data is

you are repurposing the data. And it goes against the DNA of privacy and data protection right?

So that's why I am – I've asked the question. I haven't come yet come up with the answer. I've asked the question to my task force is this one of the recommendations we shall have to make to society at this moment in time to reverse the policies of open data or at least freeze them unless we can understand what's going on because clearly I haven't yet met one single techie who can convince me that we've thought it through and that it's impossible to re-identify the data.

Tapani Tarvainen: Thank you. With that we must say thank you for you and move on in our agenda. Thank you very much.

Tapani Tarvainen: And I'll be back. All right do we have Ron Andruff here? Okay. Then we have from Ron Andruff presenting about Shadow Regulation let's (focus) on entitle. Please go ahead.

Ron Andruff: Thank you Tapani and thank you to all of you. I know many of you in the room and some of you we don't know but I've been around ICANN I think this is meeting 51 for me so a little long in the tooth. I'm not going to speak too much. I want my colleague Tim Smith I wanted to introduce you to the Canadian International Pharmacy Association. And we want to talk about the issues that we're facing right now that are really not directly aimed at the Canadian National Pharmacy Association or CIPA as much as they really are an issue that we as ICANN need to be need to be concerned about because of these Shadow Regulation issues.

In fact the EFF one of your members I believe and in fact Tapani is also with that organization have written a couple of articles about the issue we're discussing today. And so we'll be very happy to share that information with you as well as some backgrounders. So for my part I'd like just to turn over the microphone to Tim Smith. CIPA has been a member of the ICANN

community for close to a decade now. And we have had some alarming things happen in the most recent occurrence. So I would like to pass to Tim. Thank you.

Tim Smith: Thank you Ron and thank you everybody for allowing me to come and speak to you today. I know you're running behind and I think you may even have a hard stop coming up so I'll be as brief as I possibly can but I appreciate being able to come and talk to you.

As Ron has already said my association has been a member of the Business Constituency here at ICANN for almost ten years. And my association is celebrating 15 years. And to tell you something about who we are we're an association of Canadian licensed pharmacies that sell pharmaceuticals and maintenance medications to individuals and many of them in the United States upon receipt of a valid prescription. We have numerous safety protocols in place. And we have maintained a perfect safety record over the 15 years that we have been operating.

We sell as I mentioned mostly maintenance medications for people that have chronic conditions. So our customers come back to us every 90 days for refills of medications that they need to maintain their health. And why do they come to us in the first place? Well for the most part it's because they can't afford the medications where they live. So in the United States we serve about a million people a year. And we provide an important service for them. So we really deal with the end user. And that is - these are the people that we know well and have good relationships with.

So I won't go into too much detail about the model but I think the safety record speaks for itself and I think the trust that we have built with our patients is evident from that. We really have become the gold standard for and the pioneers really in online pharmacy. And we're very proud of that. But we also know that there is mischief online. And we do our job in order to protect consumers as well when they are shopping for medicines. And we

track rogue activities. And we keep a list at our Web site and we do ongoing surveillance. So it's very important for us that we're able to steer people in the right direction.

What we have been faced with over the past while is the emergence of the .pharmacy gTLD. Many of the attributes of what .pharmacy is trying to do we agree with. We agree with reducing and eventually eliminating rogue activity and bad operators. But what we have found with .pharmacy is that we have not been able to be eligible to hold .pharmacy domains. And the reason for that is because of their eligibility criteria which requires licensure where we operate which we have in all cases but also licensure where our patients live. And therefore we are restricted from being able to access a domain that we think would be very positive for us.

So that's a concern for us. And as a matter of fact that trouble grows over time as .pharmacy becomes a requirement for placing ads on Google AdWords. No we don't do Google AdWords in the states but we do it in Canada. And I even have a member who announced to me a few weeks ago that they have a nonprescription site a supplements site an herbal medicine site that they now have to apparently in order to advertise on Google in Canada have to go and purchase a .pharmacy domain. So it seems that the work of the National Association of Boards of Pharmacy in the United States is growing.

And I guess that brings me to the whole Shadow Regulation issue which is that those same protocols and those US based protocols seem to be creeping into areas that are outside of even operating a .pharmacy. And that has huge concerns for us. I talked earlier about having built trust over 15 years. And we certainly see that some of the maneuvers that we're seeing in Shadow Regulation being a pretty significant one. We can see it creeping. And with the goal of reducing the trust that our customers have in us and that of course having a negative effect on our business but also in addition to that having a negative effect on the health of patients.

And I say that because as legitimate business operators if somebody does something to us to try to shut us down I suppose they can pretty well do that. But the rogue operators the ones that masquerade sometimes as Canadian certainly all masquerade as supposedly legitimate online pharmacies and sell drugs without prescription, and sell drugs at prices too good to be true and who knows what they're selling. Those become the operators who continue to be able to spam people, and reach people and sell them fake drugs.

So what we would like to be able to do is to be able to present our case. I'd love to see a change in the .pharmacy eligibility criteria, or a white list or some way that legitimate pharmacies outside of Canada continue to serve - can continue to serve the needs of end users of our patients.

Ron Andruff: So just to be clear this is not CIPA coming here saying help protect our business. This issue really is a consumer choice and a consumer protection issue we're talking about. We now find ourselves in ICANN 2.0, you know, we're seating ourselves in and we're much more stable than we have been in the past. And so there are some very critical issues that we have to keep an eye on and this is in our view certainly one of them.

Affordable medication is a human right. It's just the people who were here before us from the Council of Europe everyone has a right to privacy, everyone should have a right to get affordable medication. It's a very simple rule. But the greed of the big pharma in the United States Eli Lilly and others are behind this program. And basically they don't like the idea of a million Americans and others I should point out CIPA provides medication to over 140 nations in the world is one of the major players in the world. So this is an issue of making sure that people can have access. But big pharma is really trying to close off all of the avenues.

In September of this year they're basically saying if you do not have a .pharmacy they are they gate - they have made themselves the gatekeepers

between Google, Yahoo, and the other search engines. So you can't even go and promote yourself because you don't have a .pharmacy. Worse the .com has been kind of the gold standard. If you had a .com it was a trusted space. And so what they're doing is putting forward a campaign saying it doesn't matter what the extension is com, .ca if it's not .pharmacy it's not a real pharmacy.

So this is a battle that we as a community really need to step up to and say, you know, just because the big pharma can't find their way through legal means through their own governments to make these rules we certainly can't allow ICANN to be the tool of these types of activities that are restrictive and causing consumers to be in a situation where they don't have choice.

So really that's why we're here today. We wanted just to get this on to your radar screen. I'm very grateful for Tapani to give us this opportunity. Then we would be happy to circulate a backgrounder on this through your secretariat if you wish as well as the links to the two EFF articles where they make very clear that healthy domains initiative wherein which there are four criteria above pharmacy that point out the exclusive - exclusionary aspects I'm talking about they - EFF took this on their own accord.

And so it was wonderful for us to see that they actually hit the nail right on the head. They saw what the issue was and they've addressed it. And I think we're going to see more of it. I don't think this is an isolated case. I think you're going to see a lot more Shadow Regulation with big industry coming in and kind of wheeling and dealing because we're so busy here at ICANN with all of the myriad of things we do that this is one of those things that could slide by because on its face if you look at it, it makes sense.

But to say you have to have licensure if a customer from Ulan Bator chooses to buy some medication in Canada we would have to go to Mongolia to get a license to be able to deliver those products to that individual. It doesn't make any sense at all. So these are the kinds of things that we're facing. And we'll

be more talking about this over the next period. You'll hear more about it is we also write more about it in terms of our comments to the CCTRT report.

And I'd like you to just give a glimpse to what they're saying there and if the NCSG and - or NCUC would feel comfortable about responding to that in a positive way to support what we're talking about we'd be grateful. So any further information or dialogue that you like to have with that we make ourselves readily available. Okay even buy you a beer.

Tapani Tarvainen: Okay, thank you. At this point I'll note we are so much behind schedule (unintelligible) cutting out the remaining items in our scheduling you only have three minutes with talking to these guys. Stephanie, (Raul).

Stephanie Perrin: Stephanie Perrin for the record. This probably betrays my lack of knowledge of ICANN but this is such classic anticompetitive behavior I'm wondering whose responsibility is it to police that anticompetitive behavior? And I bet ICANN is going to say well what the pharmacy boards are doing is none of our business has nothing to do with the domain name but it's illegal under competition acts.

Ron Andruff: And that is the point. You see so my feeling is that this is kind of a test of who we are as ICANN in this new environment. Do we as a community kind of come together and say you know what this is not right? It just doesn't pass the smell test. It doesn't pass the taste test. It's not right and we're coming together. And ICANN is all about consensus. Back in the day when we -the all of ICANN would be the number of people in this room we would find consensus. We'd work through it together and we'd find it. Now we're such a large body it's very difficult to build consensus. But this is an opportunity for us to step up and do that. So that's what we're hoping to do over the coming months. Thank you, Stephanie.

Tapani Tarvainen: There are two minutes to go. (Raul).

(Raul): So you're saying that ICANN would be sort of policing on this but how could they actually enforce it that only real pharmacies use .pharmacy? Like who – it would be national governments would be policing that right?

Ron Andruff: But this isn't the policing issue that we're discussing here at ICANN. What we're saying at ICANN is that we've become aware of this Shadow Regulation activity and we as a community are rising up to say no this cannot stand here at ICANN. Now how do we go forward with it? Well then we would have to if you recall I was here talking to you some years ago about public interest commitment specifications. And we should review all of those to make sure we wouldn't find ourselves in these kinds of situations. Now we're in this situation.

So it's really about saying here's something. We've highlighted it. How do we deal with it? And then one would think that the GDD would sit down - have us sit down with the pharmacy people and kind of work through this and get this right because it's about public interest and it's about highly regulated strings. We do know that the GAC are very supportive of this as well because their view is this - you can't be doing this Shadow Regulation. You have to work through the proper channels. Does that answer your question (Raul)? It's not policing it's certainly not policing that's for sure.

Tapani Tarvainen: Yes, thank you. But we're really running out of time this very - okay one more question and then we must have to close because we have a hard stop in half a minute.

David Hughes: I just have two quick questions. So technically is it not illegal by US government FDA law for you to ship to the United States? And is that not the underlying issue? Aren't you lobbying to the wrong group? It's David Hughes.

Tim Smith: It's - it is legal for us to sell the medications. So...

Man: Even in the United States?

Tim Smith: Yes.

Ron Andruff: Now to be clear there is no illegality for the Canadians to - a Canadian pharmacy to take that prescription, make sure it meets all the proper standards, and all the protocols and then to send those medications. It's mail order. That's not the problem. The problem is for the - actually the where the crime happens is that, that consumer taking those - that medication. That's so it's basically someone who can't afford their medications and they go to Canada and get \$100 pill instead of \$1000 pill. And when they take that pill they're illegal. That person they've - the crime is at that point.

So and quite frankly this is not - this is a crime that is not a crime. And in fact you see Sanders bills, Klobuchar's bills other bills that are coming through right now and talking about online cross border activities. And...

Tapani Tarvainen: Thank you. But we really have to close. And that's getting a bit out of scope for ICANN at this point. So thank you very much. This is a very interesting presentation and thank you all for being here.

Tim Smith: Thank you.

Tapani Tarvainen: We have - we're meeting the board in 13 minutes so let's move to Hall A1.

Tim Smith: Thank you Tapani. Thank you all very much. Appreciate it.

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