PRAGUE – Ethics and Conflicts of Interest
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BRUCE TONKIN: Okay. If you'd all please take your seats.

My name is Bruce Tonkin and I'm the chair of the ICANN Board Governance Committee. As many of you know, since the middle of last year, we have been progressively tightening up and improving our ethics and conflicts of interest processes, and we'll start here today with a review of the work that's been done so far, and John Jeffrey, the general counsel of ICANN, will present that.

And then we also have a presentation from an independent expert, Aron Cramer, who is speaking on behalf of a team of independent experts, being Aron Cramer, Jermyn Brooks, and Mervyn King.

So I'll start with John, just to give an overview of work that's been done so far.

JOHN JEFFREY: Hello, everyone. It's John Jeffrey, general counsel at ICANN, and I just want to go through quickly the work that we've done so far.

I see many of the same faces that came to our Costa Rica session on this, so many of you will have seen most of this part before, and we'll go through this very quickly so that we can get to our guest.

So ICANN has focused, first off, in looking at how we could adopt best practices.

So starting back at the Dakar meeting, and even before that, discussions were going on in the community about how we could begin to increase or enhance the conflicts of interest policy, to more clearly address the problems that exist in our community, and in particular with our board, and how we deal with conflicts.

So we needed more streamlined processes, better ways to get conflicts out in the open, and have effective processes and decision-makings happening at the board level and hopefully even influencing the community level.

Also, improving and enhancing our code of conduct and how we could meet a higher ethical standard.

So with an organization that's growing like ours, with the new gTLD program and other things coming up, we wanted to call to a higher ethical standard and set a gold standard for ethics for organizations like ours.

So with that in mind, three different reviews were set out. One was with our corporate law firm, Jones Day, who has been ICANN's corporate law firm since 1998. And we asked Jones Day to come in and look at the existing set of documents, to look at our conflicts of interest policy, the code of conduct, the corporate governance guidelines, and our expected standards of behavior, and propose adjustments to those to bring them up to state of art and best practice.

So that has happened and those documents have been posted. They've been commented on by the community and they've been adopted -- those changes have been adopted by the board. So those are now in place.

The second part or the second area of review was conducted by an outside law firm, a Washington, D.C.-based law firm named Cooley, and Cooley was asked to look at ICANN from the standpoint of similarly situated nonprofits. There we go. And I've even got the slide now.

And so to look at similarly situated nonprofits and to make enhanced recommendations for ICANN.

So one of the first things Cooley did for us was they noticed that some of our documents were there but they were difficult to find, so could we put them on pages that would allow people to locate them more readily.

So they conducted two levels of review and both of those reviews were posted. The last one was posted in May of 2012. All recommendations from those two reviews from Cooley have been implemented.

And the third review was to have more of an international and independent focus, and that was -- a group was formed, an international experts group, of which we have one of the members here today, and that group was asked to look at ICANN's ethics, to look at the conflicts, to look at our governance mechanisms, and to make recommendations, with a focus on ICANN's global function and the best practices of other international organizations such as ICANN.

And so we've been very successful in getting some of these things to already affect what we do. I've outlined those in some of the previous discussions, but an example of that is that the board has adopted strict rules for consideration of the new gTLD program, so they've formed actually a new committee of unconflicted members of the board to look at specific issues in new gTLDs.

We've also formed a subcommittee on conflicts and ethics which is part of the BGC and three of the independent directors within the Board Governance Committee -- Cherine Chalaby, Bill Graham, and Ray Plzak, I think all sitting here in the front row -- or at least two of you are -- meet and they meet on specific ethics and conflicts issues that exist on the board and help determine which members should be participating in the committee.

We've already gone over these other achievements.

I'll just skip through this part and we'll get to our updates.

So today, we have one of our panelists that have formed the ethics expert group, the international expert group.

The three panelists were Jermyn Brooks, Mervyn King, and Aron Cramer.

Jermyn Brooks is -- if you may recall from the Costa Rica meeting was on the telephone with us and spoke to us about the status of their review and what they intended to look at at that point. And I believe he answered a few of the questions from the community at that point.

He is the former world chair of Pricewaterhouse, and currently a board member of Transparency International.

We also had the honor of having Justice Mervyn King serve on this panel. He's a world-renowned expert in ethics and corporate governance. He's a former justice of the Supreme Court of South Africa.

And last, but not least, we are joined today by Aron Cramer, who was the third member of that group, and I'll let Aron introduce himself, but most -- as the slide says, he's the President and CEO of Business for Social Responsibility located in San Francisco and he's also a noted expert in this area.

So with that, I'll pass it to Aron.

ARON CRAMER: Thank you very much, John, and I think that introduction will suffice. I think I'll go right to the presentation. Aha, we'll get the slides loaded.

Ah, there we go.

So I will try to go through the presentation efficiently, to maximize the time that's available for questions and comments.

To start with a broad overview, the three of us who have been working for the past few months really did a few things.

One is we reviewed all of the information, existing documents and guidelines that ICANN has.

Secondly, we considered best practice from organizations like ICANN or similar to ICANN. ICANN has a number of unique characteristics that are quite relevant for this discussion.

We interviewed a number of directors as well, and that proved quite useful.

And then of course we conducted our own analysis.

To start with, one big headline is that ICANN is an organization that already has quite a lot of guidance on this topic. This is not an institution that is lacking in principles, and in fact, not an organization that is lacking in the implementation of these principles. And so we believe that actually what is present is sufficient in terms of written guidance. The question is implementation.

And as we stated to the board a couple of days ago, this is really more about performance, which is making sure that everyone has a common understanding of these principles, than conformance, which is compliance with more -- yet more rules.

Based on that, we concluded -- and this may be a difference from the time that Jermyn Brooks briefed the community in Costa Rica -- we determined that further development of more documents is actually not needed, and in fact, what -- what is -- what we believe will be most helpful will be to help to clarify and simplify ICANN's purpose, its value drivers, its stakeholders, and create out of that a simplified, synthesized board charter that can provide plain-language guidance in a way that everyone can understand about what is expected. "Everyone" meaning

board members, meaning all of the ICANN community and, indeed, the public.

One aspect of this is thinking about the organization's key stakeholders, and we think there would be some value in some further clarifying what ICANN's stakeholders are and what -- how those are prioritized.

In bylaws and in other documents produced by the institution, there are a number of statements of who the stakeholders of ICANN are. Many of them are formally represented within the structures, as you well know.

The question is, how do we ensure that there's a common understanding of that on the board and how are those views factored into board discussions at all times.

Of course we've also been asked to think about conflict avoidance after -- after directors leave the ICANN board. I think we're all aware of why that's an important issue, and we studied this, we looked at provisions that exist in the public sector and the private sector and in civil society organizations, similar public interest organizations similar to ICANN, and have made a recommendation about how to frame that topic which I'll get to in a few moments.

So now to get into really the meat of the presentation, we've made recommendations on six topics which you can see here: The role of the board, the creation of a board charter, the board selection process, board training, a graded sanctions system, and restrictions on directors' activities after they leave the board.

So those six topics -- and it's important to say that we believe that all of those six topics -- are important to be taken on; that picking and

choosing we don't think will be as effective as looking at them altogether.

So the role of the board. Of course the board has a legal fiduciary obligation to act in the best interests of ICANN. This is stated in the bylaws. The bylaws also contain a stated set of core values that directors individually, and the board collectively, are to apply in making their decisions.

We have also noted that there is a perception among some, inside and outside the institution, that sometimes directors are advancing the interests of a particular group, as opposed to the institution as a whole acting in the interests of the public, and we believe the best way to address this is by stating a principle that is present widely but is currently implicit within ICANN, which is the duty of loyalty and good faith. The duty of loyalty and good faith to represent the interests of the institution on behalf of the public in all decisions that are made on the part of the institution. That -- that this will greatly help clarify and reinforce the best possible definition of the role of the board. And this is also relevant to post-board service conflicts of interest which I'll come to in a couple of moments.

Board charter. And related to the last point and the point I made earlier, there is a plethora, there is a -- an embarrassment of riches in terms of principles guiding how the direct- -- how directors individually and the board collectively should act, and our view is that the best thing that could be done would be to simplify that.

Simplify that into a board charter that provides a very easily understood users guide to the board, and indeed, we've prepared a draft charter.

It's in very early stages but something that we think would really enable the board to have a much more commonly understood set of principles to guide their actions.

And we believe that in implementing this, that a facilitated process guiding the board through an activity that would help ensure that they do indeed -- all directors do indeed have a common understanding of this would be exceptionally valuable, and that that is something that should also involve ICANN management and involve, indeed, consultations with the community and certain stakeholders.

So again, less is more, in essence. That clarity, simplicity, synthesis, is going to be the best way to ensure that the outcomes are what everyone within ICANN and outside ICANN expects.

Board selection process.

And we -- in looking at conflict of interest, we concluded rather quickly that some attention to the question of board selection was also important because there were very different views, in part based on the different selection processes inside ICANN, about just what directors were supposed to be doing. And we believe that over time the board should come to include more directors who have a wealth of experience in governance matters. In governance matters.

Possibly from large international NGOs, possibly from large public companies, certainly from the range of kinds of institutions that are relevant to ICANN, but with governance expertise in particular.

Our view is that ICANN is evolving, it is ever more influential in the world, and that the governance and the board should indeed evolve

along with it, and that the nominating committee should include not only gender and geographic diversity, but also this question of governance experience in making its selections for the board.

Board training. And this is with reference to best practice. It's fairly straightforward. On a regular basis, we believe that board members should go through a training, likely on an annual basis, on best practice. The board should assess its own performance. This, as well, represents international best practice. And that -- that some strengthened induction processes could also benefit the board as well, and of course this would very much involve conflict of interest and confidentiality as important principles to be included here.

I think this is a straightforward concept.

Next is introduction of a graded board sanctions system.

There is sometimes a sense that you set black-and-white rules; you're either complying with the rules or not complying with the rules. And indeed there do always need to be clear lines.

At the same time, there are different kinds of issues that might arise and different kinds of responses that may well be appropriate, so we think the institution will be best served if a conflict of interest arises for the board and appropriate entities within the board and -- and indeed, an independent review, if it comes to that, because there is provision for that -- to consider the fullest possible range of sanctions. One of the things that we observed in our exploration is that there have been several times when directors have recused themselves from discussion. We think that's sometimes appropriate. We also think there are times

when the expertise a director has may be valuable to include in the discussion, and that director then may not vote.

So there are different ways -- a one-size-fits-all approach may actually not be in the best interests of the institution, and ultimately not in the best interests in ensuring that conflicts of interest are avoided.

Last -- sorry. I -- I guess I need a graded sanction for my not advancing the slides quickly enough.

This is -- here's the point you just heard me make.

Post-board restrictions after voting. And this of course has gotten a great deal of attention.

We actually think that the question of how to present -- how to prevent directors, after their service, from making inappropriate use of their knowledge of decisions that were made begins even before directors join the board. And this is where the duty of loyalty and good faith comes into play.

We think that if that is clearly stated, if every new director essentially states his or her understanding of that and acts consistent with that throughout, that this provides a much stronger and also longer-lasting protection against conflicts of interest after board service concludes.

The one-year cooling-off period that we see -- and in some places, this is becoming a now two-year period -- still raises the risk of a revolving door situation.

We think the duty of loyalty and good faith prevents inappropriate actions throughout, and in fact provides a means by which ICANN can

take action, if appropriate, in perpetuity, without a time limit. And for that reason, our recommendation is that the duty of good faith and loyalty be applied more explicitly and more formally and that this will actually ensure that directors, not only during their service but after their service, are acting in an appropriate manner.

So I will close there and I think now we get to the main purpose of this session, which is to elicit comments and questions from all of you.

BRUCE TONKIN: Thank you, Aron. So we invite any member of the audience that wishes to make a question or comment on Aron's presentation. There's a microphone in the middle.

ANDREA GLORIOSO: Thank you very much. This is Andrea Glorioso from --

Does the microphone work?

BRUCE TONKIN: Yeah. Just remember to speak slowly for the scribes.

ANDREA GLORIOSO: Yeah. Sorry. I'm sorry. Thank you very much. This is Andrea Glorioso from the European Commission and I speak on behalf of the European Commission here.

I would like to thank the presenter for the presentation on this. I'd also like to recognize that -- to express a recognition that ICANN has been making steps in the right direction with the discussion.

We are, however, looking forward to the actual decisions of the board, if any, following these reports, because we understand that these reports -- the report that we have just seen and other reports -- are an input to the decisions of the board.

So certainly we suspend any judgment we may have until we see the actual decisions of the board.

But I have one observation and one question on this specific presentation, and the observation is that I think it was hinted at during the presentation about the mission of ICANN.

It is our perception that sometimes ICANN as an organization is not very clear on what is its mission, what is its vision, what is its function in the global Internet ecosystem.

Is it a public policy organization, a global public policy organization, an organization working in the global public interest, or is it simply an organization regulating certain industries, or something in between.

And I must say that the self-recognition by ICANN of what it is and what its mission is, which should be reflected in its internal processes, also has an impact on how other public authorities will deal with ICANN. We deal with organizations in the global public interest in a different way than how we deal with -- with trade industry bodies, to be absolutely clear.

And the question is concerning the cooling-off period or revolving door prevention, whatever you want to call it. It is known that the commission has gone public on the record recommending, in effect, an enforceable -- whether it's 12 months, 24 months, we are open to discussion -- prohibition for members of the board and senior -- (audio problem) -- maybe was not in the scope of your work but we think it should be in the scope of these reflections.

What I don't understand from your recommendation is this duty of acting in good faith and in the interests of the corporation, how is it actually going to be enforced?

And my basic question is: Would this have prevented episodes that happened in the past? What are your suggestions? Would it have prevented episodes that happened in the past?

Being in public administration, dealing with issues which are not always dissimilar from what we're dealing with here, we have the experience that without proper enforcement mechanisms, good rules on paper remain good rules on paper and then they don't have a practical implication.

Thank you very much.

ARON CRAMER: The question about the purpose of ICANN, I think I'll defer to ICANN representatives to speak to that.

In terms of the enforcement, I think you raise a very important point. We believe that the duty of loyalty and good faith is indeed enforceable

and that if ICANN believes that it's being violated, that an injunction can be brought in, to prevent actions that would be inconsistent with that, and, you know, I am trained as a lawyer. I'm not going to predict the outcome of any particular case. But we do believe that there's a basis, and we've looked at this very specific question.

We've also looked at cooling-off periods and there also is some question, given ICANN's unique status, whether cooling-off periods -- explicit cooling-off periods can be applied in all parts of the world.

So the legal questions probably deserve some further exploration, but we do believe that this would provide the basis for taking action if ICANN believes that that duty is being violated.

BRUCE TONKIN: And also, if I can just comment, I guess, on timing as to when the board will take action.

This report was published a few weeks before this meeting, and so this is part of our process of receiving public comment on the report. We also have a public comment forum through the usual ICANN Web site process, so that public comment process concludes on the 28th of July, and you would expect the board to take action, you know, shortly thereafter.

JOHN JEFFREY: And to be exact, the comment period opened on the 5th of June, closes on the 6th of July, and then reopens in the reply phase the 7th of July and stays open until the 28th of July.

ARON CRAMER: And you also mentioned senior management. I should just say we were not explicitly asked to look at this. We did find that there are provisions in place, and clearly you don't want a board acting in a way that is inconsistent in spirit and principle, and so -- and we've observed the institution wishing to ensure that both the board and senior management are aiming to achieve the same high ethical standards.

BRUCE TONKIN: Next question. Alejandro.

ALEJANDRO PISANTY: My name is Alejandro Pisanty. I'm a former board member and member of the community.

I have two comments here.

And first, I apologize for arriving late to the session but I have read the report and with the best care possible. Would your report -- I felt an element missing in the report, which is the still persisting dual nature of the ICANN board as a management board and as a policy board.

So I don't know if you would elaborate on whether you really, you know, took these two aspects into account and how they impact the result. I think it's a very significant thing.

And the other one, I will associate myself with Andrea Glorioso's, the previous speaker's, comments and comment on yours about the measures that we can have with you -- maybe you would propose for

enforcement of the cooling-off periods and similar avoidance of conflicts, ex post, for people leaving the board.

I love the word "injunction," not being a lawyer. It's one of the things I don't want to happen to me or anyone I love, but I also think it's -- when I hear it from you, I find it naive unless further explained.

Because known cases where there has been comment about potential of conflict involve numerous jurisdictions, all of them outside the U.S., and, you know, quickly thinking further on your thoughts, there's no way or it looks like very remote that ICANN could go to some southern Pacific island and start an injunction against someone who works for a company in a different continent, in a third continent, doing business globally.

Then it looks like the next step of remedy that ICANN could have was suspending whatever accreditation, certification, or business they do with this company. And they were told -- I am asking you to elaborate on this to make sure that the measures will have the teeth.

ARON CRAMER: Well, I -- you know, I used term "injunction." I think we can speak more generically about legal action to enforce the principle, whether it's a cooling off period or the duty of good faith and loyalty. And I think we all -- everyone in this room probably realizes that there may be some circumstances where ICANN might want to resort to legal action. And, frankly, I'm not sure, as a practical matter, choosing one versus the other makes it any more easy or difficult regarding the infinite number

of jurisdictions where this could arise. So I -- I'm not sure I see a practical difference in terms of the mechanism.

I think we would certainly hope -- and, indeed, this is one of the reasons why the duty of good faith and loyalty is being advocated that actually preventing these problems is going to be far more efficient and probably more effective than looking to take action afterwards.

Many people know the example of the Sarbanes Oxley law in the United States which responded to a failure of corporate governance. And there's a sense that it created a vast number of rules that create a compliance mindset. We -- again, we don't want a compliance mindset. We want a performance mindset, not conformance but performance. And that's influencing our choices.

In terms of the dual nature of the board, there are aspects of that (audio dropped.)

WERNER STAUB: We have, indeed, lots of rules. And we care about the responsibility associated with actions in terms of whether it -- that person would have legal risks there. But we do not seem to look at the responsibility with respect to the cause. I'm actually worried about sentences like loyalty to the corporation. It is about the underlying public interest that the loyalty has to be. And, if we have a board that is mainly found to be conflicted of interest for probably just being competent in a field -- that is probably main conflict of interest in a couple of cases. And then we have these people not deciding and watching, standing by as the ICANN board made a couple of fatally flawed decisions, which, in the case of

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the one we have been talking about recently, this largely, was to me and to many others, the ultimate act of irresponsibility. And we stand by. If people just stand by while something happens that should not be allowed to happen, would they have to be sued for -- like under Good Samaritan law, just let it happen what should not have happened?

At the same time we have people in various committees who have, here and there, because of the inaction of others, some financial gain. Specifically, you know, in digital archery we have people who could be referred to as digital mercenaries, you know, selling services. Some of whom have posts such as the head of the NomCom and would actually go on record when everybody knows that ICANN is in the wrong path saying, oh, ICANN is doing the right thing. Isn't that a conflict of interest where you just have to be a bit more careful about it?

On the other hand, look at competence and doing the right thing rather than just saying, okay, I'm going to stand by and not say anything?

ARON CRAMER: Thank you very much. The point you made at the beginning of your comments -- I'd like to respond to that. Because, if I hadn't made it clear previously, I want to be on the record in saying that we think that clarifying the purpose of the board and clarifying and reinforcing the notion that all directors should act in the interests of ICANN are to the end of serving the Internet-using public. And so this is not -- this is not just about a profit-making institution that has only a unitary objective.

ICANN has multiple objectives, including ensuring an open Internet and that board service -- the board has a duty to support and strengthen

and steward the institution in its pursuit of an open Internet. So there is that broader public purpose that is a part of this and ought to be reinforced as part of the board's clarified statement of purpose.

JOHN JEFFREY: Yeah. I'd just like to add that I think it's very important that ICANN is formed as a public benefit nonprofit. And at the core of its values is the global public interest. And I think we're better invoking that in our recent communications both at the board level, the executive level, and the community. And I think that that is at the heart. When the duties of loyalty that are applied to an organization apply, they apply to how those values in that organization are set, not just to be loyal to the entity but to be loyal to its values. And, if the values are the global public interest, that is a match. It's not a perfect match, and I understand the question. But I think that's a good part of the community dialogue on this.

BRUCE TONKIN: If I could also reinforce that. A lot of these things are spread in multiple documents. Isn't that what the Articles of Incorporation is expressing a bit that John is talking about. Then the bylaws have a mission, and they also incorporate core values. And we have a separate document that's an ethics policy that describes that and another document that's talking about code of conduct. So we've got a lot of documents.

And part of what Aron's group is looking at is saying we need to simplify this and get them into one place in a crisp statement that everyone can

understand rather than having to really understand the whole framework of documents.

Chris?

CHRIS DISSPAIN: Thank you, Bruce. Chris Disspain. I'm going to talk as an individual, although it should be stated that I'm a member of the ICANN board.

And I want to try to do a level set here. So, first of all, what we're talking about here is ethics and conflict of interest. And discussions about mission and purpose are fine and incredibly important. And the mission and the purpose does, to some extent, affect the ethics and conflict of interest. But what we're talking about at the moment is ethics and conflict of interest. And it's a different discussion to talk about mission and purpose, very important one.

Secondly, I want to make it very clear that my understanding of the situation is that all the reports you have got have basically said what you currently have is good, is very good. You might need to make a few little fiddly changes around the edges and Aron's point about getting everything in one place and et cetera, et cetera, et cetera. The fundamental piece of advice we have received is that our conflicts of interest and ethics policy is up to standard, in fact, better than you would expect.

So, for those who think there might be some earth-shattering decisions coming, I personally at this stage can't see that there are.

Thirdly, anything we do do, anything we change, should be done for the greater good, not to make sure that something that previously happened cannot happen again. That is not a reason for making changes and improving things. It's an example of things that happened, but it is not a driving force.

And, finally, sometimes real examples are useful. I am an Australian citizen. I work in Australia. And I run the dot AU country code. I am a member of the ICANN board, and I'm currently -- and I'm non-conflicted in respect to gTLDs. I work in the industry. Until somebody can show me a sensible way in which, when I leave I can, other than met with very sensible suggestions about loyalty, et cetera, that I am going to be restricted in some way from either continuing my existing employment or changing my employment, it's -- any solution you come up with has to be workable. And right now I haven't heard a single workable solution. Even assuming it's a problem. Thank you.

BRUCE TONKIN: Thanks, Bruce. Kristina.

KRISTINA ROSETTE: I let Chris go first, because I had a lot of questions. So I might cut this in half and go behind Adam. Kristina Rosette, speaking in my personal capacity. I guess, the first question I have is going to the conclusion that what is currently in place is more than sufficient for the purpose.

By my understanding two of those key documents were really only adopted six weeks ago. So I'm curious about the extent to which their adoption and/or their implementation came into play with regard to

that recommendation. Do you want to answer, or should I go through all my questions?

ARON CRAMER: That was a very discrete question. So, if you don't mind, I will answer it.

That was not the primary basis for our review. There were pre-existing documents. I want to be clear in what I'm saying. There are sufficient guidelines on paper. We don't think there is a common frame of reference for understanding what all of those documents mean. So we don't think the solution is adding more. I think it would overstate the case to say what we have now is entire -- what ICANN has now is entirely sufficient. It needs to be clarified and made more effective. But the solution is not adding more. It's making better use of what's already there.

KRISTINA ROSETTE: The next question is that, in one of the slides, there's a reference to the -- I don't have the board -- oh, it's resolution 2011.12.08.19, which relates to a board member's inability to act on -- for 12 months anything relating to new gTLD decision.

And I guess the question that I have is that later on in the presentation it suggests that that 12-month prohibition is actually broader than what it reads on its face with regard to new gTLDs. So I'm just kind of curious as to whether or not you're advocating is that that resolution should broadened to include any issue on which a director votes in the 12 months or not.

ARON CRAMER: Again, very good and clear questioning.

Yes, we -- the duty of good faith and loyalty is intended to cover all actions that a director takes, not just anything related to new gTLD.

KRISTINA ROSETTE: Okay. Who do you anticipate or who would you recommend is going to be responsible for enforcing the -- I guess, graduated sanctions schema that you've proposed?

ARON CRAMER: Well, the best solution is internal, that the board should take it upon themselves -- that every director should take it upon himself or herself to act consistent in these things. That is always best. You know, in a community you wanted smallest police force and people who treat each other well. There will inevitably be debates. And, internally, many of them could be resolved internally. And, as there already is now, there could then also be a mechanism for an independent review.

So, you know, this is -- this is fairly straightforward for an organization like this where you have self-policing, applying the principles that the board agrees to, number one. Number two, an internal mechanism to try to resolve conflicts. And, if that doesn't work, you may designate some efficient and clearly understood means of resolving disputes.

KRISTINA ROSETTE: Okay. Thanks. Following up on that -- and this is directed to Bruce and John -- has there been any discussion as to where the responsibility of enforcement for that would lie?

BRUCE TONKIN: Yeah. I think currently the board as a whole can enforce voting a member of the board off the board. So the board already has that responsibility. If a board member is not performing correctly, the board as a whole would vote to take that action.

The exact mechanisms, most likely, that within the board governance committee we have a subcommittee on ethics. So, if a major transgression was reported, that subcommittee would most likely look into that case and that subcommittee would make a recommendation to the board and the board would then vote on that recommendation. So, as I said, currently, that applies to removing someone completely from the board. The ethics committee does also recommend with respect to whether a director should be on a particular committee or not. So we use that subcommittee to review the cases of several directors. And, as a result of that -- and you'll see some minutes from a meeting published soon that actually goes through that process that was used in a recent meeting. So, again, that committee recommended to the board saying, you know, this director, we feel, has some conflicts. And, therefore, we don't recommend them being on a particular committee. So that's kind of how it's working operationally.

The additional mechanisms that the review team have recommended, again, they're open for public comment. When the board takes into

account that public comment, it would be the board that would be responsible for implementing whatever recommendation is accepted.

JOHN JEFFREY: And I suppose that doesn't answer your whole question, though. If you're talking about post board service or other issues, particularly where it would extend into something where we might have a legal hook, it might become the responsibility of the organization to make sure that we're enforcing our confidentiality policies or other policies as well as whatever additional responsibilities could be taken on by way of these new policies.

KRISTINA ROSETTE: All right. And then the last question is that, you know, perhaps I'm misunderstanding and attributing too much. But I understood both the presentation in terms of the slides and your verbal presentation to suggest an endorsement of the current view that, while it is inappropriate for a conflicted board member to vote on an issue, that it is perfectly appropriate for that conflicted board member to discuss that very issue on which they can't vote but still giving them the opportunity to sway the outcome. And I'm curious as to did I understand that correctly and, if so, why?

ARON CRAMER: Our point of view is that there is not a one size fits all answer to that question, that there are going to be -- there are going to be times when it may be appropriate for someone with either a conflict or direct

knowledge of a topic to participate in discussions. And there will be times when it won't.

What we've observed is that there is already robust discussion of things like this with many cases of directors recusing themselves. We'd like to make sure that all potential conflicts are raised, that they're discussed and -- but to respond directly to your question, it's not correct that we're saying that in all cases a director who may have a conflict should participate in discussion. There may well be times when that person should not be part of the discussion, should not be part of the process in any way whatsoever. But it's going to depend on each particular case.

NANCY LUPIANO: John, I'm terribly sorry to interrupt, but we have attendees arriving for the next program, the Internet governance landscape. And we have a very tight program today.

JOHN JEFFREY: We were started about 10 minutes late, so we were hoping to at least go through the rest of our queue.

BRUCE TONKIN: What I suggest we do.

For the rest of the queue and it's not -- is make a brief statement. And Aron is available to respond to that statement afterwards. So, if you'd each like to make a very brief statement and then after the session

PRAGUE

closes, you're welcome to -- Aron will be happy to respond in the best way. Just brief statements.

ADAM PEAKE: Yeah, sure. Good afternoon. Adam Peake speaking in my personal capacity but with experience as the 2011 Nominating Committee chair. And it's about the slide that mentions the Nominating Committee. It says that experiences in organization of similar size, scope, et cetera, should be considered. And, actually, that is part of the criteria that the Nominating Committee uses as, for example, we have somebody with Cherine's experience, Judith and other. So it is actually a question.

It is something that is considered and is also part of the recommendations from the transparency and accountability review team. So it's also reinforcing a current process. And it also suggests using a recruiting firm. We tried that during my chairmanship in 2011, and it didn't work particularly well. It's something to try again and make work better. But it's something that has been tried, and it's something I can describe later.

CHRIS DISSPAIN: Thank you, Adam.

Sebastian, please.

SEBASTIEN BACHOLLET: Hello. I'm Sebastien Bachollet. I'm a member of the ICANN board. And my colleagues consider me as a person having a conflict of interest. I'm not sure whether you're being spoken to. I hope we can speak among

ourselves, and to each other. Because, as a community, I think we're here to exchange ideas because we have inputs and because what's at stake here is that, following what has happened and that's what will allow us to have this discussion with the input from the community.

I think -- yes, I'm speaking to you. It's a horrible effect we're having here. But the main problem I'm having here with the whole of this situation is that we're only facing the Anglo-Saxon legality. For everything. Everyone intervening on this subject is Anglo-Saxon. Everyone writing and drafting these rules comes from the Anglo-Saxon world.

I understand we're a not-for-profit organization from California. So it's not because we're seated in California that the whole of our actions and to exist and to act must be Anglo-Saxon. Because, in fact, the way in which conflicts of interest are considered from the French point of view, because I live in France, I do not understand these processes. This is not in the French habit to deal with conflicts of interest. This is not how we deal with conflicts of interest.

So you impose on me a number of rules which I have to accept because I do not have the means to ask to there to be an external review. I have to accept them, but I do not think they are fair in an international view of this organization which I wish with my whole heart. Thank you.

ROB HALL: My name is Rob Hall. I am the chair elect of the Nominating Committee. So I will chair next year's nominating committee.

Aron, I want to thank you for your recommendations and put on the record to you and the community that I will be implementing every one of them. Certainly, it will start for me with the call of people to our Nominating Committee. I'll see a little different this year that I'll be calling with the people with the same experience we're trying to hire to better facilitate outreach and decision making on are these the right people. So I think it starts with getting the right people on the nominating committee that have some of those similar skill sets and board governance to evaluate those that we're trying to put on the board.

And, as to recruiting firms, I know under Adam -- I had the privilege of serving on that Nominating Committee -- we used one as a test. I believe it should go wider into more recruiting firms. So I assure you that the Nominating Committee next year will indeed engage as many possible different avenues to recruiting the type of governance people we need. So I want to thank you for your efforts and your work and assure you and the community that we will implement every single recommendation you made that relates to the Nominating Committee.

BRUCE TONKIN: Final speaker, Paul.

PAUL FOODY: Thank you. The ethic, conflicts of interest has got to have some sort of teeth to it. You're looking at a situation where in 2009, September 2009, Paul Stahura appeared before the -- what was it? -- the U.S. House judiciary subcommittee on competition regarding new gTLDs

speaking in favor of it. And the same gentleman now is heading up CEO of the company that has applied for over 300 of the 1400 applied for strings. What is ICANN's view in terms of really demonstrating that it means what it's saying? It's walking the walk rather than just talking the talk when it comes to conflicts of interest. Thank you.

BRUCE TONKIN: Thank you, Paul. And thank you all for your contributions. As I say, please feel free to have any further conversations you wish with Aron in the break here. And at that point we'll close the session. Thank you.

[Applause]

Ladies and gentlemen, we're about to start the Internet governance session. If I could ask the people who are on the panel to come up, please, that will be fantastic. Thank you.