
TORONTO – Update on the RAA Negotiations
Monday, October 15, 2012 – 15:00 to 16:30
ICANN - Toronto, Canada

KURT PRITZ:

Thank you. My name is Kurt Pritz with ICANN. This session is entitled *RAA Negotiations*. We've assembled a panel of ICANN staff members and representatives from the Registrar Negotiation team to provide a status and prognosticate the future of the negotiations and a plan for closing them out. And so we'll all be talking, but I want to preface the discussion by saying this is really time for you to give feedback on the status of the negotiations.

So information's been posted on the ICANN site regarding the negotiation status, status memos where the parties agree and disagree, where the language has been hardened. And so in order to conduct an informed discussion we assume that that stuff's been read and we want to keep our comments kind of short, so you can come to the microphone and provide input that we can take back as we finish this job.

So that's a good slide to start with. So it's intended that we close out the negation by the end of December of this year. There's been substantial progress to date on law enforcement recommendations, GNSO recommendations. ICANN has requests. Registrars have requests. There's substantial work to do and I'm going to describe what that is, and others are. But our target of finishing by December will

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require us to have we think at least four face to face negotiating sessions with registrars.

You know if you think about the time that's left, it's about eight weeks. So that's about every other week and then calls and drafting in between. But a concentrated effort to finish, so that we can then post the agreement and take comments and target approval of the new RAA for Beijing. So an ambitious goal, but one that we set around the table and looked each other in the eye and agreed to undertake a serious effort to get it done.

Since Prague there've been six of these negotiations, six negotiating sessions. There was a two day negotiating session in Washington, D.C. where law enforcement actually came in, so we could get an agreement of the minds on several of those issues. All 12 of those law enforcement recommendations have been addressed in total or in part. We'll go into this statement in a little more detail; I think it's unnecessarily pessimistic.

We've agreed and registrars have agreed to adopt eleven of the 12 law enforcement recommendations and the last one, there are some differences on that that we'll describe here. Some challenging and complex issues remain; they have to partially list some of the other asks in the community.

The registrars request a way to amend the agreement. That's predictable for them. ICANN seeks to change or amend the agreement in a way that will serve registrants. And the interplay of all that is how our policy process works and how it informs and changes the



agreement. So these things can be settled, they'll just take drafting or wordsmithing and the like.

So with that really brief introduction I'm going to turn it over to Samantha Eisner, who's our lead attorney on the negotiations, so here you go Sam.

SAMANTHA EISNER:

Hi, I'm Sam Eisner, Senior Counsel with ICANN. And I wanted to let you know that today in our session we'll actually have a couple of different question periods for you in the audience to ask us questions. We're going to run through some very brief overviews of what we've looked at in the negotiations. So for general questions, we're going to have about a half an hour in the middle. And then we're going to turn specifically to some of the questions that we posed in the papers on the law enforcement recommendations. And have a few question sessions at the end, so start preparing your questions now.

Very briefly, the progress in the some of the key areas that we've made throughout the negotiations. We have agreed on the creation of an abuse point of contact that's accessible both for law enforcement and the general public at the registrar's side.

The creation of a proxy accreditation program. And this week on Wednesday, I believe, there will be a proxy accreditation program work session with the community to start getting some ideas of what the community believes is valuable to have in a proxy accreditation program and how that might work. So we've started initiating that community work already.



The registrars have agreed to provide ICANN with additional registrar information, including updates on much of the information that registrars are required to provide to ICANN in the initial accreditation process. A lot of that information will either be published on the registrar website or on a website such as Intermix, so that much of this information will become publicly available. We have included enhanced compliance remedies, including strengthening a suspension process, making more explicit rights to audit, as well as registrar self certification requirements.

We have made progress though, as Kurt indicated. One of the things that's still under discussion is how are we going to move forward in revising RAA in the future? We have incorporated language and we still working on final language on it regarding a prohibition against cybersquatting. We also have incorporated streamlined arbitration language, so that when ICANN and a registrar do need to go to arbitration it can happen in a more expeditious manner. And we have incorporated some technical specs into the RAA, including a registrar agreement to pass through on the DNSSEC chain. So with that, I'll turn this to Margie.

MARGIE MILAM:

We've also done a tremendous amount of work focusing on the law enforcement related recommendations. And when we started off this process, we kind of broke them out into various categories to really try to get agreement on approaches to these four topics that you see on the screen.



The first one is the WHOIS validation and verification requirement. And we'll go into more detail on some of the later slides, on what the differences are in approach with respect to the law enforcement recommendation. But the notion is that the WHOIS records, there would be validation of data points to make sure that address, phone number, email address, that sort of thing is in the proper format.

And that's what we refer to as validation. As well as certain type of verification and that's where a little bit of a disagreement is at this point, as to how far to go with respect to verification. And we'll explore that more in the session.

Another law enforcement related recommendation was specific to registrant data retention and collection. And this is not information that would be publicly displayed anywhere, but it's just the notion that additional information related to transactions and IP addresses and that sort of thing should be retained by the registrar and then if it needs to be accessed by law enforcement they could get a subpoena. So it's not a disclosure of that information, but it's more a retention obligation.

And then as I mentioned before there's also the notion that there are additional obligations to be developed with respect to privacy and proxy registrations, and that's why we have the session on Wednesday, to deal with a little bit more on how to go about creating a privacy and proxy accreditation program.

And then one of the areas where we reached agreement fairly quickly was the abuse point of contact. As you see in some of the drafts that were published prior to Prague, there is procedure for publishing an abuse point of contact, so that if there are instances of illegal and



malicious activity involving the domain name, you can contact a registrar and there'll be information related to that available.

So that's where we've done a lot of the focus on the negotiations and as Kurt mentioned, made tremendous progress with respect to the 12 law enforcement asks, and have met them all or partially. And we're going into the differences in this session. And Sam, I think you're going to cover this slide.

SAMANTHA EISNER:

Yeah, this slide is a bit out of order. Sorry about that. So areas under exploration and these are some of the areas you may want to think about some questions as we're completing this first half of the presentation. We're having continued discussions within the negotiations on other WHOIS obligations, aside from the verification issues regarding an SLA on WHOIS availability as well as the transition to RESTful WHOIS. We also have a technical spec request regarding IBNs that's still on the table.

As Kurt noted in his introduction we have this concept of revocation in a changed marketplace or really more in general, how do we make the RAA responsive to big changes in the market that may come forward after we get into the world of new gTLDs and the lifting of the restriction of registrar cross-ownership. We also have the issue of the revision of the consensus policy language in the agreement.

And we also have to address how we will get the RAA to a point of universal adoption, so that we can get registrars on it very quickly and have some uniform expectations among the registrars.

MARGIE MILAM:

The negotiations have also covered not just the law enforcement recommendations, but some of the recommendations that came from the community themselves. As many of you may recall there was a joint GNSO and ALAC effort to try to make recommendations on how to amend the RAA and improve the RAA. So some of those recommendations are reflected on this slide and we're happy to report that there is an agreement with respect to a lot of these issues.

For example, there's a notion that there should be additional information regarding a registrar and its officers, and directors, and affiliates. That information is spelled out in the specifications to the draft that has additional information for the ICANN, as well as some of that information would be published on the website of either the registrar or the Intermix site, so there's a lot more information to be available on the registrars.

ICANN has asked for an SLA on Port 43 and availability, which is very similar to the SLA that was required in the new gTLD program. And the GNSO request from the community also addressed things like prohibition against cybersquatting. And we're working on finessing the language related to that, but there's agreement in principle on the concept that there should be a prohibition on cybersquatting on the part of a registrar.

And then there's a notion that there should be more clear that registrars are responsible for acts of their affiliates, so that language is also something that's been incorporated into the drafts and into the



negotiation. And with that I think I'll pass it to Matt or Becky to talk about the registrar asks.

BECKY BURR:

Okay, Becky Burr here. Just in general I want to say that I think the registrar's team thinks that we've made huge progress, everybody's been working really hard. We think it's important to note there were a lot of slides before this, but the bottom line is that we have substantial agreement on 11½ of the 12 law enforcement requests and we think that's just important to keep in mind here.

There were a series of requests that the registrars put on the table and they have been the subject of some discussion, but I think really we're waiting to finalize those discussions. And just to highlight them basically we thought that the new gTLD agreement had a couple of really good provisions. One was a streamlined provision for amending and renewing the gTLD agreement, and for making that enforceable across the entire registry body, once it was adopted by a certain percentage of registries representing a certain percentage of registrants or registrations.

So we proposed the same thing for the RAA. We think that's a really important tool for ensuring that there is a level playing field and that changes to the policy that we all agree should be in there can get distributed down through the registrar population quickly. We did ask for the removal of the Port 43 WHOIS obligation for thick gTLDs, because we think that this is particularly, 1) it's replicating services that are provided by registries already and 2) in our world of 1,900 new TLDs



it could become burdensome and it's not clear that there's any added benefit. I think we would say that there is no added benefit for it.

The other thing that is important and this is an essential feature of the registrar requests was that we bring the Statement of Consensus Policy back into alignment with the Registry Statement of Consensus Policy. And the process for doing that weren't intended to be separate processes to begin with — they've drifted in the years. In an era of vertical integration that particularly makes little sense to have two separate policies and so that is another very important piece of the request.

And then we have requested automated accreditation across all new gTLDs. That does not remove ICANN's ability to consider a new RAA in total through negotiations. It doesn't limit anybody's ability to enforce Consensus Policies; it is in addition to the ability to conduct a detailed compliance review prior to renewal of the accreditation, so I want to make sure that people know that there are safeguards built into this. That this is automatic accreditation for registrars who are in compliance with the requirements and accreditation terms and conditions.

So having said all of that, we really think that there only a few issues on the table and we're committed to working cooperatively to get these things resolved. We in some ways look forward to hearing from ICANN on some of the issues that were on hold while the law enforcement questions were being addressed.

SAMANTHA EISNER:

And ICANN also came to the negotiating table with some recommendation of its own within the negotiations. And I've discussed before, those include improved termination compliance tools, where we've made great strides. Streamlined arbitration, where it appears that we have agreement. Requirements to implement IPv6, DNSSEC and IDN protocols where it appears we have agreement at least on IPv6 and DNSSEC at this point.

And then the issue of revocation in a changed marketplace that I discussed before, which really ties in more broadly to how do we amend the agreement? How do we make sure the agreement remains responsive to the needs of the ICANN community as a whole, that we continue to work in global public interest as we work through our registrar system?

And as you heard Fadi say this morning in his opening speech, at the end he very clearly said that this is something we need to get right. The RAA negotiations are very important. And he has started looking through and received a lot of briefings from us on the work that we've been doing in this. He's supportive of the work that we've started moving forward with, so his eyes are on this too, and he's supportive of the recommendations that we've put out on the table and will continue to watch the work.

So at this point what we'd like to do is open the floor to you. We've given you a lot of high level information, some of it's new, some of it's not, of where we've gotten to in the negotiations, but we'd really like to hear your thoughts on this. We will have time later in the presentation for specific questions related to the data verification and data retention



issues. So if you have specific questions on those, we'll be hearing those later. But the floor is now open for questions on this.

MARIKA KONINGS:

Hi, this is Marika. I have a question from a remote participant, from [Graham Shriver] and he asks: With this new effort is ICANN going to begin exercising RAA rules? Example given: 3.7.79.

SAMANTHA EISNER:

So for the audience, 3.7.79 is a requirement for part of what the registrar is required to have within its registration agreement with registered name holders and that says: The registered name hold shall represent that to the best of registered name holder's knowledge and belief. Neither the registration, the registered name, nor the matter in which is directly or indirectly used infringes the legal rights of any third party.

As part of our compliance work, our contractual compliance department is always vigilant in reviewing whether or not our registrars are living up to their obligations under the RAA, so we do enforce all the provisions under the RAA including reviewing our registrar's registration agreements to make sure that they exist and to make sure that they have the correct terms.

CARLTON SAMUELS:

Hi, I'm Carlton Samuels from the ALAC, two general questions: We are very pleased to see that ICANN has some considerations for the negotiations and want compliance to them and so on. So with respect



to compliance is there any pushback against having registration abuse being documented somewhere by the registrar — the first question?

The second question: We are very pleased to see the CEO did say that the negotiation is going to be an open forum and so we ask will this mean therefore, that the At-Large, who has been asking for quite some time to be at least in the room while negotiations are happening — will that be taken on board? Thank you.

BECKY BURR:

ICANN has an audit process in the RAA which nobody proposes to eliminate. In the provisions addressing an abuse point of contact there is a requirement that registrars document their receipt and handling of complaints about abusive registrations and that it is fully auditable by ICANN in the process.

I can't comment on Fadi's comment about negotiations because I didn't hear it, but I can say that we are engaged in a complicated arrangement where a significant part of this is commercial negotiations. It's very difficult to conduct commercial negotiations when you don't know who you're negotiating with.

We believe that the interests of all of the stakeholders, that there have been many, many ways in which that input has been provided and documented. And we are all very conscious of all the documentation, the suggestions made by various ICANN constituencies, by law enforcement, and all of the like and are endeavoring to report against those.



But from my perspective having a negotiation where more than the negotiating parties are sitting in the room is a very difficult thing to do and would make it extremely difficult for us to get something done by December. That said, of course the agreement will be posted for comment and we all know ICANN will hear from the community and that what the community has to say will obviously have to be taken into account.

KURT PRITZ:

This is Kurt. Thanks Carlton. Yes, so certainly the agreement's going to be posted and be commented on, so it's very open in that fashion and also the negotiations themselves spent a lot of time on the ALAC recommendations and GNSO recommendations, so you can see what ALAC put in and what comes out of them and we can talk about it anyplace where there's not a meeting there.

STEVE METALITZ:

Thank you, Steve Metalitz from the Intellectual Property Constituency. I agree with Becky that if all the stakeholders were at the table it would be a much more complicated negotiation. In fact it might even take four years to get to this point. Oh, wait a minute; it has taken four years to get to this point.

I appreciate there's been progress and I think there's definitely a lot of positive things that have been said here. But the community has expressed some views and some of them were summarized in the GNSO ALAC drafting team recommendations. I know you had one slide up there with some random provisions, some of which were from the



GNSO ALAC drafting team. But while you've given us a chart that shows how all 12 of the law enforcement recommendations have reached yellow, red, or green light status, we don't have anything equivalent on the GNSO ALAC Drafting Team.

And I'd like to ask one specific question about that. It really relates to the question you had from the remote user about 3.7.79. And I think, Sam, your response to it typifies what the problem is with the status quo, which is that under the current agreement as ICANN interprets it, its obligation is limited to making sure that a registrar puts in its agreement with registrants something along the lines of 3.7.79. You represent that you're not going to register or use the domain name in a way that infringes the rights of others.

But it has no obligation to make sure that that provision is ever enforced against the registrant. That seems to be the status quo and that was the things the GNSO ALAC drafting team was very concerned about. And we asked specifically as one of our high priority items whether the new agreement would specify the circumstances in which registrars would be obligated to cancel or suspend a registration for failure to provide valid WHOIS data, but also the same thing could apply to 3.7.79. It's the same category of requirements.

So could you or Becky or Matt answer the question, does the agreement as it stands now, include any provisions specifying when a registrar is required to suspend or cancel a registration for failure to meet any of the 3.7.79 requirements?

SAMANTHA EISNER: Thanks Steve, and Matt jump in if you have any other ideas. Where we're going to on the verification issue actually has a requirement for suspension built in, so there would be a suspension in the event of a failure to verify information, or if there was an occurrence of a re-verification trigger and there was a failure to re-verify. There's a suspension requirement in there that's point for that as well.

And I think that part of this is also hopefully going to be addressed as we get into the proxy privacy issue. I know we have a lot of concerns of infringement of rights on others through names that are registered through proxy and privacy services. And so I think that that's another venue where we can start addressing this type of provision.

STEVE METALITZ: So the answer... I'm sorry. I didn't know if Becky wanted to say anything or...

KURT PRITZ: Yeah, thanks, and think Becky's confirming this, but I'm pretty sure we changed the language so that the registrar must suspend the domain name upon false WHOIS information. And I couldn't tell you if that's 3.7.79. That's what Becky's checking on, but there was also that additional and Margie's got it over there.

MARGIE MILAM: Yeah, it's in one of the specifications. We said that basically the registrar shall either terminate the registration or place it on client hold or client transfer prohibited. So we tried to address that issue specifically in one of the specifications.



STEVE METALITZ: Well, that is encouraging and I'm looking forward to seeing how all of the other GNSO ALAC drafting team high and medium priority issues are being addressed. But I would just say that that's not the only violation that perhaps should be subject to mandatory suspension or cancellation. So we'll look forward to seeing how the text actually addresses that. And we are definitely looking forward to seeing the text. So I want to thank everybody for the hard work that I know they have put in to try to advance this and we're very eagerly awaiting the results.

BECKY BURR: And Steve, if I can comment on the GNSO specific recommendations. Right after Prague because the GNSO council had asked for it, we did do a spreadsheet of each one to see how it was dealt with in the Prague documents. I will take that up with an action item to update it so that you're aware of it. And on a high level most of the GNSO recommendations, the high and medium ones were all certainly looked at and evaluated. And as I recall there were very few that weren't incorporated in some way.

STEVE METALITZ: Thank you.

TOM BARRETT: Hi, Tom Barrett from EnCirca. There are apparently quite a few approved patents related to the processes that are discussed for WHOIS verification. So I'm interested in hearing what discussions and analysis has occurred at ICANN regarding those patents and regarding your



recommendations for WHOIS verification, and your understanding of what percentage of the registrars would be impacted by those patents based on their jurisdictions.

SAMANTHA EISNER:

As currently drafted the verification proposal from the registrars is that a registrar would verify either via an email or via a text or telephone call. There's no mandatory system or technology required. I think our view is that this an area where competition and innovation should prevail and the registrars have to do one of those two things and they have to record and document having done one of those two things. But there's no mandated technology, there's no centralized technology.

Now to the extent that there is technology that's patented, the registrars would have different choices regarding licenses, but again, what we're talking about is essentially sending out a text message and getting a response, sending out an email and getting a response. And there are any number of ways to do that that are existing. So we haven't looked at the patent issue because we have not specified other than at that very high level, what the technology is.

MATT SERLIN:

If I could just add to that, this is something that has come up recently and I think that we have at least one case where an individual or an organization has reached out to registrars following this negotiation process and notified them that they have a patent that may be applicable in this area. I think we would be looking for ICANN's assistance in this regard to help us coordinate some sort of fair use or

licensing agreement if this indeed turns out to be the case that we're being obligated to use some proprietary technology in satisfying our applications under the RAA.

SAMANTHA EISNER: But I think there's no conclusion that that claim is valid and that they've covered the waterfront on that. Anybody can make an assertion.

TODD BARRETT: So the analysis still needs to be done?

SAMANTHA EISNER: On the question of whether there really is a patent that covers all of this and precludes it, yeah.

ROBIN GROSS: Hello, my name is Robin Gross and I'm the chair of the Noncommercial Stakeholders Group. I just wanted to point out a number of concerns that our stakeholder group has on this issue that remains, particularly with respect to the privacy issues and the privacy rights of registrants.

And I will remind folks of the letter that was sent by the Article 29 working party in Europe and also another one from the council of Europe confirming the other letter, saying these privacy authorities have said they haven't been consulted in this process and that the recommendations that came out in June at least were unlawful in most parts of Europe, all of Europe.



So we have a lot of concerns about these negotiations going on in the absence of the kinds of law enforcement agencies that in fact enforce privacy laws, which are also law enforcement agencies and their lack of participation in these proceedings remains a concern for us. I think it's worth pointing out that there have been significant accommodations that have been made to the law enforcement agencies over the course of these negotiations, remarkable, significant accommodations.

The entire community has really bent over backwards to try to give law enforcement what they want, by and large, and yet at least from our perspective, there are a lot of concerns that remain, particularly about the registrars have to risk violating local privacy laws in order to comply with these provisions.

I think another big concern that remains is this ICANN proposed revocation right. I think that it is a bit overreaching and misplaces the priorities that the organization should have, which shouldn't be on ICANN the corporation, but should be on the health and development of the internet overall.

Another concern that we have that remains is regarding the law enforcement request that registrars should be required to police and control behavior of their customers, thus shifting the burden of activity over to the registrars — the costs and the responsibility over to third parties for potential bad activities of others. So that remains another concern that we have.

I think it's also worth pointing out that we are extremely appreciative to those registrars who have been standing up to the law enforcement agencies overreaching, particularly with respect to these privacy



concerns. And while in many cases they may have their own interests to do that, they don't want to violate the law and be held responsible for doing it. None the less, they've been the ones in the room on the firing line and we are really grateful to them for that.

So I also wanted to ask the panel what was the response from the people inside these negotiations of the impact if any of the letter from the European privacy authorities that pretty much said what the RAA's trying to do is unlawful? So was there any response or impact; how did that letter impact these negotiations? That I guess is my concern. Thank you.

KURT PRITZ:

Thanks Robin, those are all good points. To get to the first and last one, of course we read the letter from the Article 29 working group. Our negotiations were informed by an analysis of the privacy laws in different jurisdictions and to take those into those into account. And in fact it resulted in a meeting between law enforcement, and the registrars, and ICANN where the original law enforcement asks were reduced somewhat.

So some of the data that was requested will be kept for a shorter period of time in accordance with the laws in some of the jurisdictions where there a lot of registrars and registrants. I don't think we can accommodate the privacy laws in every area, and our approach there would be to adapt the procedure for WHOIS laws and WHOIS policy and conflict with local laws.



And so using that for data retention too, you know we don't want any registrar to be obligated to break the law in their jurisdiction — so we set a baseline of data that's been retained, that's been agreed to by the registrars and the law enforcement community. And also applied the process for WHOIS conflicts with local laws and adapt that for data retention also, to ensure that registrars can get relief from the laws in their own jurisdiction, or can comply with the laws in their own jurisdiction.

BECKY BURR:

So just a little bit more on that, the issue of privacy, particularly in the data collection and retention area, has been an issue that has been on the table and a subject of very vibrant discussion and negotiation throughout this process. We have had active participation by EU registrars in this. I happen to know something in passing about international privacy law and this question has been on the table since the beginning.

The approach that was outlined in the ICANN draft of June 3rd was from our perspective, clearly problematic under EU Data Protection Law, and the registrars had at that point already put on a proposal for a scaled back two-tiered system that attempted to set a level playing field, provide collection of transactional data and retention for a period that was consistent with minimum period under the EU Data Retention Directive, but we also recognized that some countries have questions about whether the data retention directive is in force or applicable, or okay.



So we were all very happy to have confirmation that we weren't just making it up, that it really was an issue, but I want everybody to be assured that that was something the registrars were very, very — nobody who operates in these environments can be cavalier about those issues. And I think that we have reached substantial agreement on an approach that will satisfy most of the data protection regimes around the world, and that will provide relief where that is not met. But that also doesn't create bizarrely uneven playing fields, which was another objective.

MALE:

Actually from the registrar's side, especially me, as a European registrar we've been very aware of that chasm of law enforcement recommendations were problematic in the form that they reached us. We had a bit of a problem that the GAC while saying that they represented both data protection and law enforcement at the same time had some of them fail to check with their local data protection officials and only endorsed the law enforcement position when making that statement to ICANN.

So ICANN was under the impression that what the GAC said was fully correct and didn't omit anything. We now are much further than that. The Article 29 letter is based on a version that was already outdated at the time when the letter arrived. So we had made already a significant progress because GAC has come to us and said, yes, there are some concerns. We have neglected to mention them before, and we're further than that.



We have an exception process now, that will allow registrars to not opt out, but be able to certify that they have a legal problem for going through and therefore going for a smaller solution. We will leave that now under the current proposed language. No registrar will be forced to violate the laws and therefore the privacy rights of the registrants anymore.

JAMES ROBIN:

So this is James Robin. To touch on one of your other questions regarding your revocation clause. And I think one of the slides up there indicated that that's still an area of disagreement — that's being polite. From the registrar perspective that is a nonstarter. In our constituency we have a number of companies that are public companies or perhaps have investors that that is just unacceptable to, in that environment.

And I know that they have some concerns and we want to address those in other areas and other ways with enhanced compliance tools, etc. But when we were assembling this panel there was a session on DNS security and stability and abuse, talking about issues that could affect dozens or hundreds or thousands of domain names.

But ICANN terminating all registrars simultaneously would to me be the ultimate security and stability disruption, and I think that we need to consider the possible ramifications of that. So I think that from our perspective we'd like to find other ways to address their concerns, but that particular clause as it's written, we believe it needs to be dropped. Thanks.



BECKY BURR:

So just one point of clarification, you need to take this whole thing in the context. What the registrars have proposed and that's being considered is a package of things that includes the ability to amend the RAA and have it impose uniformly across all registrars once it is supported by a sufficient number, representing a sufficient number.

There is always the Consensus Policy process which allows ICANN to impose new obligations on registrars based on stability and security requirements of issues within the picket fence. And third, ICANN has the ability to negotiate an all new agreement as it did with the new gTLD agreement for example.

And the perspective of the registrars is 1) the whole point of the picket fence was we recognize that the world changes and ICANN's obligations regarding stability and security require them to have some flexibility. That's what consensus policy is about. You cannot expect businesses to operate in a world where they have no idea.

And frankly in a world where the model has changed so much, that it isn't working, we suspect that the registrars will know about it as well as ICANN. So to be blunt, this was an issue that was raised in the new gTLD registry agreement context with a request to have the ability to throw things out the window. It was rejected there, and we think it should be rejected here, full stop.

MARGIE MILAM:

And for clarification on the revocation provision it's not a matter of throwing everything out the window. What we're looking to do is to figure out how we as ICANN, in our service to the global public interest



can remain responsive to the market. And we've seen now, as Steve indicated in his comments about how these negotiations have essentially been going on for four years, we need to figure out ways to make this agreement change and respond to what is going on in the environment.

We are on the cusp of new gTLDs. We are on the cusp of a market that we don't know what it's going to look like and we think that it is our responsibility to remain responsive. So we're trying to figure out how we can do that within this agreement. If you look back to 1999, when the first registrar accreditation was drafted, no one could have foreseen that we would be sitting here today with 1,000 registrars.

No one could have foreseen that we'd be sitting here on the cusp of taking away cross ownership restrictions between registries and registrars. We don't know what it's going to look like and we don't want to take away our ability to serve the community in being responsive to changing. So that's really the basis of the revocation clause, and it's not really throwing everything out of the window.

What we've built into the contract that we posted before Prague actually is a requirement for community input. It's not just a unilateral decision by ICANN; it would require community input and revision. And it doesn't even forecast that we would have no registrar system at all. It actually anticipates that there may be a better replacement and sets out the terms on which we think that the registrars today could move to the world of tomorrow.



So it's not the doomsday where the registration system ends. But we think that at this point in negotiations it's really our responsibility to keep looking towards this.

DESI:

Hi, my name is Desi. I'm from Net4India. This is more a suggestion. Most of the liaise who were participating in the negotiations are from the European Union and the North American region. I think a liaise from India and other Asian countries are going through a learning cycle, being late and trying to learn in less time how the domain name works.

However, I said I just try in India to come across many queries which sometimes beyond the information which they look for. The confusion what they have [is] between IP addresses and the differences between IP addresses and domain names, etc. So as a solution to ICANN, if I could open a channel to approach them, to update them on what is happening with other liaise and the expectations from other liaise. Is that in sync with their expectations of the future? So that when maybe in the next few years those guys shouldn't be coming expecting more changes to the RAA.

And ICANN is sitting on negotiating on [skin] with those region and liaise. So my suggestion is even though they are not participating right now, if there could be any initiative from ICANN side to enlighten the members of a liaise from this region, from developing countries. I think that would help in finalizing an RAA, which is sufficient enough for a longer term. Thank you.



KURT PRITZ: Thanks for that suggestion. If there are no more comments, can we go on to the next section? Hang on.

AMY MUSHAHWAR: Hi, I'm Amy Mushahwar with Reed Smith and I represent the association of national advertisers. You said just a moment ago that the negotiations would be hopefully completed by the end of the year. Do you have a contingency plan or some thoughts in place? What if you cannot get the RAA in place prior to the rollout or the delegation of the new gTLDs?

KURT PRITZ: ICANN thinks it's a prerequisite to finishing these negotiations and having this agreement in place prior to the introduction of new gTLDs. And these negotiations are intended to be a faster track toward that, but ICANN will work with the community on other solutions if we have to. We have a lot of faith that these negotiations are very close to finishing and we'll finish that in the near future.

AMY MUSHAHWAR: And we're certainly optimistic, but what we're really looking for is, are you ready to state today that the rollout of new gTLDs and the delegation will not occur unless we have a negotiated RAA?

KURT PRITZ: So just to put a point on your question, what new safeguards have to be in place in order to launch new gTLDs? And we would want to understand that, so some of the aspects of the RAA might be a



prerequisite to launching new gTLDs; with other things we're negotiating in the agreement not. And we'll certainly take your comment back and create a list of those things we think are necessary, given the changing environment that Sam just described — a requirement for there to be agreement before we can go ahead.

SAMANTHA EISNER: Yeah, certainly. And we would certainly support putting in place all of the law enforcement recommendations before the new gTLDs move forward.

AMY MUSHAHWAR: Thank you.

MARGIE MILAM: Okay, so she'll move on to more specifics now on the law enforcement recommendations. Then we'll also seek community input during this process as well.

SAMANTHA EISNER: So, as I mentioned in the earlier time, there are some issues specific to the WHOIS verification where still having discussions. And I wanted to highlight some of the differences between where the registrars are and where the staff is with respect to some of the verification issues. We put this information in the documents that we published prior to Toronto.



Essentially we're now looking at verification that involves several aspects. On the ICANN side we're asking for an email and phone verification, and that's because in speaking with the law enforcement representatives that was where they felt comfortable. And as Becky mentioned the registrars are willing to do email or phone, but not both. Not a requirement that there be both phone and email verification. So that's one area where we're still trying to come to closure on after this meeting and during the next month or so.

The other issue is the timing of the verification. The original ask with respect to the law enforcement recommendation was that the verification would take place before the domain name would resolve. And so that has been a point of negotiation prior to Toronto. And where we are is that we're looking at verification after the resolution of the domain name. But the law enforcement representatives that were advising us wanted to see that both elements of verification, email and phone, occur if that's to take place after a resolution.

BECKY BURR:

I'm sorry, if I could just... What you're hearing is that the ICANN law enforcement position. If I could just add, the view of the registrars completely agree that WHOIS accuracy is the goal here. The issue is we're talking about making significant changes in the way registrants access registration services. And there is, I will say politely, a great deal of skepticism about the extent to which this kind of verification will actually affect that.

So the view of the registrars is this is important and consequential; we should implement this. We should allow registrars to experiment with different, as in email or phone, approaches. We should gather data on



that. We should see how that affects access to registration services. We see how it affects WHOIS accuracy and move forward from there. But given the significance of the change and the questions about the costs and benefits — and by costs I do not mean dollars and cents, I mean the affect on access to registration services — we should take this one step at a time and gather data before moving on to the next step.

KURT PRITZ:

And Becky's question is really well put, and I think that's a discussion for us here. How much WHOIS data verification? how accurate WHOIS database should be in order to have a real affect on what we're trying to do here? One of the outcomes we're hoping for is a decrease in malicious activity.

And so what should our role be as part of ICANN, as ICANN marketplace with regard to WHOIS and WHOIS data verification? What's our role in order to affect some of those outcomes, to make use of the WHOIS database to either affect bad behavior or achieve some of the goals of the WHOIS database? I'd like to hear from this room about WHOIS accuracy and what we should strive for.

So this was actually a discussion we were going to have after. Do you want to takes questions on this now, Margie, or would you rather forge ahead on the other two items?

MARGIE MILAM:

Yeah, it would be great to get questions now since we've just provided the overview, if anyone would like to comment on the timing of verification and some of the questions that are on the screen.



KURT PRITZ:

So the questions are what sort of verifications should registrars undertake as part of their domain name registration purposes? Should phone verification be required? What's the weigh-in of the costs and benefits and how will this verification help us? Steve?

STEVE METALITZ:

Steve Metalitz. I really just wanted to ask a question of Becky or one of the registrars. Becky, you referred to the affect on access to registration services, and I understand that if verification occurs pre-resolution, because people now in many contexts have an expectation they register and they get their domain name right away and they can start using it right away. Could you talk about what concerns you have about the effect on access to registration services if verification is required post-resolution?

BECKY BURR:

So whenever you introduce a new process like this, remember there's mandated suspension if the verification is not completed, right? So it's not just a nice thing to do, you have to cut off the suspension. So if you do one and they confirm and then they're asked to do another and for some reason they are confused about how that process works, there will be calls to call centers, confusion, all of those kinds of issues. That's going to happen no matter what.

So if you do both email and telephone, it's doubling the chances that there's that kind of confusion, that's all. And people will get cut off after 15 days if it hasn't happened. The question is, and what we have been



told by registrars, is that in some environments the telephone, text message verification will be familiar and comfortable for populations — in others the email verification will be.

And so the question is are you going to do one or the other? We're going to see does text messaging work better than email? Does it make no difference whether you do one or the other? It's just a question of when you introduce something that causes confusion and results in calls to Customer Support, and results in delays, and people potentially getting suspended or cut off, those are significant, and we ought to know whether we're getting some return on the dollar.

We don't disagree. Notwithstanding the fact that a lot of registrars think this is not going to produce any benefits, there is agreement to do this in the first 15 day period. The proposal from the registrars that has always been on the table is telephone or email. And we don't think that the difference between post or pre really changes the analysis of how much potential for confusion you're introducing into the system.

MATT SERLIN:

Steve can I respond? I think, directly to the specific case that you mentioned, is that registrars didn't necessarily feel that post-verification was as problematic as pre-verification. I think that was your specific question.

STEVE METALITZ:

That was the question, I think...

KURT PRITZ:

You think Becky got it?



STEVE METALITZ: Well, Becky's last sentence said it doesn't matter. The real question is one factor or two factors, but I'd welcome hearing your view.

MATT SERLIN: I think where we came down was that it was not just a matter of agreeing to post-verification schema, but that a pre-verification schema really wasn't our concession to give. That was something that had to be part of a broader community discussion, possibly even along the lines of a PDP, because it would fundamentally transform how someone went and had access to registration services like you were mentioning.

I don't think we see the problem with necessarily the post-verification because it's already — I don't want to say common, but it certainly happens in the cc space, and in some other instances as well in the sTLDs. So I think that there's something to push off from there.

STEVE METALITZ: That's kind of what I thought, but I think Becky said something a little bit different.

BECKY BURR: It's not unprecedented, but you are introducing change and the question is how much.

MICHELE NEYLON: Michele Neylon, Blacknight, Irish registrar. My views on a lot of this are already pretty well known; it's absolutely heinous. But I am willing to



concede certain aspects of it. From my perspective the big fear I have is that taking away that choice from us, forcing us to do both, will cause us way more headaches than it will actually solve. And you'll end up in a situation where you're going to nationalize the entire system.

You take the entire content of Africa, how many registrars are active in Africa? How many registrars are active in Latin America? How many registrars are active in developing countries? Isn't ICANN meant to be an international organization, and not one which gives a preference to North America only?

If you force registrars to validate both email and telephone, then that is basically what you'll end up doing. Because for a registrar based in Ireland or registrar based in France, or Luxemburg or whatever — sure, we'll be able to validate certain things within our own domestic territory.

But even using one of the largest carriers in the world, Vodafone Group, they're pretty international, I travel certain countries I have no way of knowing whether a text message is ever going to reach me. It might reach me days later. When we were in Korea, what was it, two years ago I got off the plane and I turned on my phone and I just basically had a brick in my hand. Just assuming that this can be done, it will increase the cost burden — fine for the big corporate players who are worth millions and millions of dollars.

Be they registrars or registrants, this isn't going to have a massive impact on them. But when you're looking at small businesses, private individuals who want to register a domain name, get a website, get online, take advantage of one of the few areas where there is still



growth in the economy across the planet, do you really want to be the ones responsible for making that suddenly cost prohibitive? I mean if you're happy to do that, go ahead, but for some of us that's not really want to see happen.

In terms of whether it will combat illegal activity, my personal view is, it won't. Because if I wanted to commit a crime online, I'll give you a valid telephone number — I'll use a burner cell phone. I'll give you a valid email address; I can sign up for one easily. I can route my IP, I can masquerade, I can do all those things. So I don't see this actually having any real benefit. Thanks.

KURT PRITZ:

Thanks Michele. So I think that's the question, right? So well put. So I think that's the question right, what's the value of an accurate WHOIS database? We have the database, should it be accurate? And if it should be then how should it be done in a way that doesn't unnecessarily burden those that are trying to bring the DNS to areas where it isn't?

MICHELE NEYLON:

I'll just come back to one thing, just on semantics, Kurt. I personally hate the word 'accurate'. I don't think accurate should be used with respect to WHOIS, because that is far too narrow a word. And it doesn't matter which language you translate it into, it's going to cause you problems. If you're looking at data quality instead of data accuracy, then I can have a conversation with you, and we can move forward and



we can progress. A lot of the country codes have done work in this area in improving overall data quality.

But if you talk about data accuracy, the moment I move my office, or the moment I move house, my WHOIS record is no longer accurate, because that's a binary state of play. If my telephone number is out of order because I forgot to pay my bill, or I changed providers, or my provider screwed up and disconnected me, which has happened, or my email servers are down or whatever, then my WHOIS is no longer accurate. But if we can agree to work on the quality of the data then I think a lot of people will be a lot happier. Thanks.

SUSAN KAWAGUCHI:

I'm going to grab the mic and go first, Marika. I am Susan Kawaguchi and I am the domain manger for Facebook. This domain accuracy is extremely important for our company, for the trademark in part, but mainly for our users. So if you are not validating any of the information in a WHOIS, it allows all kinds of scams to go on. And you can see a trend. I look at over 100 WHOIS records a day and that's a light day for me. I do enforcement all day long; sit here in the meetings listening and sending out enforcements.

What I'm seeing now is because we do require — we sort of pound on people continually and report inaccurate WHOIS — now they're picking up our information. So therefore, I'm enforcing, and I just reported this to GoDaddy, so there's a domain name out there right now, it's serving a Chrome extension that is malware. It's delivering malware once you download it and it has all of our information and [turnkey] and info with facebook.com. So I can attest that that is not a working email address.



But the typical response and I understand the registrars' stance is that they have to contact the registrant. That's going to be interesting, because I know, I can attest that email address is false. I can attest that Facebook, Inc. did not register this domain name. So that malware's going to sit out there for another two weeks to go through the process — it is the process and I respect processes.

But if we do not start to take the WHOIS accuracy extremely important to all of us, it's not Facebook.com or Facebook, Inc. that's going to really be hurt, it's all of our users who are downloading a Facebook app that you can put up in a second and thinking "Oh, this comes from this source, Facebook, Inc.," it does not. If they were smart enough to even check the WHOIS, if they were knowledgeable of WHOIS, they would go, "Oh, it's a Facebook app."

But I have no recourse except to file an inaccurate WHOIS report and wait two weeks to six weeks, to two months, three months, depending on the registrar to get around to believing me that I am from Facebook and I'm attesting, I would send any documents and say this is inaccurate; it should be pulled down immediately. That doesn't happen.

So I would say let's do both, because yes the cost to registrars and registries is going to be incremental, but right now companies are absorbing the cost and the users on the internet are being defrauded; they are the ones that are really hurting. So somebody's got to take a stance and fix this problem.

KURT PRITZ:

Susan? Don't go away Susan. Don't go away too far.



MALE: Can I comment on this point? I might say that I'm only responding since she called me up directly. I just want to point out that we are not one of the six months to respond to your requests.

SUSAN KAWAGUCHI: No, you are not.

MALE: Thank you. I wanted to get you to say that on the record, and also, congratulations on a billion Facebook users. I'm curious how many telephone numbers are verified in your Facebook database and how many of those you reached out to? I think that...

SUSAN KAWAGUCHI: If you log on from a remote access, not your normal access and you will get a text. And if you do not respond, you will not get onto Facebook from that site.

MALE: I've seen the popup window, and Susan and I... I'm sorry for full disclosure, we work together and we're friendly. But I did want to point out that I think that WHOIS accuracy — I don't think any registrar, or anyone in this community is saying that an inaccurate WHOIS database is acceptable or that the current level of the quality of the data is acceptable. I think what we're saying is does this get us any closer?



SUSAN KAWAGUCHI: It's a start.

MALE: And I think that's kind of what we're saying. It is a start. It's better than nothing, but...

SUSAN KAWAGUCHI: It is a start, because you know what? I wouldn't be dealing with this issue right now that I'm dealing with if the email address had been validated.

MALE: Correct.

SUSAN KAWAGUCHI: It just wouldn't be there.

MALE: Maybe just one more point. But the issues you've been raising here as examples for better WHOIS accuracy or quality sound to me like abuse problems. These are malware sites. These are phishing sites. Go to the registrars abuse contact. Do not complain about the WHOIS, because the WHOIS has a process that we have to follow. Go to the abuse contact. We look at the site, we take it down in 24 hours.

SUSAN KAWAGUCHI: It's not always malware or phishing. It's "Oh, you might hate the context and... Sorry. It's not always those two things. Those are the



easy ones to solve. In this case it's a little bit different. I have 50,000 domain names that contain Facebook, that I do not own, that Facebook, Inc. does not own — that I have reviewed, vetted with the help of other people and we have to take action. That's what I do all day long besides ICANN stuff.

KURT PRITZ: There's 15 minutes left, we'll take the online question from Marika and then Thomas and Elliot.

MARIKA KONINGS: Yeah, this Marika, I have two questions on behalf of remote participants. The first one from Graham Shriver asking why are WHOIS listings always allowed to be manipulated? And the second question from Benedict, asking can the panel elaborate on why pre-resolution verification would require a PDP?

MARGIE MILAM: We don't understand the first question. Could you repeat it?

MARIKA KONINGS: The first question is why are WHOIS listings allowed to be manipulated?

KURT PRITZ: Let me just speak up, because I was watching in the chat. He gave an example of like a WHOIS that had '???' for the domain i.d. and kind of gibberish strings. So I think the question is, why can registrants just put arbitrary text into the fields?



SAMANTHA EISNER: So that is one thing that the proposed RAA does address, which is that it requires properly that all data fields be provided and the data be properly formatted, whether it's telephone number or whatever. So I think there will be enhancements in that.

MALE: And we've seen with some of our international customers that these question marks or other weird signs come out of them using different encoding when they input the WHOIS data. So they are inputting correct data and the systems of the registrar are not interpreting it correctly. It may be correctly in the database, but not correctly in the WHOIS because the WHOIS does not support a certain character set.

MATT SERLIN: Yeah, this is Matt Serlin. So to address the second question about the pre-resolution verification. It is the position of the Registrar Stakeholder Group that that does require a PDP because as James pointed out earlier it doesn't just involve the registrars; it involves the entire end-user experience. It involves registrars, registry operators, because it changes the technology and so very clearly that, we feel that is an issue that is right for the PDP process.

SAMANTHA EISNER: One of the things that we have discussed in the negotiations is the potential of doing some sort of tabletop exercise, or some sort of pilot project regarding pre-resolution verification. It's a fairly new idea. We



haven't quite vetted it, but it's something that has definitely been put on the table.

ELLIOT NOSS:

Thank you. Elliot Noss, Tucows, and I'd like to come back to the Facebook issue, because I think it provides some great context for this dialog. As a parent of two kids who are now 17 and 14, who have been on Facebook for many, many, many years. And you'll note in that they were on Facebook far in advance of when they were supposed to be on Facebook. I watched at least four or five years of children literally, being able to easily manipulate that simple verification process, of which there was no enforcement.

And I bring this up from a context perspective because I think that there are two things that are important. First, when you're dealing with a registrar and registrar's compliance, the response around abuse may not be as fast as some would like it, but I can tell you, having dealt with a number of issues with Facebook and a number of banks, etc., etc., that our response is relatively fast. In fact in some cases it's hours.

We've also had to deal with a number of issues trying to deal with Facebook abuse or compliance, which I would describe as deeply opaque. Now, I said, context. Facebook, congratulations on a billion users. There are a billion Facebook users. There are 200 million domain names — not domain name registrants — domain names; there may be 40 million registrants.

I think it would be great if we're really trying to solve some of these problems that the meeting that we convene, maybe ICANN staff can get



it on the schedule, is one to discuss the Facebook user agreement and verification inside of that. Because we get to the scope of the problem at about 50 times the size.

And the one thing I can tell you about this process, while it might not be satisfactory for all, here we are meeting and have met numerous meetings taking input from the community, etc. I promise you whether it's Facebook agreement or the PayPal agreement I certainly, nor does anyone, get any chance to get input to that agreement or negotiate it.

So from a context perspective, I think we all need to remember that what we're doing here is a couple orders of magnitude level more transparent with input and an input process relative to much more material commercial agreements on the internet today. Thanks.

[THOMAS LEKETTE]:

Thanks Kurt. My name is Thomas [Lekette] and I'm speaking in personal capacity. I want to point out that I'm not a registrar representative, so I have no bottom line to preserve. What I would like to do is add maybe another aspect to this discussion because number one, I think we are all, everybody in this room is all for preventing abuse from happening.

But the various measures that we're discussing may it be verification, or data retention, those should be carefully balanced because each of those measures will add costs to the price of domain registrations. And I'm not talking about profit for the registrars, but bearing this in mind, domain registrations will become more expensive.

We're going to see a lot of new gTLDs being launched in the coming months. And that would open opportunities for registrants in emerging



markets to get their share of the new digital property and build their business on that. And I think that with each and every cent that the domain registration is more expensive, we exclude certain groups from getting their share of these new opportunities. So I think trying to be inclusive also means that we need to cost sensitive when it comes to these measures. Thank you.

KURT PRITZ: So we're going to cut off the queue; we still have to talk about data retention, but...

STEPHAN VAN GELDER: I'm going to be very quick.

KURT PRITZ: It's your last week at work and... But I think this is a very important discussion. WHOIS, I think the remaining discussion, data retention is essentially one where there's agreement. So...

STEPHAN VAN GELDER: Thanks. Stephane Van Gelder from Netnames. I just wanted to make sure that there was clarity on the first question that came from Marika, via the online portal. Because it was my feeling that there was a misunderstanding on the points addressed, and the question which seemed to be about inaccuracy of thin WHOIS entries, when they are corrupted with sub-domains.



So examples are, sorry for Microsoft, but Bill Gates at Microsoft dot something, which is just a result... I think it's useful to make that clarification, because for people listening to these sessions we can't assume that everyone understands WHOIS the same way. It's an immediate result of the thin WHOIS format, which disappears in the thick WHOIS. In the thin WHOIS the registry is providing results based on keywords searches. So anything that has the keyword you've put in, including sub-domains that have nothing to do with that will come up. So I just wanted to make that point.

HOLLY RAICHE:

Holly Raiche and I'm the [Genuine Question to Makda]. I'm less concerned about whether we use the term accuracy or quality. I think what we want is that there is some kind of real person in the beginning and they can be contacted when it's necessary. And so if you'd care to enlighten us as to how we actually get the quality or the accuracy. I think that's the aim that we both have.

SAMANTHA EISNER:

Okay, we're going to talk a little bit now about the data retention issue. I'm back on the slide where I'll give you the overview of where we are and Becky mentioned it earlier, that there's this notion of bifurcated retention schedule where the more sensitive information would be kept for six months, and then the rest of the information would be maintained for a period of two years after the registration.

And as we mentioned earlier, we're building this notion of an exceptions process where we would amend the existing procedure to take into



account these data retention issues and the WHOIS issues. And we're really trying to seek input from the community on what the procedure should look like, what the trigger points should be, and any concerns you may have with procedure. So I'm going to put up the questions now and see if any of you would like to address that issue specifically. And we do only have five minutes left in the session.

And to provide a little more information on the procedure itself, right now it's triggered if the registrar is actually involved in a regulatory proceeding or a litigation. And so among the negotiating teams we've discussed that that's probably too late a point and that we would like to have an earlier opportunity for the registrar to raise these issues, so that they don't find themselves in a litigation or a regulatory proceeding. But we're trying to identify what type of trigger points there should be to start this process.

MICHELE NEYLON:

Do I really have to answer the first question? Is the current procedure of any use? As a registrar based in Europe I would say, clearly no. There is no way that you can expect us to enter into any agreement which is going to put us in conflict with the law and then deal with it afterwards. If you're going to go down this route of having a differentiation between European registrars and the rest, then it needs to be a procedure that doesn't involve me having to go to court first.

But one of the things that several people have brought up over the weekend sessions in the GNSO is that this could cause a lot more issues, because if you end up with a situation where you have two standards — you have a standard for registrars in Europe and you have standards for



registrars elsewhere, then are you going to see all registrars outside Europe switching to Europe? Is that actually going to help you?

I thought I'd never see the day that I'd actually end up quoting Milton [Muriver]; my God, it's happening. Milton put it quite succinctly, this is something that if a particular country wants to have a particular requirement on registrars or any other operator, then they need to legislate for it. ICANN is not a legislative body. You do not have the right or the power to makes laws that are binding on me or anybody else that comes into conflict with either my local law or European law. And you should not even try to put yourself in that position. Thanks.

KURT PRITZ:

Nor would we. So can we go to the last slide and thank everybody for their participation here. I think it was meaningful. Our task is to put before you a revised RAA at the first of the year, including the negotiations this year. So we've got an ambitious schedule for meetings and we look forward to talking to you again through online comment forum and the like and in person in Beijing. Thanks very much.

[End of Transcript]

