Male: We've got about fifteen minutes left, thank you – these inputs have been very good so far, thank you. We could - oh, John, please.

John Nevitt: I just wanted to raise another topic that certain registrars have raised in the past and that's related to essentially the accountability of the ICANN Board. Who's the ICANN Board accountable to? Essentially, we've raised the issue it's accountable to only itself. If you look at, if eight of the fifteen voting members of the Board run amok, for example, what could the community do? They could go to the ombuds person, ombudsman and he advises the Board itself, the same Board that made the initial decision, you would ask for reconsideration, and that goes to a reconsideration committee that advises the same Board that made the initial decision.

Or you can go to an independent review panel which essentially is advisory to the same Board that made the same decision in the first place. So the question is, how does the community have any accountability over the ICANN Board and I know we've talked about this. I was on a panel in I think it was San Juan, so what was that? 2008? We've been talking about this for two or three years, and we've seen papers, we've seen proposals here and there come out from ICANN, but we haven't seen any actual by-law changes yet.

Male: Thank you, in fact that was going to be the next issue that I segued to, thank you for that, John. Again, the questions that we sent to you are kind of maps to the affirmation of commitments, and in paragraph 9.1 letter a, discreet focuses on the Board in terms of performance, the selection process, the extent to which Board composition meets ICANNs present and future needs, and the consideration of an appeal mechanism for Board decisions. So John, since you were touching on kind of those avenues of review, or mechanisms of review, do you have any specific thoughts on the question of whether an appeals mechanism for Board decisions is warranted?

John Nevitt: Absolutely.

Male: Since there is an existing mechanism, what do you, what is your commentary on the existing mechanism, if you have something beyond your initial comment?

John Nevitt: Not really beyond, because I don't consider what's in place now an appeal mechanism. It's still going to the very same body that made the decision in

the first place, so there is no, in my opinion, appeal of an ICANN Board decision. You could ask the Board to look at it, you can ask them to get advice from other parties, but it's not an appeal in the way that I view an appeal.

Male: Any other comments?

Paul Diaz: Yes, Paul Diaz. Just to follow up what John said also. The existing mechanisms, none of them have binding authority on the Board, they are all advisory, and to John's point therefore it's not really an appeal, because they can take the advice but they don't have to do anything with it.

Male: Willie?

Willie Curry: Willie Curry, the President's Strategy Committee made a recommendation, just picking up on the point of Board members running amuck. There was a recommendation which I think got dubbed the 'nuclear option', where a certain proportion of all the so's and ac's could force a resignation of the Board. Do the registrars as a stake-holder group have any view on that? If that would be a useful way of dealing with the ICANN Board's accountability issue?

John Abbot: We never took a formal view on that. I'm sure individually many of us had views. My personal view, this is John Abbot, my personal view was always that – the nuclear option didn't work for the RAA, for example. We wanted graduated sanctions for the RAA to ensure compliance. A nuclear option is very difficult because it's very unlikely, extraordinarily unlikely to take place. So a nuclear option for the Board we don't think, I didn't think was appropriate either. There should be some graduated way to have an appeal. If they made one bad decision it should be able to get reversed without removing the entire Board.

Brian Cute: Any other comments? Individual views? Christine –

Christine Jones: Good morning. I'm Christine Jones from GoDaddy. Before I start let me say by way of full disclosure that my colleague sits on the Review Team with you guys. To follow up on Mr. Abbot's point, and I think also Mr. Diaz, we've been saying for a long time that ICANN has to have a review that binds the Board, whether you make that final level of review binding, or some other mechanism; that's got to be done. Otherwise, if you're here to talk about accountability and transparency, that's one of your

fundamental missions. You have to make them accountable to someone. You can pick who it is, but it's got to be accountable to somebody. Not themselves, somebody else, a third party.

We actually have a designated representative who goes to these meetings and speaks on these issues and unfortunately he was not able to be here this morning, so you kind of got stuck with me, and I'm a little bit more outspoken than some of the nice people in this room, but before we finish this meeting, let's just get a couple of things on the record, right? S

o, I'll give you an example. I testified under oath with the ICANN CEO a couple of years ago. He called me out on the record, said I was lying and said that ICANN Board transcripts are available. They're not. They still aren't. Under oath he said that. It was the last CEO, all right? The current CEO hasn't corrected that, the Board hasn't corrected that, that is not transparency or accountability, because there is nobody checking out what the ICANN Board is doing. Nobody went back to them and said 'Hey, you just testified under oath that you give out transcripts. Where are they?"

If we had somebody to whom they are accountable, maybe that would have happened. The .com agreement; I think John Nevitt referred to .net, but .com. Perfect example of an agreement that the ICANN Board took, negotiated behind closed doors, came and announced to the community, and we're all stuck with. Now I understand that .com is not relevant to every single person around this table, but it is the largest of the GTLDs and it is at least some indication of the kind of negotiation in which they engage. It's a very important example.

Going down your list, I don't know which question this answers, but it seems relevant to the discussion. We have situations where staff members modify community recommendations. I think you asked, Brian, earlier about the staff. Community gets together, and these guys over here who spend basically full time going through these pdps through the processes, through the working groups, thousands and thousands of emails going back and forth, give a recommendation, staff modifies it; under the guise of 'implementation'.

Well, what exactly community involvement is that? And where is the accountability? Now, that's not a Board issue, that's a staff issue, but nevertheless, Board is very persuaded by the staff. I would just throw out new GTLDs as an example of that. We can get more specific examples

back to you offline if you are interested. I think yesterday you talked about with the Board some transparency of the Board materials. We don't know what's in the Board materials; they say 'oh, that's attorney client privilege'. Well, I happen to be an attorney, and not every single one of those things can be claimed by client/attorney privilege. They're just not. Okay? There are specific examples where you can claim the privilege and there are specific examples where you can't.

Why don't they just give us the stuff? Why don't they just give it to us? There's probably nothing secret in there, right? I mean – sorry, I'm getting energized here. In my time zone it's not early in the morning. Okay. I would say one other thing here and then I'll shut up. Who limits ICANNs mission creep? And by mission creep I mean the ever expanding universe of things over which they have authority. Is it just anything the community raises they get to be in charge of?

Or is there that third party out there somewhere in the universe that gets to say 'Nope ICANN, your mission is to be a coordinating body for naming and numbering on the internet. You're not regulator; you're not any of the other things that the generic community wants you to be, choke it back a little bit'. I'm not sure who that is, but there needs to be somebody that does that. Again, I think it falls somewhere under the umbrella of accountability and transparency, one or the other or both of those things. To define what the mission is and say no, no, no – that's not your responsibility. You don't get to pick on that issue. I'll end it there, thank you for the time.

Brian Cute: Thank you very much. As I said at the outset, anything you have by way of documentation we would love to see, and that goes for everybody. Really we have to – we're beginning our data gathering phase, that's what this is all about, so we need to operate on facts and any information you have that supports that statements you are making today are more than welcome. Mason?

Mason Cole: Mason Cole. I wanted to echo what Christine said, and I think this can be backed up with documentation. I think that mission creep on ICANNs part is a danger to the entire community, to be honest. When ICANN was created it was given a limited, very specific set of technical coordination duties, but I think there can be ample examples given where ICANN has gone beyond that. ICANN is not a price regulator, ICANN is not a regulator of certain aspects of business, but it behaves as such because the

community has the latitude to bring those issues into play, and ICANN staff or the organization feels obligated to entertain those.

I think that can be a dangerous precedent that's set for the entire community. I don't want to prematurely leave that subject, but there is one item on your list, number 7 as it relates to the GAC, do you mind if I – and I know our time is short, but I wanted to bring that to the fore because we had a – a stake-holder group had an interaction yesterday with the GAC on a number of issues. Do you mind if we pull up question number seven there?

Brian Cute: Will you scroll to Question Number 7, please?

Mason Cole: Thank you, so the question is about how the Board can be fully informed by the information provided to it by the GAC. Yesterday we had a discussion with the GAC for the first time in a long time, formally, as a stake-holder group. It was very useful, it was instructive, it was a chance for us to talk to the GAC about what its priorities are, and a chance for us to inform them of what our priorities are, and as you might guess, the RAA was an issue of consideration. The law enforcement community has been very active in promoting its proposed changes to the RAA.

Just for context, registrars – we're all in favor of going and catching the bad guys like everybody else. The difficulty in soliciting affirmations or endorsements of specific RAA changes in this context is that registrars are not fully brought into the discussion about what impact those RAA changes might have, on registrars, on end users, and on the rest of the community. So part of that is the registrars fault, we didn't seek an audience with the GAC, however it's – we suggested to the GAC that it's premature to endorse certain RAA amendments without evaluating their impact on the community.

If there's not a responsible study done about the operational impact on registrars and the services they provide, and on the registrar's customer base, which is literally millions of end users of the internet, it's premature to say that those amendments are warranted. So that's just an example. If the GAC doesn't solicit, or if an interested group doesn't solicit the impact of a proposed policy or proposed contract change with those who are responsible for implementing those changes, if the GAC makes those endorsement to the Board, as an example, then the Board is not fully informed.

Brian Cute:	Thank you, would you consider more structured interaction with the GAC and the registrars and other constituency bodies of ICANN as being an improvement that might address some of the concerns you just mentioned?
Mason Cole:	I'll speak in my own personal capacity and not as chair in this regard. Candidly, I think that ICANN meetings are insufficient at this point to handle that amount of work that is being brought through the community. I don't think structuring additional meetings, or mandating certain exchanges is the answer. I think the real answer is a responsible approach to the amount of work, and a responsible prioritization of that work so that decent conversations between affected parties can be had. I don't think mandating additional conversations with the amount of work being processed by the community is going to help anything. I do think it's incumbent on any one who is proposing policy or would be affected by policy to seek one another out to have conversations about what those are. I go back to the interaction that we had with the GAC yesterday. It should be our responsibility to put ourselves in front of the GAC to discuss that. It should be the GACs responsibility to seek us out when they don't fully understand what impact a policy might have on registrars. Maybe my other colleagues would have input on this.
Brian Cute:	Thank you, anybody else have a view on this question? Yes –
[Greg]:	I would just, at least from my own perspective; I would find it beneficial because it would remove from question whose responsibility it is. I had a certain sense yesterday that to the extent you're not involved in the process, it is potentially always the group who hasn't fully engaged, it's their fault for not fully engaging. But it leaves open the question how much engagement is full engagement?

When are you supposed to be involved and when are you not supposed to be involved? To my mind, having structured communications lets the parties that are participating more clearly when they should engage with the process and at what time it's appropriate. Engaging too soon doesn't make sense, and engaging too late is fraught with peril. |
| Brian Cute: | I've got Becky first, and then Willie. Becky? |
| Becky Burke: | I just want to go back to the question of the workflow and the work burden. I think we have heard that from everybody that we've talked to, |

that there's just complete overload. I know the GNSO is doing some prioritization work. Is the overload a product of competing interests? So that everything, all the various stake-holder groups have different views of what's important, and that's why it's getting jammed through? Is there make work being undertaken? How do we get our hands around that?

Brian Cute: Mason?

Mason Cole: I think it's a little bit of both, in fact it's a little bit of everything, so the threshold for proposing policy is low enough that there's no barrier to entry for a proposed policy. I'm not saying that's a good or bad thing, but it contributes to what we are experiencing right now. There's no inherent prioritization mechanism for ICANNs work, so everything has to be considered. ICANN is obligated to consider everything simultaneously.

So your pool of issues gets wider, but the structure for dealing with those issues remains the same. I don't know that, I don't know if GNSO prioritization is the eventual answer. I know it's an attempt at bringing some sanity to that process, but clearly something needs to change. It can't be sustained.

Brian Cute: We're right at the hour; I want to allow Willie to ask his question and any final thoughts from the registrars. Willie?

Willie Curry: Just want to go back to some of the previous points and ask do registrars see the office of the ombudsman as a useful vehicle for raising complaints on some of the issues that you've raised today -for example, regarding staff conduct?

Mason Cole: I'm sorry, did you say staff...

Willie Curry: Staff conduct.

Brian Cute: Any thoughts on that question? Christine?

Christine Jones: Christine Jones. I'm sure you're afraid to call on me now. I would just say if, again, the ombudsman had an independent authority to bind ICANN, it would potentially be more effective than it is now. They don't have a huge volume of work, and I think they have well intentioned people in the office, but without some kind of ability to have an ultimate authority, it's much less effective than it otherwise could be.

Brian Cute:	Thank you, any other - John?
John Abbot:	I don't think I'd want an ombudsman person to have ultimate authority, though – one person. I do agree with Christine, though; it would be more effective. I think the, some of the background, some of our interaction as far as registrars historically with the ombudsman is typically, we're being asked a certain question by the ombudsman, we're providing an answer. If we had to complain ourselves, I don't think we would take that route, because we would just raise it publicly. Or raise it to the staff or raise it to the – I don't think we would need that vehicle as a stake-holder group, so it was more responsive than anything else.
Brian Cute:	Jeff - [Tom]?
[Tom]:	Yes, I'd like to issue from my perspective they would actually just go back to the staff person that I was complaining about, so it's not a clear line of 'well, I'm going up to a certain level of organization, if I complain to this person' but I do want to raise another point, unrelated to this. But it had more to do with transparency.
	I recently went to the ICANN website and it's grown quite a bit over the last few years, and I was simply looking for an organization chart. I wanted to look for a particular person in the organization and as far as I can tell its non-existent. There is no way to contact individuals anymore via the ICANN website. They have a main number, and you don't know who works there.
Brian Cute:	Thank you. With that, I think we're going to have to wrap. Thank you very much, that was a very useful session. Again, if you are inclined to provide written responses to the questions, please do. We are doing data collection at least for the next two to three months before we have to start turning to analysis and draft recommendations.
	We want to keep an open channel with you. Please those who spoke up, if you have documentation of the problems, we would appreciate it. Most of all, thank you for your time. And if the Review Team would remain in this room, we're going to have a quick meeting before we move on.

--End of recorded material--