ICANN

Moderator: Maryam Bakoshi
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11:00 am CT

Coordinator: Recordings have now started. You may proceed.

Maryam Bakoshi: Thank you very much, Lauren. Good morning, good afternoon, good evening. This is a CCWG Contributor Discussion on today, 4th of October, 2016. On the call today we have Ahmed Almarwani, Anna Loup, Ed Morris, Michael Karanicolas, Giuseppe De Francesco (Pino), Robin Gross, Stefania Milan, Jahangir Hossain. And from staff we have myself, Maryam Bakoshi.

    I'd like to remind all participants to please state your name before speaking for transcription purposes. Thank you very much. Over to you, Robin.

Robin Gross: Thank you. Can you hear me okay?

Man 1:   Yes.

Maryam Bakoshi: Yes, Robin, we can hear you.

Robin Gross: Okay great. Thank you all for joining this accountability call. I know that the Work Stream 2 efforts lately have gotten a little bit - sort of taken a back seat to trying to really push for the IANA transition to go forward in Congress.

And that has happened. So I'm hopeful now that we can get back to focusing on the meat of the work and in particular, the Work Stream 2 efforts that we've got going now.

So take a look at our agenda over here. It's basically the same as before just in the sense of we're just going to go through all of the different work groups.

And hopefully we've got people who are participating in them on the call so we can get an update as to where we are in the different work groups and how we can help push the agenda forward in the coming weeks.

So before I just dive right into this, is there anything anybody wanted to add to the agenda or any questions on any of this or comments?

Okay, well I don't hear any. So I'm just going to go forward but please feel free to interrupt me at any time if you'd like to break in.

So in terms of where we are now, the U.S. Congress did approve the budget and didn't stop the transition, didn't include anything in the budget that would stop the transition. And so the contract - the IANA contract with the U.S. government did expire on - the end of September 30.

And the new bylaws that we crafted as part of the new corporate formation have gone into effect. So now we are living under the new house if you will, the new corporate structure that we've created as a result of these reforms.

And now we really need to get to work on fully implementing them and effecting those rights and also what we're here to focus on, Work Stream 2.

And it's a lot of the different subgroups that are going on in Work Stream 2 where a lot of the real meat of ICANN's accountability work is going to be done.

Work Stream 1, we really focused a lot on reforming the corporation. And now we really need to focus on important things like transparency and accountability from the staff and the community and that sort of thing.

So that's where we are.

Let's just dive in now. I know one of the most important issues in Work Stream 2 is the transparency issue. And we're very fortunate that Michael Karanicolas is on the call today. And he's also one of the rapporteurs for that subgroup.

So if I could just ask Michael if he could give us an update as to where we are in that group, that would be wonderful. Michael, are you on the line? Can you update us on this? I don't hear anyone. Okay, it's like it's going to take him a second. Okay.

Some of their - there are a number of sub-issues within the transparency issue. We've got the reform of the document information disclosure policy, the DIDP. We've got more transparency with respect to board deliberations. That's an important one. We've got improving the culture of transparency at ICANN, really making the culture a more transparent one…

Michael Karanicolas: Robin, can you hear me?

Robin Gross: …such that the default position for revealing or not revealing information would be to err on the side of transparency. And then when there's exceptions or good reasons not to, then you make that exception and perhaps can redact or not reveal everything. But the point is to have a culture of transparency.

The discussion of transparency with respect to discussions with governments and lobbying and more transparency and improvement to ICANN's whistleblower policy. So those were the different sub-issues that had been laid out at the beginning for increased transparency at ICANN.

Michael, are you on the line now? Are you able to update us on where this group is?

Michael Karanicolas: Can you hear me now?

Robin Gross: I can.

Michael Karanicolas: Hello? Can you hear me?

Robin Gross: Yes.

Michael Karanicolas: Okay great.

Robin Gross: Please…

Michael Karanicolas: All right. Sorry for the technical problems. Yes, so we have been making good progress as part of the Work Stream 2 subgroup. And this is Michael Karanicolas for the sake of the transcripts.

So we started out basically building on these four different sub-issues and asking participants to offer, first, suggestions about areas within those four sub-themes we should be examining. And participants provided a lot of different feedback about suggestions of what we could look at.

From there, we dove a little bit deeper and asked participants to contribute sub-issues about specific problems or specific issues within those themes that we should be examining.

So in terms of the themes, somebody mentioned the exceptions within the DIDP. And then we said okay, well which specific exceptions do you find that people are - that are either being used too often or being applied too broadly.

Legal advice privilege was one that people came up with. Exceptions against information that's confidential due to agreements with state governments was a suggestion that somebody had.

And so we basically went through and fleshed out a little more at that point. And those are the first two steps of our consultation process.

When we got to the next step though -- which was to try to actually flesh out specific recommendations -- participation tended to drop off a bit.

And I think it was -- as somebody mentioned in one of the previous meetings -- a bit of a fear of the blank page started to kick in where, I mean, it's one thing for you to ask people if you have a document to try to expand out onto it or comment on it. But to sort of - if you're starting with a blank document and saying like all right, give us a recommendation, it becomes conceptually a lot more challenging and maybe a bit more intimidating for people to approach.

So at that point we decided to sub-divide things a little bit and to have a few participants in the group sort of take the lead on drafting specific sections.

And we're aiming to have a first draft of that done by October 14 which we'll then present to the group for refinement and hopefully for discussions in Hyderabad.

So that's broadly kind of a procedural discussion of where we are.

I think (Chris) sent around the thematic document as we currently have it which should give you a broader idea -- if it's posted or if people have access to it - of where we stand in terms of the actual issues themselves.

But I'd be happy to answer any questions about what our thoughts are, either on procedural ideas going forward, on - or on the specific substantive areas that we've been examining.

Robin Gross: Great. Thank you very much for that. I really appreciate that. Let's see if we've got some questions. Do we have anyone in the queue here who has any questions for Michael on where we are on the Work Stream 2 subteam for the transparency issue?

Michael Karanicolas: Don't all jump forward at once. I will - but while we're sort of waiting for a volunteer, I will also mention something that I forgot to say which is that I have been engaging a little bit with the ombudsman subgroup as well because early on we noted that there's going to be a very strong overlap between what we're looking at and specifically what the Ombudsman group is looking at since the ombudsman plays the oversight function in the transparency process. So if you got a rejection from a DIDP request, you take it to the ombudsman.

Looking at national level bodies which are my basic background -- but which is also where most of the sort of best practice standards that you're going to see internationally are found because there's generally national systems that are there -- you find that an independent oversight body is critical to the success of an access to information system.

So an information commission, an information commissioner, human rights commission, whatever body is playing that role, it's fundamentally important.

So we've been examining the role of the ombudsman in the process as well. And as part of that I've been liaising with the ombudsman subgroup to sort of discuss how the different sets of recommendations might interact or overlap and what kind of relationship there's going to be between what we see in terms of the future role of the ombudsman as related to the DIDP system and broader discussions about the future of the ombudsman.

So with that, if there are any questions, I'd be very happy to take them.

Robin Gross: Great. Thanks so much. I don't see anyone in the queue quite yet but I've got a question on one of these issues which is the board deliberations issue and some of the recommendations and suggestions that seem to be percolating forward on that issue.

Can you tell us sort of where - what are some of the recommendations that have come forward or that will - should ultimately be - we could expect to have in the final report with respect to board deliberations…

Michael Karanicolas: Yes.

Robin Gross: …how to make those more transparent? Thanks.

Michael Karanicolas: So that's going to be one of the more challenging issues that we're going to address.

Just a note on the four areas of examination. We -- and you'll see this in the thematic note, the thematic overview that we have so far -- we basically tweaked the approach to it a little bit so that instead of including a specific section for board deliberations, we basically divided the transparency discussion into two aspects.

One of them is the DIDP, which is the - ICANN's way of responding to specific requests for information. And the second part is improving ICANN's proactive disclosure system so what information should ICANN be putting out there and publishing proactively.

So as we would understand the Work Stream themes at the moment, it's: Number one, DIDP. Number two, proactive disclosure. Number three, whistleblower protection.

Now with those three, board deliberations as well as discussions of governments of lobbying would be divided between understandings of the DIDP so it's the question of - we're talking about board deliberations. What aspects of it should be classified from disclosure? And how should that test be applied? And then the second branch would be how - what information coming out of board meetings should be proactively disclosed.

The specific calibration of where the line is drawn is a really tricky one. That's one of the most challenging things that you see in all access to information systems. So that's something that I don't want to provide a definitive answer yet because we're sort of still puzzling that out.

But in terms of the general rule, what you generally want to see at an international - in terms of the international standards is an effective harm test which is applied where if a request comes in for a particular type of information, you ask yourself is there - is the disclosure of this information going to cause a material harm of some kind, a harm to an interest that ICANN's community has a broad public interest in.

And within that there can be for example the necessity to create space around pending decisions. So if the board has made a decision on a particular issue but there's a scheduled announcement to come in a week and premature disclosure would either grant somebody an unfair commercial advantage or prejudice the ability of ICANN to take effective preparations for making that decision, then, you know, that's an example of a reasonable restriction on disclosure.

Generally speaking, it's about tailoring the systems of classification to that which is strictly necessary in terms of prevention of harms to ICANN's operations.

In terms of other good practices from different jurisdictions that we like to see, one of them is to ensure that there are recordings made of all meetings including those that are done in camera in order to allow for potential disclosure later on once the sensitivity of the information is no longer a consideration.

Another one would potentially be to have severable details published so that rather than having a blanket classification system, you'd want to see systems where specific sensitive information was redacted out and the remainder of the discussion published.

But generally it's about trying to examine the issue with regard to the overriding consideration of harm. And I realize that's kind of a vague thing. It's a big challenging to get into really specifics about what should or shouldn't be published because it can be an incredibly contextual consideration and that's particularly around board considerations.

But we're going to aim with this consultation to provide clear guidance as to how those decisions should be made and a general rule that can be applied through the DIDP and through the proactive disclosure provisions.

Robin Gross: Great. Okay. Thanks very much. Let me just ask a follow-up. So one of the things that had been talked about earlier was a default position that - similar to the way the GNSO Council operates the e-mail lists, the e-mail discussion lists would be open and publicly archived and the meetings are open and publicly archived and anyone can listen in to the GNSO Council meeting as it happens.

So these were suggestions that were - we had going into the beginning of this Work Stream 2 effort. And I'm just wondering, so are these still on the table or are we only looking at, you know, very specific requests and how to handle a specific request for information? Are we also considering these sort of more broad policy objectives of opening up these discussions as a general rule?

Michael Karanicolas: Yes absolutely. I would…

Robin Gross: And then only, you know, withholding information as needed?

Michael Karanicolas: Yes, absolutely. I would consider that part of the proactive disclosure aspect of it. So the DIDP is how ICANN responds to requests. The proactive

disclosure side is what information ICANN just automatically puts out there. And those do - those are absolutely on the table.

And again the idea is - the distinction between responding to access to information requests and putting information out there proactively becomes less - is becoming less of an issue because it becomes so easy to just put information out there digitally. So gradually speaking, open data is becoming a more important aspect of broader transparency systems.

But you also have a consideration of not flooding people with information. And so you have to make sure that if you're releasing huge amounts of information, it needs to be managed and organized in a way that allows individuals to find specifically what they're looking for, which in turn adds resources.

And so there's considerations to designing the system from that perspective too. But it's absolutely I think something that we're going to be looking at.

I see someone's hand up.

Robin Gross: Yes. Milton, please go ahead.

Milton Mueller: Yes, I just wanted to get a sense from you as to whether - how tough or how resistant the ICANN representatives are being in this working group.

Michael Karanicolas: We haven't faced specific resistance yet but we also haven't put out our specific recommendations yet.

So, you know, I would -- based on the experience that I've had in trying to reform transparency systems at a variety of different levels -- you know, broader discussions of the issues usually doesn't result in resistance.

But once you actually start to get into the specifics of okay, here's what we want you to do differently, it's almost inevitable that some resistance will be there.

If there's one thing that I've learned in my work on transparency, it's that every institution will have some level of resistance to it because people are always - it's a - it's moving away from a safe area. Secrecy is always viewed as the safer course. And if people know what you're doing, if you are putting more information out there, then that can take you a little bit into more uncharted waters.

So I haven't faced resistance yet. I wouldn't be surprised if that comes out. But in my mind, you know, it's about building a stronger environment of trust between ICANN and the community and it's about presenting ICANN as an organization that deserves people's trust. And a key aspect of that is accountability and transparency.

A key aspect of that is providing a system where people view the information as being accessible and people feel that they can get a proper understanding and proper answers to questions that are asked and where the organization doesn't have things to hide.

So I look forward to that conversation taking place. I wouldn't be surprised if there's resistance to transparency but it's also a - kind of a normal part of this conversation. And that's just something that sort of has to be dealt with as it arises.

Robin Gross: Great. Thanks very much. I have one more question. And I don't see anyone else's hand in the queue so I'm just going to ask this as a final question unless somebody wants to raise their hand in the meantime.

So, Michael, how can we help? How can we as NCSG members who have, you know, repeatedly said that this transparency issue is perhaps the most important of all the issues that we're working on -- on accountability -- because if we can't see what's happening, if we don't know what's happening, then how can we possibly hold someone to account for it.

So, you know, this is - I think we're all in agreement that this is absolutely one of the most important subteams and issues in all of the accountability reform work that we're doing.

So what do you need from us as NCSG members who are very, very eager to help fix the accountability and transparency gaps at ICANN? In this working group, what can we do to help?

Michael Karanicolas: Well more than anything else, for people to contribute and participate in the process as it unfolds. As I mentioned, we had sort of a broad scale participatory process at the outset when we were soliciting broad contributions.

Robin Gross: Hello?

Michael Karanicolas: Sorry? Can you? Did I drop off?

Robin Gross: Just for a second. I can hear you now.

Michael Karanicolas: Okay great. We had at the outset a more participatory process where we were soliciting broad contributions. We're in a drafting stage now so we're sort of taking what people have given us and trying to boil it down to concrete recommendations.

Once those are published -- hopefully end of next week but potentially the week after -- we want to hear feedback and we want to make this a proper consultative process so that the recommendations that we come up with at the end of the day are representative of the views of the community.

And, you know, I mean, I personally come at this having a lot of experience in reforming transparency systems in intergovernmental and international organizations as well as at the national level and different provincial levels and a lot of different national contexts. So I have seen a lot of these systems and I'm very happy to provide whatever expertise I can to try to guide the process.

But ultimately what we're looking for is something that represents the views of the community and something that the community can get behind. So when these recommendations get published, my hope is that people will contribute and provide feedback and then provide support to help us get them implemented.

Robin Gross: Great. Thank you. Thank you very much. And I'd like to echo that and encourage our members to in the next week or so hop on that working group and comment on these documents. And the more eyes that we can have looking at these recommendations, the better.

And like I say, this is - this really is one of the most important accountability issues that we can work on because it will touch upon everything else that we're doing.

Okay. So I don't see any more hands in the queue on this one. Let's go on to the next issue. And thank you, Michael. I really appreciate your input and assistance on this.

Let's go on to our next sub-issue which is creating a framework for interpretation of ICANN's new commitment to respect human rights.

And I believe we've got Niels on the line today who is rapporteur in that subgroup. And so Niels, if you could give us an update as to where we are in that group and how we can help you guys, I would very much appreciate it. Over to you, Niels.

Niels ten Oever: Thank you very much, Robin. And thanks everyone for being here. And I have to say that I'm so happy that we see that we got so many really strong rapporteurs from the NCSG in this work. So of course, everyone also congratulations on the IANA transition. Sorry to be late.

So we're really making something move here and I am looking forward to also work with you all on this in Hyderabad.

The work definitely has kicked off. We are now tonight having our seventh meeting of the Human Rights Design Team. We set off in preparing a document that gives really the summary of where we are.

And we managed to reach consensus on the document to ensure that the new people that were joining in the work were also informed about the discussions

that were held in Work Stream 1 and to ensure that we wouldn't need to go back on discussions that were already held or that there was knowledge that people presumed everybody know but weren't there. So we really wanted to level the playing field. And that worked really well.

So then we got on to the more arduous task to see what framework would we use because as you know, human rights are part of international law to which states are party and not non-state actors.

So there is one model that helps us to apply human rights to non-state actors. And these are the U.N. Guiding Principles on Business and Human Rights, also known as the Ruggie Principles.

But the Ruggie Principles are really focused to businesses. So as we all know, ICANN is a bit of a special beast. So we are now specifically looking and going through the Ruggie Principles one by one to see what could be applicable to ICANN and what not.

In the meantime, we have a draft framework for interpretation where we (unintelligible) the findings and the discussions that we have every call. And that is where we are now.

An interesting part of the discussions -- to give you a bit more detail but trying to not get too detailed because I know you are all already very deep in the weeds of all these very specialized fields -- is that one concern was that for the Ruggie Principles you need to do a human rights impact assessment, not only of your own organization but also of your business relationships.

But in the case of ICANN, this would mean that it would analyze CCTLDs and GTLDs for their impacts on human rights such as freedom of expression.

And that would also then put ICANN somehow on the chair of even more of a regulator.

Definitely in the case of CCTLDs and most probably in the case of GTLDs, that's not something that we want and definitely not through this instrument, especially differently than from the contractual obligations.

So these are the things that we are discussing. And this is the process that we're going about. We're making progress but of course this is quite a big theme. And we're working on it. And if people feel like contributing, they're always welcome to join the group. We're doing our utmost best to really document well what we're doing.

So if you still feel like you're missing out or you think you got a lot of time on your hands, always feel free to join or reach out to me directly if you have any questions.

And I see Milton's hand is up. Milton, please come in.

Milton Mueller: Hey, how you doing, Niels? I have a question. It seems like you've gotten and you're going to continue to get a lot of resistance to the human rights agenda because we are adopting this broader sort of Ruggie framework instead of talking about the impact of ICANN's policies on particularly free speech and privacy rights.

In other words, the reason many of us got enthusiastic about pulling human rights into the ICANN environment was not because we thought for example that a registrar might be, you know, using child labor or that - you know, that a registry might be engaged in human trafficking or something like that.

What we were concerned about was the policies that ICANN passes and their impact on freedom of expression on the Internet. And is there any way to orient this FOI in a way that focuses it on that?

Niels ten Oever: Milton, I've very happy to say that this is actually something that we have reached consensus on. So Ruggie Principle 13(a) on which a meeting of last week we reached consensus on that we should have this there, that we should concretely analyze ICANN's acts, of its policies and the policy development process on human rights such as freedom of expression, privacy, but also freedom of assembly and nondiscrimination and issues like that. So that is firmly covered.

And the way that we should go about is like find the right level of granularity because the framework of interpretation is not a framework of implementation. It is not a policy by itself, right?

So we should find the right level of abstraction and also ensure that we do not get too concrete so that people can move around and say well, this is not really freedom of expression. This is just a business practice or a contractual agreement that is not subject to this human rights impact assessment.

So we're trying to come up with a very strong framework on the human rights impact assessment that's strongly focused on freedom of expression, privacy, freedom of association.

It gives us the proper structure to do this and also ensures that this is not a one-off but that these are structural safeguards that we can embed in the organization, very similar to the level of position and ruggedness as just outlined by Michael on the transparency work.

Robin Gross: Great. Thank you so much, Niels. Is it - what can we do to help you guys? I know you and (Tatyana) have been working very hard in this working group. And it's made a considerable amount of progress particularly with respect to some of the other working groups.

So what do you need from us at this point in time? Do you need more people to join? Do you need some review of some documents? What can we do to help push the agenda forward on human rights at this point in time?

Niels ten Oever: Well right now the discussion is really intense because - sorry, like the discussion is will we use Ruggie or will we not use Ruggie. Or will we only use parts of Ruggie? And if we only use parts of Ruggie, how do we package that?

So if you're up for it, I would really love to have more engagement for people but I cannot offer at this moment like very light things. But later on when there are quick reviews, I will definitely share them on the list.

I also got some more interest after the IANA transition from larger freedom of expression and human rights NGOs. And so we're also trying to angling them into the progress. So luckily we're getting visibility and hopefully we're getting some new members.

And I think it's really great that you're organizing these overview sessions, Robin. And I'm very sorry for being late. I think these are really valuable.

Milton is asking how does the decision of Ruggie now affect the freedom of expression issue. Well the freedom of expression is the what. The Ruggie decision is the how.

So it's like what framework will we use? Will we use a standard framework that is out there and will that be fitting? Or do we need to come up with a custom framework to protect these rights? And if we come up with a custom framework, can we borrow from Ruggie? So it's really trying to understand how is Ruggie intended and does it fit.

And for that, we are now actually in contact with John Ruggie himself and with the OECD Commission and several others. So we're really looking forward to get the right know-how and experience on implementing this and linking that with all the knowledge that we have in the community.

Robin Gross: Great. Thanks so much, Niels. Really appreciate all of the hard work and energy that you've put into this.

Does anyone else have any other questions for Niels or comments on this issue of the human rights subgroup?

Okay well I don't see any hands or hear any voices so I will move forward to the next issue, which is the issue of SO and AC accountability, the extent to which we as community members have to tighten up our own ships and make sure that we're doing things properly in order to effectuate some of the new rights that we've got. It's part of the empowered community.

So do we have anyone who is active in this group? I think (Avery)'s one of the rapporteurs in this one or maybe I'm thinking - maybe it's (Farsi). Anyone active in this group and can give us some information about what's happening there in the SO/AC accountability group?

I do not see any hands or hear any voices. We might have to skip this one until the next meeting or take it online when we've got some people on the call who are active in this particular subgroup.

I know we've got like 11 subgroups going on at the moment which is why we're trying to have these calls so we can all sort of get on the same page at least once a month about how the progress is moving and such. We can all sort of keep track together.

Okay well I guess we should move on to the next issue which is the reform of the ombudsman's office. I know this one we talked a little bit about with (Michael) since they're working on the transparency aspects of it.

Do we have anyone on the call who has been in this subgroup and can give us some information as to how that progress is moving forward?

Okay, I see Ed's hand is up. Ed, please, you have the floor.

Ed Morris: Thanks Robin. I have to preface this by I did miss the last meeting but I have looked at the notes. I'm concerned. In the meetings of - I've missed that last one.

We tend to have a great deal of participation by the former ombudsman and the current ombudsman to the extent where the chair (Sebastien) seems to be doing pretty much whatever the ombudsmen ask them to do.

So the questions we wanted to ask which I wanted to ask at the beginning -- and actual Mike Silber was very supportive of this but Mike sort of disappeared from the group -- is what do we want the ombudsman to do. What powers do we want them to have?

And the discussion seems to be going in a direction that we want the ombudsman to have lots of powers and to have a big ombudsman office. In the last call before this past week we actually talked about him needing more staff members.

And so I'm not happy with the direction of the call. We have gotten down to as few as four people showing up for the call. There were more people I noted in the transcript last call so.

I can't tell you what went on last week. I noticed Michael was there and that's great to see. So maybe he can fill us in a little bit about the most recent call.

But up until that point (Sebastien) would come in and say these are 13 areas I want you all to volunteer to write on. And nobody stepped up and volunteered. So it hasn't been going in any direction as best I can tell.

(Sebastien)'s been using some slides which he's taken from past ombudsman presentations and he's just relabeled them. And so it may look like we're doing more work than we are doing.

But I look forward to next week and trying to clarify for myself what exactly we are doing because I don't understand the direction at this point. Thanks.

Robin Gross: Thanks, Ed. I appreciate the information. You know, this is one of the subgroups that kind of seems to have fallen off the radar for a lot of us in terms of, you know, it just doesn't seem to have the - it just doesn't have the interest that a lot of the other ones have unfortunately.

So I guess we better get some people in this working group and get a better sense of how we can affect that.

Does anyone else have anything they wanted to say on this one?

Ed Morris: Quickly, Robin, if I could.

Robin Gross: Yes.

Ed Morris: We talked about this a bit at the council meeting but ICANN seems to be trying to use this as a way to wrap its arms around the PTI a little bit closer.

There - somehow out of nowhere an intensive part of our discussion was the role of the ombudsman in the PTI because in the seven point upskill process the ombudsman participates.

And ICANN was very forceful in saying oh, we're a - PTI's going to be part of our family so they can just use our ombudsman.

Now the one thing you should know is the ombudsman is not an employee of ICANN. He's an independent contractor.

So I argued and I'm going to come back and argue again that he should have a contract with the PTI separately because if we start intertwining all of the employees and having ICANN employees responsible for a number of things in the PTI, if that day comes when we want to separate, it's going to be really hard to do so.

And if something like the ombudsman who has a separate contract - could have a separate contract to start out with, I'd suggest that's the way we want

to go. So that's going to be an issue I'm going to try to bring back into the discussion next week. Thanks.

Robin Gross: Thanks very much, Ed. Very much appreciate that.

Okay. Was there anything else anyone wanted to weigh in on the ombudsman office issue?

Okay, I don't see any hands or hear any voices. So let's move on to the next issue, diversity at ICANN. I thought that (Sebastien) was the rapporteur for diversity at ICANN. Maybe he's rapporteur for a couple of them.

Do we have anyone who has been active? Do we have anyone on this call who has been active or attending these subgroup meetings and can give us an update as to where we are here on diversity, this sub-issue?

I know it hasn't been again one of the ones that has been so important to us like the human rights and the transparency issues. So I worry that, you know, some of these other ones that, you know, weren't up at the top of the list for us aren't getting enough participation from our group.

Okay. So do we have anyone who can tell us what's happening on diversity? I don't see any hands. We might have to take some of these to the list.

Okay let's move on to the next issue, reviewing the cooperative engagement process, the CEP, which is the first step to filing an independent review panel matter.

I understand that Ed is one of the rapporteurs for that group or the rapporteur. So maybe Ed can give us an update as to what's happening in that group. Please.

Ed Morris: Yes, thanks Robin. I'm excited. I can post to my own group. It only took ICANN staff two weeks to make that happen.

Let me briefly tell you what's going on. When we started the formulation, the goal was to have this done by September 30, to have it completed, because we wanted to have the new CEP procedures in place for the transition. Staff did not file their staff paper until September 19.

And because I saw what was happening with other groups in terms of groups with no staff papers were basically just biding time on calls, I decided to hold off until I got the staff paper.

I didn't realize that they were going to be six weeks late. And the brilliant staff paper itself was a grand total of five paragraphs which was wonderful.

I tried to set up calls, kept posting. No one was responding and then I figured out that no one was receiving my posts.

So we did a deep investigation and it turns out that staff didn't give me posting privileges to my own subgroup.

So we got that straightened on the weekend. We sent out a post. We're going to have our first meeting next week. I'm not encouraged by the doodler response to date.

I saw (Anna Loop) is on this call. And thank you (Anna), one of our new members - has actually signed up for the doodle poll and has signed up for CEP.

We need to get more people -- I know Robin's in the group, (Fozzi), (Aubrey) -- as many people as we can get involved in this because we're going to be doing - going at lightning pace.

I have spoken to ICANN Legal. I have spoken to Donuts. They're both involved in the group. They're both really passionate about what they want. But what scares me about what they want is both of them want to keep this entire process secret.

And I think, you know, Robin and I have been through a CEP. And I keep telling her this, that was one of the greatest performances of legal craft that I've seen in ICANN, what Robin did to (John Jefferies) in that meeting. But none of you will ever hear it. There will be no transcripts because the CEP is done behind closed doors.

That also impacts third parties who maybe have some interest in the matter before a CEP.

So these are some of the issues we're going to be dealing with hopefully right away. Again the doodle is out there for those members of the group. If you could check your inbox, go to the doodle, let me know when you're available so we can start working on this fairly quickly, hopefully as soon as next week.

I've also enclosed in the output the bylaws because we changed all the new bylaws on the CEP. It's a much different animal now. (Becky)'s already done work on that and a number of other things.

I'm also going to speaking with Becky Burr because -- and maybe, Robin, you maybe - because you're involved, then IRP implementation I believe -- there is revision in the bylaws which state that when you state an IRP, we encourage conciliation with a mediator. In my mind that's been in the old bylaws as well but I'm told that nobody ever really did that.

So I guess one of the questions I have is is that going to be actualized and activated in the procedures for the new IRPs, in which case I'm starting to wonder why we even have a CEP. All right, thanks very much.

Robin Gross: No, thank you Ed. Very much appreciate that update and sorry to hear about the difficulties in getting going. But it does seem like we've - you know, it's par for the course. There's not a lot of incentive to get the Work Stream 2 issues going in full throttle now that the - you know, the transition so happened.

So this was - you know, this was a concern we had and it does look like it is playing out.

But do keep us updated on how we can help, how we can get involved, what you need from us in this subgroup.

Okay, I don't see any other hands or any other - hear any other voices on this issue. So I want - I'd like to go to the jurisdiction issue which I accidentally skipped over, which is the subgroup that's working on influence of ICANN's jurisdiction on operational policies and accountability mechanisms.

I know this is another one that's got a lot of participation, a lot of interest particularly from the Government Advisory Committee and others.

I know Milton has been very active in that group. And so I'm hoping that Milton can give us a quick update as to where we are in there and what you need from us to help. Milton?

Milton Mueller: I pushed the wrong button. I raised my hand instead of opening the mic.

Robin Gross: Please go ahead.

Milton Mueller: So the jurisdiction working group is kind of - I would say, is still in the process of working out its scope and figuring out what the heck a gap analysis is and what - how they're going to conduct it.

I think the main concern I had was that some people are playing the old game of defining things that they didn't want to talk about as out of scope because they fear that if we did talk about them, they might not get their way.

I think there's a general feeling within the group, even among the government people, that, you know, nobody is going to ask ICANN to pick up and move out of California jurisdiction.

We all know that we have, you know, pretty much bound ourselves to California law with the new accountability arrangements and that we spent a lot of time and a lot of money getting the lawyers to tune our accountability mechanisms to California law.

So I think the gap analysis idea was that we're going to look at our desired accountability arrangements and find out whether California law leaves any holes in them or impedes them in any way.

And it's almost a foregone conclusion that we will find that that is not the case since these arrangements were pretty much designed around California law and we're not going to do a comprehensive legal study.

But we are going to explore the issue of whether there are any possible ways in which there could be choice of law or dispute resolution procedures that raise legal questions about jurisdiction. And I really think we're just getting started on that.

In terms of what kind of help we need, I think we do need people who understand jurisdiction law because this is not my strong suit. To me, jurisdiction was more of a political issue and continues to be a political issue for some.

And I think that we need to be aware of ways in which U.S. jurisdiction - if there's anything we could do that could prevent it from being abused. For example let's suppose that the Republicans control both houses of Congress and they pass legislation regulating ICANN, you know, how would - what would we do about those kinds of scenarios?

But more importantly it's about various forms of possible conflicts of jurisdiction like we had with the WhoIs issue some time back and how we are going to handle those kinds of things. And I think you need a lot of legal expertise to make a good contribution to those problems.

Robin Gross: Milton, is it too late for folks to join if we could track down some legal scholars who've focused on jurisdiction and get them to - ask them to join this working group? Would their contributions be timely enough do you think if we could do that within a couple of months?

Milton Mueller: Yes, I think if they got up to speed quickly on the scoping document and the report that we're circulating, no real work has been done yet. They would just have to get up to speed in terms of what we decided we're looking at and what is out of scope and what sequence we're going to do it in.

And I think they could still join as an observer easily. Whether they could be a full participant or not, I don't know, but I they can…

Robin Gross: I think anyone can.

Milton Mueller: Yes, I think anybody can.

Robin Gross: Yes. Okay. So I know I'll give some thought to that. And I think anyone else should as well. If you know of some legal scholars who've got some expertise on specifically international jurisdiction, let's put our heads together here and see if we can't get someone to join this working group and help on this issue.

I see Ed's got his hand up.

Milton Mueller: I see Ed has his hand up.

Robin Gross: Ed, please go ahead.

Ed Morris: Yes, I've been following the group. And just to let Milton know, I will be more active there. I hope to get the DT done this week or last week. But I will be more active there.

I'm not seeing anything of major concern. (Greg) has a - (Greg) I don't believe is overplaying his hand. He's been giving some fairly decent legal advice.

But my suggestion -- and when get back involved there to the group -- will be quite clear. When we're looking at jurisdiction in terms of the contractual compliance -- which a lot of this is -- there are tons of treaties, private - I mean, we don't have to reinvent the wheel.

And I - looking at the notes and listening to the recordings of some of these meetings, the group has a problem in that I don't believe even perhaps the majority of the group really knows what jurisdiction is. And I don't know how you overcome that.

It would be great to have more lawyers there. But when I note (Greg) trying to impart legally based advice, the reaction of a lot of the group members has nothing to do with the law.

So I don't know if you're seeing that there because you're far more involved than I am. And I don't know how we deal with that situation, when you have a lot of non-lawyers talking about legal terms that they don't understand.

And again that's what I'm seeing as a problem there. I don't really know what to do about it and how I can help you when I come back over there when the DT ends. Thanks.

Robin Gross: Thanks, Ed. That's an interesting observation because it's actually an ICANN thing generally where you've got non-lawyers telling you what they think the law ought to be or what they think it is. And it can be kind of frustrating generally.

Okay so anyone else have anything on the jurisdiction issue? Okay not seeing any more hands or voices.

Let's move on, go back to our list. The next sub-issue is the guidelines for ICANN board standard of conduct with respect to the removal of board members and the indemnity provisions. I believe Lori Schulman is the rapporteur of this group.

Has anybody been following this one, been involved or - in this group, attended any of the meetings or are following the discussion on this particular subgroup's list, can give us an update?

Okay, I see Ed's got his hand up.

Ed Morris: Yes I can give you a brief update.

Robin Gross: Thank you.

Ed Morris: I've talked to Lori Schulman who's basically doing this. And again she doesn't have members. And she's told me -- and this was not - actually there were a few people on this call so it wasn't a private conversation -- that in her mind she's just going to have to do it by herself.

That's literally how bad it's getting in some of the smaller groups, where you have the rapporteur…

I know (Sebastien) feels we're asking him to do that in ombudsman where you have the rapporteurs doing all the work by the onesies.

She's scheduled - they've now had two meetings. I do - I am aware of that. But she had scheduled two previous meetings and nobody showed up - that.

So that group, even as much as the CEP, the smaller groups, we're having trouble.

So I don't believe they've made any real progress. And I know Lori is intending to do a draft on her own and then submit it to whoever shows up. So we may really want to get somebody on that group because we could have an oversized impact with just one person.

Robin Gross: Thanks Ed. Yes, and I just typed this into the chat as well but I think that that issue of low participation and low energy and low interest in a lot of these subgroups over the summer has been in large part a result of, you know, people just not being willing to get terribly engaged in Work Stream 2 before we find out whether or not everything that we did in Work Stream 1 was for nothing or not.

So while the transition was in limbo, you know, while everyone was basically watching the work that we have done about to become unraveled and about to fall apart before our eyes, it was I think really hard to get people in the community really engaged and excited about Work Stream 2.

But I think that now that's changed. I think now the transition has happened and we're living with the new bylaws and the new mechanisms and we've got a lot of work to do to fully implement and get all of these structures in place and working.

So I think that - I'm hopeful that we will see some revived participation and renewed interest in a lot of these working groups.

And so I'd like to encourage folks on this call or who are listening later to join one or some of these subgroups. It's not too late. It's still pretty early in the

cycle. And anyone can join and be a member, be a participant or only an observer if you wish. But I think we'll get more participation going forward.

Okay. What is the next issue here? It is staff accountability. Do we have anyone - I think that maybe this is the one that (Aubrey)'s the rapporteur on.

Do we have anyone on the call who has been in this group and can give us an update as to where we are in this working group?

Okay I don't see any hands or hear any voices. So we might have to take this one to the list as well. Okay.

And there is another group that's not on the agenda here but I think it would be great if we could add it quickly here at this point. And that is the Drafting Team regarding the implementation of Work Stream 1 in the GNSO. And I believe Ed is on that drafting team.

And this is again very important because it has to do with the implementation of these new mechanisms and this new structure that we've put in place.

Ed, can you give us an update on the Drafting Team implementation of Work Stream 1 in the GNSO?

Ed Morris: I'd be delighted to, Robin, and thanks for asking.

Robin Gross: Thank you.

Ed Morris: At the last council meeting we were given a two-week extension for our final report. This has been a very contentious group. What can I say without

libeling somebody? I would suggest that perhaps the intellectual property community constituency has not been acting in particularly good faith.

We spent most of the first four calls discussing where the location of the decisions for the new powers should be. The four NCSG members on the group - I have to tell you, I was appointed by the non-coms so - to get us an extra member frankly. And we do have more members than anybody else. Four of the nine members of the group come from the NCSG.

And Steve Metalitz just wouldn't get off the point that he did not want council to exercise the powers despite the fact that the four NCSG members, the two members from the CPH all wanted the locus of the decision to be within council. Eventually Steve DelBianco, who's chairing the group, moved off that.

And we've started to talk about thresholds. Basically the majority, 6 to 3 on nearly every discussion, said we wanted this decision located in council.

I should note that the initial report Steve wrote gave us two to three pages on why the minority position was great and then noticed in one paragraph that by the way by a 6 to 3 vote we rejected that. And (Matt), (Fozzi), and (Ahmer) have - and David Maher as well have really lambasted Mr. DelBianco over that. And we have fixed the report.

We have three categories of new powers, that we've put the 101 theoretically new powers into. That is nominations, community powers and inspection rights.

We're still going to be talking about nominations and how to exercise the community powers. The general consensus is nominations will probably be at

a majority or slightly higher than majority threshold. The powers we'll probably divide.

Initially we were going to do supermajority but then sort of thought about that and said wait, it's going to be hard enough to exercise these powers given that we got to negotiate with the other groups. Do we really want to have it that high?

And so I think we're going to be breaking down the various community powers and assigning different thresholds for approval.

The one thing I can tell you we have accomplished and have gotten consensus on remarkably enough is on the inspection rights. So if we can get this report accepted, inspection will - the request for documents from ICANN will be coming from council at the same, low-level threshold that we use for issue reports, which is one-quarter of both houses or one-half of one house.

And in addition, any SG or constituency will on their own be able to request documents from ICANN by simply transmitting the request to the empowered community representative, which we're going to make the council chair. And he will be able to submit that to ICANN.

So for example, if Dr. Mueller, if Milton's still on the call, wants a document, thinks something's wrong here with ICANN and wants some information on a board meeting -- Michael talked a bit about well what they're doing in transparency -- well one of the ways he'll be able to get that is to make the request through the NCUC directly to the council chair who will immediately be able to submit that request to ICANN without any council vote whatsoever.

So we've tried to make that as easy as possible to access. And that, believe it or not, has the support of all members of the Drafting Team. So I think that's going to be going ahead.

In terms of the future, if you listen to the council meeting this past week, you will note that even making James Bladel, our council chair, the temporary representative of the GNSO to the empowered community was fought by the IPC councilors. It was a quite heated discussion.

So it appears to me that the IPC folks and generally backed by their CSG colleagues are going to make it very difficult for us to have this plan accepted by council and implemented.

So what I will try to bring up at our next council meeting is if that is the case, I'm prepared to introduce my own motion -- hopefully backed by everyone in the NCSG -- basically laying out the majority position of this report.

And if we submit it in that way in Hyderabad, all we need is a majority vote to implement what the majority of us are going to be able to - are coming together to recommend.

It basically is a situation where we can't get consensus because the way this - the way it's stacked up on the Drafting Team. The CSG has three of the nine members and that's enough to stop consensus. So we will not have a consensus report. We will have consensus on particular thresholds.

Council will not be able to accept that report because there will be no consensus. And the way the charter is laid out, council can only consider a report with consensus.

So at that point we're going to have to go back to the drawing board -- and having talked to David Maher and a few others involved on council and in staff as well -- the approach we'll probably wind up taking is taking a majority - the language that the majority supports out of this report and then re-submitting it as a separate motion in Hyderabad to get this done. Thanks.

Robin Gross: Wow, Ed, thanks. That's really interesting. Do you have a sense for what the IPC is really after? Why are they - why do they think that they're so much better off having this decisional body not be council? Do they think they're going to get some kind of additional weight or it won't be weighted the same as council be weighted? I mean, you know, why are they willing to die in a ditch over this, so to speak? What are they after? Do you have a sense for that?

Ed Morris: Well, two things. First, I do want to mention, in the last call Steve DelBianco broke with the CSG colleagues on a few votes. That was interesting to me.

So the BC actually did support some of the proposals that kept the powers within the house structure whereas the ISPC and the IPC did not. It's the same story, Robin.

You're the one who taught me the difference between number seven and four in terms of how we vote, seven being the number of constituencies in the GNSO -- if one considers the CPH two constituencies -- and four being the stakeholder groups.

The two Steves initially presented a voting mechanism that (Ahmer) and I said hey, man this looks interesting where they would double the votes of the councilors on the other side and basically vote without the house structure. And we said that looks - the minute we said that looks interesting, they came

back to us, oh no no, we didn't mean that. What we really meant is we want to add ad hoc groups. And they changed their story. Once they thought we were weakening on that, they thought they could plug ad hoc groups.

In other words, what they want is an ad hoc group of constituencies and stakeholder groups to come up to exercise the powers since the theory is these powers will not be used a lot.

The example they keep being used is the - when the GNSO constituencies and stakeholder groups came together back I think it was 2013 -- you'll appreciate this, Robin -- to say we needed more accountability. So that will be likely in the report.

So Metalitz keeps coming back to that saying we don't need council. Council - it's not in the bylaws that council should do this and we should just do this is in an ad hoc manner.

So in answer to your question, the end result of everything that Steve Metalitz seems to want to do is to bring everything down to the constituency level where they're going to have more votes. And he's doing that in the GNSO review. He's doing that in the NCPH. They're using the same chart.

And - but once you scratch below that chart which actually looks fair, they come back with wanting constituency power which obviously leaves us at a disadvantage. And obviously the contracted party houses are horrified by that possibility.

So it's not going to go in council. I don't think it's going to get the support of any of the other stakeholder groups. In a lot ways they just keep pounding and pounding on this.

It's a waste of time and it's stopping us from doing the work we were chartered to do. I'm upset because time is valuable, particularly when you're trying to do as much as I am and all of us are, to have to waste the time on these issues which the IPC has been bringing up time and time again since I've been here and I'm sure it's the same in the ten years or so you've been here, Robin. It's just the same thing over and over again. Thanks.

Robin Gross: Wow. Yes, this is the same thing over and over again. They - you know, they really hated it when the non-commercial users finally got parity with the commercial users on council. And ever since then, yes, you're absolutely right, it's just been a battle to just try to bring it back to where they've got more power than the non-commercial users.

And they do it through this, you know, we're going to empower the constituencies instead of the stakeholder groups because we have more of them than you have. And so that gives us - I mean, which we're never going to go for and yet we constantly have to fight even though we won this battle ten years ago. And here we are still fighting it. Holy cow. Wow.

Okay. Enough of a rant from me on this. Ed, you got me all revved up.

Okay. Anyone else want to get in the queue on this issue? This is the last of our subgroups. And Ed, is that a new hand?

Ed Morris: Yes, Robin. Can I just bring up one other thing while we have some of the folks here, very quickly?

Robin Gross: Yes.

Ed Morris: On the bylaw, we did something way, way back, like a year and a half ago, that we probably forget it. And it's in the bylaws. And I'm suggesting we may want to think about how we're going to actualize it.

In section 4.3(y) of the bylaws it states the following: "ICANN shall seek to establish means by which community, non-profit claimants and other claimants that would otherwise be excluded from utilizing the IRP process may meaningfully participate in and have access to the IRP process."

That was real important to us way back when. And I'm wondering, how do we get ICANN to actually do something. I have no idea. It's - should I be thinking of doing a council resolution? Should (Tepani), (Rafik) and (Klaus) get on this? I'm just wondering, how do we get ICANN ready?

We had talked about pro bono representation, things such as that, so that our members can meaningfully participate in what could be a very expensive process for third parties trying to file an IRP. Thanks.

Robin Gross: Well, you know, maybe we should start by talking to Becky since she is the architect of much of this. And I know that it was something that she wanted to make sure got built into the new process as well. And so she - I bet you she might be a good place to start in terms of how do we get that to happen, especially with her moving on to the board now. You know, that's kind of an interesting position to be in.

Okay. Does anyone else have anything they wanted to bring up in any other business or?

Let's talk about our next meeting. How about we do this next month on November 22 which is a Tuesday, same time, 16:00 UTC?

I note that that is not the week that there's the CCWG plenary on Tuesday. And it is also not the week that we have the GNSO Council meeting on Thursday. So looking at the month, it looked to me like that would be the time to do this next month.

And it would be a couple weeks after we got home from Hyderabad so we'd have made significant progress there. And of course we'll do a lot of work there. And we'll have had some time to sort of take stock about where we are on this issue and how we can move forward.

Okay. Anybody else have any comments, anything they want to add? If not, you're going to get 15, 17 minutes of your day back.

Okay. I do not hear or see any other comments. So I will thank you for joining. Very much appreciate it, especially the folks who have been very active in these groups and for keeping us up to date on what we can do. Very much appreciate it. And thank you. Goodnight, good-bye, good morning.

END