

**ALAC Policy Issues Discussion Part 2 Transcription\_20091101\_EN\_261353**

Cheryl Langdon-Orr: Okay. Ladies and gentlemen. (Audio gap) I was rather hoping we would have had the necessary numbers and that the Vice Chair would have been able to start the meeting. However, running the meeting is Alan. Mic's yours.

Alan Greenburg: Thank you. If you all remember correctly, a position description was put together and was approved about a week ago. And the next step is now that we have some description, although I'm sure one that will need revision on a regular basis, the next step is what do we do with this. And how do we measure whether people are doing a good job? And what do we do if we deem them not to be?

As a bit of background, the At-Large in its current form is relatively new. We've now gone through a couple of years of having RALOs. Along the process, we are far more visible within ICANN than we were before. And that's both a good and a bad thing. The bad part is people are watching what we're doing.

In general, those selecting the ALAC members, both the nominating committees and the various RALOs have not had a really good understanding of what is expected from ALAC members and therefore it's not necessarily surprising if some ALAC members have come onto the committee and not known what was expected of them. And in some cases, people are sufficiently self-starters that they have taken responsibilities upon themselves. In other case, it has not been nearly as successful.

It is -- I would like to think that what we have just described is a mismatch of skills and interests with requirements. I can't think of a single case over the last number of years where anyone who has been put on the ALAC is not a successful person in their own environment, typically very intelligent. But that doesn't necessarily mean you do a good job in any particular endeavor. And we certainly had a number of cases like that.

So certainly having a job description will help. We will learn from it no doubt. We're going to have to take that job description and add some words to it, some descriptions to it to make sure that its relatively short words are understandable to both the nominating committee and to the groups that have to name people onto the ALAC from the RALOs. But it's a good start. It's expected that for whatever reason we will still have situations where things are not working as well as they should be. And we need to be able to address them in some way.

I think the key to addressing them is not to look at it as an issue of punishment, but to figure out how we can fix the problems. Now in some cases, the only way to fix it is with a new person, but I think we want to approach it as how do we make people productive as opposed to how do we kick them out and get the next one in. If we simply take that approach, we're probably not going to be very successful.

As we go along, and it's not a surprise, we knew it to begin with, what we also will need is job descriptions for our RALO chairs and secretariats. These are by definition going to be flexible in that the different RALOs tend to self organize in different ways. But nevertheless there are certain tasks that have to be done. And I think we want to, in a relatively short period of time, try to come up -- start drafting these documents and refining them.

Some of the issues that came up, and this was all discussed -- the basic issues were discussed in Sydney. And we had general agreement on many of them. There were a number of comments that were made that have been factored in to what I distributed a week or two ago.

The first one is that metrics are important, but not conclusive. The fact that you don't attend any meetings or ever post anything on a mailing list and never vote probably indicates you're not pulling your weight. On the other hand, lots of posts and attending every meeting does not mean you're contributing a lot. We all know of cases in parts of our life where there are people who make dozens of posts a day to various lists. And that doesn't mean they're helping the situation. At some point, large numbers of interactions almost mean you're slowing the process down.

So high counts, high numbers are not necessarily a good thing. Low numbers may be an indication -- they're certainly an indication that one has to look at things. But the bottom line is we can't rely on metrics, on percentages to tell us if there's a problem or not. It's going to be a very subjective issue and I don't think we can get around that.

I don't think we -- even if it were possible to come up with metrics which would accurately evaluate people, I don't think we want to take the time or energy to do it. There's got to be better things to do in life.

As mentioned, I think we want to focus on correcting problems, not on punishment. And we want actions to be viewed -- generally viewed as fair, effective, and sensitive to cultural and personal issues. We're in an interesting environment where many of us interact with our peers in other environments other than ICANN. So whether it be IGF or the Internet society, or a number of other environments. And the fact that you haven't done a really good job here doesn't necessarily mean you're doing a rotten job somewhere else. And we want to do things in such a way that it doesn't really harm relationships and we're as sensitive as we can be to the issues.

A couple of definitions and I make no claim these are good definitions. But when I was writing the document I needed to have some words. And I admit I would like better ones, but these are the ones I'm using in this document. And they're not -- I'm not going to defend them, it's just the ones I came up with.

The first one is -- I use the term complaint -- essentially is a description of the problem, whatever the problem is. The person who we're talking about who is not performing is the subject of the complaint or the subject. And I've come up with the term focal point for the person or people who will be the main players in the interaction of trying to fix the problem or remediate the problem.

If anyone has questions or comments, these were all described in the paper I sent out, but if you have comments then please just yell or scream and interrupt.

The process, which is quite different actually from what was described -- what I proposed in Sydney, largely because of discussions we had in Sydney and a very careful re-read of the paper that Carlos had put together indicated that I think what I was proposing was not quite practical and it had to be re-thought. And I hope you'll find that what I've come up with this time is a little bit closer to what people feel comfortable with.

The process starts with someone realizing that we seem to have a problem. Could be everyone realizing we have a problem or one particular person. The identification of the focal point, that is the person who will take prime responsibility for starting to address the issue, and I've suggested

that it should be the ALAC Chair. If the problem is with someone who is a RALO appointed member of the ALAC, I would suggest that it should be done in conjunction with the RALO chair of the particular RALO.

In the detailed paper, I've provided some suggestions for what do we do if the person we're complaining about is the ALAC Chair? Or what do we do if the person were complaining about is the Chair of the RALO? So I've provided a number of alternatives for who acts as the focal point in those cases.

I've also suggested that the position -- yes. Carlton.

(Off mic)

Sorry, you were talking to the waiter, not to me. Okay.

I've also suggested that the position of focal point can be delegated specifically if the person who is designated as the focal point is either unavailable for some reason, or feels they have a personal or other conflict of interest where they're not in a position to take appropriate action then it can be delegated to someone else. It really doesn't matter who this person is, but it is someone who has to take the job seriously.

The first step is for that person who is the focal point to consider is the complaint frivolous? Is there a real problem? I've added a new step, which was not in the paper and that's the one in square brackets that I think the next step probably is for the focal point to do a little bit of private investigation discussion with others and see just how widespread the feeling is. Or what the nature of the problem is.

The next major step is essentially a discussion in one form or another between the focal point, and focal point as I mentioned can -- may be more than one person and the subject. So we seem to have a problem here. Can we fix it?

I have a question that came up that several people raised in reaction to the document I sent out a week or so ago of what do we do if we end up thinking we're coming to a solution in these discussions that is we decide well, what we're going to do with such and such, and it just doesn't work? Do we start the process all over again? Do we go back into it at this point and say we'll try it three times and then give up. I'm not sure what the answer is, but clearly we need to understand what that is. Or it may be something that on the fly we decide which way we go.

One of the possible alternatives is the person who is approached; the subject of the complaint says there is no problem. I'm a marvelous performer, there's nothing to negotiate. I'm doing a great job.

(Off mic)

And I would suggest at that point if the focal point believes that there is a problem after investigation and presumably discussion with others that the person's resignation be asked for. Remembering that if this is a RALO appointed person, the RALO Chair is involved in this discussion.

If the resignation is not involved -- is not obtained, we request that the RALO recall the person, which they may or may not do. If there's no recall, or if the person's a non-com and there's no one to recall them, then the last course is to request -- is to take a decision that the person be removed from the ALAC. I can't imagine us ever getting to this stage, but nevertheless, it's one I think we have to outline. And I'm suggesting that at that point we have a meeting of the ALAC, a special meeting, closed, with the exception of people who must be involved. That the person has an opportunity to discuss the issue with the ALAC. I don't really like using the word defend themselves, but that's effectively what it comes down to. And by secret vote, the ALAC can

remove that person and I'm suggesting a two-thirds vote, excluding -- with the person who is the subject not voting.

That's pretty much in line with the rules that are in the bylaws for removal of Board members. They in fact have a 75% requirement, excluding the person who's voting. And two-thirds seemed like the right number, but it was purely a subjective issue in this case.

The latter part of the process, of course, is not something we can unilaterally do ourselves. It may require a bylaw change; it may simply require that the SSAC or the Board say yes, it's within your power. We're going to have to go to legal counsel and find out what, if anything, we need to do in such case. But I don't think there's a lot of point in doing it unless we decide we want to.

Now if we have approval in principle for this process, then I think we need to spend a couple of weeks or a few weeks and look at comments, try to integrate them in if there's a general feeling that changes are necessary. And I'm sure there are some. Approval of it, and of course as it says, the last point is subject to ICANN legal counsel telling us what we need to do, if anything, to allow us to remove people from the ALAC.

And in parallel with that, I'd like to see us start on pulling together a position description for Chair and Secretariat positions and there may well be other things that we need descriptions of.

I've talked enough. Can we have some comments about how close is this to something you think will address the problem? And if so, what changes do we need to make it perfect, as it were? I see Carlos, followed by Patrick.

Carlos: Alan, (spoken in Spanish).

Cheryl Langdon-Orr: I will remind you that this is audio streamed. It's permanently archived and in fact when we do make a -- as I'm happy to continue, I think we should be collegiate. We could be -- certainly need to be friendly. But we also need to, for the record, say when a joke is a joke. So it is important to make those notes. Go ahead, Carlos.

Carlos: Okay, thank you. (Spoken in Spanish).

Alan Greenburg: Okay. I don't want to try to make this a debate between me as the original author and other people. I do want to clarify two things with respect to what Carlos was saying. The reference to one month is not one month to remediate to fix the problem. There was no timeframe set in the document at all for that. The reference to one month is if there is a request for resignation, that the person has one month to decide to resign or not, at which point we go on to another step. The remediation process had no time limit at all and I said it may take several iterations, and I didn't specify if this is three times for once a month or goes over a period of six months. It depends on what the particular issue is. That's the first one.

The second one is Carlos suggested that if it's a RALO nominated person, that the RALO be involved, and that was in fact covered at the very beginning when I said if it is a RALO nominated member of the ALAC, that the RALO Chair should be and must be involved -- or should be involved in the process. In both those cases, I think there's a misunderstanding.

The other issues are -- we can comment on in due time. Patrick?

Patrick: I'll try to be short. One thing I don't find in the don't find in the document that I think we need to define that at a later stage is what process can we suggest for the person to appeal to the decision -- to the (inaudible) decision of the group? Because in a sense, the group is at the same time a judge and party. And I don't think this is really fair to have -- to formulate a judgment.

And I can understand that there could be peer pressure to tell someone, look we think you're not doing a good job and I think it would be better for everyone if you resigned. That's one stage. But this is just, I would say, friendly advice rather than expelling someone.

But at the later stage, if the person disagrees with the rest of the group on the fact that they should be removed, it should be offered a way to appeal to the decision. And in that case, I think that we should involve people outside the ALAC to be able to guarantee that the process is fair.

Alan Greenburg: Sorry, I can't (inaudible). Carlton.

Carlton: Thank you, Chair. I am -- the thing is maybe there's a level of discomfort I have with this. And there is about three or four things that bother me. Patrick kind of said the first one and that is the ALAC in this case, if you think of it as a legal -- in a legalistic way is a court of original jurisdiction as well as an appeal court. And that is not on -- you can't say that you have original jurisdiction, you're going to try it and any appeal has to come to you. Again, that's not on. It's just contrary to every sense of what is fair that you could find.

There's also the issue of the measurement. And Carlos kind of picked up on it. If you are going to use objective -- an objective basis to decide non-performance, it has to mean the same thing for non-performance as well as for great performance. So if you're using metrics to decide that low performance means somebody didn't respond to some emails or didn't -- you have to use the same metrics to say there's a great performance. And so you have the issue now of how do you decide whether a fellow who's doing some trolling on the email lists is not a great performer. And the guy who is doing nothing much is a low performance. And you're using interaction as a basis to determine that. You can't shift it. You can't shift the meaning of it between low and high performance. That's just not on.

So now you're left with the subjective judgment. And here's the thing about a subjective judgment that gives me great discomfort. If the ALAC in its wisdom determines that someone is a low performer, and let us suppose that that person is also RALO appointed, what if the RALO who appoints the person disagrees with the judgment of the ALAC (inaudible). ALAC sitting in judgment (inaudible), the whole group, except for that one RALO person. Let us suppose that that person, back to the RALO say -- and the RALO says, no, we think he's doing perfectly well. And therefore as far as we are concerned, he's there because we sent him.

How will the ALAC find a way to overcome that judgment? Regardless of bringing in somebody from the outside, because that's -- the RALO's an independent entity in this context. So they have an independent judgment that goes directly against the judgment of the ALAC. I am suggesting that bringing somebody from the outside will not change that fact. They are the ones who sent the person; they are the ones who decide. That is a problem. That would make me very uncomfortable to substitute, no matter how the majority judgment is, but substitute the judgment of the ALAC for the RALO. That's going to be a problem. Because what you're saying then is that ALAC has the right to determine RALO structures, RALO procedures, and so on.

The other problem that I find is there are instances where you must give -- where the accused is not given a chance to defend themselves. And I think it's fundamental that if the person is (inaudible), he has every right to defend himself and face his accusers. That means you have to give particular the can be (inaudible) subject of I say/you say. This is to be particular. And that person has the right; it is an unfettered and an inalienable right to face your accuser. That has to be preserved. And there's no second judgment about it. That must be preserved.

So we -- I really feel again the deep waters here. Makes me very uncomfortable. And then the overarching thing is this. Why does it sound so much like compensated work? Why do we get into this (inaudible) making it sound like compensated work? That bothers me. It really does bother me. Let me give you a specific. I work for fees. I charge \$200 an hour for my knowledge services. Every time I come here, there's an opportunity caught that I'm paid. And I'm here because I have a

real interest in this business and seeing the Internet governance, the agenda, move forward. And I will do my utmost to provide support to everyone else in this business to do something that we collectively believe is important. But I just don't think, because I want to think and pay up for 50 hours and re-document so that I am familiar with every tittle and dot in the document. That makes me more valuable than the other person who will wait for you to come here and will simply say, yes, I agree with that and contribute because they have a vote.

I really have a problem with that. We seem to be forgetting the fundamental things here. The fundamental thing is this is a voluntary organization of people who come together in common interest. And we cannot -- it seems to me that what we are asking for is everybody to be at the same level or the same place. And I don't think that it's possible. I don't even think it is desirable. Thank you.

Alan Greenburg: A couple of points before we have two people in the queue at least, maybe three. We're expecting Margie to be here any minute now. She is -- I'm sorry. I -- hello, Margie. I didn't see you come in. So we will take a break to let Margie give her talk and go on to that section, then resume on this. I ask people, when we do come back, to try to be a little bit brief. The buses leave in 45 minutes and it will be nice if we at least gave everyone a change to say something before we finished. Margie?

Margie Milam: Hello, everybody. I'm Margie Milam. I'm with ICANN policy staff. I think I saw you -- most of you a few days ago. You guys have asked me to talk about the vertical separation issue. And I'll give you a brief overview of what's going on in the GNSO and what the debate is all about. And then I think we can open it up for questions to see what your thoughts are.

At the moment, as you know, we're trying to develop the implementation model for the new gTLDs. And as part of that analysis, there's a draft document that is the registry, the proposed registry agreement. So the debate is regarding what kinds of rules go into this registry agreement that deal specifically with whether a registry can own a registrar. One of them's an ownership issue. The second -- and vice versa, whether a registry can own a registrar or a registrar can own a registry. Whether they could have affiliates, so it's not total ownership, but maybe partial ownership.

And the other issue that they're debating at the moment is whether -- if there's no ownership restrictions, whether there should be contractual provisions that apply when a registry is owned by a registrar, or vice versa. And so that's what the debate is all about right now.

It started early -- maybe a year go when the -- when ICANN commissioned a report. It's called the KRA (ph) Report. It was a report that looked at the registry/registrar market to come up with recommendations on whether the policy should change on registry and registrar separation. And the KRA Report made some recommendations that the community is trying to analyze right now.

And one of the recommendations that the KRA Report made was that there might be -- this might be the appropriate opportunity to list some of the restrictions on cross ownership. And one of the recommendations that the KRA report made was that perhaps this restriction of ownership should not apply to certain models, such as a single entity TLD where one entity is the registry and the registrar. And so that -- so that's one of the exceptions. And there's also consideration of other exceptions, but the community is debating right now whether these restrictions are appropriate or not.

So what's happening right now is ICANN staff is hearing from the community on whether it is appropriate to lift these restrictions. Whether we can identify what's in the public interest because there's very heated debate on both sides of this issue. And I don't know if any of you attended the registry/registrar meeting yesterday, but -- separation -- but you could see that they're very polarized at the moment with respect to these issues.

And really, what Peter Dengate Thrush today has been indicating is that he really wants to understand how registrants are affected by this. Because on both sides of the argument, particularly between registries and registrars, they may have commercial interests for pursuing their position. And what ICANN is trying to understand is what is the registrants' view? What's best for the registrants? Does it help them to have these restrictions lifted? Or does it hurt them? And that's really the analysis that the Board wants to understand so that they can make a decision on what to recommend in the implementation of the program.

So what is happening on the GNSO side is that Alan -- no, not Alan. Mary Wong from the NCUC made a motion within the GNSO to request an issues report. And that's what's happening right now in the GNSO to analyze this issue. It doesn't mean that we're going to undertake a policy development process, but it means that we're going to present a report to the GNSO analyzing the issues and determining whether we should pursue a policy development process (audio gap).

That process is separate from the analysis that ICANN staff is undertaking to determine what to do in the new gTLD program. So we have two tracks going on right now. We've got the track of trying to understand what should be in the recommendation for the next Draft Applicant Guidebook. And that's separate from the GNSO request to understand the issue better. Does that make sense?

So that's where we are right now. ICANN intentionally did not include recommendations in the draft or the -- in the latest draft of the Draft Applicant Guidebook because ICANN staff realized that there was so much diversity on this and no consensus on this issue right now. And is looking for input from the community on what helps -- what's in the public interest, what helps registrants, what helps improve the marketplace?

And so that -- I mean that's basically the status. And I guess I can open up to questions.

Alan Greenburg:

Evan.

Evan:

I guess through most of this I've just been confused about why there's such opposition to some possible business models. Like for instance, the one I keep thinking of is the Dell model. You want to go to Dell. They don't use resellers. They make the computer; they sell you the computer. Why are business models that will work in other goods, in other businesses, in other services, where a vendor -- a manufacturer or the source of something can choose to go through a channel or they can choose to not go through a channel?

Why is this such a big deal here? If people don't like their business model, they don't have to buy that product. If people don't like the way a TLD distributes its stuff, they don't have to get it. Why -- could somebody please here explain to me why there's this kaffuffle in the first place? Why -- if we're not allowing for a large number of TLDs to come in that have different business models, and the ones that work fine, and the ones that don't want to use registrars, if they live or die based on that model, they live or die based on that model. And the worst thing about that is ICANN has to figure out what do you do with a failed registry, but that has to be done anyway. And so what's wrong with that kind of approach to things? If a registry wants to be a registrar, forget the ownership issues. Why -- I don't even understand why there's a debate allowed on why this kind of business model should be disallowed.

Alan Greenburg:

I have two speakers. Margie, do you want to address it?

Margie Milam:

I mean we haven't taken a position as ICANN. I can tell you what the arguments are. Would that help, Evan? Because -- and I heard Jay Scott this morning explain why the -- from at least the IPC perspective, they thought this is an issue.

In the analogy of the Dell model, what causes concern is that you have the producer selling to a distributor. Right? And then you have the possibility that the producer takes ownership of the

computer -- or the laptop and sells it at auction. And whether there's -- because the way the domain industry works right now, it's not as if it's just a registration to a third party. You sometimes see registrars registering names, auctioning names off and then is it possible that they have more access to information because they are a registry and registrar versus someone who's not affiliated?

So there's this concern that because they're playing in different roles in the distribution chain whether there should be some extra precaution, or restrictions, or contract provisions to deal with the situation that you're finding right now in the dot com and existing TLDs that Alan knows about from the post (inaudible) this year. Or from the post expiration debate, because there's the secondary market for domain names and the concern is that if there's cross ownership that the registrar may have better access to the good names and make money off of the (audio gap).

Evan: And at a certain level, my response to that is so what? If there's an auction for highly desired names, there's an auction --

Alan Greenburg: Okay, let's not try to make it a debate. I've got a speaker (audio gap).

There is one other issue and you're right. Registrars -- registries may go out of business. The other aspect however is if this is a particularly successful, valuable TLD, such as dot mail, or dot sport, or something they may have the market by the somethings and at that point they have full control. However, Adam is next, I believe.

Adam: (Off mic) Yes, because you have a Dell model, but you also have a telecommunications (inaudible) where we're looking to separate them vertically (off mic). So you can take (inaudible) or take whatever. But for this particular issue, I suppose we should be looking at things like significant market power, which would be something (off mic) the telecommunications world. I think there was an ALAC statement (inaudible) we may not make a statement but I think Vitorio certainly did that for very small even cultural TLDs, the registry may wish to be the registrar to defend that particular small issue market may not want to (inaudible) by the registrar.

Alan Greenburg: I should have pointed out; all parties agree that in that case, no separation is probably okay. That's not debate -- that's not the subject.

Adam: Yes, but that's kind of the opposite of (inaudible) market power in a way. But even looking at the economics of businesses who do study significant markets now may be helpful.

Margie Milam: Sure, and to answer now, if our Richard Tindal, who was making these arguments yesterday, his comment was that the rules as they exist today were developed based on the model from dot com and that dot com at the time we negotiated the new contracts and set up the rules was the monopoly player at that time. And is it appropriate to apply those same principles to these smaller TLDs that might have special community interests, might not have -- may never have market power? And so that's the debate is that the rules that are applicable right now may not necessarily make sense going forward because they were designed specifically for dot com.

Alan Greenburg: Sebastien?

Sebastien Bachollet: Thank you. I am not talking on behalf of ICANN. I am -- I think really we need to be careful when we speak about ICANN, ICANN, ICANN. Every one of us is ICANN or all of us is ICANN. I have trouble when it's -- when we say ICANN say, ICANN say. We can say everything we want, but we have to be care on that.

My point is that historically, I am sure that Richard Tindal is right, but if I recall well, the negotiation between VeriSign and ICANN was not to split between the registry and the registrar, but in the exchange VeriSign accepted to put to the market dot org. To re-delegate to dot org and



to re-put on the market the dot net. And in this one they were about to make another bet -- I don't know. They can -- they were able to be (inaudible).

The -- then they decide to split between registry and registrar. But it was after this first long discussion a few years ago. And if we don't have this history, and I was a little bit disappointed yesterday that we don't have the full landscape of this discussion. It's a little bit complicated.

The other point is that I am sorry, but domain name, it's not an apple, either fruit or a computer. It's not an (inaudible) either a fruit or a mobile phone. It's something else. And if we are here today, it's because it's something different. I don't see any industry -- somebody told me yesterday when I said that that yes, cartel of OPEC for the (inaudible) may be something. But I hope that we are not doing the same it's something different.

We are not in the market -- everybody wants to say that we are of market, market, but where is the market? We create monopoly each time that we create a new TLD. Then we can't imagine that there will be less that come, but the proof was made since nine years that is was the case. Then why we need new TLD? It's not to compete with dot com; it's to allow new community, new usage, new services to come alive for the good of the users. It's not for market reasons. I am really sorry about that. Thank you very much.

Alan Greenburg:

James?

James:

Sorry, Sebastien. I hadn't -- I take a slightly different opinion of the history than you do. But we arrive to a similar conclusion, surprisingly. Actually if you look at the history of ICANN, one of the purposes of ICANN was specifically to look at network solutions back in 1999 when it had absolute market power over dot com. And the registry/registrar agreement that was completed at that time was the result of that action in 2001. Subsequently with a (inaudible) and then how VeriSign was acquired, (inaudible) solution and eventually the network solution was being acquired back to Revising and that caused a problem. And then you eventually reach the history that you talk about.

So there was a little bit of history and the original intention of the registry/registrar separation was rooted on the fact that network solution had absolute power over dot com in 1999. It was the case; there was a lot of debate in 1996. People went to FCC. FCC did not know what to do with it. ICANN was formed or part of the reason ICANN information was to look at that market.

Let me finish. So given that understanding of the difference in history, I do agree with Adam in the sense that when we are looking at this group, market power does matter a lot. Because there is a reason we set a very strict rule on dot com back then and insisting on registry/registrar separation. Because network solution was (inaudible) priced. Prices were \$35. The (inaudible) is \$35. \$35, there's no debate. There's no one else to debate about it.

With the separation, the price went down. Now today on average, you're looking at \$10. That's proof ICANN has done its job. But in these new cases when we're looking and the new batch of gTLDs, we need to look at the fact that are these little monopolies? Some (inaudible) yes, they are monopolies. They set their own rules. But at the same time, do they have market powers? And my answer is that they may never have market power. Look at dot names. Look at dot museum or dot cat. They serve a small community; they have a small base. They don't (inaudible) -- they charge (inaudible) but people are happy because they serve a very special need. We do not need to apply the same rules that we have on the monopolies on a small player.

Today's com regulation works the same way. We always regulate the market player. We do not regulate the others. That's why the (inaudible) is more heavy regulated than ALAC.

Alan Greenburg:

Okay, I had put myself in the list for a very short comment, then we'll go on to Gareth. The issue is not whether the -- in my mind is not whether these new ones are going to be monopolies. We

don't know which of them will become monopolies and which won't. Some of these top-level domains are going to be auctioned off for a huge amount of price since the people paying that believe they're going to have huge market power. Gareth?

Gareth: I'm going to go out on a limb here and make a leap that I probably shouldn't make. But strikes me that somewhere in the -- if you back off from this and look at the broader picture, what we're talking about here when we're -- when the issue is being raised about the concentration of power in one -- by one group, and the possible elimination of the -- of the benefit from the other group, we're -- maybe we're talking in this both the reason why the United States and Canada are falling down the list of broadband leading countries the way they are these days because there's too much concentration by the telcos and the cablecos in North America and there's not the ability to allow other players to get involved. Now maybe that's a wrong direction to be going, but that's what struck me when I was listening to the debate the other day. Thank you.

Alan Greenburg: Would you care to finish the sentence though and tell us which is the right answer because of that analysis? I think I know what you're saying, but I'm not 100% sure.

Gareth: As far as I'm concerned, the right answer when you're looking at that particular part of it, if you -- the right answer in this particular debate is to not allow the one group to meddle in the other person's playing field. Is that clear now?

Alan Greenburg: So you're advocating maintaining the separation?

Gareth: Yes, maintain the separation.

Alan Greenburg: Okay, I thought that's what you were saying, but I wasn't 100% sure.

Gareth: Yes.

Alan Greenburg: Okay, Adam is next.

Adam: Which part of the contracted user's house are they going to sit in? Which part of the contracted user's house will these joint registry/registrar sit in? Because there's a registrar bit and there's a registry bit. And that's going to be fun, isn't it?

Margie Milam: Because it depends on their charter.

Alan Greenburg: Take your pick. The old bylaws, which expire at 8:00 tomorrow morning specifically said there is nothing to stop you from participating in more than one constituency. The new bylaws I believe do not say that. So I think you have to take --

Margie Milam: They're silent on that part.

Alan Greenburg: I think you have to pick which one you like better and hope your friends and your new constituents, your new safe holder group will not reject you because of your other persona I guess.

Margie Milam: Can I follow up on a couple of the points raised? Some of the presenters asked ICANN to evaluate the market to see what some of the questions that, Adam, you asked regarding whether is there a monopoly in each TLD? There's questions whether there has been sufficient analysis on the domain market. So that some of the observations from the meetings I've seen on this topic is that they're thinking that ICANN should take a deeper look at the market to understand the players and whether there is monopoly power beyond the largest provider.

Unidentified Participant: Just a very quick comment. Or rather, observation. If you do allow -- if you do insist on the separation of registry and registrar in this round, then the changes that the people is going to apply

for gTLD are mostly from the same gTLD place that we have today. Because the others registrar can also create new gTLDs.

Margie Milam: Can I respond to that? There's -- part of the frustration with this issue is that there's new models being proposed. And so even though you're correct, there's a certain limited number of registry operators right now, in the new model they're thinking that some of the players, like Aphelios (ph) and NuStar, and VeriSign will be backend providers. And so they'll provide the -- it's almost like they'll outsource their technical backend services and not really be the registry because is the applicant, just say for it's about food or whatever. They're the actual registry, but they're not performing the technical services at all. They don't have the expertise, nor do they expect themselves to get it. They get it by contracting with these backend service providers, which is the reason that Brian (inaudible) yesterday was mentioning that the rules need to change to acknowledge this new model, where there might be outsourcing through various existing registries.

Unidentified Participant: So the (inaudible) the monopoly on a handful of registries, we're concentrating the power -- market power to a handful registry operators.

Margie Milam: That's one way to look at it.

Alan Greenburg: It's quite clear there are going to be more backend operators because of the whole bunch of people who were ccTLD backend operators or registrars who have already set up the business. The only question is can they sell their own TLDs? Patrick.

Patrick: Well, on that point, I know that many of those opposing a change in the current situation are inconvenienced with just fees, which happen to also be potential backend providers for new ccTLDs. And providing backend services to ccTLD operators is a very profitable business. And by trying to maintain a (inaudible) in a certain way, they are preventing others.

Another point I want before coming to the conclusion. Another point is that they suggest that very small TLDs could be -- could work with an integrated registry and registrar operation. The question remains on what constitutes a small TLD? Is it 50,000 registration? Is it 100, 200, 300? Whatever. But that would make a lot of difference if we -- we need to have a clear limit if we accept that we need to (inaudible) a limit on what constitutes a small TLD. Especially in light of the fact that new DAG imposes some on the registry so many constraints that do not exist for incumbent TLDs, among others, regarding trademarks, et cetera, that it's not even reasonable to think that you can run a profitable TLD if you have less than 100,000 domain names.

So if on the one hand, if they say, look 50,000 is a small registry and you don't need separation that means that especially eliminates the possibility to have an integrated approach for small TLDs.

Which leads me to the conclusion that in that case, behind the strict registry/registrar separation, there is also a major (inaudible) issue preventing competition on the backend service side. And I think we should keep that in mind because it's not really addressed anywhere in the dbase we get currently.

Alan Greenburg: I would suggest that on both sides of this debate, there's huge amounts of money involved. I don't think either side has a monopoly on that. The question really is, how -- from my point of view, is what's going to be better for the registrant? I know someone's going to make a lot of money and someone's going to lose a lot of money, depending on how the decision is made. I'm not sure I care.

Margie Milam: And I would actually question your assumption that a small registry can't make money. Because in the new model, there is no price cap. And you're thinking -- I mean a lot of us are thinking what we see today. Today we see domain names for \$10, some nominal amount, but there's nothing to

prevent a new registry from charging \$1,000, if that suits their model and their expected customer base.

Alan Greenburg: Before you do, it's a quarter past 5:00. We did want to get back to the other thing. We had a relatively long speaker list. We need to decide whether we continue with this one, go back to the other one, or just go to the gala.

Cheryl Langdon-Orr: If I might suggest, I think in the time available, if you complete this speaker list and we move the continuing discussion, which is a very important discussion to part of our later agenda on another day, I think that would be the best way forward. So continue with the current speaker list is my proposal.

Alan Greenburg: Patrick asked to be honored again. That's the only speaker list I believe I've seen. Evan? I'm sorry. I didn't see his hand. Patrick.

Patrick: Just as you said, there's no price cap, but everyone knows that the more expensive the domain name, the less you will sell. So it's as simple as that. So even though small TLDs might find out that they can ask a higher price than mainstream TLDs, in the end they cannot afford to sell domain names for \$100 a year. No one would buy it.

Unidentified Participant: Can I just put a reality check on that? There is a little ccTLD that's called dot AG. And they sell a domain name serendipity. AG in German means company. So they sell a domain name for a US \$1,000. And they make lots of money.

Margie Milam: You see it in the ccTLD arena. Dot TV names, they have premium names that sell for very high. So that's what registry operators could do. They could save the select valuable names and charge a higher price for those.

Alan Greenburg: Muldova's doing a good business in the US, dot MD, selling to medical doctors.

Evan: So you're making the point. And in fact, ICANN has opened the door for this by making this a high verification zone. I forget what the acronym is or whatever. But there's this now optional designation of higher confidence. Well, if a company has jumped through all sorts of hoops to do that, well maybe their domains are a little bit more valuable than those of those who haven't gotten that designation. I'm getting the idea that that's exactly what this was meant to be. Not required, but probably of some value to those TLDs that decide to go through those hoops. So you're already allowing for something where certain kinds of domains may be of more value for something that has nothing to do with what the letters are.

(Off mic)

Right. But I mean not even -- I mean has it been considered for these -- like the dot IBM, the designation for a company that just we're going to distribute those -- we're going to distribute the second level domains internally. We have no intention of making a business out of this. But we have a real business need internally to use this. I mean has there been interests from organizations like dot IBM or anything like that?

Margie Milam: I don't know. You may know that I just joined ICANN recently and in my prior job I was with a brand protection registrar and they certainly had clients that were interested in exactly that. I mean that's -- yes, I'm personally aware of companies that are -- a lot of them are hesitant, think they don't want it. But there is a select few that think there might be value there.

Alan Greenburg: Again, there's no debate really that assuming we can define them properly, those who do not plan to sell domains at all, but just use them internally. Or in the case of Facebook, give them away. No one seems to be arguing that they should have to use a registrar for their one domain.

Margie Milam: Actually, Alan, I think you're incorrect. I think the registrars are very much saying you have to use a registrar even in that situation.

Alan Greenburg: I take it back then.

Margie Milam: But a lot of the community disagrees with the registrar position on that as you can imagine.

Alan Greenburg: Evan, your thing is on. Anybody else? I think Sebastien wants to talk.

Sebastien Bachollet: I think the rule of your -- I know this dream appears in the price meeting to (inaudible) TLDs. If (inaudible) TLDs it's for inside the company, I don't know why they need it because they are second, three-level, and (inaudible). And we need gTLD. That's gTLD or everybody becomes a US government with his own TLD for his own use. Or it's open. And gTLD (inaudible) meets in open at least to one community. But not just for the inside of one company. And I would like very much that we say that if a company decides to have his brand as a TLD, it's to be open in one way or another. It could be just for their providers, it could be for the customer. But it must be open not just for the employees of the company and not just for internal use. It's not a gTLD anymore if it's like that.

Alan Greenburg: It's a position taken by a number of people, but unfortunately, no one ever put that in the policy. So at this point, it's valid unless we change the rules in DAG 4 or 7.

(Off mic)

Unidentified Participant: I have a question. Actually this means for -- a lot more than. If one -- I will -- if ICANN's purpose or general purpose was try to do some (inaudible) regulation on pricing on dot com, and if this (inaudible) gTLD the ICANN to not do any pricing regulations. How do we serve -- are we serving the -- our end user in the right way? Just a question. I do not know the answer.

Alan Greenburg: Same answer as I gave to the previous one.

Margie Milam: Yes, I don't have any answer to that. Maybe the new TLDs have like a -- with this new designation has more value. Maybe more security. Yes. It's an open -- it's certainly an open issue.

Unidentified Participant: I'm sure there are people who pay for dot TV and pay that reluctantly.

Alan Greenburg: That doesn't stop us from saying in the application you must specify what your price cap is. And it can vary from gTLD to gTLD. But we didn't do that either.

Margie Milam: No, we didn't do that.

All right. Thank you very much, everybody.

Alan Greenburg: Thank you, Margie.

Cheryl Langdon-Orr: And we do just have a couple of minutes. And we have started light on a couple of things that I am aware that we won't be going back, I think we're all in agreement, to our previous discussion. It's something that we're going to need to take a fuller look at. So we will do whatever magic is required to fit it into the agenda. So if you could perhaps remember what it was, write down what it was, or email yourself what it was so we can pick up exactly where we left off before Margie's excellent presentation.

And I think it's something that we could perhaps take a couple of minutes now just to look at some of the logistic issues that we need to deal with that we might now have to bump out at our other meeting. Such as assuming the GNSO does do this drafting group, we need to formally work out who we're going to put in the proposal is you and Olivier with the team -- the new names team

working under it. If we could perhaps do that as a piece of business now, that would be very helpful.

Alan Greenburg: We are obliged by the end of today to have decided who is on that group, if it should be formed.

Cheryl Langdon-Orr: Okay. So to that end, if I can just ask the indulgence of the ALAC to do a piece of time critical business, but with the indulgence of the ALAC, I also want to make it -- heighten the awareness of everyone who's involved in the names task force that the role of the names task force in addition to the work you're already doing. And here's a deck I'll toss to you in a minute so you can bring up what you brought in APRALO and your desire to be involved in whatever level and why.

That we need two people. It's proposed that we have obviously our GNSO liaison. And that brings a longevity in the history and everything (inaudible) situation. But particularly, and thinking of it, the regularity of the meetings and the probable time zone it's going to be in, we have asked and Olivier, who I don't believe -- oh yes he is. He's hiding over there. He's just got at their table. Olivier, who's part of the names task force is willing to do the hard yards and be another of our voices, but very much an At-Large voice in that process.

So if someone would -- from the ALAC would like to move those few names.

(Off mic)

Thank you very much. We are swamped. We are swamped by people willing to nominate those two names. So I see Sebastien and I see Patrick. And if I can call now from the ALAC. Anyone who wishes to vote -- to have their names not recorded as voting. In other words, an abstention on that, let me know now. And have we got anyone on the -- I can't see. We haven't got any member on the Adobe list, have we?

(Off mic)

That's not here? Okay, fine. I don't need to look for hands then. Is there anyone who wishes to vote no to those two names?

Well, congratulations.

Alan Greenburg: Before we go on to the next item --

Cheryl Langdon-Orr: Is this related in some (inaudible)?

Alan Greenburg: Can I just verify who was on the speaker list that never got to speak? I had Beau, and Vivek, and there was someone else. Adam and Gareth.

(Off mic)

Cheryl Langdon-Orr: And Darlene. Okay. Now on a related matter at APRALO, we were particularly keen to insure that (inaudible) has -- I have just managed to mangle your name. Please forgive me. I'm sorry. Long day. Vivek is -- brings a lot of legal experience in this area and we would like now to offer him the microphone and just discuss for the task force how he can be best utilized in this process. And he'll need to be brought up to speed. Vivek, please.

Vivek: Something mentioned the evening APRALO meeting. (Inaudible) not to join in the (inaudible). And we discussed about how we will try to help you to do certain portions (inaudible) that. So in that context, Cheryl, we had to help you as a backup team on this. So --

(Off mic)

Yes, to help the team. So that I'm very glad (inaudible).

Alan Greenburg: Since I have no idea what the process is going to be, I can't say yes you should go do it. But we will all stay in touch.

Vivek: Okay, the point is this has just happened about a couple of (inaudible) back in the -- so I think of course (inaudible) think it will be tomorrow. Maybe I'll come out of the process in the (inaudible).

Evan: If I can just say something about the task force? Vivek is on the task force. Right now I can give a quick list of the names, which include the two people who are part of this. Right now this includes Olivier, Brett Fausett who is here in Seoul doing other work, Alan, Kathy Kleiman, and Konstantinos Komaitis from NCUC. Myself, Carlton, Patrick, Rudy, and Hong who will be coming in later in the week. Right now that constitutes the task force and part of our next move is going to be determined by what GNSO does next. And Alan, if I heard you right, you're saying there's a possibility that they may choose not to create this?

Alan Greenburg: I've told you what the motion is going to be. By the time it gets made, it may be changed, and it could be voted down. I don't know. But I'm not expecting that to happen. I will remind people of the timeframe. By the time we get home, it's going to be November 1st or afterwards. The final end product has to be around about the 30th of November. So --

Evan: And the goal of the task force --

Alan Greenburg: It's rather tight.

Evan: And the goal of the task force is going to be determined by what happens with GNSO. There is a Wiki page on social text right now that's being used. It's not for public consumption yet, but it is being very actively worked on by the members of the task force. If anyone really wants to know what's in it, just ask me.

Cheryl Langdon-Orr: Thanks, Evan. And if I can just ask you to be very specifically brief, Vivek, and get him up. Yes, that's it. Okay. Sebastien?

Sebastien Bachollet: I wanted to say exactly that, that if I understand where (inaudible) is, you please add Vivek at your list and then you will have the (inaudible).

Evan: Done yesterday.

Sebastien Bachollet: (Inaudible).

Evan: He's been on it since yesterday.

Cheryl Langdon-Orr: Sorry. We didn't hear the name in the list.

Evan: Sorry. He was on it since yesterday.

Cheryl Langdon-Orr: Thank you very much. Now there is a couple of matters feed in to the task force issues and the discussions that we had with the GAC. These are documents that I'm doing little more than tabling, but I want to draw formally the group's attention to it.

I have had a -- and I haven't checked where it's been attached. But there's been a letter written by the business constituency concerned about -- and I know the task force has had discussions -- of some aspects of DAG 3. But we also need to have those requests for our responses and considerations formally noted. So right now at this meeting, I think there's a number of points that we might benefit from looking where mutual interests are, where we agree and where we disagree. And so I'm trusting that the task force is going to continue on in that line.

The other point, and I can't for the life of me remember whether or not -- I know I asked for it to be promulgated, but there is a copy of a letter and a -- the second part is a briefing paper that was written to the GAC, which on differentiation. On the post delegation issue. And that's excellent food for thought by dot fort and a few of the others. And we need to make sure that the task force picks that up and looks at what values some of what they're already negotiating with the GAC about may fit into some of the formulations of our thoughts as well.

I mean you saw a great deal of unanimity in the room with the GAC, and that's because they're virtually already been briefed on these issues. I think it's important we get a copy and we've been a copy and permission to use for our own purposes of what other information people are feeding into the GAC. So those we've never both formally tabled, that would be that would be good.

Alan Greenburg: Regarding the first part of that, the letter from Mr. Jamil is already on our Wiki and available to everybody in the task force.

Cheryl Langdon-Orr: Okay, so there's two things from Ron Andruff that need (inaudible).

Evan: Please, may I interrupt? It is not a letter from the business constituency. It's a letter from Jamil (inaudible).

Cheryl Langdon-Orr: Okay.

Evan: With a not so subtle difference. If you don't want to have him strung up. It's a letter from him talking about the BC, but I don't think -- he's clearly not representing them.

Cheryl Langdon-Orr: I know. It's not a representative note.

Evan: But you referred to it as the letter from the business constituency.

Cheryl Langdon-Orr: I most humbly apologize and redact that from the record. And I'll hopefully be forgiven for all my other sins. Let's call this then to an end. And I'd like to thank you all for a heroic day and hope that every one of you enjoy a brilliant night tonight. The buses will be leaving at five-minute intervals, so you do have time to freshen up, make yourself feel more human. And those of you who wonder why I'm not there, it is a standing affair and there's no way I could do that. Thank you all.