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PRAGUE – At-Large Future Challenges WG  
Wednesday, June 27, 2012 – 08:00 to 09:00  
ICANN - Prague, Czech Republic

Jean-Jacques Subrenat: Today is Wednesday the 27<sup>th</sup> of June. It's 8:12. This is a meeting called for the Future Challenges Working Group Co-Chaired by Evan Leibovitch and Jean-Jacques Subrenat. Good morning. The meeting is open. The agenda items are on your screen – or are they, Matt? Adobe Connect is being connected. Sorry for this slight delay.

This is Jean-Jacques Subrenat speaking. There are essentially two agenda items as far as I can remember; they're not on the screen yet. One is the R3 paper, the full title of which at this stage is *Making ICANN Relevant, Responsive and Respected*. And the second item would be about compliance issues.

So because we have the good fortune of having two Board members present at this stage – and they will be leaving early – I suggest that we put the R3 paper on the top of the agenda and we'll deal with compliance later because we want to benefit from their view on the whole exercise.

So as you know at this stage, the Executive Committee of the ALAC – David's view that it could be distributed as a white paper – so not as an ALAC document or advice or anything like that, but as a white paper. The point why it was distributed now rather than later or much later is that we thought... the initiators of this thought that there was a question of timing, that Prague would be a very good way and location

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to do that because of the recent nomination of the new CEO. Because of the orientations taken by ICANN at this time of the year, it was important to propose this vision of things at this early stage rather than wait for, say, Toronto.

So this is only part of the work. It is being presented in order to get some feedback. Understand that within the framework of ALAC, it was submitted to a proper procedure of a covenant. We received no comments, apparently because those who had something to say had already said it even before the opening of the public comment.

So the page remained available but blank, apart from two unnecessary comments by myself trying to prod people on. But that didn't work either so that's an interesting lesson too. So in any case, we have had oral comments here and there.

The step after that was that we were encouraged, we were authorized to put it online somewhere and that's what we did in various ways. I put it on Circle ID simply because I have an account there and it's very convenient. It could have been somewhere else. And it was suggested to each of the six co-authors that they disseminate this by their own means to their own geographical and professional communities – that was done. So thanks to that exposure we've had quite a bit of feedback and very interesting comments.

Now the purpose of this meeting is to get a general sense of where you think we stand today and then in a few minutes perhaps we could see where do we go from here – first on content and then on tactics or let's say communication. Content means do you think that after the comment period which was opened within ALAC there still remained

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important aspects which have been badly bruised or on the contrary, simply forgotten or left out. And we'll come to communication later.

So the first thing is about the content – the floor is open for comments on things missing or things badly expressed. Evan, would you like to add something?

Evan Leibovitch:

The main thing I'd want to add is we took the explicit step of asking ICANN staff to assist in the translation of this document into five U.N. languages with the express intent of having it as widely distributed as possible outside – for lack of a better term – outside the ICANN bubble – with the intent of trying to engage both internal and external communities in the engagement of this particular topic.

In response to what we've seen as various external threats rumbling from governments, rumbling from ITU and elsewhere about certain parties that would want to burn ICANN to the ground and start over which is seen as an unacceptable plan of action while at the same time considering that the status quo right now is also unacceptable to a lot of people.

And so in fact we're almost encouraged to want to think of this as a third path that is essentially fine-tuning and refining the multi-stakeholder model as opposed to just stopping it and starting it from scratch as some kind of inter-governmental experiment.

And so this was started. A number of people have brought in contributions, so hopefully in the initial authorship we have I think a fairly wide background that includes Jean-Jacques, a former Board

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member; includes Yrjö, a former GAC member; myself, just someone off the street and [laughs] so also with Rinalia and Hong also adding to it, the idea is to have something that I think right now – and Carlton – so to have something that is nicely balanced, reasonably globally reflective – this is of course just the start of a conversation.

The end result is not to put this forward as ALAC advice. The end result is to put this forward as a starting point for a discussion we think needs to happen. And so this sort of started from a need within ALAC not to keep just responding to public comment periods and responding to stimuli from elsewhere in ICANN and possibly to actually start a conversation going and take some initiative.

Most of the people at this table – with the exception of the two Board members – probably are very intimately familiar with what’s going on. Do either of you have any comments, questions or stones to throw?

George Sadowsky:

I thought it was an interesting paper. I would have asked somewhat different questions; I would have expected somewhat different arguments, but I think it’s a thought piece; it’s a provocative piece. It’s the kind of thing it’s hard to make general comments on. It’s much more interesting to engage one-on-one or one-on-a-few discussions between people because you look at the points here, you say, “Well, that’s interesting but what about this?” I think it’s difficult to discuss it in a context like this; however, we can and we probably will.

Evan Leibovitch:

To which the answer is if you've got some specific issues and if it's okay, look at this but what about this – this is exactly the kind of feedback that we need into this. So we're trying to look at this document; we've put a stake in the ground with this as a PDF that's been translated as something to get wide distribution but I think it's always been considered that this is going to be an extremely iterative document. You can see the revision number is 0.1. [chuckles] So that was almost a deliberate sign to anyone, especially in the technical community, that we're still at a 0.-something release.

George Sadowsky:

You mentioned your attempts to provide visibility for this document and I think the translation into multiple languages is really commendable. Let me give you some statistics however. I computed – and this is more from a Board perspective than anything else – but I computed the number of attachments I got before the Costa Rica meeting in the week before the Costa Rica meeting – it was something like 90, and the majority of which demanded reading.

The overload, the attempt to get shelf space in terms of the Board's reading list is a very difficult thing to do. I read Circle ID about half the time; I missed the piece there. So you're dealing with so many competitive issues, most of which are I would say urgent but not important, as opposed to important but not urgent which is where I'd put this piece. I don't have a solution for that – I just want to point it out.

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Jean-Jacques Subrenat: Thanks very much, George. I'll take note of that. But individually and specifically since you spoke, would you care to – would you mind, would you have the possibility in the coming weeks to send us a few lines if you have more specific comments on that?

George Sadowsky: Yes, I could do that. The form of my comments would be essentially large insertions into this document as opposed to a different philosophical basis for proceeding – anything like that. I'd leave that to other people who can do it better than I can.

Jean-Jacques Subrenat: Thank you very much, George - that would be extremely helpful. Thank you. Yes, Bertrand.

Bertrand de La Chapelle: A few comments and apologies for having to rush for one of the Board Committee meetings. First of all I appreciate very much that At-Large is doing this and I was happy in Costa Rica to have preliminary discussions with a few of you.

A few remarks following the structure. Like George, I would probably put other blocks as well, but following the structure, the first element is that the discussion of the global public interest is extremely important in relation to the notion of capture. The key question is to delve into what constituents capture and how the mechanisms prevent the unbalancing of influences, and capture can come in many different forms.

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One of the things that I believe at one point needs to be said is that the global public interest is not something that is set just like there is no definition of the national public interest. It is something that can be invoked, abused or not respected but it's usually something that is supposed to be achieved through a proper constitutional process.

So global public interest, like the national public interest, is supposed to be the result of a properly balanced mechanism. And so it is directly linked to the institutional framework and therefore this is the link to the capture because if the system is sufficiently balanced for all of the actors to believe that the end result has taken their position into account and that yes, they ended up being in the minority but in other cases they will be able to prevail, then everything is fine.

And at the moment, the question that will be very important when the reform of the organization will happen because of the New gTLD Program is to make sure that the balance among the actors will be preserved. And it's not only from group to group, it's also within groups because there will be a parallel distribution of players, some of which will be with a large portfolio of registries and others with a small number.

George Sadowsky:

Second thing – I've said it before when we had the exchange – I am extremely reluctant to have headings or framing a debate in terms of the multi-stakeholder model versus an inter-governmental approach.

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Bertrand de La Chapelle: This is dangerous. The reality is there are many different modes of governance. Some is self-regulation in some cases; some is pure inter-governmental or governmental regulation. The multi-stakeholder approach is a principle that tries to find a balance of when and how the different stakeholders need to be involved.

There are cases at the national level where the national institutions are perfectly functional; the discussion and debate is taking place within the normal framework and you need less consultation.

However, there are cases where you absolutely need the interaction of all the stakeholders and the danger is if we pitch the multi-stakeholder approach versus the inter-governmental, then the reaction is the inter-governmental wants to crush the multi-stakeholder model.

The multi-stakeholder approach is an attempt at finding a balance between complete self-regulation by the private sector and pure inter-governmental debate in my view I mean. Just a contribution; I made a mistake. But I'm always wary of something that presents the multi-stakeholder approach as one extreme instead of an attempt at balance.

Finally a few pointed comments – I suppose that you understand the potential of the sentence that suggests to align the regime of the ccTLDs with the global regime of other gTLDs. Throw the bomb. The debate will be... it's too long to discuss right now but you know why it's a sensitive topic.

[background conversation]



Bertrand de La Chapelle: Certainly, that there is a need to discuss the appropriate balance, whether it's an alignment is another issue. Two other points. Today we have within the Board things that are called committees that are not the same at all. There are committees that are traditional corporate committees – audit; risk, governance; finance and so on. These are about the functioning of the organization.

The other ones are thematic committees – structural improvement; global partnership. They're related to strategy, to how the organization evolves, what it can do. And I believe they should become somewhat organized differently.

The first one should be completely inside the Board – it's a Board; its responsibility. The other one should be an element of interface for transforming the physical meetings into more issue-oriented discussions. Instead of having, for instance, the... no, no, no, of ICANN general.

On Tuesday you have a situation where the Board sits in a room and every single constituency comes and we discuss the same issue and it is so typical that the same questions are asked. So we are there and say, "Do you think that batching should be blah-blah-blah?" And nobody listens or hears what the others are saying.

Let's have one session on gTLD issues like batching. Everybody in the room, the Board is there and there would be one person from one of the committees in charge of following this particular discussion. And if it is about structural improvements, you get another track, what is the

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impact of the New gTLD Program, and so on. So distinguishing the committees – not to make them open, but to make them a driver discussion is important.

And finally, I could not emphasize more the support for shifting the notion that the responsibility of Board members is not to the organization, but to the purpose of the organization as I said in the discussion in the Board.

Evan Leibovitch:

Thank you. Actually, Bertrand - that was one of the first things I noticed upon my involvement in ICANN is noticing that the fiduciary duty of Board Directors was to the institution and not to the public good. That just surprised me as so unusual for a non-profit normally public benefit organization.

Jean-Jacques Subrenat:

Good, so those are two very useful interventions. Thank you so much, George and Bertrand has just left. This is Jean-Jacques Subrenat speaking. Any other comments please on - we're on the content; not on the communication side of our effort. Hong?

Hong Xue:

I think the two points raised by Bertrand are extremely important. For the second one I have a quick comment. I've circulated the R3 document in ccTLD community to ccNSO Council. I received some quick feedbacks and especially from the Chair of ccNSO Council, Lesley, specifically sent an email to me and Olivier and the questioned why

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we're suggesting that there should be global and uniform standard for both gTLDs and ccTLDs.

They believe ccTLD has their own universe. They're not subject to these general standards at all and they're seeking a clarification of this. Better this is a provision of ALAC. I replied very clearly this is a document of six authors; it's not an ALAC document, so don't bring Olivier in and make him in trouble.

But I do analyze our work, our rationale of this prerogative idea. This is a think piece of various global existence and operation that may in the long-term reveal for these general standards, especially the WHOIS. Even yesterday ICANN staff went to the cc meeting and talking about the uniformed data model for the domain name registration information and they disagree. They don't believe they should have a uniform data format. This is a technical issue and they disagree.

So I just raise this piece to the prerogative and see the challenge in front of us and whether we should further improve the document, paraphrase, make it more clear. So I shouldn't occupy more time now.

Jean-Jacques Subrenat:

No, thank you. There is an answer to that. The debate we're engaged in at this stage is precisely to get that kind of feedback. It's not for us at this stage to take positions to say what is right; what is wrong in the presentation. We're here to make sure that the items which deserve to be discussed are on the list and then we will develop them. But thank you for that input which we will take care of, of course, including you of course, as a co-author. George, would you like to say something?

George Sadowsky:

Well yes, I guess so. I'm surprised by your reaction about the Board reporting to the... how did you put it – the Board responsible to the institution – because that's precisely what the State of California would have you write into your bylaws in order to become such an organization.

And I think our bylaws don't say that we are not responsible for the public interest, they just omit it and of course, the AOC has now overlaid the bylaws as part of our responsibility, not to the State of California, but to the U.S. Government and in fact, to the world.

So I guess I see... part of the problem is that the public interest is different for everyone. And in fact, Peter used to say... he used to argue that there were 50 public interests and not one and I think that's a bit of a copout for saying that there isn't any public interest, that you can't discuss the concept.

It is quite clear that Bertrand was talking about the organization and if you had the appropriate structure, the appropriate infrastructure, organizational infrastructure that the public interest would be represented by the outcome of the discussions among the people who are in that organization.

I think it's quite clear that ICANN is a very biased organization when it comes to... not biased but is certainly very non-randomly selected when it comes to the various interests that is supposed to represent. And I think that's an issue which comes up in all kinds of ways when we're sitting in the meeting – these are just personal reflections – sitting in the

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meeting with the various supplicants who came to us yesterday and that's the model, it's the supplicant model.

It's not quite that but it certainly reminds me of one. How different the tone was between, say, the business community and the NCSG – just the manner of acting, the faux side of discussion and you get the feeling that this multi-sector model has appropriately interests which are as likely to be opposing as congruent and that somehow the process, if it works well, is going to identify the commonalities well and deal with the differences as best it can to produce a solution which is appropriately acceptable to everyone.

And I think that's a very significant issue in this organization. There doesn't need to be on the part of the various components of the organization any concern about the public interest. I doubt that the business community would not put the public interest first in terms of its actions; it would put making a profit. I'm rambling here but I'm trying to... I think I'm in the area of your concern.

Jean-Jacques Subrenat:

George, I think this is extremely important, what you said, but we have to know how to make best use of it. So will you be writing some of that in a condensed form or should we just take note of it?

My second question is do you feel at this stage that there is the necessity of some sort of exercise in defining or refining the public interest as perceived or interpreted by various areas of the community?

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George Sadowsky:                   What I strive for in my own thinking is to understand what’s going on at a level beyond specific issues. In other words, what are the dynamics of this organization and how does it function? And I think if we understand that better, we’re likely to understand better how we can make it work toward our goals.

Jean-Jacques Subrenat:           Thank you, George. So Holly and then Evan and...

Holly Raiche:                       Having worked for a public interest advocacy center for many years in communications, we often had to say what was the public interest and the public interest was actually not so much outcomes; it was actually making sure we listened to everybody, making sure that the people who may not have been heard were heard or if you will, a multi-stakeholder concept of in the right context, people having the ability to actually be taken seriously. Not only to be listened to, but to be taken seriously.

So for me public interest is not really about outcomes; it’s really more about taking the public in its many facets seriously and having the opportunity for listening to people, to taking those into account. So if you will, it’s underpinning what a multi-stakeholder meeting really is.

Now I actually support you. For me, sitting on a few Boards, my duty as a Board member is always to the organization. But in a sense because there is now written into the Affirmation of Commitment, you’ve now got this is what the organization is committed to and what a Board member does is about governance so that those objectives are achieved, if you will. That’s how you get a broader concept in terms

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of the traditional meaning of what you do as a Board in terms of governance.

Evan Leibovitch:

George, your point about the different definitions of public interest comes to mind very often and very frequently. But unfortunately my own recollection of them in an ICANN context tends to be negative in the sense that very often when somebody's talking about, "Well, what do you mean by the public interest," or "What do you mean by a consumer," it's usually an attempt to derail a conversation as opposed to move it forward and that I find it usually as a tool of distraction as opposed to a tool of engagement. I'm just saying that's been my own experience here in all sorts of discussions that I've been involved in here.

George Sadowsky:

I would agree with you, but I would really disagree with Holly and maybe this is probably not the place to discuss it, but I would rate the public interest as reaching a series of desirable outcomes and not at all in the input process which you described.

Evan Leibovitch:

My own definition of the public interest is after an ICANN meeting I go home and I talk to my family that knows nothing about what I do here, yet I try and engage at a certain level. So for instance – and I'll give one specific of how this drills down – about this whole thing about harmonizing ccs and gs.

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For the purpose of the cc operators, it's national sovereignty and how dare you. However, when I go home and talk to my family, they don't care. They're going to a domain name and they don't particularly care if it's two letters or three letters or how many letters.

When they go somewhere, they expect a certain standard of validity; they expect a certain standard of trust and the fact that it is .co and not .com shouldn't make a difference to them. Now it may make all the world of difference to the people that are operating it at the high level, but this is where I come in and try and define the public interest or at very least try and do my own proper service as a member of At-Large in trying to bring it down and drill it to that area where people don't care about that distinction and they just want to trust the system and how it works.

And so that's where I come in. And so my little piece in wanting to have that issue about well, if not harmonization, at least some kind of jiving between the two. So if someone goes to .co or .com, they don't have to worry or think about, "If I go to a website here, it's upholding these standards and if I go here, it has a different set of standards." At that level it shouldn't matter.

Male: It's George's point that the public is a series of outcomes and that's precisely what I agree to.

Jean-Jacques Subrenat: Right. This is an extremely interesting discussion, but for the purposes of this meeting, we have 15 minutes left so I suggest that we look at



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other areas of this paper in terms of inclusion or exclusion of themes. Do you think that some of the very important points have not been brought up or do you think that some are redundant? George or anyone else? Comment on the general structure of the paper, in other words, the general content.

Evan Leibovitch:

Well specifically, George, in your opening comments you mentioned a couple of... but what about this. Do any of these “but what about” come to mind now, the things that we may have missed?

George Sadowsky:

I’d rather talk about them one-on-one, simply because I... how do I say this? I look at the recommendation list and what I see is – and this is my own perception of priorities – I look at these and I say, “What would I do first? What are the most important things?”

And they’re all over the map and I’m not sure you want them all over the map. I think you want to identify the important themes here. For example, I’d put the harmonization of the ccs and the gs pretty low on my priority list. I would put, for example, something I don’t think you’ve mentioned here – supporting the establishment of many country registries – as much more important and I don’t think it’s on there and I don’t know why not. We may be thinking in different structures.

[background conversation]

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George Sadowsky: No, no, in the sense... How many registries... sorry, registrars... how many registrars are there in Africa again accredited - four, five? And what does that do in terms of legal rights, legal obligations of the registrants, etc., etc. There's a long path there which has a lot to do with how to increase access to the internet and that's pretty important for me.

Carlton Samuels: George, thanks very much. But rather than, Carlton, drilling down into one specific subject, we want to get a sense from George about this of the big packs which are missing or which are unnecessary, the overall structure of the overall content. Would you have a general comment on that? You just made a specific comment – some things are missing and some are exaggerated, for instance the harmonization between ACs and SOs is not on top priority – that's a good comment. Do you have any others like that?

George Sadowsky: Not now.

Jean-Jacques Subrenat: Good, thanks. So other comments on the subject of the general structure? Hong?

Hong Xue: I want to go back to this multi-stakeholder and inter-governmental approach. I assume for this part we could improve further, but [to put it clearly the notion] that they are not so much a rivalry relationship. If we

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put it this way I guess it would not be very helpful for the ICANN to [prove it].

And especially multi-stakeholder has its own limit. It is primarily about process. And we do need to think about how to advance our credibility from the perspective of sub-text such as really the chapter of rise of different stakeholder groups and other accountability [regimes] such as reconsideration or reveal. So I suggest for this part we have a careful think about that.

Jean-Jacques Subrenat: Thank you. That's certainly the case - we need to redefine that more carefully. Thank you. Other comments?

Evan Leibovitch: And actually Bertrand's observation I think is the first thing I want to put in – is the understanding that the multi-stakeholder model is not the other side of the spectrum. Self-regulation is the other side of the spectrum and multi-stakeholder is actually the comfortable middle ground and it's up to us to try and make that work.

Jean-Jacques Subrenat: Yes, so this... your comment confirms that it is partly a question of wording in order to make it comprehensive, but also understandable for various parties. So that really requires much more work. Thank you for those comments. One last attempt at getting from you a view of the general structure and the general content. Go ahead, Rinalia.

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Rinalia Abdul Rahim: It's not about the overall structure and content, although I was really interested to know what headings George might have had in his mind for his large insertions. But on the point about the MSN, I think that particular MSN versus intergovernmental approach – that was meant to be provocative and the feedback was exactly what we wanted to hear because we wanted to hear what do people really think about the MSN model. So it was good to hear this reaction and I think we should really think about whether or not we want to be proper in putting the paper across or do we want to continue to be provocative and I would continue to listen.

Jean-Jacques Subrenat: I think that's a good point. I think that that's an interesting remark but as Carlton just suggested, it is the contextualization which will put people at ease and make it acceptable while allowing the paper to remain provocative in the good sense, meaning thought-provoking and conducive to debate.

So I think it's a fine balance we have to strike, but I think we can try at least to do that. That would be the ultimate value of such a paper. It's to launch a discussion on the real issues rather than just about procedure and appearances. Thank you, Rinalia. Any other comments?  
George, yes.

George Sadowsky: Very practical comment. I've used two browsers and I can't get a PDF from this webpage. I don't know if anybody has a PDF of this paper or rather even a .doc file – I'd like to get it.

Jean-Jacques Subrenat: Matt, could you send that to George? We have about 10-12 minutes and we have one subject after this one. So on communication now. I call it communication just as a simplifying expression. But the idea is that the purpose of this paper is not to state a position of any part of ICANN, for instance ALAC. This is not an official position paper, but it's a white paper as I said early on.

So our communication effort has to reflect that reality and that's why at this stage we went public on websites which are available to us. But I would like to get a sense from you of where you think we should go next in terms of communication.

For the time being we've relied only on our respective personal networks. Do you have any idea of where we should go and how to get there? For instance, someone suggested that we could try to get a piece written into *The Economist* or *The New York Times* but I don't know anyone who would be working there and who would accept an Op Ed. just off the cuff like that. So what's your idea about how do we communicate... and of course the idea is beyond ICANN. Holly?

Holly Raiche: I think first of all it's important to get it in our networks which is what we have tried to do anyway. But if we revise it, to get back into the networks because it's the networks that we tap into that are actually going to have some understanding of what the issues are.

I think the issue, if you go more broadly – I can certainly get it into the Australian papers – that's not an issue. I just don't know if you have it

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more broadly to say *The Guardian* or *The New York Times* or *The Economist* or *The Wall Street Journal*, what kind of feedback would you be expecting?

Evan Leibovitch:

I guess the answer is I don't know what to expect and I think that's part of the nicety of this. This is not a public comment process; this is meant to be a general conversation. So it's anticipation of – like George says – some of this is going to be one-on-one; some of this is going to be people putting in public comments. I anticipate some if it may be people wanting to comment anonymously saying that they've got input but for their own careers, they may not want to be identified with what they say.

Holly Raiche:

Would you be suggesting that any articles have a place people could put comments?

Evan Leibovitch:

And in fact we are starting a mechanism to do that. Within ICANN itself, there's already a comment area on the Wiki page but we've already considered the idea of engaging this on social media as having structures in places where people can +1, like, add comments as necessary. The idea is to keep the conversation as freeform as possible.

ICANN already has its very formal processes; this is meant to be something different; this is meant to be a conversation as opposed to, "Here is something. Comment on it, blah-blah-blah." This is meant to,

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“What do you think?” Like it, hate it, whatever, and take the feedback in whatever form it comes and deal with it that way. I was hoping not to put any pre-conditions on the way the conversation had to go.

Jean-Jacques Subrenat:

Right, at this stage I’m afraid we have to move on, but not without having first tried to wrap up this part of the session by saying what do we take away from it. First of all, I think the discussion has pointed out that, especially for two Board members and we’re very grateful for their participation this morning in this meeting – there are big chunks which may be missing.

But also there are some approaches which are not sufficiently detailed about the global public interest for instance. So we’ll be working on this and getting back to you with the feedback and elicit your own reactions to that.

The second thing is about the communication from the brief conversation we’ve just had. I have the impression that that is perhaps just a bit premature. Because as long as we don’t have a more definitive product, perhaps it’s not very useful to go into the detail of where to post it at this stage at least.

Now the third and last point is a question of timing for our work. The first objective was to get a first discussion here in Prague. This has been done so that’s a first small achievement.

The second step will be... or the second timeline will be Toronto, the ICANN meeting in Toronto. So it’s between now and Toronto that we have to do the redrafting, the iteration between the six co-authors and

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all of those of you who wish to contribute, to arrive at a more definitive text which could then be posted, commented, etc.

And I take your point, George, that in the week before the beginning of an ICANN meeting, that's bad timing. This time we did that in a bad way; it's bad timing. So we would aim at bringing it out – would you say three weeks before? Okay, let's say three weeks before the beginning date of Toronto. We'll see if we can make it but that's the objective, I suggest, so that there is ample time for reading; commenting; thinking about it.

And we will refine the communication strategy if it's worth that between now and Toronto. But I think it will depend very much on the content actually of our paper. So although I'm sure there are many other things to say, I'm afraid we have to move onto the second topic of this meeting which is the compliance and Evan will introduce that.

Evan Leibovitch:

Okay, this actually is a topic that dovetails with a number of other things that ALAC has been working on. It affects our work with WHOIS; it affects our work with the Registrant Rights Group; it's a little bit of an overview of a number of things. But there's been a recurring theme with the ALAC meetings with ICANN staff regarding to in some cases legal and in some cases contractual compliance and in fact trying to figure out where one leaves off and the other picks up.

One thing that seems to be clear is that there is an increasing disjoint between what ALAC thinks ICANN needs to be doing in terms of compliance and what's actually being done. We've had the extremely



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positive work of Garth Bruen who's been doing an awful lot of the digging and the detailed work of actually investigating some of the things that have either fallen through the cracks or have just met dead ends and so one of the things that this working group I think is trying to help work out is trying to help ALAC come up with an overall approach to try and deal with this.

George, I don't know if this is going to be of interest to you, but we had a very interesting meeting that had ICANN Legal in the room with us in our Policy Development Meeting yesterday where the question is – to was Samantha I think that actually said – there were some comments made about what, for instance, the RAA does in terms of regulatory function in terms of the effect of ICANN working with registrars.

And she was very quick to say, "Don't ever say ICANN is a regulatory body." And so if it's not performing regulatory functions, then what is it doing? And this maybe goes to the heart of well, is this really just industry self-regulation with a little bit of outsider input or is there actually a public interest performing a regulatory function? And if there is no regulatory function, then what's the point of having a Compliance Department?

And so there's a whole bunch of different issues that sort of swirl around in this that we're trying to come to grips with. We've seen a very big hole in the RAA, specifically – and it was mentioned yesterday in the meeting – in 378 cause 378 is the "or else" clause.

So you can have all these things that say, "This is what you need to do as part of being in the RAA," but what happens if you don't? It all boils

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down to 378 – what happens or else? And that is worded in such a way that says, “Do this or else don’t.”

Jean-Jacques Subrenat:

Evan, on that conclusion, I’m afraid I have to bring this meeting almost to a close because when the Chair of a committee takes the initiative [laughter] of bringing down the clock to tweak the time – and it is, according to my atomic-based watch exactly 9:00 – I just want to say a last word before concluding.

This Future Challenges Working Group – At-Large Future Challenges Working Group – has been operating for about a year. There have not been many subjects treated but this was a deliberate choice. We decided to concentrate on two things which we thought were meaningful.

On the one hand something very operational with direct consequences for the user community which we purport to represent – that is compliance because it was felt – thanks to the preparatory work of people like Garth Bruen – that it was far from compliant and we wanted to know why.

The second subject was a high level view of things. We didn’t want to drill into knowing whether this or that bylaw was ready for review or needed tweaking. We thought that it was time – on behalf of the user community – to have a global view of where the organization stands today; what challenges it faces within itself but also from outside because of technological or sociological changes which are intervening, whether we like it or not.

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So our paper which you have commented today and we are thankful for that, was our first attempt to face those challenges on behalf of the user community and your contribution is essential. Thank you very much. The meeting is closed – Wednesday, 27<sup>th</sup> of June; 9:02. Whatever the Chairman has done to our clock. Thank you very much.

[End of Transcript]