

**Transcription ICANN Helsinki  
GNSO Non Commercial Users Constituency NCUC  
Wednesday, 29 June 2016**

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Rafik Dammak: Good morning and thanks for coming today. I know that our session is clashing with the GAC and GNSO council. Say it's complicated to explain, but it's really beyond our capacity.

So we hope that for today we kind of - because there is a new format to discuss. Kind of our impression and what we are seeing in this meeting and hopefully so we can be on some follow-up action. So it's more really as a discussion just to summarize our thoughts -- what's our impression and so on.

We are not discussing about specific topics, so we can bring any issues that we have in mind. But first maybe if we can do it quickly, really, really short introduction kind of Dr. (Talbot). And starting with Tatyana on the right -- really short.

Tatiana Tropina: Hi. Tatiana Tropina, so basically to (unintelligible).

Monika Zalnierute: Hi (Unintelligible).

Tapani Tarvainen: There are not so many (unintelligible), so no worry.

Sam Lanfranco: Sam Lanfranco, observer in part.

Gangesh Varma: Hi. (Unintelligible) from the Center for Communication Governance at the  
(National) (unintelligible).

George Sadowsky: George Sadowsky, ICANN Board.

Tapani Travaien: (Unintelligible). NCSG chair.

Stefania Milan: (Unintelligible) University (unintelligible) and GNSO councillor.

David Cake: David Cake, Electronic Frontiers Australia and GNSO council.

Ayden Férdeline: (Unintelligible) and I'm working out of university and also early active member  
of (unintelligible).

Man: This is (unintelligible) from (Communication University of China).  
(Unintelligible) which has 75% of similarity of (NCUC). Thank you.

Peter Green: Hello everyone. I'm (unintelligible). Also (unintelligible) from Peking, China.

Stephanie Perrin: Stephanie Perrin. I'm from Canada and I'm a university student.

Man: Hi everyone. This is (unintelligible) based in the UK.

Carlos Raul Gutierrez: (Unintelligible) from Costa Rica and GNSO council.

Man: (Unintelligible). I'm from the (BC) and I'll be leaving in a second as soon as I  
finish these Emails. I have to go in this thing with the GAC and the GNSO,  
but thank you for your hospitality.

Matthew Shears: I'm (unintelligible) with the Center for Democracy and Technology.

(Jonas Mufund): I'm (Jonas Mufund) and (unintelligible) at the University of (unintelligible).

(Daniel West): Hi. (Daniel West), University of Oxford, also an (exempt).

(Rebecah Corfor): I'm (Rebecah Corfor) and from the University of (unintelligible) in the UK and I'm an (unintelligible) (Ambassador).

Raoul Plommer: Hi, my name is Raoul Plommer and I'm working for the Electronic Frontiers Finland.

(Lyn Rumpal): (Lyn Rumpal) and also from Electronic Frontiers Finland.

Rafik Dammak: Thanks and we have maybe two - just introduce yourselves.

(Rachel Porak): Hi, I'm (Rachel Porak). I'm also at the University of Oxford and (unintelligible).

Shane Kerr: I'm Shane Kerr, Beijing Internet Institute.

Rafik Dammak: Okay, thanks. And I'm the Chair of the NCUC. So let's just start then. Okay. Since the - I think most of our counselors are in the - I think in the GAC, maybe - or the GAC meeting is going to start - let's maybe get some thoughts or kind of briefings - I mean from Stephanie or (Stephania) and David -- a (forward) the kind of the main topics or issues that were discussed within the GNSO council -- and also for tomorrow meeting -- the public meeting.

David Cake: Well, one of the things we discussed at the meeting - I'm not going to do all of this, so - yes, but one of the things we discussed a lot at the meeting on Monday was we talked a lot about the interaction - we had a very productive meeting with the board where we talked a bit about the interaction between the GAC and the GNSO.

And there are a number of issues -- some of which have actually been sort of hanging around for years -- others which are still very active. So there's - to do with - particularly with how the GNSO PDPs on things that are to do with inter-governmental or government (bad) sort of organizations in which there has been GAC advice that disagrees with the GNSO PDPs -- and how the board fits into that.

So I think this is one of these things that we've sort of - we, you know, the board sort of neglected some of these issues because they've been a bit distracted with other things. So the - one of them is literally been hanging around for a couple of years like the GAC and the GNSO have given the board by competing device -- basically or (different) competing - differing interpretations of what we've basically do.

And the board has just sort of sat on it going, "We're not going to sort it out, but, you know." To do with handling of names related to the Red Cross -- has hung around for many years.

One that's looming is how we deal with (curative) rights -- that is rights after the domain has already been delegated -- to do with inter-governmental organizations and international inter-governmental organizations -- and non-governmental organizations and so on.

So - and that is all leading up to the GAC and GNSO discussion going on next-door. The counselor should probably really be in that. And that whole discussion has been quite a bit how the GAC deals with - how the board deals with competing advice -- and the GAC has been something we've discussed quite a bit this week. And that a couple of things in particular with working groups that (Sylvia) is now working out chairs.

((Crosstalk))

David Cake: Yes, you've been - yes, talked about the actual GAC GNSO interaction -- yes. That's - so that's been something the council's talked out about, certainly.

Woman: Just a (complement) and probably not as interesting as what they just shared. Of course we talked about the (unintelligible) that are on the table now. So the (actual) mechanism -- the next generation of registries that actually services -- so the new (unintelligible).

And then also of course the new gTLDs -- subsequent procedures. And above all that, there's also the big issue of the GNSO review, so what happens to the GNSO, therefore, to this community? Looking forward with the results of the CCWG -- (our council will be listening). So that's something that we'll start to vote on in the coming - I mean tomorrow for the GNSO public meeting.

And there's also one of the mysterious meeting in the future of the GNSO. To date 1:30 would probably be - going to be discussed further. Mysterious because a conflict's not in the official schedule.

Stephanie Perrin: Stephanie Perrin for the record. I think it's worth highlighting that we had a pretty useful exchange with the board on this whole subject of how they treat the GAC advice. And definitely, you know, the GNSO has been doing this experiment of having a GAC liaison to basically ferry our concerns back and forth.

And we have this early look where we, you know, flag issues where there could be, you know, GAC concerns. But I still find it stunning how the GAC actually functions as a governmental group of individuals. It's unaccountable in my view. And this really -- particularly on something as contentious as the upcoming five-year RDS -- I call it (22), but what is it -- the new gTLD registry data services (office) -- PDP?

If we work for five years, saw off all of these contentious issues and then the GAC comes in and says, "You didn't listen to our advice. It's not going to pretty, you know." And unfortunately I think it really will undermine the multi-stakeholder process because no one in their right mind is going to give a huge chunk of their lives to this if then the policy process is diverted or overturned.

And we do have a nice compromise that appears to be coming on the privacy proxy services which was a difficult year and a half PDP. But we got agreement and the contentious issue is whether or not Web sites that doing financial transactions can be registered using privacy proxy services. And it's a long complicated story that we don't have time for, but we got an agreement to mend. The GAC has said, "Well, you didn't listen to our advice."

Well, it's a big long complicated process that they don't choose to engage in and they -- I would bet -- don't understand the issues. Because I beg to suggest I do on some of these issues. So it's very frustrating. Anyway, thanks.

Rafik Dammak: Thanks Stephanie. After you, we have Carlos and then Stephanie. Yes, Carlos.

Carlos Raul Gutierrez: Thank you. This is Carlos for the record. Stephanie, I beg you to watch the - your negative commands over the last two days. It's not an experiment. The inter process started in 2013. We got sort of first time our working group with the GNSO and the GAC -- 2014 it was formalized.

We developed a light (unintelligible) for quick look mechanism. We have already used the quick look mechanism in all outstanding PDPs. And we recently formalized or made permanent a role of the liaison between the GAC and the GNSO.

So I really hope that all the - and you heard (Janet) and (Robinson) on Monday or Tuesday mentioning that. You and I -- we have both worked for governments. I have worked for my government in the GAC and I have to disagree with your negative perspectives.

It's our responsibility to make a better relationship with GAC with all these efforts that we are doing -- and in each PDP. Thank you.

Rafik Dammak: Okay, thanks Carlos. Stephanie.

Stephanie Perrin: (Unintelligible). Anyway I wanted - this is Stephanie (unintelligible) for the record. So (unintelligible) Stephanie has a question about this mysterious meeting in the afternoon. There is nothing really mysterious, except that for some reason it failed to make the public agenda.

Basically a follow-up on the decision in Los Angeles this year why the NCPH decided to start the group to look into possible changes in GNSO in the future. Team made of (Rudy Vansnick) and Tony Holmes have been doing their (unintelligible) (costs) for feedback ideas, suggestions.

And the main point here is to present the outcome of that, the summary of the feedback and discuss possible follow-up. And it will be at 1:30 local time and run (unintelligible). So anybody (unintelligible) can make, please come.  
Thanks.

Rafik Dammak: Thanks Stephanie. Matt?

Matthew Shears Yes, thanks. Actually Tapani covered the issue, but I would like to say that this meeting is important. And I do, like Tapani encourage people to attend because it really is about how do we define structure and look at the future of the GNSO. And it covers a number of issues.

Some of us have responded, but the responses that they received to initial questions or what's - (you're) limited. And what they'll be doing today is revealing a summary of what those responses were.

So I think there's an opportunity to raise additional comments and concerns -- and about the future of the GNSO. And then I think it will be a - should be a pretty rigorous discussion, so I encourage everyone to attend. Thanks.

Rafik Dammak: Thanks Matt. Maybe before the newcomer here, just to clarify what you are thinking about is that even in within GNSO we discuss a lot about -- we should -- we must talk about policy's development.

There is also talk about structure of the GNSO and how it operates and so on because at the end we have different groups within with different interests. And because of - we had in last year I think a review process that's happened.

And we're not really set - it was not really set aside as outcome. And because of the (unintelligible) accountability process, the (INSO) (unintelligible) process. And there is a lot - there are a lot of discussions -- what's the future of this structure how we -- maybe we'll -- about all the groups.

So it's known, but that's why people are trying to discuss about this -- just to clarify. So we do sometimes discuss too much time to talk about structure and not about policy, but it's because it's - I mean in this model how you can get something that works for everyone or make everyone happy.

So that's the problem. Okay, just I'm trying to clarify because also we - as we have several acronyms like the NCPH -- that's the Non Contracted Party House where the (MCIC) and (unintelligible) is. Okay.

We discussed more - yes, Stephanie, just the ones -- so that we discussed one about the GNSO, but I guess maybe if we can go to working groups and the policy. Let's say I'm just maybe to get some insight. (Unintelligible).

Stephanie Perrin: Never mind, if you want to go on working groups, I've - I was just going to respond to Carlos. I didn't mean to be disrespectful about the GAC liaison quick look or to imply that it was an experiment Carlos.

It's - it seems to be working. And this is an improvement, you know, and fine. However, it's not yielding the kind of results we need fast enough for some of these PDPs I would suggest -- and the RDS is one of them

So we need it to work better and we need to have some kind of confidence that things are not going to unravel. I - for instance -- the compromise that we are reaching on the PPSAI is that the issues the GAC raised will be looked at in implementation.

Policy can't be set in implementation groups. The policy they're looking for cannot be retrofitted in the implementation group. It's going to force us as the civil society reps to join the implementation group to make sure that doesn't happen.

I spent quite a bit of quality time on the excellent group that Chuck Gomes and I'm going to skip the other co-chair led on the difference between policy and implementation -- and how we do the triggers when we're moving between policy and implementation. How it goes back to the GNSO for policy clarification.

I would hate to think that we are going to still try and fix things where people aren't happy in implementation. So I'm saying we haven't made great strides in terms of our relationship with the GAC. It's just we're not there yet -- we still have a lot of work to do. Thanks.

Rafik Dammak: Thanks Stephanie, that's - it's a still work in progress.

Stephanie Perrin: Sorry?

Rafik Dammak: Still work in progress. Let's - okay.

Stephanie Perrin: Need help.

Rafik Dammak: Okay, so yes, I mean that's important thing within - I mean how we can improve - I mean for this - the relation between GNSO and the GAC. And how we can get the GAC to be involved with - from the beginning and the policy development process -- and not a (bend) when almost has done and then they keep rising new issues.

Okay. So maybe before going to - yes? Okay. So maybe before going to the - discuss about the PDP, soon as I see that (Nathan) is here and he was in a meeting for the GAC human rights and international working group -- if he can give us some insights and updates on those about cross-community working party in human rights and I forget the rest.

So can you give us some updates (unintelligible)?

Niels ten Oever: I would love to. Thank you for the opportunity, Rafik. So I will very quickly go through the work that has been going on since the last time we met.

And we can say that there is quite a spur of activity notably after the bylaw (text) (unintelligible) adopted -- which actually created the commitments for ICANN to respect human rights.

But this will only become active once we've developed the framework of interpretation in Work Stream 2. And that was a process that we just started last Sunday.

In the cross-community working party on ICANN's corporate and social responsibility to respect human rights, we have been designing our work up in three parts. One part has been doing research. One part of the research that has been published is research on the (delete) of fiduciary which is also leading that sub-group. Oh, exactly -- on jurisdiction.

Then there is the sub-group that's following the work in Work Stream 2 that has created a visualization on what are all the rights that are impacted by ICANN. You can find that visualization at [icannhumanrights.net](http://icannhumanrights.net).

And then there is a sub-group that has been monitoring the ongoing PDPs and understanding the human rights impact on that. So that's what we have been doing. It seems like the design team will go ahead with forming the framework for interpretation.

We will have a short coordination meeting after this meeting at 10:30 -- we will meet in front of Room Number 10 that's downstairs from here. And if you have any questions, I'm more than able and willing to answer them.

Rafik Dammak: Okay, thanks (unintelligible), that was concise. Maybe take this - (unintelligible) is here for any newcomer on the (NCSC) member to ask question. I'm looking at the next gen, but anyone please feel free to ask question if you want more clarification. And yes, Stephanie.

Stephanie Perrin: Stephanie Perrin for the record. I think maybe for the benefit of newcomers, do they understand the difference between a PDP, a policy development process -- and the working part of the cross-community working party? Because they're quite different and you might want to explain that from a process perspective. Thanks.

Niels ten Oever: Yes, so what Stephanie is alluding to is that in PDPs, we are actually creating policies and the CCWG is just the customer's working party -- just a happy informal coordination body where we come together and do as we want?

And that is to support the work of others and to coordinate and understand the problem of how human rights and ICANN interrelate and impact each other. So it's more of trying to understand where all (trends) come together and inform the discussions in other parts.

Rafik Dammak: Okay thanks (unintelligible). Maybe if you want, you can share document - yes. So if anyone wants to join the working party could have a new comment. Good opportunity to get involved with the discussion. Yes Niels.

Niels ten Oever: So do you work with other (constituencies)? Niels.

Niels ten Oever: Yes everyone is welcome in the - in our party.

Niels ten Oever: So do you have people from - do you know how many people you have from a different (constituency) other than...

Niels ten Oever: Yes, so we are a rather diverse group. We have people from the technical community, so we have people from (unintelligible) (Internet Exchange). We have people from (IRRs). We have business peoples -- we try as human rights to be as diverse as possible.

Rafik Dammak: Okay any question or clarification? Okay I think it's not that too early guys. Oh, yes please.

Woman: I have - yes question for clarification. This is my first ICANN meeting, so excuse the ignorance on this. I understand that there is a working group on human rights that has already - or a working party already in existence -- and then now like part of a cross-community accountability working group.

There's one of the streams is looking at human rights. Is that correct? And then just a few minutes ago there was a GAC session on human rights and

international law. Could you clarify what are the differences between these various groups looking at human rights? Thanks.

Niels ten Oever: I - it's almost like we've practiced this. This is great. So this way I can seem like I'm not trying to capture the mic, but I can still talk a lot. It's great. No it's - so there is - there's a lot - there are a lot of different things ongoing as you said.

So there - the discussion on human rights is happening as part of the transition where we manage to get a - an addition to the bylaws where we have the commitment. But now we need to come up with a framework interpretation to make it really clear what that bylaw means.

So that's the work in the cross-community working group on accountability. But that was not always clear that it would happen, and to map where and to offer some preparatory work because in the CCWG there is a lot of space for negotiating and working things out, but in the (CCWP) we're really trying do a more of a mapping and a research and understanding exercise.

And also to understand the work that other great people doing are in the trenches of the PDPs where they are also possibly human rights implications. So just to have that central point of coordination and being a bit of a center of support or a knowledge center is something that we have this informal body that is a cross-community working party.

Rafik Dammak: Yes Stephanie.

Stephanie Perrin: So (unintelligible), you mentioned that you have a group - sub-group on jurisdiction. You had - do you have any plans to contribute to the Work Stream 2 accountable (team) that jurisdiction sub-group?

Niels ten Oever: I would like to hand that question off to a fiduciary who is I think doing the jurisdiction work. I will myself in the CCWG working to be focusing on human rights and diversity.

Stephanie Perrin: Hi, sorry, could use a piece of (unintelligible). I am just asking if you're planning to contribute to the jurisdiction in Work Stream 2.

Woman: Yes, so the way that the cross-community working party is structured is that look at what is most important. So for example right now, we're focusing on PDPs that we (unintelligible) most important. For example (unintelligible) who, you know, has a very good idea of the most important things -- give us an idea of what they should do and we're going ahead with that.

With Work Stream 2, we will be looking at each of the specific topics and working on human rights with respect to that. Does that answer your question?

Stephanie Perrin: Definitely. Thank you.

Woman: Yes.

Rafik Dammak: Okay I think that's good. Okay, Niels do you want to discuss more or more further than the human rights issue? Okay, well let's move to policy development process. I mean working groups -- and maybe we can - yes?

Niels ten Oever: Yes, sorry there's one thing I forgot and it's maybe because I've been a bit close to the issue. But there has been a very interesting report coming out about the UN - UN (Special) (unintelligible) on freedom of expression who has just launched his report on the private sector in the digital age.

And he did quite elaborately maps different parts of the private sector and Internal critical infrastructure that actually impacts human rights. And he also mentions ICANN there, so it's - the - we are not the only ones that are looking

at this problem and it's also coming from other sites. I think it's really good that we're going ahead and developing this and ICANN really recommends the report by (David Kay) as well.

Rafik Dammak: Okay thanks for the information. So I'd say let's maybe move on to talk about policy development process and so working groups. And then maybe Stephanie wants to talk about RDS employees.

Stephanie Perrin: Yes now how many people have already heard so much about RDS and Whois that they don't want to hear it again? Okay. I'll ignore (James) here.

For the newcomers, I highly recommend that if you're interested in a working group that touches on one of the big issues that civil society has been fighting on at ICANN for probably 16 years. And I won't say there's no end in sight, I think we - this is a very serious PDP -- we're finally getting down to grasp the metal and get ahold of the really difficult issues -- and look at everything.

It's certainly an exhaustive process. But the - from - I'll just give you the civil society perspective. Niels has explained about this sort of a human rights lens that we are applying to the entire organization -- and its procedures and practices and PDPs.

Certainly the RDS -- we are concerned about the exposure. First of all, the excessive collection, use and attention of personal information mostly, but also confidential information of groups and non-individuals as per the Data Protection Act -- because the confidentiality of journalists and human rights workers.

And women's educators and, you know, all of these sensitive groups that are often tracked down and harassed -- or even killed concerns us just as much as the protection of personal information that would covered under Data Protection law and constitutional rights.

So that's what we're concerned about really in the Whois and the Directory continues to grow over the years. When ICANN was first initiated, part of the original (re-mix) from the US Department of Commerce included the retention of registered data. And the requirements to make it available mostly for intellectual property enforcement -- and that has grown over the years.

But I'll spare you the long history of how that came about. The problem is of course the domain industry has mushroomed and the list of data elements that they want has grown. And the layers of infrastructure through which all of this data is traveling and being held has also grown -- increasing the risk for everybody.

And the data is available to valued added service providers who are mining it and analyzing and reselling it and repackaging it. So that's kind of it in a nutshell. Can you put the Jeanie back in the bottle -- can you reduce the number of data elements? Can you reduce the risk to the data subjects?

Can you stop the illegal data retention and I'm saying illegal in the sense of the European countries? Because the Data Protection Commissioners and the European Data Protection Supervisors have been writing for all these years saying this is - this needs to be done -- that's illegal, etcetera, with very little impact.

So that's what I'm writing my PhD. Dissertation on so I can bore you for hours on it -- and I'll stop now. Please join the group -- it's a great way of getting introduced to some of the fundamental issues at ICANN -- and it's very complex, so you will see the registrars in the group will explain how this all works from a technical perspective.

It's a very multi-disciplinary committee. The intellectual property folks are there. I'm not suggesting they don't have legitimate interests, but the question really from a public policy perspective is if ICANN is doing this as a multi-stakeholder organization, what's the (remit) - what is their public policy remit?

You know, this is not like the ITU. How is that set, what do they have the authority to do? And is indeed the application of international law really more or less out the window here?

Privacy scholars have written on this and I see we've two folks from University of (Oslo) down there who probably know (Lee Byway) who's written on this whole - a very interesting book on international regulation by contract. I'm sorry, I just got the glare from (James). I'm going - I promised I wouldn't bore you to death, so I'm about to bore you death, but yes -- look at (Lee Byway's) book -- I wish he would come and join our group. Thanks.

Rafik Dammak: I was reminded to remind if you put the (unintelligible) their name when they're speaking.

Shane Kerr: Okay, hi. This is Shane Kerr. So I don't disagree with anything you say and I'm just starting to join this working group. However, it seems like the actual work that's going on is on the other side of galaxy of what you're actually describing.

And it seems like the chairs were took under advisement -- the idea of questioning the fundamental goals of the group. And then kind of said, "Great, you go guys go work on that and we're going to continue on with this process which is underway and cannot be stopped by any force."

So is this - this is really my first experience with this. Is this something that's actually going to be discussed or is this something that's just going to continue on because that's the process says is going to happen?

James Gannon: Okay, so yes and no. You definitely have a point and so our charter.

Shane Kerr: Who are you?

James Gannon: Sorry, James Gannon. And it's a complicated question, and so yes, our charter currently sets out the method and work plan in particularly for RDS an insane amount of detail. And due to the (unintelligible) large scale of what RDS is and the serious impact that it will literally have on the Internet, you know, there were working groups who work out how to run this working group.

Now as we started and I want to just give some kind of fairness to the chairs - they are following the work plan that is in the charter. But as, you know, yourself and myself and a number of others have seen, it's not really going very well. We've ended up doing things and what has turned out to be possibly slightly round about backwards, you know, not the most efficient manner.

So I think what we saw at the meeting yesterday that you were there and others were there as well -- is that we are now at the stage where the discussion about possibly reopening the charter is now -- it's not fully on the table, but we're - we've said we're going to have this little parallel track just for a little while that can look at -- well, do we really need to?

Can we work with what we have in the charter at the moment and tweak that without having to reopen the charter because reopening a PDP charter is a pretty big deal -- particularly because this is a board-initiated PDP. Or do we, you know, have to say, "Now look, this isn't going to work" and go through that whole process.

So there is a reason why it is so complex. There is a reason that the Chairs may seem like they're kind of trying to railroad us. But they're railroading it within their confines of the charter unfortunately.

Stephanie Perrin: Stephanie Perrin for the record. I think what you're seeing is the triumph of process over reason and that's my personal opinion. We tried - it's a very difficult problem figuring out how to tackle this. But as somebody who's been

on standards committees if you don't set your definitions at the beginning, you get lost pretty quickly because you're fighting about definitions when you've done half the work.

And when it comes to Whois, the SSAC has been doing exactly what the Data Protection Commissioners have been doing, and that is asking what's the purpose of collecting registration data. Is that the ((Foreign Language Spoken)) as we stay in Canada, you know; it's basic. And yet we're not asking that question until later.

So from my perspective, that's like a standards group meeting to come up with a process without defining the terms and deciding, "Okay, we'll define the terms half way through after we've got it half written."

I don't think it's being done out of -- what's the word -- bad faith; I think there's a hope that we can get all the arcs (sic) on the table.

But from our perspective -- what we're looking at on the table that's being called to requirements when there's 999 of them as you say -- there are uses for the data before we ask the question of okay, we've got a customer here, an end user -- a citizen who has rights arguably and participating on the Internet -- and that's not been defined and agreed.

It's not agreed that an individual has a right to a domain name, you know, so interact on the Internet. So that's a really big other question that hasn't been defined and answered.

But - so it's kind of as if, well, we would like to get all this data. Well, you're not allowed to do that in any other service whether it's banking or telecom or you name it; plumbing. You're not allowed to collect more data than you need.

The question is do we actually need all this data first? What are we entitled to collect; not what could we possibly sell this data for, monetize it for, et cetera.

And we're very worried about this whole process. At least I am, and I think some of us are.

Shane Kerr: So this is Shane again. So I guess the question what's going to happen next is - I mean I agree with all of this. I think the whole foundation around the Whois, it's definitely seems like people have identified problems and decided we're going to cure the symptoms.

I mean to be honest, if I was a working group chair, I would say, "Wow, let's stop the work. Let's go back and recharter." But is that possible? Is that likely to happen? Is that something that the participants in the working group can ask for? I'm probably asking the wrong people. Maybe we should take this offline.

Stephanie Perrin: We have to remember that the process is important at ICANN when you're trying to run something like this where people are necessarily, you know. So to just throw it out and say, "Well, we don't agree with the charter."

There was a joint Board GNSO working group that set up the charter. And it went through a consultation phase and, you know, we had our opportunity.

Shane Kerr: Yes.

Stephanie Perrin: And it all sounds fine, and even the work plan sounded fine. But then when we start doing it, we realize, "Oh, we're drowning in this stuff."

Shane Kerr: Yes, it seems to be -- in my limited experience -- a common mistake at ICANN to confuse work spent with work delivered. I mean it's interesting - it's interesting that the Board and the GNSO had a joint committee, but the result -- as we see today -- doesn't seem to be workable.

Stephanie Perrin: Well, and the risk is that we're going to lose good people because I was talking to a couple of good people yesterday, and they're not going to hang around.

Shane Kerr: Right.

Stephanie Perrin: So to your earlier question, "Are we going to keep raising these issues?" You can count on me to be an utter pain in the neck.

Shane Kerr: Okay.

Stephanie Perrin: I'm going to keep talking about purpose and all these points forever -- until I go insane. That's probably why they're leaving.

Rafik Dammak: Okay, thanks Stephanie. I mean just to include more people in this intense discussion, I think - George, you want to say something?

George Sadowsky: I'm not sure what I want to say because I am not up-to-date on exactly what's happening in the RDS.

But my impression is that the concerns that you are raising are being taken seriously. So I'm not sure. I hear a lot of passion, and I'm not sure what you're trying to establish in terms of the mood here or the attitudes toward the work because I think it is being -- what you talk about, the collection of data -- is being considered seriously by the work. So I'm in a bit of a loss to understand why you're saying what you're saying.

Rafik Dammak: Thanks. That was George Sadowsky from the Board. Okay, yes (Unintelligible).

Man: We're seeing a quite of interesting development why the discussion on Whois has actually been going on for a very long time. And it seems like it's going to go on for quite some more time.

In the meantime, there is quite a lot of information out there that is not necessarily in line with every jurisdiction. There is now this initiative of Dot FRL and Dot Amsterdam to stop resolving most of the information from Whois.

So it means that it's not just people in the policy world, but also the people that are actually implementing it. They have been asking for waivers. They who have not been getting those waivers are now seeing/saying actually, "ICANN, we cannot live up to our commitments. We're just going to come up with the solution ourselves."

How do you as experts look at this trend, if it's something we should be happy about, if there's further fragmentation? How should we understand this in the light of this discussion because in the ITF, it's always first you have the running code and the protocols you adapt to the running code. But legally, it might not be the best moral principle.

Stephanie Perrin: Perhaps I could fill in. There are many others. There's a wonderful slide back if you go to the Whois page at ICANN. The GAC asked ICANN Staff to basically - they wanted an all-things Whois because they were losing track.

There's Thick and Thin Whois, there's the RDAP protocols, there's the requirements in the ART to have more enforcement. There's the - of the compliance measures. There's, you know, it's pages long this thing. And it's very confusing; you lose track.

So one of the parallel activities is the Whois conflicts with law procedure which dates from, I believe, 2006. This is not the result of a policy

development process. I believe it was a Board directed outcome of an earlier Whois review.

And there was a requirement in the registration agreement at the time to escrow data. So - and the issue of compliance with local data protection law was also raised.

So there's two ways -- two kinds of waivers -- that a registrar operating in a jurisdiction that is under the data retention directive in Europe for instance, and there are other data retention directives. This is not just Europe, but we always talk about Europe because it's a big target, you know.

So if Michele Neylon, for instance, from Ireland is in a situation where he is going to be fined by his data protection commissioner, if he breaks the data protection law and puts his customer data up on the public record, and he's violating the data retention directive by passing escrow data to Iron Mountain, and it's also exporting it because they haven't been able to find a (SPL Agent) in Europe so that's violating the data protection directive in terms of passing the data to another jurisdiction because Safe Harbor doesn't work. So he's got three reasons to want a waiver.

He then has to apply for the waiver. And what the waiver process says is you have to have a letter from a data protection commissioner saying you're violating the law. His lawyer - this is Alice in Wonderland-ish, you know, and Michele has expounded on this quite a lot here. This isn't just me; I'm quoting him.

So his lawyer won't let him break a law that's going to put him in jeopardy, right. The procedure demanded this.

So we had a review of this Whois conflicts with law. And if you want to get up to speed, I urge you to go and listen to some of these recordings because it was a frustrating experience. We just - the poor ICANN Staff who was leading

it kept saying, "We're not here to change the policy; we're here to see if we can come up with a new trigger for the process."

And the triggers were things like, well, would a letter from a law firm telling you you're breaking the law work? Would this work, would that work?

And, you know, quite frankly, I found it a remarkable way to ignore a statute because the data commissioners wrote to ICANN and said, "Everybody in Europe will need a waiver -- we're telling you." And ICANN wrote back and said, "Well you guys aren't an authoritative body."

Well this is the group of data commissioners that was set up under the directive to coordinate opinions to avoid burden on business. And so ICANN is writing back and saying, "No, you're not an authoritative body as per our procedure. You're not a court, you're not - you have no powers. Therefore, we can't take your advice."

So that's crazy, you know, from a practical red-tape production. As Paula said, I worked in government a long time. This is not what we're trying to do in government; we're trying to relieve, you know, relieve burden; not put up all these obstacles.

Any, I don't know whether that clarifies or not. I think it just shows you the complexity of this whole situation.

Rafik Dammak: Thanks Stephanie. Maybe just (unintelligible) for people. We have coffee and food if you want, so they're trying to feed you. Farzaneh and (Unintelligible).

Farzaneh Badii: Yes, so I just wanted to make a couple of comments. We have kind of a working group. I'm not going to use the normal terms that we use for the newcomers so that it makes it easier for them.

So we have a group on Internet Governance and we discuss Internet governance issues -- which are related to ICANN. And we try to do activities like going to IGF or IGF Internet Governance.

So yes, today we had a meeting with the Board members -- ICANN Board members, and the CEO of ICANN. And we discussed what we are going to do and what we should work on which is going to be discussed on the list.

So if anyone is interested to become member of this working group, or if you want to know more about it, you can come to me or Rafik is the co-Chair.

And there's (unintelligible) - can I talk for like a couple of minutes -- I think following Stephanie perhaps? Yes? Okay, great.

So the other thing is that - so with this Accountability of ICANN, it is a very good opportunity for people to get engaged with ICANN. So we have different subgroups if you are interested in jurisdiction or human rights or diversity or transparency of ICANN. It can be pretty effective; we can make ICANN a more transparent and diverse place as well -- ideally.

So you can join those working groups. If you want to know more about it, just come to me and I'll let you know.

And there's another thing. I would - so we have in NCUC we have executive coordinator - sorry - effective committee. And we have - so we decide on more operational issues like allocating funding and sometimes setting agenda for NCUC. So - and I'm the representative of Europe and that (Comedy) and Rafik is the Chair.

And I wanted to know -- for members -- I wanted to know if you have any comment on the performance of the (Comedy) or if you want to make any comment -- if you want to know more about what's going on. Just (unintelligible).

Rafik Dammak: Thanks Farzaneh. You should be careful. The last country that asked (unintelligible) for their opening, it didn't end well. Anyway, so thanks for this.

About the cross-community working group on Internet Governance is quite open, so if you want to join, yes, you can tell me; it's quite easy. And yes, we can discuss later more. We'll also in NCUC kind of (unintelligible) to give more insight, what's happening, and what we are doing.

And I think, (Jimkon), you want to add something?

(Jimkon): Yes, please; (Jimkon). So I think I'm skipping back about two or three topics now because I'm very slow this morning. And I know Shane is actually over at the coffee table.

So I think you made a really good point that - and I know we have a couple of people around the table here and I suppose this is actually an ask for everybody that is new to this and has attended the meeting week.

ICANN is not agile. We do not move quickly. But there are a lot of people who, in other areas, you know, we have people that are involved in the ITF, we have people that are involved in (unintelligible) developed organizations of the policy areas.

I'd really like to see -- particularly if joined NCUC -- which is not a hinge to our next gen people at all. But after the week, can you like put together four paragraphs on what worked and what didn't? What did you -- when you're in meeting -- sit in and go, "Well, that's pretty cool."

You know, that's a good way - most of them kind of how we work, you know. Okay, that worked well, or stuff like you were saying on the RDS process stuff, you know, that didn't work well because I think we come quite (unintelligible) in our own way of thinking sometimes that, "Well this is the

way that ICANN works and it will always work that way and it's never going to change."

The more kind of new ideas and the more ways of thinking that we can get down on paper as something that we should look at, I think that might be a good idea for people that are new to this and are observing what we're doing without any of the biases that follow us that are working inside this house. So just a thought.

Rafik Dammak: So you are asking people to write something -- in particular a newcomer -- what they think about the meeting, about this and so on?

(Jimkon): Just what works well -- as a third party coming in. Do you go, "Yes, that works really well," and what didn't work well? What should we be improving on?

Rafik Dammak: Okay, I mean that would be good. I think we can move on now because we have, I think, 50 minutes left and really talk about this meeting; not this session I mean but the policy forum because this is a new format. I think it's new for everyone and we are not sure what we could achieve here and how we can improve.

Particularly for newcomers, maybe you can give some insight what you see that should be improved because I think at the end of the policy forum, there is a session kind of to maybe for planning for next time and also this cast, and to arise concerns or question or issues. So if you have - I really encourage everyone to share ideas, and so more new voices to speak.

Gangesh, you want to add something?

Gangesh Varma: I actually wanted to go back a little bit to the CCWG on Internet Governance, but maybe we can do that later after this.

Rafik Dammak: Please go ahead Gangesh.

Gangesh Varma: Yes, I just wanted to add to what Fadi was saying - sorry - this is Gangesh for the record.

So there is a new Board appointed working group on Internet Governance. So if anyone could share light on how the interaction will be because I have to skip that meeting a little early. So if anyone who was at the CCWG (unintelligible) could highlight on what is the status of the CCWG, where it's going and how it's going to be interacting with the Board appointed working group.

Rafik Dammak: Because basically we tried to (unintelligible) with them, so to not duplicate efforts. And also, I don't think they are - my understanding from yesterday, they are not planning, for example, to organize (unintelligible) or (unintelligible). So I think they are looking more -- what I sensed yesterday -- to (unintelligible) with us and to kind of to coordinate.

Maybe - Gangesh, you want to add something?

Gangesh Varma: That's right. The reason that we formed the group, I believe, is that Internet Governance is important. It's clear that it impinges on what we do, and we just want to have a way of keeping track of it -- having a focal point for things that are happening in the Internet governance arena that we need to be aware of. It's tempting to say, well, this is something that we see all the time - - that we're used to; we get information from the press, we get it from our colleagues and so on.

What happens when you mainstream it like that is you lose the focus, so we want to keep it. And there's no intent to interfere at all with what the community does in Internet Governance.

Matthew Shears: Yes, thanks Gangesh. I was at that meeting yesterday with Rafik and many others here.

As I said in the meeting, I think that we need to build a structure into the relationship between the Board working group and the CCWG. We need to look at the CCWG as more than just a workshop organizing entity. And I think we have an opportunity to do much more strategic thinking about Internet governance -- in particular now that the Board has given this particular focus on Internet governance and has opened the door to us to working with them. I think that's a very good opportunity for us to do that.

And also, I'd like to just repeat -- paraphrase -- what the new CEO said which is very much looking to the community to indicate the direction that ICANN should be going with regards to a whole range of issues. And one of which -- which he is particularly interested in -- is Internet Governance, and I think we should take him up on that offer and suggestion. Thanks.

Rafik Dammak: Thanks Matt; (Willing) here (sic), head of the co-Chair of the CCWG on the Internet Governance.

I think it's also up to us; it's not just about structure. But it's up to us, for example, if we want to draw up a statement and position as to get the balance here to do so.

(Unintelligible), I think our only statement was (unintelligible). And I think we could make it because the deadline and the (unintelligible), and that time -- the context. So I guess if we come back and try to trust more position, statement and (unintelligible), we can move forward. In the end, it's up to us.

Okay, so just - I mean we have less than ten minutes left. And I think that not any other business but really to see if we can get more feedback from newcomer and also from members as risen by Farzaneh before about the

functioning of NCUC. Hopefully if you have any questions about NCUC you want to clarify, I mean more clarification, so please do so.

We don't want just them to say - I don't want you to say the word - usually (unintelligible), but we want to hear more from you guys. So don't be shy. Also, I am good in volunteering (unintelligible), so it's better that you (unintelligible).

Yes, please.

(Ben Woods): I'm just speaking from my experience as a newcomer in the Next Gen. I was fortunate to have both Niels and Matthew (unintelligible), so I heard about NCUC from them.

But I think earlier in the process, it would have been - earlier in the week at least, it would have been helpful to hear more about what NCUC first. But I think given that Next Gen people come from academic backgrounds -- a lot of the students -- it's kind of a good forum for us I guess. And it's (Ben Woods) for the record.

Rafik Dammak: Thanks. Yes?

Man: And this is (Unintelligible) from Committee of Risk (sic) on China. I'm kind of new to NCUC.

I'm very kind of curious about what other specific results NCUC or this group has achieved. For example, (unintelligible) the drafting of files and also some other procedures at (unintelligible) because I was accidentally seeking -- this morning in the Commercial Stakeholders Group -- and I tried to go back to the work they had done. And actually, a lot of their proposals and opinions and suggestions have been successfully translated into some of the bylaws of ICANN including the recommendation of stress test and a lot of other stuff.

And so I'm somehow curious about the subsidiary results you have done you have achieved in this group. Thank you.

Rafik Dammak: If you're asking about the bylaws, I think Tatiana can respond to that.

Tatiana Tropina: Yes, actually, this is the start of this because one of the wonderful things about NCUC is that you are (unintelligible) and you can see the results of your input. So we - I mean the CCWG and bylaw drafting. Some of the parts were a group exercise, so no one owns the final result.

But what we really own is - well, first of all, human rights bylaw we started in August last year a location for this for our reason, and people were kind of against - many people were against the inclusion of human rights bylaws into the ICANN bylaws, so we got this.

We have advocated for transparency provisions and we got it. And as far as I know, we improvised our input to the mission invitation provision, so there were many successes in this sense. And some of the bylaws we can say that we contributed on. It was our vision and it was our exercise.

Rafik Dammak: Thanks Tatiana. Yes, please.

(Grace Popolic): Hi, this is (Grace Popolic); one quick feedback and then a question.

First, I say the brochures are very effective because I saw that your (unintelligible), and I think that for people who aren't very familiar with ICANN but are interested in human rights, so (unintelligible), have a lot of the key buzz words that get people's interest, so that was effective.

My question was are there certain groups or countries that have been key allies of NCUC? I know in intergovernmental organizations, there's some countries that always kind of advocate for freedom of expression or privacy.

Do you work with members of other constituencies and stakeholder groups?  
Could you talk about that a little bit?

Rafik Dammak: Yes, that's really good question. I mean we are living in this ecosystem, and if we want to advance some position we have to coordinate with other groups.

So for example, I think for human rights, I think one big step came from the Council of Europe. And that was kind of Michele on that matter. And I think other countries -- maybe you know them.

But regarding, for example, the GNSO, it depends like also the topics. I think, like, the Whois. For example, we will find a lot of common ground with the Registrars -- maybe also the Registries. So it depends for some issues.

But we have talked with them because, for example, like the policy development and the vote and how the GNSO is structured, you need to get votes on both sides to get things really going. So we have to do that.

But it depends. They are not the same -- or the same groups. For example, if we come back from a few years ago about new gTLD program and then the applicant support, one of our biggest ally was (Unintelligible). So on that topic, we (unintelligible). So it depends. And we always try to liaison with other groups.

I think (Lisa) wants to add more about (unintelligible).

Man: Yes, the beautiful thing of the multistakeholder model -- and sometimes the frustrating part -- is that you can do nothing alone. As Rafik said, the coalitions are rapidly changing because all of the topics are rapidly changing.

So sometimes you find people on your side that you never expected there to be, and on the other side. And sometimes you think yourself you would be on

one side, but you get educated more about the topic because it's all still new and developing.

But we also see people moving from different stakeholder groups -- as Stephanie and (Colek Hagau) has said, there are also people who have been representing governments in the GAC and had been here. Monica has been contributing to the report on human reports facilitated by the Council of Europe.

So there are many collaborations going on, and I think that's also what's making a bit exciting. And I think it's also not unheard of, people starting off in civil society and then going to either the technical community or the business community. Shane comes from the hardware technical community as well, so there's a lot of spillover and a lot to learn.

Rafik Dammak: Yes, thanks. Any other questions?

(Jimkon): Hello? Yes sorry, it's (Jimkon). I just - really, really quickly to the same point.

It's really issues-based. And so since I've been here -- I've been around about two years -- I don't think an issue that I can find that we have worked particularly internally with other stakeholders on, you know, like we've worked with business guys on transparency stuff, and we've worked with the IPC on other things; we've worked with Registries on other things, the security guys on other things.

It really is - the big thing from the stand of it is because we do diverge on certain topics, it becomes a very issues-based thing rather than a standing cooperation thing. And so that's something that took me a little bit of time to get my head around all of that.

You know, the person in the BC that I was talking to about this topic one day -  
- when I was talking about another topic the next day -- wouldn't necessarily  
have the same cooperation. So it's very very much issues-based.

Rafik Dammak: Okay, so one minute left in this meeting. And so, oh, yes please.

Man: Could you give a quick word on the politics within NCUC -- if that's not too  
contentious of an issue? Within, so the different...

((Crosstalk))

Niels ten Oever: Get the swords.

Rafik Dammak: Okay, let's behave.

Man: And just the competing interest groups within NCUC -- a quick word on that.

Rafik Dammak: Yes, there are because we are diverse. So geographic diversity, for example,  
highlight, I guess, an issue like jurisdiction. I think (Unintelligible), for  
example, from India or Brazil have different point of view, and we are trying to  
work together on this kind of issue.

It can be also not geographical but can be cross - I mean I want to say  
(unintelligible), but for example, public interest and how people interpret that  
or they think we should talk about public interest or not. And it's kind also  
sometimes really (unintelligible) discussion.

So it's not we have kind of - it's a parliament and you have kind of specific  
rules, but depending also the topics, we have -- because of diversity of  
geographical diversity, culture diversity, and also the background in different  
topic -- we can have different point of view.

It makes it a little bit more challenging to reach consensus, but it doesn't prevent it. So we work towards that and we use (unintelligible) consensus and acknowledging the minority point of view and we try to work on some common position. So it's not always easy, but it's always our aim.

So depending on the issue, there is no kind of - we don't have like a (unintelligible) fighting each other all the time, but it's just for topics that people may disagree on.

Okay, yes Niels.

Niels ten Oever: There are a lot - it's actually - and someone described it like that like the history of ICANN is a history of conflict. And yes, so ICANN is a proliferation of conflict by the means of DNS or something.

But - so every - a lot of the decisions and the public comments that we make also start off with people disagreeing about tactics, about strategy, about the final goal.

With human rights, people were very concerned that this might end up in more content -- potential leeway for content control. We've been having discussions about sexual harassment -- which people thought could also lead into a possible freedom of expression and censorship issue; there were people more stronger talking about creating a safe and enabling space.

So there are a lot of very heated and interesting debates going on. So it's a good place for many shape - for opinion shaping. And yes, I think that's healthy that that goes on.

And I think there's also a place for proper criticism within organizations and also on our own structural functioning like we have in EC. And sometimes we have discussions like this should go different; there should be stronger accountability be we say that the Board should be accountable. Well, as

software producers say, eat your own dog food, so we should try to enable that as well. So, yes.

Rafik Dammak: Okay, thanks Niels. I'd say the people for the next session in this room are just coming so we have to close this session for now.

Thanks everyone, thanks for attending. And hopefully we can - what? Oh sorry Stephanie because people are coming and we are running out of time. And I thought the previous session, they were late too, and so there was no time between the sessions.

Anyway, thanks for attending and hopefully we can continue the discussion outside if you want. I think any member of NCUC would be happy to answer your question. Thanks again.

END