

Voting Transcript of ICANN Board Meeting

ICANN
10 May 2006
Special Meeting of the Board
Telephonic Meeting

Review of .XXX Agreement

VINT CERF: Okay, we are on the record.

We are going to be calling for placing a resolution on the table concerning the proposal by ICM for a top-level domain of .XXX.

The matter has been discussed at length. The contracts have been placed in public -- for public comment, have been amended and re-placed on the public Web site. We've had inputs from many sources, some in favor, some not in favor.

We've had advice coming from the -- from the Governmental Advisory Committee, both in the form of its communiqué and also specific communications coming from individual members of the GAC. And, by and large, the communications coming from governments have been -- have expressed concerns about compliance or the ability of ICM to achieve compliance of the behavior of the registrant. Other entities have been very clear in their opposition to this top-level domain.

The community that makes up the adult entertainment market itself has expressed different views. Some are in favor and some are not. So it's plainly a controversial matter.

I'll call for a motion to place the resolution on the table.

>>VANDA SCARTEZINI: I move.

>>VINT CERF: That was Vanda.

>>VANDA SCARTEZINI: Yes.

>>VINT CERF: Is there a second?

>>RAIMUNDO BECA: What's the resolution?

>>VINT CERF: The resolution is to approve -- The resolution would be to approve that the contract with ICM should proceed to implementation, that we approve that staff go forward to implement.

So is there a second?

>>PETER DENGATE THRUSH: Yes. Peter can second that.

>>VINT CERF: Thank you, Peter.

It's been moved by Vanda, seconded by Peter.

Is there any further discussion of this particular resolution?

And let me remind you that in addition to any discussion that you choose to have on the record, you also have the right to make a statement at the time that you place your vote, which might be in place of further discussion.

But is there any further specific discussion at this point?

Hearing none, I'm going to begin a roll call vote on the ICM proposal.

Alex Pisanty, how do you vote?

>>ALEJANDRO PISANTY: I vote against (inaudible) with the agreement.

>>VINT CERF: Do you wish to say anything more about it?

>>ALEJANDRO PISANTY: I have expressed during the meeting and -- that I don't find that the agreement as stated has in-built structural guarantees that the conditions and representations made by ICM can be fulfilled. Many of them are not so because of any fault of ICM itself, but because of the complexities of developing them further in an international, multilingual, and multicultural environment.

>>VINT CERF: Thank you, Alex.

Veni Markovski, how do you vote?

>>VENI MARKOVSKI: I vote in favor.

>>VINT CERF: Thank you.

Hagen Hultzsch?

>>HAGEN HULTZSCH: I vote against. And the reason is that the (inaudible) negotiations didn't produce the required and expected results.

>>VINT CERF: Thank you.

This is Vint Cerf. I vote against this resolution.

My reason for voting against it is that I no longer believe it's possible for ICM to achieve the conditions and recommendations that the GAC has placed before us as a matter of public policy and that the terms of the contract do not assure any of those -- the ability of ICM to provide the protections that are requested.

Njeri Rionge, how do you vote?

>>NJERI RIONGE: I vote against it.

And I will vote against it because we don't currently have substantial information to allow for us to be able to vote in favor. So I'm just basically saying at this stage, I'm voting "no."

>>VINT CERF: Thank you.

Paul Twomey, how do you vote?

>>PAUL TWOMEY: I'm voting "no."

Having been ill and not been a participating member of the ICANN board that looked at this issue of sponsorship during the meeting in Mar Del Plata -- I was a member of the board, but I wasn't in attendance -- I've always held concerns about the sponsorship test for this particular application.

More input into this recently, particularly opposition from significant members of the online adult entertainment community makes me further doubtful about the sponsorship aspect.

Probably more importantly, the contractual terms put forward by ICM to meet the sorts of public-policy concerns raised by the Governmental Advisory Committee in my view are very difficult to implement, and I retain concerns about their ability to actually be implemented in an international environment where the important phrase, "all applicable law," would raise a very wide and variable test for enforcement and compliance. And I can't see how that will actually be achieved under the contract. The letter from the UK is an indication of the expectations of the international governmental community to ensure enforcement of these contractual terms as they each individually interpret them

against their own law concerning pornographic content. This will put ICANN in an untenable position.

I retain high regard for the efforts of the applicant and have a strong sense of good faith in what ICM has tried to put forward. I just think the problem has become too complex.

>>VINT CERF: Thank you, Paul.

>>VANDA SCARTEZINI: Vint?

Vint, just a moment. Mouhamet has been dropped from the call.

>>VINT CERF: Yes. Thank you. We saw that. Alex Pisanty said he's on Skype with him, says that he could relay his vote if we can't get him back on the call.

>>JOHN JEFFREY: We would need him to be able to hear the call as well.

>>VINT CERF: I see.

All right. So we'll -- Can we try to get --

>>ALEJANDRO PISANTY: Mouhamet has heard the call from the point that the vote started.

>>JOHN JEFFREY: He needs to be in two-way communication with us at the point that he votes.

>>ALEJANDRO PISANTY: Okay.

>>JOHN JEFFREY: We'll try to reach out to him again while the vote continues.

>>VINT CERF: We'll continue.

We'll skip past Mouhamet for now.

>>VINT CERF: And, Joi, also you wanted to make a statement. You should make the statement, unless it's terribly long, in which case pasting it into the board room --

Let me go to Hualin Qian.

Hualin Qian, are you there? And how do you vote?

Hualin Qian, are you there?

>>HUALIN QIAN: Yes, yes.

Okay. I vote against, because I think with the culture and the (inaudible) about the content of this kind is very, very different from different countries. So the commitment made by ICM is not very easy to implement. I don't see any - not clearly seeing that this can be implemented.

So against.

>>VINT CERF: Thank you, Hualin.

Raimundo Beca, how would you vote?

>>RAIMUNDO BECA: I vote "no."

And I want to make a statement.

>>VINT CERF: May I suggest that in addition to the statement, Raimundo, if you have a text, that you also supply that to the transcribers so as to be sure that we capture it correctly?

>>RAIMUNDO BECA: I will send it afterwards.

>>VINT CERF: Okay.

>>RAIMUNDO BECA: My statement reads as follows:

"Even though, given that the GAC didn't have the opportunity to submit an advice on the specific ICM agreement proposed and that hence I would have preferred to postpone this vote, not being so I vote anyway against for the following reasons:

Number One: My evaluation is that the proposed agreement doesn't comply entirely with the GAC's advice expressed in the Wellington Communiqué; and Number Two: My evaluation is that the proposed agreement doesn't comply either entirely with the requirements raised by the Board on its September 15 meeting".

>>VINT CERF: Thank you.

>>JOHN JEFFREY: Mouhamet is back on the call.

>>VINT CERF: Mouhamet, can you hear us?

>>MOUHAMET DIOP: Yes.

Yes, Vint.

>>VINT CERF: Would you like to vote now on the .XXX proposal?

>>MOUHAMET DIOP: Yes, I can vote, even if I miss part of the discussion.
I vote in favor.

>>VINT CERF: Okay.

Do you have any other statements that you want to make? You don't have to, but you're free to do –

>>MOUHAMET DIOP: Well, the -- even if it is a very controversial issue, my statement is, the whole process was very heavy and very hard.

I'm only concerned about the core value, we are fighting for (choice, competition, representation...), as an organization with different sensitivities and different communities and our mission is to serve fully with consistency the communities.

We have gone through a decision and we ask for provision to allow this TLD to start operations. I truly believe that both decision going forward or stepping back will lead to a very controversy situation but less damage will come from allowing to move forward with the contract and try to make effective the guideline and the safeguards.

Changing our position after all that process will weaken more the organization that it will help it.

That's why I vote in favor.

If we vote against, we will open the door to a process that we will never come back again.

Any group of pressure will see itself able to make us change everything on any issue .

I'm only concerned about what will strengthen ICANN and make us remain strong, survive and serve communities.

>>VINT CERF: Thank you.

Vanda Scartezini is next on my list.

Vanda, would you like to vote now?

>>VANDA SCARTEZINI: Yeah.

Well, I have been in favor during all this process. I'm not sure anymore, because the contract language did not come with the guarantee that I have expected. So in that occasion, I will vote against.

>>VINT CERF: Thank you, Vanda.

Peter Dengate Thrush.

>>PETER DENGATE THRUSH: I vote in favor. And in doing that, I note that there are two major issues in relation to that application.

One of them is sponsorship from the appropriate community. And in the end, I'm satisfied that there is sufficient support in the local community. But I think that that's an issue that we need to address in terms of defining that. And I look forward to more clarity about sponsorship conditions, if this kind of application is to continue, from the GNSO process on new applications.

My concern here is, what is the impact. I'm happy to deal with situations where not all of the community is actively supporting a particular application. I don't see that as being required. We haven't had before, though, situations where members of that target community are actively opposing an application. And I'm interested in resolving that.

But in this case, I think that this applicant has met sufficiently the sponsorship conditions that were imposed upon it.

The second issue is in relation to compliance with the contract.

And the first point about that is, I think it's unfair on this particular applicant to attempt to ask it to build a complete and working compliance model before it's allowed to start. That hadn't been imposed on any other applicant, and I don't think it could be or should be imposed on this one.

Secondly, I think the sort of issues of compliance that are being raised really are reflections of the difficulties that ICANN has in compliance with all of its

contracts. And, again, I think it's unfair and inappropriate to require those problems to be solved in relation to this particular application.

In relation to this particular application, where concrete issues have been raised, it seems to me this applicant has gone as far as it can in providing answers to those particular things. And contracts themselves are never going to be guarantees of good behavior. What we need to do, I think, is let -- be satisfied, as I am, that this one meets the sufficient threshold, allow it to proceed, but then to make sure that ICANN has appropriate compliance monitoring and enforcement provisions so that if there are difficulties that emerge with this, or with any other application, they can be dealt with in that framework. So to require perfection, as it seems to me some board members are, in relation to this one is unrealistic.

Saying again, I think this application has met sufficiently for the present purposes those threshold requirements. So I'm voting in favor of it.

>>VINT CERF: Thank you, Peter. So recorded.

Joichi Ito.

>>JOICHI ITO: Hi, Vint.

You can hear me; right?

I will vote in favor.

And my statement, which I E-mailed, is:

Although enforcement and compliance issues have been raised with this agreement, they are mostly general issues that should be addressed in the framework of ICANN's ability to enforce agreements generally. ICANN is not in the business and should not be in the business of making judgment on content. Each country has the ability to legislate and enforce its laws to control content inside of that country.

I believe ICM has followed the process put forth by ICANN and has addressed concerns from the community in a reasonable way and I vote in favor of the resolution.

>>VINT CERF: Thank you for that clear statement.

Demi Getschko, how do you vote?

>>DEMI GETSCHKO: I vote against.

And to make it short, I share the concerns raised by Alejandro Pisanty about this contract.

Thank you.

>>VINT CERF: Thank you.

Susan Crawford, how do you vote?

>>SUSAN CRAWFORD: Vint, I vote in favor.

And I have sent a statement to the list. I am happy to read it here if you would like.

>>VINT CERF: If it's not terribly lengthy, please do.

>>SUSAN CRAWFORD: It's just one page.

We're being asked today to approve a draft registry contract with ICM, who is proposing to run a top-level domain. The string chosen by ICM and proposed by them (inaudible) .XXX.

ICANN's mission is to coordinate the allocation of –

>>JOHN JEFFREY: Susan, could you repeat the last sentence, just to make sure the transcription got it, because there was some background noise.

>>SUSAN CRAWFORD: Sure.

We are asked today to approve a draft registry contract with ICM Registry, who is proposing to run a top-level-domain. The string chosen by ICM and proposed by them to ICANN is "xxx".

ICANN's mission is to coordinate the allocation of domain names and numbers, while preserving the operational stability, reliability, and global interoperability of the Internet. The vision of a non-governmental body managing key (but narrow) technical coordination functions for the Internet remains in my view the approach most likely to reflect the needs of the Internet community.

ICANN's current process for selecting new gTLDs, and the artificial scarcity this process creates, continues to raise procedural concerns that should be avoided in the future. I am not in favor of the "beauty contest" approach taken by ICANN

thus far, which relies heavily on relatively subjective and arbitrary criteria, and not enough on the technical merits of the applications. I believe this subjective approach generates conflict and is damaging to the technically-focused, non-governmental, bottom-up vision of ICANN activity. Additionally, both XXX and TEL raise substantial concerns about the merits of continuing to believe that ICANN has the ability to choose who should "sponsor" a particular domain or indeed that "sponsorship" is a meaningful concept in a diverse world. These are strings we are considering, and how they are used at the second level in the future and by whom should not be our concern, provided the entity responsible for running them continues to comply with global consensus policies and is technically competent.

We need to adopt an objective system for the selection of new gTLDs, through creating minimum technical and financial requirements for registries. Good proposals have been put forward for improving this process, including the selection of a fixed number annually by lottery or auction from among technically-competent bidders.

In the meantime, I am not persuaded that there is any good technical-competency or financial-competency reason not to enter the draft registry agreement between ICM and ICANN that has been posted for public comment. I therefore vote "Yes" on the motion to approve the draft agreement.

Additionally, ICM is saying that it will establish elaborate registration requirements for second level domains using this top-level-domain string, will comply with the promises it has made as an applicant, and will, among many other things, "create automated tools to monitor registrant compliance with registry policies related to labeling and the prohibition of child pornography." I have carefully reviewed the concerns raised by the Governmental Advisory Committee in its 28 March 2006 communique, and have compared them to the draft contract, and I am satisfied that these concerns have been addressed by this draft contract. Indeed, I believe we may have gone too far in addressing these concerns. Policies as to the use of domain names, as opposed to the registration of domain names, are not appropriate subjects for ICANN decisionmaking. By keeping such a short leash on ICM's development of its policy organization, which will in turn make decisions about the use of names at the second level, ICANN may be getting into dangerous territory. We should not run the risk of turning ICANN into a convenient chokepoint for the content-related limitations desired by particular governments around the world. Governments have many powers within their territories, and are free to use them there.

Thank you, Vint.

>>VINT CERF: Thank you, Susan.

Veni Markovski wanted to make a statement earlier.

So, Veni, are you ready to do that?

>>VENI MARKOVSKI: Yeah.

Did everyone vote?

>>VINT CERF: Everyone has now voted.

The vote is nine against and five in favor.

>>VENI MARKOVSKI: And one is missing.

>>VINT CERF: Excuse me?

>>JOHN JEFFREY: Michael's seat remains vacant.

>>VENI MARKOVSKI: You see, I am forgetting things already. Yeah, I just wanted to say that I would like to see ICANN taking positions on new TLDs in general and not wait another five years researching reasons to not approve a new TLD.

So maybe the attempt of ICM to meet all the conditions asked for by different governments, by ICANN, by the ICANN community, the stakeholders, is enough to prove that they are taking seriously this issue. And running away from the reality and the problems will not help ICANN, will not help in the ICANN community, and will not help the users.

(inaudible)

That's my little statement.

>>VINT CERF: Thank you, Veni.

Well, ladies and gentlemen, it's clear that the resolution did not pass. And despite the diversity of views -- and we are clearly quite polarized on this question -- I hope that the board will, as a whole, stand behind the decision of the board in this meeting.

We need to move on now to -- We go off the record now.

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