

Transcripts

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1 UNITED STATES DEPARTMENT OF COMMERCE

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9 MIDTERM REVIEW OF THE JOINT PROJECT AGREEMENT BETWEEN
10 NTIA AND ICANN

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15 Herbert C. Hoover Building, Auditorium
16 1401 Constitution Avenue, Northwest
17 Washington, D. C. 20230

18 Thursday, February 28, 2008

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P R O C E E D I N G S

(9:00 a.m.)

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WELCOMING REMARKS

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6 MS. BAKER: I think we might want to go ahead
7 and get started in ICANN time, we're right on time. So
8 first of all, welcome to the Department of Commerce in
9 this lovely auditorium on this very cold day. We're so
10 pleased that you are here and really appreciate your
11 participation.

12 My name is Meredith Attwell Baker and I am the
13 acting assistant secretary of NTIA, here at the Department
14 of Commerce. And I am very pleased to host this morning's
15 public meeting on the midterm review of the joint project
16 agreement between the Department and the Internet
17 Corporation for Assigned Names and Numbers.

18 At the outset, I want to thank all of our guest
19 speakers that are down here. They are joining us today
20 from a wide variety of places and we are very grateful
21 with them for traveling and for their input today. I want
22 to particularly thank Paul Twomey who is here. He will be

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1 channeling Peter Dengate Thrush, who unfortunately could
2 not make it, but we are grateful to have you Paul and
3 really appreciate it.

4 As you know, the agenda is two panels this
5 morning and then we'll have remarks by Paul, so we're
6 looking forward to that. As you also know, the joint
7 project agreement signed by the Department and ICANN in
8 September of 2006 includes 10 specific tasks or
9 responsibilities committed to by the ICANN board in its
10 September 26 affirmation of responsibilities. It also
11 provides for the Department to conduct a midterm review of
12 ICANN's progress on each of these responsibilities in
13 consultation with interested stakeholders.

14 The purpose of the midterm review is to permit
15 the Department to determine whether course corrections are
16 needed on a path towards the long-standing goal of
17 transition of the technical coordination of the management
18 of the DNS to the private sector. The Department
19 initiated the midterm review with the release of its
20 notice of inquiry in November of 2007, which invited
21 public comments to be submitted by February 15, 2008.

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1 To date we have received 171 comments from a
2 wide variety of interested parties including the ICANN
3 board. We really, really appreciate the time and the
4 effort that are reflected in the comments that are
5 submitted and consider all these submissions invaluable
6 contributions to our midterm review. This meeting also
7 forms an important element of our consultation process and
8 we have structured our panel discussions to facilitate a
9 constructive exchange among our guest speakers and our
10 audience.

11 So I think there is -- the agenda also calls
12 for, kind of, lengthy opening remarks and lengthy closing
13 remarks by me, and really what I'd like to do is spend the
14 time on the panels and to hear what both our panelists and
15 the audience have to say. So really without further ado
16 I'd like to introduce David Murray, David is our senior
17 advisor, policy advisor in the front office and he is
18 acting administrator of NTIA's Office of International
19 Affairs and he will moderate the first panel.

20 So David, all yours.

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1 SESSION I
2 ICANN'S JPA RESPONSIBILITIES: ASSESSING COMMITMENTS
3 AGAINST RESULTS
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5 MR. MURRAY: Thank you, Meredith, and good
6 morning everyone. I'm pleased to have this opportunity to
7 moderate our first panel this morning. This panel is
8 intended to address the 10 responsibilities that the ICANN
9 board committee, excuse me; that the ICANN board committed
10 to in its September '06 affirmation of responsibilities.
11 In particular, this panel will focus specifically on
12 assessing these commitments against results achieved
13 today. Well, many commenters have recognized ICANN's
14 progress in these 10 areas, many others have cautioned
15 against confusing activities with achievements.

16 NTIA is fortunate to have the experience and
17 expertise represented by our distinguished panelists. Let
18 me take a moment to introduce them. Our first panelist,
19 Suzanne Woolf, is a senior manager at the Internet Systems
20 Consortium, the company responsible for the operation of
21 the F-root name server. ISC recently entered into a
22 mutual responsibilities agreement with ICANN, the first

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1 formalization of mutual recognition between ICANN and a
2 root server operator. Suzanne joined ISC in 2002 and has
3 been involved in ICANN-related issues for many years. She
4 is the root server system advisory committee liaison to
5 the ICANN board and also serves on ICANN Security and
6 Stability Advisory Committee.

7 Our second panelist, Beau Brendler, is director
8 of Consumer Reports WebWatch, which engages in
9 investigative reporting on trust and credibility, in the
10 online marketplace. Prior to joining the consumer's union
11 in 2001, to launch Consumer Reports WebWatch, Beau worked
12 as an editorial director at ABC News.com, where he was
13 helped -- asked to help launch the TV's news network.
14 Beau was also a member of the ICANN At-Large Advisory
15 Committee.

16 Steve Metalitz is a partner in the Washington
17 D.C. office of Mitchell Silberberg & Knupp. He advises
18 trade associations, and companies, and the copyright
19 industry, on domestic and international copyright matters
20 and represents the Coalition for Online Accountability.
21 Steve also serves as the president of the Intellectual
22 Property Constituency of the ICANN Generic Names

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1 Supporting Organization, and has been an active
2 participant in a wide range of ICANN activities since the
3 organization's inception.

4 Our third panelist, Jonathon Nevett, is Network
5 Solution's vice president of chief policy -- and chief
6 policy council, and is responsible for Network Solution's
7 relationship with ICANN, government agencies, legislative
8 bodies, and industry associations. Since June of 2006,
9 John has served as the elected chair of ICANN's GNSO
10 Registrar Constituency and he is the co-chair of the
11 United States Council for International Business Domain
12 Names System Working Group.

13 Our final panelist, Len St. Aubin, is the
14 director general of the telecommunications policy branch
15 at Industry Canada. Len contributed to the development of
16 the Canadian Telecommunications Act, Broadcasting Act, and

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17 to the modernization of the Copyright Act. He is also
18 involved in Internet policy matters and formally
19 represented Canada on the governmental advisory committee
20 to ICANN where he was elected vice-chair.

21 I'd like to start the panel out with some brief
22 presentations from each of our panelists to be followed by

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1 Q and A, from me and then also from the audience. Let me
2 start out with you, Suzanne.

3 MS. WOOLF: Good morning, everyone, and thanks
4 to the Department for the invitation to speak this
5 morning. I was invited here, as we said, as a root name
6 server operator, part of the technical community behind
7 ICANN. My employer, the Internet Systems Consortium, is a
8 private U.S. not-for-profit that serves the Internet
9 community in a number of ways. We are known for our Open
10 Source software freely available and widely used by ISPs
11 and DNS service providers, and we're known for operating a
12 DNS root name server providing a critically important
13 service available to Internet users everywhere.

14 Today we provide that service from over 40
15 locations worldwide, mostly in partnership with ISPs, DNS
16 service providers, governments, and industry. As such,
17 we're a stakeholder in ICANN, its processes and their
18 results. We're not among the stakeholders created by
19 ICANN nor are we dependent on it for our existence,
20 however, we are not unaffected by it. We provide the
21 service we do in partnership with IANA and we give the
22 Internet users of the world access to the DNS as

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1 maintained by IANA.

2 We've watched ICANN's first decade therefore
3 with some hope, some pride, and some concern. ICANN has
4 clearly made great strides away from the uncertain early
5 days when it seemed equally likely that the U.S.
6 government would give up on private sector leadership
7 altogether or that the Internet would fragment under the
8 challenges to ICANN's legitimacy and confidence.

9 Today it's clear ICANN isn't going anywhere,
10 many important boundaries have been established around
11 what it does and what it does not do. The IANA, registry
12 contracts, the advisory committees to ICANN, and the other
13 mechanisms are an established part of the landscape. It
14 was the recognition of that progress, both of ICANN and of
15 the Internet, as a critical resource to people worldwide
16 that ISC recently became their first root server operator
17 to sign a mutual responsibilities agreement with ICANN.

18 ISC signed this agreement because we believed
19 that it made an important statement to ICANN and to the
20 rest of the world that ICANN, as the operator of IANA, is
21 doing its part and we are committed to doing ours.

22 Now, it's time to look at how to move forward

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1 and build on what's been done so far. Direct U.S.
2 government supervision of ICANN should end with the JPA in
3 late 20/10. The commitment to private sector leadership
4 and technical coordination of the Internet, first made in
5 the late 1990s, needs to be kept. The Internet has
6 outgrown the special role the U.S. government has towards
7 ICANN today. However, it's also important not to
8 underestimate the protective function provided by the
9 backing even at arm's length of a powerful government.

10 The remaining 18 months of the JPA need to be

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11 spent demonstrating that the mechanisms ICANN has, its
12 supporting organizations, its contracts, and its
13 relationships with government and industry, are enough to
14 sustain security and stability of the technical
15 coordination functions that it performs. The question is
16 not only whether ICANN has met a specific checklist of
17 achievements and abilities. Integrity of processes,
18 transparency of results, and so on are critical to
19 establishing a good mechanism for meeting the real goals,
20 but they are not ends in themselves.

21 The question now is whether ICANN has the
22 structures, the relationships, and the other tools,

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1 required to play its part in continuing security and
2 stability of the Internet. Specific steps to establish
3 that it's time to move beyond the JPA could include
4 successful introduction of more new top level domains into
5 the DNS, including internationalized domain names.
6 Progress is always slow and many interests must be
7 reconciled, but in the case of IDN particularly, there is
8 simply no choice. The resolution of many open, technical,
9 social, and operational questions seems to be in sight,
10 now it's time to make sure progress doesn't falter.

11 Second, successful transition of day-to-day
12 responsibility for the content of the DNS root zone to
13 ICANN - it is time for the U.S. government to step back
14 from immediate supervision of this function and give ICANN
15 room to show that it can reliably manage the root zone
16 even with the possible addition of many new TLDs.

17 Third, ICANN must find a way to play a
18 constructive part in the Internet communities' response to
19 the imminent end of unallocated IPv4 addresses and the
20 need to find a way to integrate IPv6 into the network of
21 the future. ICANN has almost no direct role in either
22 policy or operations here, it is also in a unique position

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1 to build relationships and mobilize resources, the
2 challenge is to build positive influence over a situation
3 where neither ICANN nor anyone else has much direct
4 control.

5 I've heard many of the people involved in the
6 future of the Internet speak with mixed feelings about the
7 end of the JPA. They are not comfortable with the special
8 role of the U.S. government towards ICANN and they want to
9 see us all move beyond that. Yet, not all of them have
10 full confidence that ICANN is ready to be on its own. The
11 next 18 months must be spent with ICANN focusing on
12 winning that confidence, thank you.

13 MR. BRENDLER: Good morning, thanks for inviting
14 us here. As mentioned, I have two hats, one, the Consumer
15 Reports WebWatch hat, and you can certainly find more
16 information about our organization and the statement we
17 made by going to our website, so I won't go into that, but
18 also, I am a member of the -- an elected person from the
19 At-Large community in North America. So my comments cover
20 both bases.

21 I do want to say, the consumer's union does
22 believe strongly that ICANN needs to evolve towards

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1 independence from the U.S. government, and I make that
2 very clear that we share, you know, the views already
3 stated on that in many ways and we were in fact recruited
4 by ICANN -- ICANN staff to participate in the At-Large

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5 community, which is a really good thing. And the At-Large
6 staff of ICANN is currently trying to recruit other
7 consumer and user-based organizations to participate in
8 the At-Large, which is very, very positive.

9 Speaking from North America's perspective, the
10 North American regional organization's perspective, the
11 major concern there is with the At-Large community being -
12 - as it is supposed to be the voice of the user community,
13 concerned with the ALAC's lack of voting status, in the
14 most meaningful forms within ICANN.

15 ALAC can offer advice and, you know, there are
16 other mechanisms that it can use to get its point across,
17 but it does not really have a meaningful vote within the
18 structure as it is currently set out. We do believe that
19 this issue is in the process of being addressed, both in
20 the independent review of ALAC that is going on right now,
21 and the ALAC -- the At-Large community met in India with
22 some consultants who are doing a review.

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1 We also think that the issues being addressed to
2 some degree in the review of the ICANN nominating
3 committee and GNSO's internal deliberations -- if I'm
4 using too many ICANN acronyms please forgive me and
5 challenge me on them; it is part of the two-hat issue, I
6 guess. We believe that these challenges with regards to
7 representation can be overcome, but we also believe that
8 they need to be overcome in tandem with some clear
9 explanation of how user representation will be in essence
10 protected in the future and will remain integral to the
11 ICANN process after the JPA concludes.

12 So 10 years from now, or 5 years from now, when
13 ICANN has evolved from oversight, and its current
14 mechanism, what guarantees will be in place that the user
15 community will have a strong voice within the process? I
16 will conclude my comments here in hopes of some
17 interactivity at the end. Thank you.

18 MR. METALITZ: Thank you and I'd like to echo
19 what everyone said. I guess, I'm echoing anyway, but
20 thanks for being here. And I'd also like to thank NTIA
21 for holding this midterm review, I think it's already
22 shown a lot of usefulness if you just look at the range of

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1 comments that have been received; there is a lot of good
2 information and perspectives in those comments.

3 I'm here on behalf of the Coalition for Online
4 Accountability, which consists of nine leading companies
5 and associations, and membership organizations in the
6 copyright sector of our economy. But I think a lot of
7 what we said in our comments and what I say here, well, is
8 also shared by many others in the business community. And
9 I'd really like to make three main points here.

10 First, with regard to the subject matter of this
11 panel, the assertions of the -- assessing commitments
12 against results, it is certainly true that ICANN has made
13 a great deal of progress on many of the points which it
14 set for itself in the annex to the JPA and has made more
15 progress in the last 18 months on many of these issues
16 than it had in all the previous years of its existence.
17 But I think it's also fair to say that many of the key --
18 on many of the key criteria, it hasn't really achieved
19 these objectives, and in many cases it's just starting to
20 achieve the objectives.

21 And I'll mention two of these in particular --

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22 one has to do with contract compliance, which is an issue
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1 in point 5 and point 10 of the annex. I'm not picking
2 this issue out at random. In some ways this is the most
3 important issue on which ICANN needs to make progress.
4 Because in the model that ICANN represents, the great
5 experiment in non-governmental management of these
6 critical Internet resources, since ICANN is not a
7 government and doesn't have regulatory authority or the
8 ability to impose laws or negotiate treaties, this system
9 is only going to work if a network of contracts and
10 voluntary agreements is created, and if that network has
11 credibility and integrity.

12 That means that when ICANN and other parties
13 enter into a contract, there has to be public confidence
14 that the terms of that contract will be respected and that
15 people who rely on those contracts will have some
16 confidence that they will be followed. I think ICANN is
17 just starting to get to the point where that public
18 confidence perhaps could develop. I don't think it exists
19 now because if you look at the realities of contract
20 compliance activities at ICANN, they are really just
21 getting off the ground.

22 And we are glad to see all the progress in this
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1 area and the budget commitments for greater resources for
2 contract compliance, but this is certainly not something
3 that has been achieved, in the sense that you think it is
4 necessary. The second example I would give is point 6 --
5 a mechanism for -- better mechanism for involvement of
6 those who are affected by ICANN decisions, and from the
7 perspective of the business community, I think this is one
8 of the big challenges still remaining for ICANN.

9 And our filing goes into a lot of detail about
10 the experience that many companies have had in trying to
11 have their voices heard within the ICANN process.
12 Particularly companies that don't have contractual
13 relationships with ICANN aren't dependent upon ICANN for
14 their business, but yet are very much affected by
15 decisions that ICANN makes. This, I think is a gap that
16 still remains to be filled, and I think it's a real
17 challenge over the next 18 months.

18 I think -- we hope that NTIA and ICANN can use
19 this midterm review as the opportunity to make a midcourse
20 correction, and I think in fairness to ICANN, because the
21 criteria in the annex to the JPA are expressed in such
22 general terms, it's not clear quite what the benchmark

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1 would be for whether or not they've been achieved. So
2 perhaps something that could be done now is to come up
3 with more concrete measurable objectives for the next 18
4 months.

5 And then the final point is, you know, what
6 happens at the end of the 18 months and what should be
7 done to prepare for that. Our organizations certainly
8 have no position on what should happen in September 2009
9 when the current JPA expires, I think a lot will depend on
10 what happens over the next 18 months. But I think it's
11 also appropriate as many other commenters have noted, to
12 start now the discussion of what we would like to see as
13 the future relationship between the U.S. government and
14 ICANN, what needs to be done in order to realize the
15 original vision of a private sector-led system for

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16 administering the domain name and addressing systems.

17 I've already indicated what I think some of the
18 main challenges are, but I think now is the time for a
19 more robust discussion about what comes next and what
20 needs to be done in order to get there. Thank you.

21 MR. NEVETT: Thanks, Steve, I didn't even need
22 to kick you under the table at all. So thank you again

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1 for inviting me as well as the other panelists, I think
2 I'd like to commend the NTIA for the leadership in this
3 area. I'm speaking on behalf of Network Solutions, but my
4 comments are also framed by my role as chair of the ICANN
5 registrar constituency, co-chair of the DNS working group
6 on the USCIB, and a member of the ICC International
7 Chamber of Commerce Committee on these issues. I'd also
8 like to commend ICANN and Paul and Steve, and other folks
9 here in attendance on a great deal of progress over the
10 last 18 months, since the JPA has been enacted and the
11 annex has been agreed to by the board.

12 Especially in the area of transparency, I think
13 there has been a tremendous amount of progress, and I know
14 those of us in the community appreciate that and Paul
15 Levins' efforts on those issues. At this time, however we
16 think it's somewhat premature to say that ICANN has met
17 all of its requirements in the annex, especially with
18 regard to accountability and competition. And we think
19 these issues need to be addressed before ICANN can
20 demonstrate its ability for long term sustainability
21 through effective self governance.

22 And these accountability mechanisms are

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1 important; they were referred to by Ms. Baker in San Juan,
2 at the ICANN meeting there, where she said ICANN should be
3 commended for recognizing the importance of improving its
4 transparency and accountability. ICANN still has a long
5 way to go, however, to ensure and institutionalize these
6 principles and its processes and procedures. And I for
7 one and probably everyone on this panel are committed to
8 working with ICANN over the next 18 months to achieve
9 these accountability, and competition, and the other
10 issues that have been raised today.

11 I think it's time that we -- we need to roll up
12 our sleeves. It is hard to say that ICANN is more
13 accountable in its structure today than it was when the
14 JPA was enacted 18 months ago, considering there has not
15 been one bylaw change in that time period. We discussed
16 in San Juan, after Ms. Baker's comments, on a panel about
17 some accountability ideas and issues that are outstanding.

18 And I think we need to roll up our sleeves and
19 make a lot of progress on those issues, and again we are
20 committed to do that. Just to point out a couple of the
21 holes that we see, the ICANN board decision making needs
22 to be more accountable. They should include analytical

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1 components of decisions that explains how all the inputs
2 were considered, and how and why they were followed in the
3 final decisions.

4 The ICANN board decision-making process needs to
5 have a better review process. Right now if the ICANN
6 board makes a decision that's 8 out of 15 members of the
7 board there is a reconsideration process, which is decided
8 by the same board, an independent review process decided
9 by the same board, an ombudsperson that advises the same

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10 board, and a right to removal of board members decided by
11 the same board. So if there are 8 board members that
12 essentially roll back some of the progress that's been
13 made over the last 18 to 36 months there is nothing the
14 community could do about it, and we need to change that.

15 So I ask Paul and folks to set up a task force,
16 set up a presidential advisory committee or something to
17 work on these issues. The next-steps document that you
18 circulated last month is good for a start and we should
19 talk as a community about those ideas. Financial
20 accountability is also another issue. The ICANN budget
21 over the last 5 years has gone from \$8 million to now
22 proposed or estimated to be \$61 million. We're talking

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1 about a 10-year-old organization so it's important to have
2 important financial safeguards and controls and those
3 should be also a part of the next step.

4 The fourth accountability issue would be
5 contracts in a material nature. Those should be, there
6 should be a mandate that those are sent out for public
7 comment and review. Folks may have remembered the dot-net
8 experience where a contract wasn't necessarily sent out
9 for public comment before it was entered into. ICANN has
10 done a great job since then, in making sure that happens,
11 but it's not mandated by the bylaws.

12 And I think that's a theme that I certainly want
13 to express, is that bylaws need to be changed to mandate a
14 lot of these changes and a lot of the progress that has
15 been made, and some additional changes that need to be
16 made so that they are in writing and committed to, not
17 just in an oral agreement, or a commitment that's been
18 followed through so far, but you don't know about a change
19 in leadership. We don't know, you know, we have -- the
20 board could change, again only -- it would take only 8
21 board members to make a material change to ICANN's
22 processes and there is nothing that the community could do

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1 about it.

2 Finally in regard to competition, two of the
3 requirements of the JPA talk about the establishment of
4 new TLDs and IDNs and there is a huge market demand for
5 both, and we think those should be successfully
6 implemented before we move to transition. So again, we
7 are committed to working with ICANN on these issues. At
8 the same time we think we should talk about a transition
9 plan, so we've a lot to do in the next 18 months.

10 We're talking about making serious fundamental
11 changes, but we also want to talk about a transition plan
12 and work with ICANN on that, and so we look forward to
13 having this dialogue and again thank the NTIA and ICANN
14 for the progress it has made so far. Thank you.

15 MR. AUBIN: Well, I think my comments will be
16 echoing a lot of what you have already heard, but I'll say
17 them anyway. Thanks to the NTIA for organizing this
18 public forum. The Canadian government is very happy to
19 take part, Canada's contribution represents a continuation
20 of our interest in the domain naming, at numbering and
21 addressing system of the Internet. We've been involved
22 since 1998, we've been an active participant in ICANN's

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1 governmental advisory committee, and we've made numerous
2 submissions on ICANN issues in that forum and also in
3 response to NTIA consultations.

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4 Frequently, Canada's submissions have focused on
5 the issues of accountability, transparency, and good
6 governance, and we've heard a lot about that today. We
7 were an early supporter of the United States Government
8 decision to privatize responsibility for the technical
9 coordination of the domain name system. Like the U.S., we
10 continue to believe that this technical function can most
11 efficiently and effectively be managed by a private-sector
12 led not-for-profit corporation with international
13 participation and representation, transparent processes
14 and bottom-up input, and that's a lot to expect of an
15 organization.

16 This approach, we believe, holds the greatest
17 promise for carrying forward the characteristics, which
18 have underpinned the Internet's great success as a rapidly
19 evolving dynamic source of innovation, productivity, and
20 economic growth worldwide. The governor of the United
21 States set an ambitious target when it called for full
22 privatization of ICANN by 2000. In hindsight, this

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1 deadline was too ambitious; you might say even heroic.
2 But we recognize the courage and foresight inherent in
3 identifying and acting upon the need for timely progress
4 toward that stated objective.

5 At this point, with the benefit of hindsight, we
6 believe that the important questions to be asked are not
7 about dates, and dates certain, but rather have we made
8 progress toward the stated objective, is the objective
9 still appropriate, and are we still on the right track to
10 meeting that objective. And we believe that the answer to
11 all three questions is, "yes". Our main concern has been
12 and continues to be the evolution of ICANN to an
13 accountable and transparent steward of the domain name
14 system with global representation, because these
15 characteristics are critical to its long term success.

16 Accountability remains a challenge; the review
17 of ICANN's processes has generated greater awareness of
18 accountability issues, measures identified need to be put
19 into practice demonstrating to the -- results to the
20 satisfaction of the various constituencies and stakeholder
21 groups that make up ICANN. ICANN has also made very good
22 progress in improving transparency, global multi-

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1 stakeholder participation in ICANN policy development has
2 been a feature of the organization from the start.

3 Again, good progress has been made in dealing
4 with the challenges inherent in such broad-based global
5 participation. At this juncture, our main message is that
6 there needs to be a clearer vision of what ICANN will look
7 like, how it will work, how it will be accountable, and
8 how it will continue to pursue its governance objectives
9 in the absence of the current form of U.S. government
10 oversight.

11 A plan needs to be developed on how to get there
12 from here with appropriate targets and benchmarks. During
13 the second half of the current Joint Project Agreement,
14 discussions should be initiated within the ICANN community
15 towards clarifying that vision. And has the time come to
16 end ICANN's links with the U.S. Government?

17 In our view, this is -- really is a depressing
18 question, the more important question, rather than fixing
19 a date certain for privatization, is achieving agreement
20 on the future form and nature of ICANN's accountability as

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21 a fully privatized entity that has sufficient buy-in from
22 its global stakeholders including governments to fulfill

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1 its mandate and continue its important contribution to
2 maintaining the stability and security of the Internet.

3 The Internet is an open global communications
4 network that enables people from around the world to
5 communicate freely across borders and time zones.
6 Concerns about stability and security will be ever
7 present. Under ICANN's watch, the Internet has remained a
8 remarkably stable environment. And ICANN has made
9 contributions to Internet security. These are
10 achievements for which I think everyone involved in ICANN,
11 from engineers, to lawyers, board members, and management
12 constituencies, NGOs, governments, and individuals from
13 around the world who have taken the time to participate
14 have some reason to be proud.

15 The Internet is a truly global phenomenon. The
16 naming and numbering addressing system must continue to
17 work on a global basis. And we encourage the NTIA and
18 ICANN to persevere, and we look forward to ICANN's
19 successful future, thank you.

20 MR. MURRAY: Thank you, Len. Let me turn it to
21 a question and answer period now. Some of the questions
22 for the panelists may result in a reiteration of some of

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1 your comments, but I think they are -- they are good for
2 the discussion. They are very important issues.
3 Unfortunately due to time limitations we aren't going to
4 be able to address all 10 commitments. But we're going to
5 address those that were either addressed by the panelists
6 here or in the comments submitted by the organizations
7 they are related to.

8 The first commitment, very important one, of
9 course, security, and stability, ensuring the continued
10 security and stability of the domain name system is
11 indisputably one of the core principles on which there is
12 broad agreement. There is also broad agreement that
13 meeting this objective requires ongoing efforts among
14 multiple stakeholder groups, ICANN, Root Servers, Registry
15 Operators, IETF.

16 Let me have this first question go to Suzanne.
17 Suzanne, in your view, to what extent do ICANN's
18 mechanisms or systems effectively recognize the roles and
19 responsibilities of other stakeholder groups and leverage
20 the capabilities and expertise they possess?

21 MS. WOOLF: Thank you. First, just to point out
22 my perspective on that is principally it's part of the

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1 technical community. There is a little bit of difficulty
2 in that there aren't established business and contractual
3 relationships to point to, in answering that question.
4 And in some ways it, sort of, goes to the heart of what
5 does it mean to not be a governmental regulatory fully
6 formalized body in this phase.

7 I think ICANN actually does a very good job in
8 managing this disparate set of stakeholders. At the same
9 time it's kind of a work-in-progress. It's not always
10 clear how mainly technical players are to participate, or
11 what their role is. There are good reasons why the roles
12 of IETF and DNS security experts and some of the technical
13 players are informal. But perhaps they need to be more
14 visible.

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15 For example, as light weight as we all wanted
16 the Mutual Responsibilities Agreement to be, there are
17 specific provisions in it that commit ICANN and ISC to
18 consult on technical matters, and perhaps a little more of
19 that kind of making the relationships and commitments
20 clearer would be useful.

21 MR. MURRAY: Thank you. Beau, let me move to
22 you on TLD management contract compliance. This issue is

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1 considered by many in the community as a core component of
2 the private-sector-led model that ICANN represents. Are
3 there new developments or activities such as domain
4 tasting that could effectively be addressed through
5 contract compliance?

6 MR. BRENDLER: Yeah, I think there are. And I
7 think, you know, from a user community perspective the
8 recent news that came about a certain registrar engaging
9 in domain name front running that you know, when a user
10 hears or sees that kind of news, I think the reaction is
11 well, how and why are they allowed to do that?

12 And I think there was some discussion when that
13 first began as to whether the Registrar Accreditation
14 Agreement even addressed that and that it was not the
15 right thing to do. Well, I mean, if ICANN doesn't know
16 when something like that occurs, whether the Registrar
17 Accreditation Agreement addresses it or not, then it seems
18 to me that there is some room within those contracts for
19 either better enforcement or compliance incentives for
20 registrars. So I think, you know, that the way that the -
21 - the way that the situation plays out in terms of how the
22 written network solutions issue is addressed is an

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1 important one.

2 So the answer to the question would be, "yes,"
3 and I think, you know, there has been -- there have been
4 some very positive developments with the user community
5 working with the registrar community to have some
6 discussions about those things. Jonathon and I met at
7 length over Indian food in Delhi along with some other
8 members of the user community. And we are beginning to
9 forge bonds that hopefully will allow some direct address
10 from the user community to registrars about situations
11 like that.

12 MR. NEVETT: If I may? Please, thanks. I want
13 to echo certainly what Steve said earlier that contract
14 compliance is incredibly important to those of us under
15 contracts. Because those of us under contracts are
16 spending an incredible amount of money to comply with
17 various parts of -- all parts of the Registrar
18 Accreditation Agreement or the Registry Agreements in the
19 case of the registries. And those parties who do not
20 comply have a competitive advantage over those who do,
21 because it certainly impacts our -- our cost structure.

22 So we are very supportive of additional

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1 compliance. We've pushed ICANN in the past for more
2 compliance. We're very supportive of the efforts that
3 their new compliance director have -- has undergone. And
4 so, for that, for compliance with the RAA or the Registrar
5 Accreditation Agreement, we're absolutely supportive. A
6 couple of the instances that, or at least the instance you
7 -- mentioned is not a RAA compliance issue, because there
8 is no RAA provision related to that.

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9 So you know this is a competitive marketplace as
10 well. So we -- to some extent some -- some issues need to
11 be forged in the marketplace through competition. So if
12 someone -- if a customer base or user group doesn't like
13 what one registrar or registry is doing, you should go to
14 -- well, certainly in the registrar case, there are 899
15 other registrars you could go to. So if you don't like
16 what's going on and when you use proprietary software on
17 one's homepage, then go to another one is certainly one
18 way.

19 So there is market regulation, there is RAA
20 compliance issues and there are -- and those are the ways
21 to rein in registrars. When it comes to tasting, I
22 applaud ICANN on taking a strong stand in the last board

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1 meeting and had -- we'd certainly been pushing for that
2 for quite some time. And if the network solutions
3 activity or measure -- customer protection measure was
4 impetus to that, that's great, and I wish it had happened
5 a year ago, because -- for various reasons. But we were
6 fully supportive of that and we think that the transaction
7 fee that ICANN announced at the last board meeting and
8 implying that to the -- add grace period will seriously
9 curb the tasting phenomenon that we've seen.

10 MR. MURRAY: Thank you.

11 MR. METALITZ: If I could just add to that. I
12 think that this question does also get back to the
13 question of the input of other stakeholder groups. I
14 think it was the ALAC that got the ball rolling on domain
15 tasting. And I think that was a very positive step that
16 is within the GNSO Council to try to move forward to
17 address it. And I think that was -- that was certainly a
18 very positive step. And as Beau and John's comments both
19 indicate, there is some question about whether some of the
20 activities that people are concerned about, do or don't
21 violate the current Registrar Accreditation Agreement.

22 ICANN is right now engaged in a process of

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1 revising the Registrar Accreditation Agreement. This is
2 certainly one issue that could be addressed. There are
3 many other issues that could be addressed in that revision
4 process to try to clarify and update the RAA. And that's
5 a challenge for ICANN to make sure that the stakeholders --
6 -- all the relevant stakeholders are heard there rather
7 than simply having a discussion in a closed room between
8 ICANN staff and the registrars.

9 Those are the parties to the contract, ICANN and
10 the registrars. But those are certainly not the only
11 parties with a stake in what is in that contract. And I
12 think that process needs to be opened up. It's a good
13 example of an area where the business community at large
14 needs to be represented.

15 MR. MURRAY: Thank you. Let me move on to
16 accountability and transparency. Institutionalizing
17 improved accountability and transparency in ICANN is an
18 equally fundamental objective on which there is broad
19 agreement. Most commenters noted that ICANN has
20 institutionalized several improvements in these areas over
21 the last 18 months and plans further modifications as
22 articulated in its Accountability & Transparency

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1 Frameworks and Principles document released just last
2 month.

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3 Len, let me submit this question to you. Has
4 ICANN developed a sufficiently comprehensive
5 accountability and transparency mechanism to meet the
6 needs and standards sought by the community?

7 MR. AUBIN: Well, we were pleased to see the
8 document come out on accountability. I think it's a good
9 step in the right direction. There are -- there's still
10 work to be done there as we mentioned in our opening
11 remarks. For us, at this point, I think the key issue is
12 going forward, implementing these things, I guess, two
13 things. Number one, implementing these things and
14 demonstrating that they work because often you know, the
15 proof of the pudding is in the eating. So you need to
16 make sure that it works and that folks recognize that it
17 works.

18 But the next step is really, what's next, in
19 getting a vision right for accountability in the absence
20 of the current form of U.S. Government oversight. And
21 that's -- that I think is what needs to be -- have some
22 attention put on it, and get some clarity around it so

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1 that we can then move to the next step. The goal is
2 privatization.

3 At this point, I'm not sure that it's very clear
4 how accountability will work in the absence of that. So
5 that's -- and I don't have an answer for that at the
6 moment myself. But I think we need to start the process
7 to get there.

8 MR. MURRAY: I understand. Any comments? Let
9 me have one last question for Steve under the multi-
10 stakeholder model. There is a broad agreement that ICANN
11 represents a unique model of private sector leadership
12 supported by multi-stakeholder participation in its
13 deliberations and policy development processes. Steve, in
14 your view, to what extent is the concept of private sector
15 leadership appropriately and effectively embedded in
16 ICANN's structure and decision making?

17 MR. METALITZ: Well, I think it's only partially
18 been realized. I think some elements of the private
19 sector are in a leadership role in ICANN. But I think
20 there are many other elements that are -- have effectively
21 been excluded. When the white paper was written and ICANN
22 was founded I don't think that "private sector led"

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1 necessarily meant led by the companies that have contracts
2 with ICANN.

3 And yet we see -- we've seen many examples of
4 the fact that those -- the registrars and registries
5 collectively do have an outside role in the policy
6 development process. I think it's understandable, 90
7 percent of the revenue for ICANN comes from registrars and
8 registries. But of course, ultimately, it all comes from
9 registrants. And I don't think that ICANN has yet
10 succeeded in finding a mechanism for registrants' voices
11 to be heard, much less, the voices of others in the
12 private sector who may or may not be registrants of a
13 particular domain name, but who are very much impacted by
14 decisions that ICANN makes.

15 And when you think about how important the
16 Internet and the domain name and addressing systems have
17 become for electronic commerce worldwide in just about
18 every sector, I don't think ICANN has yet succeeded in
19 developing a mechanism for those voices to be effectively

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20 heard. We're having a discussion now within the GNSO, the
21 Generic Name Supporting Organization, about a
22 restructuring plan that I think risks diminishing those

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1 voices even further from what they are now. That's only a
2 part of the picture.

3 It's not just the GNSO issues, there's a lot of
4 other issues that ICANN grapples with where we need to
5 find a better way for a wider range of private sector
6 voices to be heard particularly from the business
7 community. And I would second what Beau says about the
8 issue that's come up in the ALAC review is -- are -- do --
9 have we effectively reached out to the major non-profit
10 organizations and others that are affected by ICANN
11 decisions. And do we have a good way to channel their
12 input.

13 I think the answer is, "no, not yet." And that
14 this is one of the major challenges ICANN faces in the
15 next 18 months.

16 MR. MURRAY: Any comments? Okay, I'd be happy
17 to turn it over now for -- I'm sorry, go ahead John. I'm
18 sorry.

19 MR. NEVETT: Well, just from a registrar
20 perspective. We support the ICANN board governance
21 committee's proposal which will have an impact to some
22 extent on the policy development process. The role of

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1 registrars actually is reduced in the plan by a percentage
2 point, notwithstanding, we're supporting it. Those who
3 are lumping registrars and registries together, however,
4 seem to have a short memory, because if you were here a
5 year and a half ago, we didn't sit on the same side of the
6 table, let alone the room. So there's certainly a number
7 of issues where we don't agree.

8 And if you look at those contracts and from a
9 business perspective; a lot of us here represent various
10 businesses, if you look at their registry agreements and
11 you look at the Registrar Accreditation Agreements we are
12 required to follow consensus policies.

13 So if this GNSO in this community come up with
14 some consensus policies we are required under -- in
15 advance, required under our contracts to follow it. So
16 therefore it makes sense to have some kind of balance
17 between those of us who are required to follow those
18 requirements and those who are implementing those
19 requirements. So that's the -- the current process and
20 the proposed process has some kind of balance between
21 those of us not only under contracts with ICANN but those
22 under contracts that require us to follow the policies

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1 being derived by -- through this -- through this policy
2 development process, thank you.

3 SPEAKER: Please, sure.

4 MR. BRENDLER: Very short, if I could just -- a
5 slightly finer point on something Steve said in terms of
6 outreach to civil society and consumer groups. One of the
7 reasons that we've been mentioning representation is
8 generally speaking that's what the civil society and other
9 consumer groups that have interests will say is that their
10 concern, if that is their concern about how the ALAC is
11 structured at the moment.

12 So if the civil society groups are coming back
13 and saying, you know, we don't want to be part of the ALAC

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14 because it's you know, it's -- ICANN's scope is too small
15 for us. That in a way is probably a good thing. They are
16 coming back and saying, you know, we don't want to be part
17 of it because there is no representation. That's the
18 point that we are trying to get across.

19 MR. MURRAY: Thank you, Beau. I'd now like to
20 invite questions or comments from the audience. We have
21 two microphones set up. If you could please introduce
22 yourself and identify the organization you're

0044 1 representing. We have one, I think -- go ahead carry on.

2 SPEAKER: Thank you, David. Thank you.

3 SPEAKER: I don't know which, so --

4 MR. MURRAY: Give it a shot, if you could give
5 it a shot.

6

7

QUESTIONS FROM THE AUDIENCE

8

9 MR. DELBIANCO: Steve Delbianco with NetChoice
10 Coalition. I already submitted comments on the JPA. But
11 I wanted try to share, sort of, the sobering reality of a
12 -- of the false sense of security one can get at a mid-
13 term review. I'm the parent of two teenaged boys in a
14 very academically challenging high school environment. So
15 I have been through multiple mid-term reviews with their
16 teachers.

17 And I always feel comfortable in the sense that
18 they -- I find out yes, they were attending class, yes,
19 they were taking notes, they were participating in
20 discussions, really getting their homework done in time.
21 They haven't screwed up their pop quizzes too bad. And
22 that makes me feel comfortable.

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1 But I am always left with more questions than
2 answers at a mid-term review. Because the hard work of
3 the semesters have yet to begin. They haven't had to do
4 the term paper yet, they haven't done the big group
5 project. And the comprehensive exams that cover all the
6 material are yet to come.

7 And all at the same time since I have got
8 teenage boys what they are dealing with is they have got
9 car keys, they've got cell phones, they've got peer
10 pressure, and they are just throbbing with testosterone.
11 And that is not an environment where the mid-term review
12 really gives me a lot of comfort. So think about the
13 parallels to ICANN and their mid-term review right now.

14 The structures are in place at ICANN. I
15 participated there and I know that. I know that the
16 policy development processes are underway. And there's
17 even a lot of new policy processes that have been begun.
18 But look at the challenges in the second half of the JPA.
19 The second half of the mid term review. We've heard a
20 little bit about it from the panelists here so far.

21 (Off mic)

22 MS. WOOLF: Sure I can go first. What I was

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1 addressing was the perception that the U.S. Government
2 acts as kind of, a back stop on those issues that you
3 spoke of and other decisions in front of ICANN. I don't
4 believe it is impossible for ICANN to get to a level of
5 trust and stability and recognized solidity if you will.
6 I think that's within reach, and I think part of making
7 that work is having a clear vision and a clear path

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8 forward that includes an ongoing relationship with the
9 U.S. Government, with other powerful forces, with other
10 interests. And I believe the biggest single thing we need
11 to do I think that I addressed as far as the next 18
12 months is make clear how that's to be accomplished.

13 SPEAKER: Sir?

14 SPEAKER: (Off mic) -- addressed -- I guess,
15 they want me to use this now. And we're very pleased with
16 the data escrow agreement that was entered into recently
17 with Iron Mountain and the fact that 775 of the 900-plus
18 registrars have already agreed to use them for data
19 escrow. It was frankly shocking to learn in wake of
20 registrar fraud that the data escrow provisions of the
21 Registrar Agreement had never really been affectively
22 enforced by ICANN.

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1 However a great -- as many of the other things
2 that have been mentioned we need to see much more progress
3 in the next 18 months. We were frankly very disappointed.
4 We thought they would be a revised Registrar Accreditation
5 Agreement to review in advance of the Delhi meeting and
6 comment on. That was not available. In fact, now we are
7 hearing reports of further delays where that revised
8 agreement may only be available very shortly before the
9 Paris meeting coming up in June.

10 We're also disturbed when we go into this now --
11 letter, with a growing -- concerns about lack of
12 uniformity in application of the RAA. And I'll give you
13 two examples. One, is that ICANN has just announced a
14 policy to provide national law exceptions for Whois
15 compliance by the registrars. Now that is friendly --
16 actually that's pro-registrant to some extent. I know it
17 -- it gives great concern of the IP community.

18 But ICANN has really again, failed to explain
19 their thinking in providing this, failed to state there is
20 any limit where a nation could set it up as a -- as a real
21 privacy haven. Would ICANN allow registrars to be
22 headquartered there and operate?

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1 So a lack of explanation of their thinking and
2 whether there's any limit to this exception. And our
3 letter goes into in some length of what we see as a
4 growing lack of uniformity in the UDRP process which is
5 very important that it be applied uniformly and in a
6 balanced way to protect the investment of professional
7 registrants. And we see a growing trend that may lead to
8 a forum shopping among the ICANN accredited registrars
9 where complainants will choose particular forums because
10 they frankly favor one side over the other. So that's our
11 views on contract compliance.

12 I do want to mention one other issue which we
13 think is extremely important and must be addressed in
14 advance of any determination of U.S. oversight. And that
15 is the complete lack of transparency in the proceedings of
16 the government affairs committee.

17 It's clear to any observer of ICANN that the GAC
18 has grown to a 120 nations and intergovernmental
19 organizations. It's clear that's having more and more
20 influence on ICANN policy and yet it continues to hold all
21 of its meetings and all the meetings of its working group
22 behind closed doors.

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1 This is completely inconsistent with ICANN's

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2 commitment to transparency. And we really need to see
3 that GAC -- closed door sessions of the GAC be the rare
4 exception and not the general rule before we'll feel
5 comfortable about seeing ICANN cut loose from all U.S.
6 oversight. Thank you, very much.

7 MR. MURRAY: Any comments from the panelists?
8 Anything to share? Nothing?

9 MR. BRENDLER: I can speak just very briefly to
10 the many points made to the -- one about the GAC. That is
11 also a concern of the user community. And the ALAC has
12 been trying recently to open that up and to try to
13 initiate some meetings with some good response from the
14 other side. So there is some progress being made on that
15 front. And it's a very good point that you bring up if
16 you want to talk about it further, come talk to me.

17 MR. MURRAY: Steve.

18 MR. METALITZ: I'll just say on the procedure
19 for conflicts between who has contractual obligations in
20 national law. I agree with you Phil (phonetic) that how
21 that is implemented is extremely important. And I will
22 say in defense of the ICANN board, which I do occasionally

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1 seek to defend, that they basically ratify the
2 recommendation that came to them unanimously from the GNSO
3 counsel.

4 The board adopted it in principle and then the
5 staff did some implementation. And while there are -- I
6 have some questions about some aspects of the
7 implementation. I think this -- this is one of those
8 occasions where there's this policy development process
9 did function. But I agree with you that how it is
10 implemented is extremely important. And the goal of it is
11 to provide greater transparency in how these issues are
12 dealt with than we would otherwise have in terms of
13 registries who might -- or registrars who might claim that
14 there is some conflict there that needs to be resolved.
15 But implementation is going to be critical.

16 MR. NEVETT: Two points on your comments, Phil.
17 One just to echo what Steve just said. Certainly the new
18 Whois policy on national laws scares a lot of folks under
19 contract. because we want to level the playing field.
20 Like I said before we want to -- we don't some registrars
21 or registries having competitive energy over others. So
22 to the extent there's a situation wherein those in the

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1 United States, those registrars in the United States are
2 to come at a disadvantage to some registrars at a
3 different country, there is going to be a land rush to
4 that country, and I don't think anyone wants that.

5 So the transparency that Steve mentioned and --
6 in the policy is very important in the way we implement
7 it.

8 In regard to the Registrar Accreditation
9 Agreement, we are making a great deal of progress, Phil.
10 It's not easy for a lot of reasons, because there are --
11 there have been numerous comments, and ICANN is taking the
12 public comment process very seriously, as are registrars.
13 And we are discussing very heavy and hard issues. And
14 with that said, I think we are getting to a point that
15 we're close, and when we -- when we issue something we
16 want to make sure there is community input, and the
17 ability for additional round of comments.

18 So, you know, I am optimistic, and I think ICANN

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19 is optimistic, they will have something in the next, I
20 think 30 to 60 days is what Curt (phonetic) said and NTIA,
21 and I think we can meet that deadline. And it's certainly
22 our hope and we're working hard to do that.

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1 MR. MURRAY: One more question.

2 MS. FRANCE: Good morning, my name is Lisa

3 France (phonetic), and I am with the Information
4 Technology Association of America. ITAA is an association
5 here in the U.S., representing over 300 IT companies
6 representing the breadth and depth of the industry, both
7 in size and diversity of services and functions.

8 I'd like to take the opportunity to thank NTIA
9 for the opportunity to comment publicly on the midterm
10 review, as well as holding this meeting today for
11 additional dialogue.

12 In our comments to the midterm review, we noted
13 a few things that everybody has touched upon. The
14 principles being security and stability not only of the
15 Internet but of ICANN as an organization itself being
16 crucial to its evolution, and transition, accountability,
17 and transparency, leveraging the multi-stakeholder model,
18 which many of you have touched upon. And in that note --
19 in that regard we included the notion of expanding our
20 reach to the Internet's business users and infrastructure
21 providers to work with those communities for effective
22 participation in security and stability, and again the

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1 stability of the organization itself. So there have been
2 a number of things that have been touched upon by each of
3 you.

4 We may hear more about this in the next panel.
5 But since several of the panelists now have touched upon
6 the dialogue that needs to take place of the 18 months --
7 next 18 months for the future, I just wanted to highlight
8 our considerations that we put into our comments that we
9 think need to be addressed.

10 One is the long-term vision for ICANN. What are
11 the elements required for continued trust and confidence
12 in the future of ICANN, which was mentioned earlier.
13 Ensuring the continuing security and stability, and then
14 preservation of ICANN as a private sector led
15 organization.

16 In that regard, I guess one thing that we as a
17 multi-stakeholder group here, and those not present need
18 to identify is what are the specific questions perhaps
19 that we need to raise in that dialogue going forward. And
20 while many of you have touched upon the need for the
21 dialogue, I'd be interested in more specific questions you
22 think need to be raised as we go forward to that

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1 transition.

2 SPEAKER: (Off mic) questions.

3 MS. FRANCE: I stunned them.

4 MR. MURRAY: It looks like, yes. It looks like
5 you have, yes. Well --

6 SPEAKER: -- take a shot?

7 MR. MURRAY: You can take a shot, or we can --
8 maybe some of the people can get back to you.

9 MS. FRANCE: You can go on to the next panel
10 too, if that's an option.

11 MR. MURRAY: Maybe the next panel would be more
12 equipped today. Thank you. Question?

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13 MS. ROSETTE: Sure. Good morning. My name is
14 Kristina Rosette. I am an attorney at Covington & Burling
15 in town. But I represent the Intellectual Property
16 Constituency on the GNSO Council.

17 And I wanted to follow up on a question that was
18 posed earlier, and directed at Beau, because there has
19 been some recent developments, or the suggestion of some
20 recent developments that I personally find very troubling.
21 And that was the question about whether or not practices
22 such as domain tasting, warehousing, front-running and

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1 alike be taken care of with regard to contract compliance,
2 and more specifically compliance with the Registrar
3 Accreditation Agreement.

4 And while it is true that there is a provision
5 in the Registrar Accreditation Agreement that requires
6 registrars to comply with policies that prohibit
7 warehousing and speculation in domain registrations, the
8 problem is that you don't have any consensus policies on
9 those topics.

10 And the easy answer to that is, "Well, fine,
11 start at one, start the policy development process and
12 develop one." But in the past few days, in connection
13 with a project team working on developing a solution to
14 domain tasting, it appears that at least one of the
15 registries is taking the position that there can be under
16 the terms of their contracts with ICANN, no consensus
17 policy unless the registry is supported, which means that
18 you are inherently limiting the scope of issues on which
19 you can have a consensus policy to those that the
20 registries will support.

21 And I think it's probably fair to say that it
22 would not be an exaggeration, at least at this point, to

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1 at least personally suggest that the fact that VeriSign
2 has got over 50 million names being tasted each month, or
3 deleted during Add Grace suggest that they might not
4 necessarily support that policy. And in the light of
5 that, if there is in fact a correct contractual
6 interpretation, then I think we have some real issues that
7 ICANN needs to address in that regard.

8 MR. MURRAY: Any thoughts from the panelists, or
9 concerns?

10 MR. BRENDLER: I can just briefly say that the
11 North American community very strongly supported complete
12 elimination of the Add Grace Period. I don't know. That
13 was not exactly the pole position of the (inaudible) but I
14 think strong support for that remains in the user
15 community, and we may need to address that.

16 MR. NEVETT: There are three proposals out there
17 right now to deal with tasting, and it sounds like you are
18 talking about one that's the most controversial. ICANN
19 board last meeting already announced that they are going
20 to take action against tasting.

21 We think it's going to work. It's a \$0.20 fee
22 for -- and there will be some threshold. If you look at

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1 .org, .org wiped out tasting on its registry through a
2 nickel fee and a 90 percent threshold. So we think that
3 that's certainly a good move by the ICANN board. It's
4 easiest to implement personal policy development process,
5 where you get into the issues of the so-called picket
6 fence that Kristina mentioned, whether that's subject to

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7 consensus policy under the ICANN's contract with the
8 registries.

9 But the ICANN board action is, in my opinion,
10 the best way to go, because we think it'll stop tasting,
11 and it's the most easy and economical way to wipe it out.

12 MR. MURRAY: Go ahead.

13 MR. METALITZ: Just to say that, as Kristina
14 pointed out, the contract seems to contemplate that ICANN
15 might adopt consensus policies dealing with warehousing
16 and speculation. It hasn't done so to date, and I'm
17 troubled by the assertion that maybe it isn't able to do
18 that. It seems that that would be very much within its
19 (inaudible).

20 But, of course one problem we face right now is
21 that if that policy development process were to get
22 started, it would be through the GNSO Council. And the

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1 board is about to give its approval to a proposal, the
2 GNSO reform proposal that will basically, I think, take
3 the GNSO Council out of the policy-making business for
4 most of the rest of the term of the JPA. They are going
5 to be so busy doing all the things that are required to
6 change their entire policy development process, move to
7 working groups, dissolve the constituencies into a sea of
8 stakeholder groups.

9 The Board Governance Committee report listed 30
10 or 40 projects that the GNSO Council would have to take on
11 within a few months, and complete within a short time
12 period. So I think we just have a bandwidth problem if
13 that goes forward with -- the GNSO Council will have great
14 difficulty actually accomplishing anything substantive,
15 because it's going to be so consumed by this reform
16 process.

17 To me that is a misplaced sense of priority.
18 There are serious problems. I mean everyone agree that
19 tasting is a serious problem. I think part of the
20 solution may well be the development of new consensus
21 policies on it. And to divert the scarce resources that
22 ICANN has for making those policy decisions into a lot of

0059

1 internal restructuring, I think, would be a mistake.

2 MR. MURRAY: Before I move forward with any
3 other questions, did I move too quickly on the earlier
4 question from ITAA about suggested questions? Did anyone
5 have comments? Just wanted to make sure. Any other
6 questions from the audience today? Please identify
7 yourself.

8 MR. FLAME: Sure, my name is Bobby Flame
9 (phonetic), I am a FBI agent, but I am not speaking for
10 the FBI, I just want to make that clear. Just a comment.
11 I know a lot of people in the room, and they already know
12 my position, but with the Whois -- sorry to sound like a
13 Johnny One Note -- but the affirmation of responsibility
14 number five as part of the JPA, states that ICANN will
15 continue to keep the WHOIS public, and open, and stable
16 and so on and so forth.

17 But it seems like there is -- there hasn't been
18 progressed where there has been a slight erosion through
19 the growing proxy registrations through the GNSO OPOC
20 proposals, and we're continuing to discuss that when it
21 seems that the JPA Affirmation of Responsibility has
22 already, kind of settled that discussion. So like I said,

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1 it's really more of a comment, I don't know if any of the
2 panel can answer that type of question. But it's more of
3 a statement of what's going on, and, you know, I know
4 everyone is, you know, trying very hard, and it's kind of
5 slightly a runaway train with lots of people coming up
6 with different policy proposals, and different opinions.
7 But that was really just -- you know, just a comment I
8 had, and that was it. Thank you.

9 MR. METALITZ: Well, a lot of our submission is
10 dedicated to this question of WHOIS data accuracy as a
11 contract compliance issue. And I think we spell out in
12 detail there, our view that ICANN is not yet enforcing
13 effectively this aspect of the existing contract.

14 We also mention there that we think the -- that
15 there need to be additional responsibilities and
16 additional steps taken in this area. And I would just
17 underscore that having a accurate and publicly accessible
18 WHOIS is a security and stability issue from our
19 perspective.

20 So it's a very important area where much more
21 needs to be done, and I -- again I will salute ICANN for
22 starting these enforcement processes and the audits that

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1 they have started to do. But there is much more that
2 remains to be done.

3 And by the way, the proxy service issue in our
4 view is also, to some extent, a Registrar Accreditation
5 Agreement compliance issue. To some extent it's a
6 question of whether there needs to be changes in the RAA
7 to address that.

8 MR. MURRAY: Anything further from the audience?
9 Please.

10 SPEAKER: Thank you. Good morning. My name is
11 Josh Bourne. And I am here for CADNA, the Coalition
12 Against Domain Name Abuse. I want to thank the NTIA and
13 Department of Commerce for holding this public meeting so
14 that others, you know, locally and from elsewhere could
15 attend and listen to some of the comments being made, and
16 direct their own questions and comments to a very capable
17 panel such as yours.

18 This is more -- a set of my own reflections in
19 listening to the initial comments this morning, and invite
20 all of your responses if you have strong feelings. But my
21 sense in listening to what's being said is that, there is
22 an illusion that ICANN may be somewhat disconnected from

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1 the reality of how people use the Internet, and what
2 people really want from the Internet.

3 My sense in listening to people talk about
4 demand for new TLDs, and looking to .org, and what they
5 did to effect tasting, and considering that that would
6 work in .com, to me just shows a lack of study, academic
7 study, for instance.

8 Here is an example. After reading about the
9 \$0.20 proposal to effect change of a domain name tasting
10 we referred to research that we had hired a consultant to
11 perform. His name is Mathews, like many of you might
12 know, it's a Matthew Zek (phonetic), many of you might
13 know Zek in Zek Nick (phonetic) and lot of the work that
14 they have done.

15 In leveraging the data that was collected by Zek
16 over a period of 14 days, we found that 6.6 percent of
17 names that are drop caught are then kept, and are

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18 distributed back into the available names pool. Over two
19 weeks -- excuse me -- over two weeks kiting took place
20 that led to sifting, and through that sifting a total of
21 25 percent of the 100,000 names that were dropped in that
22 particular day were kept.

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1 So applying the 6.6 percent to the 100,000 names
2 that are dropped on a daily basis, it was clear that the
3 \$0.20 tax would only lead to an adjustment in .com from
4 \$6.20 to \$9 as a cost basis across all the names that were
5 tasted. It was clear then to us that kiting would be
6 halted by the \$0.20 tax, but tasting would not. And the
7 reason for that is that traffic is so valuable on the
8 Internet that -- and this is the reason why the \$0.05 tax
9 worked in .org, it's because nobody is typing in .org, and
10 you should know that.

11 You should know that it's much more difficult to
12 monetize traffic to .org, because it's a lot drier. There
13 is a huge supply of traffic, be it typo squat or combo
14 squat (phonetic) derivations to .com names. And as a
15 result, it would take just 3.8 clicks over the course of a
16 year to make up for the \$0.20 tax. That's insignificant.

17 So looking at that example, and hearing the
18 actualities about why it worked in .org, and how their
19 effort should have -- should be conclusive in .com. And
20 also hearing about the need for new TLDs, I reflect on new
21 TLDs that have been introduced over the last five years,
22 where for the most part the speculative community has

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1 acquired these names and held them. I've also heard from
2 people that certain registries that have been formed in
3 these last five years are not doing that well. There is
4 not demand for their extensions. I've also looked at
5 arguments such as .com is dried out. There are no
6 available .coms. I register .coms everyday. I can find
7 available names that fit my needs.

8 So, again, I wonder if it could be that there is
9 potential bias in reflection, such as we need more TLDs,
10 people want more TLDs. And maybe you could offer some
11 additional comments on the type of research that ICANN
12 gets externally from independent experts to help it form
13 its opinions about that. Thank you.

14 MR. MURRAY: Please.

15 MR. NEVETT: I'll address your .org comments.
16 Essentially, I am not saying that the exact model for .org
17 would work for .com. What I am saying though is, because
18 of the policy development process, .org proposed that
19 process through the new registry service model the -- also
20 called the "funnel", .biz, and .info recently proposed a
21 similar scenario though with some differences.

22 ICANN cannot make a registry charge of certain

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1 amount, or charge a fee or not charge a fee, that's the
2 picket fence issue that we're talking about. ICANN can
3 however charge its transaction fee, its \$0.20 fee which is
4 the current level, to all GTLD domain names. That's the
5 power that ICANN has right now, and ICANN smartly is using
6 that power and proposing to use that power. And we think
7 through our study and our knowledge of the market that
8 that will work in deleting -- for that the better word --
9 wiping out domain tasting in .com, as well, in the bulk
10 tasting that we've seen over the last year or so. Thank
11 you.

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12 MR. MURRAY: Any other comments?
13 MR. METALITZ: David, just going on that, the
14 questioner asked, "Do people want new TLDs?" I don't know
15 if people want new TLDs or not. But they're sure is heck
16 going to get them, and whether ICANN is prepared to deal
17 with that is, I think a challenge that's facing it, if in
18 fact there are hundreds and hundreds of new top level
19 domains, how that effects the operations of ICANN.
20 MR. BRENDLER: On the At-Large Committee there
21 was not consensus about new -- you know, whether new GLD -
22 - gTLDs were good or bad. In fact, I think probably

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1 opinion -- the opinions weighed more towards people did
2 want more gTLDs, but I am not sure there is any particular
3 research backing that up. I will say however, that our
4 organization's position -- my organization's position,
5 Consumer Reports WebWatch's was that some real questions
6 need to be asked about the implementation of new gTLDs
7 that weren't being asked at the time. And we made some
8 very specific statements to ICANN about that. And
9 supposedly I am not aware of where the process is. But
10 those were supposed to be worked out and addressed in the
11 implementation phase. So if anyone wants any more
12 information on that, I hopefully might be able to help
13 you.

14 MR. MURRAY: I know there are some more people
15 who want to ask questions. Unfortunately, we are
16 constrained by time. Our panelists will be available, I
17 assume, following the panel. The next panel may also be
18 an opportunity for you to ask questions. Thank you very
19 much, thank you the audience, and let's move on to the
20 next panel.

21 SPEAKER: I just want to take a five minute
22 break (off mic).

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1 (Recess)
2
3

SESSION II

4 ICANN'S JPA RESPONSIBILITIES: ENSURING ICANN'S CONTINUED
5 PROGRESS AND SUSTAINABILITY
6

7 MS. BAKER: If everybody could start finding the
8 way back to your seat. Let's get started again.

9 (Pause)

10 MS. BAKER: Well, hello again. And I want to
11 give a special thanks to the first panel. You all did a
12 great job. We have big shoes to fill up here, you guys,
13 so hopefully we can do that. We try to -- make this focus
14 to where the first panel was focused sort of on the 10
15 tasks.

16 And this would be a little bit, maybe a bigger
17 picture panel on sort of the future forum and the long-
18 term sustainability of ICANN. I think the vast majority
19 of comments the department has received has shown that
20 ICANN is the appropriate entity to coordinate the
21 technical management of the DNS.

22 And in addition, many of the commenters have

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1 recognized ICANN's progress, and meeting -- toward meeting
2 these responsibilities, and moving forward. That does
3 seem to be a little bit less agreement concerning whether
4 ICANN has in fact achieved or made significant --
5 sufficient, not significant -- had made sufficient

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6 progress, whether they made significant -- have they made
7 sufficient on all the goals in the JPA.

8 So with these considerations in mind, I am happy
9 to introduce you to our distinguished speakers on the
10 panel today, so that we can hear their perspectives on
11 whether ICANN is adequately equipped to preserve the
12 security and stability of the DNS going forward.

13 I'm going to introduce some -- their bios are
14 long and very important. So I'm going to try and reduce
15 it to just a few sentences because I think you all are
16 familiar with the prestige backgrounds of the panelists
17 here.

18 On my left is J. Scott Evans. J. Scott serves
19 as the senior director on the legal team of Yahoo where he
20 concentrates his expertise in the area of trademarks,
21 copyrights, unfair competition and Internet law.

22 J. Scott served on the five member drafting
0069 committee that has assisted the staff at the ICANN with
1 the drafting of the Uniform Dispute Resolution Policy and
2 the rules of procedures for the UDRP.

3 Lynn St. Amour, I think is familiar to most of
4 us. Lynn is the president and CEO of the Internet
5 Society, a non-profit organization founded in 1992 to
6 provide leadership in Internet related standards,
7 education, and policy. Lynn has extensive experience in
8 global IT and international business including positions
9 in international sales and marketing, strategic planning,
10 partner management, and manufacturing. She also has
11 considerable experience in corporate restructuring and
12 start-up management.

13 I'll make sure I have the right key.

14 Next is Keith. Keith Drazek is senior manager
15 of industry and government relations for NeuStar. NeuStar
16 provides addressing, interoperability, and infrastructure
17 services for communication service providers and
18 enterprises worldwide.

19 Prior to taking on his current role in 2005,
20 Keith spent 4 years managing NeuStar's registrar sales
21 channel to ensure effective communication and operation of
22

0070 registered products. Keith currently represent the Dot-US
1 registry on ICANN's Country Code Name Supporting
2 Organization Council, and also participates in ICANN's
3 GNSO registry constituency.

4 Martin Boyle has a new job. Martin recently
5 joined Nominet from the UK government, where he formerly
6 represented the UK-ian government in ICANN'S GAC among
7 other activities. Established in 1996, Nominet is the
8 registry operator for the dot-UK country code top-level
9 domain managing over six million domain names. Nominet is
10 also actively engaged in ICANN's Country Code Name
11 Supporting Organization.

12 And we have John Carlson at the end. John leads
13 the regulatory program at the BITS Financial Services
14 Roundtable.

15 We are very happy to have you join us here,
16 John. He is little bit of a newer face here.

17 BITS is a non-profit financial service industry
18 consortium made up of a 100 of the largest financial
19 institutions in the United States. BITS provides
20 intellectual capital and fosters collaboration to address
21 emerging issues where financial services, technology, and
22

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1 commerce intersect.

2 John regularly engages experts and executives
3 from regulatory agencies and financial institutions on
4 information security, operational risk, vendor management,
5 fraud risk, and business continuity planning issues.

6 Again our format is going to be the same. We
7 are going to have presentations from each one of our
8 panelists, and we are going to go to our question and
9 answer period. I read all of your comments except for
10 yours, which were rude comments, and they are all
11 terrific, so you can feel free to summarize your comments
12 or engage in the topics of the panel whatever is your
13 preference.

14 MR. EVANS: I represent Yahoo, which is one of
15 the world's leading Internet brands. It has a history not
16 much older than ICANN. And in the 14 or 15 years since
17 its inception by graduate students, it has become one of
18 the world's most valuable brands, the most visited
19 website, and the greatest provider of e-mail services in
20 the world to Internet users.

21 We are very concerned about ICANN, not only
22 because we have a valuable brand that we have to represent

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1 that is a huge asset of our company, in fact we have many
2 valuable brands, but also because our job as the most
3 visited Internet experience is to ensure that our users
4 are taken care of, and that they can have consistency and
5 a level of expectation when they come and visit our
6 properties.

7 And so we are greatly affected by domain name,
8 stability, security, policies, dispute resolution policies
9 that occur because our users are so greatly affected by
10 all of those policies. In going forward in this process,
11 I -- we want to acknowledge, as we did in our public
12 comments made through many of our trade associations that
13 we actively participate in, that we do believe that ICANN
14 in 10 years has made wonderful strides.

15 Some of the most significant strides have been
16 made in the last 12 to 18 months, hazard to say in the
17 last 9 months. And that's where the problem comes in
18 whether those have been sufficient. There hasn't been
19 time to know whether they have been sufficient. We still
20 have tremendous concerns.

21 We have seen budget increase, staff increase,
22 with regards to contract compliance, but we've not seen

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1 yet any major enforcement of contracts by ICANN play out
2 to see how that is going to take place. Will there be
3 lawsuits filed? How is that going to play out in the
4 system? Will it be accepted by the contracting parties?

5 I mean, so that is a great concern for us in
6 going forward that we know that it is sustainable through
7 private contract. That is an assurance we don't have yet
8 because it is never been achieved. We've never seen that
9 take place. We know that they put in and are developing a
10 system to enforce contracts and it has begun the very
11 embryonic stages of enforcing some contracts with was
12 notifications to parties, but we've not seen any drastic
13 efforts done when somebody is not in compliance.

14 We are concerned with that because it does
15 affect competition in the marketplace with regards to
16 those that provide registration and registrar services to

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17 companies and our users. So that is very important for us
18 that we need to see that the model is sustainable when the
19 contracts are enforced. And we have not seen that yet.
20 And that is something we are concerned with.

21 Another concern we have is we've heard a lot of
22 talk today, and we have in the ICANN debate about private-

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1 sector-led organization. And I think there needs to be a
2 great understanding or at least a common understanding of
3 what that means. As a business representative, I can tell
4 you that many in the business community feel like we are
5 marginalized, that we are not heard, that our voices
6 aren't heard, that ICANN is solely becoming a trade
7 organization for registries and registrars.

8 And the justification is, well, they're paying
9 our bills. And we take great umbrage at that given the
10 amount of budget, that my legal budget puts into
11 registering domain names, both to protect my brand and
12 protect my users from fishing, and farming, and scanning
13 pornography, that I write huge checks to registrars that
14 I'm not paying for the system. And when I allocate my
15 budget to fly to various and sundry venues around the
16 world to participate in the process, that my voice is not
17 being heard.

18 Or when I spur fellow members of the industry to
19 submit comments to ICANN within a policy development
20 process, and they received 75 comments from private
21 industry companies, which I've heard, we want to hear from
22 companies, not just trade organizations. And I see in a

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1 report a footnote that says, we receive 75 comment for
2 private industry. We assume this maybe because they have
3 very good lobbyists.

4 That is disheartening to private industry, that
5 in many instances my contacts are intellectual property
6 lawyers who then have to get involved in the government
7 affairs, people, the public relations people, their board
8 of directors to approve comments. They will be then on a
9 public record and then have them marginalized by a
10 footnote such as that. It's disheartening.

11 We are also very concerned about the continued
12 movement towards capture within the policy development
13 process by registrars and registries. There's been a lot
14 of lip service given to the fact that weighted voted has
15 been eliminated from the new reform process that the
16 Governance Committee has put forth.

17 However, the reality is when you do the math,
18 registrars and registries continue to have majority voice
19 in policy development. And as my mother used to say, that
20 is sort of letting the fox watch the chicken house.

21 And we believe that policies to solve problems
22 that are harming consumers and customers, that companies

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1 pass along to their customers and inflated costs because
2 the cost of doing business on the Internet is raised
3 because there are not solutions through the contracts with
4 ICANN, are being thwarted because private sector that has
5 to deal with these processes has an expense, huge expense,
6 side, no revenue side, of the balance sheet, are not being
7 heard.

8 We are also concerned about transparency and
9 accountability. We do believe that ICANN has rolled out a
10 process to deal with this particular issue. However, it

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11 is so infantile, it is difficult to say whether it is
12 sufficient. We do believe it's significant. We are glad
13 to see that it has been put in place, but we do not know
14 what, if any, effect it will have and if the effects it
15 has will be pleasing to the stakeholder community.

16 We are also very concerned about some conflicts
17 of interests that occur on the board of directors. We are
18 very, very concerned at that attorney's representing
19 applicants to run registries that are seeking special
20 dispensation from contractual agreements with the board of
21 directors, have their attorneys sitting as a member of the
22 board of directors.

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1 In my particular profession, that would be of
2 conflict of interest because under the ABA rules it is the
3 appearance of impropriety, not an actual impropriety. In
4 sustainability, we wonder when you make difficult
5 decisions that affect the marketplace by granting to
6 someone in the competitive marketplace a special
7 dispensation, that arguably could put them in a
8 competitive advantage to the nefarious people who want to
9 abuse that dispensation, that their -- there is appall
10 over that decision when that sort of conflict exists. And
11 we believe it. We believe it does.

12 Lastly, we are concerned that ICANN, whenever
13 ICANN matures itself within a particular decision-making
14 bottom-up process, whenever it gets itself matured where
15 the parties have realized this is the universe that we are
16 going to have to cooperate and deal with and to make
17 decisions to recommend to the board of directors, that
18 system changes.

19 It evolves. And again, the entire policy
20 development process revolved -- devolves into an argument
21 over process, and substantive solutions cannot then be
22 dealt with. And I think Mr. Metalitz brought that forth

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1 when he stated, "Here we are with several huge issues
2 facing the process with regards to abuses of contracts and
3 systems, and we are about to throw the policy developing
4 arm of this organization into an entire 18 month process.
5 Well, all they will do is deal with developing further
6 processes for a new process rather than substantive
7 solutions."

8 We appreciate the opportunity to appear here
9 today to tell you how business feels. We were very
10 concerned about the marginalization of businesses in a
11 private sector, which we believe includes all voices,
12 commercial, non-commercial, registries, registrars with
13 equal voices, so that a consensus model policy can be
14 reached. Thank you.

15 MS. St. Amour: Thank you for the opportunity to
16 speak here today. In 2006, the Internet society or ISOC
17 as are more commonly known, made a contribution to the
18 Department of Commerce notice of enquiry at that time. We
19 urged the government of the United States to take a more
20 hands-off approach in its relationship to ICANN consistent
21 with the original intent of the whitepaper and to give
22 ICANN more freedom following the private sector model that

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1 had been nurtured since its creation.

2 So ISOC was pleased to see that the approach the
3 DOC took for the JPA following those public consultations
4 addressed many of the concerns expressed by ISOC and

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5 other participants. The joined project agreement does
6 represent a more hands-off approach in the government's
7 relationship to ICANN.

8 Indeed, the undertakings made in the JPA were
9 not requirements imposed by the U.S. government, but were
10 taken freely by the ICANN board of directors. At this
11 midpoint in the JPA, ISOC believes that ICANN has made
12 remarkable progress in meeting its commitments. And we
13 commend ICANN for laying these out so clearly in their
14 submission.

15 ICANN is also to be commended for the energy and
16 commitment they have shown. However, at this point in
17 time, two key points were on further consideration. The
18 first, implementation, and the second, planning for the
19 post-JPA period.

20 A few comments on implementation. Again in
21 ISOC's view, and it is expressed by many of the comments
22 that were submitted and many of the comments here today,

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1 ICANN has made significant progress in the development of
2 new processes, procedures and mechanisms, particularly to
3 improve transparency and accessibility in its processes.

4 Now, as the JPA draws to a close, ICANN needs to
5 demonstrably align these advancement to the satisfaction
6 of the global Internet community with, one, a clear
7 statement of their support for and intent to move to a
8 private sector model, and two, a clear, open, and
9 transparent process for planning the transition to such
10 model.

11 To not do so, frankly, makes a mockery of the
12 progress made today to reach transparency and would
13 contradict the Internet model and the ICANN model that the
14 many Internet organizations have supported and worked for,
15 for well over 10 years. This should not be thrown out for
16 some flavor of the month or in response to some
17 geopolitical pressures. And ISOC does not believe that we
18 need to search for a different model.

19 Second, a few comments on planning for the post-
20 JPA. ISOC continues to be concerned by the question of
21 whether the current governance model is appropriate to
22 address the full range of ICANN's responsibilities. Is

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1 there adequate and appropriate participation from all the
2 required communities is a question that we hear phrased
3 often.

4 The original constituency model was conceived to
5 attain inputs, but the current model does not always
6 provide the necessary range of stakeholders perspectives.
7 In fact, the increasing preponderance of views
8 representing specific economic interests creates a danger
9 that ICANN's process may not be sufficiently inclusive in
10 future.

11 ISOC joins many other organizations in
12 recommending that ICANN expend further efforts in a review
13 of their consultation and decision-making in order to
14 ensure adequate input from all appropriate quarters as
15 well as to review its policy and policy development
16 processes to avoid what seems now to be a real possibility
17 of capture. No one stakeholder should have dominant
18 control.

19 I just like to make a sidebar note that ISOC
20 strongly supports the Internet Architecture Board's
21 contribution to this notice of enquiry. That concerns the

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22 IETF role vis à vis the protocol parameter assignment

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1 function done within IANA. And before completing the
2 transition to a full private sector model, we would like
3 to see the rightful role of the IETF be clearly
4 articulated and addressed.

5 But to reiterate. We are eager to see ICANN
6 transition to a private sector model involving all
7 stakeholders. We believe that having a clear community-
8 agreed organizational endpoint is critical to ICANN's
9 future success. And we would like to see ICANN state this
10 unequivocally as an endpoint.

11 We strongly urge ICANN to develop, consult, and
12 articulate an organizational and governance model of ICANN
13 post-JPA. This endpoint should be developed through an
14 open, inclusive and transparent process drawing on the
15 considerable expertise available to the organization. We
16 are proceeding on the assumption that governments will
17 continue to provide advice, but not oversight.

18 In addition, we would like to see the U.S.
19 government start taking steps now to ensure that they are
20 ready to conclude the JPA in 18 months.

21 In closing, ISOC stands ready to support ICANN
22 as they take the next critical step in the evolution of

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1 this critical supporting organization in the Internet's
2 development. I thank you again for the opportunity to
3 comment.

4 MR. DRAZEK: Excuse me. So my name is Keith
5 Drazek. I work for NeuStar. NeuStar is the registry
6 operator for the Dot-Biz gTLD, under contract with ICANN.
7 I won't go over all of the points that we included in our
8 letter, but I would like to touch on a few of the, kind
9 of, the highlights, and then we can save some of the
10 specifics for the Q and A session.

11 NeuStar supports ICANN's ongoing mission to
12 ensure the security and stability of the Internet under
13 private sector management. Over the last 18 months,
14 progress has been made by ICANN and the community in each
15 of the 10 responsibilities outlined in the JPA.

16 In anticipation of further concrete steps and
17 progress over the next 18 months to move ICANN closer to
18 those key goals, NeuStar recommends that ICANN, the ICANN
19 community, and the U.S. Department of Commerce begin work
20 to develop a joint transition plan that outlines a path to
21 independence. The final transition plan must ensure that
22 ICANN continues its maturation into an organization that

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1 can resist internal and external pressures to move away
2 from the critical model of independent private sector
3 management.

4 We believe the criteria outlined in the JPA
5 provide a good baseline for measuring ICANN's progress and
6 sustainability. However, within that existing framework,
7 we believe there is room for measurable objective criteria
8 that would provide ICANN a clear target that once reached
9 would trigger a transition from the current status. And
10 we believe that the criteria -- that criteria should be
11 developed cooperatively by NTIA, ICANN, with input from
12 the broader Internet community.

13 NeuStar believes that the technical security and
14 stability of the DNS depends upon the viability and
15 sustainability of the ICANN model, which is private sector

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16 leadership, accountability and transparency,
17 representative consensus-based policy development. And I
18 look forward to the Q and A session when we can get into
19 some other more details.

20 MR. BOYLE: Thank you. When Meredith introduced
21 me, she didn't actually say that my recent transfer to
22 Nominet was actually Monday this week.

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1 (Laughter)

2 MR. BOYLE: Lesley Cowley, the CEO of Nominet
3 was supposed to be occupying this seat but sends her
4 apologies. She is unwell, and I would refer you to the
5 posting that she made to this process. I'm not going to
6 try and summarize that process in detail, but I think I
7 would like to pull out just a few highlights. In
8 particular things -- and echoing the comments that has
9 been made by a number of people on this panel and on the
10 previous panel, there has been a good progress. There's
11 obviously and always scope for any organization to
12 continue to improve and to continue to respond to the
13 pressures on it, the pressures that come particularly in
14 this sector where there is so much change and innovation.

15 But I think we've got to also put it into the
16 context of international expectation that this process is
17 a one-way street, it is moving forwards. We've gone
18 through the MOU process, we now in the JPA process, and I
19 think everybody expects that that should be leading to
20 some sort of completion of that privatization process, a
21 process that we strongly support.

22 But the critical thing is, a number of people

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1 have said, is to plan and establish the right framework
2 for that process to go ahead. And I'd like to sort of
3 throw an additional level in here, and that is really of
4 the improvement of the international trust and the
5 accountability of an organization that is still quite
6 heavily routed in the United States in spite of quite
7 considerable efforts to widen its responsiveness.

8 And as it does that, as it manages to serve the
9 wide community, then I think we will see an improvement in
10 the way that ICANN is trusted. So the question is how do
11 you get there? I think there are -- over the last 5 years
12 perhaps there are a number of principles that have become
13 very, very clear, the principles in whitepaper, the U.S.
14 government's in June, 2005, have had four principles that
15 they put on the table that I think are actually very
16 useful for us all.

17 And in fact, then the world summit and the
18 information society also identified some principles that
19 certainly the U.S. government as the UK government has
20 signed up to and where ICANN was very heavily involved in
21 steering that process as well.

22 The (inaudible) their mind, of course, is that

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1 ICANN is not treaty the organization. And we should not
2 see it as being a treaty organization. And this is going
3 to become more and more difficult for the organization as
4 its gets out into that wider international community. It
5 is got to live in a world where laws are not the same.
6 And I'm reminded of the conversation earlier, in the
7 previous panel, on privacy laws, and -- which is something
8 that we are going to have to address.

9 Up to now the United States government has been

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10 the guardian. What do we do post-JPA and what is quite
11 fundamental is that we can't move from, and I'm not sure
12 whether I dare to say this in United States government
13 building, but the United States in the role of a benign
14 dictator what I would not like to see is handing over that
15 oversight role to what might turnout to be a malign
16 oligarchy.

17 And part of the problem there is that level of
18 accountability -- ICANN is not a conventional
19 organization, it's not got shareholders, it's not got
20 clearly defined membership, and therefore there is always
21 a risk that things will be captured, which is why I would
22 go back and refer very clearly to having defined

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1 principles and processes. And the fact that these are
2 seen, understand -- understood and accepted and that the
3 role of the board is actually find important in trying to
4 make sure that the management is held quite firmly to
5 account for that.

6 And in that process obviously then there is the
7 input from the supporting organizations and the advisory
8 committees. And here again, the participation, and as our
9 colleague from Yahoo has just said, that very important
10 level of getting that wider involvement. This isn't just
11 about domain names. This is about that which underpins
12 the Internet and the economy.

13 So planning for the future, I see very clearly
14 ICANN has got a very significant role. And it is ICANN's
15 role over the next 18 months to develop a framework for
16 post-JPA existence. And it's going to do that by building
17 consensus with the international community and validating
18 it with them and engaging with that wider community. And
19 as they say, I think only ICANN can do that.

20 The second thing that I can see firmly in place
21 really is -- again, it's not the right place to be saying
22 this, but the job for NTIA. And I'd say this, and it's

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1 actually a comment by -- made by Suzanne Woolf in the
2 first panel, and it's that four-letter-word-IANA, and the
3 importance of being able to preserve security and
4 stability in post-transition environment.

5 I know that the IANA role is not on the table in
6 this particular discussion, but it's the way in which that
7 oversight of ICANN in managing that function is carried
8 out. And I see the problem is being that of having extra
9 levels, extra layers in the process that will then get in
10 the way as a barrier to automation of the process. A
11 barrier to the introduction of DNSSEC and the signing of
12 the routes. And so I think this is something that perhaps
13 NTIA could establish a multi-stakeholder dialogue to try
14 and work out how it couldn't (ph) make its touch on that
15 process that much lighter.

16 So (inaudible) in mind, I've well exceeded any
17 fair allocation of time. If I just identify the way
18 forward, it is that setting the criteria, a lot of the
19 criterion in place, the commitments, the engagements to
20 the global community, the definition of very clear
21 processes, the recognition of the limits and the
22 responsibilities of others, and making sure that people

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1 are firmly signed up in that.

2 There is the question of delivery. And ICANN is
3 very odd body because it's been set up -- essentially it's

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4 a process, and yet everybody really would want to make
5 sure it's about what it actually achieves, and it's the
6 introduction of internationalized domain names. If we
7 don't do this, then the system is really broke. Getting
8 new gTLDs, and new gTLDs working in different legal
9 frameworks, there are not many gTLDs that are run from
10 outside the United States, and even fewer that are run
11 outside the Western World.

12 And then lastly, the framework of accountability
13 and the board holding the responsibility and
14 accountability and how it defines that accountability and
15 to whom it is accountable. And this, I think, really
16 presents quite a major challenge to ICANN and to NTIA for
17 the next 18 months. Thank you.

18 MR. CARLSON: Very well. Thank you very much
19 for inviting me to participate. I think the best way for
20 me to start -- and I think it's the educational having
21 listened to the other speakers, that where you stand
22 depends on where you sit. And from my perspective, where

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1 I'm sitting and I'm standing is representing the financial
2 services industry, which really has not been a key player
3 within the inner workings of the ICANN.

4 But we feel, we certainly have a stake in this
5 game in terms of the impact that what -- the actions that
6 ICANN takes, the role that the registrars play in dealing
7 with some of the negative consequences, some of the bad
8 actors around the globe that are trying to perpetrate
9 fraud and identity theft and other types of challenges
10 that are really facing the financial services industry.

11 Clearly the Internet is a major delivery channel
12 for the financial services industry. It's also a major
13 factor for how new types of fraud are being perpetrated.
14 So our recent engagement with ICANN has really come
15 through the work of the Whois Taskforce in terms of
16 looking at and making changes to that.

17 We had some concerns with the way the process
18 was handled in terms of not having good analytics in
19 understanding the consequences of actions that were being
20 taken, of getting input from various parties, and in
21 moving that discussion forward so that all the different
22 players were truly represented in looking at the outcome

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1 of whatever actions that were taken.

2 We clearly understand that ICANN has a very
3 difficult challenge. We appreciate all the work that
4 ICANN has done in terms of trying to enhance
5 accountability and transparency, and to focus on some of
6 the process issues.

7 The one concern that I have is that, that
8 process that was very difficult for a non-participant to
9 be engaged in. It's hard for someone from my point of
10 view to step in and say, how do I get involved without
11 dedicating my entire life to the series of meeting and the
12 series of conference calls to work on these issues?

13 And I have to hand it to those people to do it.
14 So I appreciate the work that they do, but it is not
15 practical from, at least from where I said, in terms of
16 engaging large finance institutions that are on the
17 frontlines of the identity theft and the fraud related
18 issues to work with ICANN in some of these issues.

19 And I think, this -- the security and stability
20 challenges are just going to grow overtime as more

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21 activity, more commerce, and more brands are put on the
22 Internet, and we are relying upon this infrastructure. We

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1 are going to need a very good governance structure with
2 lots of transparency, lots of controls, checks and
3 balances to make sure it's meeting all the needs of the
4 various stakeholders.

5 So we applaud the effort by both the Commerce
6 Department in hosting these forums, but also Paul Twomey
7 and his staff at ICANN in terms of moving this dialogue
8 forward, and trying to think through some of these
9 challenges in the road ahead.

10 MS. BAKER: Well, I really want to thank all of
11 our panelists, great information, great perspectives. I'm
12 very grateful that you are here. I have so many
13 questions, but I'm going to be mindful of the time to make
14 sure we have time for audience participation. So I'm
15 going to limit myself.

16 Something that has come up a couple of times, it
17 came up in the first panel, I think, when Steve Metalitz
18 was speaking, Martin mentioned it just a minute ago, do
19 you believe a specific criteria need to be developed
20 against which the continued progress and sustainability
21 of ICANN could be assessed? And if so how should these
22 criteria be developed? And that's really an all-play

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1 question.

2 MS. ST. AMOUR: I have two short answers, I
3 guess. Yes, I do believe specific criteria should be
4 addressed, and I actually believe they should be addressed
5 through the ICANN community, and through the broader
6 Internet community, and if necessary and ICANN needs to
7 undertake targeted outreach to those other communities to
8 ensure they get the information they need to make sound
9 decisions, that they should feel free to do that and not
10 be held within some tighter balance.

11 MR. BOYLE: Yes, similarly I agree with the need
12 for the right objective criteria that's -- I think, the
13 criteria I'm looking at really is -- are all about trying
14 to establish and ensure that accountability and ensure
15 that it is the right framework that it does allow the
16 business community to get its input in that does avoid
17 capture and does ensure that there is a process that loops
18 back and holds the managements accountable for what it has
19 achieved.

20 And I see this is being quite fundamental in the
21 process. And it's a level that I don't think quite we've
22 got in place. I think we probably do need to consider

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1 very much more carefully the role of the board in the
2 process.

3 MR. CARLSON: I would also add in terms of
4 setting the criteria, I think it's going to be very
5 important to make sure they're in response to emerging a
6 change in threats. So to be focused on the new risks that
7 are out there and the challenges that need to be
8 addressed, and also making sure that there is
9 accountability all the way down the chain, that it's the -
10 - the companies, organizations that are under contract
11 with ICANN that they are following through on the
12 commitments, and that there is an enforcement mechanism to
13 deal with those parties that aren't living up to the
14 contract, because I think the point was well made that

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15 that is a competitive disadvantage, and we need to make
16 sure that everyone plays by a level playing field.

17 SPEAKER: Okay, great. Just -- you got such a
18 fabulous vocabulary we (inaudible) you speak again. What
19 more can I can do to earn the confidence of the community
20 and enhance its credibility as an independent self-
21 regulatory body?

22 MR. EVANS: Well, I think it was mentioned in
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1 this, the first panel on a couple of occasions that the
2 accountability mechanisms that are sort of built into
3 place all report back to the board. And so I think that
4 that is an area that drastically needs to be worked
5 through with the community.

6 And while this 18 month is sort of a guidance
7 and role with helping assist, the Department of Commerce
8 can assist in guiding ICANN and putting together
9 mechanisms that will solve -- resolve those issues, I
10 think that is hugely something that needs to be dealt
11 with. And until that loop gets brought back around, I
12 think that there is always going to be a problem.

13 And, you know, I can tell you that there were
14 people that on substantive issues, I am on the very other
15 spectrum from them, but when I read their comments, that
16 we all had this dramatic thing running through the
17 comments. I take it from some of the more local non-
18 commercial interests that have not always been my greatest
19 fans, but we do agree that this is a huge problem that
20 needs to be resolved and is a hole in the mechanisms that
21 have been developed to-date. And I think that that is
22 going to have to be resolved.

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1 MS. BAKER: Anybody else have comments on this
2 one?

3 MR. DRAZEK: Sorry. I'd like to just list
4 through a couple of things. I mean, we've heard people
5 talk about contract enforcement and the lack of contract
6 enforcement. And I'd like to second some of the things
7 that John Nevett said earlier. And as a registry operator
8 under contract with ICANN, John as a register -- represent
9 a registrar under contract with ICANN, it may seem maybe a
10 little unusual that we would be calling for better
11 contract enforcement. It's almost like, you know, come
12 and enforce your contracts with us.

13 It's the parties in the process that are may be
14 not the good actors, you know, who are -- those who are,
15 you know, basically taking advantage of a lack of policing
16 and a lack of enforcement, that we've really think need to
17 be addressed. I mean historically -- and I will say that
18 ICANN, just in the recent months in the last year, has
19 taken some steps and some very positive steps to improve
20 its policing in enforcement. But it's not quite there
21 yet. Historically ICANN has taken a hands-off approach to
22 policing and enforcement. And I think that's one specific

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1 example of things that -- you know, something that could
2 be addressed.

3 MR. CARLSON: One thing I want to add, at least
4 again from where I stand, you know, financial institutions
5 are heavily regulated, and all regulators constantly say
6 to our finance institutions, "You must oversee your third-
7 party service providers, you must manage the risks that
8 are out there, you have to protect the privacy and

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9 security of the information." And they've been increasing
10 requirements overtime very much in a risk-based approach.

11 What we can do is we can necessarily manage
12 those third-party vendors such as registrars that are --
13 they are not the good actors, that are creating some
14 problems in terms of providing the gateway, the access to
15 perpetrating fraud. So that really puts us at a
16 disadvantage in terms of how do we resolve these types of
17 problems.

18 We then we work with law enforcement. Law
19 enforcement will have the same sort of constraints that we
20 will have in terms of investigating and following up and
21 dealing with these issues. And there's a further wrinkle
22 (inaudible), you also have the global nature of it. You

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1 have mentioned the laws, that you are going to be dealing
2 with multiple laws, and there are inherent conflicts in
3 that.

4 There is also challenge in terms of working with
5 different government agencies and law enforcement agencies
6 to resolve some of these issues. So whatever role ICANN
7 can play in order to ensure that the participants in the
8 process are doing the best they can, will certainly help
9 in mitigating some of these new risks that we are having
10 to deal with.

11 MR. BOYLE: Thank you. And yeah, the law point
12 is obviously fairly fundamental because you can't just
13 turn around somebody in a different jurisdiction and say
14 you have got to obey the law in California, it doesn't
15 matter what your own jurisdiction should be. And that
16 leads me to thought that's, bearing in mind there are lot
17 of jurisdictions out there we are seeing within the
18 country code domains, that the registries and registrars
19 live within that legal base.

20 And many of them manage too without being havens
21 of cyber crime. And I think that perhaps gives us a clue
22 as to what we should be trying to do, of looking at

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1 putting the safeguards in place that allow the protection
2 of personal privacy but they don't then disadvantage the
3 commercial operators in the space and make it easier for
4 people to do the cybersquatting or the fishing or any of
5 the other abuses.

6 So I think this is somewhere where ICANN can
7 actually, by using that and enlarging that
8 internationalization role of understanding what the space
9 looks like, and then starting to make sure that people are
10 in other countries taking their roles and responsibilities
11 and taking them seriously.

12 MS. BAKER: I think that leads me to my next
13 question, because that's part of -- that's been part of an
14 answer here, but also I'd like to go a little bit further
15 with this. What are the internal and the external
16 pressures on the ICANN model that need to be addressed by
17 the community? And Lynn you had mentioned geopolitical in
18 your remarks. And so maybe you might want to start to
19 supplement.

20 MS. ST. AMOUR: So in particular, ICANN has felt
21 a lot of pressure, other parts of the Internet model and
22 Internet community have also felt a lot of pressure from

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1 other governments. As the Internet has become ever more
2 vital and ever more critical in our day-to-day lives, it's

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3 at one level natural that governments would want to get
4 involved with the increasing problems with spam and
5 fishing and cyber crime. Equally, that's another reason
6 why governments would want to get involved.

7 And most of the solutions to those problems
8 though don't come from government and we don't believe
9 come from regulation, the way the Internet has developed
10 over the last 30 years is through innovative,
11 collaborative efforts.

12 And the reason we feel so strongly that ICANN
13 should continue to follow a private sector model as
14 opposed to any other quasi-governmental or
15 intergovernmental organization, it's because we believe at
16 a very fundamental level that that is where the strength
17 of the Internet comes from. And where problems facing the
18 Internet, it will be addressed today.

19 So I think it's impaired upon ICANN, it's also
20 impaired upon many of the other Internet bodies, whether
21 they are regional Internet registries or the IETF, ISOC,
22 that we continue to espouse that model, work together in a

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1 collaborative manner to address any of the future problems
2 that come up with the Internet.

3 So I think those are some of the pressures that
4 -- that it's very, very hard to ignore. They are pretty
5 pervasive. We've all been active in the World Summit on
6 the Information Society and the world Internet governance
7 groups, the current Internet governance forum. It's also
8 fairly clear that those pressures aren't going to go away.
9 I just keep holding on for a generational change in
10 government basically.

11 But then again I think if ICANN can continue to
12 evolve as it has, it can strengthen a lot of its
13 processes, it can build a strong governance model, it can
14 work very collaboratively with Internet organizations and
15 appropriate stakeholders, then I think that they can truly
16 be as strong as they need to be and as well respected and
17 credible as they need to be, and can stand alone as a
18 private sector model. But I do believe that's one of the
19 more important pressures.

20 MR. DRAZEK: Okay. I think, you know, one of
21 the other pressures, and I think it's an internal pressure
22 that ICANN -- that I expect ICANN to face in the coming

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1 years is the budgetary pressure. And unlike a lot of
2 organizations that have budgetary pressures to keep costs
3 down, ICANN's budget has increased exponentially over
4 recent years. And as far as I can tell in our evaluation
5 there is -- it doesn't show that there is any likelihood
6 that that's going to stop.

7 So ICANN is going to have a lot of money to
8 spend, and I think that it's going to have internal
9 pressures to kind of justify the money that it's bringing
10 in. And I think that's both positive and potentially
11 negative. And really what that gets me to is the need for
12 transparency in the budget process, in ICANN's budgetary
13 process.

14 Again, you know, I don't want to sound like a
15 broken record, but I think ICANN has made a lot of
16 progress in that in recent months, but there is still some
17 work to do.

18 MR. EVANS: To be fair though, you have to
19 realize that ICANN was woefully under-funded from day one.

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20 So to say now that they may have -- we don't know where
21 their budget is, I do think that there needs to be
22 controls to make sure that they can -- that it's not used

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1 to let this budget just get out of hand.

2 But I do believe that we aren't sure yet what
3 that budget needs to be, because they were so woefully
4 under-funded for so very long. I mean, many of the
5 reasons we've seen in the last 12 to 18 months progress is
6 because they finally have money to hire staff to spend
7 time tackling issues, that the volunteer community didn't
8 have the time to do more than identifying issues and give
9 a broad-based idea of what the solution should be without
10 any drill down to how that would be implemented or what
11 affects would be or studying what it would be. And we're
12 just getting to a point with that's taking place.

13 So I just want to make sure that we're fair to
14 realize that is a reality. It does seem like it's grown
15 huge. But when you are so woefully under-funded from the
16 beginning, how do we know if it's just getting to where it
17 needs to be or not? But I do believe checks need to be in
18 place to make sure that question is being asked.

19 MR. DRAZEK: Yeah, I absolutely agree with that.
20 And again, transparency is the key.

21 MS. BAKER: Gosh, I have so many questions.
22 Okay, I'm going to rap up here in a minute. I think in

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1 fairness to Lizo (phonetic) who asked this question and to
2 the first panel, which really sounded like a great
3 question, as the second panel, is there -- let's take a
4 moment to talk about the long-term vision for ICANN and
5 how to really ensure the private sector leadership. I
6 know we've touched on it, but do you have any additional
7 comments to -- vision of -- the long-term for ICANN?

8 MR. CARLSON: I would just say, I don't have a
9 vision. And obviously, ICANN is a unique organization,
10 and it's got unique responsibilities. But I think the one
11 thing that I'm willing to commit is to participate in an
12 ongoing process to sort of figure out what is the right
13 mechanism to get the support that they need to have the
14 transparency, to have the good governance. All those
15 different elements that I think will garner the title
16 support and the structure that is going to satisfy as many
17 stakeholders as possible.

18 I'm not saying that's going to be an easy job
19 given all the different competing interests that are out
20 there, but one thing, I think, we would certainly like to
21 see is if the private sector model is to really be more
22 than just words, then it really needs to be structured

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1 such a way to get as many stakeholders involved in the
2 process, in an easy-to-use process, to provide input and
3 to make the organization stronger to deal with the
4 emerging risks that are today as well on the horizon, and
5 to have the financial resources to make sure that it's on
6 sound footing.

7 MR. BOYLE: Likewise I don't think I have the
8 magic vision for the future, but I think there are
9 certainly some areas, which have to be addressed and have
10 to be seen as top of ICANN's priority. The one is the
11 increasing improving competition. But associated with
12 that and the internationalization of the management of the
13 domain names space, really is the -- improving the

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14 international participation and the diversity of the
15 space.

16 In particular, as I mentioned earlier, the
17 internationalized domain name systems, but also actually
18 the ability for people to get -- from developing countries
19 to get involved in the process is actually fundamental.
20 If we don't get these people engaged in the process, then
21 we are failing to look at the next billion and the two
22 billion users after that, absolutely fundamental improving

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1 that diversity. Thank you.

2 MS. ST. AMOUR: Just one quick comment. With
3 respect to the endpoint, the vision, a lot of ICANN's
4 activities and a lot of focus in the world, and I look
5 towards ICANN as around and security and stability of the
6 Internet. Security and stability of the Internet is very,
7 very broad and certainly encompasses more than just
8 ICANN's set of responsibilities.

9 The -- and there's probably a lot more we can
10 actually say in that particular topic, but the point that
11 I'd actually like to make is that I think it's equally
12 important as we go forward in the next 18 months in the
13 JPA, that we actually focus on the stability and long-term
14 viability of ICANN. And that's what a lot of the comments
15 have been about, both, today and in the submissions to-
16 date.

17 But you know, it might be more appropriate to
18 draw some parallels to some of the activities within ICANN
19 and some of the processes that happen within the ICANN
20 community that focus on security and stability. And we
21 are doing that in the context of security and stability of
22 ICANN, as an institution and as an organization as opposed

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1 to security and stability of the DNS.

2 MR. EVANS: I think that there needs to be
3 within the ICANN system a realization of reality at some
4 points. You know, it's all well and good to bring
5 everyone to the table in every jurisdiction and open up
6 and say we want to have registrars and registries in every
7 jurisdiction. But the reality is if there are havens for
8 particular malpractices going on, the reality needs to be
9 seen, then ICANN needs to say that laws are being abused
10 and there are malpractices, and the best practices are not
11 been followed in these jurisdiction, and they need to not
12 bound to the political pressures.

13 With regards to another reality, someone mentioned
14 today that there were like 850 something registrars to
15 choose from. Well, if you get to checking all the
16 corporate connections, I would hazard to say that they are
17 like a 198 separate entities that are actually out there,
18 or, you know, it's not -- it's large as it seems because
19 they are all separately connected.

20 And so I think ICANN needs to make policies that
21 realize and recognize that reality when they do contract
22 enforcement so that portfolios don't run from one

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1 particular bad actor who is actually 12 bad actors that
2 there -- and I think there are steps being taken that
3 realize this reality.

4 But I think sometimes, in answer to the
5 geopolitical pressures is, you have to balance that with
6 reality and be able to articulate within that pressure
7 cooker why certain things are, because we are all looking

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8 for best practices, because the best practices creates a
9 very vibrant competitive marketplace for the good actors,
10 which is what ICANN is trying to encourage.

11 SPEAKER: Okay. Why not turn it up to the
12 floor?

13 MS. BURR: My name is Becky Burr. I will start
14 with my standard disclaimer, which is that this is
15 probably all my fault.

16 (Laughter)

17 MS. BURR: Nonetheless -- I, in preparing for
18 this recalled that in 2002, ICANN's Committee on Evolution
19 and Reform asked me to draft the implementation for its --
20 the accountability section of its blueprint for reform.
21 So I went out and I consulted with my colleagues and
22 members of the community and I reported back in my interim

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1 report, sorry, the blueprint is not going to work. You
2 have inappropriately limited role of the ombudsman, and he
3 is not sufficiently independent. You've given the manager
4 a public participation, a non-sustentative role. You have
5 not created a broad enough mandate for independent -- for
6 reconsideration on the board. And you need to have a
7 standard against which independent review is going to be
8 judged by a persistent group of highly qualified people.

9 The Evolution Reform Committee came back and
10 said, thanks, but you know, we really wanted you to stick
11 to the blueprint. And the board said it would listened to
12 all your good idea. So you know, stick to the blueprint.
13 So when I submitted the final report, I noted that -- that
14 this was limited to the blueprint that had been provided,
15 that it was inadequate to provide real accountability to
16 ICANN.

17 And then I provided some additional
18 recommendations. Although, I may have been thinking about
19 other things in 2002, I was struck by the degree to which
20 the recommendations for additional work are still
21 appropriate today. And specifically it's that ICANN has
22 to ensure meaningful accountability with respect to

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1 mission creep, in other words the blueprint lacks the
2 mechanism providing accountability with respect to
3 revisions that expand the scope of ICANN's mission.

4 ICANN lacks an accountability mechanism to check
5 misuse of authority to determine whether or not a
6 particular action would constitute or require the
7 development of policy. Accountability mechanisms cannot
8 work if they do not have a workable standard of review
9 against which actions can be measured, and that the
10 reasonable judgment of the best interest of the ICANN
11 community standard was inadequate.

12 I think we are still there. I think that ICANN
13 has done tremendous work in terms of getting some
14 organizational stability, getting transparency, but
15 transparency and accountability are just not the same.
16 And the result today is that if you want a dispute, if you
17 really want to have to, you know, get to the bottom of
18 something, you have to engage in a extremely expensive
19 international arbitration process, hundreds of thousands
20 of dollars worth of expense.

21 And that's only if you have a basis on which to
22 get there, and the basis on which you can get there are

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1 limited. So my wish for ICANN, my long-term vision for

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2 ICANN, is that it address in particular, and urgently, the
3 absence of meaningful accountability.

4 MR. GOLDSTEIN: Okay, from this side of the
5 house, I'm Steve Goldstein. I am I think the only voting
6 board member from ICANN here today, although our CEO Paul
7 Twomey is an ex-official voting board member. There are
8 several points that came up that I would just like to
9 address briefly. One is that a misunderstanding repeated
10 becomes a fact in a lot of peoples mind. So I'd like to
11 get at that.

12 There was a misunderstanding about all disputes
13 or all disagreements are resolved by the board. That is
14 not true. The IRP, the Independent Review Procedure, is
15 delegated to the International Arbitration Association,
16 and in fact, there are special entrance points in the
17 International Arbitration Association that recognize an
18 ICANN complaint. So that's number one.

19 Number two, the Add Drop Grace Period. At our
20 three big meetings, the board adopted a new way of meeting
21 with the constituencies. Instead of the whole board
22 sitting en banc with each constituency and not really

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1 getting much done other than a proclamation from the chair
2 and the CEO and the board chair, we've broken up into
3 smaller groups and each group visits for longer period
4 with each of the constituency -- with a constituency.

5 And I have the pleasure of meeting with the
6 registrars of constituency at our last meeting, and a
7 very, very -- two very fine papers were presented by the
8 registrars, and one gave 10 very, very good reasons for
9 maintaining the Add Drop Grace Period.

10 So I think it's really tasting in other abuses
11 that we have to deal with, but not the Add Drop Grace
12 Period itself. So we are getting the word -- you know,
13 the board is not just sitting and making pronouncements
14 from the top panel, we are indeed dealing with the bottom-
15 up.

16 In terms of transparency in the budget process,
17 this year for the very first time, our operational plan
18 and trail budget first draft of the budget have been
19 presented together for public comment. The budget will be
20 refined as a result of public comment. But for the very
21 first time you get to see the proposed draft budget, if
22 you will, and the operational plan at the same time. And

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1 they are on the web now, okay?

2 And by the way, when I came to the board, I was
3 the one who had absolutely insisted that we have a
4 simplified method of showing our income and our
5 expenditures by things like bar graphs and pie charts.
6 And they are now there on the web as well.

7 So if you want just a brief capsule in what's
8 there, where our income is coming from or how the play is
9 going, it's there on the web. As by the way, our page is
10 showing our progress for all the key initiatives which are
11 going on with timelines. They are all there, okay.

12 The board itself has begun to undergo training
13 in for its members in things like governance. And in
14 fact, several of us are enrolled in a course, which is to
15 begin in the 1st of April or the first course, who
16 enrolled in, will begin in April by the National
17 Association of Corporate Directors. That course will be
18 here in Washington.

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19 And the one other thing, as we talk about
20 internationalization, as we get ready for things like the
21 IDNs, the Internationalized Domain Names and so forth, we
22 must somehow increase our international footprint to be

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1 able to deal with those realities. And we are indeed
2 looking at setting up offices or subsidiary organizations
3 in different parts of the world to be able to handle that.

4 Now, if you look at our budget, you will see
5 that over a 3-year-period, there is about \$14 million
6 earmark for the new gTLDs and IDNs. This is going to be a
7 big undertaking. And we have to get ready to do it, it's
8 not going to just -- we can't do it with the existing
9 staff.

10 So we are getting ready to do that, and we are
11 getting ready to internationalize, and to internationalize
12 even further in a very well planned way. Thanks.

13 MS. BAKER: Okay, thanks. I may deduct that
14 from Paul's time at the end. Just kidding, Paul. Go
15 ahead (inaudible).

16 MR. MEIJER: Thank you. My name is Roel of
17 Meijer. I'm the CEO of SIDN. SIDN is the registry for
18 .nl, the Dutch country code-top level. With about 3
19 million domain names, we are about -- we are the fourth
20 largest country code top-level in the world.

21 We've been supportive for ICANN and also the
22 ccNSO since their inception. And it's our opinion that

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1 over the last few years ICANN has realized significant
2 progress in becoming a truly transparent, international,
3 private sector organization accountable to its diverse
4 stakeholders.

5 Does that mean that we feel that ICANN is
6 perfect? No, it doesn't mean that. And I think it's not
7 really the question we should seek to answer. I think we
8 should try to focus on the answer, if ICANN progresses --
9 continues to progress on the track it is on now, do we at
10 the end of the present GPA need another one for
11 supervision by the U.S. Government?

12 And my strong answer to that question is "no."
13 And therefore, I think that ICANN, the NTIA, and the ICANN
14 community together should, from now until September next
15 year, work on the plan and that process also to realize
16 that plan that will lead to a post-GPA forum.

17 And I think today already we've heard a lot of
18 ingredients that should be in that post-GPA forum. I
19 would like to stress my opinion and also the IANA,
20 although I know it's not on the table today, should be
21 part of that discussion and part of that forum. Thank
22 you.

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1 MR. COHEN: Hi, sorry. My name is Nat Cohen.
2 I'm the president of a company called Telepathy, which is
3 here in Washington, D.C. And we own a domain, a generic
4 domain portfolio. So we are a registrant, we own lots of
5 generic domains, so we're in that -- the registrant
6 community.

7 We spent over a million dollars a year buying
8 generic domains and the generic domain -- the value of
9 generic domains, I would assume, is probably north of a
10 billion dollars, if you take into account the other ccTLDs
11 as well. When I say generic domains, I mean non-branded
12 domains like cats.com, dogs.com, chairs, flags.com. Also

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13 domains like red.com, blue.com, window.com.
14 Some of these domains and words are trademarked
15 by companies. They have trademark uses some of them. But
16 they also have non-trademark uses. And there is a --
17 there can be conflicts of interest on different
18 perspectives on how those names should be used or
19 allocated.

20 And those are -- that's one of the areas that
21 ICANN has a responsibility for. So even though the ICANN
22 -- or even though the Internet started off as a non-

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1 commercial, I guess, nuclear attack communication device
2 as we were talking about last night, it's now -- there's
3 now a lot of business interests that are involved in ICANN
4 and that ICANN oversees, and that are affected by ICANN
5 decisions.

6 The registrant community being the one -- one of
7 the ones most affected by ICANN decisions, because the
8 domains that we're acquiring are not -- we don't have
9 property right in them, I guess we have contract rights,
10 or that may be open to discussion.

11 And those rights can be changed by ICANN, the
12 UDRPs can take domains away from us through arbitration;
13 the fees be paid to renew those domains are set by ICANN.
14 So we are quite vulnerable or at the mercy of ICANN's
15 decisions in a lot of ways. The question, you know,
16 looking -- as we are talking about the future of ICANN and
17 looking at it as a private organization, thinking ahead a
18 few years, I mean, with the fear that I have and I think
19 others who do what I do have is that it don't -- that does
20 not turn into in the vivid phrase of the gentleman from
21 Nominet, like a malign oligarchy that there is -- I mean,
22 I'm heartened to hear lots of people from all sorts of

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1 perspectives talking about the issues of accountability,
2 legitimacy, transparency.

3 I don't envy ICANN's tasks. It is -- there
4 seems to be bit of a paradox at the heart of ICANN, which
5 is it's a private organization were a public mandate, yet
6 it doesn't have a public -- you know, the public does not
7 really have a role in choosing the ICANN members.

8 But the underlying question for all this is in
9 looking ahead to the future of ICANN, is it going to
10 require a fundamental change to the ICANN structure to
11 accomplish the objectives that this panel and a lot of
12 other panels have talked about, as far as meeting the
13 goals of accountability and transparency.

14 Because there is going to be lots of conflicts
15 of interest, you know, a lot of winners and losers, and
16 the legitimacy of those decisions that come out of ICANN
17 are going to depend on each side having a fair say in
18 that, and we have 8 out of 15 people who is a little bit
19 unclear where they're -- how they are being appointed, and
20 they are not really elected, making these decisions.

21 So I'll stop it there, and just ask about the
22 structure of ICANN and how it can -- in going forward in

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1 the future accomplish those goals given its current
2 structure.

3 MR. BOYLE: Well, where angels fear. I haven't
4 got an answer to this. This is why I suggested that this
5 is very significantly the role for ICANN to lead in the
6 next 18-month process of how properly to engage with the

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7 full community, how to ensure that that accountability is
8 put into place.

9 I think probably there are thousands, if not
10 millions of people out there in the community all ready to
11 draw up accountability structures for ICANN. It's
12 probably is -- it's probably got the consensus of one
13 person for most of these. I think the real challenge for
14 ICANN is to start sketching out that framework of
15 accountability, of making sure that it -- to steal
16 somebody else's catchphrase -- doesn't have evil.

17 That process has to be not only proposed, but
18 there is a consensus built up around that approach in such
19 a way that there is a good justification for that
20 framework. And obviously, that has to include some sort
21 of -- going back to other comments, some sort of fair and
22 just appeals process for when inevitably people are going

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1 to feel deeply aggrieved.

2 MS. BAKER: That's a good question, and a good
3 answer. We have five folks at the mic. So I'm going to
4 see if we can get through you all. We are going to run
5 over time, but we took a break, so hopefully you can stand
6 it. But let's try and keep the questions and -- as -- or
7 your comments as --

8 MR. BOYLE: Succinct.

9 MS. BAKER: -- succinct as possible, thanks.

10 MR. FILAGE: J. Scott, that's a word you would
11 use. Mike Filage (phonetic), speaking in an individual
12 capacity. I'd like to thank the NTIA for having the
13 opportunity to have this forum, and talk about some very
14 important issues. Just a couple of points and I will make
15 these short.

16 In -- when I read ICANN's original submission to
17 the NTIA, I began writing sort of a response trying to
18 come up with responses. When I got to 10, 12 pages, I
19 said, no one is going to read this. So this microscopic
20 approach to responding is not the good way. So I said,
21 "What's a more macro-level approach?"

22

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And the question that I have that I'd like the

1 panel to perhaps answer is if ICANN is truly an open,
2 transparent, bottom-up, consensus-driven organization,
3 isn't something as substantial as saying mission complete
4 in connection with the JPA something that it should have
5 consulted with the community, prior to the board adopting
6 and approving the submission?

7 So I think if ICANN would have done that, it
8 would have been able to work with the many panelists who
9 have said, ICANN is doing a good job, it's heading in the
10 right direction, but perhaps it could have refined, and if
11 you will, been in a better position than it is here today
12 with some of the panelists raising concerns.

13 The second point has to do with a challenge.
14 And this is a challenge, I think, that goes out to the
15 ICANN board. We already are talking about what the post-
16 JPA environment is going to be. And I think you have one
17 of two paths that you can follow.

18 Path one is one where ICANN staff, with its
19 consultants and its outside attorneys, come up with a
20 post-JPA vision, which is approved by the board and then
21 floated to the community. Or, if you will, option two is
22 the ICANN staff board can work with the community in

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1 drafting that policy.

2 And I think you -- this session is looking to
3 the future. I think we need to look to the past and sort
4 of what Stuart Lynn did, when he came up with the ICANN
5 evolution and reform. That was a very noisy, painful
6 process. But what happens is at the end of it there was
7 buy-in from all the people that participated.

8 So I think that really is a challenge of how we
9 go about creating that post-JPA environment. So again, I
10 would submit that option two is the better. And my third
11 final point is in how to get forward to getting to that
12 post-JPA environment. This is a challenge, I think, both
13 to the NTIA, or the U.S. Government, and ICANN.

14 Right now the U.S. Government in a post -- in a
15 post-JPA environment, there is going to have to be a legal
16 construct between ICANN and the USG, because the USG has a
17 couple of assets known as .us, which is a ccTLD, and it
18 also is the administrator or overseer for three gTLDs,
19 .mil, .gov, and .edu.

20 I think what would be very helpful for the
21 international community is to see the USG and ICANN come
22 up with a construct that works for both organizations.

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1 One in which ICANN's roles and responsibilities can be
2 acknowledge, while at the same time protecting the
3 sovereign interest, and if you will, concerns of the
4 United States Government.

5 And if in fact we can get to these agreements, I
6 think it will set a benchmark for some of the other
7 government that have not yet bought into the ICANN process
8 to come. So that's sort of a challenge to both ICANN and
9 the USG. Thank you.

10 MR. LODICO: Thank you, my name is Phil Lodico
11 and I'm with FairWinds Partners. And I'll keep this a
12 brief question. And I think that timing is bit of a
13 follow-up to your question in point. I think that when I
14 think about ICANN and the issues that Internet users face,
15 one of the structural concerns and issues facing the long-
16 term viability of ICANN, is this inherent structural bias
17 over voting rights.

18 My question is very basic. Does the panel and
19 you people believe that in ICANN's current structure, this
20 is you would be able to be addressed? Could -- can ICANN
21 address this inherent bias, which needs to be fixed in
22 order to move forward with policy development?

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1 MR. EVANS: I think the board needs to listen
2 carefully to the comments that were submitted, because I
3 think it's clearly been articulated what those problems
4 are, and what they need to do to try to resolve this
5 situation. They've had two rounds of comments, one was
6 when weighted voting went to win, and one is when the
7 reform process that we're currently in and has (inaudible)
8 come through.

9 And those concerns have been raised. So I
10 believe they've heard. The question is will they listen
11 and act, realizing private sector leadership means more
12 than, I think, it's being interpreted as today.

13 SPEAKER: Hi, two quick comments. I wanted to
14 respond to Steve's comments about independent review. It
15 is indeed an independent external body that conducts the
16 independent review. But in order to get to the
17 independent review, first you have to come up with the --

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18 you know, at minimum \$150,000 worth of arbitrator's fees.
19 It's not fees for your own lawyers, arbitrator's
20 fees. And in the end, the by -- what the panel produces
21 is a recommendation that goes back to the board. Now, I
22 will concede it would be silly for the board to ignore the

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1 recommendation of this panel, but it is a recommendation,
2 and there is lots of latitude.

3 And the second -- my second point is, goes to
4 Lynn's point about private sector leadership. The reason
5 I feel that accountability is so critical, is because with
6 a real accountable framework, ICANN has the mechanism to
7 start to -- was just the urge to be all things to all
8 governments.

9 It can say, here's our standard, here's what we
10 have to do, sorry. It does empower private sector
11 leadership.

12 MR. DI GANGI: Hi. My name is Claudio Di Gangi,
13 I'm with the International Trademark Association. I'm a
14 government relations manager there. I wanted to thank
15 NTIA and ICANN for this forum today. INTA is world's
16 largest non-profit organizations in the world that is
17 dedicated solely to the promotion and protection of
18 trademarks.

19 We represent over 5,000 trademark owners
20 globally. We have members in over 190 countries. We have
21 an international board of directors. Our international
22 members are crucial in our policy development process. So

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1 I just wanted to mention that in the hopes that NTIA will
2 take the international nature of our organization into
3 account when it considers our comments, I just wanted to
4 briefly just mention two points that were in our comments
5 that we recently submitted.

6 The first is that many of our members are
7 concerned with the proposed GNSO restructuring, and how
8 this restructuring will happen without effectively
9 diluting the voice of intellectual property owners.

10 The second the point is that there is no formal
11 process within ICANN for taking public comments into
12 account, and that was really the question I wanted to post
13 to the panelists is to get their opinion on that
14 specifically in regards to not actually having a formal
15 process for taking the comments into account.

16 MS. BAKER: I think maybe we should like have
17 that discussion. We can talk about that after this
18 session. The panelists will be here, and we can discuss
19 that afterwards. I think maybe like we move and you'll be
20 our final comment, and we can hear from Paul, and I'll
21 wrap up really quickly, I promise.

22 MR. MARTIN: Hello, my name is Chris Martin, and

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1 I represent the United States Council for International
2 Business, and I thought that we've heard a lot of comments
3 from a number of different interests and people here
4 today. And it might just be helpful to suggest that there
5 is broad agreement in some ways on ways to move forward
6 now to a -- this vision and long-term, a long-term model
7 for ICANN into the future.

8 The U.S. Council that I represent has member
9 across a number of different business interest, these
10 registrars, registries, trademark owners, as well as the
11 general business community. Now although our membership

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12 does not support conclusion of the JPA now, we do support
13 the launching of these discussions between NTIA, ICANN and
14 the Internet community on how to facilitate a sound and
15 stable transition to a fully independent private sector-
16 led ICANN.

17 Now, the things that most of these -- that we've
18 all agreed on -- at least our membership -- that need to
19 work on are increased accountability, increased contract
20 compliance, the sound and stable implementation of IDNs
21 and new TLDs, new gTLDs, as well as the importance of
22 general business community involvement in the multi-

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1 stakeholder process.

2 And so I think it's important to understand is
3 there is agreement across a number of different interests
4 on the things that need to happen, so that this transition
5 can ensure that ICANN has the requisite structures and
6 procedures in place to meet the challenges of today as
7 well as those of tomorrow in fulfilling its mandate as the
8 manager of the DNS. Thank you.

9 MS. BAKER: Okay. I want to thank everyone for
10 your helpful comments, very insightful, and I thank our
11 panelists. And why don't we make a quick switch to Paul?
12 You can have the microphone over here and we'll keep
13 moving.

14 MR. TWOMEY: Thank you. Thank you, Meredith.
15 And perhaps I'll just start off, I'm going to first to
16 congratulate -- I'm going to talk just for a minute as the
17 president and CEO, and then I have to change
18 personalities, which I'll explain in a second.

19 I think as president and CEO, I would like to
20 thank NTIA for holding this session, it's been very, I
21 think, very valuable. I do think we've seen one of the
22 challenges of the discussion, I think maybe every issue

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1 that was raised, we could have had people on either side
2 of each argument putting the arguments backwards and
3 forwards, so I think we could have had several days of
4 discussions on some of those topics.

5 And you would have found voices that would have
6 been counter to other voices throughout all of this, that
7 is the nature of the ICANN bottom-up process. I also
8 think, you know, it's difficult to look at some of these
9 things. I think we also suffer frankly from a problem
10 with a noun, which is ICANN.

11 I think even this morning, I've heard ICANN used
12 in multiple ways, is it the whole group, is it the group I
13 interact with, is it the GNSO, or is it the GNSO Council,
14 this is the -- the Internet Republic Constituency
15 (phonetic), is ICANN the staff, is it the board, is it the
16 -- you know, so this whole issue of what is ICANN in the
17 discussions, I think, tends to get blurred and it's
18 distinct.

19 But I would like to make just a couple of --
20 just very simple factual statements just to deal with some
21 things that they've addressed this morning. I think since
22 I have been president, ICANN has de-credited registrars

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1 every year through its compliance program. So comments
2 about there is no compliance program are frankly false.

3 The issues of how that is implemented and its
4 publicity, but I would like to put it on the -- on the
5 ground that there has been -- put on the record that there

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6 have been registrars de-credited every year that I've been
7 the president.

8 There also have been some comments made about
9 the finances. I think you'll find very clearly in the
10 statement accountability -- accountability and
11 transparency frameworks that the board leadership
12 obligations had to take in the interests of the users of
13 the DNS and of the security and stability the DNS and the
14 Internet as a whole.

15 When it comes to finances, it is the view of the
16 board and the executive that it is the registrants who
17 pay. They do -- do so through a mechanism of the
18 registrars and the registries but it is far from any sense
19 that there would be a consideration that -- from that
20 group, that any payment mechanism therefore brings any
21 sort of rights or obligations or special interest in terms
22 of decision-making.

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1 Indeed, I think in the last 4 or 5 years we have
2 spent tens of millions of dollars of the money fighting
3 the very bodies that's supposed to collect that
4 information, collect that revenue. So I just think it's
5 worth putting on the table. And the final point I'd make
6 about public comments.

7 It is bylaw-obligated that we have to collect
8 public comments on things, there is policy about
9 collection of public comments. There is a one click-
10 through element on the ICANN's site where public comments
11 for board consideration, are both collected, they are all
12 summarized, and their summaries are all delivered to the
13 board for its consideration.

14 So I thought I'd just make that clear as well.

15 So now let me change personalities. And this is
16 a difficult thing. Lynn said about my role -- experiences
17 of having to be occasionally -- well, maybe a Canadian,
18 can be -- channel in American, because I have to now
19 channel in a New Zealander, and a few of you would realize
20 just how difficult a task that would be for an Australian.

21 But I've -- Peter Dengate, the chairman of ICANN
22 is not here. But he has actually done a lot of work in

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1 consideration of all the submissions we've received and
2 has asked me to read to you and address specifically
3 dedicated to looking at those of reviews and responses.

4 So if I may start. "I am very pleased to
5 contribute to this public meeting to discuss the mid-term
6 review of the Joint Project Agreement between the
7 Department and the Internet Corporation for Assigned Names
8 and Numbers. I am sorry I cannot be there in person, but
9 work commitments in the court have detained me in New
10 Zealand.

11 "I want to thank the NTIA for the work that has
12 gone into organizing this review and for their cooperation
13 in the work done to date. I look forward to working
14 closely and cooperatively with Meredith Attwell Baker and
15 Suzanne Sene in reviewing the results of this exercise and
16 forming some joint conclusions. I want to say thank you
17 also for the opportunity to speak this afternoon.

18 "In October 2007 at our Los Angeles meeting,
19 John Kneuer, the then assistant secretary said that it was
20 the board that would determine whether ICANN was meeting
21 its responsibilities under the JPA. After all it was the
22 board who developed them. The Notice of Inquiry for the

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1 comment period focused on those 10 responsibilities
2 developed by the ICANN Board and incorporated as an
3 appendix to the JPA, and asked commentators to rate
4 ICANN's performance and suggest if ICANN could do more.

5 "The board believes that ICANN is meeting its
6 responsibilities under the agreement. More could and
7 should always be done but the responsibility is being met.
8 We think that the conditions have now been sufficiently
9 met that the JPA can conclude during the months up to
10 September 2009. The vast majority of the community
11 responses support this conclusion.

12 "Most commentators have focused on the bigger
13 picture as well. We think that this is appropriate.
14 Today I want to provide a perspective on what we are
15 hearing from contributors to this review process, and to
16 outline a way ahead. As an active partner in this process
17 of review we have carefully read all of the submissions
18 made.

19 "The process of public input and review followed
20 by policy development in public is of course one which you
21 are very familiar with. It's embedded in the ICANN
22 bottom-up process.

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1 "Overall, the comments have focused less on
2 giving ICANN a rating, but rather expressed the view that
3 now is the time to have a debate about how to move to
4 final transition to an Internet naming and addressing
5 system coordinated by a private-sector-led multi-
6 stakeholder model of participation.

7 "I think that after almost 10 years of
8 experience of this model the question before us is very
9 stark. 'Are we going to complete the White Paper's vision
10 of private sector management of the Internet's system of
11 unique identifiers?'

12 "I believe the overwhelming view from virtually
13 all participants is that the transition is the goal, and
14 the interest in is settling how we get there. If that's
15 the case, then we need now to put in place a process to
16 identify the necessary elements the stakeholders want to
17 see to make this final step. I wanted to put our analysis
18 of the comments received in terms of what is being said in
19 broad terms, and then look more close to some specifics.

20 "I think the broad themes are, first and
21 encouragingly, there seems to be agreement that ICANN has
22 improved markedly in areas to do with transparency and

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1 some major elements of accountability. The submissions
2 also seem to comment favorably on improved operational
3 efficiency and the better resourcing of compliance. There
4 is recognition of major improvements in the IANA function.

5 "Furthermore, commentators seem to appreciate
6 the attempts at reforming the Registrar Accreditation
7 Agreement. Recognition for this and other achievements is
8 very promising.

9 "Another major theme is that most of the
10 submissions want to see the process of transition proceed.
11 Within that there is a group that is interested in
12 concluding the JPA after a debate has taken place.

13 "Even amongst those who don't want the JPA
14 concluded now, most want to see a public debate about how
15 the transition might happen. Their concerns relate to
16 issues of national security and risk of capture by

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17 international governments.

18 "Finally there is also an expressed interest in
19 the need to include the consideration of the IANA function
20 in any discussion. There is a group of respondents who
21 believe that any forward-looking discussion needs to
22 address the IANA contract. That is, the role of the USG

0137

1 in operational matters to do with root zone management
2 needs to be examined as to whether it should continue as
3 it presently stands.

4 "What this broad analysis tells me is the
5 majority of people are still seeking the transition
6 proposed in the White Paper and looking for a debate on
7 how to get there."

8 Just turning to the comments in more detail,
9 "There are 169 responses posted on the NTIA site." At
10 least the last time Peter looked; I think there is now
11 171. "Many of those responses are from the members of the
12 international Internet community who interact regularly
13 with ICANN."

14 Let me break this down this group of -- I'm
15 actually trying to shorten this, so -- we will be
16 presenting this paper fully to NTIA for posting. But let
17 me just move through somewhat quickly if I can. "Over 100
18 separate submissions clearly request the conclusion of the
19 JPA, or assume its conclusion within its term in September
20 2009."

21 Let me break down this overall 169 number
22 groupings of interested stakeholders. "The technical

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1 community has strongly endorsed the need to conclude the
2 JPA, and move to completing the transition, including
3 finalizing the IANA arrangements.

4 "The Number Resource Organization, representing
5 the five Regional Internet Registries, states the JPA
6 should be concluded and the DOC and ICANN should work
7 together to complete the transition to private sector
8 coordination. It calls for ICANN to fully consult with
9 its community in planning this transition.

10 "The Internet Architecture Board focuses on the
11 maintenance of the technical parameter registry, and on
12 previous communications with the Department of Commerce on
13 the role of the relationship of the Internet Engineering
14 Task Force with ICANN's IANA function. The chair of the
15 IAB notes that the IANA function is meeting service-level
16 agreements under a separate IETF/ICANN agreement. And
17 that separate agreement is working satisfactorily, and
18 does not need to change.

19 "Now, the main thrust of the IAB submission
20 focuses, however, on what it considers an important
21 condition to be incorporated in the final transition
22 arrangements for the IANA function -- a clarification of

0139

1 the boundaries of the IANA registry function and the
2 recognition of the IETF as being the source of authority
3 on technical parameter registry functions, not the
4 Department of Commerce.

5 "The Internet society has also reinforced this
6 point." We've heard from Lynn this morning, and I won't
7 talk to the ISOC's position, because Lynn did that this
8 morning, I think, here.

9 "A wide range of country code top-level domain
10 representatives have responded, including the regional

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11 organizations, Latin American and Caribbean, ccTLD, the
12 Council of European National Top Level Domain Registries,
13 and the Asia-Pacific Top Level Domain Association, as well
14 as ccTLD operators from Africa, Europe, Middle East, the
15 Americas and Asia Pacific." I recognize Roelof as one of
16 those in the room.

17 "They also call for a multi-stakeholder dialogue
18 within the ICANN process to arrive at a shared vision of
19 what a post-JPA ICANN should or would entail, as well as
20 how or when transition should or would be triggered.

21 "Country-code representatives also consider,
22 like the technical community, that the evolution of the

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1 IANA function is to be a key part of the transition
2 planning." Many people made that comment, but I'd just
3 like to read this quote from InternetNZ, "Allowing the
4 expiry and non-replacement of the JPA is not the only step
5 required in achieving the privatization of the DNS. Also
6 required is consideration of what should occur with the
7 IANA-DOC relationship and the relationship between ICANN -
8 - ICANN/IANA and the DOC and Verisign in dealing with the
9 root servers. The .au, .uk, .nl, .jp and others make
10 similar points."

11 There is a point also there from Nominet. "A
12 number of governments make public responses to the notice
13 of inquiry including the governments of Sweden, Japan,
14 Latvia, Egypt, Canada, Singapore, the European Union,
15 Bulgaria, and Tunisia. Further, during ICANN's own
16 consultations during the New Delhi meeting,
17 representatives of the governments of Italy indicated they
18 supported the position of ISOC Italy. The representatives
19 of France, Latvia, Finland, and Brazil also made comments.

20 "All these responses are generally supportive of
21 the ICANN model. They also recognize the importance of
22 government involvement on the issues relating to public

0141

1 policy from the ICANN context. Several governments note
2 the need for continued evolution of the ICANN model. The
3 Italian government representative in particular noted the
4 ISOC IT submission that some minor adjustment of the
5 Governmental Advisory Committee's role may be necessary as
6 part of a transition model.

7 "But interestingly all these governments' inputs
8 reinforce the message of the private sector and technical
9 communities that no one stakeholder should be allowed to
10 gain dominance in the ICANN environment.

11 "They also recognized that ICANN continued to
12 improve, but as the Egyptian government states 'as much as
13 we believe that progress has been achieved in those areas
14 as well as many others, we envisage that the Internet
15 community would always expect more from ICANN. That is
16 due to the uniqueness of ICANN's function and dynamism and
17 never-ending development and innovations in the field of
18 Internet domains and numbers. Nevertheless, it is
19 important to stress the fact that the "need for more"
20 should not be a motive for further extensions of the JPA,
21 nor for the initiation of another similar agreement. We
22 are concerned that decisions that go in such directions

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1 would be interpreted as an intention not to complete the
2 transition for the domain name system from the U.S.
3 Government to the international Internet community.'

4 "There was a wide range of responses from

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5 business and business associations," and we've heard much
6 of that today. "Those responses tended to form the two
7 broad subsets -- the first were broadly-based
8 international business groupings such as the ICC, the U.S.
9 Council of National Business, ETNO, ITAA, WITSA, and
10 others. While presenting a range of very useful
11 suggestions for continued improvement by ICANN, this group
12 is broadly supportive of ICANN's progress and called, like
13 other groups, for transition to private sector management
14 of the DNS and proposed items for such a model.

15 A second, subset that are mostly U.S.-based and
16 reflect intellectual property interests, focused on their
17 concern about the voice of business in the Generic Names
18 Supporting Organization in the context of its proposed
19 form and specific concerns about ICANN increasing and
20 deepening its compliance work especially as it relates to
21 Whois compliance for registrars and their resellers," and
22 we've heard many of those voices today.

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1 "This group focused on specific operational
2 goals, which I welcome, because as the Board of ICANN
3 stated in its mission, ICANN can always improve. I will
4 ensure that their suggestions are fed into the operational
5 plan for this coming financial year. As some of them are
6 concerned about perceived concentration of ICANN's
7 funding, I will also be interested in hearing from them
8 ideas about diversifying ICANN's sources of revenue, even
9 specific funding for boosting compliance work.

10 Many of this subset expressed concerns about the
11 completion of the JPA in terms of not yet having a plan of
12 what would come next, and in particular a plan which
13 ensured that ICANN's leadership would not be challenged by
14 governments nor controlled by parties under contract with
15 ICANN.

16 "In many ways I hear the latter concerns of this
17 group as being similar to other members of the community
18 who are calling for a detailed plan as to how a transition
19 would work.

20 "Representatives of the Registry and Registrar
21 Constituency have also made submissions. GoDaddy, Network
22 Solutions, and PIR recognize the progress ICANN has made,

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1 while believing more needs to be done. GoDaddy is
2 critical of several operational aspects and supports the
3 renewal of the JPA upon its expiry. However, Network
4 Solutions looks forward to working with ICANN and NTIA to
5 develop the JPA transition plan. VeriSign expresses
6 confidence the USG will act in interest of resiliency and
7 reliability of the DNS. NeuStar supports transition so
8 long as the goals of the MOU and JPA are not undermined,"
9 and Keith Drazek has read out that position this morning.

10 "There are close to 70 submissions from civil
11 society and Internet user voices. Overwhelmingly these
12 submissions supported the conclusion of the JPA. Some
13 submissions also focused on improving the voices of civil
14 society and at-large users in ICANN's decision-making,
15 particularly at the board level. I welcome submissions
16 from people such as Jacqueline Morris, the ALAC, and
17 WebWatch, because they point out the user community
18 representation issues that I will convey to the ALAC
19 review and board review being undertaken this year.

20 "Among -- another 64 people took up the tool
21 many of them had asked for to convey simply and in

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22 English, often not their native tongue, letters supporting
0145

1 ICANN's submission. Most are serious players in the
2 Internet and ICANN world, including, Nii Quaynor, Oscar
3 Robles Garay, Professor Ming-Cheng Liang, Sulaiman
4 Alansary, Wolfgang Kleinwachter and Hartmut Glasser.
5 "Another civil society voice, the Center for
6 Democracy and Technology, whilst arguing the JPA should
7 not be concluded yet, also states like other respondents
8 that the midterm review would be used to jumpstart an
9 international dialogue on ICANN's long-term independence
10 from government interference. The CDT requests ICANN and
11 DOC to address this issue with urgency and to consult the
12 Internet community to develop mechanisms that will ensure
13 accountability and representativeness and protection of
14 the DNS.

15 "Further, the CDT urges the U.S. Government to
16 reaffirm that it will end its contractual arrangement with
17 ICANN and to work for mechanisms 'that will ensure ICANN's
18 independence.'"

19 So Peter has asked then, "What needs to be
20 improved, what are we doing about it and what has ICANN
21 learnt from this process?" Obviously he was not reporting
22 here on every detail of this process, and he says, "If we

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1 are to progress the debate about transitioning then ICANN
2 needs to identify the areas of change we require, listen
3 to the community on the things we are doing right and
4 where the organization and the model, can improve. We
5 need to test our hearing and then we need to act on what
6 we hear.

7 "Today I am starting that process. In doing so
8 it is important to build on the processes already put in
9 place by the ICANN community to ensure that the concerns
10 raised are addressed efficiently and effectively.

11 "Firstly, the ICANN community has developed a
12 very open and bottom-up process for strategic,
13 operational, and budget planning. I hear the inputs that
14 are focused on topics such as compliance, Whois and Whois
15 accuracy, and better engagement with stakeholders. I want
16 to ensure that they are addressed now, in this year's
17 operational planning process. For those people who say
18 there is still work to be done here is how that work will
19 be done.

20 "Further, I exhort the voices that made these
21 points to participate in this open planning process to
22 ensure that their concerns are part of the mix of

0147
1 community issues to which resources are dedicated. That
2 is the place to raise these issues. Participation in the
3 crafting of the strategic and operational plan is crucial.

4 "Secondly, ensuring effective voices of
5 business, consumer, and at-large has always been part of
6 the ICANN multi-stakeholder approach. So has board
7 accountability, which is reflected in the publication of
8 the compilation, frameworks, and principles for ICANN's
9 transparency and accountability.

10 "I will monitor closely this year's bylaw-
11 required reviews of the GNSO, the At-Large Advisory
12 Committee, the Nominating committee, and the board itself
13 to ensure that the further concerns raised in the
14 submissions about these issues are fully considered. As
15 chair I will ensure that the consideration and outcomes of

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16 these reviews is integrated in such a way to address the
17 concerns raised by some of the respondents to the NOI.
18 "Further, I've made it a personal goal in the
19 coming financial year to augment ICANN's meeting processes
20 to ensure dedicated workshop interaction with business. I
21 also expect to propose GNSO reforms to make it easier for
22 business to participate in working groups of interest

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1 along the lines of standards organizations. As chair I'll
2 be personally monitoring this.

3 "I also want to address a more general point.
4 Some respondents expressed frustration that they found it
5 hard for their constituency to express their voice in
6 various debates. If that is a belief then ICANN needs to
7 address it. But I don't want anyone to misunderstand the
8 nature of this model. One of the features of the multi-
9 stakeholder model is that you often get conflicting
10 positions that take time to work through. I think we see
11 this in the GNSO improvement debate and we saw it in the
12 so-called OPOC proposal and the Whois discussion. Often
13 an enormous amount of energy, time, and resources is
14 involved in arguing your position; those cases are no
15 exception.

16 "This is coordination of the public resource by
17 all stakeholders, often with divergent interests. It is a
18 unique model of governance and will always take effort to
19 make it work.

20 "While these avenues for response are already
21 available to us, we do need to consider how to address the
22 widespread call for a roadmap for transition to full

0149
1 private-sector management of the Internet system of unique
2 identifiers. In this call, many respondents have raised
3 key framework questions to be addressed.

4 "They include, inter alia, how to ensure -- 1)
5 freedom from capture or dominance of ICANN by governments,
6 intergovernmental organizations, or any other group of
7 stakeholders, including private or corporate interests,
8 including those with whom ICANN has contracts; 2)
9 effective and efficient operation of the IANA function by
10 ICANN; 3) accountability of the ICANN model as a whole to
11 its community, including affected parties; 4) continued
12 security and stability of the Internet's unique
13 identifiers.

14 "So what is the process to have the debate about
15 these issues?

16 "The submission from the government of Canada
17 is, I believe, informative when it says, 'While Canada is
18 not in a position to declare that the JPA should be the
19 final formal tie between the NTIA and ICANN, the progress
20 made towards increased accountability and transparency
21 within ICANN suggests that there is value in beginning
22 multi-stakeholder discussions on what ICANN could or

0150
1 should transition to. With this in mind the NTIA should
2 initiate discussions with ICANN in the context of the
3 current JPA on issues associated with the next steps in
4 ICANN's transition to privatization. The ICANN's
5 President's Strategy Committee could be identified to help
6 facilitate such discussions and provide support, although
7 a broader outreach and more open processes would be
8 helpful.'

9 "I think this is a useful suggestion on the way

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10 forward. ICANN's President's Strategy Committee has been
11 discussing improvements to the ICANN model, the JPA
12 review, and especially on accountability issues, and so
13 the logic of engaging this group is compelling.

14 "As one of its co-chairs I'm asking the
15 President's Strategy Committee to outline a plan for
16 developing this transition framework. They will meet in
17 April and make a first presentation involving the
18 community, starting a process for further engagement with
19 the community at the ICANN meeting in Paris in June.

20 "This process will be guided by the input ICANN
21 has received so far from its own consultations and the
22 analysis of the comments surveyed in this review.

0151

1 It will be a consultative process; ICANN needs
2 to move forward secure in the support of the entire
3 community to which it is accountable. The concerns of
4 that community that we have heard expressed need to be
5 addressed in planning our future. The community wants an
6 ICANN that is protected against capture, that functions
7 well as a multi-stakeholder coordinator of the Internet
8 resources, and which manages the IANA function well.

9 "I shall be reviewing with the CEO the resources
10 ICANN needs to invest in this project.

11 "Let me make one point of clarification. Among
12 the respondents there were a few concerns expressed that
13 ICANN will leave the U.S. and seek broad immunities from
14 legal process by third parties or contracting parties.
15 Let me be loud and clear on this -- that will not happen.
16 The U.S. for historic and practical reasons will remain
17 ICANN's headquarters. Consistent with the continuing
18 stability and security of the RootZone operations we're
19 dedicated to be a non-profit organization operation
20 operating under law."

21 So concluding, Peter says, "I characterized the
22 question before us at the outset of the statement is, are

0152

1 we going to complete the White Paper's vision of private-
2 sector management of Internet system of unique
3 identifiers? I believe that the community is clearly
4 indicating that it wants to proceed and complete that
5 vision. The ICANN Board and all those who have invested
6 time and energy in the usual promise made in '98 want to
7 see not just the JPA concluded but also the entire
8 transition discussed and implemented.

9 Almost 10 years ago the United States Government
10 recognized the power of the Internet to promote
11 enterprise, to promote human interaction, and information
12 exchange. That power comes largely from the Internet's
13 naming and addressing system. The fact that individuals
14 can reach each other uniquely means that there are
15 potentially as many forms of innovation and expression as
16 there are people on the planet."

17 I will skip through some of the stuff. He just
18 finishes by saying, "We all need now to work together over
19 the 18 months remaining in the JPA to finalize the model
20 for the long term ahead. I look forward to this
21 challenge. I look forward to working with all of you to
22 make it a reality.

0153

1 "Thank you."
2 (Applause)
3 MS. BAKER: All right. I know everybody is

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4 tired and hungry. This has been webcast and it will be
5 transcribed and will be on -- it will be on our website,
6 and Paul, we can put the full letter in the record, so
7 that will be there. Thank you, Peter and Paul. Peter-
8 Paul, no Mary; just Peter and Paul, for your perspective
9 and thoughts.

10 I had thought that this morning's discussions
11 had just really been thoughtful and I am so grateful to
12 you all for taking the JPA midterm review seriously as we
13 have.

14 We have heard recurring themes and I think the
15 bottom line and the central theme is that ICANN as an
16 organization is maturing. I think we've heard four --
17 well, we've heard more than four, but I'm going to focus
18 on four real quickly.

19 You've stated that ICANN has made progress
20 towards the goal of private-sector leadership but you've
21 emphasized that this goal also will remain in the
22 forefront. You've stated that ICANN has made progress

0154

1 towards transparency and accountability mechanisms; you
2 emphasized that more needs to be done to test and evaluate
3 these mechanisms to ensure their effectiveness.

4 You've stated that ICANN has made progress
5 towards gaining the confidence of the community; yet, many
6 of you have noted that there are many voices not yet heard
7 nor heeded at ICANN.

8 And lastly, you've stated that ICANN has made
9 progress towards meeting the community's agreed-upon
10 goals; yet, you note that activity does not equal
11 achievement.

12 Let me say that it has been just extremely
13 helpful to have you here and had -- to have these
14 discussions to gain a clear understanding from your
15 perspective on ICANN's maturation process. We will take
16 your advice and your concerns and your thoughts and we'll
17 digest them.

18 And I just want to extend again my sincere
19 thanks to all of the speakers and all of you who came from
20 far away.

21 And I would like to note, one member of the
22 audience who has had an incredible attention span here, he

0155

1 has been better behaved than any of you all. Paul Levins
2 and your son, thank you so much for bringing the next
3 generation of the Internet users here to the meeting.

4 Thank you.

5 (Applause)

6 (Whereupon, the PROCEEDINGS were adjourned.)

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