MONTREAL – Public Interest Framework
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AVRI DORIA:	I'm Avri Doria and with Ergys and some of my Board colleagues, what we're basically talking about and working on is trying to develop a public interest framework for discussing the global public interest which is one of our stronger mandates in both the Articles of Incorporation and the Bylaws.
	Ergys Ramaj will start off, and I hope I pronounced your name correctly. We'll start off by describing the situation that we're in and some of the problems, some of the key considerations, our goals, the current landscape and opportunities, and then a little bit of discussion about the framework that we are suggesting. And we're suggesting it from the Board as a starting place for the conversation.
	The one thing I want to say at the beginning is that we don't have an idea that we are imposing on the community, we have certain things in here that the Board has to do because of the way the bylaws are set, and we're basically coming to the community and sort of saying we need your help to do this properly. So, this is something I'll be talking about a lot this week in lots of different sessions and in this one. So, I'll pass it off to Ergys.

ERGYS RAMAJ: Thank you, Avri. I think it's important that we start by acknowledging that discussions on the topic of the global public interest are actually not new, and in fact, they've been taking place since the early days of ICANN. One of the key reference points for discussions on this topic are the ICANN Articles of Incorporation, and they specifically state that at ICANN, the global public interest is directly tied to the mission of ICANN. And more specifically, it is about the operational stability of the internet, which of course is carried out by executing the mission that is outlined in the ICANN Bylaws.

Another important mention in the Articles of Incorporation is that what constitutes the global public interest can only be determined by the global multistakeholder community in a bottom-up process and this framing is somewhat foundational as this conversation continues to take place. There are a number of other primary governance documents that also make mention of the global public interest and in addition to The Articles of Incorporation we have the Affirmation of Commitments, as well as the old and the new bylaws.

Now, over the past five to six years the Community has been engaged in discussions on this topic and one of the areas where progress has been made Is around getting to an improved understanding of how the concept itself is both understood and applied in different regions and contexts. Where things have gotten stuck a little bit is around the notion of operationalizing the mission itself. So, making sure that it's standardized in such a way, and that it becomes a part of the decision making process at ICANN. We're not there yet. Next slide please.

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In 2014 the ICANN Strategy Panel on Public Responsibility Framework came up with a proposed definition of the global public interest as it relates to the internet, not ICANN. During this time, there have been a number of sessions across the ICANN community with various groups, including two high interest topic sessions and as I mentioned a little earlier, there have been no agreements on Next Steps.

Just for context, I would like to read the definition proposed by the panel on public responsibility framework verbatim, and I quote, "ICANN defines the global public interest in relation to the internet as ensuring the internet becomes and continues to be stable, inclusive, and accessible across the globe, so that all may enjoy the benefits of a single and open internet. In addressing its public responsibility, ICANN must build trust in the internet and its governance ecosystem."

Just a couple of observations here from the community during this process The first one is that this proposed definition was perceived to be a bit too aspirational, essentially offering very little practical guidance in the way of operationalizing it. And the second observation or understanding across the community is that there was a need that was expressed to engage in a more bottom-up discussion on this particular topic.

So, in summary, a few key takeaways or considerations. There is an increased understanding around the community that any definition could potentially be limiting, so focusing on the outcomes is probably more useful. Related to that, and on the definition side of things,

acting in the public interest, of course, within the mission and remit of ICANN, is more useful.

And last but not least, pursuing the public interest, of course, requires weighing the various interests that are at play And determining how to best serve the interests of the general public and, of course, deciding by which means. And thankfully, these are the same requirements for following the bottom-up multistakeholder process. So this foundational piece is already in place. Avri, over to you.

AVRI DORIA: Thank you, Ergys. So the goal is therefore to develop a public interest community procedural framework, and the reason we're looking at that is, as was just explained and as I've seen even since, there are many good ways of explaining the public interest.

In fact, lots of people have come to me and said, it's easy I know what it is, here. And we've even gotten comments that did a very good job of giving a view of the global public interest. But when we try to get to the point of a consensus for a global public interest, it comes to me that we very often get to one of my favorite expressions which I feel like we're trying to boil the ocean, that we're transcribing a global public interest that is very broad, is either aspirational or difficult to operationalize or such.

So here what we're trying to do is basically link the mandates in our governing documents. That's the bylaws, that's the Articles of Incorporation, and frameworks of interpretation later too. And

basically, those are documents that that the community spent a lot of time on in the transition and went through variations on, where we really tried to not only say we must live up to global public interest, but to basically put down within the constraints of our mission what were our values, what were those public interests that we were trying to solve.

So what we're looking for is a method of finding the global public interest for each instance where we need to understand it, as opposed to trying to turn ICANN into an organization that defines global public interest in some grand or broader way, but basically when we have a task, when we have a decision to make, when we have recommendations to make or advice to give, how do we basically link it, anchor it in, what is defined as global public interest within our foundational documents.

So we're trying to basically look for a method, call it a toolkit, call it a framework, any number of names we can apply, but basically, how can we do this? So we want to focus on the context of defining it as opposed to doing it in the abstract. We've got a specific problem to solve, what is the global public interest? And how do we do that in a bottom-up multistakeholder process?

We've already got those, we're already living with them, we live within them, and we've also had the transition where we've done a lot of work, and we've given what I believe is a set of anchors that we can basically look at and use to basically discuss the global public interest in any particular circumstance. We want to try and help facilitate this

discussion and I'll say it a couple times, the Board is not trying to impose a method for the community to tell us what the global public interest is. The Board definitely has an obligation to make all its decisions with that in mind, and if we look at how the considerations are all based upon serving global public interest.

And if we ever get to the independent reviews, they review against the global public interest as it's defined in our foundational documents. So we have a certain commitment to try and do that. So, within the current landscape there's no specific tools available for the community. There's a bottom-up multistakeholder process, there's the process tools, there's how we do PDPs, there's how various ACs come up with their advice.

But beyond that, there's no systematic or assistive tools to sort of say here, if you do this, you will help Identify the global public interest that's related, so that when a decision needs to be made by the Board and the Board has the recommendations, has advice from various committees, has outside comments, it doesn't have to sort of on its own, find out what the global public interest is that needs to be served. And if there are many points of view on the public interest, if they're anchored in our foundational documents, we can see them and we can actually then work with the groups to try and do the balancing that's needed.

Board resolutions now, I'm sure those of you that have been reading them and have been reading the rationales, basically try to anchor themselves. When there's a decision the Board is making, it tries to

anchor itself in the foundational documents, in the bylaws, in the articles. So the opportunity is can we help facilitate a community driven process to develop these tools? So this tool is just a blank piece of paper, we put down a tool, and now we want to talk about it.

There's certainly nothing finally formed or even fully well formed about it. And then a toolkit will help demonstrate proactively and systematically how the community recommendations, advice and comments meet the public interest before the Board has to do its consideration of is this within the public interest. The Board has to make that consideration on that basis, I know I'm repeating myself, but I really do think it's important to repeat myself, the Board has to do this, the Board is already doing it to a large extent.

But we're looking for help. We're looking for help from the community when we do this anchoring in our foundational documents of what is the public interest. So, The first step we took, and basically you'll see that there's basically five categories I'll go through them separately, and basically put together the beginnings of what might turn out to be a framework. And if I seem like I'm couching this in lots of "maybe" and careful words, I am, we don't want to presuppose the process, we just want to help.

ICANN Technical Coordination is one of the overall ICANN categories that we need to deal and when we look at that, we look for public interest categories that are related to that and these are some, there may be others; is it stable, secure, open, resilient, interoperable. Any

of you that have read the bylaws or dwelt inside them know that those are terms that bind us.

So then, how do you anchor those in the bylaws? And basically, you ask questions. We ask questions of, will it preserve and enhance the administration of the DNS and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the internet? That's a quote, that's one of the commitments, that's A-1. So, what we're doing in this last column here is we're saying there are overall ICANN categories. There are public interest categories and these are some examples. This is just an example, it's certainly not complete or final in any sense of the word.

ICANN's role in the DNS marketplace needs to be competitive, fair, trusted, words that we've seen in the bylaws. So then the question we need to ask, will it, where feasible and appropriate, depend on market mechanisms to promote and sustain a competitive environment in the DNS market? Core value B3.

Another one, benefit to the intern community, is it beneficial? And then basically ask questions like, will it operate in a manner consistent with these bylaws for the benefit of the internet community as a whole? In performing its mission ICANN must operate in this matter, parenthetical, carrying out its activities in conformity with relative principles of international law and international conventions and applicable local law through open and transparent processes that enable competition open entry into internet related markets. Commitment A.

So, that's three examples, again, this is an example of a framework, hopefully something that we can build on. It's something that the ICANN Board and ICANN Org are already sort of using in a sense to try and build the rationales and make the decisions that we're making so that we can argue quite reasonably, we hope, that they are in the global public interest.

Going to another two categories. ICANN global multistakeholder community and policy development processes. So the public interest categories within that; diversity, respectful, inclusive, innovative, transparent, open and balanced. Those are key words that basically define how we have to operate to be in the public interest when we're making decisions.

And then a couple of the bylaws considerations that we find for anchors on those. Will it strive to achieve a reasonable balance between the interest of different stakeholders, while also avoiding capture? Or will it seek and support broad informed participation, reflecting the functional geographic and cultural diversity of the internet at all levels of policy development and decision making to ensure that the bottom-up multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent. Core Value B2, the other one was Core Value B7.

Finally, ICANN's policies and practices, are they neutral, objective, responsive, accountable, sustainable, fair, fiscally responsible? And then two examples within that category; will it remain accountable to

the internet community through mechanisms defined in these bylaws that enhance ICANN's effectiveness. Commitment A6. Will it subject to the limitations set forth in Section 27-2 within the scope of the mission and other core values, respect internationally recognized human rights as required by applicable law?

Core Value B8. And I know that's waiting for the WS2 framework of interpretation for it to go instance, but this is assuming that it will. So, this is basically the sample of what we're looking at, is how do we understand the categories, how do we understand the public interest categories, and where can we anchor them in our foundational documents, in our bylaws, and in our articles?

So, we started out doing a community consultation and there was a little bit of question about why a community consultation and not a public comment. And what we're doing here, which is the same sort of thing we're trying to do, we sort of followed an existing pattern. As in many PDPs where first they go to all the constituencies and stakeholder groups and say here's the problem as described by the org in an issues report. What do you guys think? Where are we on that? What have we missed? What do we need to add? What are some of the considerations that we need to include?

And then we get the thoughts of the consultation and we have a public conversation here, then we go back and rework it. And then we have more consultations, and then eventually, when we think we have something that has reached an annealing point, that has reached a level of energy where we think, yeah, maybe the community is there

on it, then we can do a public comment and check and see whether this process that we're going through has reached an endpoint.

So, just in case anybody thought that we were skipping public comments by going to a community consultation, it's really using that community consultation as a first step, as a let's take the white piece of paper, let's put our first ideas down, let's go back and forth between Board and Org and try and get something that we think is halfway reasonable or even if we thought it was fully reasonable, and then get first opinions, discuss it, and then try and get something that is reviewable.

So, the questions we asked in the consultation were what are your thoughts on the proposed framework approach? Do you have any suggestions for how it can be improved? And we did get a bunch, we got questions, we got why is it only DNS and not IP addresses and such and that was just a feature of what we found in the documents and what we were working on.

What are your thoughts on the proposed Approach for decisions in the ICANN ecosystem to be accompanied by consideration of their impact on the global public interest. Will this help? Will this work? Does this go any way towards answering our problem? How do you see this working for the supporting organizations, the advisory committees, the constituency groups, the review teams or cross community working groups which are contributing?

Now one of the comments was well, if you're using the bottom-up multistakeholder processes as defined, isn't this somehow redefining those processes? And the answer I'd like to give on that is, I don't believe so, these are questions that we're hoping can sort of get included in those processes. We're not suggesting any new process, We're just sort of suggesting that hey, if you look at it this way and you do some of these considerations, then these things get to the Board and the Board has to ask these questions, you will have already given us a variety of answers that we can then take the next step and look at the balancing of.

So, community and next steps, we got comments from the GNSO Council, from ALAC, from registries, and from the business constituency. We're gathering feedback, we had a couple webinars, we're gathering input here, and then we're going to basically bring all this input back, the Board is going to consider it, work with Org and such. We already got a very serious comment about, your timeline was way too optimistic and you got to rethink it, and I think that comment has already been well accepted.

And then if you add it to the other comments we've seen today, there's multistakeholder process improvements, there's PDPs, there's all this work going on, you know, take it slow, take it serious, and don't push it too hard. So indeed, we'll do that. So we're so we're going to look at the timeline and see, but want to note that in one sense, the Board's already using this, so the sooner bits and pieces of this can Basically grow into the practice, the easier it'll make it for the Board to

come out with a decision that is consistent with the global public interest as seen by this community.

And there we are, I don't know if anyone at the panel here would like to add comments, but then I'd like to go to the microphone. Does anybody wish to add something or we'll get to it later? So please. You want to make a comment now? Do you want to go to comment or you want to come up here? Okay, great so after Steve, or do you want to go before Steve? Well, you guys work that out. Any slide you want me to go back to, I'll go to, maybe not competently, but I'll do it.

STEVE DELBIANCO: Hi, Steve with the Business Constituency. What we've put in writing you've already seen, since there weren't that many comments that came in and many of you had seen that line of thinking before. So I'll just try to frame it in terms of what I've heard here today. The BC believes that the commitments and core values in the bylaws are mostly about how ICANN org and community and Board do what we do, and not what we produce as a result of those processes.

In other words, our commitments in our core values when you read them in the two previous slides which categorize them in five ways are nearly all about the way in which we come up with the policies that we do and the decisions that we do. In that respect, they hardly need to be recategorized or rephrased in any way. They stand alone and they've just survived three years of the work that Avri, myself, Leon and many people, Malcolm, in this room, have done, which was to

bring them into the new bylaws that we did as a result of the transition.

So I think they're solid, the way they are, but the challenge that you took on really was to boil the ocean, because you've decided to combine how we do what we do with the public interest of what it is we produce and the BC was inviting you to keep them separate, that the how we do what we do, those values and commitments, are different than the simple objective measure about whether what we've produced in any given policy recommendation are in the global public interest of what it is ICANN is supposed to do.

Because ICANN, according to our mission statement, and that precedes the commitments and core values and the bylaws, only does two things; it coordinates on the registration and the resolution of domain names. The registration of domain names and the resolution of domain names, whether for an email or a lookup and registration, whether it's at the TLD level or the registration of names within there.

And about that, the BC recommended that two words are sufficient to describe the global public interest with regard to registrations and resolutions and those two words are availability and integrity. So I can put in one sentence what would be the global public interest of the output, the availability and integrity of registrations and resolutions.

And the value of a statement that simple, such as life, liberty, and the pursuit of happiness, the value of that statement is that when two

processes within the ICANN community at the same time, or at different times, come up with conflicting visions on how something should work, but they both followed all of the commitments and core values, what is our touchstone to know whether those policies are in the public interest?

When GAC advice comes across and we need to evaluate whether it conflicts with GNSO policy that we've just worked through, how do we determine whether those processes are in the global public interest of what ICANN needs to produce, especially if both have followed all of the core values and commitments? So there's an inviting simplicity to the notion that the ultimate test is whether registrations and resolutions are available and have integrity.

I'll close with just a couple of examples. The availability of registrations and resolutions and the integrity, the availability has to do with can I get domain names in any script and language anywhere in the world at any time? Those would be the availability. Are they available to all classes of potential and actual registrants and users? When it comes to integrity, you want to guarantee that the registration goes to the entity, the entity that is entitled to receive that registration, so we don't have cyber squatting, for example.

The resolution side would be that when I am using a domain name and an email address or URL in a particular web application, that the integrity of that is that I get the actual resolution that is tied to in the DNS as opposed to a resolution distorted by a man in the middle

attack, a cache poisoning, or some other form that undermines the integrity of the resolution.

So, ultimately it's the availability and integrity of registrations and resolutions. And that is not instead of the work you've done, it's rather a simplistic way of putting a capstone on that work, so that when there is conflict between two decisions the community has done, both of which followed all of our core values and commitments, how do we determine whether it's in the global public interest for us to operationalize and roll it out? So, I hope that's helpful clarification on just a two page comment that the BC filed. Thank you.

AVRI DORIA: The one question I have here is, and I thank you for that, and I hadn't quite seen it in that light, so thank you for the explanation, is I thought our capstone was the mission and the limitations of our mission. So when I was looking at it and the simplicity of that is beautiful, but it's also maybe a lot broader than our mission and the limitations of our mission might allow. So, how do you respond to that?

STEVE DELBIANCO: That's fascinating because I would have thought, Avri, that you would have concluded the opposite, because the availability and integrity of registrations and resolutions strikes me as inherently narrow, inherently narrow and fitting with an organization that manages the identifiers of the DNS, because all we do are registrations and resolutions.

So, I would have thought that availability and integrity are about the only two things that inarguably we ever do, registrations and resolutions, was simple and narrow, and if I heard you correctly, you were just suggesting that it might not be narrow enough?

AVRI DORIA: That was just a question that occurred to me as I was listening and sort of taking, because we did have a capstone and we assumed that the mission was indeed our capstone, and such, but I'll definitely look at it in that, and I assume that we all can, but yeah.

STEVE DELBIANCO: We applaud the work that's been done and suggest that this is a capstone over what you already have. Thank you.

AVRI DORIA: Thank you. I was going to say, is there any Board member that wanted to comment, but there's one at the microphone.

LEON SANCHEZ: Thank you Avri, Leon Sanchez. This I think is related to what Steve was saying. So I guess this an opportunity, Steve, for us to come together and actually bring both the Board and the community out of our respective silos, and collaborate together. So this is an effort, a good faith effort, to say okay, how can we improve things the way we are doing them?

Because as you clearly said, the core values alone, but then again, I think it's healthy that when we do things throughout all the policy processes that we follow, we have a check and balance and we say, are we doing things in line with our core values?

And we constantly ask ourselves these questions because sometimes we are so pressed by the timing issues and the heated discussions and the stakes that we put into the discussions, that we might be forgetting sometimes to ask ourselves these questions. Are we acting in line with what our core values mandate? Are we in line with our mission? Are we within our remit, et cetera.

So I guess this exercise what tries to do is to say, okay, let's, as you as you put it, let's not try to boil the ocean, let's try instead to set some guidelines, some references that can help us just guarantee that what we are doing is in line with our mission statement, our vision, our core values et cetera.

So that when any policy or any effort that comes from the community to the Board, the Board will already know that you have thought all along In fulfilling, this point and it's guidance, and I'm not saying we want you to make our lives easier, we will do our work, but it will help a lot if when it comes to the Board we already know that you have gone through these checks and balances and asked yourself these questions and say yes, what we are delivering to the Board in our vision is in line with these core values and with this mission and with this limited scope, et cetera.

And therefore it should be considered as in the global public interest. And then we'll go through it, we'll review it, of course, and we will say yes, thank you very much, what you brought to us is perfectly in line with global public interest, therefore let's go together on this. I hope that helps.

AVRI DORIA: Thank you.   What you said reminded me, Leon, what you said reminded me of one of the comments we got during the webinar and well actually it didn't remind me, it reminded Ergys, and Ergys reminded me, but anyway, just to be honest about this, and this one should appeal to you, was a recommendation that we build some test cases or what was the term you used, stress tests, and that basically one of the things that may actually help us in taking the next step in deciding how to include the capstone, whether we do have it, and I know you said that Yeah, we all know what the commitments and values are, but we were looking for some tool that would actually help us use them as opposed to, say go read the bylaws and make sure it's within the bylaws.

So perhaps, and we got this comment during one of the webinars, that if we build some test cases, and I'll call it test cases, not to steal the stress test, that would help us, we could actually then do some exercises and I don't know whether you've got the inclination to help us build some, but certainly the call does go out to see if we couldn't build a couple cases that would help us test, measure, see how it works, see how it doesn't, see whether, as Leon says, it gives us the

ability to put our finger on what we're talking about at a particular time. So, thank you for reminding me, thank you for reminding him. Please, before I babble on too much.

UNKNOWN SPEAKER: Avri, can I comment?

AVRI DORIA: Please.

UNKNOWN SPEAKER: Steve, thanks for the very succinct message and the way you framed it is very eloquent, but I'm going to challenge you that it wasn't precise enough. We use this term unique identifiers on purpose so it's not just the DNS, but it's also the protocols and the numbers as well to put that in there and I think you've got a great way of capturing it.

MALCOLM HUTTY: Thank you, and can I start, Avri, by saying I think that this is an interesting and useful piece of work to be working on it and I can see that this is a really genuinely good faith attempt to engage with how we actually operationalize the values and commitments that we've signed up to, and I would like to upload that. I particularly like what you were saying about anchoring things and showing and having a read across so you can really see back to where it comes from, and so forth.

I must say when I first heard the word toolkit I was a little worried. Toolkit could mean all sorts of things and there is a risk, certainly when you deal with terms like global public interest that you look for things that can actually be levers that you can pull on to do the things that somebody might want to do, which is really the opposite of anchoring things firmly in the bylaws.

So, I don't want to be too lawyerly about this because I do think that looking at this just saying oh, go away and read the bylaws as you say can be a bit dismissive and can fail to embed and operationalize those commitments in the way that this seeks to make it more real on a more day to day basis.

At the same time, however, whenever you step away and I am going to be a bit lawyerly now, when you step away from the original text, when you're selective about what you pick out and when you paraphrase or change words and so forth, then you definitely create a risk that people look at your simplifying or explanatory document rather than the original, and then start to interpret the explanatory document, rather than interpreting the original, and that leads you into error essentially, into legal error.

I had the benefit of speaking with Steve before about his idea for a simple sentence and it didn't occur to me then, the challenge that you just put to him. And as soon as I heard it that's when I wanted to stand up at the microphone and make this point because it really was very precisely that the explanation of this is exactly the kind of thing going wrong, because Steve, we don't do resolution at ICANN, resolution is

done by resolver operators and registration is done by registries and registrars, not by ICANN.

ICANN's function is coordinating the allocation of the assignments and names and the roots, not registrations, and also facilitating the coordination of the operation and the evolution of the DNS and I'm going to leave out some extra verbiage there, but actually, the bit that you were describing encompasses other parties' role in that and it hadn't even occurred to me that when we were discussing that last night. So moving away from the core text can be very dangerous. Nonetheless, this is important work here and I do applaud it.

I do also wonder whether some aspects of the global public interest are captured not by individual elements of the text, but by the text is a whole in the round. And I'm going to say this, if someone were to ask me about what is the most important public interest concern with regard to ICANN as a whole, for me I would say that at the moment of transition there was a compact made between all the elements of the community that spoke about decided and agreed and settled what is ICANN's role, what is its mission, and how it would work and how it will go about things, a compact that was the foundational thing.

And I think the public interest, I think it would be an incomplete statement of anything about public interest that didn't say that defending that compact was an important element and maybe here this goes to my particular area of concerns which is around accountability mechanisms and so forth that are the means by which

the organization discovers and correct errors in how it is done That's how I like to think of those sorts of things.

But I think that certainly ensuring that compact is honored and that the mechanisms for ensuring it is honored continue to be effective is an important element of the global public interest I don't think it would be a complete statement that doesn't say that and yet merely to say honoring the bylaws or following those processes will kind of relegate that, while it would be a thing, it would relegate that to be amongst the others, whereas the global public interest in this compact Is essentially on some kind of other level, I would say so, I'm going to stop before if I ramble on too far, but I think I made the point about the value of operationalizing but also the danger of moving away from the main text.

AVRI DORIA: Thank you. I think that we very much had that in mind, that's why, while we may have added the word, "will it" before the quote, it was not changing the words of that and I think while we didn't say it anywhere, I think you captured very well sort the compact of why we wanted to try and make this something that was, and I know toolkit is a funny word, I kind of like the toolkit because it means you open it up and you use things, but you don't always have to use the same tool and you don't necessarily have to use that tool or this tool, and we can find any other word if toolkit is not right, but basically it was how do we operationalize that compact?

We've got the compact, we all recognize that we have it, and in fact, that's why I think in the Board rationales on various resolutions it's basically always trying to anchor them into the document that is our compact, and such that represents it. So, I appreciate what you said and while we did not paint that word or use the word "compact," I think it very much matches what we were trying to do, hopefully. Yes, Matthew?

MATTHEW SHEARS: Malcolm, thanks for that, I think you've touched on something that is a genuine risk that determining what the global public interest is, becomes too mechanistic. And you're right, there is an element to the bylaws that is the sum of its parts that we can't lose in many ways, and I think somehow we need to ensure that we capture that and that what we have here as text is an excerpt and that to fully account for the global public interest, you need to go to the text itself. So I think we somehow need to work that into this dynamic, but thank you for that, that was very helpful.

AVRI DORIA: Please, go ahead.

JORDAN CARTER: Thanks, Avri, Jordan Carter, .nz. I did some work on accountability for a few years and I think we deliberately stayed away from this topic. I sort of think I land a bit closer to Steve's point, that the way that

ICANN sustains the global public interest is by doing its job and its job is what is set out in the bylaws. So as long as you're helping the internet systems unique identifiers work, that's the test.

And what this looks like and I tried to Google it and couldn't find it on the ICANN website, is a blending, a strange blending of how ICANN acts appropriately as a public interest organization and what the public interest is, and I don't think we should try and determine what the public interest is. We serve the public interest only by doing our job. Otherwise, we'll get into spending hundreds of millions of dollars of auction proceeds on broadband rollout programs or some other horribly contentious sort of problematic expansion of scope.

So I don't know if there's woven together because I haven't been able to find the documents to read them. They're not linked off the schedule for this event, unfortunately, but we serve the public interest by doing our little narrow bed of making the internet work and anything else is getting too complicated.

AVRI DORIA: But, if I can ask a question, as the Board is committed to serving it, it needs to be answerable in an independent review, to having done so, is it enough to say, yeah, we did our work, or do we have to explain how it is we did our work within the confines of our compact?

JORDAN CARTER: Well I think it depends on what problem you're trying to solve. If you're trying to say how does ICANN serve the public interest, it has to be as simple as Steve's formulation, or the one I just gave you. If you're trying to explain how you're acting as a public interest organization, sure, build a framework, but this begins to look like it's creating complexity for the point of it.

AVRI DORIA: Thank you. Steve?

STEVE DELBIANCO: Steve DelBianco. The key word in global public interest is the word public and the public aren't the people in this room, I'm afraid. We need to go out and check somebody in the streets of Montreal using a smart phone to download an app and book a restaurant app or put a social media post up, and for the public those are actual and potential registrants and users. It's another simple capstone.

The public for the purpose of ICANN are actual and potential registrants and users, somebody who is a registrant or wants to be one, somebody who is an internet user or wants to be one, but can't get resolutions in their part of the world.

So, if that's the public, they actually won't care if it's about the contractual compliance or the protocols, they won't care, they'll say, can I get registrations and resolution 24/7/365 in any script and language anywhere on the planet and maybe even beyond the planet,

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and do they have integrity, did the domain name I sought, the email address that I sent get to the right place or come from the right place? Or was the integrity of that experience subject to DNS abuse, cache poisoning, a variety of other abuses that undermine the integrity of a resolution or the integrity of a registration.

So ultimately I still appeal to you to think of it more simply and get out of this room. If we applied stress tests the stress test will be similar to what Jordan just described, a bottom-up process that checked all the boxes of process and did it in the right way according to commitments and core values, ended up suggesting a policy that was so far afield from the integrity and availability of registrations and resolutions. What could the Board use to say no to that policy or that advice that came over from the GAC or something that came out of the GNSO.

So ultimately, I still think that we need a capstone that captures and limits what it is that the people outside of the ICANN meeting will say when they assess sure, I heard that they have a great process inside of ICANN, but I can't get to this website, or I can't register a domain name in a script that I want to use in a TLD that serves my people. Thank you.

AVRI DORIA: Before going to back to Malcolm, anybody up here want to respond, comment? Malcolm, please.

MALCOLM HUTTY: I come down here with Jordan I think that we serve the public interest in the what, as it's been set out, we do our job, and the other things, other elements of the public interest or other people in their respective roles, they do other things, what we do is what is set out in the mission, and we serve the public interest by doing our job.

But in answer to your challenge to Jordan when you asked him, actually, is that enough, I would say no, it's not enough that we just do our job. We also have to do our job in the way that we said we were going to do it. And that's the adherence to the processes and to the values and commitments that we set out.

If you actually look at the bylaws, the first article of the bylaws, it's very striking, but there is this big chunk here on commitments and on core values, and core values are something that you see sometimes written in corporate documents but not necessarily in bylaws and not in a way that is set out in a way that's intended to be justiciable like these are, and the commitments or even harder and more solid and it says that while the core values might have to be traded off against each other, the commitments are solid and hard and you've got to do them all the time.

This is really striking stuff, and so yes, I'm absolutely with Jordan, we don't go off and do all the things that somebody might think is in the public interest that gets done or that this issue gets addressed.

No, the way we serve the public interest is by doing what we do, but we also must serve it in the way that we said that we would serve it,

and we are serving the public interest by doing it in that way and it is that compact that we have made that has found that this is the public interest that we should do it in that way, and that is not a finding by the Board or even by some future bottom-up multistakeholder thing. That is a finding by a constitutional settlement.

AVRI DORIA: Thank you. Keith, please.

KEITH DRAZEK: Thank you, Avri. Hi, everybody, Keith Drazek. I'm here in my capacity as GNSO Chair. And as you noted, the GNSO Council did submit comments and I'm just going to I think reflect on or sort of reinforce a couple of those things.

But I do want to jump on one of the things that Malcolm just said in terms the treatment of the core values in ICANN's bylaws, and that is something that we called out in the GNSO Council comments is that there is a recognition that even among the core values sometimes they're not always consistent with one another and there needs to be a balancing test, and that the ICANN Board In its decision making needs to be able to have the flexibility to make those choices and make those evaluations and do that balancing.

And so I think the GNSO Council in our comments recognized that an overly prescriptive or rigid framework, particularly if it was a framework intended to guide or cabin the ICANN Board's ability to

make decisions and to have those balancing tests could be risky. A framework to help generate input to ICANN Board for its consideration I think could be helpful and interesting.

But we also recognized at the Council level that these questions of global public interests are meant to be discussed and developed from a bottom-up consensus process. And if we think about it, beginning discussions of global public interest in a PDP working group, for example, public interest is in the eye of the beholder. You're going to have different groups and different individuals with a different perspective or perception of what global public interest means when discussing the same issue.

You will have people coming at it from different perspectives and one of the things the GNSO Council called out from a process perspective is that has the potential to introduce additional conflict and additional disagreement, which then turns into additional time In terms of how we manage our policy development processes.

So this has been a really interesting conversation, sort of a thought exercise, and I'm really enjoying this, but I just wanted to reiterate some of the comments that the GNSO Council made in our written submission. Thank you.

AVRI DORIA: Thank you. Any other comments? I know it's late, but we got another half hour we can keep talking about this. I'll keep thinking about this, whether we stop talking or not, it's become an avocation for me.

There had been someone else in line, but then he went and sat, and so I guess there was no other comment. Does anybody up here have anything they wish to add to the conversation?

Certainly a lot to go back and think about. I especially like some of the stuff that came in the GNSO comment about this is useful for after the fact, but to make it a priori, to make it before the fact, may make life more difficult, may make it harder, because if you start looking at those questions and dissecting it at that bottom level, you make life harder, if I'm paraphrasing what I read correctly and what you just said.

So, I do appreciate that and such, and it is an evaluative technique that is already being used, so making it richer and better is a good thing too. Anyone else have a comment?

In which case, if no one has anything else to say other than thanking you, and asking you to continue talking about it and buttonholing some of us or whatever, but I don't know about the cases, I know I've had recommendations of some people saying, you really need some cases and some people saying, eh, maybe cases is not such a good idea. So, as we go on, if you could think of a case that might be useful, please send it off and we'll look at it.

But if you think cases are a horrible idea, then don't send any, and then we won't have any. So I'm really walking away with a little bit of doubt over that, whether we need cases or not, that we have had comments saying subject it to a little bit of case analysis. If no one

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else has anything as opposed to me continuing on, I'll thank you and wish you a good evening.

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