

## Brussels Board-GAC Meeting

2 March 2011

### Morning Session

>>PETER DENGATE THRUSH: Good morning, ladies and gentlemen. If you could take your seats, get coffee plug-in. We have got about two minutes and then we are ready to continue the interim report from the board to the -- oh, goodness -- to the survivors here in Brussels.

>> MARK CARVELL: Thanks, Peter. Before we start getting to the substance today, I just wanted to, from the U.K. seat -- I'm pretty sure I'm speaking on behalf of all colleagues in the GAC to put on record our appreciation of the diligence and constructive engagement shown by board members here and indeed by staff and ensuring that this meeting is making progress. We really appreciate that. And I just wanted to put that on record.

And, also, I wanted to put on record our appreciation of the attendance here of the observers. There are still some here today, I see. And it's been very good, I think, for the purposes of this dialogue between the GAC and the board and the staff that so many observers have committed to join us here.

I'm sure many of them have been itching to take the mic to help us through these discussions and have admirably resisted any temptation to do so bearing in mind the modalities of this meeting.

I just wanted to put on record our acknowledgment of the interest and commitment shown by the observing stakeholders here. And in the margins of the meeting, it has been very good to interact with so many of them as well. So I just wanted to put that on record, if it can be formally recorded as notes of appreciation for both yourselves and for the observers here. Thank you.

>>PETER DENGATE THRUSH: Thank you, Mark. That's very gracious and very well received, I know, on behalf of the board and I'm sure the observers. And I would just reflect it back at you, if I might, just adopt all of your own words and say the same thing. We have very much appreciated what you have described as the diligent and constructive engagement, and we feel exactly the same from the board in relation to the GAC contributions. I thank you very much.

With your permission, Co-chair, I will go back to where we were yesterday when we finished our interim response and just perhaps again begin by explaining that what

we've done is tried to work out how -- the exercise is to simplify the bylaws consultation that we have got scheduled for San Francisco. And so we've tried to work through the GAC advice and say, Well, what is there in here that we can clearly -- advice that we can easily accept and adopt? And so we called that 1A. And then we have got another category where we've called it 1B where we accept the principle but see to implement it, we need some further work. And then stuff that we've called 2 which says, Looking at this, we think it is going to be impossible, this will not be implementable, or we cannot accept this advice for other principle reasons.

So anything that's got a 2 or a 1B on it is something that would require taking to the bylaws consultation. But anything that has got a 1A on it can be taken off. So the purpose of the exercise here has been to streamline and prepare and shrink the work for an eventual bylaws consultation.

So we got to 5, I think, yesterday, if I can pick up there. And what we've done is take the 12 categories of issues raised by the GAC and turn those into -- very thoroughly explore those and parse them. While we haven't treated them as, if you'd like, contractual terms or bylaws or amendments to the DAG, we've tried to look very carefully at what the principles and the suggestions in them is. And I think we've understood those very carefully.

What we've actually broken them out to is about 80 individual bullet points, but these are the 12 categories that you gave us.

So category 5 is a relatively straightforward one, and that is the recommendation about registry/registrar separation.

And the recommendation from the GAC was when there is market power, then there needs to be separation. And we accept that completely, and we think we've dealt with that. We've dealt with that in a very different way. We've said that the standing condition will be that there is no set rules about separation and we've explained very carefully in the rationale that we have published why we have come to that view. We won't go into that now.

So the standing condition is there are no rules on market separation. However, there are lots of provisions in lots of places for what to do about abuses of market power, and we've talked about some of those. There is the rights of the registry and the code of conduct and the specific provision that deals with the abuse of market power that arises from registries, registrars being commingled is to refer them to the appropriate competition authorities because the actual GAC recommendation is that when we get that situation, we have to separate the parties. We've, in fact, we think, come up with a more comprehensive -- a better solution even than that, which is to refer to the competition authorities that have the availability of all the competition law, remedies which include divestiture but also include fines, recommendations, best practices, et cetera.

So we completely agree with the principle, when there is an abuse of market power arising from registry, registrar commingling then there is going to be action. And that takes place in a variety of ways.

6 is the protection of rights owners and consumer protection issues, and the first one of these -- And this is probably the longest of the individual separate points. This is relating to the trademark clearinghouse. And the first issue here was the suggestion that all types of intellectual property rights that are recognized should be organized and be able to go into the clearinghouse. And there was a date requirement.

And the response from that -- this is sort of a 1B -- yes, we accept the principle that the clearinghouse should operate substantially this way. We think there is a problem with a cut-off date because, as we explored in the discussion, what that will do is actually block a lot of very valuable trademarks that have come into existence since that date. And the people who know how to game these situations have already applied and said -- so we can be more sophisticated and give better protection which is the intention there.

Sunrise, services and I.P. claims, the suggestion there, they should both be mandatory. We think there's some further discussion required around this, so we've got a 1B on this. This is a principle that we understand and can accept. The current thinking from the board is that either sunrise or trademark I.P. claims service. But what we understand the issue here to be is not so much about I.P. claims and/or sunrise, it's the development of the concept of a notice service. And so we're happy to investigate the notice requirements to trademark owners who registered in the clearinghouse.

So the next issue is the suggestion that the -- in addition to your registered trademarks, that you can put in other things, which is going beyond the exact scope of your trademark registration. And the kind of example that's used is, for example, Coke soft drink or Kodak Camera or Kodak Picture or the extensions around the thing. We continue to have difficulty as the community has had with that all of the time. We go to a lot of trouble to specify what the rights are, and they have to be registered, et cetera. They have to be detectable and searchable.

This is an extension, it seems to us, beyond that and doesn't add significant protection because what's required at the end of the day is the analysis of the application of the standards.

6.1.4 is the suggestion that all trademarks regardless of whether they're examined on substantial or relative grounds have got to be eligible to participate. Now, this arises from a distinction where there are different categories of trademark -- (dropped audio).

Some trademark owners -- so there's an appearance in the current suggestion that what we are seeking to do is to elevate some trademarks or RALOs, and that's not what is intended.

So to clarify that, what we are going to make clear is that, yes, all trademarks from whatever registry given but to be effective, they must carry with them some proof of use. And that's to avoid the situation that we've learned from where people can go and get very easy cases of registrations.

Remember what we are conferring here is a benefit on genuine trademark owners. We have to find a way effectively of excluding the non-genuine trademark owners. There are places where you can go and for a very small fee, very quickly, get an instant trademark registration. And nobody believes that that kind of trademark registration should get this additional kind of protection that we're building for the genuine brand owners. And the way around that is to make sure that whatever -- wherever you come from with your registrations -- We're not trying to categorize it by source of registration. Not only do you have to have a registration but you have to show that this is, in fact, a trademark that's in use. So they're all in with that additional requirement.

And then there is another statement that says when we talk about trademarks, they can't include trademarks that are being the subject of cancellation proceedings or have been removed. Obviously, that's a 1A. We've got no difficulty with that.

Then there is some further requirements that the claims service should notify the potential domain name registrants, the rights holders, claim and notify the rights holder, et cetera. Again, no difficulty, 1A. We think the guidebook provides for that.

The next one that we do have a little bit more difficulty with is the suggestion that the trademark clearinghouse should continue after the initial launch of each gTLD. Now, again, we think the intention here -- And this is a topic for further discussion. It is in relation to the provision of the notice service. The other ones don't make sense, as I think Bruce explained quite carefully. You get into a circularity loop, for example, in some cases. We are happy to explore a mechanism for continued notice service, if that's what's intended.

Next one is who pays for the trademark clearinghouse. Again, we're not -- this is a 1B in the basis that obviously this has to be paid for and it has to be paid for by the people who benefit. And there is a variety of benefits that come from this, including to the domain name owner's benefit by possibly avoiding expensive litigation and embarking down the wrong track and trademark owners get their brands protected.

The solution we see here is that rights holders pay the trademark clearinghouse when they register their mark, so they are paying for the registration service in the clearinghouse. And the registry, of course, then pays for the use of the services. The registry has to pay the clearinghouse to provide the claims service, notice service

and a sunrise service. So we don't think there is any disagreement. All parties are paying for this.

Uniform Rapid Suspension then is the next sort of major topic in relation to that. And there's, firstly, a whole topic which we won't go into now which has been an effort to reduce the time scale. And we're noting that as, again, a 1. We also expect that the R should stand for "rapid" in the Uniform Rapid Suspension system.

I've got that as a 1A currently but no comment. So just, remember, particularly with the trademark ones, that we are awaiting to have a scheduled call with a couple of questions on this and we aren't going into too much detail.

You'll remember that the time scale has a two day here, a three day here, four to five day, a 14 plus 7, there is a whole lot of little times. We may in the end agree how to change some of those, but the principle of this being rapid is certainly accepted.

We also have a 1A complete agreement with the suggestion that the complaint itself should be simplified. And we want to see that cut down from 5,000 words to the 500 words that's suggested, try and make it as much template based, as pro forma as possible so the burden on applicants who may be facing -- trademark registrants who may be facing thousands of cases is much simplified.

What this doesn't do, of course, is limit the respondent's reply. If a respondent wants to put in a long explanation, they are perfectly entitled to. So we think that should be a substantial improvement for trademark owners.

There was a point that said decisions should be taken by qualified examiners and not require panel appointments. We think that's, perhaps, a misunderstanding. There is an examiner appointed by the URS provider. So we think that's a 1A.

Again, the -- there was another argument about jurisdiction and substantive examination. And this dispute that some marks get substantive examination, some get examined for use, some don't, again, we have given this a 1B in that we agree with the principle. We need to work through so that when we are talking about these trademarks and when they are being used, they must come with evidence of use. So I think we've covered that sufficiently. It's not to create categories of different grades of trademark. It is to make sure that the same standard is applied in each case.

And the suggestion was that, when there is a default, that it should be in favor of the complainant. And the Web site should be locked. Again, that's a 1B. We agree that should be and we thought that always would be the case. What we just want to make clear is that even when there is no -- when there is no response -- and we think in many of these cases there won't be -- the examiner still has to go through the proper process, check that the forms are in order and standards are there and so

forth. So there will still be a examination. So, if there was a suggestion there wouldn't be an examination and would just go straight to the complainant, that's not quite right. But once they've gone through the process -- and the more significant point, as I understand it from my consultations with the IP community, was this suggestion in the guidebook that where there is no appearance by the respondent, the examiner has to try and create and contemplate possible defenses. And we agree that should not be required. We don't think the examiner should be put in the position of becoming counsel for the missing respondent. So I think we've got a reasonably clear agreement on that.

The standard of proof, when we're looking at the application of these things, at the moment is clear and convincing evidence. Now, I know not -- some of you, sadly, are not trademark lawyers. So the issue here is in ordinary civil cases, there's sort of two standards of proof -- clear and convincing evidence, which is slightly higher than preponderance. Preponderance just means on the balance. A normal civil case is on the balance. You can win a case 51-49. That's all you have to do is just get more than the other guy. What the community has negotiated for these cases, because of the circumstances, because they're quick and we want -- they want to be rapid. They've got to be clear-cut. So the community has set the standard for this as being clear and convincing evidence. Those of you who watched a bit of television will know that for criminal cases, the standard is higher. It's beyond a reasonable doubt. We're nowhere near that standard. We're just at the middle threshold. The slightly higher standard for civil cases, we want an immediate reaction often in the absence of the defendant. So we're talking about clear and convincing. And at this stage our position is that is the community-negotiated position. That is what the IRT asked for or originally proposed. So we haven't yet seen a rationale for changing that from that. So that's currently a 2. A 2 we need to go forward and negotiate that.

Bad faith requirement: Again, we think there's a difficulty with removing this requirement. The intention here is to -- has been to try and change the standards of some of these tests from what's been negotiated. And we think that the URS should continue to apply only in those clear cases of cybersquatting where domains have been registered and used in bad faith. So, again, that's something the community has worked on. And we would want to hear some pretty convincing reasons as to why the community-negotiated standard should be changed.

User pays -- a loser pays mechanism should be added. Again, we disagree with that. But we are prepared to very carefully monitor the launch conditions. And, if we are seeing abuse by losers and that we require evidence to change this, we're prepared to act very quickly if there is actually evidence that this is causing problems. Again, there was a suggestion that registrants have lost five or more cases should lose the right to appeal. Again, we can't quite see where this is coming from or why people should have their rights removed except for very clear cases.

Again, people who appeal should have to give rationales. We think the rationale's contained in the appeal. We don't think there should be a preliminary process to give leave to appeal appropriately. We think there's some confusion here because we're not sure whether this is intended for appeals by complainants or respondents. And in some cases it even looks as if it's thought that winners might want to appeal. So I think there's a certain -- this is probably one of those areas, Mark, that some questions and some calls will help clarify.

There's a circumstance where, if you don't turn up to a URS and you lose, that you ought -- and that may be because you're away on holiday or because you haven't used this domain name for many years. So you'll sit there, and your registration will be in suspense. The current provision is that you've got up to two years to come along and apply to have that suspension lifted. The advice suggests that that period be reduced to six months. Now, without -- with all respect, we think this is rather an unusual situation. We don't think we need to get too hung up about it. But, at the moment, again, this is the community-based negotiation period. The community thought that two years was an appropriate period for you to be allowed to come back and try to restore something where you're in default. So we're suggesting at this stage let's leave it as the community suggested, unless there's -- so let's take that one forward for negotiation.

In addition, the examination of possible defenses in default cases, again, I think this is a repetition. This is a 1A from us. We see no reason why the noncooperating defendant should get that kind of benefit.

The fees: URS filing fee. It's currently set at 300. We're not quite sure what's intended by the GAC point here. It says it should be 200 to 300. We think -- if that's intended to mean that 300 is an upper bound, we think that's a possible interpretation of it already. What we call this is a 1B and that we understand the principle and agree. The difficulty -- excuse me -- the difficulty here is we have to actually negotiate with our provider. ICANN is not providing dispute resolution services. We are contracting those out. We have to make sure we can find a provider who will do the work required for that fee. So, subject to that kind of externality, we think this is a substantial agreement.

The next one is another very good one, I think, that's come out of this process. At the moment, if you're a successful complainant in the URS, what happens, contrary to the way the UDRP works, which is an actual transfer to the complainant, this, because of the different circumstances, is a suspension process. Now, what can happen -- it's suspended for the remaining life of the registration, unless the parties do something else. Under the current rules, it drops out of registration into the various automatic drop catches that people have to pick things up as soon as they become available again. And the risk is that the person who won the URS isn't the person who picks this up when it becomes available again. So what that would force the trademark owner to do is go through another URS against another cybersquatter. So what we're happy to say here is yes. We agree that in those

circumstances the person who has won the URS should get the first right. They can turn it down. That will avoid them having to go through another URS or UDRP. So that's a 1A.

Again, the next point is that the URS should be allowed to go beyond the exact registrations. Remember we talked about what goes into the trademark clearinghouse and how they get used and sunrised, et cetera, is the suggestion that, in addition to all that, the expanded shadow around the mark of the Kodak camera. And, again, we disagreed with that. We can't see how you can grant greater rights than your registration gives you. We're not in the business of expanding the concept of trademark infringement. The proper test, as I set out, is a confusing similar or deceptive. So that's a 2.

Rights protection: The post-delegation dispute resolution process -- this is another one where the standard of proof has been asked to be changed from clear and convincing, which, is, you know, like 60% over 40% level should be changed back to down to the 55/45. Again, we're not sure how much turns on this. But our position at the moment is that this is what was put out by the authors of the process themselves. And this is what's been negotiated with the community. So, if one side to that debate now wants to change that, we're not quite sure why. and we'd want a reasonably good rationale for that. So that's a 2.

Another suggestion was that, if there is a successful post-delegation dispute challenge to a registry that says you have been aiding and abetting all these people to do cybersquatting, in addition to whatever remedies ICANN takes against the registry, which could include cancelling them or fining or all the remedies that might be available, the suggestion is that all the registrations themselves that have become -- that might be embroiled in one of these disputes should get transferred. And we don't agree with that. We think that's not the proper process. You shouldn't be using the post-delegation dispute resolution attack against the registry to sweep up the things. What you need to do there, of course, is file UDRP proceedings or court proceedings. It's not that you're not without a remedy. This is the wrong remedy for dealing with that particular problem.

Again, the next one is the requirement of substantive examination. And I think I've covered that. We're not going to be discriminating on the basis of where it's registered or what standard examination. Trademarks have got to be supported by evidence of use for these provisions to be activated.

There was a long paragraph about goods and services being identical. And all my notes here say is we just don't understand this one. We're waiting for clarifications. That's just a question to come.

Grossly negligent. Standards been introduced about the registry operator. And we're not -- we don't have -- we're disagreeing with that.



Requirement that the complainant has to notify the registry at least 30 days filing is said to be burdensome and should be reduced to 10 days. Again, we're not convinced that that's required. There are other ways of urgently bringing action, if it's required. This remedy is not intended to be for the interim injunction or the temporary restraining order circumstance. This is where there's a long pattern of behavior against the registry. There seems to be no reason why 30 days, which is a relatively standard sort of notice period should be reduced to 10 days. But, again, I guess we're hoping to be able to be persuaded. Next is 1A. And that is where there's an expert determination against a registry that says, yes, you have been engaging in this illicit conduct, you have been, for example, conspiring with registrars to facilitate cybersquatting, when that determination comes back to ICANN, the recommendation and the GAC advice is that ICANN will propose appropriate remedies that are in line with the determination. And we agree. We think yes. And we're prepared to commit ICANN will impose appropriate remedies that are in line with that determination. So there's no difficulty with that.

So that's the end of the URS and PDPs. We get to the general consumer protection provisions. The first one is about an amendment to the abuse point of contact to include government agencies. And I think I actually covered these yesterday, so I'll skip 6. We actually had answers on 6. And come to post-delegation disputes.

Now, this is a relatively complicated one. This is the suggestion that's been particularly raised by the delegation from the government of Norway who are concerned that there was a discrepancy between the letter of support or nonobjection and what's in the contract. And this is -- this is a 1B. Because we completely agree that, when there is a -- and this was the "may implement" or "will comply" change that the Norwegian government has been referring to.

So what we think is there's a bit more thinking that all the parties need to do about this, because there can be adverse consequences if we simply do what's required. So the principle is accepted. And we will modify the suggested wording of the letter of support or nonobjection. So that's the first one. The letter that will be required will be modified as requested. But we think that the registry agreement -- our thinking at this stage is the registry agreement itself should continue to say "may implement" rather than "will comply."

And that's because -- and we're prepared to explain this in much greater detail -- it's not always in the interest of ICANN or governments to give registry operators only the ability to force ICANN to implement decisions in this case. What this means is that in cases where the government might have lost a decision, for example, the registry operator will be able to do, if we do what's required, what's suggested by the GAC here, we'll be forced to implement decisions against the government that the government might not be happy with. So we're happy to work through and explain that and take further consultation with the GAC.

The other point that we're very clear to confirm in this area is that we have mechanisms to implement and enforce the contracts. This is not about ability to enforce the contracts against the parties. This is what's to do in these relatively unusual circumstances of litigation.

So the second aspect of that was ICANN complying with legally binding decisions in the relevant jurisdiction. And at this stage we're still concerned that simply legally binding decision is too low. Our concern here is simply the general security and stability of the business and the arrangements. This addition here, for example, is there may be circumstances where some of these amount to re-delegation by government action. And the other one is there could be multiple jurisdictions. And we've talked about the Springfields, for example. So we think some -- we think it's helpful for stability purposes for there to be some discretion around the enforcement of that to be compulsorily required just because one authority changes its mind about something with a change of government seems to us to invite some stability discussions.

So geographic names. The first point here was to implement a free of charge objection mechanism which would allow governments to protect their interests. That's a 1B for us. We have the commitment to investigate a mechanism in the coming round under which GAC members can be exempted for paying fees for some circumstances. So, yes, we can do that.

The next part of that is a difficulty about the definition of names that are considered to be geographic. And, again, there's a difficulty here.

We continue to have the requirement that we rely only on pre-existing lists of names. And this is for the stability and certainty points. But governments and other representatives can continue to use the challenge process. And we will also explore the possibility of identifying in advance and using additional lists that are published by recognized global organizations. So we're very sympathetic to the problem that's been given. And there's been examples given of abbreviations and names by which countries are commonly known. And we're committed to working to a solution to do that. We don't think the answer is an ex ante, sorry, definition later of what is a geographic name after an applicant has made a move.

Next one is ICANN is going to exclude an applied-for string from entering the round when the government formally states that the string is considered to be named which is currently known. That's the same point. We continue to rely on pre-existing lists but will work toward solutions.

The suggestion then for the next topic then was about city names where an applicant comes forward and says it intends to apply for something that is a city name but does not intend to take advantage of the city connection. The GAC said there should be further explanation on statements that applicants are required to provide a description, et cetera. We don't think that's required. We think, if

somebody wants to come forward and, for example, Wellington wants to sell Wellington gumboots and Wellington is a city leaving aside a capital sort of issue, we think there are sufficient post-delegation mechanisms to address this. And, in addition, the early warning mechanism that we've developed -- the 45-day early look we think is a way to indicate early days community objections. That's a 2.

Government should not be required to pay a fee for raising objections to a new gTLD application. And the advice is to implement a free objection mechanism which would allow governments to protect their interests. And the commitment here -- this is a 1. We accept the principle. It's a 1B because we need to work out what the modality is. We will investigate a mechanism for this coming round under which GAC members can be exempted from paying fees for objections in some circumstances. Now, as you'd expect -- and I have apologies from the CEO, president Rod Beckstrom has gone to be present in Qatar for the launch of their IDN. But, as you'd expect, the instant protection of the ICANN model was his concern. We have to just make sure that there are -- that we carefully consider who will pay for this and what the fiscal risk is.

Further requirements regarding geographic names. This is a 1A. The issue was the GAC clarifies it's a question of national sovereignty to decide which level of government or administration is responsible for dealing with letters of support. Yes, we agree. We think, as we move down this track, it will be helpful to all parties if governments can provide that information and published information on their Web sites, et cetera. But it's clearly a matter for the government to determine who it is who has property authority to do that.

Next one is, again, a relatively complicated one where there are -- if there's more than one application for a string representing a certain geographic name and the applications have the requisite government approval. So where there's multiple applicants or with the approval, the GAC says in this case in such circumstances it's not appropriate for ICANN to determine the most relevant government entity. So this is the situation where you might have a city council as the appropriate authority authorizing somebody to use the county name. And the city -- the province name is the same and someone else has provincial authority. So the question is who determines. The GAC's position is ICANN shouldn't be put in the position of determining whether the county trumps the province. And we agree. So we'll continue to suspend processing of applications. We don't want to be seen to be making a judgment about that either. And so we're accepting that. What we do have to have is a process of resolving that. So we think we need to work with the GAC to allow that to go forward so that multiple applicants can go forward.

What we will do is the other side of that, which is when there are multiple applications all coming from the same authority, it could be -- I think we've seen a couple of these already from some places, some authorities, maybe 5 or 6 applications, if people wanting the same city name and the city decides it's going to authorize all of them and let the best applicant go forward. We're quite happy in

that circumstance, because we're not required to make a distinction between two authorities. So where there's multiple applications from a genuine authority, we will process those, as you have said. That's a 1B. We just have to work out how to do that.

Legal recourse for applications: This is an issue where there's provisions in the contract that said we can't be sued for matters arising out of the way we conduct the gTLD application process. And there's been some advice from the GAC about taking advice from European competition laws. And this is a 1A. We think we've done that. We've got the advice. We agree completely. And also the second part of that GAC advice was to be clear that all the other ICANN accountability mechanisms apply. In other words, the exclusion against lawsuit doesn't exclude it from being a complaint using the ombudsman, applying for reconsideration -- all those things, usage should still be available. They are. So that's a 1A.

Topic number 10 was providing opportunities for all stakeholders including from developing countries. The primary answer on a lot of this is that we agree. And the way we are responding to this is we've set up a community workgroup. And they've been tasked with coming up with mechanisms. So, to a certain extent, we at this stage have to say we're waiting for those recommendations. And, when we get them, we'll apply the usual ICANN process for review and implementing those when we can. So we just commented here we would like to get that report from the JAS working group as soon as possible. And, if we can help that working group in anyway, please let us know. At this stage that's a to-be-developed point. But we have set this up for the reason to meet this very concern.

Language diversity. Yes, we think that's a 1A. We're currently providing all the documents in the U.N. languages and within a reasonable period. That's covered by our other sort of operating principles.

The GAC strongly recommends that the communication strategy be developed with the issue of inclusiveness as a priority. We agree completely. That's a 1A. And then there's technical and logistical support. We've given that a 1 as well. We completely agree. What we need to do is work out what the mechanisms are for that. We've suggested this matching service where we will set up a list of providers of various services, and we'll make that information available to the applicants. So that's how they will get the technical and logistical support. And then there's an outreach recommendation. And, again, although we're waiting for aspects of the report, we've given that a 1A. We have absolutely no difficulty with the whole point of the communications outreach has to go to the entire community.

Another recommendation actually incorporated the report of -- the interim report from the JAS group. And you told us to go ahead and implement those. We actually can't implement the interim recommendations. We're waiting for the final report. That's, if you like, a relatively formal answer. We're very happy with the way that

work is going. We're looking forward to the final report. When we get the final report, we'll do what we can.

In the next aspect of that was applications from governments and authorities in developing countries. We're waiting to see, Heather, what the report tells us to do on that.

So I think that's been a very well-done piece of work.

Other developing community comments, fear about the consequences. So what we've got there is a 1B. ICANN is investigating and intends to provide mechanisms for assisting with matching needs to providers. We'll continue to investigate mechanisms for providing support, et cetera, so we're doing what we can there in terms of what the report comes out. Okay.

The last 2, which are relatively short. The first one is the law enforcement issues. And there's a first part to that which related to a separate exercise where we've had information about status of the RAA-related recommendations from law enforcement, which we've had. So there is -- we will provide an update very shortly on the status of the RAA-related recommendations from law enforcement.

The next aspect of that is the guidebook, the new gTLD part of that. And the suggestion here, the first suggestion was to include other criminal convictions as criteria for disqualification, such as Internet-related drugs. This is a 1B. We certainly accept the principle. And on generic terms we accept the principle that screening should be as effective as possible. And we commit to work with all of the parties to find the most effective solutions. And we know that governments and their agencies are the most informed people. And we look forward to help in making the screening that's been called for as effective as possible. So principle's accepted. We just need to work out how we do that.

We note some problems, just for the record. There's no consistent definition, for example, of criminal behavior across multiple jurisdictions. We're not quite sure whether the intention is that all criminal behavior will disqualify you, or does it need to be specifically linked to any kind of activity, et cetera. So there's some thinking and refining to do there. But the principle is accepted.

The next one is to assign higher weight to applicants offering the highest level of security. And that's a 1B. I think we agreed that that's a useful approach. And we are considering providing extra points in some aspects of the qualification scoring process. We record the difficulty about the second part of that, which is that this should be targeted in areas where there's somehow there's some -- we're available to identify strings that prevent a higher risk. We're conscious of avoiding any a priori categorization of strings. And I think it was Suzanne Sene, representative from the United States, that said let's increase the level of security instead or as well. So that's the approach there.

The next one was add domestic screening. And, again, we accept the principle. Without getting into where the -- all the detail of screening, the principle here -- this is a 1B. We accept the principle the screening should be as effective as possible. And we commit to work with the parties to find the most effective solutions and that includes meeting with law enforcement to work that out. So we're not screening experts. Let's talk to the people who are.

Add criminal background checks to the initial evaluation. Again, we accept that as principle. 1B. Screening should be as effective as possible, willing to meet with law enforcement, and so forth. So the same kind of reaction.

There's a suggestion that we should amend the statement the results of these inquiries should be posted. And we're not sure -- we're prepared to explore that. But just the obvious point is that in many jurisdictions, I think, for example, Europe and my country, this would raise immediate privacy concerns. Understand there's some quite different approaches to privacy for people with criminal convictions in some countries, but that's not the norm internationally. So this is something that's going to be very carefully done. And this is one of the constant problems we have, of course, as we try to get a global solution where there's a variety of national differences in the law.

Maintain requirements that WHOIS data be accurate and publicly available. That's a 1A. And the text here is simply cut and paste from our obligation under the Affirmation of Commitments where existing policy requires that ICANN is to maintain WHOIS information, et cetera. So we point to a much tougher obligation on us already than this one and happy to accept it. And, finally, we point to the -- there's a suggestion about an early warning to applicants. And we've given that a 1B. We think this is covered by provision of 2.1 or 2.2 above. So the principle of early warnings, except the exact modality needs to be further discussed. But we think that's now dealt with the provision of the data and the 45-day evaluation period for governments to be allowed to examine, for example, for sensitive strings. So that's the end of the run-through. I appreciate it's difficult to take it in orally. We are working on refining this. And the board expects that we will be in a position to hand this to you within a couple days. Thanks.

Well, let me just first ask if any of the other topic leaders want to augment anything that was said and at the same time, Heather, obviously, open it up to questions.

>>HEATHER DRYDEN: Thank you very much, Peter, for that. Good morning, everyone. If GAC members would like to ask questions or seek clarifications on that, then I would invite that now. Yes, I think that's a good use of the next few minutes.

I actually see Rita asking for the floor.

>>RITA RODIN JOHNSTON: Thank you, Heather. I just wanted to mention, as I spoke to Mark from the U.K. a little while ago, we are happy to set up a conference call very soon after this meeting. Peter did an excellent job of going through the complicated brand protection points. And so we would be available to talk to GAC members at their convenience, hopefully sooner than later, to go through in more specifics some of the resolutions that we reached.

>>HEATHER DRYDEN: Thank you, Rita. I know that the GAC is working on that as we speak.

So all right. Are there any requests from the floor? European Commission and then United Kingdom.

>>EUROPEAN COMMISSION: Thank you, Peter. Actually, that was tour de force actually to go through so many subjects so quickly. Certainly my fingers are burning actually from my notetaking.

We have a lot to digest. I think there is quite a lot of 1Bs on that list where additional discussion is required between the GAC and the board on how to refine some of the proposals to make them practical from an ICANN perspective. So I think that's good actually. I mean, that's a step forward.

It does make me wonder, though, in terms of the process actually. That's going to require quite actually a lot of work between GAC and ICANN staff, I guess we're talking about initially.

And as we all know, a lot of the devil is in the detail actually. So how would you assess the impact of having so much outstanding work on ICANN's projected timetable for the gTLD process overall? Thank you.

>>PETER DENGATE THRUSH: Yes. I think I will be looking for some assistance from staff. I think the most important point is how many 1As there are. I think that's the starting point. There is a lot that's been taken off the table as well. And I think a lot of those 1Bs, or many of them, turn on getting some answers in relation around the I.P. stuff. And I think once we get that -- we may get those in the next few days. A number of those 1Bs will then be turned into 1As as well.

The other thing is some of them may -- the next split is how many of these need to be resolved prior to launch and how many can be resolved later and where do they fit in terms of the urgency.

Are they things that need to go -- many of them don't actually need to go into the guidebook, for example. That's another split is to sort out what of them are actually guidebook-dependent and application launch date determined.

I think I'm looking at Kurt in terms of preparing this. We are actually feeling reasonably confident that we can get through producing version -- Well, Kurt, why don't you help me out here.

We had this discussion yesterday in terms of actually converting these into draft guidebook language. We think we can do reasonably quickly in many cases because of the length of time we have been discussing them, because of the fact we have now crystallized them down to this kind of a point. And the actual refinement that's required now, we think, is actually in many of these cases relatively straightforward.

Kurt, I don't want to be putting -- or any of the other staff. Do you want to perhaps give a response in relation to -- the question really is how much more work in terms of turning these 1Bs into guidebook language do you think there is?

>>KURT PRITZ: I think it's sort of a bifurcated answer. One is, you know, the task of augmenting the guidebook with the input from the GAC is fairly straightforward. And then one is at some stage a feedback loop established with the GAC to determine that these changes are along the lines they've projected.

So we intend to use the time between now and San Francisco and also the time allocated for board GAC consultation in San Francisco to have those discussions and put some of that proposed text before them.

>>PETER DENGATE THRUSH: Bruce, can you help with that?

>>BRUCE TONKIN: I just want to make a slight comment, too, in that in many cases, the 1Bs are that we're agreeing with the intent of the GAC recommendation but changing the implementation slightly to be implementable, I guess. That does not necessarily mean there is a lot more work. It is probably just another sentence or two in the guidebook.

But, really, what we are saying is we agree with your intent. The reason why we put it 1B is we haven't agreed with every word in your implementation. So in many cases, we've -- in the document that you will see coming back from us, we give commentary to say this is a 1B. We agree with your intent, but this is how we're going to implement that.

>>PETER DENGATE THRUSH: A good example of that is the registry-registrar separation. We think there's a fairly comprehensive solution to that in terms of the mechanism that's proposed, but it is different from the one you suggested which was when you get to abuse, then you separate the parties. We think that's -- we think we have got a better answer than that.

So there is no additional work actually required on that. We just need to have a discussion, and you need to be satisfied that the solution that's proposed in the



rationale and in the guidebook now meets the need. But no additional work would be required in terms of drafting anything.

>>HEATHER DRYDEN: Thank you, Peter.

Is that a follow-up from the European Commission? Okay.

>>EUROPEAN COMMISSION: Just a little one actually. You pick a very good example there, Peter, actually on registry-registrar separation because on some of these issues, we'll have to defer to colleagues who have policy responsibility for this area.

And some of these issues for them are quite complicated from a legal perspective. And I think we need to avoid a situation where we have goodwill on both sides, the ICANN side and the GAC side.

But, in fact, the solution that the staff think they have to our concerns is not one that our colleagues think answers their concerns. And we only discover this after the launch of the gTLD process.

I think you said there you felt that some of these can be deferred. I imagine that would be problematic for ICANN to discover after they've launched actually that what they thought was a solution isn't a solution for the relevant public authorities.

And I just -- another general observation, I think on some of these issues, it may be slightly ambitious to expect public administrations to be able to respond. I don't know how many any working days we've got between now and San Francisco. If you post draft language -- I think what we need is draft language. I'm very pleased to here that you are thinking about that. That's always the best way to move these processes forward, is to show track changes actually and then we can consult. That's very helpful.

I hesitate confirming that we'd be able to get back to you before San Francisco on some of these issues, though, just because of the consultation processes we have to engage in back home. But we will do our best, of course. But I wouldn't like to create a false sense of optimism. Thank you.

>>PETER DENGATE THRUSH: I think we are going to come to discuss the letter that we've got -- I think the first thing is in relation to going forward, is to say thank you very much for the offer of two days. Let's lock that in as soon as possible. Whatever we call it, let's take that because that's a lot of planning, as you can understand, not least coffee breaks, lunch and other things that the meetings team will need to organize. So as soon as possible, if you could tell us which two days are going to be available. Are you thinking -- We've got the Thursday already scheduled. Are you thinking of the Friday, the Wednesday, or the Tuesday, if you could let us know, that would be a big help.

The second thing, as a matter of a general point, we are not expecting you to change anything or go and take any further advice. We are expecting you to come to that meeting with all the preparation you have already done.

What we think you need to do -- you don't need -- you actually now don't need to prepare on all the 1As because we've taken those off the table. So, in fact, the work that you were going to do for San Francisco has now got easier. We are not expecting you to do any additional work as a result of what we've done because we've made that easier.

>>HEATHER DRYDEN: Thank you for that clarification, Peter.

We will be endeavoring to prepare on as many or all of these issues in good time for discussion in San Francisco. And we will await receiving your written decisions and clarifications there in order to assist with those preparations.

I have the United Kingdom next.

>>UNITED KINGDOM: Yes, thanks very much, Heather. And thanks also, of course, to Peter for providing such a comprehensive report this morning. I'm sure many of us are greatly encouraged with, as you say, the number of 1As. That's a very positive start this morning. And I think that sets a very good feeling about this process for San Francisco, too.

With regard to the rights protection area, I'm sure a lot of brand holders, trademark holders, big and small, some of the very big brands have obviously had a very prominent voice in this process. But we in governments have also been very cognizant of the interests of small and medium-sized enterprises who are not so well resourced to try and address their concerns and articulate them and bring them to our attention in our stakeholder consultations.

We have had some involvement, but I'm sure SMEs as well as the brands will be greatly encouraged by the 1A responses we've had particularly with regard to the URS. I mean, that was for many a key mechanism that needed being brought back into line with its original objectives.

There was already the appreciation with that as a principle, was greatly appreciated and the follow-through in looking at how we can do that and the number of 1As that I was furiously noting down. I might not have caught all of them. And I noted there were some 1As.

And there were some 1Bs, and I think you're right. Some of them can be quickly fixed through a quick consultation as we prepare our written answers to questions, which your colleagues needed to put to us to clarify where exactly we were coming from. And as we prepare those responses and then engage in a consultation, which

we're very ready to set up, hopefully we can convert those 1Bs into 1As through discussion, maybe some adjustment in positions. That's inevitably part of the process, but it is all very encouraging.

So I think those -- that's what I wanted to say. Generally, I feel, you know, it's been a good process here in identifying what can be 1As and the middle ground of 1Bs where, you know, it is an issue of practicalities, I guess, for most of those cases of 1B. Thanks.

>>HEATHER DRYDEN: Thank you, U.K. I have Katim, Sri Lanka and Germany.

>>KATIM TOURAY: Thanks a lot, Heather and Peter. Just to say thanks to Peter for an excellent summary of a very complicated list of issues and items here. It's great. You give it a wonderful presentation.

I just wanted to take the opportunity to really encourage everybody, by which I mean everybody, to really get all hands on deck and give the JAS working group all the support that we can provide them to ensure that they come up with a comprehensive set of proposals that are practical, that are implementable, that we can hopefully use to move the issue of support to developing countries forward.

This is a very important issue because I think it goes to the heart of the credibility of ICANN as an organization because if we are going to say that -- and we keep saying that we want an inclusive process, it is not going to help us to have a process that actually ends up leaving people behind, either by default or by design.

So the point I should also make is that even if you are not going to be a direct beneficiary of this support program, I would remind you that you are also -- you are also going to benefit from an ICANN that is more credible in the eyes of its constituencies, in the eyes of governments around the world and in the eyes of the global Internet community.

So for that very reason, I would really encourage everyone, again, to -- if you have any questions or you have any suggestions, any ideas that you think can be helpful in moving this issue forward, please bring it forward to the JAS working group so we can get on with it. Thank you.

>>HEATHER DRYDEN: Thank you, Katim. Well said.

Sri Lanka next.

>>SRI LANKA: Thank you. Thank you, Heather. From my side, I also want to thank Peter and the team for the encouraging response that we had. We are also encouraged by the several 1As.

Just a point of clarification I had on the subject of -- under scorecard Item 10. I think Katim also clarified some of the points that I wanted to ask. Is there a specific timeline for the JAS outcomes? Maybe I (inaudible) about the timelines they have already set.

It seems that your response suggested that the position of the board will be contingent on the final recommendations of the JAS in determining some of the points we have mentioned on this particular item. So I just want to have a clarification on that. Thank you, once again, Peter.

>>HEATHER DRYDEN: Thank you, Sri Lanka.

I think Avri Doria is chairing the JAS. I see SÈbastien waving. Can you answer the question, SÈbastien?

>>S...BASTIEN BACHOLLET: I can try to answer the question. Currently, there is a co-chair of the working group, Rafik Damak from the GNSO and (saying name) from the ALAC.

For the moment, the question the group has is when they need to give a final report. Obviously, the answer up till now was the San Francisco meeting. It's quite unrealistic for two reasons. The first one is that they need more inputs, and the call here to have participation from other participants and from GAC members is important and they will need to have some time to work out the thing.

And it's not something we need to have the DAG finalize. Because it is something outside of the DAG itself. It will not change what is inside. We can always add new way of doing things for them outside of the DAG itself. Then it is not linked with the publication of the final application guidebook.

But my feeling is that we need to give them some line of the date. And I think if we can ask them to have something ready, something like within one month after the San Francisco meeting, it will be good to have them focus on the work. And, hopefully, other people will be able to join prior to San Francisco and to work with this group to deliver. Thank you.

>>HEATHER DRYDEN: Thank you for that, SÈbastien. I don't think we need to confirm all the details here and now, so that's helpful.

Germany?

>>GERMANY: Yes, thank you. I also want to thank Peter and the board for this presentation. I think it was a good drop of work. And I think especially the discussions in I.P. protection are quite encouraging, and I hope that we are in a good way and in San Francisco, we could really come to some more 1As and get many of the issues resolved.

The second issue we are a bit hesitant is we also have some focus on this -- as you know, this discussion on geo names. Let's see what will be provided, if you have any list.

I'm frankly a bit skeptical because we had tried during the last three years -- I was participating in this work -- to find some international list that can be used for these purposes, and we didn't find it.

And I wonder how we can find it in the next weeks. Therefore, I'm a bit -- our approach was, let's say, a pragmatic one, not a perfect one, I know. But we really tried to start being pragmatic.

But maybe we find some time in San Francisco to discuss this in depth. And we are surely prepared to engage in these kind of discussions. Thank you.

>>HEATHER DRYDEN: Thank you very much, Germany.

I have Ray and then Bertrand.

>>RAY PLZAK: Thank you, Heather.

I would like to echo the sentiments that others have expressed here in that we have made some fantastic progress in these two days. And the progress that we've made is to gain a lot of clarity as to what are the real things that we still need to discuss.

As Peter has said, we've taken a lot off the table. And as Bruce has said, there are other things that will come off the table in short order as well.

And so the consultation that we are going to have in San Francisco has become more meaningful in that we can really focus where we need to focus. I think that the GAC's suggestion that this be expanded to two days is a very good thing. And so I think that as we move forward, let's not forget that we have all put in a good-faith effort to date to get this work as smoothly and as efficiently as we can.

And so I, for one, am looking for a successful conclusion in San Francisco.

>>HEATHER DRYDEN: Thank you very much, Ray.

Bertrand?

>>BERTRAND DE LA CHAPELLE: Yeah. I would very much agree with what Ray was saying. Just an element of clarification regarding particularly the 1Bs. There are a certain number of cases where in digging deeper in the topic, it appears that there are some elements that cause no problem but some cases where it might be difficult. I will give you an example.

There are elements where when the relationship is between an existing actor and just a national government, things are pretty easy to solve. But when there is anything that is cross-border or that is involving several actors, there needs to be something a little bit more specific than what is the current proposal or the current wording.

So this is a typical example where something is in the 1B because there is a distinction that has to be made or something that must be explored further.

And one of the cases where there is a deepening of the understanding that comes from the discussion is, in particular, in the part 7 where I noticed that in the post-delegation dispute, without getting into the substance, I just wanted to say that we understand that there are additional questions that the GAC will ask because of some of the things that Peter has reported.

It is a delicate topic where we want the interaction to explore in detail what exactly it means and why the board is coming back with this feedback.

So I'm looking forward to the discussions in San Francisco on this grid of topic by topic and, basically, the 80 lines minus the 1A that have come. But I think it has been a very good tool for interaction, and the scorecard was a very good basis to provide us with capacity to feed back.

>>HEATHER DRYDEN: Thank you very much, Bertrand. I think we have, indeed, built up some goodwill in the last couple of days and now we need to build on that. We have more work to do, but we have a good basis to proceed.

So from my part, the GAC, I know, is very appreciative of the efforts of Peter, all of the board and staff as well for putting together these two meetings and for working with us to try and resolve these outstanding issues.

So from me, my full appreciation.

>>PETER DENGATE THRUSH: Can I just stop you thanking me for this? I'm just the front end of what's been effectively an incredible team, the team leaders, the topic leaders. You have heard them and have done all the work and have given me fantastic briefing notes. It is not fair you keep thanking me for this. It is the team, it is the topic leaders on the board that have done all the work.

I would like to move to a different topic. I wanted to say, first of all, thank you very much for the offer of the second day. I think if we can move forward that as a given and lock it in. We don't just quite understand the suggestion this not be a bylaws consultation. We've had a scheduled bylaws consultation in front of us since you and I talked about it in mid January. And the board resolution sets that out. We think things have got easier.

The only specific element of what makes it a bylaws consultation is the element of good faith, trying to bridge the gap. So the suggestion -- I really worry why -- rather than speculate, what is it that having done this work, having got the chores easier than we had in front of us, why do you suggest that it not be a bylaws conference?

>>HEATHER DRYDEN: I will do my best to answer your question, but I also will look to other GAC colleagues to contribute.

I think the uncertainty for us is because we haven't had the written decisions of the board or the written indications of where the board is moving on the 12 outstanding issue areas that we've identified, that we would need that in order to prepare to develop GAC consensus views wherever needed on -- you know, in response to what we receive, identify areas where we would need to clarify and so on. And we know we just don't have a great deal of time between now and San Francisco.

However, that is what we will be working to do in the time between now and then. So that will be the focus of our efforts.

So we were concerned that if we didn't signal as early as possible our hesitation around being prepared for the 17th, that that would be unfair and so we wanted to be as clear on our side around what we can accomplish in this time frame.

>>PETER DENGATE THRUSH: I guess we don't understand because we don't think you need to do -- We don't understand that at all. Sorry. You've been preparing for a bylaws conference since January on these 12 topics, and it has now gotten easier.

>>HEATHER DRYDEN: I think if we follow --

>>PETER DENGATE THRUSH: If we -- what we are saying is the more work we do to clarify, the harder it gets? Surely, the more work we've done to clarify, the easier it's now got to do the work in San Francisco. If we had not had the Brussels consultation, we would have just turned up and had a bylaws consultation in San Francisco. But what we've done is clarify and limit the work so the work we now need to do in San Francisco is reduced and comes in with greater clarity. I don't understand how more work and more clarity leads to the conclusion that you come to. So you have to help me with this.

>>HEATHER DRYDEN: I believe I have answered your question. If others would like to make additional comments.

I have the United States.

>>UNITED STATES: Thank you, Heather, and thank you, Peter. Actually, if we can go back to the January resolution, a sort of reaction we had at that time was some slight surprise actually that without having seen the GAC scorecard, you were

already forecasting that you anticipated not being able to accept the advice contained in the scorecard. So that seemed a little bit of putting the cart before the horse, if I may say.

So, whereas, I appreciate that having issued the resolution perhaps on the board's minds, you anticipated that we had put bylaws consultations on these issues in our agendas.

I think we all put a large question mark on that because we knew we had the Brussels meeting and we needed to wait until we concluded the Brussels meeting.

So I concur completely with Heather's assessment. We all need to digest your reactions to us in written form because we all have to consult in capitals. And then we need to confer with one another so we have a GAC consensus view. Thank you.

>>HEATHER DRYDEN: Thank you, Suzanne.

I did see Rita as well asking for the floor.

>>RITA RODIN JOHNSTON: Thank you, Heather. I guess I'm a little bit confused as to some of the comments that I'm hearing. My understanding, as Peter mentioned, and what was told to the board we were having a preconsultation to a consultation. There is no requirement that that happen. And as you can see, many, many board members who have day jobs came here and prepared quite a lot for this consultation.

As you know, we got a scorecard that was wonderfully done. There were some follow-up questions, but ICANN had prepared a series of papers. There were a series of preconsultation, preconference calls where people tried to go through issues. And I can speak for the I.P. issues. Unfortunately, we weren't able to get into substance because we did not have the GAC's position in the scorecard on that card.

But if there was an agreement to have a preconsultation before a consultation on March 17th for two days, I wasn't aware of any requirement that there would need to be a writing here because I'm not quite sure how that would work.

We've been working non-stop for a few days, especially, as you can see, the board is ceding to what we heard from a few GAC members yesterday of, Can you give us your preliminary views?

I appreciate the GAC members saying you guys have done a lot of work. But we did a lot of work, and we were very focused. And we came out with this statement that Peter has made to give you guys our rough read on the issues. So I'm just wondering if you agreed to have a prebylaws consultation before consultation on March 17th, how you think that a unilateral decision that now you have information but it's going to take you longer to process is going to sit with the board?



>> ERIKA MANN: And with the rest of the community.

>>HEATHER DRYDEN: I wouldn't describe it as a unilateral decision. We've assessed where we're at in light of the work that's been undertaken in the past few weeks, our ability to be assured that we would be ready for those consultations on the 17th. And because we're not completely confident, because we do have a process, we have our internal process that we follow in order to generate advice and establish positions. And we would need positions to enter into a bylaws consultation with you, that that's really the intent.

And I think if at this point after both the GAC and the board having worked so hard and having approached these meetings in good faith we began to point to each other to critique our timeliness on developing papers or trying to assert that perhaps one has been more diligent than the other and this kind of thing, that we're going to end on a low note. And I think we were heading towards a positive note.

So I see you asking for the floor. And I see a number of my government colleagues asking for the floor. So we can continue in this vein, or we can stop. So --

>>RITA RODIN JOHNSTON: I just want to say that I'm not sure you were directing this to me, Heather. But this is not about pointing fingers at all. This is about trying to understand a process. And what we were told about a process is this had been agreed between the board and the GAC that this is what's going to happen. And it seemed like last evening, when we received this letter, this agreement has been unilaterally changed. This is not about accusation. It's about asking factual questions. We were told something that was agreed between these two organizations, and now we're told that's not the case any more.

>>HEATHER DRYDEN: I don't think we should litigate this. We've explained.

>>PETER DENGATE THRUSH: We don't understand the explanation. If we had not come today and done some work, we would be faced with a bylaws consultation on the 17th of March. We understand you're preparing for that. Come to that meeting, and let's have the consultation. If you don't find this helpful and reduces the work you're currently doing for this preparation, we don't understand that either. Surely, you're preparing for that work and are ready to come. And this is helpful. It cannot be that helping clarify things has added to the work. It's just -- it just doesn't make -- that's the bit we don't understand.

>>HEATHER DRYDEN: No one is saying that this hasn't been extremely helpful. In fact, I think you've heard in abundance that we believe it is. And sometimes you can't anticipate how something is going to go, particularly meetings like this. We've never done this before.

>>PETER DENGATE THRUSH: If we're going to have a 2-day consultation in San Francisco, what is it about -- what is it that you feel you need to do to say this is not a bylaws consultation? Why can't it be -- because all that implies is that you think there has to be further -- the community -- this is the end of the process. This appears to be starting a whole new process. The community is going to take this very badly. If this is a bylaws conference and we need more time, we are quite happy to schedule further bylaw conferences. This is no suggestion that anyone needs to be backed into corners for time pressure. What we don't understand is, having scheduled a bylaws conference, why would we now change the designation of the conference, which inevitably is just going to lead to the requirement to have yet another -- you seem to be adding a step. Whereas, if we have a conference and we need more time, let's ask for more time. If that's the concern, that you want more time, we have no difficulty with that. Let's -- people -- the parties to this should take as much time as necessary to get there. So perhaps focus on the designation of the meeting. That's partly my problem. Having designated it as a bylaws conference, why are you seeking to undesignate it, I suppose? And, if it's a question about time pressure, let's deal with it as a question of time pressure, not as a designation. Bertrand, perhaps you can help. I may not be explaining this very well.

>>BERTRAND DE LA CHAPELLE: I don't know if I can help. But the starting point is that we clearly want to keep the good spirit there. I think it's very, very important. And it has to be repeated, repeated, and repeated and repeated.

The thing is the bylaws themselves, basically, say, if there is something that is likely to be different between the final decision of the board and the GAC advice, the board and the GAC need to try in good faith and in a timely, efficient manner to find a mutually acceptable solution. And, if no solution can be found, the board will explain why.

There's nothing in the bylaws that says there should be three meetings, four, one that is labeled A, the other that is labeled B, and so on.

We have triggered the provisions of the bylaws. And what we're doing is this good faith exchange.

The triggering moment is when, in good faith on both sides, we agree that there are some topics that however deeper and longer we explore them, we will not find an agreement, if there is any. Hopefully, there will be none. But there will be a moment when we, the board and the GAC, in the good faith exercise will identify some topics that we will know that we can continue forever. There will be no agreement for whatever reason. So the question is not whether we label the thing or not. The question is when we come to the clear distinction of what is in which category. This is why this meeting has been extremely important. Because the first line is going to be clarified as being -- found a solution. Basically, we agree or the board agrees. And we may have to finesse the wording. But, basically, this is less of a problem.

The second category is what -- where the meat of it will be in San Francisco to make sure that it moves in where we've jointly found a solution. And the hope is that in what is currently labeled 2, we'll be able to move still some out of the 2. When you look at the list, there are some things that we have positioned as 2 because the way it is made now doesn't look promising. But we hope that some of them may evolve. What we're saying is that in San Francisco -- or that's the way I understand it, anyway -- I have the conviction that we will have cleared all the different elements to the point where the elements that remain are sufficiently clearly not going to be explorable further, that we can say, okay, we have done the efforts in good faith. And this is going to be the moment when the transition point occurs. That is the hope. It's not about whether it's labeled A or labeled B, in my view. It's how far we can go in the process to identify the ones that will be remaining. So I want to focus on the process maybe rather than the pure label. But we are already in the bylaws process. I think we should move from labeling a meeting to labeling a process. We are in the bylaws process. So the question, then, is not whether this meeting here is different from the meeting in San Francisco. If we can close, the sooner we close, the better. I cannot say it better.

>>HEATHER DRYDEN: Thank you, Bertrand. I have Portugal, Kenya, Malta, and Bruce.

>>PORTUGAL: Okay. Thank you very much. I think it was very useful what Rita said and what Peter said. Because I think that what is happening here is something that I think we should talk about. Some members of the board, they don't understand how the governments work. And we want to solve and to sort it out as soon as possible. But it takes time for us. So it's not up to me to decide what Portugal and what people back home will say about this. Of course, it's up to me to convey the messages and to try to make them understand what is possible and what is not possible. But it takes time. So it's impossible for a country or a government to be here today and to say okay, it's a very good idea so move on. It will be great. But governments, they don't work like that. And, since I'm covering GAC, I see that, in fact, there is this problem between government and other constituencies and mainly the board. The reasons are different, even if our objective is the same. Sometimes. Thank you.

>>HEATHER DRYDEN: Thank you, Portugal. I have Mike next. Actually we had omitted to go to Mike first. Then Kenya, Malta, Bruce, and Denmark.

>>MIKE SILBER: Chairperson, thank you. If I can pick up something that Peter indicated, and, again, building on what Bertrand has said, we started a process. We haven't yet had a meeting designated the bylaws consultation. But can we work on a principle that my technical colleagues on the board keep reminding me, which is start and iterate rather than trying to find perfection. So I do understand, and I have a lot of sympathy for the fact that the board has responded to many of the points you raised by finally listening when you felt you haven't been listened to for a long

time and acknowledging that there is value in some of what has been said by the GAC. And that we would look at appropriate language, which we felt would be a reasonable compromise. And that you can't make a final call on those issues because you would need to get instructions from capitals.

At the same time, I think there are a lot of issues which are either clearly within the advice accepted, implementation proposed, and follow-up required, as well as those items where we do not feel that we can implement and we can explain why, but we can start going through where there is no further instruction required. And what I would suggest is that we iterate. We start on day 1 in San Francisco, and we continue to day 2 if we need to. And we schedule another meeting, if we need to. And if it's still going well and there's still good faith negotiations and interaction happening, we schedule a 4th. The community are anxious. I don't want to let their anxiety for a fixed date drive us into a corner. But I also don't want the need to take instructions on some of the issues derail the ability for us to interact on others where you already have your instructions. And I think our ability to engage is not influenced. And I think the sooner we give you the formal responses to our scorecards, you will see. And from what Peter has done excellently yesterday and today, about a third of the issues will require instructions and engagements, and we can take those off. Two-thirds of the issues I think we can deal with and finalize in San Francisco.

>>HEATHER DRYDEN: Thank you, Mike, that's helpful. Kenya, please.

>>KENYA: Thank you. First I'd like to join our colleagues and the chair in thanking the board and the GAC for all the hard work we've put into this. But also to reiterate that the way government works is we cannot really expect to leave here without any written -- and underline word for us being written response to us for scorecard to be able to take back home to discuss at the national level and within the GAC level to form consensus and then come back. And that is not really possible between now and 17th of March. And I think we actually, again, reiterate that it's not going to be possible to then have a bylaws consultation on the same by 17th having -- you know, having looked at the process that the GAC does need to go through. We have our own process. And I think it's important to understand that. Thank you.

>>HEATHER DRYDEN: Thank you, Kenya. I have Malta and then Bruce.

>>MALTA: Thank you very much, chair. And like my colleagues, I really would like to commend really both the board and the excellent work that has been done by the board in really getting us to this stage. I came to this meeting this morning really not quite certain about what the outcomes were going to be. We had a debrief yesterday. And we talked about, you know, where we'd go, depending on what the outcomes would be. You know, speaking personally -- and I do think that, as a GAC, we need to spend 15 minutes at the end of this to really make an assessment to see where we're going. But, from my own personal standpoint -- and I may not be as, you know, well-informed as the others -- I think that the -- you know, we have

achieved progress here way beyond expectations that I had envisaged. I think that, you know, we had more of the issues identified that, you know, have been resolved and a few questions, you know, remaining about some others. And I think that, you know, rather than, you know, leaving here in sort of a negative frame of mind, I think that, you know, we should, you know, strive our darndest to really make an assessment about where we really are and the extent to which we can, once we have a good sense of the balance of issues that are still to be resolved, the extent to which we can tackle these in San Francisco as early as we possibly could. But I think it would be most unfortunate to end this meeting on a negative note. I think there's a tremendous amount that has been accomplished. And we really should build on the goodwill that, you know, has been developed in the last couple of days. Thank you very much.

>>HEATHER DRYDEN: Thank you, Malta. I have Denmark, Erika, Rita, Portugal, and the United Kingdom. Bruce, I'm sorry.

>>BRUCE TONKIN: Thank you, Heather. Before I respond, perhaps, if I can just go back to Kenya, one of the debates we're having is: Is it worth us getting a document out today or, if we have a document in two days' hence, whether that makes a big difference. First question for you, when you were saying you need extra time to consult, does it mean you need extra weeks? Or are you saying the difference of a day is really significant for you? If you got something today, to start with, you have the transcript. I'm assuming the transcript is available today. And there's a transcript yesterday. So I guess that's an assumption. Maybe staff can confirm. But that, at the very least, should be available today.

>>PETER DENGATE THRUSH: Yes. Staff confirmed it's available now.

>>BRUCE TONKIN: So there is a written record. You can retrieve that and print it. We're trying to make sure we've got the wording right and make sure we're informing you properly. Does it make the difference of a day? Are you saying it's hugely better if you get it tomorrow? Or are you saying you're looking for time, you're looking for weeks?

>>HEATHER DRYDEN: The simple answer is we don't know. What we're endeavoring to do is to have consensus views on all these issues for San Francisco. That is our aim. We're committed to doing our utmost to accomplish that. In terms of the written decisions, I don't imagine a day would make a difference in that it's better for you to take the time that you would need.

>>BRUCE TONKIN: So having stated that, just coming back to the process, I've got the bylaws in front of me. I think we're in the bylaws consultation. I agree with Peter. If you read the bylaws, it's simple, really. It says, in the event there's an action that you think is not consistent, we inform you. We've done that. So we've gone through the scorecard line by line. And we've said here's something that we think is completely consistent. 1A. Here's something where we understand your intent, but

here's some -- a better implementation that we think is better. And here's some things that we think will be inconsistent. But we're open to further feedback. So that's where we are. We've done that. And then we're scheduling two days in San Francisco, which is in good faith trying to find an acceptable solution. Now what I think you're saying is -- and maybe I also can clarify. Perhaps Peter could confirm. But, certainly, I think there was some misunderstanding that the board was going to sign-off and approve everything on the Friday following that. Maybe he can just confirm --

>>PETER DENGATE THRUSH: We've given that undertaking that we don't expect to sign anything or launch in San Francisco.

>>BRUCE TONKIN: Given that, I would have thought we were in a bylaws consultation. To me this is part of it. We're doing what's in the bylaws today. And we're coming back for some further discussion for two days. So I think, Heather, perhaps what you're saying is, given that we have come back with some 1Bs -- and you will get text, let's say tomorrow -- part of your issue, perhaps, is trying to determine whether they are in fact 1As. In other words, you think that the implementation meets what your intent is. So, in other words, that would be feedback back to us to say your proposal for 1Bs is completely okay with us, so we move that up to a 1A. It's done. Or you're saying your proposed implementation doesn't meet our requirements so, from your perspective, that drops to a 2. And we need to do some more work.

But it is a process that we need to definitely make use of the full two days in San Francisco. We're hoping that some of the 1B stuff that we present to you, say, tomorrow, you can come back to us in San Francisco and say we agree with what you've said. That's a 1A. And then there's some other things that you might say need more work. We'll work on that. And, if that takes another week after the ICANN meeting, we have another conference call, we'll do that. So I think we are in bylaws consultation now. We're putting some stuff that's 1B. We're going to ask you to tell us whether you think that's acceptable. Hopefully, maybe you can't give the answer to everything. But we hope you'd be able to give the answer to some of those by San Francisco. Because it's not -- as Peter said, it's not really more work. It's pretty much just giving the separate implementation. As Rita said, we're very willing to give briefings both to yourselves and your experts back in your home countries to clarify. Because a lot of this stuff is very complicated. We thought through lots of different angles. And we can provide the reasoning for why we're recommending something in 1B, as we think it's better. So I think it's a continuous process. But I do believe we are actually in the bylaws right now.

>>HEATHER DRYDEN: Thank you, Bruce. We do see this as needing to be iterative. And I think that was the point Mike was also making earlier. And it's the case that, by having the written decisions or indications from the board following this meeting and before San Francisco, it allows us to analyze and reflect on what's there and what we could clarify or, you know, how we may come back.

>>BRUCE TONKIN: From our perspective, the purpose of this meeting was being able to clarify for you where we definitely can reach agreement. We've got some 1Bs that we want to provide to you that, at a high level, Peter has already given to you. So you've got that as a starting point. And probably in the next few hours, 24 hours, you'll have that in more concrete form. That's still enough time -- because a lot of those aren't big changes. We hope that would be sufficient for you to iterate, if you like, by San Francisco.

>>HEATHER DRYDEN: We hope so, too. And we'll look at the 2s as well, of course. Because we would still want to find a mutually acceptable solution. Yeah. Okay. Thank you. That's useful. All right. Denmark is next.

>>DENMARK: Thank you. I would also like to commend everyone on the work on these issues. And we've made progress, I think. But I think we are all very happy to work constructively in an iterative process further on with these issues. This is also, as I think you said, an interim advice from the board, what you call it, on these issues. And they've been provided very briefly. So for non-English speakers, we will have to go back and analyze them too as well as others.

What is there. But on some issues I'm not still not completely sure. So I still need to see it in writing. And the problem is, as my colleagues have said before, when we get this -- and, I mean, this week or something, that's very fine. But we're simply not able to consult back home on the tweaks and turns that we need to come up with on GAC with such a short period before San Francisco. But I think we are very eager to solve these issues the best way we can. And I think we, hopefully, walk away from all this in positive spirits. Thank you.

>>HEATHER DRYDEN: Thank you, Denmark. I have Erika, then Rita, Portugal, United Kingdom, and European Commission.

>>ERIKA MANN: I think we all understand the need for you to consult with government. There's no doubt about it. That's why we meet. And we understand that each constituency has a different -- I mean, ecosystem and environment how to operate. And, certainly, the environment for government is a very specific one. Nevertheless, it's not government-to-government negotiations which we're facing. But it's a government community negotiating, which different communities and all part of one ecosystem, which is the ICANN. So, on one side, we're all part of one ecosystem. And, on the other side, we have our diverse strings, which we have to respect. I think that's absolutely crystal clear and fully understood from our side. But what I think and which I don't get -- and I'm sorry to be so frank -- is why we need to be so careful about the wording is it a bylaws consultation or not? I mean, it is a bylaws consultation. And it doesn't make any sense to change the terms on the consultation, on the bylaws consultation for San Francisco. That's all we're saying. There's no time constraint for you. If needed, we will continue. This is all fully understood that you have to go back afterwards and consult with your governments

or during the process in San Francisco, until San Francisco, during San Francisco, and after San Francisco. It's all well understood. But we need to, I think, stick to our terms of references as well. And we would like to continue this as bylaw consultation in San Francisco. And that's what we are all asking for. Not more. I would love, if you can do this. I think Mike said -- and your colleague, the GAC colleague, our colleague from Malta, both said something very similar. We're not striving for perfection. I mean, inventing something new. It's a part of work in progress. Even if you have found the most perfect language and solution, we will find during the process of the first batch and when the second batch starts, we will have to do adaptation. We already discussed this. So it's a work in process we undertake as an ICANN community. And we will not have the perfect -- you know, we will not invent the world new. Because it still has a piece of process which we have to make. And the bylaws consultation, I think, are a perfect way of doing this. So only thing I would love to urge you not to change actually the process but to continue with the process which we started here, which I think was, actually, very, very helpful.

>>HEATHER DRYDEN: Thank you, Erika. I think we do have emerging agreement that this -- we continue on basis that we've already now been working on and that this be iterative. And for the GAC we were associating that -- the 17th with finality. And, if that's the case, if that's our understanding, then we felt responsible to let you know that we're not confident we can be prepared for such finality because of our processes.

All right. So next I have Rita and then Portugal, U.K., European Commission, Senegal, and U.S.

>>RITA RODIN JOHNSTON: I appreciated comments by others, especially Portugal and Kenya, to give us some understanding of the GAC processes. My understanding is that those were built into this process. I think that's where we have a disconnect.

I just want to make sure we all -- in the spirit of moving forward, we also as, I guess, the board have processes, right? We have so many different constituencies in the community that as part of the accountability and transparency review are calling for us to be transparent, accountable for our decisions but they also want predictability.

So we've made timetables that, again, we thought were agreed. So I just want to understand how we get clarity on going forward what we're going to be doing because I think that's really all we want for the community. That's what the community expects of us, right, is certainty?

So I think we just want to make sure that going forward, I hope we have many more consultations like this. I think it has been very helpful to start this dialogue. I think it should have happened years ago. But I think what we do need to do is make sure that we work together so that your processes are very much incorporated into our processes so everyone knows exactly what is expected, what the work product



results are that you need, so what we need to do to make sure we adhere to our bylaws, our accountability commitments to the remainder of the community.

I hope we can improve the communication going forward in these sorts of areas so it will be a win-win for everyone.

>>HEATHER DRYDEN: Thank you, Rita.

Okay. Portugal, you are next.

>>PORTUGAL: Thank you very much. I think we are getting to be much more sensible about this issue. But, of course, all of us want to proceed as quickly as possible and to conclude whatever we are doing on this matter.

I just would like that all of us, and actually to be quite frank, to be understanding that most of the issues that are raised in scoreboards and representing this format have been raised by GAC in the past two years, or even more in certain a cases, without having the opportunity to discussing them with the board in the way we did in the past two days.

I remember calling precisely for an engagement of this sort in the meeting. We have solved together. We have some board members. And I'm very happy it finally happened.

But we must understand that no matter what the urgency is, we cannot expect that from our side we can't work on the scale of two weeks when the board worked on the scale of two years. Thank you.

>>HEATHER DRYDEN: Thank you, Portugal.

I have United Kingdom.

>>UNITED KINGDOM: Thanks very much, Heather. Let's please not downgrade what we have achieved in this meeting here. We have made some very valuable progress. And we mustn't lose sight of the fact that there is some urgency here. We may have compressed a lot of important dialogue towards the end of the period before the San Francisco meeting. That might have been perhaps regrettable. But through a lot of hard work on the ICANN side and on the GAC side, a lot of consultations have been going on with stakeholders and so on and within administrations a lot of it pretty much around the clock. The result has been great progress here.

We have not agreed not to have a bylaw consultation in San Francisco. That's my understanding. Whether we really need a bylaw consultation, I think, has yet to be determined because this is an ongoing process. We have some 1Bs and 2s that need

examining and we're all committed to resolving as many of those as possible in the intervening period between now and San Francisco.

One would hope we could achieve resolution on a lot of these issues, maybe if all of them. That may be a real challenge, but I think there is a great spirit of trying to reach that objective of obviating the need for a bylaw consultation triggered by disagreement. So we are trying to avoid that.

So it seems premature to sort of close off that possibility at this stage through any kind of discussion here. Let's keep the spirit of great progress going. We will try and sort out the I.P. issues as soon as possible.

We'll have the transcript actually on that. It would be a great help to have a document by the close of today to prepare us for the teleconference, which I'm hoping we will have by the end of this week. So a clear note of the board positions on all the elements of the I.P. issues would be very helpful by close today. I know there is the transcript, but an authoritative document on that as soon as possible would be greatly appreciated.

So that's where I am. I'm still greatly positive, you know. This sort of "are we going to reach a position of confrontation through bylaws, triggers and so on," I can't really understand why we seem to have gravitated into that kind of turn. Let's keep it going. Thanks.

>>HEATHER DRYDEN: Thanks very much, U.K.

I have European Commission, Senegal, the United States and Gonzalo and then we'll try to conclude.

>>EUROPEAN COMMISSION: Yes, thank you. I'm also very positive, actually. I have said board members and staff and other stakeholders, I think this is a great meeting.

I'd echo the comments of my colleagues, of course, actually. I think particularly the comments of Portugal actually. There has been a lot of goodwill actually. This process has been going on for years. I think to try to squeeze the end of it, you know, risks the whole process. I mean, some of the outstanding issues are still major public policy issues for us.

And the reality is I will actually need to go home and report to colleagues and they will tell me how much progress they think we've made. I won't decide that. They will decide that.

And they will tell me if they think we have made enough progress for them to be able to drop their concerns. And that process takes time. It takes due process.

I think most of you are probably taxpayers in this room. I think you would be pretty annoyed actually if you thought you had paid for your public servants to travel around the world for several years and at the last minute rush through the process for convenience. We are bureaucrats. We are accountable. We have to actually follow due process back home. This is an extremely important point.

And I think that my take of, you know, the GAC's communication to the board about this is that the bylaws say that there should be a timely consultation. And I think many of us felt that where we are now is very positive but there are a number of issues outstanding. I mean, I have a list of -- on law enforcement, I think they are all nearly 1B issues.

Let's not underestimate the difficulty actually of fine-tuning the language to satisfy law enforcement requirements. I was at a workshop here last week. These are major issues. I think we shouldn't pretend they can be done in a conference call.

Conference calls can be very, very useful in this process. But what we need is a board-GAC consultation. And these kind of conference calls are really good for adding clarification and for thinking. Actually, they're not well attended, though. You are not going to get many GAC members on that call because of the nature of conference calls and the rest of it.

So I think we need to bear these logistics. And I think several of us on the GAC -- maybe not all of us now, I see. But some of us felt that the board would find it useful for us to tell them that we thought maybe it wasn't timely to have this meeting -- the formal meeting in San Francisco. And I think that is also partly -- my second point is this is the first time we've had this process. We haven't had a meeting like this before. So we have to be precise and I think we have to pay due diligence.

Our reading, I think -- my reading of the board resolution in January was it was intended that the meeting on the 17th would be the final consultation between the board and the GAC. And that reading is purely because I didn't know. We have no guidance actually because we have never done it. It is not a criticism of ICANN.

I have to take a conservative view on such issues. I have to assume actually it may be the last meeting. Some of us felt we should signal to the board that it's likely, given the non-existent time available between now -- Let's be honest actually.

Many of the people in this room will be flying home. They have day jobs. Actually, we have day jobs as well, Rita. We do quite a lot of things. This is one of the things we do.

We are going to have to catch up. And then we will have to turn around and travel to San Francisco next week.

We thought it would be useful to tell the board that given the number of issues where there's still 1B notation on them and, I doubt, given the caveats yesterday that this is best current thinking and not the formal position of the board -- And I appreciate it. I'm glad you did that, Peter. There was good clarity there, and it was very useful to have the best current thinking.

But for some of our colleagues, this means there is uncertainty. There is a degree of uncertainty. They will be cautious, and they will adopt a conservative position. And I would, if I was them. That's the way we work, and that's the way taxpayers expect us to work when we're in these environments.

So I think it was intended actually to be helpful to the board to say that in case you think that there -- maybe we can solve it all and we can -- which would be great. Of course, it would be great actually. But if we solve it all, we don't need a consultation meeting at the end of the San Francisco meeting, which is why some of us were a bit surprised that you had already scheduled it before we'd had this consultation and before we found out how many other problems we could have solved.

So I think there is a lot of goodwill in the room. Everybody wants to go away on a high. But I think -- and maybe there is a lot of misunderstandings. But there is a history of misunderstandings between the GAC and the board, particularly between the native English speakers which amuses me.

[ Laughter ]

And it does encourage us to adopt a conservative and cautious attitude because we think it is fair to the board and ICANN staff and other stakeholders, which we will consult stakeholders back in our own countries, that it is fair to them we are as precise as clear as we are and we signal in good time. We feel at this point in time it looks a bit tight for us to have a final consultation with the board on this issue.

Hopefully, we don't need to have that consultation. We will do it in the first few days. It was intended to be helpful actually. So I am a bit surprised at the reaction.

>>HEATHER DRYDEN: Thank you, European Commission.

I have Senegal next. Then United States, Gonzalo and then the Netherlands and then I think we really need to move to close.

Senegal?

>> SENEGAL: Thank you, Chairperson. I really want to thank my GAC colleagues for the work to get consensus. It was not easy and to write down the scorecard.

And I think in my position, I really have a request to get the written decision from ICANN.

I'm sorry to talk about myself, but I'm in charge of ICT in my country, and I will have to report back to my minister who will have to report back to the prime minister and we also have to work inside our administration to see what is the response and if we are happy on that or not.

And to do that, I need also to translate a document. And if I have to translate all the transcript -- I'm sorry, but I'm not full-time on ICANN issues. I have several other things to do, and it will be very helpful for us to get the written transcripts.

My feeling is for the first time we met on the positions with GAC, with ICANN and board and staff, I think these are positive things but also I think that we have to test our maturity because I am involved in the GAC for years and years. And I think we need to work more to have the maturity to work together and to understand each other.

I think we reach something on this meeting, and I think also we need to continue this meeting and try to understand each other.

And, frankly, if it doesn't work, I'm thinking about advising ICANN to have another level of government. Perhaps it will be easier for ICANN to work directly with minister or with an Internet governmental organization that will allow them to go quicker than what we're doing right now.

Frankly, I'm very happy to have this intersession meeting. And I really look forward to have an answer about our issues about all the issues and really to allow us to protect our citizens and to be sure that we are not going the back way. Thank you.

>>HEATHER DRYDEN: Thank you very much, Senegal.

United States?

>>UNITED STATES: Thank you very much, Heather. And the bonus of coming so late in the queue is that almost all of my colleagues have said everything that I would like to say.

But I think it is worth noting a few key points. The benefit of meeting face to face like this -- although, of course, irony of ironies, we have been back to back instead of face to face. Hopefully next time it will be a proper face to face -- is actually this is the first time ever. So in 12 years, this is pretty notable. First time we've done this and we all agree, oh, my God, what's taken us so long? We should have been doing this on a fairly regular basis because it is invaluable to have this kind of opportunity to have direct and frank exchanges. So I occur with my colleagues, particularly Maimouna is the most recent one. We absolutely need to continue to this because it is also taken as, frankly, a more positive sign that the public policy concerns of

governments are, in fact, taken seriously and will, in fact, be incorporated into the policy.

So going forward -- and obviously all of us want to think about the future as opposed to challenges we've encountered in the past. Nonetheless -- and I think Maimouna touched on this, so did Louis, so did Bill -- going forward we need to make sure we do not create the same obstacles for ourselves. The policy process is challenging. It has developed in a silo approach.

Governments here there in this structure under the bylaws provide you, the board, with advice. It hasn't been entirely easy to understand what has happened to that advice which we have been delivering for four years.

So now by doing the scorecard, this is -- obviously we have hit on a better methodology of sort of committing our issues in writing and getting your response. This is a very, very useful and very effective sort of means of understanding what you think you understand of what we are proposing and where you think we can go with it. That's extremely helpful.

So I think going forward, we also need to address in the event there will be additional or new policy development processes, let's work together so that we actually factor public policy advice into those processes at the start, at the outset. That will require some changes down the road. I don't really want to get into them.

But I also think there is a value in having our face-to-face meetings and I do think we should do it more often to avoid misunderstandings.

I heard several board members say today that you had thought -- you were disappointed when we said we didn't think we would be prepared by March 17th because we had agreed.

On the GAC side that is completely mystifying. We don't know how or when anybody thought we had agreed to that date. So our understanding -- and this is again why it is useful to have these exchanges. Our understanding -- in fact, several of us were quite surprised with your January resolution because it seemed to definitively send the signal we intend to take a determination that is inconsistent with GAC advice.

So because you issued that resolution prior to the conclusion of the scorecard, we were a little bit baffled. We thought, Well, gee. Of course, we know the Brussels meeting will help tell us what parts of our advice they don't want to accept, but how is it they already feel confident they won't be accepting advice? Because, as Heather has said, and I think some of my colleagues have said, from our perspective, it would be really, really optimal if, in fact, there were no 2s and that we could have our advice taken into account because we feel strongly that we have been trying to advance these public policy concerns for four long years.

So, again, when you put yourselves in our shoes -- and this is useful for us. We need to understand one another in the different perspectives.

As we go home to capitals for four years, we've gone home with increasingly effective GAC communiques. But we have been looking at various versions of the DAG that don't seem to reflect what is in the increasingly effective GAC communiques. That's our challenge. When we brief up to our managers, including up to the minister, we have to be factual. It is really hard to make the case. When you look at the facts, it hasn't been a very clean record.

Having your written responses to our scorecard, I think, will help a lot of us enormously in being able to say, well, we made really good progress on these points. The 1Bs, some of them may be easier to solve than others. Some are going to be quite tricky. Quite candidly, my guess is our biggest challenge will be the 2s.

So, again, if we can find ways to ensure that we can sit hopefully in San Francisco properly face to face and really work through those issues together because I think going down the road, we will all agree that we probably want to tweak our working methods and adapt a more effective means of communication between us. Thank you.

>>HEATHER DRYDEN: Thank you, United States. Okay. I have Gonzalo and the Netherlands and I think Bruce is asking for the floor, again, a quick question, okay. All right. And then we will try to close the session.

>>GONZALO NAVARRO: Thank you, Heather. First of all, I have a proposal for the next meeting in San Francisco. Maybe if English is the reason we cannot reach consensus, maybe we can work in Spanish, it could be easier.

[ Laughter ]

>> Si, si.

>>GONZALO NAVARRO: Thank you. No. What I want to say is I'm not going to focus my intervention on the process of where we are what are we triggering or not, but I think the process for sure has an ending. I think we are visualizing the end of this process. It has been a long, long process, more than three years. And I think it's time to reach some consensus.

I do understand, of course, your fears -- the governmental fear about timing or not having enough time to share with different agencies or the capital of the delicate issues that we are dealing with here in terms of public policies.

However, I'm really optimistic about -- that we can have a frank and really open conversation in San Francisco and to reach consensus because I guess that many

issues that are covered on the scorecard, after three years, many countries, if not all the countries, have clear ideas about the rationale behind every issue, each issue. Maybe, of course, the public policy issues are evolving. But after three years, I'm -- I'm sure that at least the bone, the core of the issue is there and perhaps not that difficult to explain that to the minister or the capital.

I'm pretty sure that maybe we will not reach consensus on every little detail, but there's always opportunities -- opportunity to work further and to see the future. I'm pretty optimistic that we are going to close this long, long process soon.

My last note is on what Bill said about law enforcement. This is a really important issue, and he's right in saying that perhaps there's not going to be a lot of governments out of the United States and the European Commission on that call. But I really, really hope that some colleagues from other countries, other continents can join to that meeting, if we have that meeting or that call in the future, because it is a global issue that is -- in the interest of every country, especially in developing countries. Thank you.

>>HEATHER DRYDEN: Thank you, Gonzalo.

Netherlands.

>>NETHERLANDS: Thank you, Heather. Just to be brief, there has been some confusion, misunderstanding. And I hope sincerely with other colleagues that this will not jeopardize the good collaboration we have. We have achieved a tremendous piece of work, a bunch of work, I think.

I must say honestly, I came in with many, many, many concerns. And I come out with, let's say, a comfort feeling to a certain stage.

I think I iterate with a lot of other colleagues by saying that we did not say no to this bylaws consultation and we didn't say yes. I think Heather put this out very well.

We have really to think about this. And it really depends also on how many 1As and 1Bs. We have seen now there are many, many 1As and gives me hope we can enter in such a bylaws consultation.

Speaking also with Suzanne, I think the real challenge is now the -- couple of two points we have, category 2 which we should come to some conclusion as to how we can have the concerns dealt with. We have maybe not through this instrument we proposed in category 2 but maybe through other instruments. So that's something we should very much look upon. Thanks.

>>HEATHER DRYDEN: Thank you, Netherlands.



And, Bruce, you have a question. I hope it is a good one. It is going to be the final one.

>>BRUCE TONKIN: I just want to bring us back on track in terms of making progress. And that comes down to a lot of making progress is getting the planning right. I just maybe put the question on you -- and maybe you can't answer it finally but I would like an answer, I guess, by the end of today. But how do we want to use the time in San Francisco? And what are the best days to do it?

You've offered kindly two days, which we think is great. And obviously one of the days has already been scheduled, which is the 17th. The kind of quick brainstorming in the board was perhaps using the Tuesday which is constituency day.

One of the benefits I like is that it gives a gap between the two days because I think what we struggled with in this meeting was sort of we had a lot of really good discussion on the Monday and then we needed time to absorb all that. So we worked late into the afternoon. We worked very late last night. We just sort of felt under a lot of time pressure as well.

So does that work, a Tuesday and Thursday? Or does it make more sense that it is a Saturday and Thursday? Would be the first question.

And then what would you see the difference between the two days? Would we use the first day more as a -- similar to the format here which I think worked, which is more sort of a question of clarification, we provide you a bit more information, get more clarification the second day, coming back? Or how do you think -- two questions: Which are the days that make sense, and what should be achieved in each of those days?

>>HEATHER DRYDEN: Thank you. Good question. My quick reaction is what you are proposing is likely to be agreeable to the GAC. I think Tuesday and Thursday would be better from our perspective. But I will consult, take some time with the GAC to get that right. And I'm sure we can come back to you with better clarity later today with how we think that could work.

So I appreciate the question. And then hopefully we can have an exchange on that, so we can come to an agreed approach.

>> (Speaker off microphone).

>>HEATHER DRYDEN: Yeah, the earlier the better, as you say. Okay.

All right. So with that, are we able to close?

>>PETER DENGATE THRUSH: Thanks very much. I want to try and end this on the most positive note possible. And I thought I would go back to the open and positive comments that everyone else has said. We have had a tremendously useful time. Amongst other things, it has been very good socially to get to know you better. And I think it has been very good for the community and the GAC to see the skills on the board, the technical expertise that's available and the team leaders on both sides that have worked to develop their positions. I think that's all been tremendously beneficial politically, socially and administratively.

I'm particularly delighted to hear the representatives from the U.K. and Holland saying that you haven't agreed not to have a bylaws consultation in San Francisco because I think -- and I'm grateful to the representative from the EU for clarifying what the problem about that is.

It is not a designation problem as Bruce has said. The bylaws have been triggered, and we are underway.

If the concern is being trapped into a corner and being forced to finality, that's a very real concern that we can immediately -- let's address that. That's the concern. Let's deal with that.

My reading of the bylaws which says that we are obliged to have meetings in good faith means that one party shouldn't be able to push the other party into early closure. That would be a breach of good faith. So that the protection against being forced to finality is there. So let's talk about what we mean. If more time is required within reason, because we have to bring this process to close, let's take that time as we've said before. We've got to get this right, not get it done fast. So let's work on that.

At a very high level, let me just also say something that's very important to me and that's about the nature of the relationship between the board and the GAC. I have a complete conviction that the GAC members are supporters of the ICANN model and believe in this and come to these processes because of the support they have for that. And I want to strengthen that.

I welcome the meeting that helped us build the ICANN model. I think there are enormous resources available to ICANN in terms of GAC members and their connections and their commitment that we are not properly utilizing and we would like to. And, in particular, let me be clear that I think that -- this is not a fixed pie problem. It is not a question of if there's being a strong GAC, there is a weak board or if there is a strong GAC, there is a weak community. If there is a strong GAC, there will be a stronger board. If there is a strong GAC, there will be a stronger ICANN. That is what I'm trying to work for. That's what I think is the real benefit from this kind of a meeting.

So let's all be clear this is not a fixed pie of power and this is not about a power sharing or a power struggle. This is about building a proper organization that takes into account the legitimate interests of government, the public policy concerns.

And if this meeting has helped build a way of properly taking or better taking into account government public policy issues, then that's a major achievement, not just on this new gTLD issue but on the whole issue of this wonderful multistakeholder model that's responsible with this extraordinary thing called the Internet.

So thank you very much. I think we can close at that point. Say thank you again and look forward to seeing you all in San Francisco.

>>HEATHER DRYDEN: Thank you from me as well. See you there.

[ Applause ]