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LARS HOFFMANN:

Let's see how this goes. Hi, everyone. Welcome to the 6<sup>th</sup> meeting of the SubPro IRT on Tuesday, the 11<sup>th</sup> of July 2023 at 13:00 UTC.

I do not have the usual text that we prepare ready for this. I'll just ask you casually to adhere to the usual Standards of Behavior. The call is being recorded. It will be posted on the wiki page. That's all I know off the top of my head. If you have any questions, let me know.

First of all, I'm hoping that the fire alarm in the [inaudible] office is just a drill. I'll report back live on this call from that. The agenda for today's call should be up on the screen for everybody, which is Predictability. Picking up where we left off last week. It's usually a quick SOI update, some background on the IRT, then we go into the substance with a discussion, and then Any Other Business at the end. With that, two questions, any concerns or questions on the agenda? And second, are there any updates to SOIs? It does not seem to be the case.

With that, we will go on the IRT original scheduled meeting. I'm sorry, I'm running this more or less alone. So I'm letting in people as well to the room. I'm sure it will be sorted in a moment. The schedule, I think it's on the agenda. I think the e-mails have been sent out. I've received a number of invites to my calendar. If you have not, please reach out to me, to Elisa, via direct e-mails or through the mailing list. IRT stats, some information on the dashboard, we shared that with you last week. We're still finalizing that. We'll obviously have it go live as soon as it's ready on continuous reporting on the progress of this work.

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*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*

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The update, we also talked about this last week. The percentage range that gives the kind of back of the envelope estimation of how far we progress through the work that's before us. We should be here with more or less 70% according to this. Obviously, we're going to go into the discussion in a moment.

Before we go into the Predictability document, I've got this open here. I'm also happy to put that link into the chat. For those who've done that, I thank Michael for posting Standards of Behavior there. I just saw it. Thanks, Michael. I shared this document yesterday on the list together with the longer notes. I'm not sure if everybody's seen it. It was sent yesterday with a link to this updated text. A couple of members have made edits to the document.

This is a relative short document. There was just three or four people who made edits to it. That's perfectly fine. But I think going forward, we talked about this internally, I would suggest that we try to work in Suggestion mode. I think that makes it easier for other members to also comment on other IRT members that would like to see a change rather than making direct edits. I think that would be a good practice. I'd like to hear people's thoughts on that. I think it makes it easier to discuss points through the Comment section and probably it also makes things easier for us to track.

Susan, I see your hand is up. Just one additional note, if there is a desire that direct redlining should be maintained then we will do that. But I would then, at the very least, suggest that when an edit is made, a rationale as part of a comment is provided by whoever makes the direct edit. Susan?

SUSAN PAYNE:

Thanks, Lars. That sounds absolutely fine to me. I was just going to going to say that when you share the link to the document, I think you can set up the permissions that people are given. I don't know if that will work. I can see you shaking your head so maybe it doesn't. But I know speaking for myself, sometimes I get in there and then I realized as I've started to make an amendment or even maybe later that I haven't changed the mode and I've made an edit without realizing that's what I was doing. But from the shaking of your head, perhaps that's not an option.

LARS HOFFMANN:

I thought the same thing, Susan. I was like, "No, it must be possible." In Google Docs, we can either—you can just look at it so you can't do anything at all. Then you can make clean version edits, so change [direct to] track changes or track changes and comments. There's not a just comment function, unfortunately. At least we have not tried to find it. But it doesn't seem to exist as far as we know. But that would be the easiest. I agree with you, though.

If there's no other concerns, I think what we'll do for now is we'll fiddle with the accessibility options. Then put a disclaimer maybe on the documents and send a reminder when we send the links to wherever possible with the common function. In some cases, people have made typo corrections. I mean, it's a common sense thing, right? Obviously, I think that can be made directly in text. I don't see any problem with that. We're working together. I'm just concerned that people start

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editing, it would be good to have just one pen holder so that we can bring something to the group to review so that the edits that we usually make would reflect what we discussed the week before. And if they don't, we also try to work with the comments to explain the document, why we have changes. Anyway, I'll send a note around on the mailing list. There doesn't seem to be too much concern around this. I don't see any other hands, and move on from there.

Good. I noticed I already shared this document. Let me see if I can make this a little bit bigger. Here we are. Last week we discussed, I think, the role or the purpose or the possibility or the ability of the Council to also provide guidance via the GGP, for example, and whether or not that should be reflected in the framework and how that would look like if it is. I think I shared some of that on the list. We don't think it's necessary. I'd like to hear everybody's thoughts on this. In our view, the framework, and as we understand it from the final report, has been put into place to ensure that what happened in 2012, for example, where a lot of changes took place, I think, after the Applicant Guidebook was already published and there was a center in the community that there wasn't enough clarity around that and enough predictability and transparency, and so this framework is one of the remedies for that concern or that situation in 2012. I was going to talk but please go ahead.

ANNE AIKMAN-SCALESE: Thank you, Lars. First, I wanted to ask a question. Did you say that there's a fire in an ICANN building? I'm sorry.

LARS HOFFMANN: Fire alarm is what I'm saying.

ANNE AIKMAN-SCALESE: Fire alarm? Okay. Thanks. Very briefly, Susan and I had an exchange regarding your e-mail that came yesterday. And I think we're still concerned that the tools that are available for clarification are not taken into account in the current draft. I mean, I think that we have a good understanding of the fact that Org can't be placed in a position of just not being able to act. And I'm sensing that there's some concern in relation to the GGP because that can be a pretty slow process and could hold things up. So I appreciate that. But in terms of the role in the relationship with Council, there are potentially other tools available as well for clarification that would not require new policy. And in order to implement actually the intent of Category 4, which talks about policy implications, there needs to be an ability for ICANN and the SPIRT together to ask for action from Council, for example, even in the situation that requires a clarification of policy.

What we have found in connection with the 38 pending issues where the Board has not approved recommendations is that the Board's very happy to have us issue clarifying statements out of Council in relation to certain policy recommendations. That type of tool appears as well to be available to Council, which is a much more rapid tool. Once again, we have a number of things coming down the pike here that are not adopted yet that might require clarifications from Council. For example, you have IDNs, you have Applicant Support, you have Name Collision

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Analysis Project. Not providing for a ready mechanism for the SPIRT and ICANN's request for Council clarification on those recommendations does not make us as nimble as we would want to be.

I think that in the e-mail that you sent, it almost sounds as though the only thing that Council can do if a clarification of policy is required is initiate a GGP. But it doesn't appear to us from how we are operating right now that that would be the case. Category 4 does appear to us to provide in terms of the intent of the final report and the approved final report to provide for a potential need to simply clarify or interpret a policy at the Council level. Thank you.

LARS HOFFMANN:

I was going summarize. I hear what you're saying, I appreciate the input. If you permit, I'm going to lay out the framework and the purpose of the framework. We read it from the report and what we think the intent is. I think what you said is—I have no concerns with anything you said so I think that's already a good starting point. And then maybe we can pick up the discussion after that.

The framing is there to our reading of the final report. That's always going to mean that. It's not for us to say or interpret what the report says. That's obviously why the IRT is here and the Council. In our reading, the predictability framework is there to ensure that changes that happen to the program as it is underway taken place or take place in a transparent, predictable, accountable manner.

The program is based on essentially two things, on Recommendations and Implementation Guidance. Recommendations adopted by the

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Board. Guidance have been added to the final report, not adopted by the Board, but still should be used as closely as possible. And if they can't be followed, there needs to be rationale behind that. Based on that outcome, we build the program, we operationalize it, we build the Applicant Guidebook, etc.

The Council, as any other body, can at any point launch any process that is part of its arsenal of procedures, whether it affects the program or not, that should not be in our view part of this program. That's why there's a reference to that in the first section here now. The same is true for the Board for any of the other Advisory Committees and Supporting Organizations.

Then, if the program is running and there is a need for any sort of change—this is what the predictability program is about. It's about change required to the program. Then it's either an operational change or a policy change. If it is an operational change, then we have those two paths. Minor, non-minor. Minor if there's a non-material impact on the applicants. Non-minor if there is a material impact on the applicant. Then the SPIRT plays a slightly different role on either. Then the second category where there's a material impact, the ICANN Org has to work with the SPIRT, have to come to an agreement and then move forward.

If there's a policy issue, where it means that an existing policy, if a change needs to happen that would be inconsistent with existing policy, then the Council comes in to provide a way forward. If a policy development is necessary, then the Council will stop that. And if a temporary solution is necessary, then ICANN Org will work with the SPIRT as part of this framework to find a temporary solution.

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To Anne's point, if there is additional interpretation that the Council would like to provide on whether a change is required on something that is ongoing, etc., and that would lead to a potential change of the program. Or if the Council would like to write input in the temporary solution that arise via a process of their choosing. I don't think there's anything in this document for now that prevents that from happening. In our view, the role here, however, goes to the SPIRT. ICANN Org would work with the SPIRT on either a temporary solution or on a solution to a non-minor issue.

If the Council provides a clarification on something that in their view does require change, again, it would go through the SPIRT to us and we would then see whether it's an operational issue or would be a policy issue and the different paths will be taken. In other words, whatever input the Council were to provide that is "non-formal," in our view, it must fall into either of those two categories, operational policy, and ICANN Org would engage with the SPIRT and the SPIRT will get this information from the Council as they see fit. Even if it is a GGP, in fact, it's slightly different. That's not just some reinterpretation. In some ways, the Council gave some input to the ODP, for example. There was no GGP. It was essentially they answer some questions. So something like that could obviously happen during the program as well. Again, in our view, it would go through the SPIRT here to bring that to ICANN Org. However, the Council comes to that input vis-à-vis the SPIRT, that's up to the Council. They can form a small team, they can have a vote, they can have all sorts of processes however they decide. If it is a GGP, in fact, then it would go via the Board. ICANN Org would in fact receive input from the Board on what needs to happen. The Board then directs



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ICANN Org to implement the outcome of the GGP if the Board accepts it. In that case, the SPIRT will actually be out of that circle, if you will, because it would come in the process in the Bylaws.

There's no concern about flexibility or nimbleness, as Anne noted and Cheryl also posted on the chat. I'd like to hear your thoughts on what potential... On the question of the communication with any changes to the program should happen with the SPIRT and the Org. The way that SPIRT interacts with the Council, the framework text should be silent on that. That's up to the Council and the SPIRT. And if there's any other change in operational policy, then we certainly need to talk about that. But I have not heard any different type of change. And obviously, there's no other type of change in the predictability framework either.

Anne, before I call on you, I just want to quickly read Justine's comment who's wondering whether this document needs to explicitly say policy development when referring to GNSO's arsenal of tools in considering any issue related to Council or SPIRT. Well, it's a good question Justine. I will put that to the room. I think Anne earlier noted already that there's other processes the Council may want to use, provide input or advice or guidance. I hear your question, Justine, but I'll pass it on to the group. Anne, please?

ANNE AIKMAN-SCALESE: Thanks, Lars. I want to be careful really only to—in our position, for Susan and me, as liaisons, we really are only wanting to raise issues that talk about that relationship with Council that you mentioned. I'll make two very brief comments. One is that you talked about issues that arise

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that are inconsistent with policy. But what we are concerned about is issues that arise that simply need clarification that are, in fact, consistent with policy but clarification is needed. I think where I'd want to ask Cheryl and Jeff, in particular, to weigh in, and Susan as well, is I believe you said that this document should be silent with respect to the relationship between the SPIRT and Council. I'm not certain that that assumption is really consistent with the intent of the final report, that there's nothing about the predictability framework or the chartering of the SPIRT that Council will be doing that should talk about that relationship between SPIRT and Council. I had always thought that it was intended that the nature of that relationship be clear.

LARS HOFFMANN:

I would agree with that, Anne. But that should be in the SPIRT chartering, that shouldn't be in this framework. This framework, the interaction is between ICANN and SPIRT. So I don't think we should confuse in a predictability framework, neither for us or for the process or for the applicant, that if a change is required and it involves the community, let's say, it's not a non-material change, then ICANN Org will work with SPIRT and shouldn't go to the Council. That should go to SPIRT. And the SPIRT feels that they have to consult with the Council, then that's up to them. The framework talks about the relationship of ICANN running the program, and changes need to happen with that, and then the SPIRT comes into that and how SPIRT interact with the Council. Yes, I do believe also that it should be clear, but I think in my view, it should be in the chartering document. In fact, in that section of the final report, I believe it's where that relationship is also detailed.

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Anne, sorry, I didn't mean to interrupt. I thought we're having a conversation, you didn't—please go ahead.

ANNE AIKMAN-SCALESE: I think that's very helpful because it's an important exchange. I think my sense of what's missing here—and certainly I will ask Susan to weigh in, and others—I do understand what you're saying there but it doesn't take into account how ICANN Org will react to the results of the communication between the SPIRT and the Council. In other words, there's nothing in here that essentially says, "Hey, if the SPIRT raises an issue at the Council level, that is merely a policy clarification. And if the Council issues a statement to clarify the policy," as we're doing now, for example, with respect to many of the 38 pending issues, "how will ICANN Org treat that and take that into account?" is missing from this document.

LARS HOFFMANN: Thanks, Anne. I'm going to take a look at that. I thought there was an issue. If an issue is brought to the attention of ICANN—I mean, if there's an operational issue—I mean, it's not about interpretation. It's about the Council but then say, "Something needs to change and we think it's an operational issue, because otherwise, we will do a policy work of sorts." Then the Council would say, "This needs to change." And the Council would bring that to the SPIRT and the SPIRT and ICANN would discuss whether that indeed has a material or non-material impact. Then either will be spared or not. If it's a non-material change, then SPIRT wouldn't even come into it. SPIRT would bring it to us and then

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ICANN Org would find the solution and implement it and log it in the log.

ANNE AIKMAN-SCALESE: If I may, I think Category 4 indicates that there may be a change that is material but yet it's still consistent with policy.

LARS HOFFMANN: By definition, it's an operational change.

ANNE AIKMAN-SCALESE: Well, it is a change with policy implications, as in Category 4's described policy implications. I'm seeing in the chat, of course, that it's absolutely up to the SPIRT charter in terms of how the SPIRT works with the Council. And that is true. But it seems to me that this document and the charter of the SPIRT need to be consistent in terms of the working relationships. Now, we haven't gotten to the charter at the Council level yet. You and I should probably stop at this point and let other people comment.

LARS HOFFMANN: Look, I think it's helpful. I just tried to understand. I think that's the key here. I really invite others to come. First of all, on the consistency, I completely agree with what you say that you need to be consistent. I'm very much in favor that once the—this document here, the particular framework, I would suggest that once we put this aside, we put it aside. We're going to go back to it for several items, notably for the definition

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of non-material or material changes. I think once the charter is ready, it behooves us all to take a look at the charter and see whether consistencies are here or not. They probably should happen before the charter is adopted so that there's flexibility in both documents to make sure that they are aligned with one another.

Anne, you're quite right. I think we should let others chime in as well. I'm happy to take you on this, too. But I just want to make sure—I don't really understand. I'd like you to explain that again to me. It goes back to what I said beginning, I guess. It is changes to either operational or policy. Whether it's based on how you interpret the policy or not, that's neither here nor there, right? It's either consistent with existing intent and wording of a policy, what is inconsistent with the existing intent or wording of a policy. As long as it's consistent with an intent of a policy and follow intents and purposes, it's essentially an implementation issue. If this issue had come up at this very moment when the program isn't alive, the Council, because SPIRT is not in place, would have probably informed you, Anne, and Susan, to provide the IRT with some additional insight on the meaning of a certain recommendation and we would have taken that on Board. In this case, I see ICANN Org and the IRT in the same way as I see ICANN Org and the SPIRT, that if there is an issue that's essentially implementation issue, therefore, even after the program had launched, we call that then an operational issue. Then we work with the SPIRT if it's non-minor. And how the SPIRT gets the information on the Council, that is up to the Council and the SPIRT.

I'm going to leave it at that. I hope I'm making sense. I don't know. I'm not sure whether I'm missing something or I'm not being clear enough, Anne. We can have another go around. I invite others to comment as

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well. We can leave it at that and move on. I'm fine with either of those three options.

ANNE AIKMAN-SCALESE: Well, I certainly think it's appropriate that we not finalize the predictability framework language until the charter is finalized for the SPIRT. And I think where the source of the disagreement at this point on the processes that need to be followed lie in the fact that the assumption of this document is that something is either operational or it requires a policy change. But again, there's a third category that is represented by the example shown in Category 4. The example in Category 4 is a change that is not a new policy or a policy change, but a change that has policy implications. That is a different category that was laid out in the framework, I guess, for a reason. And that's where you and I have, I think, a bit of a continuing different view on it.

But I like your idea to try to make sure that the processes that are defined in terms of the communication and the consistency between the SPIRT charter and the predictability framework, we could certainly, I think, set that aside as long as we're not finalizing the framework. Thank you.

LARS HOFFMANN: Thank you, Anne. I hear what you're saying. Obviously, on the very last point, it's not going to be finalized right until the Board adopts it. It's going to go out for public comment at least twice, once individually. We said we're going to do certain modules at certain points. And then I expect the full Applicant Guidebook at the very end with regard for

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public comment as well. I think our group should go back to that as well to the document if and when the charter has been finalized.

What I will do and we've been working on this had something a little bit high level, so maybe in more details. Also, to Susan's point, that this is maybe hard to get your head around. I would suggest that maybe for the next meeting, I think, is in two weeks from today, I will see if we can get a flowchart put together. A decision situation, I think it's the technical word. And share with the group to maybe walk them through, understand that better. I also will reread the topic four. I like looking at them, I don't like making them. But I will also take a look to the point that Anne made on the Category 4 to make sure we haven't overseen anything. I also invite everybody to think through the whole idea of what I kind of spoken about of the program, the changes to it, if they're aligned with existing policy. The intent or the wording thereof then essentially becomes an implementation, therefore an operational issue. Anyway, I'm going to leave it at that.

No, I would agree with that, Greg. Absolutely. That doesn't make sense. Greg notes that the charter shouldn't go out without the SPIRT charter. We just talked about this, too. I mean, this is up to the Council, obviously, but I think it would be good to Susan and to Anne. Then once the Council gets around to drafting guidance in the state where it's maybe in draft state, that we can align both these texts, make sure we identify areas where they don't fit together, and then work together and make sure that they are aligned. That probably is the smartest way forward and only the initial draft of the comment, Greg, maybe even we find a way to post it at the same time. I think that nobody in the

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Community or in Org, I think, for that matter, would be upset about that particular timing. Very good.

Susan and Anne, I don't mean to put you on the spot but we talked about the chartering so much. Has there been any discussion? I know there's a Council meeting later this month on the timing around that. I mean, in theory, obviously, there's a lot of time. So the charter wouldn't have to be ready probably until about four or five months before the window opens. So that's going to be at least two years from now according to our latest timetable. It's not super urgent but I'm just wondering if there's any plans that you can maybe update the group on. Susan, please.

SUSAN PAYNE:

Thanks, Lars. I would say I don't think we've had a meeting yet since the D.C. meeting. I may be missing one. But I don't think we have. I would say at the D.C. meeting, we were incredibly focused on meeting the Board's deadline in terms of timelines for outstanding issues and so on. We spent a lot of time talking about other things related to SubPro. So we did have a general conversation about whether Council agreed that it was the right place for dealing with the SPIRT charter was within Council. And I think there was a general agreement that it was but we didn't get on to a specific conversation about timing. But I think this discussion we've been having here probably helps to focus that attention a bit for Council, because obviously, there was a feeling that it wasn't the most urgent thing we had on our plate. But bearing this discussion in mind, perhaps it rises up the urgency a little.



LARS HOFFMANN:

Thanks, Susan. I appreciate that. As you notice on the call and others from the GAC, maybe as well, there's also GAC interest in that too, and I'm sure other groups as well. Sebastien noting [inaudible]. Thanks for that.

Just answering Anne in the chat. Anne noted that the current work between the Council and the Board on the clarification of the past recommendations is possible. Informs the comments on the need for clarification. I would disagree with that. I think the current discussion is very helpful. But it's pre-Board adoption. So the Board is seeking clarification on what the recommendations mean and the intention is and then decides whether in the best interest of ICANN and then the Board adopts them. If they do, instructs ICANN to implement them. And if there's clarifications at that point needed, we would go to the IRT. If the IRT isn't sure, then Susan and Anne will take to the Council and get input from the Council. The same would happen, in my view, during the program. If there's an issue that arise, the recommendation is adopted, change then happens, as we said, is consistent. ICANN Org would go to the SPIRT and say, "Hey, guys, there's a change needed that aligns with the policy. What we're going to do?" SPIRT said, "Hey, this seems complex. We want to talk to the Council about this." "Absolutely. Please, talk to the Council about that and then we can come back together and discuss to move forward." That process, I think, is reasonable. Very good.

There you go. Anne, I think we're aligning slowly but surely. Good. I note you're comment. Very good. I will look into that and make changes if

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that's necessary because that certainly, I think, aligns with what we said and thinking.

Looking slightly above the camera, because my second screen is up there, we move the role of the Board up here. Sorry, this is the Council and then the Board up here. We had this previously in the Board section of the text. It's the same. We just moved to the round little bit because we talked about the Council processes here as well, that the framework doesn't affect the Council's Bylaws to find abilities in these annexes to launch possible element, what kind of processes that may affect the program.

This here is the sentence where we move to the top, so that's all that happened, and made the addition here. I'm talking, again, about the clarification. I believe it looks relatively straightforward. I invite others, obviously, to look at this as well. This is a discussion that we had last week. We're going to discuss this. I think it's actually 18.2. But anyway, when we get to Terms and Conditions, we're going to discuss that.

There are some changes here that Anne made in the document. Anne, I also invite you and others. I don't think we should do this on the call. I made some comments around this, on those who are maybe—there were some concerns from the Org side on those edits and what they may or may not mean. It would be good if people who are so inclined, take a look at the document and feel free to add to the comments or start a new thread, however you see fit. I think this is it. There were some small typos back here, comma edit here and there. Thank you for that, Barkha. I think those are all the changes that we've had.

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The question that I have is that I talked about a flowchart, perhaps foolishly earlier, so I would suggest we'll circle back one more time on this topic for the next meeting. I also suggest that in discussing this, I'd like to hear what your thinking is. We talked in the beginning about working with track changes. So maybe we're possible just with comments even because that makes it easier to then have others chime in on proposed changes, but how you would like to keep record of this. I think these kind of straightforward changes that we made up here, I think there was no concerns around that. I think we should just accept them and leave it at that. Then those changes here where there's maybe some discussion still ongoing in the chat section, we can maybe leave them for now and resolve them when we come back to this topic. Probably focus to public comment at some point in the future. Obviously, if there's an issue to return to earlier, then we'll do that for obvious reasons.

Then we'll leave it in the Google Deck with the open comments on the Google Drive and return back to that. I hope that makes sense. Keeping not a clean version, but a working version as the one that we keep in the in the Google Drive.

Just see and make sure that I've got to see all the hands that are up. No hands up for now. I'm going to be honest with you, Thursday is the day after tomorrow by the latest look, I cannot promise that. I have to see. We have people that are on holiday. We have a lot of work going on. Our team is also supporting the Board. I hadn't planned about this before this call so I don't know the answer. We will certainly try to do this. We have the next meeting two weeks from now. I'm happy to commit that we'll share this next week. Still at least a day and a

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weekend before the next meeting, working day and a weekend. But I can't promise. I promise to do it as quick as we can. But I don't think the day after tomorrow is reasonable. Thanks. Yes, we will do our very best.

Good. With that, I don't think I have anything more substantive on this. I also haven't seen any hands. In two weeks' time, we will discuss freedom of expression, Topic 10, the final report. We will share a text as we did with the predictability prior to the meeting. Again, we will try to send it out as soon as possible once we have the document, and also go through the flowchart, by then will also have been circulated. Good. I see Elaine has unmuted herself. That may or may not be on purpose. But before I close the call, any final questions or comments? No? That was Elaine. I would have liked some [inaudible] songs. We didn't hear those.

Thank you, everyone. With that, we're finishing 15 minutes early. Have a great rest of your day, morning, afternoon or night in some cases. Thank you especially to Cheryl for joining us this time and others in the similar time zone. Thank you. The next time will be very inconvenient for me and others. So we'll share the burden. Thanks, everyone. We can stop the recording. Talk to you in two weeks, if not before. Thank you.

**[END OF TRANSCRIPTION]**