
LONDON – ATLAS II Thematic Group 4: Transparency & Accountability - Session 1

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ICANN – London, England

[TATIANA]: I'm Tatiana. I'm a Ukrainian Internet [Association 00:00:06]. This is my first time in an ICANN Meeting. My first participation. I'm just learning. I think the transparency and accountability is very important, not only for such democracy processes, like you see in ICANN and [area 00:00:42], but for all process. It's why I'm here.

HOLLY RAICHE: Thank you. By the way, a lot of you will not have lived with these particular mechanisms. When you're talking you put the little button down and there's a red light, and that means you talk. When you finish, you hit it again. Otherwise, you've got two streams of conversation and that really gets confusing for people who are not in the room and trying to listen. We've got [Lorna], [Jonathon], [Tatiana] and...?

KERRY BROWN: I'm Kerry Brown, from the Internet Society Canadian Chapter. I also sit on the Board of CIRA, who manage the .ca in Canada. My involvement with ICANN has previously been about six or seven meetings, mostly to do with the ccNSO. This is my first meeting to do with the ALAC.

HOLLY RAICHE: The ccNSO is the Country Code Name Supporting Organization.

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KERRY BROWN: I picked this group because at a ccNSO Joint Board Meeting/ccNSO Meeting, there was not very much transparency to do with the Board budget. I've been interested in the transparency and accountability ever since then.

HOLLY RAICHE: Thank you Kerry. Oksana?

OKSANA PRYKHODKO: Hi, I'm Oksana Prykhodko. I'm also from the Ukraine. I represent European Media Platform. This is a non-governmental organization. It stated a mission of integration of Ukraine into the European Information Society. I was EURALO Secretary. EURALO is the European Regional At-Large Organization. I'm here for two reasons. One of them is a very practical aspect of transparency and accountability. I see a lot of gaps in communication between national Internet communities, individual Internet users, and ICANN.

For example, when we're sending letters to ICANN, what can we expect? Where will it be published, or will it not be published? When can we expect an answer, or why don't we receive an answer at all? And so on. It's also about finding information. There's a lot of information and resources. They are somewhere on the Internet, but we can't find certain aspects of information.

The second one is I'm very afraid of faking multistakeholderism, because it's extremely easy to name anything as a multistakeholder structure,

and just imitate the principles of multistakeholderism. Transparency and accountability are the first steps, for me, of multistakeholderism. If you can ensure you're transparent and accountable, only then can we talk about multistakeholderism.

HOLLY RAICHE: Thank you. Do we have enough seats? Sell-out crowd. Fantastic. Carlos?

CARLOS GUTIÉRREZ: Thank you. I'm Carlos Gutiérrez. I'm here from the ISOC Chapter of Costa Rica. I'm new to LACRALO. Before I was at GAC, for over three years...

HOLLY RAICHE: Government Advisory Committee.

CARLOS GUTIÉRREZ: I'm sorry. Government Advisory Committee, since Senegal, ICANN 39. Well into my time in GAC I complained about GAC and I got punished, so they sent me over... No, not yet! It's a longer timeline. I complained to a big government, so they sent me to the Accountability and Transparency Review Team, where I participated as an independent.

Although I was always related to GAC, I didn't come with the support of GAC to the ATRT 2. I would assume that letters in the Affirmation of Commitments have to be known. This is a holy... There are four exercises of accountability...

HOLLY RAICHE: You're not allowed to go into them. You're not allowed to go into too much detail. I just want to know why you're here, briefly.

CARLOS GUTIÉRREZ:: Because I spent a year with Alan and Avri in the ATRT, so when I saw the list and I expected to see Alan and Avri here, I decided I was hooked on the issue. Particularly now that ICANN has presented a separate exercise, outside of the AOC, which was posted on May 6th about enhancing ICANN accountability as a twin to the IANA transition. When I saw what the people were sending, they were just answering the questions at the very end...

HOLLY RAICHE: We're going to stop there, because otherwise we won't... There's one of the people you were expecting, Alan. Avri is on the team, theoretically, but she also has commitments for the Generic Name Supporting Organization, so she's not necessarily here.

CARLOS GUTIÉRREZ:: I should also be at the gNSO, because my Chapter is.

ALAN GREENBERG: She knows she's late.

[BRUNELA LUNGO]: Hello everybody. My name is [Brunela Lungo]. I'm an information management advisor and consultant based in London. I'm a newcomer. This is my first ICANN, but I'm not so new. I'm dealing for the first time in the last 20 years with a start-up, that should be focused on open data assurance. It's too long to explain what I mean by this, and it's probably out of scope. To answer the question of why I came to this session, I think that accountability and transparency are definitely at the crossroads of any governance and assurance matter, and that's the reason why I'm here.

HOLLY RAICHE: Thank you [Brunela]. Alan is going to settle in quietly and catch his breath while we go around the room. We are introducing ourselves and then answering the question as to why people chose to be in this particular session.

ALAN GREENBERG: I'm Alan Greenberg. I'm to some standards not a newcomer, although compared to those who've been around since 1998 I'm very much a newcomer. I've been working in ICANN since late-2006. Why did I pick this topic? Partly I'm not sure I picked it. I was told... [Laughs] I'm happy to be here because it's a subject that is somewhat near and dear to my heart.

I was a Member of the last ATRT AOC Review, and I have some idea of what the concepts are. I'm generally known by most people as a somewhat cynical "bugger", which is a more polite term than is often used, in terms of accountability and transparency. I did send a notice to

this group a couple of days ago, giving what I thought was a summary of accountability and transparency. It comes down to “be squeaky clean, and assume people are looking over your shoulder, even if they aren’t”.

if you do anything that violates what they believe you should be doing, they will not trust you on anything else. That’s a really hard thing to achieve, and it’s really hard to put into operation. For a whole bunch of pure operational reasons, it’s difficult, and yet I feel it’s absolutely essential.

HOLLY RAICHE:

Thank you Alan. We’ve got a gentleman that’s just entered the room. To add to the list, what’s your name, Sir, and why are you here for accountability and transparency? With the number of people in the room, we’re going to have to be very brief.

[KRISTOFF BRU]:

My name is [Kristoff Bru] from the Humanist Union. It’s Germany’s oldest civil liberties organization. Actually, I thought about whether to join this group or the multistakeholder group, but I think there’s a close relationship between multistakeholderism and accountability. I think this is more concrete here, and it’s an opportunity for more direct involvement than in the other group, so I decided on this one.

HOLLY RAICHE:

Thank you. Hong?

HONG XUE: Thank you. My name is Hong Xue. My real job is a law professor. I'm teaching in Beijing now. Before that I used to work in Australia, US, and Hong Kong. They gave me a weird acronym, as an SME, a small or medium-sized enterprise, so it's normally... Along with Avri Doria I drafted a small thought piece, that's been posted on the workspace of this Thematic Group. It's our rough understanding of what transparency and accountability is.

We chose this topic, because Avri and I believe it's very, very important, not only for the present ICANN, but for the future of ICANN. Especially as a critical and historical moment, the IANA Stewardship transition and ICANN's [enhancability 00:12:30] exercise.

JODY [PANDER]: Hi, my name is Jody [Pander 00:12:30]. I'm representing [Centre Find Internet Society 00:12:33]. This is my first ICANN meeting. Also I'm very new to this space generally. I'm interested in democracy and governance issues, and particularly interested in the way ICANN engages the community. I felt that the best way to start engaging with ICANN and the issues they deal with would be to start with accountability and transparency. Thank you.

HOLLY RAICHE: Jody, is that right? Thank you. Apologies if I mispronounce anyone's name. [Chesu 00:13:09]? I normally don't mispronounce my name. When we get to you, you can ask your question.

[CHESU SONG]: I'm [Chesu Song] from the ISOC Hong Kong Chapter. Like Alan, I did not request to be in this group, although I don't mind. I'm new to ICANN meetings. I was at an ICANN meeting once, in, I think 2002, when I was on a [unclear 00:13:53] Hong Kong Internet registration corporation, where I was one of the founding Board Directors. I guess obviously we were using public money to form our organization, and transparency and accountability were extremely important to us. I think it is to ICANN as well. I'm just helping out where I can.

HOLLY RAICHE: Thank you [Chesu]. Your nametag is not visible? The most important person in the room?

HEIDI ULLRICH: Hi everyone. My name is Heidi Ullrich, and I'm with ICANN staff. My request or my comment is that we do have an Adobe Connect room here for this room. It's in the link. The link is in the Agenda for today, on that page we pointed to earlier today. Currently we don't have anyone in that room. We have a staff person here who's here to monitor that room. If you do want to go into that, you can make comments. We're also going to be putting links or URLs in. That's another reason to go into that room. Thank you.

HOLLY RAICHE: Thank you Heidi. Roger, you're next.

ROGER [BAIG]: I'm Roger [Baig], from the ISOC-CAT Internet Society Catala Chapter. I'm a newbie, a newcomer, and new, according to all standards. My work now is in community networks. Community networks are IP networks built by the people and for the people. I was assigned to this group, but after talking to Jordi Iparraguirre, who is also a Member from ISOC-CAT, and reading the recommendations, I think it fits well. As a newcomer I will mostly stay quiet and learn from you. I will just speak when I have strong views.

HOLLY RAICHE: I hope not. If you have something to say, I hope you say it. Thank you.

GARTH GRAHAM: My name is Garth Graham and I'm with Telecommunities Canada, which is a national organization in Canada for sharing the experiences out of community networking. I chose this group as the lesser of evils, because I think the four of the themes, except for security, overlapped to such a degree that there really isn't a heck of a lot of difference in them. I have some interest in accountability specifically.

I think I understand ICANN's transparency to some degree, although I believe it's fashionable to say you're learning, although this is your 40th ICANN meeting. I'm a little leery of saying I understand transparency, but accountability interests me particularly, because accountability means answer to. It's not clear to me in any way who ICANN answers to in the climate in which it's moving in. I'm really interested in what that answer is. I don't have it either.

One other fact. In the area of accountability, accountability is usually assumed answering to after the fact, but there is a concept embedded in accountability of answering before the fact. To me, to some degree, the transparency mechanisms in ICANN allow for statements of impact about who benefits and who pays, in the classic adversarial sense of civil society against the rest of the world, that make accountability before the fact possible. I'm hoping that in some way that concept can be built into the process.

HOLLY RAICHE: Thank you Graham. [Jahinga 00:18:22]? Am I pronouncing that correctly, by the way?

[JAHINGA]: Yes. This is [Jahinga] from Bangladesh ISOC Bangladesh Charter Chapter. Actually, I'm partially involved with the government policy level, partially. I'm [wholly 00:18:35] involved in government. The government are thinking that ICANN activities, especially for our country, there's misinformation to the government. I think with all this experience, and all our thinking, is it our government? [unclear 00:18:55] ICANN have actually been doing.

The reason this [conversation] I need to know, is to share with our government what I can do. In the meantime, I believe that if there's more accountability and transparency, then our organization will be more perfect. ICANN globalization, accountability and transparency will help with more involvement [into 00:19:28] to government, since our

government was thinking it was a US organization. I think I'm trying to minimize the gap between ICANN and our government.

They have a lot of misinformation about ICANN. I'm trying to minimize what they are thinking and with all this misinformation, I need to share with our government and to the end user.

HOLLY RAICHE: Thank you. Next?

[SPEAKER]: I am representing Slovenia and the Consumer Association. This is in Europe. Otherwise, I'm an information systems professor at the University of Ljubljana. I also teach about the Information Society, so I have some knowledge about that, but I'm quite new to this topic of accountability and transparency. I think it's difficult to achieve, so I'm quite interested in what I will hear and learn from you. Thank you.

HOLLY RAICHE: Thank you. Next?

CHRISTOPHER WILKINSON: Good afternoon. I'm Christopher Wilkinson. I attended the first 25 meetings of ICANN. I've also been Secretary of the GAC for several years. My interest in this area is two-fold. First, I'm particularly concerned that the multistakeholder decision-making system, particularly in ICANN, must be much more balanced than it has been to-

date, and we are facing problems of commercial and industrial capture of the decision-making process.

Secondly, I had the privilege of being invited to the Net Mundial conference in São Paulo, where this issue of transparency and accountability was high on the agenda, and is discussed in the final act, not least because of the close link between the IANA transition and the successful reform of accountability of ICANN itself. Especially if you remain within the framework that Fadi announced earlier today. He said bluntly – and historically this is true – that ICANN was set up manage the IANA function.

I know that because I was there. I was intimately and personally involved with the negotiation with the White House, which produced the agreement to set up ICANN and IANA in its present arrangement, and consequently I have a strong interest in...

HOLLY RAICHE:

I think you'll have a fair bit to add to the discussion. We've got Jonathon next to you, and we're missing a Jonathon over here. What happened to him? Has he already left?

ALAN GREENBERG:

He's stepped down.

JONATHAN ASKIN:

I'm Jonathan Askin. I'm with the New York Chapter of ISOC. I think I was placed on this Committee... I'm a law professor at Brooklyn Law School. I'm also a visiting professor at the University of London Queen Mary. I

started my career as a civil rights, civil liberties lawyer, until the Internet happened. Now the issues are joined. I think it's essential for civil libertarians to take their battles online and I think this Committee is the right place for us to [unclear 00:23:49] some of the issues.

HOLLY RAICHE: Excellent. Thank you. [Poa 00:23:50]? Bringing a very different perspective.

[POA HANSA]: Hi. My name is [Poa Hansa 00:24:00] from the Cook Islands. I have a personal and selfish reason for wanting to be in this group, because I also work for the government and we talk about accountability and transparency all the time, but don't necessarily act upon it. I wasn't really here to contribute. I hope I am, but I'm here mainly to take away what I could and use it back home. Thank you.

HOLLY RAICHE: Thank you [Poa]. Finally...?

GRACE ABUHAMAD: Hi everyone. My name is Grace Abuhamad of ICANN staff. I work for Theresa Swineheart in Strategic Initiatives. I'm here just to listen and learn more, since Strategic Initiatives, from the staff perspective, is the Department that's coordinating the process for accountability. So it's just to learn, listen and be here.

HOLLY RAICHE:

Thank you everyone. I think if we're going to have everyone contribute, we're probably going to have to do a couple of breakout sessions. We're going to have to have people talk in smaller groups. To really start with our task, our task is actually to discuss a number of things to do with accountability and transparency, and I'll go through what I think those are. You can contribute. It's to come up, ultimately, with some recommendations.

We've got what seems like a lot of time ahead of us. It's actually not a lot of time, if you think about the tasks we've got. I'm going to suggest of you, and I'm going to trust that Alan's going to write them down...

ALAN GREENBERG:

Paying attention was not in the job description.

HOLLY RAICHE:

Tough. It was just added. I think you're all going to bring in absolutely enormous breadth of both your expectations and your experience, which is going to be very valuable. I've jotted down what I think are some of the basic questions that we have to ask. You're Jonathan one, because we've got a Jonathan two. Welcome back. I think we have to start with definitions. I think we have to start with what we mean by "accountability". I think we have to start also with what "transparency" is.

For both of those, I think we have to start with accountability, with by whom. Who are we talking about? It's something Lorna hinted at to start off with. Are we talking about ICANN accountability, or are we talking about ICANN accountability within ICANN groups, to ICANN? For

example, in At-Large we've got our own accountability to ourselves, to the larger organization that pays for our hotel bills, for us to get here. Are we accountable? Are all of those organizations accountable, and what do we mean by that?

Who are we accountable to, as well as what we're accountable for, and are there any consequences? I think that's part of the larger question what we mean by accountability, in terms of to whom, whom makes the judgments, and then are there any consequences or not? I think we have to ask the same thing for transparency.

Now, we have some documents to refer to. One has been referred to already, and it's the Affirmation of Commitments. It's the document that's been signed between the US Government and ICANN, as an organization under which one of the things ICANN does is manage IANA. We'll look at that document.

Another document that's been referred to – in fact we've got some Members on the Board, around the table, from the Accountability and Transparency Review Team. The "2" is there because it's been done before. There were some recommendations within that report, and that report was also put down as a bit of a reading list.

ICANN itself also has principles for accountability that we can have a look at, as to what it thinks it means by accountability. They're all on the list and we can refer to them. In fact, we should discuss them, if nothing else than to think what ICANN means about accountability. We can also refer to our bylaws, if we want to get down to it, in terms of what we think accountability means.

What has also been referred to by Christopher, and others have probably thought about it, is the reason why the accountability and transparency issues has been talked about. I trust everybody around the table is familiar with the announcement by the National Telecommunications Infrastructure. It is part of the Department of Commerce, and that's where the contract between the US Government, through the Department of Commerce and ICANN is – for the supervision of the function of IANA.

In that context, there's been a lot of discussion saying the contract itself provides a certain amount of accountability, or if nothing else, some way for the US Government to pull the plug if something goes wrong. The term "accountability" has been used in that context and has meant it's become a very important discussion. We can re-visit that context and say in the context of the transition of the supervision of the IANA function to ICANN, what do we mean by accountability in that context?

That's an awful lot of things for us to think about. It's some reading for all of us to think through. I think what we might do is start with... I'd like to split you into four groups and I want you to come up with a definition of... You can come up with suggestions, but I'm thinking of accountability. If you've gone to the ICANN website there's a whole accountability page, and there's been a lot of submissions to it.

There was one in particular, by Professor Milton Mueller, whom I do not always agree with, but nevertheless had some things, and a particular chart, to say about accountability, that might get you thinking. There is another chart that's actually on the Wiki. Alan, can you bring it up; our own little reading list? That's how IANA has set out what it thinks its

accountability mechanisms are, as a start for conversation. On that Wiki there's also a statement of principles that IANA has set forth, in terms of what it think accountability is.

There's a fair bit of material available on the website to start thinking about accountability. I'm going to give everybody about ten or fifteen minutes?

ALAN GREENBERG: Before we break into groups I'd like a few minutes?

HOLLY RAICHE: I'd love to hear from you!

ALAN GREENBERG: A couple of things. First of all, I think it's important to recognize that accountability and transparency are different things. There are totalitarian regimes around the world that are very transparent. You know exactly what they're doing but they're not accountable to you. They do what they want. They are very different things, and I think that's important to remember. Garth raised the issue of accountability normally means you are accountable to whom?

That implies a threat. If you don't meet their expectations, they can do something. Take the contract away, whip you, whatever. If you're in a world where we are not accountable to anyone, then how do you put a similar set of threats or similar things to threats in place? I think it's important to remember that we're looking at accountability and transparency from two relatively different perspectives. One is IANA.

Currently IANA is run by ICANN under contract to the NTIA. The wording on the transition document implies – but that may or may not be how it turns out – that essentially the IANA function will be given to ICANN. That it's no longer subject to a renewal, or contract, or threats, and therefore the question is, how is the world going to be convinced that ICANN is going to do the right thing, whoever ICANN is?

We always worry about how does any organization get captured, often by a small number of entities. The simplistic answer that often comes out is, "ICANN is controlled by their Board, and you all have mechanisms of changing Board Members," but I think we're working in a world that if something's going wrong, we can't allow five or six years to slowly transition Board Members, even if we had a mechanism to do it. The IANA one is a significant one.

The second one however is the transition of ICANN itself. The two are linked together, but separate. ICANN used to operate under contract to the NTIA. They now operate under the AOC, which is not a contract, but still the NTIA is there, watching over the shoulder. They participate in all the AOC reviews. They may be an equal participant, but some participants are more equal than others. The question is, if we don't have that relationship anymore, how can we make sure we can trust ICANN?

It comes down to a question of how can "we" – and that's all of the stakeholders; be they registrars, registries, users, governments – trust "them", whoever the "them" is? Then how do we not only trust them, but know what they're doing. That's all the questions we're asking.

HOLLY RAICHE: Okay. We've got four penholders. This means you don't have much of a job, Alan, sorry. Scott, you have not said who you are, and why you're here?

SCOTT SULLIVAN: I'm one of the ALS Members from Toronto, Canada. We're GTALUG, which is the Great Toronto Area Linux Users Group. We represent some 500 to 1,000 professionals and hobbyists through our mailing lists and monthly meetings. I'm here by decree of the Wiki.

HOLLY RAICHE: The Wiki's always right.

SCOTT SULLIVAN: I didn't bother to edit myself elsewhere.

HOLLY RAICHE: Okay.

SPEAKER: Before breaking into sessions, can I ask a question?

HOLLY RAICHE: You're about to. Go ahead.

SPEAKER: I was wondering, profiting from the huge amount of experience many indeed have about former work on this topic, I was wondering if

anybody is willing to give a two-minute overview of the work that's been done in the last five years on this issue?

HOLLY RAICHE:

No, we're absolutely not going there, because I want all of you to come up with what you think you mean by accountability. It's all on the website. If you want to read the ATRT 2, it's been up there for some time. We can certainly refer to it, because some of those recommendations we have to deal with, but I want people's idea of what accountability is. I think the fact that there will be different views is a good thing. I don't want you to be listening to somebody else's view. I want your view there too.

Just the fact that Carlos is apparently feeling quite jaded about accountability, will mix with you as not feeling jaded about accountability. We'll have Lorna and [Kristoff] and Jonathan one, and Tatiana, I think, and Kerry, maybe. Then we'll have Oksana and Carlos. You're sitting between experts anyway, so you can talk to Carlos and he'll give you his view.

SPEAKER:

I think I asked a methodological question, and you gave a methodological answer, and that's it.

HOLLY RAICHE:

Good. Hong and Jody. Okay. Could you come up with – and I want, from all of you – what you think are the components of both are. First, accountability, and second, transparency, because Alan's right. They're

not the same thing. In terms of just by whom, and to whom. We're just going to use that nice bit of butcher's paper to come up with some answers, because we have to come up with recommendations, so we have to come up with definitions of what we mean first.

Everybody gets about 15 minutes. Then we're going to progress a little bit, in terms of how we're going to do it, what the consequences are, if there are any. Then I might actually call on a couple of people with different areas of expertise, so we can start working through that. We've got a lot of ground to cover, because we have to come up with recommendations. We've got to second-guess ATRT 2. No, we don't. Alan says we don't, so that's okay.

ALAN GREENBERG:

Can I comment? Not really. ATRT 2 was looking at some very constrained views of accountability and transparency. We're looking at it in a brave new world where we don't have the AOC, which was the premise of the ATRT.

HOLLY RAICHE:

Right now, I want this to be something where it's not necessarily in a constrained context. I want what you mean by accountability. What do we mean by a government being accountable? What do we mean by a company being accountable? What do they mean by a person being accountable? What are we actually talking about here? Then we're going to have to form some tests as to what we mean about accountability in the context of not only ICANN, but constituents of ICANN. Lorna started off by hinting that really, we may be talking about two things.

Yes, this is in the context of IANA, and we will get down to that, but let's get some high-level definitions before we actually drill down. I think the high-level definitions will maybe get us somewhere, and maybe a different place, and maybe that's a good thing. There's coffee out there. Carlos?

CARLOS GUTIÉRREZ:: May I just interrupt very briefly? You personally skipped the introductions. In spite of our mutual experience this is the first time we've met. I know your name from the list. I have no idea where you're coming from, or...

HOLLY RAICHE: I'm sorry. A few hats I wear. I first encountered ICANN at the Mexico meeting, ATLAS I. I'd always been interested in communications law and policy. That started off I worked for the Australian Broadcasting Commission, before it was Corporation, in several areas – public affairs radio, television policy, corporate policy, freedom of information, equal opportunity, that sort of stuff.

I left to join a newly-formed thing called the Communications Law Center, which was a public interest advocacy center. By the way, somewhere in my ABC career I actually did a law degree, having done a couple of other things as well. I worked in the Communications Law Center just when telecommunications was being liberalized in Australia. Then I worked as a communications advisor for the Australian Democrats.

Then I worked as a project manager for the industry body in telecommunications, as a project manager for the development of industry codes, and then I became the Executive Director of the Internet Society of Australia. I'm still a Director and I'm a research associate in what's call the Cyberspace Law and Policy Center, which is based in New South Wales. I still teach communications law at the University of New South Wales.

I've done short courses in various things, and I also helped found, and I'm a Deputy Chair of the Australian Communications Consumer Action Network. I'll stop there. Does that answer you question? I'm also on the Executive Team for the ALAC, and I was Chair of APRALO. I stepped down when I joined the Executive Team of the At-Large. I'm going to get some coffee. You all have a job.

ALAN GREENBERG: Who's in which group?

HOLLY RAICHE: Oksana up to here is one group. Kerry down is another group. You're in separate groups. You're not going to be allowed to talk to each other!

[TAPE CHANGE TO ATLAS II ACCOUNTABILITY TRANSPARENCY 2]

HOLLY RAICHE: Just a reminder, to me and to everyone. Can you speak into the mic? We're actually being recorded. That's also a reminder about anyone

that has concerns about being recorded. We're being recorded, and there isn't a choice. Now, this is the start of a conversation that's going to be going on for the rest of today, and that's not a lot of time.

Certainly tomorrow we have to wind up with recommendations about accountability and transparency, and we'll need to do that understanding both what we mean by the terms, which is where we're starting, an understanding of where the responsibility lies, and if we mean accountability of ICANN, that's fine. If we mean accountability of parts of ICANN to other parts of ICANN, which we may do, we can put that down, and then what accountability measures are there.

We have a fair bit of work ahead of us, and if you haven't read the material on the Wiki, or at least skimmed it, I suggest you do. There's some pretty interesting stuff. I'd also suggest, if you're really a glutton for punishment, or you're jetlagged, that on the homepage of ICANN there's a big area for accountability, where a lot of submissions have been made. Some of them are very interesting. End promo.

I'm going to call on group one, which contains Jonathan one, Gabrielle, Kristoff, Tatiana and Kerry. Which color pen have you got? If you want to talk about what your thoughts were on a high-level principle about accountability, what does it mean, to whom and so forth? Put some notes on the board so that Alan can capture them? Thank you. The problem is, you're going to have to speak into one of these mics so that we can be recorded.

JONATHAN ZUCK:

Here in group number one, no bias for the number, obviously, we were discussing the question you gave us, which was about accountability and transparency, what we thought the who, to whom, and what the questions were. What we came up with were the who. We'll call ICANN "inc" so the entity that is ICANN as an organization, the incorporated entity, which would include its employees, the Board, etcetera. We'll call it ICANN Inc., for lack of a better term.

The to whom, where it gets complicated, the ICANN community. I'm sorry, my handwriting is so horrible. The community. Obviously, this is an ill-defined group of people, but we were thinking that it was made up of the various Advisory Committees and constituency organizations within the ICANN community – the people that meet and talk about these things on a regular basis.

HOLLY RAICHE:

For the record then, we've got the who is ICANN Inc., and the to whom is the ICANN community, and that includes all of the... The shorthand usually is SO and ACs. Thank you.

JONATHAN ZUCK:

What we thought was probably necessary was something external to the organization, that would be some kind of external judiciary. Then that would basically be a kind of review on the actions and ultimate decisions of the staff and the decisions of Board of ICANN Inc. There were certain considerations here that affected who we were thinking this should be made up of. One of them is that it should be people that have some idea what's going on.

It was this notion that it probably shouldn't be some completely unconnected judiciary body, but somehow made up of people within the community. One possibility is a representative, what we may call a cross-constituency, since that's a sexy term these days. It would be a Working Group that would basically be set up to be permanent. It would have a representative from each of the SOs and ACs.

Unlike the Board, it would in fact have the Mandate to in fact be representative of those SOs and ACs. Even though the Board Members come from those groups now, they are restricted by their own Charter from actually being accountable to them, and in fact their accountability is to ICANN Inc. once they become a part of the Board, and no longer to the community. The idea would be to hardwire into the creation of this some accountability directly to the organizations that they represent.

Another thing that came up was the ability to potentially contract an independent entity. Again, this was the product of a very short conversation, but the idea being that while we don't want a completely independent entity being this organization, that they would have the ability to reach out to an independent auditor, or some sort of independent arbitrator, or some other facilitator, in exercising this role as an external judiciary.

Then there was the concept of transparency. Again, I think this enlarged measure was back to being a reference to ICANN Inc., and there was this notion of both proactive and reactive transparency. There would be a list of publication requirements for Board Members, for decision processes, conflicts of interest, financial transparency, etcetera. That was another thing that came up.

SPEAKER: Also, of course, a set of rules for the reactive transparency – so who has a right to [repress 00:11:42] what information to...

JONATHAN ZUCK: I don't know if "decisional" is in fact an adjective or not, but for purposes we'll use it as one, as a type of transparency – conflictual, financial and decisional transparency. Proactive publication requirements and then processes, á la freedom of information style requests for [unclear 00:12:12] for transparency. I think that's basically what we came up. Do you guys remember anything else?

[KRISTOFF BRU]: There's one thing that I didn't understand the same as you presented it, and that's concerning who is to be held accountable. You said it's ICANN Inc. That's correct, but of course if the ICANN civil society, the organizations that are at the fringe, the borders of ICANN, [unclear 00:12:39], the question is... Sorry, it's {Kristoff Bru} speaking. I think we can, but we have to understand if we limit transparency to ICANN Inc., then of course we exclude the whole part of decision-making, of which we claim is, in a way, part of ICANN.

The problem is, if we extend accountability and transparency to this part, then we have a very strong overlap between the community that is to be controlled, and is to be the controller. There has to be a split. That's why I said there could be a rule that the same communities can feed into the Board and into the Control Board if, for example, you have the rule that someone who's been within the official ranks of ICANN, or

ACs or something, cannot join the other side before five years, maybe. You cannot build a career in both directions.

HOLLY RAICHE:

Understood. Look, thank you for a really good start. If you're group one, I'm going to go to group three next. I have a few questions. What are the same things that you've got, but what different takes might you have on the same questions? You're quite free to write over in whatever color you've got. Red? Okay. You can start from another page. We have a request of Heidi – we might need more butcher paper, by tomorrow.

I've actually got some Blu Tack, believe it or not, which I nicked from the ISOC meeting yesterday. I have to be thoughtful.

SPEAKER:

We worked on the definition, and we didn't stick to who, whom, and what. We just came across with a definition of accountability, which says it's the responsibility to be aware of how you got done what you committed to do.

SPEAKER:

What we did with that statement is we actually removed any strict definition of to who, to whom, and focused on the actual accountability part of the statement. You can plug in different datas for that, be it ALAC, be it the ICANN Board, be it the gNSO. Those are always going to change, but the same structure exists. When you've committed

something, you've got to prove you've achieved or didn't achieve that something.

HOLLY RAICHE: Okay. We should all be saying our name beforehand, and I'm the worst offender. Thank you for that. That could fit in with what stuff you did in the first group. Accountability is the responsibility to answer to... Okay, so you're saying accountability is essentially being held up to be responsible for, in some way, whether or not you've achieved the task you've been given. Does that beg any questions?

SPEAKER: A couple. [Audio interference]

GARTH GRAHAM: Sorry, you were using a particular phrase, and when that crackled I lost it. Now you've probably lost it too. I have lost it, I'm sorry.

HOLLY RAICHE: I think what I said was responsibility for achieving what it is you're responsible or have been tasked with doing.

GARTH GRAHAM: It's the word "tasked", because it may be what you, in ICANN's context, has decided to do. The tasking is your own.

JONATHAN ZUCK: I think that this is half of the question of accountability, and the other half is determining what you committed to do in the first place, probably, right? I think that's what you're getting at. Yes, even this level of accountability would be an exciting reform inside of ICANN, but a lot of ... ICANN Inc. has been very clever by setting up objectives that are tautological in nature, like, "We will hire two more people this year," and then at the end of the year they report on the fact that they hired two more people.

Even though those people had a job, whether they accomplished that job or not is never part of the accountability mechanism. Something I harp on a lot is using data and metrics to really measure the problem and measure whether or not there's been some improvement to it. The other half of this, I think, is determining what the tasks are.

HOLLY RAICHE: I hear a third part from Jonathan one, which is metrics.

JONATHAN ZUCK: You'll hear that a lot from me.

HOLLY RAICHE: Does anybody else have anything to add to this particular view, this definition of accountability? Garth?

GARTH GRAHAM: Holly does not [unclear 00:20:00]. Just noting that both groups so far, to me, don't address the question that ICANN raises to itself, of global

public acceptability. I don't think either of these attempts to address what accountability is, begin to take that into account.

HOLLY RAICHE: Garth, could you take that further? The gentleman on my left, named Alan, will.

GARTH GRAHAM: There's that phrase, global acceptability that's sitting there. This answering, somehow, has to be out there, everywhere. The mechanisms for doing that are not obvious. To me, when you say, for example, "ICANN will answer to an external judiciary, to apply some dimension of legal measurement on it," okay, fine. Who is the judiciary accountable to in terms of global acceptability? It just steps up one level, all the way along.

I am being mischievous in asking this question, but I don't have an answer myself, and I don't think that our own definition there addresses commitment. It's fine to state your commitment to tasks, but it still doesn't answer who you are answering to.

JONATHAN ZUCK: I guess I worry that that starts to become a speechless argument, because there's never going to be a global judiciary to whom we might answer. This ICANN community, make up of SOs and ACs is the easiest organization to join, in terms of identifying what your interests are and becoming a part of it. The extent to which people have interests to express, that's probably the easiest vehicle – to become a part of this

internal accountability mechanism, together with comment periods to alert you that you might want to become involved.

Maybe it becomes part of transparency to create that accountability, but the mechanism of that accountability is probably showing up to meetings, either in person, or virtually.

HOLLY RAICHE:

Alan's been incredibly patient, so I'd like to have Alan first and then Jonathan two.

ALAN GREENBERG:

Thank you. Alan Greenberg speaking. Before I make the comment I was going to make, I'll point out that we're having an opportunity to discuss and debate what the second group put up there, but we didn't have a similar opportunity for group one. Perhaps you want to go back and have that discussion. I think the part of accountability that's missing here is accountable to whom, and what they do if whomever it's accountable to feels that you didn't do it right.

The term we use in ICANN is the "public interest". It shows up in the bylaws. It's undefined, and carefully so, in many people's opinion. There's a lot of perspectives of what things are in the public interest, and what things are not. Of course, different governments and different people may have different opinions of it, but somehow, accountability has to have a mechanism for what happens if they don't meet the target.

They forget to tell us why they did something, or they didn't tell us they did it at all! Or any of that kind of stuff. Accountability needs to have that second component. I won't call it enforcement, but the double-check, the cross-check, that we are indeed meeting our commitments. Thank you.

HOLLY RAICHE: Thank you Alan. We will go back.

JONATHAN ASKIN: Jonathan Askin here. I sort of want to take issue with something that Jonathan Zuck said – the concept that we may never have a time where we'll have global accountability. I'm not that familiar with ICANN's processes and platforms, but I feel like when I look at the website it looks very static, very Web 1.0. If there was an entity in the history of the globe that had the potential to take Internet inter-activity to the next level, it's the ICANN at this moment in time.

It seems to me that governments at municipal, state and international levels are already starting to look at interactive platforms for public participation and civic transparency. Why shouldn't the ICANN be the model of that degree of global civic participation in its processes? You've got new platforms like Reddit. They're emerging.

Why can't this be the place where it really is pioneered with the potentiality for billions of participations, in a policy formation, online system? I may be Polly-Anne-ish about it but it feels like this is the time and place for something like that to happen.

HOLLY RAICHE:

One comment that I've got, then I've got Hong, and you also put your hand up? I'd point back to Milton Mueller's article, which I suddenly find myself touting. He draws a distinction between participation and accountability. His critique is participation or more participation, or even more and more participation, does not actually equal accountability.

I think that's a point to be made, to say we want all of you to participate in this, and we want all of you to write all sorts of levels of comments once, two, three times, and then we're going to thank you. The danger is it's left there. I have personal doubts about... In terms of transparency, a component of transparency would be the ability – as has been talked about, because I'm not going to come up with answers... Transparency certainly does involve open participation.

I'm questioning putting participation together with accountability. I'm just questioning whether they're the same thing. Hong's got her hand up. You've got your hand up. Alan, you're just going to have to be third, because people want to talk.

SPEAKER:

Just to say that in my view, in respect of the role of ICANN, and other bodies in the Internet governance, my view is completely the opposite. It's always been very dynamic, but very technical, and therefore in the last ten years, the number of stakeholders interested in having a say about this has immensely increased, whereas the process has not

strengthened. This is what we briefly discussed in our group. It doesn't seem, yet, very fit for purpose.

However, I think many of us are very aware of the latest development. We are here this week to understand better transition, and about many facets of ICANN developments, one of which is, of course, accountability and transparency. From a personal perspective, I think that the process would be immensely improved and strengthened with the little operation of reduction. Not to say that participation is not important.

Not to say that different views and opinions are to be discarded – not at all – but let's stick with rules about names and numbers and the way in which it's a global, collaborative effort, a collaborative government. We can manage this. It's very childish and it's very uneducated to bring in an expectation like a global judiciary system, from my perspective.

This is something that must be taken into account – avoiding this level of childish approach to the matter. Let's stay with the robust expectation of having a mechanism agreed on a global basis, in the more simple way... This is from my point of view, the best way to build up a new, global infrastructure.

HOLLY RAICHE:

Okay. Hong? I keep putting you off. I'm sorry.

HONG XUE:

Okay. Thanks. I guess group one and group three did a wonderful job. You've laid down very solid foundations for our further discussion. You touched all the key questions we want to ask and try to answer. The

first one, who is accountable? Jonathan one put across his group's opinion that it's ICANN, as an institution, that should be accountable. I fully agree with that, but I don't know others' opinions. Question one: to whom ICANN, as an institution, should be accountable.

Very interesting answer I learnt from Jonathan one. I believe ICANN should be to the ICANN community. Very, very interesting.

HOLLY RAICHE:

I'm going to say stop there, because I'm very conscious you guys have not, as a group, presented. Nor have we heard from group four. As you wish. It may be that some of the issues that Hong is very rightly raising will be addressed, so let's actually finish here. Hong, if there's still gaps... By the way, people are quite free to go back to what groups one and three have said, but can we hear from four? I'm sorry, but Carlos didn't want to talk at the moment. He's put you back...

ALAN GREENBERG:

I'm the one who's talking, but in any case, can we go back to the first group and talk about that? Is we're going to talk about each one as we go through, then I think we need to go back and talk about that one.

HOLLY RAICHE:

Okay. One of you...? I'm saying fine. One of you? All of you?

ALAN GREENBERG:

I have a comment. I don't know about the rest...

HOLLY RAICHE: Go for it. Kerry and Alan. Do you want to bring...?

ALAN GREENBERG: My largest comment about number one... By the way, if I'd been the second group to present in order, I'd have simply said, "Let's all the rest of us go out for dinner and leave it to group number one," because they clearly have a better handle on it than we do. I'll say that when I get up to talk, but the largest comment I have is the issue of accountability to whom. Accountability to the ICANN community is too inward-looking and is not going to satisfy the rest of the world. We can put this up

Sorry, I'm just commenting on the previous, what I thought was the largest thing wrong with what Jonathan did. That's that the accountable to who has to be a much wider group than the current existing ICANN community. We are viewed as too isolated to begin with, and aside from the fact that we've not included 200 governments around the world who think they have a stake in this, there are larger stakeholders in this than just us.

HOLLY RAICHE: Under "community", would you put, in a little caret sign, would you put "the global community"? Yes. Let's have the conversation now. Kerry has actually had his hand up for a while. Then we'll discuss community and the questions about the definitions of community. Kerry, go for it.

KERRY BROWN: It was a while ago in the discussion. I can't remember who brought it up, but one thing we never really resolved was what happens. How do

you make them accountable? We didn't know American law well enough to know, as far as I know, the only accountability you have is to get rid of [import 00:35:37] somehow, and there's no mechanism within ICANN to do that. You'd have to sue the organization to make them accountable, which is a big problem.

HOLLY RAICHE:

Thanks Kerry. Jonathan one, you had a right of reply? Then Alan has a right of reply to your right of reply.

JONATHAN ZUCK:

Well, if that's meant to temper me... I'm very empathetic to that notion of global public interest. At the same time, the problem is that we have to find a structural mechanism with which to bring about some level of accountability. Right now, ICANN exists as an organization. It has existing mechanism for policy development and execution, and so the question then becomes when the institution of ICANN takes action, or fails to take action that were decided upon by those existing mechanisms, what do you do?

I believe that's the question that we need to answer, unless what we're going to do is redesign the processes by which those "tasks", as we referred to in group three, are established in the first place. The 200 governments that feel they ought to have a say, do. They have the opportunity to show up and be a part of the Advisory Committee that exists here, any time they want to, and they'd be a part of this external judiciary, at least as group one defined it in 15 minutes, right?

Every organization has the capacity to participate now, inside of the ICANN community, such as it is, and it is in fact the organization of ICANN, and its existing processes for decision-making, that need some mechanism to loop back and make sure that as group three defined it, the tasks as defined by those processes were in fact accomplished and either done, or that other things that were not agreed to were not done. I think that that's a lot of what's raising this conversation.

To make it into a more ethereal conversation about global public interest, and somehow conflating that with accountability, I think is dangerous and unproductive, because the truth is, the way that we can be most effectively agents of global public interest, is by forming an open, transparent and accountable process for policy development and execution. I think that that's what we need to try to stay rational about, in terms of building the structures that we recommend.

HOLLY RAICHE: Okay. I'm going to take one or two more comments, and then we're going to go to group four. You want a right of rebuttal of rebuttal?

ALAN GREENBERG: You told him you would give me one.

HOLLY RAICHE: Did I?

JONATHAN ZUCK: That's why I was wondering if you were just doing that to keep my comments short. I didn't know if you were serious.

HOLLY RAICHE: By the time we get the rebuttal, rebuttal, rebuttal, could it please be short? We have Garth, who wants a rebuttal rebuttal?

ALAN GREENBERG: I don't entirely disagree with what Jonathan just said, but the organization of ICANN, as it sits today, does not meet that criteria well enough. It would have to be, perhaps, substantially changed in order to meet the requirement that the ICANN community equates the world community.

HOLLY RAICHE: Well, we have to come up with some recommendations, and between the two of you you've raised some very interesting points that we'll have to address. I'm not saying anybody's wrong, I'm saying that there are some really good points that have been made. I'm sure Garth is about to make another one.

GARTH GRAHAM: Perhaps. I think one of the things that needs to be protected is the Affirmation of Commitments, because I think that the AOC stands on its own, whether it's a contract with NTIA and ICANN, or whether it's ICANN stating its own intentions. Somehow, in terms of that clarity of the task, something like the AOC needs to remain in place.

SPEAKER: Move it into the bylaws. Take the agreement and move it into the bylaws.

HOLLY RAICHE: Carlos, would you like to elaborate?

CARLOS GUTIÉRREZ: I certainly think that there is a lot of truth, but when you develop an institution, you can also go another way and create bylaws. There are bylaws, and then on top of the bylaws we have the AOC. Now, what goes first? If we have a global institution, and we have a bottom-up participation, why not review bottom-up? Putting the AOC first, yes, why not? But I'd start somewhere else.

HOLLY RAICHE: Actually, that's a very good point, because tomorrow when we have – I've got to say – not much more time, and we're going to go from the very high-level, which I think has been very useful, and really asking people to focus on the hard questions... We've been focusing just on to whom are we...? First of all, who is responsible? We have been talking about ICANN Inc. We haven't been talking about the components of ICANN.

Now, we can make that decision. We can say that's the way it is and proceed that way, that's fine. We have tried to unpack to whom, and we've had different and quite valid reasons to go one way or another. We have talked about the very difficult question about what are the

consequences if something doesn't happen that should. Is it an external judiciary? Is it the bylaws? Is it another contracted party? What set of consequences would be put in place?

We've actually really tried to unpack a lot of the stuff that has to be answered. We have talked a bit about transparency. I think that's, in a sense, a simpler questions, because it's openness, and if it's openness, well, anybody can look. We still have to unpack transparency, of what, by whom – because the two are certainly wedded together in a lot of the discussion. We have to hear from group four.

Is this going to be Christopher? Is it going to be Jonathon? Is it going to be [Poa]? Or is Heidi going to jump in and say, "Listen. I've got all the answers"?

[JONATHAN?]:

[00:43:58] We have an outline on the screen here. Tomorrow I'll bring the plug so we can connect Apples to the VGF socket. We concentrated on definitions. We haven't got into recommendations. We've concentrated on definitions. We haven't gone into recommendations yet, and since the conversation so far is really around the definitions...

HOLLY RAICHE:

Wait a minute, we can take your computer and just plug it in.

HEIDI ULLRICH:

Is that okay, Christopher?

CHRISTOPHER WILKINSON: I suppose so. It's just three or four pages.

HOLLY RAICHE: We've got two people... This is a Mac Pro. He's got a Mac Pro or a Mac Air. One or the other. Okay. Christopher, can you...? Your computer is controlling it.

CHRISTOPHER WILKINSON: Anyway, just a couple of starters. First of all, we concentrated on definitions, and not...

HOLLY RAICHE: Are you reading from your screen?

CHRISTOPHER WILKINSON: Yes. Why doesn't it come up? What do you want to do? Well, first of all, the first bullet there basically says that we have to think in terms of accountability of the whole process. Accountability of ICANN Inc. or just the Board is not good enough, because nearly all the decisions coming through the SOs and the PDP, which determine the policy options, which the ICANN Board has to adopt, or not, occasionally, they have to be responsible for it subsequently.

Consequently I would argue... This is amazing. You've now succeeded in taking it off my screen, so I don't know how we scroll down. The second point is indeed, as Alan has insisted several times, accountable to whom? The ICANN Board and its nomination processes are far from

perfect. Some stakeholders are over-represented. Others are under-represented.

The Nominating Committee, which was set up to appoint independent and neutral Board Members, instead of having Board Members elected directly by individual Members of ICANN, the NomCom, in my opinion, has not succeeded in restoring the balance and neutrality. The Board is thus perceived as being still extremely bias towards the Commercial Supporting Organizations and related entities.

In that context, Jonathan, intellectually I see the point about having an external judiciary, intellectually. There is a lacuna there, which everybody has pointed to. The problem that I see from a political point of view is that there are several volunteers to be the external judiciary, but they're all intergovernmental organizations. You put up the idea of external judiciary and ITU will say, "Right, monkey, that's us." End of story. End of transition.

SPEAKER: I don't think them saying it will make it so.

CHRISTOPHER WILKINSON: If you want to have an external judiciary – and I say that there is a problem here, which I haven't resolved this afternoon, so we can discuss it further, of course. If you have an external judiciary that is "ex nihilo" appointed, ICANN describes such an entity. It would be, so to speak, a competition with the ICANN Board. It would have to be small to be cheap and nimble enough to exercise the additional responsibilities, but there would be such great pressures – and there already are.

There's a proposal that all registries, and potentially all registrars, could be members of a new entity. There would be such great pressures on the "me too" basis, that I would fear that this would take more than one year to resolve. That's just a personal opinion. All I'm saying here is agreeing, to a certain extent, with Alan's reservations, that to-date, the ICANN Board is not yet fully accountable enough, and is not globally accepted. Then we come to ICANN's accountability and the IANA transition as joint or separate.

HOLLY RAICHE:

I'm just wondering, can we stop there? We're working on definitions, and you're getting into tomorrow's discussion. Today's discussion really was high-level. You've got transparency as high-level, so I do want to stay in high-level. Save that thought, because tomorrow we get there, but I think we're trying to work through some of the ideas that we're going to explore tomorrow, but in a much more concrete way. Let's do transparency, because there's a bit of that that's also high-level.

CHRISTOPHER WILKINSON:

Well, here, the starting point is indeed that ICANN has made major steps in the last decade or so to become more transparent. ICANN is so transparent that you can spend hours looking through pages and pages of websites before you find what you're looking for, even if it's something you wrote yourself and put there. You can't find it. I think we need to take that as a positive given. It's more than a footnote.

There is scope for improving multilingual access to the relevant information, but I think politically that's also a given. It is a question of

time and money to implement. However, the decision-making processes themselves, and particularly the processes involved with meetings and ICANN meetings, which many of the stakeholders can't come to on a regular basis – indeed conference calls and so on – the internal workings of the decision-making process are, for the sake of argument, not transparent enough.

I think an old-fashioned solution is to have properly, professionally prepared minutes of meetings that are published. There's a tendency – and not only in ICANN, but in other online organizations that I'm familiar with – to say, "There's a transcript." "There's a recording." There's a logical problem there. You can't expect people to sit down and listen to the recording of a whole conference call that you weren't able to go to. That is not transparency. That's burying decision-making processes in excess of information.

Finally, I've said – this is just a first draft of course, but my colleagues have actually read this on-screen, and basically told me not to go ahead with it, so thank you guys – the stakeholders need to be able to trace back how particular decisions have been reached. I can think of examples of decisions, for which it's very difficult to discover how they were reached. Finally, as part of the definition of transparency, we need to cover the points... Well, the review mechanisms are intended to improve transparency, and I accept that.

From an operational point of view though, particularly in terms of correcting errors or adjusting decisions to new circumstances, I think the review mechanisms are too slow and complex. Improvements that may result from contemporary review mechanisms come too late to be

credible. End of first spiel, Holly. I apologize for being a bit too long and maybe a bit too spiky, but I'm sure we can smooth this out in further discussion.

HOLLY RAICHE: It's a good start. Where we got to, and my...

CHRISTOPHER WILKINSON: People trying to take photographs of the screen...

HOLLY RAICHE: I know!

SPEAKER: Just personal views, [inaudible 0:56:21]... Instead of putting down on paper, just...

CHRISTOPHER WILKINSON: I know how to send an email. I don't know how to put this on a workspace. I've never done it.

ALAN GREENBERG: Or send it to the rapporteurs so I'll know what you said.

CHRISTOPHER WILKINSON: I'll send it to you, Alan, but I might touch it up a little bit before I send it.

HOLLY RAICHE: Okay, now, we've got a harder task in front of us. Oksana, you had your hand up?

OKSANA PRYKHODKO: Thank you. I want to say thousands of thanks to Christopher, because he expressed in a very excellent matter all my problems with finding information, which there is on the website, or in any other informational resources. I participated, of course, in the Working Group #2, and I learnt a lot from a 15-minute conversation. Really. My ideal case of accountability is accountability of the Board before each individual user.

It's an ideal case, and it's absolutely understandable that this situation could not be achieved. What are some approaches to this situation? How can we create intermediate mechanisms to help each individual user receive answers to all his or her problems, concerns or something else, from the Board? Of course, it's staff responsibility, and it's not the problem of the user.

It's the problem of the Board to create a mechanism, to [receive 00:58:22] accountability from staff, and from constituencies, and from any stakeholders in ICANN. This is just my ideal comments, and of course regarding informational...

HOLLY RAICHE: That's fine. Thank you. I think another element has come up that maybe will form part of a recommendation, which is how do you find stuff on the website. I think we've all gotten used to the website, only to find it having changed. Then you've got to relearn where everything is. Everything's there's somewhere, but it does take a bit of finding, and

knowing what to look for, and knowing what's there, how to access it, is perhaps something we can look at tomorrow, in terms of both transparency and accountability.

Accountability... We're still working through what the community looks like. We're still asking ourselves what are the consequences for a lack of accountability and transparency. To my right?

SCOTT SULLIVAN: Sorry. Scott Sullivan. As we get into those kinds of questions, we're actually getting into the area that I feel is capacity building, and is the subject of a different Working Group.

HOLLY RAICHE: If it's a solution though, it's not.

[BRUNELO LUNGO]: Capacity building has nothing to do with accountability, and has nothing to do with a mechanism to assure transparency of processes. It's a matter of [pertaining 01:00:15] skills and internal organizations... As I said before, we need, from my personal perspective and experience, a bit of effort in terms of reductionism and pertinence.

SCOTT SULLIVAN: I was simply addressing the comments about finding things on websites, getting involved in ICANN and getting up to speed. That is a capacity building question, in that the people who are involved... It's not something we should be delving too far into.

HOLLY RAICHE:

Can I clarify? What I meant by the website is not so much people learning how to participate and so forth, it's about is something there, and if people actually want to find answers, are they there? That would be the transparency bit. Sometimes, yes, actually finding your way through what's there is pretty hard, and it's not so much capacity building, it's like beating somebody up because you've got a website that doesn't do what it should do.

That said, it may be that one issue – it's about transparency – is the information there, and reasonably located? So that in fact, if I wanted to know what happened in the Board meeting, is it easy for me to find that? For example, one of my participations is in the IRTPD Working Group. One of the comments that's been made by that Working Group is that if you're a registrant and something's happened to your domain name, you don't know what, is it easy for you, as a registrant, to actually go to the ICANN website?

Or, go to your own registrar's website, find a link that will take you to words in plain English that allow you to understand what may have happened and what you can do about it? It's not so much capacity building, as is the information there that you want to know, in terms of transparency. That's the way I was using it. We've got three conversations. Go ahead. Alan?

ALAN GREENBERG:

I was assuming I wouldn't have to... This is from group two, that was somewhere in that corner. We don't really have a lot to report. That's

why I didn't ask for the flipchart. I think it's worthy of reporting what we don't have to report. We spent a lot of our time trying to do level-sets, because the various people in the group have very, very different backgrounds, and even the use of the terms accountability and transparency were not particularly clear.

We spent a fair amount of the time talking about examples of what was transparent, what wasn't transparent. Several of the people had certain instances that concerned them. "Is this an example of lack of accountability or lack of transparency?" I and a number of other people gave our opinions, and of course those were just opinions. I think the discussion, we didn't get anywhere near as far as group number one, which I think has the championship of coming up with answers to the questions Holly answered.

We were not anywhere near in a position to do that, so I consider you're either much luckier, or one of you took the lead and simply wrote things. I'm not sure. I think our discussion highlighted the difficulty of coming to a single conclusion when the perspectives of the people, certainly in our little group, were so varied, and in some ways had very diverse positions – some of which could not even be rationalized in the short time we had.

Now, it's fine to say I was right, and they were wrong, or vice versa, but it's a more complex issue than that. I think as we go into tomorrow, because we're pretty well finished today, we're going to have to think carefully about the methodology. Otherwise we're going to come up with a lot of random thoughts and not have anything to present. Just a bit of a worry. Thank you.

HOLLY RAICHE:

Thank you Alan. I'm actually not worried, because I think I achieved what I wanted to do, which is to get people thinking about the terms; people actually trying. I understand how difficult it is when particularly you've got you and Carlos, who have sat on ATRT 2, and really tried to grapple with those issues, of what do you mean by accountability of the Board, for what, to whom, how do you do it... That's difficult.

What we're going to do tomorrow is be a lot more specific, because we have to be. If we're going to get to recommendations, one of the things that was in today's.. There are some paragraphs that Hong and Avri wrote. One of their specific recommendations was a follow up on Recommendation #9 of ATRT 2. For homework – if you're going to come out tonight, just bring your computer and read, okay? Otherwise you don't get a pass.

Go through, at the very least, the recommendations of the Board centered around Recommendation #9. Another is to familiarize yourself with the Affirmation of Commitments, which is called AOC, for those who live in this strange world. I'd go back to the chart that I had up there first, because that's the way ICANN feels it is accountable. Just follow those streams. Does that actually equal what we've been talking about in terms of accountability?

Or, is that just a diagram that proves that the Board thinks they're accountable and they've solved the problem, but we don't think they've solved the problem? Now, we are tasked with coming up with recommendations. That doesn't mean that we have to. We may wind

up saying, “You guys are 110%. It’s all hunky-dory. We can all go off and have a beer, or a glass of champagne.”

I think we do need to actually say, “Well, in terms of the wide range of views on what accountability is... “, and what I’ve heard from all the groups, “What do we mean by ICANN accountability?” I suspect we do not have time to explore both ICANN accountability, and the accountability of organizations within ICANN. I’d liked to have explored that, if we had time. I think it is fair enough to say, “ALAC, we have a set of our own rules. Does that hold us accountable?”

We walk away with money, folks. We get airfare. We get hotels. Are we being held accountable? I think it’s a fair question, as much as it is at a Board level. Are there other organizations? Are they accountable to ICANN for what they do? I just don’t think we’ll have time. I think we may try, but Alan would just like to say something? He’s looking very tired.

ALAN GREENBERG:

I’ll be relatively short. I play a mind exercise with myself very often. When you go into long, complex processes, I predict the outcomes. Before we’ve had any discussions, before any of the real work is done, I like to predict outcomes. Sometimes they’re right, often they’re wrong, but nevertheless. The other thing I tend to do is try to put constraints on the outcomes of what a satisfactory outcome would be.

In this case, it would be delightful if we came out with an overall model of ICANN accountability and transparency, which will work in the great, new world. I really don’t think we’re going to. I believe I would be

happy if what we came out of is a set of constraints and limitations of what we're looking for. That is, "Any satisfactory model must satisfy the following criteria..." I'm not saying exactly what it is, but saying there must be an external body – and this may or may not be one – that passes judgment on ICANN. Whether it's the external judiciary or something.

"The stakeholders who are involved must include the following laundry list, if it's to be deemed representative of the world Internet body." If we can come up with lists of constraints and lists of criteria like that, that any future plan can be measured against, I think we will have done a good job.

HOLLY RAICHE: You've got your homework. Jonathan one is just about to put his hand up.

JONATHAN ZUCK: I guess what I'm going to say is very related to what Alan said, which is that we need to be very careful of scope and not try to be the ATRT Review Team in the process of a day, because my understanding is that that process took considerably longer – unless they really procrastinated. The fact the ATRT process is in fact an internal process, that as Garth brought up, may be something that we want to institutionalize or make part of the bylaws or something like that, we don't necessarily need to replicate the substantive efforts of that.

The issue of transparency as it relates to, say, how comments are handled, for example, is an ongoing discussion within the ATRT. Probably

by ATRT 5 those recommendations will work, or be adopted by the Board. That's a process that already exists, and I think we should caution ourselves not to try to replicate that. As Alan said, instead of constraints, or at least some structural framework of recommendations should probably be our objective. We shouldn't try to get into every little substantive issue that's already been dealt with in a lot of different places inside of ICANN.

HOLLY RAICHE:

I would have to agree. Hong had her hand up before Alan.

HONG XUE:

I'll not go into details, but I agree that our recommendation, if it's going to be formed tomorrow, should not go into very specific recommendation and accountability measures. It's already been addressed in the ATRT 2 Final Report, Recommendation #9. That's very specific. From this old blower program, to the review of independent review panels, this has all been addressed. What we are thinking probably is like Holly mentioned – how to fill the gaps and how to cover the issue that was not covered by ATRT 2, because of their limited Charter.

For example, let's go back to the question that groups one and three addressed. Group three gave a definition to accountability. It means responsible to what's been committed to. Let me remind you, in the AOC, ICANN publicly committed to the global public interest. Then we go to the critical question – how can ICANN be accountable to the global public interest? I know to whom it is accountable.

That's one question. How to be accountable is another question. ICANN can say, "I committed to global public interest," but can anyone go to the California Court to sue ICANN? Do they have standing? That's a very interesting issue. So far, only the contracted parties, registries, registrars, they can sue ICANN. They have a contract with ICANN, but our people in At-Large, do we have standing? External judicial proceeding? Probably not. Just think about that.

HOLLY RAICHE:

Before we head down that particular thing, that would be interesting. A standing for what? That would be a very interesting place to go. I don't think we're going there tomorrow, but yes, a conversation offline. Alan has his hand up.

ALAN GREENBERG:

Thank you. Hong said part of what I was going to say. Don't rely on the ATRT. It had a particular Charter based on the AOC. It is somewhat limited. Carlos and I can probably tell you some of the real problems it had in terms of not being able to address certain things, because they just were not within our scope. Things that might be deemed to be accountability issues, but the drafters of the AOC did not have the foresight to include them.

Let's not use that as the model. We didn't procrastinate. We spent a whole, long year working, and with relatively limited results. I think our job here is something different than the AOC or the ATRT. That's part number one. Part number two, just reacting to a couple of things that were said – if any final solution here to ICANN's future relies on

California courts to verify that they're working, this is a non-starter that will not be accepted in large parts of the world. Let's not even talk about that option.

HOLLY RAICHE: Jonathan two and then Heidi. Heidi actually wants us to go away.

HEIDI ULLRICH: No-no.

HOLLY RAICHE: I saw his hand.

JONATHAN ASKIN: By the way, I prefer Jonathan Askin to Jonathan two. My Mom might get very upset by that.

HOLLY RAICHE: How about Jonathan On My Right? [Laughter]

JONATHAN ASKIN: My question might come out of some degree of naiveté, but it seems to me that the ICANN, better than any other organization in the world, has come up with about the best, streamlined, dispute resolution process I've ever seen. The UDRP process – has ICANN ever explored taking what it's done, its pioneering work in dispute resolution, through arbitration, and using that as a vehicle for these sorts of internal accountability issues?

ALAN GREENBERG: First of all I'll caution you, I'll remind you, that the UDRP was acceptable to large numbers of bodies only because you can then go to court over it. It's not a final arbitrator. It probably doesn't meet the criteria that we need for this kind of case, because of that. I don't think we'd want to build that into any ICANN model – at least, I don't think we would. That same model is used in a number of other places within ICANN, or something very similar to it. The answer is yes. Sort of.

SPEAKER: It took the GAC three or four meetings before we could persuade ICANN to adopt the UDRP.

HOLLY RAICHE: Well, we're not charged with getting ICANN to accept anything. We're charged with making recommendations. I think that Alan's cautionary note is a very good one, that in fact probably, if we can come up with, "These are the restraints," I think it's very useful. I would remind people that there is a little bit of reading, that if you haven't read... Although it's hard to read a report for the gaps, but you can, and the AOC, or even ICANN's own set of principles – what it thinks its accountability is.

Maybe have a think about whether that amounts to accountability. Heidi, what time do we meet back? Do we meet in this room again? 8:00 AM?

SPEAKER: Do you provide a bit of breakfast?

HOLLY RAICHE: No.

ALAN GREENBERG: We have the ability to change the time. Indeed not.

HOLLY RAICHE: Is it down as 8:00? I've got something at 7:00, so I don't care. I think you're right. We'll say 8:00. We'll start talking. Whoever's here is here. 8:00 it is. Now, I'd like to thank everybody for your time, your attention. I think we had a really good discussion today. I think it actually started some very interesting debates. Thank you for the support team who've put up with us. Well done.

ALAN GREENBERG: We have instructions on where to go next? Heidi, where are we reconvening?

HEIDI ULLRICH: We are reconvening in the Viscount, where you were this morning, for the Plenary 3. It's a very short summary Plenary, where the rapporteurs are going to give brief summaries of their groups' discussions.

HOLLY RAICHE: Today?

HEIDI ULLRICH: That's from 18:00 to 18:30 in Viscount, and then again at 18:45 the shuttles begin going to the pub for dinner.

ALAN GREENBERG: From where?

HEIDI ULLRICH: From down where registration is.

ALAN GREENBERG: ICANN registration or hotel registration? West wing?

HEIDI ULLRICH: As Gisella's noted, it's in the west wing ground floor, at 18:45 to 19:00.

ALAN GREENBERG: Are we all supposed to go to Viscount now, or just the rapporteurs?

HEIDI ULLRICH: No, all go to Viscount. It's a Plenary.

ALAN GREENBERG: Okay, so everyone who thinks they're finished now, you're not.

[END OF TRANSCRIPTION]