
SINGAPORE - Joint Meeting of the ICANN Board and the Non-Commercial Stakeholders
Tuesday, February 10, 2015 – 16:45 to 17:45
ICANN – Singapore, Singapore

STEVE CROCKER: All right. Let's get started, folks. Thank you.

Rafik, get us going here.

RAFIK DAMMAK: Okay. Thanks, Steve. Thanks for this opportunity again to talk with the board. I mean, between the noncommercial stakeholder group and board members, we always welcome this. We try to work hard to find what kind of topic we want to share with you, to listen to you and share our thoughts.

So we hope that we can have an interesting and fruitful dialogue today about the -- it's mostly two topics that we will go through.

We have some lead discussants just that will give a brief, but everybody is welcome to participate.

So for today, we thought that we might discuss about public interest, content policy or content control, and then an update on privacy.

We can change the order. That is no problem, I mean.

But if you want, we can start with content policy. We will try to -- I mean, maybe 25 minutes, or 20 minutes, to be balanced here. And we will start with Ed, please.

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ED MORRIS:

Okay. We got that?

Hi. Ed Morris. We have a concern. ICANN traditionally has said "Hands off. We're not into content. We just do names and numbers." Yet we're hearing things. Specifically from Fadi. In Bali, Fadi told us the story of how ICANN, quote, in the public interest used its resources to help law enforcement track down a pornographer. Included among the resources used was an ICANN staff member who spoke Spanish and was assigned to go through Panamanian company records to try to track the malfeator down. So that's pornography. ICANN is getting involved in stopping porn on the Web.

At the NCPH meeting in -- recently in Washington, Fadi told us about this evil Bulgarian who had put a bunch of alleged IP content on line. He's running a service out of Costa Rica and ICANN was trying to figure out what to do about him.

So we've gone from pornography to IP, assisting law enforcement to trying to figure out what to do in the so-called public interest.

So the -- and we understand the board's under a lot of pressure from governments, from corporations, from IP holders, to try to regulate some of this stuff, despite the fact that we're just supposed to be doing names and numbers.

So the question to the board is: First of all, are you aware that the staff is being used in this way? Two -- and do you support that use?



Two, do you intend to come to the community at some point to see if there's community support for ICANN operating in this way?

And number three, it's a little -- part of our concern is how this is being done on an ad hoc basis.

We represent the individual user, noncommercial interests. We don't have the connections or perhaps the power plugs to play with you guys to get you to act on the content we don't like, and we'd prefer to have ICANN out of content altogether, but if you're going to be in content, there should be some guidelines and rules that we all understand. Sir?

RAFIK DAMMAK:

Thanks, Ed, and we'll see if there is a queue here.

Anybody want to comment?

George, maybe.

GEORGE SADOWSKY:

Thank you. I'd be curious in your position, is there ever -- in your view, is there ever any -- any time when ICANN should cooperate with law enforcement?

To what extent do you think there should be limits on such activities?

ED MORRIS:

Cooperation with law enforcement through the issue- -- cooperation through the issuance of subpoenas is one thing. Assigning your staff



member to go through corporate records in Panama is something entirely different.

No. Personally, and I believe it's the view of the majority of our stakeholder group, ICANN should not be involved in content regulation, period. David?

DAVID CAKE:

I think a mere sort of -- a counterquestion might be not so much when do we -- how much -- how much transparency do we feel there should be in cooperation with law enforcement?

And the answer from us will be: A lot.

And then we will be able to give you a much better question about -- much better answer about whether or not we feel it's appropriate.

Certainly I think there are times when ICANN should be cooperating with law enforcement when it's -- you know, for example, when there's a situation that clearly involves a large number of registries and is, you know -- but that may not be -- we want a lot of transparency about that and a clear limit on when it's necessary.

RAFIK DAMMAK:

Thanks, David. I think Steve wanted to comment here.

STEVE CROCKER:

Actually, with the arrival of Fadi, I think it will be very helpful, and I beg your indulgence to do a super quick recap -- you know, a hundred words



-- just to bring Fadi up to speed, and then we can proceed from there. I think it will be helpful.

FADI CHEHADE: Sure. Sorry about that.

ED MORRIS: Sure. Welcome Fadi.

We were speaking about the comments you made in Bali about ICANN's involvement with busting up the child porn ring, and then in the NCPH meeting you talked about a Bulgarian IP interest, what you're going to do about that with the service out of Costa Rica.

So our concern is ICANN is starting to get involved in content a little bit too much, and that's really not part of our mission. We'd like to see what you say about that.

FADI CHEHADE: Yeah. So on the Bulgarian thing, this was just an example that came to me from my staff, in fact, to tell those coming at me that we shouldn't be involved.

So they basically came to me because I knew that that particular -- it's the CEO of a very large content company -- was coming at me saying, "ICANN should be basically looking, you know, at these content issues."

So my staff simply told me, "Look, just so you understand, he's very mad at this site, and this site is registered to this person who is from somewhere but living in Bulgaria with a registrar who's in the U.S."



And then they showed me the whole model to explain to him that this is -- you know, first of all, it's not my business because this is very complicated, and that I'm not going to tell this registrar what to do because I don't have (a) the authority and I don't want to get into that.

Of course the content CEO wasn't happy, but, you know, we -- so we're - - we're aware that a lot of people are coming at ICANN saying, "You're giving up -- you're giving these license plates to these people. You need to be responsible for that."

You all know what happened with us with the whole Wall Street Journal article. This was very complicated, right?

I mean, do we -- are we responsible when somebody does something with -- with a Web site like a pharmacy site? Is this our responsibility?

Well, the Wall Street Journal basically was saying, "It is. It is your responsibility," right?

And we're saying, "Well, this is far more complicated than you think."

My staff showed me, for example, in preparing for that meeting, a site in Holland that is run by a feminist group to provide abortion drugs to women in countries who can't get them, you know. So who am I to decide if this is a bad site or a good site? It's complicated.

STEVE CROCKER: So --

FADI CHEHADE: So we shouldn't be in that business.



STEVE CROCKER: Yeah. So --

FADI CHEHADE: That's the bottom line, and that's our position.

STEVE CROCKER: But the claim is being made that in some instances we have facilitated law enforcement. We've been on the other side of that.

FADI CHEHADE: Yeah. So if this is -- if there's a clear bright line of legal issues, for example -- and frankly, only in porn -- child porn, because that is probably the only area where there is clear international, let's say, agreement that child porn is bad. So when there are clear bright lines like that and we receive either subpoenas or direct notices that we should cooperate, we first explain that it is not our job, and if we are asked to cooperate in a legal framework, we do, and that's standard, right?

But outside of, frankly, child pornography, we're not finding anyplace where it is a clear bright line.

ED MORRIS: So you would not cooperate, in the absence of a subpoena or other legal directive?

FADI CHEHADE: Yeah. Yeah.

ED MORRIS: Okay. That's great to know.

FADI CHEHADE: We shouldn't. And if we do and if staff does, you know, usually there is some clarity to me or someone about that.

But frankly, in general, we have to respond within a legal framework. We have contracts with the registrars. We have contracts with the registries. That's what binds us.

Getting into the content space is going to be very dangerous for ICANN and it's not an area we should take lightly, and I think many people almost would like us to fall into that, and so we have to be very careful and very thoughtful and talk to you and talk to the community to make sure, as these things come up to us, we get your help.

Is that helpful?

ED MORRIS: Very much. Thank you.

RAFIK DAMMAK: Thanks. Looks -- everything looks positive here but if there's no further comment, maybe we can move to the next item.

Avri, you want to add something?

AVRI DORIA: Thanks. Avri speaking. Avri Doria speaking.

I wanted to ask -- and I think it's -- it's -- it's --

UNKNOWN SPEAKER: (Off microphone.)

AVRI DORIA: Oh, I'm talking. Okay. I'll talk closer.

I'm wondering whether you need any help from the community in terms of standing up to the requests that aren't on the -- the rare cases that might be with a subpoena and on the bright side.

And even when there are cases that -- that there is a subpoena, that doesn't always mean that there isn't a legal recourse because many countries could give you a subpoena that -- that was, in itself, spurious.

So I'm wondering whether there's anything the community can do to actually help be a bulwark -- be, you know, bulwarked or help build a preventive set of measures to help staff, so it isn't staff alone saying, "No, we don't want to do it," but somehow enforce -- help it.

FADI CHEHADE: Thank you, Avri. Certainly. And I'll take up your offer to do that.

I mean, so far it's been pretty black and white for us. I mean, it's no. It's just not our business. We don't -- it's not in our remit and --



UNKNOWN SPEAKER: (Off microphone.)

FADI CHEHADE: Please.

BRUCE TONKIN: Just to put context, what content would you have? You don't actually hold the registration data, nor do you control any of the systems that host the content that people would be complaining about.

So it seems rather odd in most cases that ICANN could even respond to a subpoena. Where are you getting the data from?

FADI CHEHADE: No. It's not that kind of data, Bruce.

BRUCE TONKIN: Yeah.

FADI CHEHADE: I think where we were -- there are people asking us to get involved in takedowns, or at least in figuring out that a site is engaged in activities that are illegal.

I mean, of course we discussed at length the whole pharmacy thing, right?



What is ICANN's or the registrar's or the registry's role in shutting down or participating, even, in any activity to shut down pharmacies on line, right?

And so the new role --

Is Allen Grogan in the room? You know Allen Grogan, of course, was appointed as head of compliance, and he added a new layer to his compliance role that you see in his title called consumer advocacy. And his job is to go into these kind of areas where the contract is not superbly clear and address these. So he's been very good at, frankly, making the arguments.

If you recall in London or in L.A., we had a gentleman stand up with 20,000-plus signatures telling us, you know, "Senior citizens in America are begging you not to close Canadian pharmacies because" --

So Allen engaged with him, engaged with the other side, and has been just at least having a dialogue that is largely to explain that it is not our work. That's all it is.

So before, they used to be frustrated and start then calling Congress and calling different people in the U.S. At least now we have Allen Grogan engaging with these interests, explaining what our role is, and hopefully clarifying that ICANN will not be in the business of takedowns. This is far -- this is not what we should be doing.

So I hope this helps, and Avri, I appreciate -- I really appreciate your views on this, too, and I hope you reach out to Allen, who's been kind of taking the frontal engagement on that. Thank you.



RAFIK DAMMAK: Okay. I think we can take last -- we can take last comment here. Yeah, please.

ARUN SUKUMAR: Thank you. Arun Sukumar from the National University in New Delhi. Can I? So presumably any -- any dialogue between governments and ICANN on the issues that we were -- we are discussing right now on the question of takedowns or the legality or illegality of certain -- certain actions presumably creates a paper trail. How accessible is that documentation to end users of the Internet from ICANN's side? Thank you.

FADI CHEHADE: So first of all, there is no discussion between governments right now about takedowns with us because we've never done them. We don't do takedowns.

In other words, it's not like they send us a request, "Take down these six sites." When President Francois Hollande, after Charlie -- Hebdo Charlie decided to shut a number of sites in France, he didn't call ICANN. I mean, he called Orange and he called the telecom companies in France and he decreed that they should close sites.

So we are not -- we don't get these requests, but we educate. So when -- simply when, you know, we had in the public forum people saying "Shut pharmacies," so Allen just engages with them and says, "Look, this is why we don't. This is" --

So it's just a -- frankly, not some formal requests we are responding to. This is simply engagement, telephone calls, calling people, explaining where ICANN's role stops and starts. And I think it's been very successful to have him on board and to have him have that dialogue, so people understand the limit of our remit. Let's -- I hope this helps a little bit.

RAFIK DAMMAK: Okay. I think really we can move to the next item, which will be introduced by Bill Drake.

BILL DRAKE: Thank you, Rafik, and good afternoon, everybody.

UNKNOWN SPEAKER: (Off microphone.)

BILL DRAKE: My apologies. Good afternoon.

Okay. So last time we met, we thought we would do something easy, so we raised with you the question of human rights and how that could be incorporated more fully into ICANN's work. And because that was such an easy one for us all to tackle, we thought we'd come with another one of a similar character this time.

In the spirit, though, of having a conversation together, it's -- it's not so much a matter of a question and answer, but rather we're trying to



think about something and we're wondering what you're thinking about it as well. And that is the notion of the global public interest.

The public interest --

By the way, I really hope next time we're going to not do this format, and that we can reorganize this room in a -- in a more conversational manner.

The notion of public interest is -- obviously it's in the bylaws, it's in the Affirmation of Commitments, and it's coming up more and more in more contexts. GAC members are increasingly referring to the public interest in explaining positions. In the accountability discussion, people have been talking about, you know, how we -- how we root the accountability structures in the public interest framework, et cetera. And it's not clear, of course, what standards we're following or what we all mean when we talk about this.

Now, the ICANN draft five-year operating plan lists as one of the strategic objectives developing and implementing a global public interest framework which includes development of a, quote, common consensus-based definition of public interest. And you had a strategy panel that tackled this question a couple years ago and put forward a rather concise but arguably limiting definition of the public interest.

You have a -- a department now in the ICANN organization -- I'm always tempted to say "secretariat" because I'm used to international organizations -- but in the org -- in the staff that deals with the public responsibility and public interest issues.



This morning, NCUC had Nora Abusitta and Megan Richards from the European Commission in to spend an hour talking about this concept and what do we mean by it, and we've talked about this in a number of other contexts as well, including at the non-contracted party house meeting that was recently held in Washington, D.C. between the noncommercial stakeholder group and the commercial stakeholder group.

And there's no consensus, certainly, within NCSG on this matter. I can just say straight out we're quite divided in our thinking about this.

Some of us, I think, worry that having an undefined, vague standard allows the term to be easily appropriated and used to justify all kinds of different types of agendas that may or may not actually be in the public interest in the view of the other people. And that having some sort of structured process to at least bound the discussion a little bit more and understand a little more fully what each other means by it, if not necessarily even arrive at a specific definition would be useful.

Others of us, though, worry that for ICANN to plunge into this arena in any detail just invites us into an abyss that we will never get out, that we cannot possibly come up with any kind of a consensual definition or shared understanding and that it will end becoming a political football that leaves us nowhere.

So we're a little puzzled as how to proceed or whether to proceed with this, but it is in the operating plan. So I presume, we presume that the board is thinking about this at some level, whether there should be some sort of a process to try to get your arms around the notion of a global public interest. And, if so, we'd like to hear from you how you



are thinking about this, how you're thinking about taking it forward, if you are, because it's in the plan, and how we in the community could interact with you in shaping that, if that is, indeed, something that's going to be happening.

And, Fadi, you said also in Washington, D.C -- and I actually have it -- I read it right out of the transcript. You said, "one of my missions for this year is to come up with a definition of the 'public interest' and we need the community to help."

So it seems to me this is a big problem. It's been out there for a long time. And I want to know -- we would like to talk to you about how you're thinking about it. So I stop there. And I invite great thoughts from all concerned. And don't all rush.

[Laughter]

RAFIK DAMMAK: We will try to get more input, comment, if someone would like to -- yes, Wolfgang, please go ahead.

WOLFGANG KLEINWACHTER: Just a question, you know. Do you come back to the human rights issue? (multiple speakers).

Do we have to divide it at this point into two parts, public interest --

BILL DRAKE: Thank you for poking me on that because I forgot. So when we talk about the question of the public interest, some of our colleagues feel



that human rights is so intimately bound up with it that you have to address the two together and. Some of us, I think, think that doing so makes it even more complicated, and it is a little bit good to kind of bracket them a little bit and talk about them in parallel and think about the linkages.

So I'm asking here -- we talked about human rights last time. So I was concentrating here more on the public interest side. But we're open to any kind of discussion, however you see this.

WOLFGANG KLEINWACHTER: I understand this. My comment was not on this public interest debate but on the human rights dimension because we have a new document on the table, now the paper which was delivered by Article 19 which has enriched the debate because so far we had the study by the Council of Europe which was of a very general nature, a very global complex. But the Article 19 paper is more specific and speaks about the obligations which the corporation has on the human rights conventions. And I think in particular, Recommendation 2, therefore, "concrete recommendations."

And in my eyes, the Recommendation 2 of the Article 19's report is very useful because it speaks about the first simple step to raise awareness so that people, both ICANN board members, members of councils, advisory committees and this stuff is more aware about this.

But we had a discussion whether a new institution should be established or bylaws changes are needed. If you go back to the articles of incorporation, Article 4 of the articles of incorporation of ICANN is



very clearly that the corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions.

What does it mean? "Internet convention" is not specified.

I think ICANN is not a trademark law organization. But ICANN has no right to violate trademarks. That means if ICANN makes decisions, it has to be clear that the decisions do not violate international conventions, regulated trademark, or intellectual property rights. So that's why we have a trademark constituency, and we have them produce the trademark, clearinghouse which works like a watchdog. So it means if ICANN makes decisions which violates trademarks, this is bad, has to be stopped.

So you could just add behind trademarks human rights. ICANN is not a human rights organization. We do not set standards for human rights. But ICANN has no right to violate human rights. That means we have to respect this. The discussion of content relates to Article 19, and we have to respect human rights. ICANN cannot adopt a decision which would violate the right to the freedom of expression, full stop.

Insofar the question is, in my eyes, there is no need for a bylaw change or something like that. We just have to create more awareness that this is part of the -- of our work. It is the basis for our work. It is the basis for our work. We have to accept this.



And then we could think about it, if there are problems, whether we need more precise mechanisms, probably to get in a concrete case special legal advice.

We have now under the accountability working group seven experts. One is an expert for international law which includes international human rights law, Lee Bygrave from the University of Oslo.

That means my recommendation would be if there is a case now where we have a problem, then please ask this expert for advice, what he thinks about it.

So this is the easiest way to start, which does not need a bylaw change or the establishment of new institutions. And then let's wait and see. If the community thinks this is not enough, the legal advice does not satisfy what we -- what we expect, then we can start.

But I think for the moment, this recommendation 2 of the Article 19 report is very helpful because creating more awareness is the first step to move in this direction.

And, once again, ICANN has no right to violate human rights.

[Applause]

RAFIK DAMMAK:

Okay. Thanks, Wolfgang.

Maybe Bill wants to add something and then Markus. Maybe start with Markus first.



MARKUS KUMMER:

Thank you. Yes, I was also part of the intersessional meeting we had in Washington and also the Frankfurt meeting of the accountability cross-community working group. This issue came up, and the point was also made that ICANN operates in an area where normally governments have the responsibility. And governments have a responsibility to protect human rights. But here we don't want governments to be in charge, so by definition it is the responsibility of ICANN to protect the human rights in question.

And what are the rights we're talking about? I think one right we are already looking after it, and that is the copyright. That is also intertwined in the Universal Declaration of Human Rights, Article 27. But there are other rights. Privacy, freedom of assembly, and, of course, freedom of expression are some of the key elements.

But one model worth looking at is also the Global Compact of the United Nations where there was an initiative that basically reached out to big private corporations. And it was the same philosophy as saying that more and more international activities are dealt with directly by private companies and not governments. So private companies need to assume responsibility. And there is also question of labor standards, environmental standards, but also of human rights.

And the -- there are key documents that are included in the Global Compact, Universal Declaration of Human Rights, International Labour Organizations, Declaration of Fundamental Principles, Rio Declaration on Environment, and the United Nations Convention Against Corruption. These are, of course, not all relevant for ICANN but the



model as such I think is worth looking into. It is a kind of parallel where companies sign up to some principles.

But as Wolfgang said, it is in the bylaws that ICANN has to respect international conventions. So by incorporation, that is already there. But we have to flesh out and look what is relevant.

And the report, I think it was brought up at the L.A. meeting by the Council of Europe on human rights, and ICANN I think is also a very helpful starting point. But I think the discussion is worthwhile having. Thank you.

RAFIK DAMMAK: Thanks, Markus. I think maybe Bill wanted to clarify, yeah? No?

BILL DRAKE: No.

RAFIK DAMMAK: Okay. Marilia and then Walid.

MARILIA MACIEL: Thanks very much. This is Marilia Maciel speaking. I think that we do have some issues that are being discussed in ICANN that are interrelated such as public interest, accountability, and human rights.

And it would be nice if we could keep track on their evolution to make sure to communicate with each other.



I agree that human rights would be one possible compass to guide the discussion of public interest. Probably there are other issues that we could take into account. But I think that it will be important as a baseline that the public interest is consistent with human rights, especially because if we think that due process is one key issue when we discuss human rights, due process is also very important if we want to make sure that the public interest is observed, that all voices are inserted into the process properly. So I think they are related and should be discussed together but not necessarily conflated.

And with regards to human rights more specifically, I think that the discussion is gaining traction and substance inside with the community. We have held sessions about it in L.A., in London, now in Singapore.

We have talked to different community leaders of SOs, ACs. And it seems that overall the community sees that there is an opportunity, and it's necessary for us to engage in this discussion in a more structured way, maybe in a cross-community effort. We can discuss what is the best way to do it, but I think it is gaining traction.

I have just been sitting through a session in the GAC about public interest, human rights, and international law. And also among GAC members, there was strong support for the creation of a working group inside the GAC to discuss human rights and international law that would communicate with a cross-community effort to discuss human rights. So there was broad support for it. All the countries as far as I heard were in support of it: U.S., U.K., Brazil, European Commission, many European countries. So I think it is gaining traction, and it is a very positive development.



Maybe I would like to ask the board and Fadi, if you see a good way forward for us to move with this discussion, that you believe that there is opportunity for this cross-community effort, what are your views on that in terms of practical? If there is this interest, how should we proceed in your view? Thank you.

Sorry. There is a session tomorrow -- I forgot. There is one session on the agenda at 10:30 about the human rights in ICANN. And we have invited the whole community. If you can be there and attend, it would be great. It is in Sophia at 10:30. Thank you.

BRUCE TONKIN:

One idea could be, I guess, to form a cross-community working group across the different parts of ICANN. It sounds like you are engaging with GAC, which is great. I would imagine ALAC would be thrilled to be involved and any other groups that are interested.

I mean, our role here is if you develop some policies that come through a consensus policy process, we would obviously approve them. We don't make the policy, in other words.

So it sounds like you are doing all the right things. You are reaching out to the different parts of ICANN and at the relevant time form a cross-community group across these different areas and then develop policy, I guess.

RAFIK DAMMAK:

Yes, so you want to respond or we can go to --



FADI CHEHADE:

So, Marilia, let me just say this. We drifted because we started with Bill talking about kind of a definition of public interest and we moved into the human rights discussion. I appreciate the need for both, but just to make sure we don't forget getting back to Bill on his question.

So on the broader question of human rights, this is complicated. And I know the community has been looking at various ways to define that. I'm not an expert -- and it is not my job anyway. It is the community that should come around that.

But the only thing I would ask -- and this is my personal comment here -- is let's make sure we not forget the -- I think the valuable comment Ira Magaziner told us on Monday morning. Let's stick to our -- let's make sure that we are not conflating what ICANN's role is with the broader human rights agenda.

So long as this is, you know -- we understand just to protect ICANN -- by "ICANN," I mean the work we do to serve the world -- to make sure that any focus on that area is done in the spirit of the work of ICANN, not the expansion of our remit, then I think we are all aligned.

I mean, as Wolfgang said, this is -- we cannot -- we have no right to violate these rights. Now, you may be thinking there's more positive things to do. But let's make sure that we do this as a community together and that we remember that the simpler and more focused we are on our limited remit, the more we are meeting our objectives as an organization.

On Bill's question, which he has been very patiently waiting for some redress on, some addressing, Bill, you are right. There are two places



where we have made progress, but we now need to coalesce together on the issue of public interest and come up with something. The first area is don't forget the community developed a new strategic plan that has a very specific fifth column for the first time that says one of the five top objectives of ICANN globally is the global public interest. So we now have a key objective for the next five years to focus on that.

The second thing is if you remember my foray into these strategic panels -- do you still remember these, or you happily forgot them? One of them, if you remember, with Nii Quaynor and Tim Berners-Lee was focused on public interest and public responsibility. And they produced, I think, a pretty decent report. But, again, we said their work was simply to inform. It is not the community's work. It is just a work that can inform.

So these are two pieces of work to start with in our bylaws. And I think you are right, Bill. We should make sure we're all aligned on what that means. And I welcome your initiative to help the community start using the -- what I mentioned -- the three pieces I mentioned as a starting point to inform us to move forward on that.

And we have a department doing things in public responsibility. So I think they would be delighted to see that the work is moving. You have my support for that, Bill.

RAFIK DAMMAK:

Thanks, Fadi.



We will try to go back to the discussion about the public interest issue. We have, I think, some people want to comment before. So I think Dave, Walid, and George.

Yes, Dave, please.

DAVID CAKE:

So it is important that I think both the -- I'm going to easily draw a little Venn diagram. Public interest is not human rights. The human rights discussion is not always the same as -- there's a strong overlap, but they're not the same. There is other aspects of the public interest.

I know when we were in Washington, Bill talked about how the telecommunications sector has thought about it and developed models for thinking about it in economic ways and so on.

I think one of the things -- I mean, this is really -- I mean, I'm saying this in my personal opinion. But I think it's -- I'm -- but I think there would be a fair bit of sympathy for it, which is that the public interest -- trying to work in the public interest but with a very loose undefined idea of what the public interest is has got us into some trouble.

And really welcome that this is going to be a real focus. And, you know, I think in terms of a definition of public interest maybe is too simple. We should be thinking in terms of processes by which we work out what the public interest is. It will -- it needs to be from both the community and the -- and the staff will both need to work on this. And especially a -- and some of these areas -- and human rights we sort of talk about -- again, we talk about it as a relatively simple, here's a list of human rights. But actually human rights law is complicated. There are people



with enormous expertise in it, some of them within the community. We do this with security, stability, and resiliency. We have a clear objective and we have developed, made sure -- and generally ICANN has done a very good job with SSR overall because -- and part of the reason is because we have clear resources and experts in both the community and the corporation who work together and we should -- we should be moving towards that on public interest and human rights. Yeah.

FADI CHEHADE:

A very quick thing. I want to repeat that in Washington, thanks to Kathy Kleiman making the point and Avri and others, I did say, and I stand by this, that I agree with the community and we will work with you that our definition, our work together on defining the public interest, in many ways that has to be rooted in the understanding that human rights are part of that. So we're there. We just need to kind of figure out how to get there together, and we will make sure part of our discussion, we understand the linkage between the two.

RAFIK DAMMAK:

Thanks, Fadi. So we have Walid and George on this topic, and then I think we will go to the public interest.

WALID AL-SAQAF:

Walid Al-Saqaf, for the record. I'm talking now as an outsider. You mentioned human rights. I'd say imagine myself being an outsider -- an end user, and the word "end user" is quite familiar to us in NCUC. In my position as an end user I still have some sort of unwritten contract. I expect -- with ICANN I expect that if I access a Web site the procedure



or the process will get me through to the domain and then to the network. But there are occasions when this connection is disrupted and this disruption could be in action, for example, in the form of filtering. Oftentimes happening not transparently, leading to me, instead of going to a particular Web site, going to a malware Web site or perhaps another government Web site or tracking Web site. However, so far we have not seen an attempt for -- through which ICANN could actually have a mechanism in which cases, or well-known cases where users were redirected because of this, having their rights taken of accessing an open and transparent Internet, taken away without firm action. I understand it's complicated, given the sovereignty of countries and ISP issues, but then the issue is that as now talking on behalf of NCUC I feel we're obliged as this body to communicate the need for the end user to be connected to ICANN. We can't just have a name saying noncommercial end user without having the end user into account. So we need to take that into account.

So one way of doing it is that at the core of the ideas of -- of connecting users is guaranteeing security of the user. Guaranteeing the openness and accessibility. So one form that could work out, perhaps, is allowing reports from users to a particular group, perhaps in ICANN, that report cases of these actions and then from that, not necessarily taking action directly but forming some sort of team or body that monitors and tracks and ensures that whether there is such a widespread case, this would be handled with the ISPs and with the groups beneath so that it's not a matter of content, it's a matter of access.



So I feel that these practical things need to have their position in ICANN, though -- I mean, because eventually if we disregard the end user, we may actually not be doing our job.

FADI CHEHADE:

Walid, I know exactly what you're talking about and I know how awful these practices are. But let's be -- let's be genuine here. In the same way you've asked me to not get into the content, in the same way if we have to get into these kinds of issues, it's a big leap for ICANN to start getting -- now, it's different from me saying, when I go and visit within an official in a country that I bring it up, which I do, you know, I bring up that, you know, that these things do not support an open Internet that we all need. But it's complicated for ICANN to step into -- outside of our remit into these areas. With all due, you know, respect to the issue, because I'm very disturbed by these practices, I think this is a great activity or thing to do, for example, in ISOC. This is where the Internet Society could be frankly very, very helpful on the ground. That's the kind of issues they -- they are good at and they can take through their chapters.

I was going to send you to ALAC because in a way that's our end user group, but again, that would be taking them potentially out of their remit because that's not our remit. With all due respect to the issue, which is a big issue, I really don't think we should be proactively building teams to go after solving these issues. I may be wrong, so I invite our much more experienced Board members in that space to give me their view, because that's an important question you're asking. I'm not taking this lightly or just throwing it to ISOC.



RAFIK DAMMAK: So George, please, and then we have Bill and then Milton and Mike.

GEORGE SADOWSKY: Thank you. I want to go back to something Marilia said a couple of minutes ago. She was talking about an activity, and then she said well, perhaps this might be a cross community working group and so on. That sounds like a means to something, and I'm wondering if you could state -- I don't know whether Marilia will do it or somebody else, what is the goal of this activity and how will you know when you have achieved it?

RAFIK DAMMAK: Okay.

BILL DRAKE: You're asking what is the goal of the activity on human rights.

GEORGE SADOWSKY: The activity that was mentioned.

BILL DRAKE: Yes. Would you like to answer that before I return to the public interest dimension?



MARILIA MACIEL:

Thank you. This is Marilia Maciel speaking. I believe that one of the things that we have noticed is that some policies, they have raised concerns related to human rights such as race and privacy that is going to be discussed in the next topic or the new gTLDs and freedom of expression, but we are always looking at the issues when the policies are already approved. So we are trying to fix it afterwards, and that creates problems. That creates difficulties.

It would be easier for us to have a way to have a human rights assessment, a look while the policy's being developed so we make sure that they are developed in accordance with the standards, harmonized with the standards that we have.

How to do this? I think that there are several options, and I think that the cross community working group, if one is to be created, would have the role to try to figure out what would be the best way to introduce this assessment is look inside what has been established at the normal PDP in ICANN. Thank you.

BILL DRAKE:

I think it's a matter of establishing a criteria, broadening the base. So in any event, returning to the point of the public interest. In -- and I think Milton is going to speak afterwards, so he can tell -- he'll tell you why I'm completely wrong here. But in telecommunications and other regulated industries where the concept has been used for a long time, as David noted, you do have various sorts of dimensions that are built into this such as, for example, dealing with problems of market power, market concentration, right? Which is not necessarily a human rights issue directly but it is something where, you know, in the United States



the Federal Communications Commission nominally was supposed to be working to preclude abuses of market, you know, the development and abuse of market power as a public interest thing. The way in which the airwaves is regulated and so on. So there is a question of saying how -- what would be the comparable sorts of questions or comparable sorts of criteria that you would want to think about with regard to ICANN's remit? And how would we develop discussion around that that would be useful? I don't think we have to try to come to one single-bounded definition, as I said, but I think we do need to at least have a broader inventory and understanding of what each other means or what is some of the different types of considerations that people have in mind when they use this term as a starting point.

Now, I look at the public responsibility strategy panel's definition, and they say it's making sure that the Internet continues to be stable, inclusive, and accessible across the globe. So those are three principles that sound pretty, you know, enticing. We all like stable, inclusive, and accessible. What does that actually mean in operational terms when you get down to trying to deal with gTLD policy, et cetera, becomes less evident. So this is the kind of question I think we have to try to spell out. What is the -- what are the elements that people would consider from a principle standpoint to be relevant and then how do those translate into concrete policy practices and so on? And I would like to hear how different parts of the community view that question. I would be curious how the intellectual property people view it versus the registries versus the registrars versus the CCs, just as a way of trying to get out on the table where are we in our thinking and so we can begin to bound the question a little bit. It doesn't have to arrive at a single-



sentence definition, but it would at least be, I think, useful to do that. And if I understand it, it's part of the agenda, so I want -- I'm trying to find out how you intend to proceed with that. That's what I'm probing for.

RAFIK DAMMAK:

Yes, let's take a question. I think Milton wants to speak, and then Mike later.

MILTON MUELLER:

Yes. This is Milton Mueller for the record. I was heartened to hear that you understand why you don't want ICANN to be or pretend to be a human rights organization with positive obligations to, you know, promote certain things, but you don't seem to understand why you don't want ICANN to also be a global public interest organization. In other words, these things seem very symmetrical to me.

It's correct, as Wolfgang says, that you don't want to violate human rights, and it would also be correct to say that you don't want to violate -- you don't want to do things that are not in the global public interest. But if you put into your strategic plan that we are now pursuing the global public interest as part of our core mission, it sounds to some of us as if it's a massive expansion of your mission that kind of opens doors for you to do anything that could be rationalized. Maybe it means you're going to start using the auction proceeds to fund, I don't know, you know, food for starving babies. This professor is not starving, especially not at ICANN meetings. But, you know, it seems like mission creep. It sounds like a grand new open-ended set of obligations, and it



makes me nervous frankly because, of course, based on what Ed had said to you earlier there could be all kinds of pressures on ICANN to become a global regulator of the Internet, not just the domain names system. So how does that get in there for five years, what do you do with it, and how can we get it out for the next five years?

FADI CHEHADE:

The answer's for the community to tell us. It is not my decision. My voice is only a voice like yours in the community. So let's -- as Bill suggested, let's not just come up with a sentence. Let's come up, as David also said, with what does it mean that we have all agreed -- not me, I didn't put nit the strategic plan, you did -- that we need to focus on the global public interest as a fifth goal. That was a community-developed plan that took 18 months of input and consultation.

So again, I'm listening to the community. Let's figure out what this means. And let's translate it, as David said, into how we do things. What does it really mean to say that, rather than come up with a nice glorious paragraph that we can, you know, put on the wall.

And I think Milton, you would find most of us, including myself speaking personally, to agree with you that let's not use this to expand what ICANN is and what we should do. I think with Ira Magaziner said on Monday morning frankly is etched on my mind from someone who has more gray hair than me, saying look, keep it simple, stick to your knitting, get your job done, and I think he's right. If we expand what ICANN does, we -- we lose our focus on what we're here to do. So you have -- you have at least my voice in that. But I need your -- everybody's voice to define what that means, which Bill is taking the



leadership to help us do. And I will -- Bill, in terms of next steps, you asked, I will see -- I will have to connect both Nora and Samantha to you after this meeting so that we can figure out how we can help you move this ball forward within the community in any way we can.

RAFIK DAMMAK: Thanks, Fadi. Mike, please.

MIKE SILBER: Thanks very much, Rafik. I've sat in the last couple of meetings, and this issue keeps coming up repeatedly, and I really appreciate that we've actually had an engagement today instead of a somewhat adversarial interaction about it because I'm beginning to understand what -- why this question is being asked in terms of what is ICANN's role and what is ICANN's perspective on human rights. It sounds, though, that there's some different perspectives. Some people want to ensure that we're becoming a human rights observatory, others that we're a human rights advocate, and others that we don't get mission creep into the field of human rights. But it would have been really helpful, I don't know, three, four, five meetings ago, whenever this issue first arose, if we could actually get a problem statement and maybe even some suggestions. Because I'm hearing good suggestions over here. I'm hearing some that I don't think are workable or don't belong in the context of ICANN. You know, I think it's great that there is some interaction with ISPs dealing with issues of filtering. Just given the number of ISPs who actually arrive at ICANN, I don't think that this would be a really good place to have it because you'd be talking to three or four people, none of whom are from your country or region. So I



think it would really be helpful if we could get a better problem statement and some suggestions rather than the kind of adversarial response or questioning that we've been having up until now, and this has been really positive, so thank you.

RAFIK DAMMAK: Thanks, Mike. Okay. So we'll get a comment from Dave and then we try to move to the last item in the agenda.

DAVID CAKE: Just a really sort of brief -- just wanted to comment on the sort of interaction from Walid and Fadi there. I agree that sometimes these tools to sort of monitor things like states' (indiscernible) is not ICANN's role. But as someone who is intensely interested in this area, ICANN has been providing us the tools, which those of us who are looking at that are some of the things you have been doing are really helpful. So ICANN's things like DNSSEC I'm about to use -- do a large project where I'll be -- working as part of a large project (indiscernible). We'll be using the CZF data, centralized zone file data. These things are really helpful and we do appreciate it.

RAFIK DAMMAK: Okay. Thanks. I think we have -- we can get two or three minutes.

FADI CHEHADE: Bargaining.



RAFIK DAMMAK: Yeah, come on. We are from the Middle East and North Africa. We need to bargain for everything. Okay. So we get three minutes and Stephanie will give us an update on privacy. It should be short.

STEPHANIE PERRIN: Yes. Thanks very much. Stephanie Perrin, for the record, and I'll be brief. When we were last in Singapore I think we spoke to you and we told you that we didn't think that the ICANN privacy policy was quite up to snuff and so we offered to take it back and bring you back comments. We haven't forgotten. We've been working on a draft. We're in the middle of doing our last final community consensus, and we'll be sending you a letter with the analysis of the existing policy and some commentary on it. So that's -- that's all I have to say, just an update.

STEVE CROCKER: And what's your ETA?

STEPHANIE PERRIN: I would think we should have it within a month.

STEVE CROCKER: Looking forward to it.

STEPHANIE PERRIN: Thanks.



RAFIK DAMMAK: Any comment on this? Okay. This looks like a Kumbaya moment. Thanks, everyone, for attending today. I think we have good dialogue and we express several opinions, and looking forward to the next time. Thanks.

STEVE CROCKER: Thank you, everybody.
[Applause]

[END OF TRANSCRIPTION]

