ICANN

Moderator: Maryam Bakoshi
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10:00 am CT

Coordinator: Okay, recordings have started.

Maryam Bakoshi: Thank you very much, (Mary). Good morning, good afternoon, good evening. This is the NCSG CCWG Accountability discussion on 16th August 2016. On the call today we have Ed Morris, Klaus Stoll, Milton Mueller, Patrick Lenihan, Rachel Pollack, , Sonigitu Ekpe, Tapani Tarvainen, Tatiana Tropina, Robin Gross.

And we have apologies from Matthew Shears. 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.

Brett Schaefer: Robin, this is Brett Schaefer. I'm on audio only.

Robin Gross: Great, okay wonderful. Thank you very much, Brett. Thank you, Maryam. And thank you all for showing up today to discuss our CCWG Accountability work.

I'll quickly review the agenda, see if anyone wants to add anything and then we can just dive right in. Okay, so you should have the agenda on the screen there and it should be scrollable. So we can do a quick update on where we are and what's next for our working group, and then dive right into the various Work Stream 2 issues.

You can see the sign-up sheet there where we've asked members of NCSG to please join the different working groups and also put your name in the sign-up sheet here so we can try to keep track of who's working on what and what the goals and objectives are.

So with respect to the various Work Stream 2 issues, okay so we've got the first is increase transparency at ICANN. The second is creating a framework of interpretation for ICANN's new commitment to human rights. Next, influencing the ICANN's – the influence of ICANN's jurisdiction and operational policies and accountability mechanisms.

And we can talk about SO/AC accountability and reform of the ombudsman...

((Crosstalk))

Robin Gross: ...diversity at ICANN. Reviewing the CEP, as it's known, which is the cooperative engagement process, guidelines for the ICANN Board Standard of Conduct, and staff accountability. And then we can talk about trying to set up a meeting for next month as well. And then any other business. Any questions on this? Anybody want to add anything, subtract anything?

Okay well I'm not seeing any hands there so I'm going to just plow forward with this. So the first issue here we've got is the increased transparency at

ICANN. And as we discussed in the past, this is one of the most important issues that the accountability working group can be working on and can be coming up with reforms for. So I'd really like to encourage as many people as possible to participate in the transparency subgroups.

There are a number of subgroups within the transparency issue. We've got the reform of the document information disclosure policy, the DIDP, Board deliberations, making sure those are more transparent, trying to foster a culture of transparency at ICANN, more transparency with respect to discussions with government and lobbying and improvements to ICANN's whistleblower policy. So these were the five specific transparency issues that the group has been charged with working on.

Let's just start with the first one, reform of the document information disclosure policy, the DIDP. Let's see, who do we have on the call who's been working on this issue? Has this one got started yet? Yes, I'm not even sure it's gotten started yet. Let's see, Ed's got his hand up. Okay, Ed, please go ahead.

Ed Morris: Hey, Robin. Thank you. Yes, we've had one meeting in transparency. And it was basically a get to know you. And we started to talk about some of the issues, including the DIDP. Our chairs are relatively new to the ICANN ecosphere, at least Michael is from our group. I wish Michael were here. But my concern is – my philosophy was let's take a look at what we currently have. Let's see what we need. Let's talk to ICANN Legal and have them justify any and all of them. But the response I got from the rapporteurs, at least during the initial call, was no, we want to look at the wide world and cast a net to see what everyone is doing.

And so I'm just not sure that's something we can do with the timeline of getting this thing done by next June. But I look forward to the second meeting

and seeing what these guys come up with. It is a concern of mine that we may be not focused enough on ICANN with what I saw on the first call and more focused on, you know, what the government of Fiji is doing, for example, or some other government out there. So I'm a little bit concerned at the direction of the group based – but solely based on one call and I'm sure we'll get back on track. Thanks.

Brett Schaefer: Ed, this is Brett.

Robin Gross: Wow. Please, Brett, go ahead.

Brett Schaefer: Okay, Ed, did you circulate the two DIDP studies; one by – I can't remember which group in India did it; and then the other one by the grad student from USC on various DIDP practices, to the group?

Ed Morris: We did to the entire CCWG, but that's a great idea. I'll throw those out there tonight on the list. Thanks, Brett.

Robin Gross: Thanks, Brett, and Ed. I see Tatiana has got her hand up. Tatiana, please go ahead.

Tatiana Tropina: Thanks, Robin. Tatiana Tropina speaking for the record. Yes, I actually agree with Ed. And I was participating in that call on transparency. And (unintelligible) kind of mixed feelings because I wasn't sure if there was a kind of bad preparation of the subgroup rapporteurs for the call or was it just very unfocused discussion. But it is still not clear for me what this group is going to do at the end.

So I – as Ed said already – I think we have to wait for the second call and see that either that get a bit more focused on ICANN or maybe we can push a bit

and get them focused because for me right now it's not clear whether it was just mistaken preparation and they just didn't get enough time or enough efforts to get the group focused or they just truly want to go that wide but I agree that it is a kind of concern. Thanks.

Robin Gross: Thank you. Yes, this is concerning. I wasn't able to join that call unfortunately. So hadn't heard this. And, you know, we talked about this being such an important issue that, you know, it's a little – it is concerning to hear that the issues of focus – we're supposed to focus on it sounds like weren't even really discussed in the first call.

So it sounds like maybe what we need to do is come back to the second meeting with some very specific goals and some very specific proposals for what we need to do, what the group needs to do and tying it very closely to what was in the CCWG Accountability report and the five issues that we – that were (unintelligible) by the (unintelligible).

Hi, can you hear me? This is Robin.

Brett Schaefer: Yes, you dropped off for a bit.

Robin Gross: Okay, I'm sorry about that. Okay so we've – it is disconcerting that the five specific transparency issues, it sounds like, weren't discussed on the first call. But I think what we need to do is we need to go into the second meeting call with very specific goals that tie closely to the transparency issues that we are supposed to focus on in this working group. It sounds like maybe the rapporteurs need a little bit of assistance and direction and guidance from those of us who have been involved in the CCWG from the beginning and have a clearer understanding about what the transparency subgroup is supposed to be focused on.

So let's think about what we can bring back into that meeting with some very specific goals. I know we've got our sheet – our sign-up sheet where people had already listed a number of very specific goals that we could propose that this group focus on that are tied to the issues that we're charged with working on. Okay so I see we've got a couple more hands in there. Tatiana, is that a old hand or a new hand?

Tatiana Tropina: Sorry, it's an old hand. But I really want to make this intervention, sorry, Ed, before the floor goes to you. Actually the rapporteur for transparency group sent an email just a few minutes ago, well half an hour ago, asking for suggestions for thematic areas of investigation. Maybe it's a good time to join the discussion right now, I mean, today, for Ed who was suggesting to focus it. Thanks.

Robin Gross: Thanks, Tatiana. Ed, you are next in the queue, please.

Ed Morris: Yes, can you hear me? You see – Robin, are you there? Is anybody there?

Robin Gross: I can hear you. Go ahead.

Ed Morris: Okay, thanks. Yes, no, Michael, I'm not even going to attempt to pronounce his last name, is one of the rapporteurs is actually one of ours. He's a new NCSG member. I wish he were here but maybe next call that we do we should make an extra effort to tell him, hey, this isn't just another one of the hundreds of emails you're getting from the NCSG. Could you please come?

And that way we can better help him do his job and also push our positions a little bit. Since he is one of our members, he's new to the entire ICANN

ecosphere, maybe one of the ways we can contribute is reaching out to him and helping him through these calls. Just an idea. Thanks.

Brett Schaefer: Does anybody have their hand up or may I intervene now? This is Brett.

Robin Gross: Go ahead, Brett, you are next.

Brett Schaefer: Okay, I saw that email from Michael earlier. I sent him a note basically saying that I think – he was asking for new issues to be raised now beyond or I guess to extend or clarify or whatever, the existing list of issues, including the ones that Robin laid out at the beginning of the call.

And I mentioned the questions that I had sent around by email yesterday in reaction to the IRP case which is tied also to the confidentiality clauses in the – that Xavier mentioned in his email, which is apparently ICANN enters into contracts with vendors which will involve or include confidentially – confidentiality clauses that preclude ICANN from disclosing how much, for instance, they pay them, what specifically they're doing, what their objectives are, what their goals are, what ICANN has contracted them to do, etcetera.

And if that is the case and what seems to be implied here is that Xavier basically in his email is that he can't legally provide that information. And I need to know or I think we should very much need to know whether that would also include the right of inspection, whether the EC would have access to those, that type of information, whether that would be accessible to a DIDP process, whether that would be accessible through an independent audit as approved by the EC.

Because if those confidentiality clauses preclude any kind of discovery from those types of processes, then we have a big huge black hole in our transparency measures inside of ICANN. And I'll just leave it at that.

Robin Gross: Thanks, Brett. I really appreciate that. I think you really touched upon an important issue here. We've known that these confidentiality clauses exist and to some extent in a vague way in ICANN contracts for a number of years now and, you know, they're always citing them to – as an excuse for why they can't provide disclosure of public information.

So you're right that I think this is an issue that we will look. But I also think it fits within what we've already laid out because it is part of the culture of trying to create a culture of transparency at ICANN. And so, you know, having a look at the extent to which non-transparency has already been baked into the system, baked into the culture, baked into the structure of ICANN through these contracts I think is really worth looking at and could help us to understand where some of the roadblocks are in terms of getting information out from the organization and, yes, that IRP ruling really did shed a lot of light on the way things are done at ICANN in the last couple of weeks.

Brett Schaefer: Yes, and just to clarify what I mean by that, in that IRP ruling…

Robin Gross: Yes.

Brett Schaefer: …apparently ICANN staff said that the transparency provisions in the ICANN bylaws only apply to the Board; they do not apply to the ICANN staff. Which if they actually operate under that impression, then that is a serious problem that needs to be addressed in this that I, for one, did not think should even be under consideration or question.

Robin Gross: Yes, that just strikes me as, you know, the general counsel's interpretation of the bylaws only applying to the Board and not the staff. I'd like to see that matter – that issue actually being adjudicated. Thanks for bringing that up.

Did anyone else want to get in the queue on this issue? On transparency more generally? And how we can try to steer this subgroup back on track and, you know, get it sort of focused on some of these more specific issues that we know we're supposed to be working on that, that we know will be helpful doing a big survey of what's going on in the world?

Ed, please, go ahead.

Ed Morris: Yes, Robin, I actually have to question your memory to make sure mine is right. Do you remember in Morocco just before we went to lunch you got some things inserted in the list to look at for the transparency group? I don't even remember what – actually you got staff accountability in at that point. But I remember I got – the speakers' fees for Board members in. And what happened to those lists we created in Morocco?

Because there's not in the staff reports I've seen. And everyone is pretty much ignoring them. So I think one of the things we can do to get the list broadened – and I'll make the suggestion tonight, is that we should get the lists we spent the creating that face to face meeting in Morocco. But is my memory serving me correct, we did make lists for all of these areas in Morocco if I recall.

Robin Gross: Okay, my memory is not very good unfortunately so I don't – I remember these issues but I'm not sure I remember specific lists or what we did in Morocco meetings all sort of...

((Crosstalk))

Robin Gross: …blend together.

Ed Morris: You didn't need to take (unintelligible) – no staff accountability, they weren't going to do it and you brought it up just as lunchtime was coming so they basically said, "All right, that's fine." And I remember it was brilliant so I wanted to comment you on that. Thanks.

Brett Schaefer: Well, my recollection is – with Ed here – that there was staff accountability added, and I looked at the Helsinki list on Work Stream 2 issues and both staff accountability and I believe Board accountability were there. So I didn't see any specific mention about Board speaker fees.

Robin Gross: Well I think, again, that is something that we want to look at in this subgroup. And I think it also goes under the culture of transparency at ICANN and just trying to get a better understanding about the different ways in which the Board incentivized or rewarded for saying things or doing things or acting in the space I think is an important thing for people to know when they're evaluating the decisions that are coming out of the Board.

Brett Schaefer: Can I add one other thing to this?

Robin Gross: Please do.

Brett Schaefer: And that is the conflict of interest policy by the Board. They are not very clear in terms of what those policies are. And in terms of the reporting on it, it's not entirely clear when they have to actually report that and when they don't have to report that. And this relates back to the question of Fadi after the (WIC) in China. And the Board had a meeting with them. They posted the – a very cursory and superficial summary of that meeting six months after the fact after

he had actually resigned so any kind of information that might have gone in or been useful to the community was well out of date by then.

And I think there should be a time limit for when the Board has to report the minutes of its meetings. Doesn't have to be within days, but I think it certainly should be within weeks. And I think that there should be a transcript involved in these things available either written or audio so that the community can actually get a better sense for what the subject matter covered was and how deeply it was covered rather than really shamefully superficial summary that was provided on that instance. And I've gone back and looked at other Board meetings and they're not very detailed at all on what they're discussions are.

Robin Gross: Thanks a lot, Brett. I think those are really important deep points that we want to add into the Board deliberations topic. I think it would be great if maybe we just came up with a very quick list of exactly the kinds of things you were just saying, the – a specific deadline by when the minutes need to be reported. And that they need to be much more substantial. That the Board deliberation email list needs to be made public. That the recordings of the audio of the Board meetings themselves should be listened to live the same way the GNSO Council meetings you can listen to live.

I mean, you know, these are very specific discrete things but we could just do a quick list and come back to that meeting – the next meeting and so okay, well, we know we're supposed to work on Board deliberations and here's a series of suggestions that we can start with and, you know, really try to focus the direction that that group is headed since it seems to be in need of some focusing. Anybody – oh I see Ed's got his hand up. Please, Ed, go ahead.

Ed Morris: I'm sorry, Robin, old hand.

Robin Gross: No worries. Okay did anyone want to comment on this? Not seeing any volunteers in the traditional ICANN manner, I'm going to voluntold and ask Brett if you would be willing to jot down, you know, in just very quick, you know, list bullet point form some of the issues under Board deliberations that we could come back and bring into the meeting next week as, you know, very specific goals that we can push that the group focus on. Any chance you'd be available for something like that, Brett?

Brett Schaefer: I can do that but I can't do it right now, I'm on audio only away from the computer. But I can do that as a different (unintelligible) that they want to email me. I'm happy to do that.

Robin Gross: Thank you. Thank you very much. And I actually didn't mean right now but, yes, you know, just some time in the next few days so we can have a more focused agenda going into that meeting. I think that would be very helpful. Thank you very much. Appreciate that.

Did anybody else want to weigh in on the transparency issue or have some other suggestions or ideas for how we can tackle it at this point? Okay I'm not seeing any more hands.

Okay so I think we can move on from transparency at this point and next is the second topic would be creating a framework of interpretation for ICANN's new commitment to respect human rights. And we've been very fortunate that Tatiana and Niels have been working very hard along with Farzi and some others have been working very hard on this particular subgroup.

So why don't I ask some of the people who have been active in this subgroup if you could sort of let us know where we are and where we should be going

and how we can help. Tatiana, are you – okay great. The floor is yours, Tatiana.

Tatiana Tropina: Thanks, Robin. Tatiana Tropina is speaking for the record. Well, it's – there has not been much going on in the subgroup because we just have the first meeting this evening. And I hope that after the first meeting it will be clearer to which direction the subgroup is going.

Though, as far as I'm concerned, Niels ten Oever and Nigel Roberts who are both cochairing the subgroup, did lots of preparation for the discussion with presentations, with structure. So I hope the one hour of this call will be used, you know, in full – in a kind of group manner and we are going to achieve at least some framing for the discussion.

There is a background paper. I think the background paper for the subgroup discussion, the draft, was one of the first released and Niels and I and some other folks took active part in preparing it together with the ICANN staff. And for anyone who is interested in this topic in this discussion this paper contains framing of the issue and the short background for the discussion and also the list of resources.

But other than this paper, there has been not that much work done on this so far, just because we haven't got the first call. And also the subgroup on Work Stream 2 of the Cross Community Working Party on Human Rights has not been active yet because we already discussed our position concerning the framework of interpretation and we are just looking forward to the discussion. But we don't know where it is going to go because at the end it is a community exercise and we need to listen to other people's view and get everyone to participate in these discussions.

So I have no prognosis right now. I have no real idea except that this call is going to be interesting this evening so please join. Thanks.

Robin Gross: Thank you very much, Tatiana. If I can ask you, because since I know you've been so actively involved in this group, where should it be going? What – if you could steer the direction of the group, you know, any way you'd like, any way that would be for the benefit of the Non Commercial goals that we have, what should it be doing and how can we help as members in the – that are participating in the working group to achieve that?

Tatiana Tropina: Well it's rather what should it not be doing on the first place. We are a bit afraid about the capture of this human rights working group in terms of what actually of human rights, what is going to be included there. And of course we are going to fight hard to probably be, you know, like for example IPC, Intellectual Property Constituency insisting that author's rights shall be considered as fundamental human rights.

So we are going to narrow this framework of interpretation down to specific human rights mostly I believe it should go to the freedom of expression for example. And we are going – I think the discussion should be to make it clear and simple, not really to insert as many human rights there as we can, because it should just frame obligation to respect human rights, for example, in policy making and PDPs. But I don't think that it should list what ICANN shall be doing extensively.

But on the other hand, I also think it should be very specific to not to broaden any obligation, not to make ICANN move into the direction of, for example, enforcement of human rights or content regulation. And they have to be specific on this as well that there are some limitations, there are mission limitations, there are limitations on the bylaw language of – concerning

ICANN not enforcing human rights and not protecting human rights, only respecting.

So this is our initial idea. And this is what we are going to fight for so this is kind of some redlines for us. Thanks.

Robin Gross: Thank you, that's really helpful. So if I understand correctly some – the debate that we've heard in the past to some extent is continuing with respect to do we look at only specific human rights in the ICANN context or are we supposed to be, you know, not focusing on any at all or picking and choosing human rights and people would say. So it sounds like this is still going on. And we should be heading towards settling on something that is focused on freedom of expression and privacy and not a broader – not a broader more inclusive definition of the kinds of human rights we're looking at. Did I understand that correctly or have I missed that?

Tatiana Tropina: Tatiana Tropina is speaking. Well, I cannot say that this debate is going. I think this debate is right now sleeping. And we are able to shape this because we are those who are active in this group so that's where we might need help from anyone who is interested, from anyone who wants to join.

I don't know whether this debate will go to this direction or that direction or like let's say is everyone on the same page that this framework should be simple and not super extensive and not super inclusive because we actually discussed this in Helsinki. And it seemed that everyone was on the same page concerning this. But if someone will reopen this debate I don't know, but at least we will be trying to put it to the right direction.

I have not heard many discussions on this but this is what we, Niels, I and other people, kind of bear in mind that we shouldn't make this debate too, we

shouldn't make this framework of interpretation too extensive or too inclusive. But the redlines for us is this difference between protection and respect.

Anything that goes to the direction of content regulation or anything that goes to the direction of, I don't know, blocking or, I don't know, any regulation regarding content is outside of the mission and frankly speaking I would side of this bylaw language because it talks only about respect and not protection and not enforcement. So this is our clear line of discussion and we are going to hold it as far as we can. Thanks.

Robin Gross: Well wonderful. Thank you very much, Tatiana. I really appreciate that. Is – is there anyone else on the line who wants to comment on this, on our human rights framework subgroup and that work effort? I know we've got folks who are in that group. Unfortunately, Niels wasn't going to be able to join the call today. I do not see any more hands. Okay so I guess I will take that to mean that we're satisfied with where we are on the human rights issue today and we can move on to the next issue.

Which is the influence of ICANN's jurisdiction on operational policies and accountability mechanisms. Okay the thorny jurisdictional issue, which I know gets a lot of people pretty heated and busy and typing away in all caps.

So this is the one working group that I have not joined any calls on so I really need to rely upon our members who are in this working group to give us some guidance here in terms of where that working group is and how we should be steering it. Milton, are you on the call? I think this is an issue that's – you're on this Work Stream 2 subgroup issue. Okay, can you give us a – sort of quick update on where this group is and where we should be headed?

Milton Mueller: Hello? Can you hear me?

Robin Gross: Yes, I can. Go ahead.

Milton Mueller: Yes, well Farzi has said it all preempting me and making it completely unnecessary for me to speak. It has not started. Basically we have had fun deciding what is an observer and what is not. One of my concerns is whether it's actually a good thing for this discussion to not even start until after the transition is complete because the jurisdiction issue in the US is something that the congressional republican opponent can use to beat the Commerce Department over the head with. And if you've noticed Larry's latest speeches he basically has to say that ICANN will never leave the United States.

So I would – it's not clear to me that we can have a – an intelligible or intelligent or constructive discussion of the jurisdiction issue until after we know whether the transition has happened or not. That's all for me.

Robin Gross: Okay thank you very much, Milton. Appreciate that. That's really interesting because I actually thought the meetings had started and I just hadn't joined yet. But it sounds like they actually haven't started. Okay does anyone else want to weigh in on this – on this issue? How they'd like to see it go? How we should not see it go? Any comments?

Okay, not seeing any hands I'm going to move on to the next issue, which is SO/AC accountability. Okay and this is the issue where we as the community have to make ourselves more accountable. And so do we have in this group who can let us – I believe Farzi is one of the rapporteurs of this group so I'm going to hopefully put Farzi on the spot here and if you can give us an update on that I'd really appreciate it. Thank you.

Farzaneh Badii: Hi, everyone. So I had – so we had two calls and in the first call we briefed the working group members on the tasks that we have carry out and these tasks are stipulated in the CCWG proposal for Work Stream 2. And one of the tasks is (unintelligible) mutual accountability roundtable idea; the other one is to come up with a concrete plan of accountability of SO/AC and the other one is to elaborate whether we should subject SO/ACs to independent panel review.

And we have – hello? You cannot hear me?

Robin Gross: Yes, go ahead. Go ahead.

Milton Mueller: She needs to speak louder into the phone directly. We can barely hear her, it's just kind of background murmuring.

Farzaneh Badii: Yes, well it seems like other people can hear me. Okay I continue. So yes and then we have starting (unintelligible) at the moment we drafted a report on our progress. And we sent it to the group list. And anyone that wants can contribute to that document. So I will – so if you want some issue to be raised or if you want your comment to be captured you need to go to that document and say whatever you want.

And, yes, that's about it. We had a couple of issues during our last call which was one of the issue was that some people thought that our ordering of discussion is not – is not correct and we should reorder it so we should not speak about – talk about mutual accountability roundtable now but we should do it later and we should first make it clear to who we are accountable and sorts of general question.

Yes, okay thank you, Milton. So that's about it. I think something else was raised during our meeting to – yes, so we talked about the mutual accountability roundtable, and people commented on it, some liked it, some didn't like it. And some said why should SOs and ACs be accountable to each other? They should be accountable to their communities. Some said no, they should be and it should be like (unintelligible) so, yes, that was – that was the other issue.

This is actually Farzi, with an I, thank you, Ed.

Robin Gross: Thank you very much, Farzi with an I. And also thank you for bringing up this issue of to whom are we accountable because this was sort of the beginning of that particular workgroup. And I think it's important that we take a little bit – take a few moments to actually evaluate that and think about that before we start coming up with proposals and solutions like a roundtable. But, you know, really kind of looking at that question, to whom are we accountable?

And there were three sort of proposals or three sort of different ways of looking at it that were discussed in the meeting and I'd be very curious to hear what people on this group have to say about the different ways of looking at this. So as Farzi said, the one way of looking at it is we are accountable to our members and that is – that is the extent of our accountability, the NCSG members that vote for us, that we represent, that's one way of looking at it.

Somebody else was saying, no, actually we need to be accountable to the more – the broader community in the sense of the noncommercial users who aren't our members but who we still need to be inclusive of their views and their concerns. And then there was yet a third perspective of, no, actually we need to be accountable to – all the SOs and ACs need to be accountable to each other so it's not just your own membership or your own interest group,

but in fact the whole community needs to be accountable to each other - all the SOs and ACs need to be accountable to each other. So it's not just your own membership or your own interest group but in fact the whole community needs to be accountable to each other. And so we kind of went round and round about this for a while. And I think it's an important discussion because it will be, the things that we decide will follow from the answer to that question to whom are we accountable? So if anyone wanted to weigh in on that issue here I'd really appreciate it because I'd like to hear what some of the members of this group have to say about that to date. Thank you.

Brett Schaefer: I can speak about one issue here or one my priorities. This is Brett on the phone line again. Hello?

Robin Gross: Please go ahead Brett. Thank you.

Brett Schaefer: Oh sorry. I guess the main concern I would have with the SO AC accountability process is that it does not become a means for the board to try and intimidate individual SOs and ACs into towing a particular line or staying within certain boundaries. I think it's important that the board have a role in this process and that it sort of be almost a neutral arbitrator but that the ultimate accountability process should be one that doesn't allow the board to exercise, you know, leverage over the community. Because ultimately that would be counterproductive if we want to actually have ICANN be accountable to the (EC). So that's just my overriding concern. I'm not sure whether that's happening or whether that is likely to happen or whether that is simply not a concern at this point. But from my perspective that would be the top priority.

Robin Gross: Thanks very much for that Brett. I think that is a realistic concern because, you know, if you think about the way our stakeholder group charters have to

be approved it's - we are required to have the board of directors sign off on it. So if there's anything that the board doesn't like in our charter well if they don't agree to it then, you know, too bad. So there is a lot of - and also the extent about the board reviews of the SOs and ACs and, you know, how they try to sort of guide the structures and the membership and as a result the positions they get taken and again lobby for it. So I think this is an issue and I don't think it's one that we've really - anyone's really put their finger on in our Accountability Working Group.

But it is worth looking at and I think it maybe covers a number of different sub issues as frankly many of them do. They don't uniquely fit within one particular subgroup but often have some cross play along the different sub issues. But I think this is, that you're right this is worth looking at.

Anybody else want to weigh in on this or the larger issue of to whom are we accountable, to whom should we be accountable? Is it only our members? Is it only our interests or should we be accountable to the IPC, should be accountable to us because again that - the decisions that will be made from this group will depend upon the answer of that question. So it's important that we answer that question right. Okay I see Farzi's got her hand up. Please Farzi go ahead.

Farzaneh Badii: Yes sorry I just I cannot give an opinion but what was raised during our session some of the members in the working group argued that we should respect what the constituencies and stakeholder groups do in their constituency. And but then some others also argue that there - and also in really queries proposal it would argue that the SO and ACs are accountable and should be accountable to the global public Internet users.

So there's a debate going on. There is a debate going on about this. I'm sorry if I'm speaking as so yes, there's a debate going on about this. And this is like one of the things that is concern like members of NCSG that are members of that working group they can also work on.

Robin Gross: Thank you. Thank you very much Farzi. Anybody else want to weigh in on this issue SO AC accountability? I know some of the issues that I'd like to see the group address are things like transparency of who the members are. You know, the IPC for a long time said their membership list was secret. And, you know, obviously we can't have that in an organization that requires transparency in its bylaws and is engaging in global governance.

So, you know, these kinds of things like the transparency of the membership list and the transparency of the decision-making processes these kinds of issues fit neatly within SO AC accountability and I think it's the way that the group should sort of tackle initially is picking out, you know, looking at specific criteria for what would be required for SO AC accountability, things like transparency, things like representativeness, the ability to recall unaccountable representatives -- these sorts of things.

And, you know, then once we come up with some of the criteria for what we would consider to be measurable for accountability then we can look at solutions and mechanisms for addressing those issues. So that would just sort of be my proposal for how to go forward in that particular working group. Anybody want to weigh in on that or SO AC accountability in general?

Okay not so seeing any hands or hearing any voices I will move on to the next issue which is reform of the ombudsman's office. And who do we have here who is working in this work - in this subgroup and can give us an update on where this one is? Ed I see you've got your hand up. Please go ahead.

Ed Morris: Thanks Robin. We had a call today. It was one of the more interesting calls I've experienced in ICANN. Sebastien is the reporter for the group and he came in with a plan that…

Robin Gross: I like suddenly can't hear you. Are you there?

Ed Morris: Hello? Yes.

Robin Gross: Okay. There I heard you.

Ed Morris: Okay I'm here. Thanks Robin. Okay so basically Sebastien came out with a plan that was based upon looking at best practices of other ombudsman's office. But I raise the issue that a lot of the things we've been thinking about asking the ombudsman to do might not be things that ombudsman's traditionally do.

George Sadowski had come up with the idea that we should have an inspector general. So I propose that we first look at what powers we want to give the ombudsman, not what other ombudsman's are doing, figure out what powers we want them to do and figure out when we want an ombudsman or something else. That was supported by the two board members there (Osher) and Mike Silber and (Raul) participated as well from the NCSG.

So Sebastien's going to have to go back to the drawing board. So we're basically going to start over on call number three with a whole new work plan and a whole new direction. Thanks.

Robin Gross: Thank you Ed. And it sounds like you intervened right in the nick of time there to get that group back on track -- appreciate that. Anybody want to weigh in on the ombudsman office issue?

Brett Schaefer: I have two comments if that's all right Robin?

Robin Gross: Please go ahead.

Brett Schaefer: Okay there are two issues that came to my attention first during the CCWG process. And that is in the IRP the IRP panel has the ability to stay a decision if there might be irreparable harm. There is no similar process for a stay in the request for reconsideration process. I think that the ombudsman or if there is an inspector general should be given similar powers. There is a possibility that in our - a request for reconsideration decision could also result in irreparable harm. And I think that should be part of one of the proposals here.

Second is coming out of the IRP decision just recently .registry. And that is that the Board Governance Committee did not abide by ICANN bylaws and rules and procedures and that under the new RFR process the ombudsman will have a say in this. But it is not clear to me that the ombudsman can actually be definitive or decisive in this process. The - to me the Board Governance Committee is still going to be the one relying on ICANN staff to inform this decision is still going to be making a recommendation to the board. And the board is still going to be the one that is ultimately going to decide this issue.

So I'm kind of curious as to what role the ombudsman is going to be playing here and what powers they will have to try and make sure that the Board Governance Committee actually lives up to the bylaws in terms of its procedures and obligations under the IRP process. Thanks.

Robin Gross: Thank you and once again you've raised really important issues that yes we need to look at. And I know we did some fixes in the first Workstream on the reconsideration process. We're trying to get (show) valuation out of ICANN legal's has input into the ombudsman's hands. But I don't believe we did anything like that with respect to the IRP. So in some ways it's kind of a new proposal unless I'm missing something. And but I think it's one worth looking at.

Brett Schaefer: It's not really…

((Crosstalk))

Brett Schaefer: …proposal. In the request for reconsideration process the Board Governance Committee has the ability to summarily dismiss a request for reconsideration. If it doesn't do so them the ombudsman will evaluate the proposal but the Board Governance Committee still has the ultimate decision over whether to approve the request or to decline the request in his recommendation to the board which has final say.

So the ombudsman has new role in the RFR process but I'm not exactly sure how powerful or how influential or how decisive that role is going to be. And so I think what we need to do is just flush out exactly what powers and what authorities we are granting the ombudsman in the RFR process and more explicitly lay that out in our discussion of the ombudsman's role going forward.

Robin Gross: Okay. Okay great. Thank you. An issue I see with this is an issue, you know, that we've had when we've discussed the ombudsman before about the extent to which the ombudsman is - provides sort of an advisory opinion. He can make a recommendation to the board but it's always the board, the final say.

And, you know, our lawyers have told us a number of times that that's because, you know, that's the way corporate governance infrastructures are supposed to work, that the board is supposed to have the final say because they're going to be the ones who are ultimately held accountable for those decisions. So I wonder to what extent we can take a decision out of the hands of the board and put it in the hands of the ombudsman without buying, you know, more general corporate governance rules?

I'm sure there's a way we can make it very difficult for the board to not accept a decision of the ombudsman. But in terms of actually the final decision where the buck stops, you know, that seems to be pretty murky. And also the answer seems to lie with the hands of the board. Although, you know, this would be worth - a really good question to take up with our outside legal counsel.

Brett Schaefer: I absolutely agree with you that the final decision has to lie with the board. But I'm talking about the - what role it has in terms of the Board Governance Committee and whether it's actually following the rules and procedures that have been outlined for it. But I think the ombudsman could be an effective vetting mechanism for making sure that the Board Governance Committee is actually doing what it's supposed to be doing.

Robin Gross: Yes, yes you're right. The ombudsman could sort of, you know, be a policeman of sorts and look at the way that the Board Governance Committee is carrying out its duties and its responsibilities. And could say hey you're not following the rules here or you're not doing your due diligence there. And it would put the ombudsman in a little bit more of an adversarial role to the board. But frankly I think that's the role it should have been in all along as opposed to, you know, sort of the way it is now where there's not much

distinction at all between the ombudsman and another member of the ICANN staff.

But, you know, if it really was their job to look over the shoulder of the Board Governance Committee and make sure that it is doing is due diligence and following the rules and the bylaws that would be an incredible help I think to the community and to ICANN's governance generally so I appreciate that clarification. Anybody else want to get in on the - this issue, reform of the ombudsman's office?

Okay. Well not seeing any other hands or hearing any other voices let's go on to the next issue which is diversity at ICANN. Again this is another one that I haven't joined any of the subgroup meetings on if they've even begun. And I'm a little - I'm not even sure they've begun. Does anyone have a more clear picture of the diversity subgroup and where that is? I don't think it's begun.

Okay not seeing or hearing anyone okay so let's move onto the next on because again I don't think it's begun, the diversity sub issue. So the next issue is reviewing the Cooperative Engagement Process, the CEP which is the first step to filing an independent review panel matter. And I believe Ed is one of the rapporteurs for that particular subgroup so Ed if you could walk us through where we are on that I'd very much appreciate it.

Ed Morris: Hi Robin. Yes I'm actually the only rapporteur and I'm on strike at the moment for one simple reason, I don't have my staff report. And this is something that I think (Greg) has been bitching about as well in terms of why jurisdiction hasn't started. Grace Abuhamad left ICANN I guess about a month ago. We all know that Grace was responsible for the work of any other five ICANN employees because since she's left we've (sic) just not getting the work product out of the accountability staff that we need.

I've been on the phone bitching about this. I know (Greg) has been doing it for his group and they just are not producing the reports and we aren't even getting time estimates when we can have them. So although some groups have started without the report - I decided for CEP I'm not going to waste anybody's time by having a meeting or even starting up on list until we have a common text we can look at.

It's an interesting group. We have 12 members right now and looking at the list I see folks like Donuts is there and they're in CEP's constantly. They're doing more IRPs against ICANN than any other commercial group. But we also have folks that I'm not sure even really know what the initial CEP are. So the decision I made was to hold off until we have a staff report and a common point of reference. But I also need to let everyone know that in terms of the rapporteurs perhaps not being prepared transparency did not have a staff report. So one of the problems we have getting WS2 going is frankly staff just is not producing the stuff we need to get organized in a timely fashion. Thanks.

Robin Gross: Thanks Ed. Well this has been a concern that a number of us have had would be for Workstream 2 was that we wouldn't get the staff support and from, you know, in the sense of resources, travel support, the number of staff members who are willing - who are to handle the meetings. You know, there's not - they don't have the same incentive to support the work of the Accountability Working Group because, you know, they got to sign off on the transition. So, you know, there isn't a lot of incentive for them at this point to support this work. I mean we're trying to change things. Why would they want things change?

So I think that we're going to encounter resistance. We're going to encounter foot dragging. We're going to encounter the staff using its power of the purse and power of the pen to manage and guide us. This is the way it's always been. And, you know, I think we can fully expect that to continue with Workstream 2.

But nonetheless I think we do want to push forward although I am, you know, I'm not going to complain that this particular subgroup hasn't started yet because boy I'm up to my eyeballs in subgroups right now and, you know, if one or two of them doesn't start for a couple more weeks I will not be crying just because the amount of work the overall workload that all these subgroups have created is enormous so thank you. Did anyone else want to get in the queue on that? I see Milton's got his hand up.

((Crosstalk))

Milton Mueller: I'm sorry.

Robin Gross: Oh Ed I'm sorry. I thought that was an old hand. That's a new hand?

Ed Morris: It's a new hand but let Milton go first.

Robin Gross: Okay sure.

Milton Mueller: I actually wanted to change the subject before I disappear so maybe Ed should go first but I do have to leave in like three minutes.

Ed Morris: Okay this will be very quick. Robin the bad news is once we get started we've been charged with getting this done by September 30 so it's ready for the transition. So we're going to be at a super accelerated pace to get technical

work done. And we're starting late because staff has not produced the material. Thanks.

Robin Gross: Thanks Ed I didn't realize we had a set - a hard September 30 deadline to complete this. Thanks. Okay Milton go ahead.

Milton Mueller: Okay so I just - I sent a message to the list about this. It's really a somewhat unrelated topic although it is related to accountability. So we're all familiar probably with the unbelievable IRP decision about the .registry case in which it is revealed that the legal staff is really sort of behind the scenes in control of supposedly independent processes.

And there has been some calls for John Jeffrey the head of ICANN legal to lose his job over this. I just wanted to point out that I think that the NCUC should or the NCSG should actually go into the Hyderabad meeting and make this one of our discussion points with the board. And also there was bad news on this front in that the ICANN responded to this by going into picky details about alleged inaccuracies in the reporting instead of actually responding to the fundamental issues at stake regarding the independence of their process and the interference of the staff. So I think the initial ICANN reaction to this is very bad and that we should really know let them get away with it. We should take some initiative here and try to make an issue that somebody really has to be made accountable, somebody maybe should be fired for this.

Robin Gross: Thanks Milton. I would certainly support that. You know, I said for many years that most of the problems we have with ICANN, the corporation is that the legal department really runs things and they, you know, they run it like a fortress. And they run it the way lawyers are taught to protect their clients which is put all of the liability on everyone else and, you know, protect yourself at all costs.

And so, you know, there's just this enormous power disparity at ICANN anytime you're trying to fight against the organization because they have, you know, all the resources and the ability to shape the facts at their disposal. So I think that that's a great idea. I would definitely support that. Anybody else want to weigh in on that issue? I see Ed's got his hand up and Avri. Okay Ed go ahead.

Ed Morris: Yes I very quickly on the on the IRP decision I understand the minority statement was by somebody who had ties to ICANN but I still have questions about the overall case before I would want to call for somebody's job. There are questions to be asked. I would love to get answers to the questions. But I still there's stuff there that yes. But we have the pattern of the past 15 years as Robin's described.

But in this particular case the minority report does make me wonder a little bit about whether it's as bad as some of the other statements in the report in the decision (ours) I just want - it's not a red flag. It's just a yellow flag of caution make sure we know exactly what we're talking about if we go down this path. Thanks.

Robin Gross: Thanks Ed. Avri you got…

Avri Doria: Thank you, Avri speaking, same topic in terms of the IRP but a slightly different angle on it and not to disagree with the need to investigate this one further and do something. One of the comments that came out in the board's decision was that as the IRP panel did not offer any remedy and therefore they've got no remedy to consider. Now in the current IRP the panel is not really empowered to do anything with remedies so done some interim

remedies and those were even questioned. So I find it though remarkable that the board in this case said, "But you didn't give us a remedy."

But in terms of what's and also with the issues before us part of the IRP Oversight Team which I think a few people from this group are on one of the still I think open issues and this deals with kind of this body of work going forward on accountability is the degree to which the IRP is able to make substantive recommendations and remedies that fall into the same enforcement rules as any other decision they might make.

So I think whatever ends up being the issue on this one there are certainly issues that pertain. One of the things that did come up at the last IRP meeting -- and it's hard to say IRP without thinking of things -- but the IRP Oversight Team -- whatever it is -- is that we have to look at this last IRP response for issues that we may need to cover in that group. Thanks.

Robin Gross: Thank you very much Avri. Did anyone else want to get in the queue on this issue which is just sort of the IRP decision recently that revealed a number of problems with respect to ICANN decision-making perhaps. Okay. I'm not seeing any more hands or any more voices so then I shall move on to the next hand.

Brett Schaefer: Robin?

Robin Gross: Yes?

Brett Schaefer: Robin I just wanted to reiterate the point made I think by Milton and by Ed and also I guess not directly but indirectly by Avri which is that we shouldn't let any quibbles that at the board may have with the IRP decision or the conclusions of the panel, ultimate conclusions of the panel distract us from the

fundamental problems it's revealed in terms of how ICANN staff looks at their transparency obligations nor how the board Governance Committee essentially just rubberstamps the recommendations of the staff rather than rigorously investigating the matter before them. I think those are very serious problems and we need to highlight those as we move forward in Workstream 2. That's it.

Robin Gross: Thanks Brett. I think you're absolutely right. And, you know, it just reminded me of something at ICANN the really makes my blood boil over the years. And it was when the NCSG filed our reconsideration request after Fadi and (unintelligible) Mark Plus 50 rule to the basically was going to give trademark owners an additional 50 trademarks or 50 words that they'd put in the database to block off anyone from registering, you know, something that existed nowhere in law. It was not created in any bottom-up process whatsoever, totally contrary to what the GNSO council had said in its recommendations. And so NCSG filed a reconsideration request saying, "Look board, you violated the bylaws. The bylaws say this is the way that policy is supposed to be made. You have to follow this very specific process." And they summarily denied our reconsideration request.

And so, you know, when I would talk to board members about that and I would say, "Why? How did you - why did you do that?" They said oh you're just - you just didn't like the outcome of the decision. You need to allege a bylaws violation." And I thought and every time I would say this I'm like my God these guys never read our complaint. They never read it because that was our complaint. You didn't follow the bylaws. So it became very clear at that point in time that these board members never read the complaint. They had - they literally had no idea that we were alleging a bylaws violation because that was a way that the legal department had described the whole issue to them.

So, you know, I get really angry and really upset when I see it's still going on that the board really is not doing their due diligence. They're just rubberstamping what ICANN legal department comes up with. And sorry, I didn't mean to get so emotional in telling this story here but, you know, it's something that NCSG has experienced first-hand. They - the board had no idea that we were alleging the bylaws violation because they never read the complaint. They never did their due diligence.

Okay sorry enough about that. Anybody else want to weigh in on this issue? Okay I'm not seeing any hands or hearing any voices so we can go on to the final Workstream 2 sub issue which is staff accountability. I believe Avri is one of the rapporteurs in this group and is on this call so Avri can you give us an update?

Avri Doria: Sure, this is Avri. And yes I'm co-rapporteur with Jordan Carter on this one. We have our first meeting this Thursday in the - in which timeslot? I think it's this Thursday but anyway we I have to check when I have this meeting. I believe it's Thursday in the -oh, yes in the 1900 UTC timeslot. So we haven't started yet. Like many of the others we do not have the staff paper yet. What we decided to do is (Jordan) and I built our own background document that basically quotes the chartered items that we're supposed to deal with from the report that went out and also basically collected a couple of the issues that have come up to date on that.

So, you know, I'll certainly know more after this first meeting. (Jordan) and I are just at the point of coming up with our slides for the Thursday meeting. One concern we have is that we're talking about staff accountability yet we don't have much staff participating in the discussion. And also even in terms of getting staff participating in the discussion we need to be able to make sure

that any staff participating were A, not just, you know, carrying a party line but also that they could speak without fear because if they can't speak so this means that we do have a certain cross connection on the whistleblowing topic that I believe is in other work track where we'll be following that along.

And the whistleblower topic doesn't relate to just staff because as we know that even among our non-staff participants in ICANN there is sometimes a certain fear of retribution when one speaks especially if they're working hard on some objectives somewhere else. And so whether that feeling that people have is realistic or is exaggerated it exists. So, you know, so that's pretty much where we're at on it. Thanks.

Robin Gross: Great. Thank you very much for that. I hear an echo. Okay can you hear me okay? Okay so do we got anyone else who wants to weigh in on the staff accountability issue? Sounds like it's just getting started like many of the other ones. Okay I don't see any hands. I don't hear any voices although it could be I think I might've skipped Number 8 there which is the guidelines for ICANN board standard of conduct regarding the removal of board members and the indemnity provisions related to that.

I don't think that group has gotten started yet. Is there anyone who is in that group or who knows? Okay it says it hasn't started yet, okay. Okay so we - I won't worry too much about that one at this point. Okay were there any other points on the Workstream 2 sub issues? We've gone through all nine of them.

Okay it looks like nobody's in the queue for that. All right so then let's think about we've got a meeting on Tuesday, next Tuesday a plenary meeting. Last Tuesday's plenary meeting was like what 15 minutes long. That was the shortest plenary meeting we've ever had. And I guess it's because so many of these Workstream 2 sub-groups have just gotten started or just kicking off and

so there really isn't a whole lot to report back to the main plenary yet at this point.

Okay but in terms of our groups work I'd like to propose that we do this again same time, same station next month which would be the third Tuesday of the month September 20. And if the same time 1500 works for folks that would be great. If anyone wants to propose something else or if there's a conflict with something we need to be aware of please let me know? Avri please I see your head is up. Go ahead.

Avri Doria: Yes in terms of conflict of times I will probably have periodic conflicts in this timeslot because this is one of the timeslots that the new gTLD Subsequent Procedures Group is using for its meetings and sub teams. I just wanted to say I don't know that my conflict is enough to say move this but I'll it - in this timeslot I'll often be an hour late. Thanks.

Robin Gross: Okay well we could certainly move it an hour ahead if that would help. I don't - or two hours ahead. I think we started off doing this two hours earlier but then there was some other meeting that was happening and so we needed to move it two hours later but I'm not sure that that was a standing conflict. I think it might have just been last month or the month before.

So why don't I send out a Doodle and while I really like doing this, you know, at the same time the same day each month because it can give a certain degree of regularity so let's stay September 20. But maybe we can Doodle and see what time works for folks or if anyone else has another proposal I'm all ears. Okay well I'm not seeing or hearing anyone else. Is there any other business that you'd like to discuss otherwise we're going to get out of here a few minutes early and my dog will appreciate that.

All right okay well I don't see or hear any other comments or hands so I will thank you all for joining and for participating and especially all of the work that's being done in all these different subgroups. I know it's a lot of subgroups and a lot of you are in a lot of different ones so I really appreciate it and we will keep chatting. Thanks so much. Bye all.

Maryam Bakoshi: Thank you much - thank you everyone for attending the call. Mary you may now stop the recording. Thank you very much for your time today. Bye.

END