
HELSINKI – CCWG Accountability WS2 Session
Sunday, June 26, 2016 – 08:30 to 17:00 EEST
ICANN56 | Helsinki, Finland

UNIDENTIFIED MALE: Today is Sunday, June 26, 2016. This is the CCWG Accountability WS2 session. We are in Hall A, and the local time will be 8:30 a.m. to 5:00 p.m.

UNIDENTIFIED MALE: Good morning, everyone. We're going to start shortly.

UNIDENTIFIED MALE: For those of you that are in the room and would like to get on the Wi-Fi, you can select the ICANN 56 WPA network. The password is Helsinki56. Again, if you want to get on the Wi-Fi, the passcode is Helsinki56. Again, that's Helsinki56.

UNIDENTIFIED MALE: Just for the remote participants, blame it on the good times, blame it on the sunshine, blame it on the boogie. Sorry, we're a little late. We will start in two minutes.

MATHIEU WEILL: Welcome, everyone. This is Mathieu Weill speaking, the CCWG co-chair of the Cross Community Working Group on Enhancing

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

ICANN Accountability. Welcome to this face-to-face meeting, which is dedicated to launching our Work Stream 2 effort.

To start with, I'd like to make sure we have the roll call set. I encourage you to all log into the AC room to facilitate that. I would like to ask whether there are any remote participants not logged into the AC room.

ALAN GREENBERG: Cheryl was delayed at a mentoring talk, but she'll be here in a few minutes.

MATHIEU WEILL: So Cheryl Langdon-Orr will join us shortly. I'm aware of Jordan Carter, who has sent apologies for not being able to attend and will be joining part of the meeting from Rome. Steve DelBianco's flight has been delayed, and he will join as soon as he has put his bag in his hotel. We can expect him to join shortly or at least during the day. I'm sure we'll be joined by others during the course of the day. We'll probably remind everyone to join the AC room so that we can get a full list of attendance to this meeting.

I would also like to start the meeting by thanking ICANN for setting up this face-to-face meeting in this new Meeting B setup. Actually, everyone is learning how it works. We are aware of the extra steps that were taken by staff to accommodate this

meeting. I'm especially grateful for the very nice setup that we benefit from today here in Helsinki with brilliant sunlight outside. Which, by the way, you can stay in the room because the sunlight is going to stay very late and you probably already enjoyed it, so you're not losing as much as in other locations by being in this room while it's sunny outside, so consider this.

A few meeting rules as a reminder. Please state your name when speaking because there are some remote participants. Also, we'll have a timer ready if need be for the two-minute rule. We hope we don't have to use it today but, just in case, we thought we'd make a note of it.

Finally, I think what really characterized our Work Stream 1 discussions were the collaborative approach, the tone of respect for each other's opinion, and we think this is really what we need to continue fostering amongst ourselves during the Work Stream 2 discussions and hope that we'll all be in the same constructive mindset as we've been in Work Stream 1 during the Work Stream 2 efforts. Thank you in advance for your constructive approach in the discussions we'll have today.

I think that will be it for the meeting rules. Probably we can now move to the agenda of this meeting. As you see, this is a Work Stream 2 meeting. We'll try to initiate discussions on the various topics. Obviously, given the number of topics, we'll not get deep

into each of them, but we'll try to steer the discussions forward so that the various groups can then prepare for deliberations down the road.

We have three Lightning Talks sessions (we'll get back to that) as well as a couple of more generic items. Our hope is that by the end of this session, everyone gets a better view of what can be expected from the discussions in the various topics but also of how Work Stream 2 is going to take place, how it's going to get organized, and who is going to be active in which topics. I'm really looking at the room that we will need volunteers. We will need your active contributions to move those topics forward. It's not going to happen out of a magic trick, so we'll all need to define where to apply our efforts, how to apply them so that the topics can move swiftly.

I think for the sake of process, I should make sure that there are no specific comments on the agenda. I see none, so I think we can move to the next slide and getting into the Work Stream 2 discussions.

These are topics we've discussed before in terms of generally how we will organize Work Stream 2. This is recapped here so that we all share the same information at the beginning of this day. Work Stream 1 is not yet completed, but we're very close now. There are still as far as Accountability is concerned a few

items open, such as the IRP implementation, which is not in the scope of Work Stream 2.

The IRP Phase 2 as we college it is not Work Stream 2 because, obviously, it's implementing requirements that we have defined and have been approved as part of Work Stream 1, whereas Work Stream 2 are topics that we've [scoped] in the Work Stream 1 effort and where we need to assess consensus between ourselves on specific recommendations related to those topics which will later be implemented. I hope this distinction is clear for everyone [at this point].

Work Stream 2 is scheduled to finish around June 2017. We have nine topics. That's the biggest challenge we have. Nine topics is a lot. It's obviously not possible to synchronize them all the time without delaying the overall process, so we're aware that not all topics will start at the same time or with the same energy. We might need to prioritize them into, for instance, the simpler or lighter topics where consensus may be easier to reach and others which will take a longer time to reach consensus.

We'll have the opportunity to discuss with the community as a whole – because, obviously, the discussion is not only in this room or with this group – during two major ICANN meetings, ICANN 57 in Hyderabad and ICANN 58 in Copenhagen, so not far from here. We've agreed that work will be led by sub-teams,

while the CCWG itself retains, obviously, the consensus assessment. That's the generic view. The next slide please. In terms of timeline, if you're in the AC room, you get a special bonus because you can actually read that slide on your screen because it's a little dense.

The idea here is to highlight two potential scenarios for timeline. One for potentially simpler or lighter topics where we could be at a stage by October this year to agree to issue a document for public input which could then be discussed in Hyderabad with that community, receive comments by end of November, analyze in December, refined and potentially a final output can be issued for adoption in Copenhagen. That would be the fast track on topics where by chance or by skill we would be able to reach consensus quickly.

For more complex topics, obviously we would need at least two rounds. You see what type of timeline this would lead us to on the right side where probably Hyderabad would be a first informal discussion but substantive with the community, just an update. The public input would be around Copenhagen and, hopefully, we might be able to refine the final output in time for June 2017.

Obviously, those are tentative timelines. It's more to make sure we share the same type of expectations. Reality will certainly

kick in at some point, but having a plan is a first step. Then if we have to adjust the plan, we'll adjust the plan. That's the initial thinking on the timeline.

Any questions on the timeline discussions? Comments? I'm looking at the issue in priority because, just as a reminder, it's easier if you can log into the AC room and raise your hand in the AC room for the queue management. I'm seeing no comments so far. It's already covered ground, so let's move on to the next slide then.

As a reminder as well of the discussion we've had about what we expect from the subgroups, how we expect the deliverables on the various Work Stream 2 items to look like. Basically, we expect them to look like the annex of Work Stream 1 report. The structure is an executive summary; a description of the issue, including the description of the current state of play and incorporation of the discussions and inputs we have received from the Work Stream 1 effort, the supplemental report; and a section describing the requirements for the recommendation.

It's a reminder that our group is not tasked at this point to provide actual Bylaw wording or wordsmithing, but define requirements for approval which will then be implemented. Then obviously, as we've seen with the Bylaw exercise, we have another few [loops] before it's finalized. And, of course,

including the rationale for the recommendations is a requirement.

There was really section which was supposed to be here. I don't know why it has gone missing. But a reminder that the Work Stream 2 effort still needs to demonstrate how our recommendations are meeting what was previously known as the NTIA requirements.

These requirements are going to be translated into a specific Bylaw article on Work Stream 2, so the same criteria – [our support], the multi-stakeholder approach, etc. – are still guidelines for our group to assess whether our recommendations are actually enhancements. So we still need to demonstrate and do our due diligence about how we are meeting these criteria.

I don't know how we're going to name them because it's technically no longer the NTIA criteria, or at least it will no longer be after September 30, but they still remain. They are in the Bylaws, and we still need to be very careful to demonstrate that we are doing the due diligence that we are meeting these criteria with each and every one of our recommendations. We'll have to fix the slide to make sure this is captured again so no one gets confused.

So that's the template we're expecting from every subgroup in terms of their deliverable. Any questions on that? No? We're still [inaudible]? Good. Next slide then.

I think I'm already to the point of our next agenda item, which is the Introduction to Lighting Talks. Since there's no further question at this point, I think, Leon, would you like to give a short introduction to this concept and get the room warmed up for it?

LEON FELIPE SANCHEZ AMBIA: Happy to do that, Mathieu. Hello, everyone. Welcome to Helsinki. As you know, we will be holding some lightning talks, but let's see what a lightning talk is to begin with. A lightning talk as we have envisioned it is a very short presentation meant as a way to brainstorm and generate ideas around the scope and focus of Work Stream 2 efforts.

This means that we have different and several volunteers that have signed up to provide us with a lightning talk on different issues. What we like to have in these lightning talks is, of course, a very short and concrete point of view, a very short and concrete [kickoff] so that the rest of the group and the larger group can begin brainstorming, as we said, on certain issues.

There are several Work Stream 2 topics that have more than one volunteer already willing to provide a lightning talk. This is, of course, an example of how lightning talks not only may have different approaches and different points of view that want to be shared but also the fact that the more volunteers we have providing lightning talks on different Work Stream 2 topics, the richer the effort and the exercise will be [carried].

A little bit of rules on lightning talks is that we are providing a five-minute maximum space per speaker. This talk must be related to a specific Work Stream 2 issue.

Remember that we have called for volunteers, as I said. There has been already a list of volunteers that signed up for different Work Stream 2 issues already circulated. We still have some slots open, so if there is anyone that would like to actually provide a lightning talk in one of those available slots, you are free to actually just sign up for that particular open slot.

These talks should describe your approach or your vision to address a particular Work Stream 2 topic. As I said, there is not a single or right way to address any particular issue. There must be different approaches and different points of view, so we are open of course to listening to each and every point of view and approach on the different issues.

We think that this will benefit our work because this creates a shared sense of direction for Work Stream 2 topics, and the higher volunteer engagement we have, the richer the exercise will be.

It will also highlight the key tensions and conflicts behind visions. With this, we will be open to fist fighting in some points, I guess. I think that this will, of course, lead to very interesting points of view from many of you in the different topics.

It will help identify leaders for each topic. This will mean that those of you who are most passionate about a topic might actually be volunteering to lead one of the subgroups working on the different Work Stream 2 topics.

It will help us also identify topics with greater or lower momentum. There have been already some topics with many people interested in them. There are some topics that are lacking people interested in the different topics. If we have topics that have no volunteers already signed up for them, we definitely encourage those of you who are not already volunteering for a certain issue to come forward and volunteer for those topics that have no volunteers already willing to speak on the issue.

This also will help us organize our work forward. There will be a big load of work in certain topics, but there are other topics that

shouldn't take as much air from the room as those with heavy loads of work. So that will also help us prioritize our work, as Mathieu said, in the expected timeline.

With this, I think I'd like to open the floor for any – oh, okay, so we do have already some questions on the lightning talks. The first on the queue is Greg Shatan. Greg, could you please [inaudible]?

GREG SHATAN: Good morning. I'd like to volunteer to give a lightning talk on Human Rights. I think there's an open slot there.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Greg. We'll take note of that. Grace, could you please add Greg to the lightning talks on Human Rights?

Alan?

ALAN GREENBERG: Thank you. You've had no mention of any rebuttals or discussions about the lightning talks, but you're allocating significantly more than five minutes per talk in the sessions. Does this give us permission to exceed the five minutes, or do you have some other plans?

LEON FELIPE SANCHEZ AMBIA: Well, the intention is to have, of course, the lightning talk for five minutes. And since the most fruitful way of taking advantage of the lightning talk is to actually interact with each other, we are trying to have a ten-minute question and answer after each lightning talk.

ALAN GREENBERG: Thank you. You had been silent on that, so I wanted it to be clear.

LEON FELIPE SANCHEZ AMBIA: Thanks, Alan. Any other questions or comments on the lightning talks and how we're trying to build this up? Okay, so having no more questions, I'd like to turn the microphone to my co-chair, Thomas Rickert.

THOMAS RICKERT: Thanks very much, Leon. Hello, everyone. I see there's a hand raised. Sebastien, would you please take the floor.

SEBASTIEN BACHOLLET: Yes, sorry. I was too late to go to the AC room. I have a question why you add objective of those lightning talks. I am concerned with the fact that now you decide in putting the Benefits like

“helps identify leaders for each topic” that the one who signs up will be the one. I am not sure that’s – at least that’s the way I understand it. Maybe you will decide that they are not the leaders of those working groups. But it’s a little bit strange to add that as an objective of those lightning talks, and at least it was not put clearly before who and about which topics we will be talking during the lightning talks. Thank you.

THOMAS RICKERT:

Thanks very much, Sebastien. Actually, there is no [segue] from doing a lightning talk into getting a leadership position. It’s just that individuals in our group get the opportunity to speak to a topic that they care about, that they’re passionate about. And if they maybe want to become a subgroup leader, then this could also be an opportunity for them to present themselves and their expertise to the group. But actually, there is no direct link to actually being picked. So no decision on that is made or prejudiced by doing a lightning talk.

Before we start the series of lightning talks, I see a lot of faces that I haven’t seen at our previous face-to-face meetings. Sebastien, sorry. Do you have a follow up?

SEBASTIEN BACHOLLET: Yes. Maybe you can add also in the Details that three talks about one topic is a requirement, maximum three talks.

THOMAS RICKERT: Well, maximum maybe. But if we have less than three talks, I guess it will be difficult to make it a require to have three talks. But the point is noted.

As I said previously, we have a lot of new faces in the room. I think it's good to have more people, potentially new people. Maybe some of you who are in the room today have been in the AC room at previous meetings. But I think it has been a [inaudible] of our group that we have been very welcoming and have a good team spirit.

So I would like to offer to those that haven't been with us physically previously the opportunity to briefly introduce themselves if they want to. You don't have to if you don't want to, but if you would like to briefly state who you are and state your affiliation, then it would be easier for the rest of the team to go over to you during the coffee break and make friends and introduce themselves to you. So does any one of you wish to say hi? Please do.

SONIGITU EKPE: Hi. My name is Sonigitu Ekpe. I'm from Nigeria. I work with the Cross River State government, and I have an interest in Internet and wildlife. Thank you.

THOMAS RICKERT: Thanks so much and welcome. Please?

ANDREEA TODORAN: Good morning, everyone. My name is Andreea Todoran and I'm also joined by my colleague Erin Dorgan from the government of Canada. We have indicated our interest in becoming a CCWG GAC member for Work Stream 2, and we are now awaiting a GAC decision. Thank you.

THOMAS RICKERT: Welcome. Anyone else? Please?

DENISE MICHELLE: Hi. My name is Denise Michelle. I'm representing Facebook and also participating in the Business Constituency for the purposes of Work Stream 2. Thank you.

THOMAS RICKERT: Thanks and welcome, Denise. Anyone else? Please?

SUSAN PAYNE: Hi. My name is Susan Payne. I'm in the Intellectual Property Constituency, and I also participate in the Registry Stakeholder Group on behalf of some of our clients.

THOMAS RICKERT: Great. Welcome. Let me pause for a second. Again, this is not a requirement. It's just an invitation, but I'm sure that all of you will meet during coffee breaks or maybe during lunch and also establish personal contacts, which as our history shows has been very beneficial to break down barriers between the different silos and groups inside ICANN. So great.

Now I would suggest that we start with our lightning talks. I would like to get a signal from staff whether we have Jordan's talk ready. Actually, Jordan Carter who can't be with us physically today has recorded a video lightning talk, and he will join us by phone for a conversation.

The first couple of lightning talks are going to be on the subject of Jurisdiction. Before we do the lightning talks, I would like to apologize again for the [drafting] glitch in the blog post that we've issued a couple of days back. I'm sure that we will continue our substantive discussion on the issue probably after the lightning talks. And I guess we will have more opportunity to discuss the overall scope, remit, and prioritization of this

challenging and multifaceted topic today or in the next couple of weeks.

With that, I have confirmation that we have the video good to go. May I ask you to start it? Play it for us. Thank you.

JORDAN CARTER:

Hi, everyone. It's Jordan Carter here from .nz, one of the ccNSO members of the CCWG. I'm sorry I can't join you in person today in Helsinki. I hope the meeting goes well. I just wanted to make a few points about Jurisdiction by way of a lightning video talk.

The first one I'd like to make is that we need to all really table the interests that we bring to this discussion early on and as accurately and openly as we can. There might be political interests at play, there might be practical interests at play, there might be commercial ones. I think the more open and upfront we can all be about what the interests are, the more likely it is we'll be able to have a good discussion.

Then following that, we're going to need to note that some topics will get raised that it isn't within our scope as an accountability working group to deal with. By being really upfront about the interests, we can make sure that we have a clearly defined set of topics to work through that don't risk leaking out and getting more complicated as we go.

The second main point I'd like to make is that we should then define requirements to the topics we've agreed. We had a lot of luck with that earlier on in our process, and the really clear discussion of the requirements that we have as a group through our jurisdiction to deliver is important.

We might say that the jurisdiction issue in terms of location has to be that it can meet the sentiment agreed in the first part of our work in Work Stream 1. We might say for contracts that a requirement is predictability of enforcement in the courts. I don't know what the requirements are, but I think that it's a really helpful way to start before we get into discussions around recommendations for jurisdictions that could meet them.

Then I think the third piece of work for the group to do is to actually make some recommendations. One of those recommendations might be that we shouldn't change the jurisdiction, that everything is working as well as it can. Other recommendations will come out of the work of the group. I don't know what they might be.

All of this is, of course, a sensitive topic and a really interesting one. There's the ongoing requirement of the transition that we don't turn ICANN into an IGO or a government-controlled institution, and those are important criteria to keep in place.

Anyway, I hope those are helpful. The three points again: making sure we're really open about our interests because that will help us work together really easily; and then making sure we've got the right scope, defining our requirements; and then developing some recommendations.

I hope that's helpful, maybe interesting, maybe not. Go well with your work. I look forward to catching up with you online. Thanks.

MATHIEU WEILL:

Thanks very much, Jordan. I hope that Jordan has joined us on the phone bridge already. I'm sure you've noticed that Jordan has promised that he will make three points, and he ended up making four. This is what the CCWG is about. We promise something, and we deliver more than we announce. That's a good thing, isn't it?

Jordan, are you with us?

JORDAN CARTER:

...or maybe I'm not.

MATHIEU WEILL: Now you are. Welcome, Jordan, and thanks for the video lightning talk. Is there anything that you would like to add or speak to now?

JORDAN CARTER: Just to apologize for [inability] to count and to invite any questions that people may have.

MATHIEU WEILL: Let me pass on this question to the group. Do you have any questions for Jordan? He has suggested a methodology for approaching this topic. Do you have any comment on that? Do you agree with the way he presented we could approach this? Is there opposition? Alan? There's a hand raised from you. Is that an old hand?

ALAN GREENBERG: It's a very old hand.

MATHIEU WEILL: Very old hand? Okey-dokey. This seems to be a very calm and probably tired, jet-lagged community today. I would have expected a lot of interventions on the jurisdiction topic. Okay, if I may, Jordan or maybe staff can help with this since Jordan is on the road. I guess it would be worthwhile capturing his four

concluding points in the notes so that we have something to lean on as we continue our discussions. Actually, Kavouss hand is up. Welcome, Kavouss.

KAVOUSS ARESTAH: Yes, good morning. Not tired, not jet-lagged, but [inaudible] period [inaudible] waiting for [heating up]. Thank you.

MATHIEU WEILL: Thanks, Kavouss? Greg?

GREG SHATAN: I agree with Jordan's points and just wanted to underline one of them, which is expressing your point of view, your agenda, your goals. It seems like from the previous discussions on this topic, some people approach this with hidden or semi-hidden agendas, some of them not hidden at all. But it would be good to keep the conversation candid to have a sense of what people seem to be aiming at in this area.

I have another comment on jurisdiction, but I'll wait for the other lightning talks to see if it's covered in one of those other talks. Thanks.

MATHIEU WEILL: Thanks very much, Greg. That allows us to move to the second lightning talk. As previously mentioned, if you want to put yourselves in the queue to deliver an additional lightning talk, this is perfectly possible. Just signal that to us, not only on this topic but on all of the Work Stream 2 topics. We would very much appreciate more lightning talks. Maybe you want to do one spontaneously on this or on the topics that we don't yet have lightning talks on. So that would be great.

I haven't yet seen Phil Corwin in the room. Phil, are you with us in the room?

JORDAN CARTER: Could I make just a quick response to Greg's point?

MATHIEU WEILL: Please do.

JORDAN CARTER: The reason I suggested that we should put our interests on the table is to make the point that all of the interests around jurisdiction are legitimate and the extent to which they can all be shared openly will make everyone more able to participate in real recommendations. Even if people think that their points of view are awkward or might not want to be heard, I think it's

really beneficial for all of our work if everything is put on the table as far as it can be. That's all.

MATHIEU WEILL: That's a useful clarification. Thank you, Jordan.

Next lightning talk is going to be delivered by Phil Corwin. Phil, are you with us? Does anyone know whether Phil is in Helsinki? So he might just be a few minutes late. Let's go to Pedro's talk then. I hope that staff can be flexible and put his slides on. Pedro, would you like to come to the tabletop? You can see the group better if you want to please.

PEDRO IVO SILVA: Yeah, okay. I can do that.

MATHIEU WEILL: Over to you, Pedro.

PEDRO IVO SILVA: Okay. Hello, everyone. Nice to see you all again. I have eight slides and five minutes. I'm not sure if I'm able to make it in five minutes, but let's see. I'll do my best.

Similar to Jordan, I have a lightning talk that covers mainly process. It's a suggestion about the process that we should

probably adopt in order to tackle the issue of jurisdiction. I will probably make some comments on substance, but it's mainly a proposal on process.

I'd like to start with a [usual] assessment of our previous discussions. I think in the past year, we have had fruitful discussions on the topics. I think almost everybody has something to say about jurisdiction. It's not an irrelevant topic at all. But my impression is that most of what has been expressed is more about preferences or, let's say, wishful thinking rather than real effects and concepts, [mutual] effects and concepts.

In my view, I think the debate so far has been maybe a little bit loaded and not sufficiently fact-based. Of course, this is important. We need to know the concerns or irritations as Phil Corwin likes to put it. They need to be taken into account in this debate, but we need to question ourselves: do these concerns actually have a solid foundation? Are they based on really true facts? I think this is one of the objectives of this subgroup is to base on solid foundation in order to tackle this issue.

I think that expert input in this exercise will be key. So far we haven't had. I think we have many people who know a little bit of the topic commenting on it, but I think we need to have a formal people established in which experts can give their input. I

think it will be very beneficial for this exercise. You can move on to the next.

A brief recap of what we have agreed in our Work Stream 1 report on this topic of jurisdiction. Of course, Thomas mentioned we have agreed that jurisdiction is a multilayered issue, or I prefer the word “multifaceted.” It is a very complex issue.

We have indicated what our main concern or let’s say broad concern is, which is the influence that ICANN’s existing jurisdiction may have on the actual operation of policies and accountability mechanisms. Involving primarily – and it means not only – the process of settlement of dispute, which means the choice of jurisdiction of the applicable laws but not necessarily the location where ICANN is incorporated. We have clearly indicated that in our report.

We have even also indicated how we will consider this topic in Work Stream 2, which is also very important to remember. We have indicated that we would clarify all concerns regarding this multilayer nature of the jurisdiction issue. We have also agreed that we would identify potential alternatives and benchmark their ability to match our accountability requirements.

Based on this assessment and on this recap of what we have agreed so far, my suggestion (if you go to the next slide) is to

address the topic of jurisdiction in what I would call a scenarios-based approach, in a step-by-step approach in which we would start by a collection of scenarios. We would evaluate those scenarios based on whether they are really real concerns for us or not.

Then we would check whether those concerns can be addressed by the ICANN post-transition accountability mechanisms, if those concerns can be mitigated or fully removed by those new mechanisms that we are setting. In case not, we would then check for alternatives and, finally, make recommendations how to implement those alternatives. I'll explain this a little bit more in detail. If we go to the next slide, please.

By scenarios, I mean to identify all areas in which jurisdictions, not only one but maybe others as well, influence or interfere in ICANN. Remember that we have agreed that this would be our main broad concern. It is in our report. How does jurisdiction influence ICANN's operations?

Then, once we have identified all those areas where jurisdiction influences ICANN, we would evaluate whether those areas of influence actually do represent major concerns for us. It can be, for example, that there is influence of a certain jurisdiction on labor law with respect to ICANN, but this is not really a concern for us because it is only related to employment relationship

between ICANN and its staff. So maybe it's not the real concern, but in other cases, yes, so I think we should clarify this.

Then, once these concerns have been identified, we would then make an accountability check. Can these concerns be addressed by the new mechanisms we have agreed? Yes? No? If not, then we would look for alternatives, as I said. Not only let's say looking for the alternatives, benchmarking them, but also see if they are feasible, if they are implementable.

Then, finally, we would list all these alternatives and make appropriate recommendations, including how to implement them.

Let me give you two examples just to illustrate a little bit more this process. If you go to the next slide.

Let's think about government sanctions. This is one topic that was raised in our list and also there has been some previous [studies] on that.

There are many stakeholders who have real concerns with government sanctions because they represent unilateral and therefore undue interference in ICANN's global policies and operations. It is one scenario that really may represent a real concern for us.

We would then evaluate if ICANN with the mechanisms that ICANN has in place, the accountability mechanisms, if ICANN can decide not to implement a government sanction that goes against ICANN policies, their own policies, policies that have been developed within our community. Can ICANN ignore these sanctions if they are against those policies? I don't know. Apparently not.

So we should look for alternatives. Can we, for example, have immunity on certain types of sanctions? Can we seek for immunity for ICANN for certain types of sanctions within the jurisdiction where those sanctions are imposed?

I'm just giving an example here of how we should evaluate this kind of possible interferences in ICANN's global remit. Then we should then go to proper recommendations.

Other examples would be the approval of new laws or acts within the jurisdictions where ICANN operates, if these interfere also with ICANN's global remit, or the approval of new regulations. If you go to the next example.

Another topic that has been mentioned, it's in our report as well, is the governing law for contracts between registries and ICANN. Maybe some of you in here in this room have an answer to this, but these questions are here put just for example.

Maybe if both parties, ICANN and the registries, if they can agree on the specific governing law for their contract or specific jurisdiction for their contract, this is not a concern. But can both parties really choose at their own will the specific governing law? I don't know. Maybe. This is a concern or not.

If they cannot choose, I would say this is a concern, and then we should evaluate if this can somehow be changed maintaining ICANN's current post-transition status. So it's an evaluation we would do. If this cannot easily change, what other alternatives do we have? Then we would make proper recommendations.

These are two scenarios where there might be interference from jurisdictions in ICANN's global remit, and we should evaluate those and see whether we have alternatives or not.

Other examples would be enforcement of IRP decisions. Can IRP decisions be enforced just in one specific jurisdiction or in others? I don't know. I think it's something to be discussed within the group. Delegation/redelegation of ccTLDs, to what extent can governments or a jurisdiction influence this process? This is another possible scenario that I just give here as an example. Going to the last slide. Sorry.

Just some comments on how this group should be organized. I think it goes without saying that our group should be as diverse as possible, but I think this specifically applies to this subgroup

of jurisdiction given the sensitivity of this issue, sometimes also raising sentiments of nationalism. I think this should be as diverse as possible from stakeholder groups, also from geographical point of view. Diversity of the rapporteurs as well. I think we should have at least two rapporteurs in this subgroup coming from different ACs/SOs and from different regions. I think it would be very important.

As I said, expert legal advice is very important – I think both in California and U.S. law and also international law – both to help us identify how this interference of jurisdiction takes place in ICANN and also to help us identify alternatives.

Finally, I think we should refer to the extent possible to previous studies on this topic. I give here as an example this report on the internationalization of ICANN that has been elaborated in the context of the presidential strategy committee of 2009. I think some of you have participated in that.

That's it. I'm open for questions. Thank you.

MATHIEU WEILL:

Thanks very much, Pedro. We have a line that has formed itself. Elliot is the first one to speak. You're over there.

ELLIOT NOSS: It wasn't a question about this particular talk though, so I want to defer to anything that addresses this.

MATHIEU WEILL: Then let me just ask whether any one of those that have raised their hands have specific questions for Pedro. Paul, please.

PAUL McGRADY: As I'm listening to this, it sounds a bit like it's the tail that could undo the dog. The entire accountability infrastructure that came out of Work Stream 1 is tied to the notion of this sole designator model, which is novel as far as I can tell under California law.

It sounds to me like we're going back now to say, okay, here are other concerns and we're going to evaluate those other concerns to see if the current jurisdiction can address those. And if not, then we're going to out and find new jurisdictions that can without addressing whether or not we're ever going to find – and I hope we don't – a jurisdiction where ICANN can ignore the government where they're located.

My concern is that it sounds like what we're doing is, by using this jurisdiction issue, we're going back to reevaluate all the work in Work Stream 1. So I'm hoping that I've just misunderstood what you've said and you can clarify that that's not what we're really doing.

The second this is just for clarity's sake, I'd like for us to not dance around the issue and I'd like for somebody to say that both the issue of where ICANN is physically located and also the choice of law for its various contracts, which is a much lesser issue, both of those things are on the table so that when we go back to our people who have interest in this (constituencies and the like) that we're able to say, "No, there's no possibility of ICANN being moved out of California," or, "Yes, there is a possibility," just so that we all know what we're talking about. Thank you.

MATHIEU WEILL:

Thanks, Paul. Pedro, would you like to respond?

PEDRO IVO SILVA:

Yes. Okay, thank you, Paul, for your question. This is merely a suggestion of a process. It's not anticipating any result. I'm not having in mind any result. I think it's a process that's as flexible as possible to cope with all the concerns that are expressed by the community on this topic. I think it's also important that this process actually visages to address concerns, not overall concerns but concerns individually, for which there can be different solutions.

Also, I'd like to stress one of the items in the evaluation part of this process, that visibility is one key value here. We need to check when we identify alternatives if those alternatives are feasible, if they are doable considering all restrictions that we may have.

So I think the key message here is that we are not anticipating anything and we should not be anticipating anything. We should not already put limitations to our work and also not from the start say that we will not do that and we should not do that. I think really it's open. I think the discussion, the debate is still open, and I think let the subgroup come to its own conclusions. Thank you.

MATHIEU WEILL:

Thanks, Pedro. I would just like to point your attention to a comment that has been made by [Jordan] who, as you know, is one of the rapporteurs for the Work Stream 1 recommendations. He said that we should make a requirement that the work of Work Stream 1 is [inaudible] so that we're are not using the jurisdiction discussion or the others to amend what we have agreed with the community in Work Stream 1. I think that's an important point to bear in mind.

Elliot, you have been patiently waiting so, Elliot, the floor is yours now.

ELLIOT NOSS:

Thank you. I do want to – I think there's a lot of great detail there about approaches, and I understand that there are certainly in the short term some limitations on jurisdiction flexibility. But I think we should not lose sight of the most important point around jurisdiction here.

Sorry. I'm Elliot Noss from Tucows.

I think we should not lose sight of the most important point as it relates to jurisdiction. The people in this room almost by their presence here impliedly are recognizing the fact that with the Internet multistakeholderism is the most important principle. We have seen just this week writ large that no single nation state trusts other nation states when it comes to primacy or when it comes to control over what is seen as key Internet infrastructure.

When we as a community are looking for jurisdiction, again especially in the longer term, the most important principle must be locating in a jurisdiction that respects that primacy of multistakeholderism. That creates in and of itself if we agree on that point a unique challenge because prior to the formation of ICANN and prior to the existence of the Internet, there is not another similar example of all of the world being so intertwined around key infrastructure. What that means is that, again by

definition, no nation state has yet had the opportunity to demonstrate that it will respect multistakeholderism over the interests of any one nation state.

I'd say that where that leaves us with jurisdiction is we are in the truest sense jurisdiction shopping. We, this community, are shopping for the jurisdiction that will put up its hand and explicitly recognize the primacy of multistakeholderism. That doesn't exist yet, but I suspect that if we make that call long and loud through this process, that one or some number of countries will step up around that.

Again, I want to circle back to what I said earlier. It is a fundamental principle of nation states and sovereignty that no nation state wants to be dictated to by any other. We can't expect in the current or past historical frame that any nation state would have respect for something like this in multistakeholderism. So what we're looking for is something that doesn't exist today, but with our help, it's something that can come to exist. Thank you.

MATHIEU WEILL: Thanks, Elliot. Is it just me, or was that a lightning talk?

UNIDENTIFIED FEMALE: It sounded like one.

UNIDENTIFIED MALE: It was.

MATHIEU WEILL: It was. [applause]

ELLIOT NOSS: I'll e-mail my slides to the list later.

MATHIEU WEILL: Thanks very much, Elliot. Greg?

GREG SHATAN: Thanks. It seems to me that we use the term jurisdiction to mean a lot of different things, and I think that creates confusion. Maybe they all fall under some broad umbrella that we can call jurisdiction for some purposes, but I think referring to all of these separate things as jurisdiction is not enlightening but rather confusing. A non-exhaustive list that I came up with was the country of incorporation and in the U.S., the state of incorporation, the physical locations of the headquarters and the physical locations of any other offices or activities. That's just the domicile, if you will, of ICANN. The choice of law for contracts, the places where ICANN can be sued, places where ICANN itself can sue, the law that applies to ICANN as a

corporation which is tied to the country and state of incorporation. That's a non-exhaustive list.

I think we'd be better off not calling all of those things jurisdiction even if we think they're all somehow under this Work Stream 2 topic as words matter and making it all sound like it's all one ball of wax, I think, is unhelpful and really actually incorrect.

In terms of a couple of the specific things that came up in Pedro's talk, one scenario referred to government sanctions. As far as I define a government sanction, it's a tool that's used by a country or perhaps by an IGO to persuade other governments to change their policy by restricting what they do. So unless there's some other definition of government sanctions that is different, I don't see where ICANN, where that issue comes from unless we're talking about the fact that ICANN's currently physically located in a jurisdiction that has government sanctions against, say, North Korea. So I'm not sure where that all fits in or if that is alluding to an issue that bubbles up which is the idea of influence or interference of the government. And there's a lot of fudd around that concept of interference.

Some people would like to define the very idea that ICANN can be called into a particular court to be the interference of the government that maintains that court. So I think there are a lot

of terms that are thrown around and I think we need to be much more consistent with use of terms and also, I think, avoid kind of rhetorical mischaracterizations of both topics and what people are trying to say.

And frankly, even kind of spreading of some what I believe to be fairy tales about jurisdictions and what can happen due to either place of incorporation, domicile, choice of law, vulnerability to suit, and applicable law of the corporation. And I would not call all of those jurisdiction and I would urge the group to follow that. Thank you.

THOMAS RICKERT:

Thanks very much, Greg. And looking at the queue, you've obviously warmed up to the discussion now. And let me close the queue after Farzaneh so that we have time to squeeze in for Corwin should he come to the room. Have we heard from [inaudible]? Just want to make sure that we give him the opportunity to speak.

Next in line is Mathieu.

MATHIEU WEILL:

Thank you very much, Thomas.

I have a couple of very practical questions for Pedro on the process. Sorry to bring things back down to Earth here.

The first question is that my understanding of the [inaudible] approach is that it's extremely similar to what we did with the Stress Test approach. Do you think we could be using the same type of framework?

And the second question is about the reliance on experts, legal experts and international law experts. Do you also believe that in terms of international law experts, we should reach out to the public experts group experts that joined our effort in Work Stream 1 or were you thinking of other experts?

PEDRO IVO SILVA: Yes, thank you Mathieu. I still have a little bit of a trauma with Stress Test, the name Stress Test. I prefer not to use it.

UNIDENTIFIED MALE: Post-traumatic stress disorder.

UNIDENTIFIED MALE: Call it Scenario Test, so it's ST.

PEDRO IVO SILVA: But yeah, the concept is similar. It's about identifying, let's say, used cases, scenarios that we would individually, case by case, investigate and then make proper recommendations based on them.

And then on the experts group, I think specifically on international law, I think private international law, I think is one aspect which is related to the conflict of laws and the choice of, let's say, the governing law for a relationship between private entities that belong to different nations. I think that particular expertise is what we need. And I think it's one of our experts, I think, has his expertise in this area so I think definitely this would be one, let's say, area that one person will definitely contribute a lot to our work. Thank you.

THOMAS RICKERT: Just to put your mind at ease, should we have more than 15 Stress Tests, we will make sure that the numbering is 15, 16, 17, 19, 20 and onwards. Next is David, please.

DAVID MCAULEY: Thank you, Thomas. I, too, have a question for Pedro.

First of all, Pedro, thank you for your lightning talk and thank you for your slides. My question, and I agree with Mathieu – it looks like the Stress Test – but under whatever term, when you

develop a scenario and then you subsequently develop alternatives, are the alternatives that you float, are they also subject to the scenarios or the Stress Test as well as they're considered? Thank you.

PEDRO IVO SILVA:

Yes. I think that all the alternatives that we come up with, I think definitely need to, let's say, comply with what we have agreed so far both in Work Stream 1 and let's say all the limitations and all the constraints we have agreed within the group. So I think that goes without saying that definitely there needs to be, let's say, subject to all those, let's say, concerns that we have expressed within the group and agreed that would represent real concerns for us. Yes.

THOMAS RICKERT:

Thanks very much. Alan?

ALAN GREENBERG:

Thank you. I just want to make a comment on something I think Paul said a very long time ago. I have now forgotten. That the implication of a change of jurisdiction with the Empowered Community that we have created, that indeed, at least as I understand it, if we were to consider a changed jurisdiction, we either need to find a construct comparable to what we're using

under California statutes or we need to redo the work again. Let's be candid about it. Thank you.

THOMAS RICKERT: Thanks Alan. Vidushi?

VIDUSHI MARDA: I'm from the Center for Internet and Society. I had a question with respect to the approach that you propose. And specifically, my question is how do you account for the fact that the draft new ICANN Bylaws implicitly assume that the jurisdiction will be in California? And I say that because there are repeated references to the California Civil Court, there are repeated references to entities that are only found in California, and I'd be interested to hear how you would fit that into your process. Thank you.

THOMAS RICKERT: Question for Pedro, right?

PEDRO IVO SILVA: Thank you, Vidushi, for the question. Again, I'd like to stress that we are not here, let's say, anticipating any results. And we are building on work that has been already done. This is very important to bear in mind.

And also, as Greg mentioned and hopefully, let's say, I made myself clear in the presentation, I think jurisdiction is a very multi-faceted issue. It's not about only the fact that ICANN is incorporated in California but has other aspects as well like the example I gave on the, let's say, governing law for contracts. So it's lots of issues that need to be first, let's say, filtered out, let's say, what is feasible, what is, let's say, can be done and what is a real concern. And then we should really cope with this, address those topics individually, case by case.

So it's important that we don't anticipate and then reconsider that jurisdiction is not only about the place of incorporation of ICANN but has many other aspects as well. Thank you.

THOMAS RICKERT: Thanks, Pedro. Sebastien?

SEBASTIEN BACHOLLET: Thank you very much. I would like to thank Elliott for enlightening no lightning talk. And I would like to support this questioning. I want to say that almost two years ago, seven and 41 days as Twitter says, I write a private mail to [Soto], tweet to our French government State Secretary for Digital and after she was talking about the need for a transfer of the ICANN headquarter and I was asking her if France, maybe Europe, but

you see where we are, can offer a specific statute to welcome organization like ours with multi-stakeholder organization and there is no such things existing under other jurisdictions and it could be interesting way to think about it. Thank you.

THOMAS RICKERT: Thanks, Sebastien. Jorge?

JORGE CANCIO: Hello. Good morning to everybody. I just wanted to go back perhaps to a more procedural level and also to state or to point out that in the two official, so to say, lightning talks we had, there are many common elements I think because if you look at what Jordan said and what Pedro has proposed, I think that's a good way to avoid talking about jurisdiction in general as a theoretical or a metaphysical issue, but to go into really what are the concerns, what are the problems. Perhaps they are perceived problems. Or to what extent they are real problems or not. For instance, in the Registry Agreement, we have different options already. But perhaps we need to boil that down even further and see, okay, is this enough? Are there still concerns from the community or not?

So I like very much that approach of, okay, let's talk about very specific things, but specific concerns, specific scenarios, these

different facets or aspects of jurisdiction as a whole, but stick to those specific issues and to have a fact-based approach with neutral objective expert support which may enlighten us on what are the real facts of these different scenarios.

And on that basis, perhaps we are able to have a discussion on what would be the requirements to address those concerns once we know whether these concerns are real or not or to what extent. And on those requirements, we may reach agreement or not already because that's less a fact-based issue but also a question of opinion. And then, the last step would, of course, be to make recommendations or perhaps on the level of agreement is lower. But perhaps, in any case, there might be some common ideas where we may nevertheless agree as a group.

And as a last point, I also wanted to share with you all that I very much agree with the idea and we have put this also to in different forums that we need to make sure that we have a diversity in the sub-group that will lead this work. We need to make sure that this group represents us as much as possible, the overall community. Thank you.

THOMAS RICKERT:

Thanks very much. Lyman?

LYMAN CHAPIN:

Thank you, yes. Lyman Chapin with SSAC. Wanted to make a point and ask a question that's related to something that Pedro just said, expanding on his lightning talk. Because of the role that I play in this group, I spend a lot of time explaining what the group is about to a bunch of other folks, in particular, the SSAC folks. And a concern I've got arises from that.

When we talk about jurisdiction, my sense is that as Pedro has said, we're talking about a variety of different things but they seem to be things that are of two types. There's jurisdiction that has to do with where ICANN is incorporated and the laws under which it operates and the way in which it might or might not be constrained in what it can legally do based on the jurisdiction in which it, itself, operates as a corporation.

That has a lot of aspects that, in my cases, most of the time that is spent talking about them is time spent by people who are not experts in the relevant law and we end up going down many, many rat holes when we have those kinds of discussions. We eventually manage. I think we've done a good job of crawling out of them eventually. But it's a painful process.

There is a very different set of issues surrounding jurisdiction when we use the term to refer to the jurisdiction that ICANN itself establishes as what amounts to a regulator in the domain name space. And I understand that the term "regulator" is

freighted in ways that make it probably not the right word to use and we shouldn't be talking about it as a regulator but, in fact, it operates that way.

So there are certain kinds of disputes that we expect will be brought to ICANN as opposed to some other body. There are disagreements between ICANN and other international and multinational organizations about who has jurisdiction over certain aspects of Internet behavior and Internet infrastructure. Those seem to me to be obviously related to the jurisdiction within which ICANN operates as an organization.

But ICANN establishes its own jurisdiction within which it expects that certain kinds of issues and contract disputes and other questions will be brought. And I'd be interested, in order to reflect this properly back to at least, in my case, the SSAC folks, it would be very useful to know if this Work Stream 2 topic is going to limit itself to just the issue of where should we incorporate ICANN or if we're also interested in how to establish the terms of jurisdiction for ICANN as what amounts to a regulatory body within the Internet ecosystem. Thanks.

THOMAS RICKERT:

Thanks, Lyman. We can for sure that this is not limited to the location of ICANN.

With respect to the other topic or whether or not ICANN should be a regulator, I think you rightfully pointed out that this is a term that is not used so much, so that's going to be up for discussion, but [may be] a little bit challenging.

You will remember that I had closed the queue after Farzaneh. She got disconnected as she wrote in the chat. She is now back online so we're now going to hear Farzaneh and I would like to ask those that have raised their hands afterwards to be patient. We might get back to the jurisdiction topic if and when we get Pril Corwin in the room for his lightning talk. But I would definitely like to keep some time for Niels's talk on human rights before we break. Farzaneh, please.

FARZANEH BADIEI:

Thank you. I am going to just make a comment on what Greg was posing as the government sanction, whether government sanction is a matter of jurisdiction, if we should talk about it.

I don't know if the group is going to decide that government sanction is a matter of jurisdiction. We are going to talk about it in jurisdiction. But I would like to say that as a matter, the case of the .IR that happened, it's brought up [inaudible].

THOMAS RICKERT: Audio should be back. Farzaneh, can you please restart your intervention?

FARZANEH BADIEI: Okay. So the case of the .IR brought a lot of uncertainty to Iran and Iranian users of their domain. And obviously, we have to have mechanisms in place to avoid that. ccTLDs and gTLDs are critical Internet resources. We also have sanctions against Iran and other countries for new gTLDs. Iran had to get an OFAC license to apply for. And when I say “Iran”, I do not mean the government of Iran. I mean people, private sector, NGOs. The ones that want to get a new gTLD have to get an OFAC license and that causes a lot of complications. If that’s not jurisdiction, what is it? If ICANN can be sued because it has not complied with a sanction law or a write-off attachment for attaching ccTLD to some people, so what is it? Okay, thank you.

THOMAS RICKERT: Thanks very much, Farzaneh. Let me try to recap a few points that have been mentioned. First of all, let’s confirm the scoping of the issue as mentioned in our Work Stream 1 report, and that refers primarily to the process for a settlement of disputes within ICANN involving the choice of jurisdiction and the applicable laws but not necessarily the location where ICANN is incorporated.

So we've acknowledged and we should go on record with that one more time that the jurisdiction issue should not be limited to the question of incorporation or location. In fact, you will remember that ICANN being incorporated as an organization in California is in articles of cessation and that has fundamental Bylaw status. So that's the status quo.

Also, for those that have been there when we discussed this early in Work Stream 1, we've always made very clear that we want an accountability framework that works. And we have been able to operationalize the Work Stream 1 recommendations under Californian law so we haven't seen any limitations to those requirements that the community established being operationalized.

And therefore, the other point that's been made was whether we should limit the jurisdiction discussion to points that would not revise or reopen the recommendations that we had in Work Stream 1.

Also, we should probably rethink the language that we're using because there's so much confusion about the word "jurisdiction" to be misunderstood for being location or place of incorporation only. So maybe we should just give it a different name in order to take away the potential for confusion.

Also, the idea of working on a requirements basis and then Stress Test that, although we might not use the word “stress test” in that regard. It could be a methodology that we could apply in this case.

So I would suggest that we leave it there for the moment. I’m sure that Phil, whom we’ve tried to reach out to join our work during the day so that we can come back to the jurisdiction topic for his lightning talk and a little bit more discussion. So with that, I’d like to thank you all for a very interesting kickoff of this debate on jurisdiction or whatever we might call it going forward. And now it’s Niels’s turn to do the first lightning talk on human rights. So Niels, would you like to join us at the top table so that you can better interact with the group?

Thanks very much, Pedro, for your lightning talk and responding to all the questions that were brought up.

NIELS TEN OEVER:

Thanks, Thomas. Great to see you all. We’ve come a long way. And we have done a lot of work since 1948, the year that the Universal Declaration of Human Rights drafted by a committee under lead of Eleanor Roosevelt was adopted by the UN General Assembly.

We have come a long way and have done a lot of work since the 2005 Tunis Agenda as it was formulated during the World Summit on Information Societies where it was first said we must protect and respect the provisions for privacy and freedom of expression as contained in the relevant parts of the Universal Declaration of Human Rights.

We have come an even longer way and we have done even more work since the NETmundial Declaration in 2014 which said that human rights are universal as reflected in the Universal Declaration of Human Rights and that they should underpin Internet governance principles. It also reaffirmed that the human rights that people have online must also be protected online.

We all know all too well the long way we have come and the work we have done since we started on Work Stream 1. Working through the human rights tax in Working Party 4, but also taking on the enormous opportunity of showing the world that multi-stakeholder governance works resulting in a consensus in the CCWG and approval by the NCIA.

So here we are now at the beginning of Work Stream 2 with a legacy and an opportunity. Our most important legacy being the human rights Bylaw, the commitment to respect human rights in the ICANN Bylaw and the true spirit of constructive discussion

and collaboration in a multi-stakeholder manner. Our opportunity being the development of a framework of interpretation to operationalize ICANN’s commitment to respect human rights and create a clear perspective on ICANN’s way forward to live up to this commitment.

In order to do so, we need to understand how ICANN impacts human rights. The Cross-Community Working Party on ICANN’s corporate and social responsibility to respect human rights has been doing some initial scoping to this end. And this slide, which is maybe a bit low resolution for here, you can also find at ICANNHumanRights.net.

Our scoping efforts included through research into the development of human rights. We looked at the UN guiding principles for business and human rights which have been implemented by large IT companies. And at the specific sector guide for the ICT sector as well as the latest report by the UN Special Rapporteur on freedom of expression, David Kaye, on the role of the private sector in the Digital Age.

Luckily, there have been people before us in ICANN who have been working on frameworks of interpretation, notably the CCNSO. We are drawing upon their work as well. So luckily, there is no need for us to reinvent the wheel or come up with exotic constructions. We do not need to develop a human rights policy

nor do we need to develop specific human rights instruments for ICANN. We just need to explain what is meant by the language in the Bylaw. That is the task at hand.

We cannot copy-paste an existing human rights instrument and apply it as a framework of interpretation for the human rights Bylaw. ICANN's unique mission, history and structure calls for development of a very specific approach, tailored to just its purpose. That is what we will be working on in the upcoming weeks and months. Our own deadlines urge us to ensure that this domain will not become years. When the framework of interpretation is done, ICANN and the ICANN community should have a clear road ahead to live up to its commitments and their core values.

We have a lot to build on. We can stand on the shoulders of giants, giants of the past and also present in the room right now. Together we can continue to band the long arc of history towards a rights-enabling Internet. With that said, let the work on the framework of interpretation commence and let's boldly go where no woman or man has gone before.

THOMAS RICKERT:

Thanks very much, Niels. And the previous slide, it actually looked like there's a very long way to go.

NIELS TEN OEVER: We go very fast.

THOMAS RICKERT: Are there any questions for Niels? Kavouss, I'm not sure whether that's an old hand or a new hand. Old hand? Mathieu has a question. Please.

MATHIEU WEILL: Yes, Niels. Thank you very much for this very lightning talk and very entertaining set of slides as well. Actually, that was the perfect set-up for the conversation.

My question is related to the human rights working party. I'm losing the names, but how do you see the interlink between the sub-group of the Work Stream 2 accountability and this existing group that I know you're very familiar with as well? How would you see this? Is it corporation? Is this actually the same people getting on board as well? I think we will need to be getting some clarity about roles and the responsibilities here to avoid duplication but also confusion about who is doing what.

NIELS TEN OEVER: So, of course, we do not want to duplicate. But we do want to ensure that there are synergies. And I think what is crucial to

remind ourselves of is that the Cross-Community Working Party is not a formal ICANN working body. We cannot make decisions there.

So we set it up to understand the scope and coordinate the issue and understand how it impacts our work here in Work Stream 2 but also in the PDPs, so see it more as a congregation of minds to map issues and to provide input and maybe some coordination. But the real work on Work Stream 2 is done here in the CCWG Work Stream 2 and in the Design Team. There should be no unclarity about that.

THOMAS RICKERT:

Actually, I do have a question for you as well, which is sort of a follow-up on what Mathieu's been asking. Just to get all of us on the same page, I understand that you've done a lot of ground work in analyzing what areas need to be looked at when looking at the impact of ICANN in the human rights arena.

So have you been looking at the different constituent parts of the ICANN community, i.e. GNSO, CCNSO policy making and the like, as well as the way ICANN the corporation functions, let's say with its label law aspects that might have a human rights aspect? Or do we get the holistic view with that analysis already so that we could take that and work through it to see what else is needed?

NIELS TEN OEVER: Well, it's only a holistic view if we together agree it's a holistic view. But we have done some initial scoping of the instruments with which we can look at things like different filters. So the UN guiding principles for business and human rights provide us with the instrument of a human rights impact assessment and we have been looking at initial steps for that. And I should very clearly indicate it is easier to do that impact assessment for ICANN the company than for the community and the policy making process. But we have been analyzing how this can be done and that is documented on the reports on the ICANNHumanRights.net website and I think those documents and reports could provide an input or a setting of the stage for the discussion in the design team.

THOMAS RICKERT: Thanks, Niels. Any more questions for Niels? So that's Greg. Greg, please go ahead.

GREG SHATAN: Thanks. I'm not sure if my hand is up because my connectivity got lost here. And I can present my thoughts here rather than having to do a whole lightning talk, especially because I have no terrible experiments gone wrong in trying to mate a

hummingbird with a car or anything like that. So I'd rather just take it from here.

I agree with a lot of what Niels has said and think it provides a very good platform for considering our work. It is important to note that we're putting together a framework of interpretation and not a framework of implementation for structures and documents. This is the platform upon which things like that will be built, sets the stage for other activities in years to come by ICANN and by ICANN structures like working groups and Cross-Community Working Groups.

I do think it's important to focus on the full panoply of human rights and not nearly cherry-pick. There was one mention along the way there of privacy and freedom of expression which I caution against us focusing on those and those alone. But rather, looking at the full panoply of human rights and how they all interact and what their effects are on what ICANN does. I think we lose some legitimacy and credibility if we try to narrow this in a way that kind of seems to meet the needs of certain groups as opposed to focusing on the concept of human rights.

I would also say that we need to look to all prior inputs including inputs from any stakeholder group. As Niels noted, the Cross Community Working Party on Human Rights is an informal group not chartered by any organization, is basically a GNSO

NCSG activity with some others pitching in. So inputs need to be taken as such. So we don't want to redo work, but on the other hand, we can't just adopt work without the group itself, as Niels noted, deciding how to adopt it, how to work with it. Anything we can do to work relatively quickly because I think if we avoid mission [creed], we get this done in the time it needs to get done, then we have an active Bylaw and we can work with it as such. If we get stuck in rat holes or other such places, we're doing nobody any favors because we don't get to where we go until we get a framework that is broadly agreed. Thank you.

THOMAS RICKERT: Thanks very much, Greg. Greg, you have volunteered to do a lightning talk. I understand this was your lightning talk or shall we reserve more time for you?

GREG SHATAN: No, that was it. As I said, I don't have any good slides. I don't have any good jokes, so this is as good as I'll get. Thanks.

THOMAS RICKERT: No, it was great actually. I just wanted to make sure in terms of time requirements that we don't bite into our coffee break. So Niels, would you like to respond to that?

NIELS TEN OEVER: Yeah, I can happily say that I agree with Greg and I think also as in quite a lot of work has been going into the visualization you just saw of the different processes, how they link up to rights. And part of what's mentioned there are the human rights principles and [inaudible] also said that human rights are interrelated, universal, and interdependent. So as we have said in Working Party 4, we cannot cherry-pick human rights. We need to understand how the whole framework works and how we balance the different rights. And for that, we need to come up with a method. But luckily, we can draw upon experience. We do not need to reinvent the wheel. So I am greatly looking forward to working with you all on this.

THOMAS RICKERT: Thanks very much, Niels. Anymore questions? I was disconnected from the Adobe. So Mark, please.

MARK CARVELL: Yes, thank you. Good morning, everybody, and thank you, Niels, for that lightning introduction. That was very entertaining and I think very much to the point and the purpose of this particular topic.

And sorry, introduction, Mark Carvell, United Kingdom government. I'm one of the co-Chairs of the GAC Working Group on Human Rights and very much in the spirit of providing timely inputs into this process for this sub-group, the GAC Working Group will be discussing at this meeting here in Helsinki how we should prioritize the framework interpretation for the human rights Bylaw as in our action plan so that we hit the ground running, we can get inputs from governments in consultation with the informal Cross-Community Working Party and within the structure of the sub-group for this topic. So we will hit the ground running, I hope, and we will hopefully get to the core issues in a very timely and efficient way. I hope that's helpful. Thank you.

THOMAS RICKERT: Thanks so much. That's very encouraging. Just to let you know, the queue is closed after Brett. But now let's move to Tatiana, Kavouss, and then Brett.

TATIANA TROPINA: Thanks to Niels and Greg for very good talks. And I wanted to address one point which Greg raised and which I totally agree with. Though I'm a part of Cross Community Working Group, I believe that these two, the Work Stream 2 Group on Human Rights and Cross Community Working Group shall be separated

because this exercise on developing our framework of interpretation shall be the exercise of Cross-Community Working Group. Of course, some people would be in two groups but I believe that Cross-Community Working Party on Human Rights, we are analyzing different spectrum of issues, not only related to Work Stream 2 and we are just coming to the CCWG accountability with our knowledge.

But I believe that we don't own anything and, of course, we do not want to duplicate the job. But we also don't want to, you know, promote only our views or our ideas and I totally agree with Greg that if it's NCUC or non-commercial dominated, yes, it has to be taken as such and just one point of view, just one aspect. So I believe that there is no duplication and these two shall be separated but, of course, there is some synergy in that. Thanks.

THOMAS RICKERT: Thanks very much, Tatiana. Kavouss?

KAVOUSS ARASTEH: Yes. I think it is good to have so many brilliant people with brilliant ideas. Good to listen to all of them, but we have limited time and we have to see what are possible to do and what is manageable to do within the timeframe mentioned by Mathieu

at the beginning of the meeting. We should not convert CCWG to an institute of research for human rights nor an institute of research for jurisdiction. Two people mentioned before me that we have to find or identify areas we have problems and try to see whether we have any solution for those problems only. Thank you.

THOMAS RICKERT: Thanks very much, Kavouss. Brett?

BRETT SCHAEFER: Thank you. I'm looking over the chart. It's a very interesting chart. I do notice a bit of a discrepancy here. You go from very specific to very broad. For instance, there's a right to privacy, a right to freedom of association and then there's a group of rights called economic, social and cultural rights. Then at the bottom, you have participation, inclusion, equality, non-discrimination. These are very broad categories and they contrast quite sharply with the very defined rights that you've identified in other parts of this document. The more that you define what we're talking about, I think the more successful we're going to be in trying to figure out where the end result is going to arrive.

I also note that some of the discussions here – for instance, free and fair use of all domain names, the right to use all words and

names in domain names – that’s also being covered in some other working groups. How are you looking to coordinate with those ongoing efforts in your process so as not to preclude the conclusions of those other working groups? Thanks.

THOMAS RICKERT: Yes?

NIELS TEN OEVER: So actually, this was exactly done to ensure that we will not start to do the work of other parts of the community here. But we should be very aware of the impact ICANN has on human rights, the work that’s going on in other parts of the community to ensure that we do not duplicate and also to ensure that there will be no incongruencies with different parts. So I think what is important is first to have the high level overview of what’s going on where, so starting with the scoping and the mapping. But then also really quickly going back to make it really narrow what is the scope in Work Stream 2 because it is not the development of a policy. It’s explaining what we meant with the Bylaw, the framework of interpretation, nothing more, nothing less.

So I think based on that and based on your remarks which I completely agree, we should have it clear what’s going on outside and what we should be doing on our part.

THOMAS RICKERT: Thanks very much, Niels. Now before we break for coffee, let's just briefly recap. I guess it's become clear that human rights is a very broad topic, that we need to stay focused on all the aspects that are relevant to ICANN. We should, as much as we can, build on previous work, recognizing that the other working group has its distinct scope and that it may only be partially usable for our purposes.

Our job is to come up with recommendations that feed into language for a framework of interpretation and not a framework of implementation as Greg put it. And we should, therefore, avoid mission [creed], particularly given the time that we have available for accomplishing this task.

So I guess that with that, we should break for coffee. Thank you to the remote participants as well. Should you have questions, we will go back to you after the coffee break so that you can make interventions that you would like to make. And let's reconvene in 15 minutes. Thank you. Thanks to Niels.

[BREAK]

Hello? This is a two-minute warning so we're going to reconvene in two minutes. Please be seated.

Is Siva in the room? Siva? If Siva is in the room, we would like to invite you to the table so that we can hear your lightning talk from here. Now the audio for the whole room is working. That's great. So we will start in a few seconds. If Siva is in the room, Siva, can you please come to the top table for your lightning talk? So please be seated. We will start momentarily.

LEON FELIPE SANCHEZ AMBIA: All right. So welcome back. We'll continue with the lightning talks now. We had scheduled for Sivasubramanian to speak on guidelines for standards of conduct. But I don't see Siva in the room nor in the Adobe Connect room. So I guess we need to move on and, therefore, the next lightning talk will be provided by Cheryl Landon-Orr on Diversity.

And may I remind you to please mute your speakers and your computers. Cheryl, you have the floor.

CHERYL LANDON-ORR: Thank you very much, Leon. I'm the token female other than the staff here at the table. Interesting – isn't it? – when we're talking about diversity. I couldn't help myself saying that. I also thought it was amusing that when we looked at the three people to talk about diversity, we had two French males and me. But that's

strange. That's fine. Do go on, please. Take the floor, Sebastien. We can interrupt. No? Okay, well when we get to Q&A.

Why I'm saying that tongue in cheek is while most of us, I trust, would agree that diversity matters and in ICANN what we mean by diversity, first of all, needs to be defined and discussed and agreed upon. It's not actually as simple as it seems. Aspirational work, aspirational goals, concepts and matters upon which we would like to see the outcomes of the diversity are probably, one would think, fairly easy and perhaps even a mathematical formula that we can look at. Yeah, something along equitable lines.

So if you have a particular leadership team, let us assume I could use the At-Large Advisory Committee as an example. We have 15 people who serve in ICANN in this role of the At-Large Advisory Committee and they are by design, for example, geographically balanced. The committee had the good luck and benefit of being designed to have equitable representation from the geographic regions as ICANN defines geographic regions.

But there are still other matters of diversity that need to be addressed. Historically, we've waxed and waned around unequitable balance between the genders. We often have almost a two-third, one-third ratio. But that very rarely has

survived more than a 12- to 18-month term. So there seems to be almost a natural selection thing that is happening.

But part of that is because of how that particular group is appointed. For each of the five regions – and I’m taking you through this example somewhat laboriously because it’s hopefully going to show you we need to have a deep conversation and come to agreed terms because it’s not as simple as it first sounds. For these five regions, two members of the At-Large Advisory Committee are appointed by the leadership and membership of the geographic region as identified as At-Large Structures and Regional At-Large Organizations. So they are coming from our own, ourselves, our obviously interested individuals.

The third comes from a Nominating Committee appointment. All of these roles are two year terms and they are staggered so that different regions are refreshed, one year on, one year off, and the Nominating Committee also does its refresh rates in a simple way.

That rebalancing of gender that I described to you has almost always – in fact, I would suggest has always come to the NomCom to fix. Now that’s a concern. Right? We really shouldn’t be looking at having efforts to make particular diversity balances appointed and then some other group having to only

appoint people from emerging and developing economies or only appoint people from a particular gender or only appoint people from a particular geographic location because that's all that's left in the slots.

That worries me deeply because what I want to see in our diversity puddle in an efficient and successful and energetic entity where we are looking at the variety of voice that we want to look at, want to engage with and we want to discuss, is actually a system where expertise does come into play, experience does come into play, but there is a clear and absolute commitment to making sure we build up, support, nurture, and bring more people with greater diversity backgrounds to the level of experiences that are needed.

We should have, as is happening in the Scandic Park Hotel for the first time here today. We have the Next Generation Network Group, we have the Fellowship Group, and we have a mentoring program which is looking at an onboarding and support system in each of the component parts of ICANN for people who wish to take on greater roles and have greater influence in those sections. Now, that's the type of thing that I think will create a greater grouping, a greater number, and a greater diversity in those we get to appoint and choose from these critical roles.

Diversity is a hot topic. But each part of ICANN is very likely to have very specific greater and lesser interests in what they are calling diversity. The ccNSO community, as an example, one of their key diversities is already in the ccNSO member base and making sure there is a balance with the non-ccNSO member base. So their interests in appointments and consideration of who is sent to do what sort of jobs often has to consider, “Do we have not just ccNSO members here but do we also have ccNSO operators who are not members here as well?” That’s a vital piece of diversity to them and should, and probably always will, trump other diversity interests.

So when we do our conversation on our diversity work, we are going to have to look at some agreed interpretations on what it means for each of our component parts. We’re going to have to look at what is desirable, what’s possible, and what’s actually implementable, and how we may need to start some baseline work to make sure that the quality and diversity of people we have to pull on to do these jobs is representation as we would like to see it. And I suspect that is balanced and allowing a time and a place for all voices to be facilitated. That’s it from me.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Cheryl. Now I would like to open the floor for comments or questions on this particular lightning

talk. And I see Alan Greenberg’s hand is up so Alan, could you please take the floor?

ALAN GREENBERG:

Thank you. Cheryl, I think you ended with something that’s really important. As important as diversity is in selecting people for particular roles, the pool we have to select from is really the core issue.

In any given selection, each of us have a responsibility to the group representing to pick someone who is going to do a really, really good job on our behalf whether it’s the NomCom picking people for a position or At-Large picking someone for a CCWG.

We’ve all seen examples of selections that worked less optimally than we have imagined and whether those selections were made for diversity reasons or other [ill] something reasons, it doesn’t really matter. But the pool is what we have to work with and until we have a decent pool in many of our areas where we don’t right now, we’re never going to do a good job and it is not fair to the individual organizations to be told, “You must satisfy diversity rules” when that implies to them they might not be serving themselves very well by picking the wrong candidate. So it comes down to the overall pool and ICANN attracting people, not just the individual sub-groups. Thank you.

CHERYL LANDON-ORR: Alan, if I may, that's something that has resonated with the work that has been done in the Nominating Committee for a couple of years now where there has been – let's just talk about one aspect of diversity here – gender diversity, where there has been an intentional outreach program by the Nominating Committee over several years to engage with various women on board in leadership of women groups internationally to get more people to put in their applications. And if you look at the statistics that are published each year, which I know is hardly the most exciting bedtime reading, but what the Nominating Committee does put out is interesting and those interested in metrics and analyzing things should be able to see over the years significant improvement.

Of course, it's significant improvement in the number of applications received. We're getting better in that balance. What's not happening is once the first triaging is done, we drop just rapidly the gender diversity. So when it comes to interview, we may, in fact, have a highly imbalanced set of people to appoint from. So that's where we need to get what's coming in, what's being filtered through, what is being successful. That all needs to improve.

There's a light at the end of the tunnel. I don't think it's going to happen. But it doesn't happen with the flip of a switch. Very strong bits of work are being done to improve that. That's just in one place.

But because you've got your regional diversity on, for example, the ICANN board, you may have three wonderful women that interview, but if they all come from a particular geographic region, which doesn't have a place to put them on the board, it's a problem. You can only appoint one if there's only one space. So even getting through such a situation as the Nominating Committee process doesn't necessarily mean that the appointments will be able to match with the talent pool.

Go ahead, Alan.

ALAN GREENBERG:

Just a one sentence follow-on. As long as we're not going to lower our standards to meet the needs of diversity, I'm happy with it. It's unfortunate that what you describe is what's being seen. But standards are really important. Thank you.

LEON FELIPE SANCHEZ AMBIA:

Thank you, Alan. I'm closing the queue with Avri. So I'd like to encourage everyone to be as concrete as possible. Next on the queue, I have James Gannon. James?

JAMES GANNON: Thanks, Leon. So Cheryl, I totally agree with you.

CHERYL LANDON-ORR: I hope you do.

JAMES GANNON: I know. So I think you've made the point in a very, very intelligent way. I don't think the problem here is gender quotas or diversity quotas. I think the problem with diversity at ICANN is that we don't attract a large enough pool of people. And I think that's, being brutally honest, I think that's a failure of every one of us here. I don't think we've made enough effort in that area. You know, I think that there is no argument that there are people from every region on the Earth and from every potential gender on the Earth out there with the skills and the experience that we need in this room and we need on every single working group in ICANN.

One of the things we talk about is all of our volunteer burnout, and that's linked into the same thing: we're not attracting a wide enough and varied enough talent pool. While I don't think it necessarily comes very easily from just having a wider pool, I think we need to be bringing people in from a wider range of

backgrounds and a wider range of experience, and we need to show them how ICANN works.

As somebody who came into ICANN I suppose relatively recently compared to many others, we're terrible at it. You know, you get people and they arrive at Fellowship, they arrive at NextGen, and even in those, which are targeted programs to bring people in, we have massive attrition rates. You know, we need to look at how we are bringing people in, we need to look at how we are cultivating that talent which is out there, and from that, we can then have a pool of people with which to build our diversity.

Because as Alan said – and I thought his last point was very good, diversity for diversity's sake and losing talent because of that, if we have people who we want to put onto ALAC, we want to put onto GNSO Council, we want to put onto the Board, and we're losing those people because of diversity quotas, that's something that I don't agree with, because then we're losing people that we need in ICANN. We need to build on what we have, we need a lot of work in that area. I don't think it necessarily falls to just ICANN to do that.

I saw Jean Jacques downstairs, I think GSE, they look at a wide range of people there. They're not targeting anybody in particular.

I think it's the ICANN community that needs to do that, particularly those such as yourself, who have been around here for a long time. We need to look at how when we bring people into ICANN, how we keep them here. We have lots of people who show up to an ICANN meeting and never show up to one after that ever again. We need to work out how to fix that. I think that's one of the key things to increasing the diversity that we need within the organization.

CHERYL LANGDON-ORR: If I may, James, even I agree absolutely, so this is a watershed moment, ladies and gentlemen. James and I agree absolutely on something, and that's not a bad thing, but we are fixing and remodeling this airplane while we're flying it, so we need to watch how we implement and how we focus on things in a very planned and able to be actively and intelligently pursued. Just bringing in models and aspirational things may not necessarily be the answer.

LEON FELIPE SANCHEZ AMBIA: Thank you very much James and Cheryl. Next on the queue, I have Kavouss.

KAVOUSS ARASTEH: Yes, thank you. Diversity has many, many dimensions and so on, so forth. The first and top and the most important, gender diversity. Gender balance, gender equality, no one is against that. It is internationally agreed, and in fact, there's no one who dare to be acting against that. Otherwise, there's no [Tinder] at all. Or there is a problem, so people agree with that.

But the other issue is how to implement that. Not gender balance, how to implement the diversity. What are the criterias? Contributions, expertise, devotions, geographical distributions and so on and so forth. Could they have one criteria to apply? Could we have a combined criteria to apply?

This is a difficulty. This is something that people facing since many, many years. At least I'm facing this since I don't know how many years. I can't tell you, but the problem is known. And sometimes, availability. You don't have available person. What you do? Region, what are the regions? There is no agreed definition of the regions. ICANN have their regions, UN have their regions, X has their regions and so on and so forth. Sometimes, a few countries have a region, and one seven to 80 countries another region.

How you could have a balance between the two? I'll use an example, Asia pacific. 75 countries or territories. Some other, 20 or less. How you could say there's regional distribution, regional

balance if it's very difficult? So we have to find criteria, and we have to know how to implement and how to apply that. But availability, contributions, devotions, expertise, qualifications is all of the important issues, and we have to find a compromise between all of these. If we can't find, good luck. Thank you.

CHERYL LANGDON-ORR: Well, I hope it isn't just luck, Kavouss. I hope that the conversation which you have outlined quite admirably there, with the exception of the dinner arrangements, will certainly be the basis for some of – I think – our discussions and healthy debate in our work in this work stream activity.

LEON FELIPE SANCHEZ AMBIA: Thanks, Cheryl. I just want to remind those who are in the queue that I have closed the queue after Avri, so that we can, of course, take advantage of the time and better use the time that we have allocated for this line of talks. I will close the queue with Avri, and next on the queue, I have Malcolm Hutty.

MALCOLM HUTTY: Thank you, Leon, and thank you Cheryl for your presentation. I'm glad that this is focusing on outreach and inclusion and development, and that people are alive to the dangers of focusing on promoting certain demographic groups at the

expense of the skills, knowledge and expertise and backgrounds that is needed to drive ICANN's work forward. I think that there is a real danger in using coded language here that conceals what is really being asked for.

When we talk about diversity, if we're simply meaning increased female participation rates, get more people from Africa and something like that, we are narrowing the debate enormously. And when we mean those things but refuse to say them out loud, that makes it even worse, because it prevents us from having a proper, open discussion about it. In particular, there are other aspects of diversity that I – when I supported the creation of this subgroup – really hoped that would be considered here.

Diversity as relating to the interests and concerns and viewpoints of different types of people, whether that's in terms of things like technical skills and that sort of thing – okay, let me give a couple of examples. These are just random examples, but to give you an illustration. If there's a discussion on intellectual property enforcement matters within ICANN and it doesn't have a balance of people from intellectual property holding interests, those that might be accused of breaching people's intellectual property rights and those that are intermediaries responsible for dealing with those issues, if a group that is coming up with issues on that doesn't have a good balance between those, then

it is likely to fail. It is not likely to have legitimacy, and the reason for that is a lack of diversity in there.

If [inaudible] diversity consideration does not give proper space to consider those sorts of issues, then we will really be missing out, so I really hope that there's focus on that. It's not the only example. When it comes to human rights, I want to make sure that the intellectually property people are properly represented in the human rights area. When it comes to ccNSO type things, if it were all countries from one region of the world or all large countries rather than small countries or whatever it might be, that would compromise the quality of the work for lack of diversity not based around demographic groups, so we need to focus on that.

To be honest, I don't care, when we're having a discussion about a matter that matters to me, what hangs between the legs of the person who's representing me or what their skin color is. What I care about is whether they come from a background that represents my interests, and that I think is much more important. We need to be a little more committers to the idea of the meritocratic idea, making sure that ICANN's people are selected according to what will drive ICANN's work forward and what will give proper and be seen as being legitimate representation that all points of view are being considered.

If we fail to ensure that certain parts of the world or whatever have adequate access to this, then we will fail for that ground, so we should do outreach work on that thing, but not only for parts of the world or genders or whatever, but also for interest groups as well, and these things need to be considered alongside each other. Thank you.

CHERYL LANGDON-ORR: Thank you, Malcolm, and you've identified something really important. It's so natural for people to only think gender and geography. That's the top of the pile stuff, it comes off first. There is so much more to it from economic development status to all sorts of other things, and it may indeed change and should necessarily change to be fit for purpose for whatever activity we're doing. This is where we probably need to have some very interesting and probably very tense discussions during this working group activity in the near future.

But what I found exciting when I was sharing a little bit of time with the outreaching of the three groups working together, the Fellowship, the onboarding and the NextGen is more countries represented by those people than I have ever seen before, from spaces that we have not traditionally had a lot of inclusion. So that in itself gives me a great deal of hope.

There was a lot of Central European countries with people there today. That's nice, that's important. There'll be times when their contribution is even more essential than at other times, but we need those people in the puddle to begin with. Who's next?

LEON FELIPE SANCHEZ AMBIA: Thanks Cheryl, thanks Malcolm. Next on the queue, I have Sonigitu Ekpe.

SONIGITU EKPE

Thank you. I think following on Markus's discussion, I think it's really great that we have people that are really very intelligent in areas you want to work on, but then there should be a deliberate effort to enable new skills to be acquired, especially for those in the informal economy. You'll find out that the world is currently moving at a very fast pace, but the citizens are not moving likewise, especially in Africa. We are struggling to have national unity, so we need to come out from the informal sector to the formal sector before we get to the digital, and this can only be done through learning. So we need more mentoring. If you mentor us, of course, definitely learning by doing will bring about the expertise. Thank you.

CHERYL LANGDON-ORR: Thank you, Sonigitu, and as you know, many of us in this room are committed to making that happen in ICANN, so hopefully it's something that we will be able to say we have achieved at the end of Work Stream 2, at least a plan for it, if not action.

LEON FELIPE SANCHEZ AMBIA: Thanks, Cheryl. Last on the queue is Avri.

AVRI DORIA: Thank you. First of all, I want to thank people that have started this discussion, because I've sort of been in a humdrum mode this morning, and finally, people said something that made my blood boil, and I quite appreciate it. And I want to argue for diversity for diversity's sake. I think those who speak against diversity for diversity's sake don't know what they're talking about. Talking about lowering standards for diversity is insulting. Talking about lowering skills for diversity is insulting. It misses the point, that diversity brings in difference of perception. It looks at the world differently, so when the white person with the dangly parts is judging who is skilled and who is not, they may be missing the perceptual basis for even understanding the skills that are needed.

So I just want to – really, it does make my blood boil every time I hear it. Even when I say it myself, it makes my blood boil. So we

are ignoring that when we are ignoring that difference. We need the cultural differences. We need the gender differences. We need the sexual orientation differences.

We need all of those perceptual bases that define how human behavior and how human societies organize themselves in order to be skilled in the policies we are talking about. Without it, we are just technicians doing a number, or just playing with statistics.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Avri.

CHERYL LANGDON-ORR: Avri, you know I love it when we have a good debate, but also I assume it doesn't make your blood boil when you hear that we should be working together to have a commitment to ensure that we do upskill, that we do promote, that we do mentor, that we do support and we do enable diversity, because as I said at the very beginning of my intervention, diversity does matter. Diversity matters, so it shouldn't be a discussion about lowering, it should be a discussion about ensuring that we have the diversity and enabled as many people who can contribute to contribute effectively.

AVRI DORIA: I guess, but I think the mixture we have now is not even sufficiently diverse to recognize the skills that are needed.

CHERYL LANGDON-ORR: Well, we can but try.

LEON FELIPE SANCHEZ AMBIA: Thank you both ladies for this debate. Thank you very much Cheryl for this lightning talk. Next on the lightning talks is [Dalila] [inaudible]. I see that some hands remain up in the AC room, and I also note that there were some hands in the AC room like Sebastien's, we'll be able to come back to you after [Dalila's] talk on diversity. So [Dalila,] the floor is yours.

[DALILA]: Hi, thank you for giving me the floor. So this question, diversity is very important for the ICANN, but also for all the users all over the world. It's not only an ICANN question, okay?

First of all, why diversity is important. At the end of the '90s, the majority of the Internet users lived in the developed countries, mostly in North America. Now, more than two thirds of Internet users are from developing countries, and this number is increasing in the coming years, and the majority of the Internet

users will live in Asia, in Africa, in South America, and consequently, these users are non-native English speakers.

However, the ICANN leadership does not reflect this diversity of Internet, because 40% of the ICANN community leaders come from North America, and more than 62% are native English speakers.

LEON FELIPE SANCHEZ AMBIA: Move a few centimeters from the microphone, it is distorting.

[DALILA]: Yes, okay. Now, it's okay? Yes, it's better. Sorry.

Women represent only 26% of the ICANN community leaders, and 80% of the ICANN community leaders come from the technical community and the private sector, while civil society and government each account for only 10%.

So today, ICANN should embrace and reflect the diversity of Internet users across the world. But what is the criteria? That is a good question, Kavouss. I think we need a multidimensional approach.

First criteria, the geographical origin that should be based on regional analysis as well as on a per-country analysis.

Second criteria, the main languages. All languages shall be represented in the ICANN leadership, and better balance between the seven official languages of the ICANN too.

The gender equality, of course. As I said, the women are only 26% of the ICANN community leader, and I think that two other criteria are important. First of all, the stakeholder criteria, to have a better balance between the stakeholders group and the ICANN, and the second criteria, which is the openness of the ICANN to find a better balance between the insiders and the outsiders in the ICANN [inaudible].

That's why I think the first step is not to implement the diversity, but to – for example – create an office of diversity and inclusion in the ICANN, where this office will be in charge of two things. First, gathering and analyzing the data regarding diversity within the ICANN with these six criteria, and make a report to propose concrete proposal to enhance diversity in the ICANN. Just very quick, I think that diversity and skills are not opposed. You have a lot of persons of diverse origin that are also competent within the ICANN issue. Thank you very much.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, [Dalila]. Are there any questions or comments in regard to [Dalila's] lightning talk? Cheryl.

CHERYL LANGDON-ORR: Thank you, [Dalila], and I really do appreciate how you identified the diversity of the diversities we need to look at. And language diversity is extremely important, but different parts of ICANN have approached it and have greater or lesser success in how it operates in a more multilingual way. We have now got the Language Services Office within the ICANN structure, and there's a professional recognition of the importance of the services that we use, both interpretation and translation.

As someone who only speaks Australian, so I don't even speak the English language, I've certainly been a strong supporter of having as what the At-Large community has benefited on, from so many years of real time telephonic meetings that are run in up to four or five languages. So we run our monthly meetings with Russian, with Chinese, with French, with Spanish interpretation and an English channel. So there really isn't a technological excuse for not doing better, and I think we need to recognize that we have an opportunity with ICANN, because it has already made some significant contributions and commitments to this general area to build a better model.

So it would be very exciting to see how we can work with that conversation during our Work Stream 2, so let's put a pin in that and make sure that it's taken as a piece or subwork of specific

importance. We will probably always have one dominant, agreed language for some level. It seems reasonable, for example, that the Latin American and Caribbean should work in languages that are primarily comfortable for them, and the African community gets to work in languages that are comfortable for them.

And of course, in Asia Pacific, because we've got in excess of 58 plus – without even looking at dialects – languages, we've generally decided we'll stick with English, because it's just too great a diversity to deal with at this stage. But that doesn't mean that outreach and activities in local language isn't an absolute essential, so let's make sure that stays part of our agenda. Thank you.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Avri. I have three persons on the queue, and then Elliot last on the queue, so I'm closing the queue with Elliot, because we are running out of time. Next on the queue is Alan Greenberg, and please try to keep it as concrete as possible.

ALAN GREENBERG: As usual, I will point out the last speaker was Cheryl, not Avri though.

CHERYL LANGDON-ORR: Oh, we're always confused with she and I.

ALAN GREENBERG: I'm going to follow on Cheryl. Language diversity is one of the relatively few ones which comes with a large price tag. It's not the only one, but it's one of the few ones that come with a large price tag. ICANN has – on a regular basis over the last years – said “It's too expensive, we won't do it.” I'm talking about both written and verbal translation, interpretation. As we try to expand and address that level of diversity, there is going to be a price tag on it, and let's not pretend there isn't, and let's face it head-on.

There are other price tags. Using simultaneous interpretation on teleconferences slows down the conference. It slows down the effectiveness on it. That may or may not be a reasonable price to pay, but let's not pretend that it isn't there. We have to be honest with these things if we're going to address them. Thank you.

LEON FELIPE SANCHEZ AMBIA: Thanks, Alan. Next on the queue is Jonathan.

JONATHAN ZUCK:

Thanks, Leon. I just got off a red eye, so I'll try to tread carefully and not make anyone's blood boil before lunch. Some sort of blood soup, I guess, but I guess a couple of things come to mind on this topic. The first is about lowering standards for diversity. I have to confess, I was really unaware that we had standards to begin with, and as I look at some of the policies that have come out of the organization, it feels as though the standard could only go up.

But I take that as it was intended. I guess my concern though is still related, and it's not so much about lowering standards, it's about chasing our tails around diversity and trying to find a balance, maybe about productivity and diversity, and finding how to build a parallel track. I guess one of the things I want to raise is the people that we serve is where we probably want to explore the greatest need for diversity.

In other words, the people that are able to participate in the programs that we've put in place, the applications for new gTLDs, whether it's IDNs, etc., people being able to register, being able to protect themselves from online fraud and DNS abuse, and just sort of participation in the DNS feels like the area where we ought to be focusing our diversity efforts, more so than making sure that every working group we have is diverse.

Now, there may be instances in which increasing diversity of a working group helps with that problem, but we ought to be overt about that and look at a diversity problem sort of out in the world, outside of the verified air of ICANN meetings, and seeing if bringing more voices into a particular discussion can help address some diversity deficiencies that we see out in the world that we attempt to serve. I want to make sure that we keep the people we serve in mind, and not always be so sort of focused on ourselves and be myopic organizationally. Thanks.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Jonathan. Next on the queue, I have Kavouss.

KAVOUSS ARASTEH: Yes. [Dalila,] thank you very much. You started to talk about some criteria. I want to mention something, that sometimes you are able to know to identify a diversity [self] criteria, but political environment prevents to implement that criteria. Thank you.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Kavouss. Last on the queue is Elliot Noss. Elliot?

ELLIOT NOSS:

Thank you. [Dalila,] I wanted to comment just on your reference to a leadership of SOs and the lack of government involvement. I think it's important that we remember the particular history of governments and ICANN where, for many years, governments chose actively to stay outside of the ICANN process, and even now with much more government involvement – which, by the way, I think is a great thing and very positive about governments being more active in the policy setting – it still is government speaking as one voice typically through the GAC, and we're only at the very onset of people who are coming from government actually taking active roles in the policy setting process.

I think we're probably still years away from government representatives actually coming into the process and just participating almost as individual actors with that being their background, which is really the way that people from the business or technical or legal communities typically act, so I think – I'd love to see a world where there is more of that, but I think there's got to be a continued evolution, and that we need remember the history when measuring that. Thank you.

LEON FELIPE SANCHEZ AMBIA:

Thank you very much, Elliot. I realize that Fiona's hand is up, but I had closed the queue with Elliot, so I would like to invite you, Fiona, to make your contribution after Mathieu's

presentation. So thank you very much, Dalila, for your presentation, and now I would like to hand over the floor to my co-Chair, Mathieu.

MATTHEW WEILL: Sorry. Thank you.

[DALILA]: So concerning the effort of translation, there are a lot of efforts, but for example today, we have one option: to speak in English. We cannot speak in French, it's my mother tongue. We cannot speak in Spanish, in Portuguese, and in the working group, the main language is English, but the Internet users are not all native English, so it is a very concrete example.

For the criteria, I think it is an open list. It was just six criteria to design a framework on the definition of diversity, but we can – and the Office of Diversity and Inclusion is a group to define more precisely what is diversity. It was just some guidelines.

LEON FELIPE SANCHEZ AMBIA: Thanks, Dalila. Now, the turn for Mathieu's lightning talk.

MATHIEU WEILL: Thank you very much, León, and thank you Cheryl and [Dalila] for their talks on diversity. I feel a little bit awkward as a co-chair

to give a lightning talk, but that's an issue that's quite dear to me from my perspective on what ICANN needs to be doing, and once I'm done, I'm going to tell you my real point of view on these things.

Yes, now we're back. Good.

I think that addresses part of the discussion we're starting to have – I think that diversity is not an option. It is neither a secondary requirement, it is a priority.

And the reason is in our report on Work Stream 1 – and if we can get to the next slide – and it's been captured at the insistence of the public expert group experts, who were unanimous that there was a problem with diversity in ICANN, and that this problem was actually having effects on ICANN's reputation, legitimacy, credibility, and probably quality of policymaking, because maximum participation, transparent deliberations of all the stakeholders concerned, and as [Dalila] rightfully said, all the stakeholders, most of them don't speak English, most of them are not represented in this room and I certainly don't represent them, but it's needed to reflect the diversity of the point of views, because we are a multi-stakeholder model, and the basis of a multi-stakeholder model should be that all stakeholders are represented in the discussion, and it is more important than skills or expertise.

So, where do we stand? Because we also need to recognize where we stand now in this respect.

Next slide, please.

That was the exercise I've been doing with a few folks about looking at a set of 190 what I call ICANN community leaders, so not focusing on a specific group, because yes, focusing on a specific group is too short of a dataset, but on the wider leadership of ICANN. The people we select to represent us and that actually make most of the decisions that influence the policies, but also our culture.

And that includes the CCWG accountability members, by the way. Eat your own dog food and look at yourself. So the next slide, I go quickly on this. So North America, really strong. Africa, Latin America and certain parts of Asia Pacific, very low. Asia Pacific representation is mostly focused on Australia and New Zealand, and that's obviously an issue, just like European representation is mostly focused on Western Europe, and that's an issue as well.

The next slide, please.

English speakers, tremendously dominant, and in some areas, you could also see on the same graph that the North American regions in the GNSO for instance is extremely present, to the

point where if it was in other regions, I'm sure some of us would start speaking about the risk of capture. So diversity is also an issue for preventing capture, which is at the core of our accountability group, isn't it?

So native English speakers is – I mean, look at the people speaking on our mailing lists, most of the most local ones are usually native English speakers, or very fluent English speakers, and that has an impact on the way discussions are shaped, take form and decisions are made.

And there are ways to address that. I'm not going to get into that. The next slide, please.

Gender balance. Well, SSAC, RSOC and even the NomCom – I'm only speaking in terms of comparison with the rest of ICANN, but [inaudible] there's something wrong. Can I place a request to the ombudsman for being censored? Okay, so there's no reason not to have more women. There are a lot of qualified women even in the technical fields, in SSAC or root servers, and I'm not even speaking about the NomCom. The next slide, please.

So a few thoughts. If you look at the regional balance, you will see that everywhere when there is a Bylaw requirement, it works. When there is not, it's imbalanced. Food for thought.

We also need to make sure to recognize that we tend to value fluency in English over skills, I mean technical skills, and over fair representation of stakeholders. We could question that. There are other organizations who have been thinking about improving diversity, and they're close to us. IETF is one.

ITU is another, and every organization in the world has been discussing diversity in one way or another, and every one of them has started with the same discussion we've had today, starting to say "Well, aren't we going to lower our standards?" That is the initial point of every discussion in diversity I've ever heard about. In the political setup, that's what I've been hearing in the French parliamentary environment for what, 20 years now? And it took quotas to change that. And if you look at the rankings across the world, people who did quotas improved faster than the ones who didn't, and that's being demonstrated.

So if we have to, then maybe we need to consider it, but there are other steps. There are intermediate steps, and we should look at them. First, looking at the data. That's the first step for every improvement. We need to look at our culture and how we are welcoming others, because the way we structure discussions with the open mic, it is not friendly for many cultures. It is very focused on the Anglo-Saxon culture of confrontation, debate, and this is not the way to welcome people from certain cultures, like in Africa for instance.

We need to look at what targets we could have. We need to look at what incentive or penalties we would put on certain groups if they don't improve diversity. How about we restrict travel funding for some groups if they don't reach certain targets in diversity? That can be an option.

We need to educate, and educate so that we stop thinking that diversity lowers standards, and we stop thinking that it's not possible to find good candidates out there.

And finally, if needed, of course, there is the quota approach. I think it is going to be difficult to get consensus on that soon, but it's good to remember that that's an option and it works in a number of cases. So the last slide, because I've been too long, obviously. Every one of us can act now without any Work Stream 2 recommendation. It is dependent upon us to insist that diversity is put on the agenda of every group. Every one of us can request that diversity is made a decision making criteria in an appointment process, or ask your representatives to be accountable for that.

It is upon us to point out the diversity issues when they occur, like this very [manner] or the appointment of three co-Chairs from a single country in a very important policy working group. That should never happen, it happened twice in the last six months. It is our- we can all, if we care about diversity, go to the

mic, point it out, put it on the record, and that's the start of diversity enhancement. And that's going to be it for me, León, thank you very much. I now go back to my neutral chairing mindset. Thank you.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Mathieu. There is a queue forming, of course. I am closing it with Farzaneh. Well, okay, with Sebastien. I'm closing the queue after Sebastien, so first on the queue is Fiona Asonga. Fiona?

FIONA ASONGA: Thank you very much, Mathieu for the presentation you've given us, and good morning everyone. I think on the issue of diversity, when we start looking at diversity and start thinking of [inaudible] of skillsets, we are just [inaudible] perceptions that have been carried along all the way as around diversity. There have been certain perceptions that we now need to consider and take new positions on, because things change.

Yes, it's working.

So when we look at diversity and think of it in terms of skills, it means we're catching ourselves short even before we've begun the process, because they believe that across the world, across

all the different regions, we can get the skills that we're looking for to fill in the gaps that we need filled in.

The challenge is that we need to change our perceptions on what views we have or opinions we hold on having geographical diversity. We also need to look at our perceptions that we have carried along over the years on cultural diversity and how that impacts on how we're able to deliver, because I think that it is important for us to realize that the cultural differences that there are do not mean that it's a lack of knowledge or skills, it's just a different approach. And a different approach means that we need to be ready to accommodate different views and different opinions, but still find a way to negotiate and reach the same point.

So the fact that I may be from Africa with a different cultural view and understanding, and therefore [inaudible] an idea differently does not mean that I'm ignorant or have less skills, it is just about my ability to present, and English not being a first language also has its challenges, so that means ICANN basically needs to open up more and be more willing to negotiate, and the truth of the matter is unless the question of diversity is addressed by some Bylaw somewhere, the SOs and ACs are not going to give it a priority, and that is why there isn't enough effort within a lot of the SOs and ACs to reach out, to get participation and membership from other regions.

With the exception of maybe the [SO] and ALAC that already have structures that accommodate that, the rest really need to take a concerted effort to reach the next billion of Internet users and find ways of getting them to be involved and to participate within ICANN. Thank you.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Fiona. Mattheu, do you want to comment on Fiona's –

MATHIEU WEILL: No.

LEON FELIPE SANCHEZ AMBIA: No, okay. So we'll continue. Next on the queue, I have Malcolm Hutto.

MALCOLM HUTTY: This isn't an intervention, actually, it's a point of order. Mathieu, thank you for your passionate advocacy for your point of view, but the idea of you now going back to neutral chairmanship seems open to question at the very least. Will you now recuse yourself from more chairmanship duties related to this matter, now that there is clearly no possibility of you being absent of the suspicion of inability to be neutral?

MATHIEU WEILL: I think no, because we are on a multi-stakeholder approach, and it is clear that rapporteurs and everyone come with their own ideas. We respect everyone's idea, I don't think I have to recuse myself from the discussions to be able to listen to your points, try and see whether we have achieved consensus, and that's going to be my role as a co-Chair. I will not participate directly in the Diversity Working Group however, but that's my answer to your very deliberate question. Thank you.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Malcolm and Mathieu. Next in the queue, I have Jorge Cancio.

JORGE CANCIO: Hello and thank you very much for giving me the floor. As a start, I would like to thank [Dalila] and Mathieu for their presentations, especially the data put forward by Mathieu. As incomplete they may be and as much we need to further refine this kind of data, it's a very good starting point and it gives us a factual basis for our discussion.

I would like to be very clear: I think that diversity is not only a question of fairness, it's not only a question of representation of

the global community, we intend to represent here. It's also a question of being smart, a question of a smart organization.

Diversity in the approaches to the different problems we are confronted here which have this ever evolving nature is a strength for this organization, so it's not only fair, it's smart to have stronger diversity in this organization.

And we see with this data that there's clearly a gap to be bridged in this regard, so I think we have to go beyond openness. Openness is a precondition, but it's not enough. Openness, first come first serve – only basing the work of the different working groups in this organization based on the prior come, prior served rule of openness is not enough.

We need to go beyond that, we need a welcoming culture, an open culture for people who are not part of the core leadership groups. We need also affirmative action to get these people inside the leadership and to have a more diverse functioning organization, which as I said before is not only fair, but is also a smart approach. Thank you.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Jorge. Next on the queue, I have Olga Cavalli.

OLGA CAVALLI: Thank you, good morning everyone, and thank you very much Cheryl, [Dalila] and Mathieu for the presentation.

When I started my career as an engineer some years ago, I was very young and I felt that any organization or company that had no barriers to my participation would offer me equal possibilities. I had that idea and I was very optimistic, and experience told me that this doesn't happen. Reality is different.

So I think that with time, I learned that in some spaces and for some circumstances, having quotas is not a bad thing. And for diversity and achieving some diversity in some spaces, for example some groups in ICANN and some other organizations, that could be a good way to achieve it.

There are enough different professionals of different gender and color and origins and different regions that are extremely well prepared to participate in all of these spaces, and for different reasons, they don't get there. So I think I will give a positive idea of revising the concept of quotas in some of the Internet in general organizations. Thank you.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Olga. We had some technical difficulties in the AC room, and I know that Kavouss was after Olga, so Kavouss you're next.

KAVOUSS ARASTEH: Thank you, Leon. I think we're talking of maximum participation. Maximum participation in what? are we narrowing down everything to the ICANN leadership, or we are talking in general? Have there been any obstacles for participations in the ICANN leadership? Have there been any obstacles in participation elsewhere? Instead of talking about the maximum or minimum, we should say what are the obstacles to implement these diversity issues. And if we find this obstacle and try to find a solution for that, it's good, but I think everything is now concentrated or narrowed down to the participation in ICANN leadership, or use of particular language. We should see the practicality to using other languages, how practical they are. Thank you.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Kavouss. Next on the queue is Farzaneh.

FARZANEH BADIEI: Thank you. So I think the issue of diversity at ICANN is directly related to the accountability of SO and ACs. How do they actually take on members, and are there membership fees that are hefty for developing countries? And also, some of them do

not accept individual members. Now, I'm not saying that they should change their governance, but this actually is a big hurdle for people to join.

Also, there's a problem – and this is a problem that I have personally faced – that sometimes if you are from a country but you have moved somewhere else, they want you to be a resident of the country to be able to apply in that region. Well, I was born and raised in that region, I understand the difficulties, I'm still in touch with people in that region. Does that really mean I don't understand them anymore? So I think we need to also look at ourselves and the rules, and see what we can come up with.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Farzaneh. Next on the queue, I have Sebastien Bachollet.

SEBASTIEN BACHOLLET: Thank you very much, Leon. A few things. First, we need to be able to go ahead with the diversity question. Of course, define what it is, and we have a good document in the Work Stream 1 deliberation with some list of possible items to take care as diversity issue. But I think we need also to say that even if we put all that in diversity, it's not the right word for everything. For some issue, it may be more balance than diversity issue, but if

we put all that together, we need to discuss the list, but also we need to see where are problems, and I want to point some of them.

For example, when you talk about the NomCom issue, NomCom is supposed to select people, and one of the reasons of the NomCom to take a decision after – in June, and after the election of each group, it has to help to better balance, to better diversify the people selected in different bodies.

But at the same time, the way we as a community are asking the NomCom to work, what are the skillsets we ask for, we need to revise that. I think when the Board asks for people with business knowledge, maybe we need to change that to something else, the Board is not just a business-oriented group.

And if you take back some history – and there are people in this room who can help me with that, but when we created the ccNSO, the discussion was “Can we open the ccNSO to all the stakeholders?” The answer was “No, we will keep with just as a manager of ccTLD.” So be it, but the final decision was to have the ccNSO council open to three nominated by the Nominated Committee, and it was supposed to allow those users to get – for example – to other stakeholders, and it was, in our mind, users of multiple ccTLDs who could add a voice there. it was never applied.

We have to think if those ideas at the beginning are still useful and could be brought back. And I want to end up with two examples in At-Large. We just end up to select another member to the ALAC from the European region, from EURALO, and as I am one of the two selected by EURALO, the second, we try and we success to have somebody from Eastern Europe with very good skill – I am sure better than mine – and she’s a woman. So sometimes, we can find and have good solution

Now, the last point, it’s from my point of view a wrong decision. We at ALAC have the possibility to select five people to the NomCom, and we select four men and one woman. I struggled to have some more balance, and I was not successful in that. That’s a pity. Thank you very much.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Sebastien. We have one last contribution, Lousewies’ AC room froze, so she couldn’t raise her hand in time before I closed the queue, but it’s interesting, of course, to get to know a board member’s perspective on diversity. So Lousewies, please take the floor.

LOUSEWIES VAN DER LAAN: Thanks. I wasn’t going to share my personal perspectives, because everyone who follows me on Twitter knows where I

stand. But I just wanted to – sitting here as a Board member – to let you know that the Board has appointed liaisons, and I will be doing diversity and we have a backup for everything, so [Lito] who's at the back of the room will be the backup for diversity.

We're dealing with a lot of these issues inside the organization as well, and one of them is that we had a session – as those of you who have been following it know – also on volunteers and trying to fight volunteer fatigue, and diversity is an important element of that, also because we don't want to have a bias whereby it's always the same people. We want new people coming in, that's also part of diversity, and we have to have an inclusive atmosphere for that.

So we're working on a lot of this stuff as well and we really look forward to working together. Thanks.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Lousewies. Okay, so trying to take stock on what we've heard, I think that the main point is that on diversity, we have diverse points of views. There are different approaches, we have different issues, so I guess for those who will be participating on the Diversity subgroup, you should definitely look at the common grounds that can lead us into a constructive perspective.

Maybe some of the questions that this subgroup should answer is what we mean by diversity, what is desirable, possible, implementable, does the pool of selectees actually limit the success of the selection, or those in charge of selecting new leadership roles? Do we want diversity for diversity's sake, does diversity for diversity's sake go along with lowering standards, whatever that means, and why is diversity important for ICANN? Does ICANN leadership reflect the Internet's nature of diversity? And we should also study ICANN's current diversity level and propose enhancements accordingly.

And language, language is a major issue that I can see coming in the diversity discussion. We should assess whether we need quotas. We should also discuss whether building diversity into our Bylaws would help fostering diversity within ICANN. I also heard that diversity is not only necessarily but also smart, and that openness is not enough, but just a precondition for enabling diversity.

So with this, I'd like to thank everyone that provided us with lightning talks, and it is time for us to have a lunch break. After that, we will be coming back for some lightning talks by Siva and Phil Corwin and other volunteers that have signed up and who weren't present at the room when we were addressing the particular topics that they signed up for. So thank you very

much, we will pause for a moment. We will go for a lunch break and we'll come back. We'll reconvene in –

MATTHEW WEILL: In an hour's time, so ten past one. And you can leave the stuff here.

LEON FELIPE SANCHEZ AMBIA: And where is the lunch served?

MATTHEW WEILL: And the lunch is in the back of the room. First come, first served.

PART 2

LEON FELIPE SANCHEZ AMBIA: Okay, so the co-Chairs are in and we have audio. So could you please take your seats? Alright, welcome back. We hope you had a great time having lunch.

We will be doing some amendments to the schedule. Originally we were planning to have the update on Work Stream 2 background papers at this time but instead we're going to continue with the lightning talks. And afterwards we will be reviewing the Work Stream 2 background papers and after that

we'll have the coffee break and we'll continue with the original schedule for Work Stream 2 and ATRT 3 Timing and Any Other Business.

So at this time I would like to welcome Siva so he can provide us with his lightning talk on guidelines for standards of conduct. Siva, you have five minutes.

SIVA MUTHUSAMY:

Thank you, co-Chairs. The topic of guidelines for Board conduct could be expanded as a broader topic of Board accountability and discussed in the same manner as AC/SO accountability of staff accountability is to be discussed. AC/SO and staff accountability measures work at one level whereas the organization's accountability is epitomized by the Board accountability design. Such a discussion on Board accountability needs to be distinct from generalized discussions on ICANN accountability.

Next slide please.

The ICANN Board is to be held accountable for what it does do and what it does not do that affects ICANN. The Board is also to be held accountable for everything that ICANN as an organization does do and does not do that affects the DNS and the larger Internet. Even if such actions of ICANN or such actions

of any of its parts happen without the explicit consent or discernible directives from ICANN Board. In other words, the Board ought to be held accountable for even that which arises outside the Board.

Next slide please.

If the Board is [notionally] to be held accountable it requires to be sufficiently empowered first. We need to review how the Board is positioned in the organization. In the past we have had situations where there were situations of Board [inaudible] depending on administrative decisions and there were situations of difficulties and Board staff interactions. We need to look into issues that may potentially limit the Board's ability to function, including the constitution of voting and non-voting members.

Work Stream 1 has created new challenges and new processes for safeguards which proceed on the assumptions that new community powers would provide the necessary challenges against abuse of Board pass. These measures tend to disperse responsibilities, especially in the context of accountability and increase room for lack of clarity on who is to be held accountable for the decisions needed for the pursuit of the overall mission of ICANN on developments that may occur to the distortion of the overall purpose of the organization.

Next slide please. Next one.

It wouldn't help the pursuit of ICANN's mission to approach the topic of Board accountability as an exercise of creating more processes that may actually slow down or even limit the Board's capacity to issue necessary directives. On the other hand, it becomes difficult approach the question of who would oversee the Board which would inevitably give rise to the question of who would oversee the overseer.

The answer so far is the community, but we could come up with a new solution that may neither entirely depend on oversight nor on challenges and limitations.

The last slide. Next slide please. Okay.

ICANN Board as an entity comprises individuals.. The propensity of the Board to be effective, correct, and just, depends on who the Board attracts to be its constituents. If the Board, as it does to a noticeable extent now, attracts individuals from any part of the world who are at such stage that they're not expected to deviate from the larger purpose, we will have an accountability framework around the [inaudible] Board even more worthy of trust on its conduct of business in a manner that would require little or no challenges or a [closer] oversight. Such an accountability framework would ensure good governance even

ahead of implementation of diversity, irrespective of jurisdiction or even staff diversity.

I would say that the issues like jurisdiction and diversity are very important, but these processes would tend to take a long time and in the meantime, the Board needs to be far more accountable, their design has to be much higher and also that even if the jurisdiction question remains and even if there is no diversity or a lack of diversity, the Board accountability design has to be such that there is overall fairness without even diversity or irrespective of jurisdiction.

These are actually rough ideas, very rough ideas. These ideas are to be brought to good shape by Work Stream 2. Thank you very much.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Siva, for this lightning talk. We have a queue and the first in the queue is Kavouss.

KAVOOS ARASTEH: Yes, thank you very much. I think we have sufficiently discussed Board accountability. What else we have to discuss? What framework we have to discuss?

SIVA MUTHUSAMY: Okay, Kavouss. We have discussed Board accountability and when we discussed Board accountability we have talked about new processes and community mechanisms. We've talked about removal of Board of Directors and processes to remove Board of Directors or processes and processes to create new processes and so on. So I'm talking about an inherent design, an inherent framework that would make the Board to be a Board of much higher standards. I mean, we have a Board of standards. It is that which inspires me to talk about much higher standards. We have a Board of standards – I'm talking about elevated standards. As I said, these are rough ideas to be explored, to be thought of, to be debated.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Siva. Next on the queue we have Thomas Rickert.

THOMAS RICKERT: Thanks very much, Leon. Thanks, Siva, for the lightning talk. I think when I read Holly's e-mail with respect to this very topic, I think the intention in our report making reference to standards to be developed is not one that addresses the Board and its conduct, but it addresses the community members that want to remove a Director.

This whole debate was sparked off – and I think it was Alan Greenberg who made that point – that we need to worry about liability of community members that bring forward the request to remove a Board member or the entire Board to prevent those community members or protect them against being taken to court and sued. And the responses that the community should have standards written down and that if the community plays by these standards, that then there would be no risk of being held liable. And that would include – and I read from Holly’s e-mail – “Indemnification associated with the removal of individual ICANN Board Directors that guidelines for standard of conduct that will be presumed to be in good faith. For example, conducting reasonable due diligence as to the truthfulness of a statement that is brought forward as a reason for Board removal.”

So I think maybe we need to focus on that angle, if our group chooses to. And that is not to [diminish] the importance of the points that you’ve raised, but I guess that our main requirement or our main challenge for this phase is to look at how the community needs to act in order to reduce liability risk for community members when it comes to spilling Board members. Thank you.

SIVA MUTHUSAMY: Let me respond to that, Thomas. I understood the topic as proposed now, that of making sure that Board removal exercise does not go wrong, but I distinctly noticed the absence of Board accountability in Work Stream 2. Coming back to Kavouss again, we did discuss Board accountability in work Stream 1 but Work Stream 2 is supposed to look at the topics without pressure of the time limit and so on in an expanded scope. That’s why I said this topic needs to be expanded and examined in this light. Thank you.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Siva. Are there any other comments or questions? I see Greg Shatan’s hand is up. Greg?

GREG SHATAN: I feel like all of Work Stream 1 was in one way or another devoted to Board accountability. So I think we’ve pretty much covered that. I don’t really see where this goes, and certainly it isn’t one of our enumerated topics. And I do think that there was interest in the issue of standards of Board conduct which was this was accidentally thought to be and I think there may be something worthwhile in exploring that. And I believe there already are guidelines and the like, so that would not be starting from scratch but the idea of looking at Board accountability

again seems to me to be an avenue that's not really one we should or need to go down. Thanks.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Greg. Siva, do you want to comment on that?

SIVA MUTHUSAMY: Yes, Greg. By proposing a discussion on this I don't mean any disrespect for the work done by the community and the processes that have been developed. The work that has been done has been quite impressive. But I'm merely proposing that we should look at it in a much, much, broader light. And I can assure you that the time is not going to be wasted on this. It's going to be very, very, useful for the organization. Thank you.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Siva. So now I would like to... Oh, we have two more people and now the queue is closed after James Gannon. So we have Kavouss.

KAVOUSS ARASTEH: Yes. Thank you again. I think we need to give some time for a process to get into the implementation stage and to see whether it work or doesn't work. It's not necessary to have regulations

after regulation, process after the process. Let us wait, monitor to see what will happen. If there is a need, the door is not at the end. Everything is open. We can come back and at some stage according to the existing procedure we can correct if there is some difficulties. So perhaps let us concentrate on something which have not yet addressed. Thank you.

LEON FELIPE SANCHEZ AMBIA: Thanks, Kavouss. Siva, do you want to comment on that?

SIVA MUTHUSAMY: No, nothing to add.

LEON FELIPE SANCHEZ AMBIA: Okay. Last is James Gannon.

JAMES GANNON: Thanks, Leon. I'll keep it very brief. I think if we haven't put in the framework and the controls around Board governance at this point, we've kind of failed [us] the entirety of Works Stream 1. It was a huge part of what we did. And we don't have unlimited time and resources. I don't feel that this is reflective of what we were supposed to be doing with Work Stream 2. We did a lot of work around possibly one of now the most accountable Boards out there, so I don't see where this fits into our Work Stream 2.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, James. I think that the way forward should be to actually focus on community member guidelines for conduct and the Board removal and recall process, and that should help us have a more clear view on this issue of Work Stream 2.

Thank you very much, Siva, for providing us with that lightning talk. And now I would like to handle the mic to my co-Chair Thomas for the next lightning talk.

THOMAS RICKERT: Thanks so much, Leon. I will only step in for a little bit to invite Phil Corwin to the table. You will remember we had our discussion on jurisdiction earlier this morning and there is one lightning talk missing and Phil is making his way to the talk table for the remote participants. He's very fast, almost running, to the table. And he said that he will need a maximum of five minutes for this, so we're looking forward to your lightning talk.

And for those who are not in the Adobe, he is putting his glasses on. Now he is looking like he's ready. Over to you.

PHIL CORWIN:

Thank you, Thomas, and the other co-Chairs. I'm Phil Corwin. I'm a member of the Business Constituency and one of their GNSO Counselors. I'm speaking entirely in a personal capacity today on the subject of jurisdiction. Some may find my remarks somewhat confrontational, but I'm hoping they will set off a good debate.

When we look at Work Stream 1 – and by the way, I'm sorry I wasn't here this morning for the other remarks. My understanding was that the lightning round should be this afternoon – I want to address the central question of ICANN's corporate jurisdiction, recognizing that there are other secondary jurisdictional issues to be addressed in Work Stream 2. And my contention is that the only logical and functional decision to make for ICANN's corporate jurisdiction – which is currently a California non-profit corporation – is to enshrine that status in a fundamental Bylaw.

When we look at Work Stream 1, the two important things that the Accountability Group did – and the CWG as well – was create two new entities for the transition and accountability – the PTI and the Empowered Community – both of which were required by fundamental Bylaws to be California non-profit corporations.

ICANN, of course, has been a California non-profit corporation since its founding in 1998. The new Bylaws also require that any

change in the fundamental Bylaws – that is, any change in the status of the PTI and the EC – would have to be communicated to the California Secretary of state. The accountability plan was designed to be maximally effective within the context of California non-profit corporation law. Any disputes involving ICANN, the PTI or the EC, will be decided within the U.S. legal system. I’m not arguing that it’s the best or only good legal system in the world, but it is well regarded for making objective determinations under a reliable rule of law.

For those worried about government interference, by being a U.S. corporation ICANN enjoys the protection of the First Amendment which forbids the United States government from enacting any law that would coerce ICANN into using its root zone control to abridge free speech.

Now, those were the things we did do. The things we didn’t do in Works Stream 1 was make a final decision on the ICANN parent corporation jurisdiction in the context of a fundamental Bylaw. The current Bylaw provision that requires ICANN to maintain its principle office in Los Angeles County has not been made a fundamental Bylaw. The Affirmation of Commitments were largely incorporated into the Bylaws by including the three periodic reviews required by the 2009 Affirmation of Commitments to become fundamental Bylaws, but we did not incorporate the other Affirmation of Commitment requirement

that ICANN remain a non-profit corporation headquartered in the United States.

Now, these were conscious decisions of the CCWG on Accountability. I respect them. I would maintain simply that putting aside the other secondary jurisdiction issues, that the central question of ICANN's corporate jurisdiction should be decided with finality as early in the Work Stream 2 process as possible. We don't want to be sitting here in a decade debating ICANN exit from the U.S. We don't want this issue to become a festering sore on the body politic of ICANN itself. We really need to resolve this soon, because there is no... Some people talk about some safe harbor in international law. There is no international law for corporate governments. There's no international law for competition and anti-trust issues.

ICANN must be – if it's going to be a non-profit corporation which is the whole point of this transition exercise – must be domiciled in some jurisdiction. If this was a matter of first impression, we could debate which national jurisdiction was the best. But it's not a matter of first impression. ICANN was created by the U.S. government. It's been situated in the United States for 20 years. And we've made decisions in Work Stream 2 which tie ICANN through the PTI and the EC even closer to California law and therefore U.S. jurisdiction.

And finally, I don't think we want to be – having spent, I believe, in excess of \$23 million in legal fees so far as well as two years – we don't want this central jurisdiction issue to become something that just continues and continues and wastes time and wastes legal resources. If there ever becomes a reason in the future to look at it again, we're perfectly capable of doing that. If by some unforeseen means the U.S. government starts to interfere in an unacceptable way with ICANN. But short of that, we should decide this question as early as possible, and I believe and contend that the only logical way to resolve it in consistently with the decisions we've made in Work Stream 2 is to make ICANN's parent corporation permanent jurisdiction a fundamental Bylaw of ICANN. Thank you.

THOMAS RICKERT:

Thanks very much, Phil. We have roughly 15 minutes for this discussion because we have rearranged our schedule slightly. Before we move to the queue, let me just out of personal interest ask you as an attendee of the CCWG for many, many, months – You took your arguments, I guess, from the article that you wrote. You've written about this and when I read your article as well as when I heard your intervention now I was wondering where you took from that we discussed that ICANN should be elsewhere.

I mean, that was the starting point. We have it in the Articles of Association. Those have fundamental Bylaw statutes. So the status quo that we have put in place with our report and its implementation into articles and Bylaws is that it is a U.S. corporation and that it would be governed by that law.

PHIL CORWIN:

I wasn't involved intimately in every aspect of the CCWG over its two year course in this issue. I have discussed with other individuals who were very involved that attempts were made to make this a fundamental Bylaw. I recognize it's in there now, but it doesn't enjoy the full protection that fundamental Bylaw status would give it and there are various individuals and [NTDs] out there which clearly are on the record and I documented in my short 10,000 word article who want to reopen the debate and make ICANN an international organization, and in effect an IGO. And I think my concern is based upon those public statements and I think it would be best to engage on this and make a final decision by adopting fundamental Bylaw status for being headquartered in the U.S.

THOMAS RICKERT:

I'm sure that Steve will speak to that topic when we move to the queue. I was just curious whether you found anything in our report that suggests that we have moved away from the...

PHIL CORWIN: Only in my discussions with other individuals who tries to push for fundamental Bylaw status in the Works Stream 1 process and there was resistance.

THOMAS RICKERT: Just to finish that point, I think when we discussed this very early days in Works Stream 1, there were ideas that ICANN could be looking at other jurisdictions such as Switzerland and other others. And we sort of ended that discussion said we certainly need a jurisdiction that can deliver on the accountability requirements that we have but that, as long as a gap analysis doesn't show that we have deficiencies using California law to deliver, that we wouldn't pursue that. And so far – unless I have entirely gotten this whole thing wrong – all the accountability features or the accountability requirements that we came up with, could be operationalized under California law.

But maybe we take this offline and move to the queue now.
Steve is next.

STEVE DELBIANCO: Phil, I share your concern of the unpleasant eventuality that might result if ICANN were to be uprooted from its principle

jurisdiction, but I don't share your analysis of whether or not CCWG addressed that concern.

As Thomas just indicated, the regular Bylaw is that the principle office for the business of ICANN shall be in Los Angeles. And since that's a regular Bylaw and it doesn't enjoy the protection that you and I seek. So what the CCWG did when we analyzed bringing 8C over from the Affirmation of Commitments is we looked at the Articles of Incorporation, and the Articles of Incorporation say that ICANN is organized under California non-profit public benefit corporation law. And the next sentence says that the corporation will be exclusively operated for charitable educational, scientific purposes within the meaning of 501C3 of the U.S. Internal Revenue code.

So the Articles of Incorporation – just the one-page document that we're now taking public comment on – make it clear that ICANN is a California corporation and it's organized under that law and serves the purpose of the U.S. Internal Revenue code law.

So why would they give you any satisfaction? Because the articles of Incorporation under our proposal require the written approval of the Empowered Community to be changed. That is to say one syllable of the articles to be changed. We, the Empowered Community, have to prove it in writing. That is a

stronger level of protection than it would enjoy as a fundamental Bylaw where we simply have a consensus – we don't even require a unanimity for that purpose.

So I really believe it's been solved, and I'm pretty sure you are aware of that, so what did you believe was insufficient about our belts and suspenders of using the articles?

PHIL CORWIN:

I agree with everything you said except for one point. If, now that the PTI which will operate the IANA functions, is going to be a California corporation the Empowered Community is going to be a separate California corporation and the Articles of Incorporation remain for ICANN a U.S. corporation based in California, why wouldn't we take the logical step of adding a pair of suspenders in making that a fundamental Bylaw – ICANN's own U.S. status?

I think as long as that's not a fundamental Bylaw, it's more subject to continual debate.

STEVE DELBIANCO:

I can't see that, because the same [de laude], the Empowered Community, would have to approve a change to the Articles and there isn't any point in saying that, "Oh, yes. They also have to

improve a change to a fundamental Bylaw that accomplishes precisely the same thing. Thank you.

THOMAS RICKERT: Thanks. Let's move to Christopher Wilkins now.

CHRISTOPHER WILKINS: Thank you. Phil, it's a pity you weren't here this morning for a much more detailed discussion than we have time for now. Suffice to say that I'm – as I've already indicated on the list – I do not agree with you. I'm afraid to say that what you're suggesting outside this room risks being interpreted as almost a provocation. We have had Californian jurisdiction for nearly 20 years and I don't expect that to change very much, but to make the proposal that – you used the words definitive and permanent – to make a proposal along those lines to that extent at this stage in the proceedings of Work Stream 2 which has only just begun, I feel, would lead to unfortunate consequences.

There are a lot of countries who don't agree with you. We need to keep them on board. And I think going in your direction would be counterproductive in that sense. Thank you.

THOMAS RICKERT: Thanks Christopher. Kavouss?

KAVOUSS ARASTEH: Yes, thank you very much, Phil, for your explanations and your presentation. I don't think that the headquarter of ICANN being in California or U.S.A. to be in fundamental Bylaw or the regular Bylaw resolve the issue of jurisdiction. If you go to another country, still jurisdiction exist the discussion. So we have to take it from that aspects. I don't think that after so many debate that this it was decided that at least at this time or for the time being it remained in regular Bylaw we should bring back the issue of the headquarters associated that with the jurisdictions and say that, "Okay, first put it in the fundamental Bylaw and then I don't know how the jurisdiction will be." If you go to the [third] country, still we have the same problem. I think we have agreed on that for the time being, we have [let] the process to be implemented. And if there is any need in future, the door is not closed. We should come back [to that].

This is not, I would say, a justifications of jurisdiction discussions to the fundamental Bylaw for the ICANN home or for the regular Bylaw. We have to address the jurisdiction and still we have a lot of things to discuss [in the] jurisdictions. Thank you.

THOMAS RICKERT: Thanks, Kavouss. Next in line is Paul.

PAUL MCGRADY:

So I guess I'm just confused about how this is all being discussed, because on one hand we have everybody telling Phil, "Gee whiz. There's nothing to worry about when it comes to jurisdiction. That's never going to change and Work Stream 1 took care of that." But on the other hand we have people calling for jurisdiction shopping and if there's nothing to worry about and Work Stream 1 took care of it and jurisdiction shopping is not possible under the accountability mechanisms, then why is there a Work Stream 2 on this topic? Why not just say jurisdiction was handled by Work Stream 1, there's nothing to worry about, people who want to change the jurisdiction would then go out and agitate for that in their own way in some other mechanism. What's it doing under this umbrella if, in fact, Phil has nothing to worry about? Thank you.

THOMAS RICKERT:

Just to maybe refresh our memories on one of the findings this morning or even in the Work Stream 1 report, jurisdiction is a multifaceted topic, and Phil is talking to the issue of place of incorporation even though [Paul] might not be interested in my answer now. So I might as well move on. Let's go to Jan now.

JAN AART SCHOLTE: Yes, thanks. Just on the principle that Work Stream 2 is not a place to reopen issues that were settled in Work Stream 1, and it was said this morning that jurisdiction shouldn't be an occasion to open up the issues that were settled in work Stream 1. And my sense that this particular issue about the ordinary versus fundamental Bylaw was settled at Dublin. There was a very, very, full and long debate and everyone had their say and the conclusion was that it should be an ordinary Bylaw. Presumably that was that and we go on to other things now.

THOMAS RICKERT: Thanks very much, Jan. Greg?

GREG SHATAN: Jan, I compare what you say to what Steve DelBianco said, and it seems like the reason that in the end it was not a fundamental Bylaw is because the Articles of Incorporation enjoy the same amount of protection as fundamental Bylaws do and it would be redundant for the jurisdiction section of the Bylaws to be a fundamental Bylaw. Or another way to look at it is that we somehow try to split the baby and have some people think that we had a non-fundamental Bylaw and other people think we had a fundamental Article, and the answer is that we have both. The end effect, though, is that you can't make a change in jurisdiction without changing both the Articles and the Bylaws.

So I think the head of the baby lived and the bottom half. Well, anyway, that's not a good analogy to continue with especially right after lunch.

But more to the point, I think that there are a lot of secondary issues under jurisdiction I think we all need to talk about. And then there is this, what Paul calls jurisdiction shopping, and there seems to be a question about whether we should be talking about that or not and whether we're going to just do another baby splitting exercise over that and but ultimately end up with the result that we have. So if it makes people feel good to think that we're going to be talking about moving ICANN to an island outside of any country's jurisdiction, I think you can build one of those fairly quickly.

That's one thing, but it does seem like we're going to take a lot of time to discuss that because for a number of people that is the jurisdiction line. So there's going to be a significant management issue to confront on that and I think that is a lot of what underlies Phil's point.

THOMAS RICKERT:

Thanks very much, Greg. Brett?

BRETT SCHAEFER:

Thank you. I think we would all be relieved if the Articles of Incorporation actually said what Steve said they said. But they don't. The Articles of Incorporation say that it's organized under California non-profit public benefit corporation. It is organized under California non-profit public benefit corporation law for charitable and public purposes. It says nothing about being incorporated there. It says nothing about the headquarters being in California. It says nothing about the principle offices being there. The principle offices are in the Bylaws but they're a regular Bylaw not a fundamental Bylaw. And there is nothing preventing ICANN from being organized under California law, but being incorporated someplace else.

So if this is a situation where there is no circumstance under which ICANN could be relocated to a different jurisdiction for the purposes of [being] its headquarters, I think we need to shore this up and make clarifications in the Articles of Incorporation and we made this recommendation somewhere else. And if everybody's in agreement here that this is a possibility beyond the realm of consideration, then I don't understand the hesitation for making that clarification in the Articles. There is nothing stopping – if Work Stream 2 so determines – that we're going to move jurisdiction, that can be done through the normal process of amendment to the Bylaw and amendment to the Articles of Incorporation as laid out.

But I think that we should be doing this very properly and very prudently because we have undertaken a serious amount of investment in terms of ICANN's money in order to make sure that the Bylaws and everything else is consistent with California corporate law. And that if we move someplace else and potentially we may have to adjust the Bylaws to meet the circumstances of a different jurisdiction, then that's an additional expense. But regardless of whether that expense is worthwhile or not, we should be doing so with the full support of the Empowered Community as we've laid out here.

And so I don't see anything wrong with putting it in the Articles of Incorporation the fact that ICANN is incorporated in California and that its headquarter and principle offices are there. If we want to make that change later on I don't see any reason why we can't do that, but at least right now we would, I think, benefit from the certainty of the current situation. Thanks.

THOMAS RICKERT:

Thanks very much, Brett. I guess according to other lawyers in the room there is no such uncertainty even with the language that we have in the Articles of Association now. So Greg says, "Organized means incorporated. There is no space between the two." And Becky adds, "I just don't think that's correct, Brett,

being organized under is the equivalent of being incorporated in.”

So I won't comment on that any further. I had closed the queue. I would like to give Phil the opportunity to make some closing remarks, so give feedback to what you've heard earlier.

PHIL CORWIN:

Well, as lawyers are wont to say, there's three sides to every issue – my side, your side, and the truth. And the community will decide the truth. I make this proposition not to be adversarial/confrontational, but simply out of recognition – and again, it's documented in my article and we've heard some reference here – there are nations, there are organizations, there are individuals, who view what we've come up with not as the end game of ICANN's jurisdiction but as a weigh station to possible future changes. And that's the reason I've proposed what I have, and I'm glad to see it's initiated a good debate. It's not the only jurisdiction issue. I think it's a central issue, but there are many other secondary issues to be looked at and I look forward to working constructively and in good faith with other members of the community as we work on the jurisdictional issues. Thank you.

THOMAS RICKERT: Thanks very much, Phil, for the lightning talk. And thanks to all of you for a very interesting discussion. And in summary, I think adding to what we've summarized this morning I think it becomes clearer and clearer that when talking about jurisdiction most of us are thinking much more of the secondary topics rather than the place of incorporation which currently is Californian law in California. And with that, I'd like to hand over to Mathieu for chairing the next session.

MATHIEU WEILL: Thank you very much, Thomas. Our next session is a little breathing room between lightning talks, and it's a follow-up on the discussion we had last week – or was that Tuesday? Probably we're in the same week – during our last call about background papers. Staff have been extremely busy at assembling papers that would be used as inputs for every subgroup, and we thought it would be a good idea to give you a flavor of one of these so that we can interact, adjust, and feed the different subgroups with the relevant documentation so they can start working faster. Basically, it's a bootstrap for each of the subgroups.

So who is speaking? Is that you, Grace? Yes, please. So Grace is going to introduce us to these background papers. Grace.

GRACE ABUHAMAD: Thanks. Terri, can you move to the next slide please?

This is Grace Abuhamad, one of the staff supporting the CCWG Accountability. Next slide please.

We've developed staff papers for you to sort of get you started on the Work Stream 2 topics. They are simply sort of starting point type papers. They're divided into three sections. The first section is Scope – sort of just an extract from the Work Stream 1 report, Bylaw if applicable.

The second section is a sort of a background on discussion that either the community has had in our Work Stream 1 conversations or elsewhere in and some questions that may be helpful for the subgroup to consider.

And then the third section is just a list of resources. Do we have time for me to pull an example up?

MATHIEU WEILL: Yes, for you we have time.

GRACE ABUHAMAD: Sure, thank you. Okay. Terri, can we put up the Ombudsman paper please?

So I'll show you an example of what we've come up with. So far we've circulated three papers to the list. They're in Google Doc

format so you can go ahead and comment. Thank you, Jorge, for already putting some in on the Human Rights topic. We're hoping that these papers really will just sort of kick start the work of the groups and that each subgroup could either take them and rewrite them, develop them, or not use them at all. It's really up to you. But we're just trying to provide some material to help.

So, Terri, if you can go ahead and scroll slowly, we'll just show the group a little bit what these look like.

This is the Ombudsman paper. So the first section is, again, an extract from the Work Stream 1 report. Some discussion and description of the Ombudsman role, what the Ombudsman's powers are and jurisdiction. This is stuff we've pulled from existing documents.

And then the last section is the sort of some resources that we think are useful. It's a little bit more straightforward for some of the topics rather than others, it just depends on the work that we have and, of course, there's some good – [inaudible] reminded me that during the diversity talk this morning there were some links shared in the chats so we've incorporated those into the Diversity paper. We'll be ready to share that with you shortly.

But again, as you come up with things and ideas, resources that you'd like to include in these papers please feel free to do so. I'm open for questions. I don't know how we want to lead the discussion.

MATHIEU WEILL: Yes, John.

JOHN BERARD: Thank you. I noticed the list of papers that you described you had both Ombudsman and Transparency. In the Work Stream 2 final document, the Ombudsman was part of Transparency. So will you also be doing separate papers on the other elements – the Whistle Blower and Interactions with Governments? Or have we separated Ombudsman from Transparency?

MATHIEU WEILL: I think Ombudsman is a separate issue from Transparency in the final report. And it's been all the way. So it might have been a glitch in the way it's presented, but it's a separate issue. Any other questions for Grace? Greg, is that an old hand? Apparently. Okay. Brett.

BRETT SCHAEFER: In terms of the Ombudsman, I raised this issue during the end of the CCWG final report which is under the IRP there is an opportunity for a stay of decisions, and that is not currently the case under the [RFR] process. The Ombudsman is the natural place to put that power to have a stay or a decision not to implement if irreparable harm could be done through an implementation of a decision. That was under that consideration. I was told that that should be a discussion for Work stream 2, and I just wanted to make sure that that wasn't overlooked in terms of the discussions that's going to be going forward.

MATHIEU WEILL: Brett, I don't think we've had any more discussions on this topic, so I don't think there's any new elements. But does your question imply that the way the paper is crafted is heading in any way on this question?

BRETT SCHAEFER: No, it was went through very quickly and I just wanted to make sure that the point wasn't lost.

MATHIEU WEILL: We're still in the same status. It's as much on or off than it was previously until the subgroup convenes and discusses about

scope and everything. I can't give any more because I wasn't maybe following this so closely that I can get at this level of details. We'd have to go back to the documentation.

GRACE ABUHAMAD: If I can suggest, Brett, I think we have the Ombudsman papers now on the Google Doc and you can go ahead and put some comments in if you'd like. Go ahead and insert some comments into the document there and that would help kind of keep the discussion moving.

BRETT SCHAEFER: Okay. I'd appreciate that. And I'll do that.

MATHIEU WEILL: Thanks, Brett. Greg.

GREG SHATAN: Just a point of information for those of you who haven't read Steve Crocker's blog is that Chris LaHatte will be departing I believe at the end of July plus a three month consulting period and that the current Adjunct Ombudsman will be the interim Ombudsman until a new Chief Ombudsman is selected. That's not necessarily germane to the talk about the Ombudsman position, I thought it was worth noting. Thank you.

MATHIEU WEILL:

Thank you, Greg. It's good noting and I think the subgroup that's going to be discussing on the Ombudsman should certainly make sure that they get inputs from Chris' experience as the Ombudsman before obviously he moves to other ventures, and that's something that we need to keep in mind, benefiting from his experience on this work group. Thank you for pointing that out, Greg. And Chris, are you here in the room?

I have seen you earlier, but not yet. So we'll have to also liaise with him to express our appreciation of the continuous engagement that Chris had in the Work Stream 1 process in a very productive manner as a participant in addition to his Ombudsman duties.

And I think, Grace, is that a new hand? You would like to add something.

GRACE ABUHAMAD:

Everyone, this is just a quick request. We draft these papers mainly for the subgroups to use as their starting points, but until we have those subgroups formed, please feel free to suggest any material or resources on the CCWG list or to me directly and I'll make sure they get included into the documents. We haven't yet kicked off those mailing lists. That may be something we do at

the end of this meeting or as part of the discussion today. But until that point and until we have Chairs for those subgroups, it would be useful to keep the conversation going and we can incorporate the work directly if you send them to staff.

MATHIEU WEILL:

Thanks, Grace. My first suggestion would be to add the lightning talks relevant to every section and maybe the extract of the notes of this particular session so it's not lost on the group when they start. But obviously I encourage every one of you to contribute to that effort. It's an outstanding effort of documentation which I'm certain will prove extremely useful as we move towards a fact based relevant analysis of the various gaps in the various topics. And I think it's extremely important that each of us gets familiar with these papers but also contributes and suggests addition as we move forward.

And with that, thank you very much, Grace, for this short introduction to the draft papers. And we're going to get back to lightning talks now for our third and last session. And to start this session I'd like to call Steve DelBianco for a lightning talk on SO/AC Accountability. Get ready for some SO/AC Accountability.

STEVE DELBIANCO: Steve DelBianco with the Business Constituency, CSG Rep to the CCWG. So this will be a quick five minutes and I hope a little bit of discussion on SO and AC Accountability.

I'd like to start by shining a light – if you go to the first slide, Grace, shine a little bit of light on... Well, what else? The Stress Tests, right? The Stress Tests which are in Annex 15 – I've memorized every last word of it – several of them actually involve the failure of SO and AC Accountability. To whom? Well, to the target communities that each SO and AC is designed to serve.

For instance, Stress Test 31 looked at the question of rogue voting. Do you remember that? A little over a year and a half ago when we were voting, we were counting votes starting at the Istanbul and Frankfurt meetings and we worried that the ALAC vote might not be cast in accord to what the ALAC actually decided. And whether you're talking about voting or indicating support or oppose – let's just call that voting for purposes of this discussion – it's indicating a decision. Rogue voting or rogue decision would be one where, "That's not what we decided. What did you come up with?" Well, to address that, our response for Stress Test 31 is that if an AC or an SO rep expressed support or opposition against the instructions of their underlying AC and SO, we are going to write decision rules for the Empowered Community. There would be procedures to invalidate the

consensus call based on objections from any of the officers in that AC and SO, or for that matter any member of the AC or SO who says, “Wait a minute. That’s not what we decided. We decided to abstain, or we decided to oppose and somebody communicated that we supported the exercise of that community power.” So we think we solved that one.

I’ll give you two other examples. Larry Strickling at NTIA one year ago this month gave us four Stress Tests to add to our list, and two of them in particular were on SO and AC Accountability. Larry pressed us on internal capture in Stress Test 33 where the members of an AC or an SO or even a constituency or stakeholder group below that level have captured for their own interests a decision that would have otherwise been made differently, or when new members who are legitimately entitled to be in that constituency or stakeholder group are excluded for some reason of manipulated eligibility, a denial of their application for membership. And I’d like to address how we supported those.

So if you go to slide three, Grace. We did decide two mechanisms to answer Larry Strickling’s two Stress Tests.

The first is that a disenfranchised member could challenge the Board’s decision to follow advice using reconsideration or IRP. So let’s suppose that GNSO came up with a recommendation,

sent it over to the Board and the Board accepted the recommendation and began to have staff implement it. If it turned out that the GNSO's decision making had been captured by incumbent interests of one of the many GNSO constituents, then I suppose that could be challenged. The Board's decision to accept could be challenged.

And what would the criteria be of evaluating that challenge? If it were an IRP or a reconsideration they look to the core values and mission statement which say that ICANN makes decisions in an open, transparent, bottom-up, multistakeholder process. So that would have to be what the IRP panel would look like. Was there something wrong with the way the GNSO arrived at the decision that they came up with and that the Board should not have relied upon that when it made its decision.

So that is what we answered the Stress Test with. But Work Stream 2 is about seeing if we can put a finer point on that and make it a little more direct. Because that really feels like a rather indirect way to challenge an SO/AC Accountability.

The second we put in for Stress Test 33 and 34 was we reminded everyone of something that's been in the Bylaws for a long time. These are the periodic – that is to say every five years – organizational reviews of the ACs and SOs. They're directed by the Board and staff, and they typically get an outside company

to come in and do an evaluation. I'm not particularly enamored of how those have gone from the standpoint of GNSO, but the raw ingredient is in the Bylaws to make it go well. Because two of the conditions that the Board is supposed to look at when it reviews an AC and SO are whether any change in structure or operations is desirable to improve the effectiveness of an AC and SO.

What does effectiveness mean? The Board gets to decide that. And I know that for my part I have asked every time, what is the definition of effectiveness? Well, here's our chance in Work stream 2. Let's make effectiveness about how well it serves the interests of the target community.

The second is that the Board will also look in these five-year reviews whether any SO or AC is exhibiting behavior that is accountable to its constituency stakeholder groups and target organizations. So that is supposed to be looked at in these reviews that we do now. And those reviews are done for every AC and SO except for the GAC, right? The GAC does not, in the Bylaws suspect itself to having a review conducted by ICANN's Board. I encourage the GAC to conduct a review of similar nature, even if you just did a self review.

Let me transition now because we described that these areas are probably game for further improvements than we did in

Work Stream 1. So in our final report we came up with four specific areas where SO and AC Accountability should be looked at as part of this Work Stream 2 Bylaw. If you recall, we have a Bylaw specifically defining how Work Stream 2 will be conducted and the high bar of recommendations that come out of Work Stream 2 that the Board has to accept it unless it can come up with a public interest reason to reject our recommendations with two-thirds of a Board vote.

So there are four of them. The first was this notion that the SO and AC Accountability should be part of the Accountability and Transparency reviews. Well, it's there. Go to paragraph 89 of Annex 9 on the AoC reviews – “Assessing the extent to which ICANN’s decisions are embraced, supported, and accepted by the public and the Internet community.” So those words live in the Bylaws now under the ATRT instructions. So I hope that that is broad enough to encompass but maybe it's not specific enough. It could be that in Work Stream 2 we put a finer point on that and encourage the ATRT to look at the target community's accountability, not just the entire global Internet community.

The second one, which was to evaluate mutual accountability round table idea. Two years ago this idea was suggested by our advisor Willy Curry – is Willy here today? And it was supported also by our advisor Jan Scholte – and I think Jan is here. Now Willy proposed in writing – I had to dig back into our archives to

find this – how this would work. He said, “It’s a round table of the Board, CEO, and all supporting AC and SO Chairs. They would pick a key issue to examine. Each would describe how their constituency addressed the issue, indicating what worked and didn’t work. Then there would be a discussion to create a space for mutual accountability and a learning space for improvement.”

So, Willy, that sounds good – wherever you are, Willy – but I guess we would need to see it in action to understand whether that will be an improvement over the reviews and mechanisms and challenges we have in place. So one of our goals in Work Stream 2 is to evaluate this mutually accountability round table.

The third is, do a detailed plan on enhancing accountability as part of Work Stream 2. I think that’s self-evident. That’s really what one, two, and four are about.

And the fourth one was to assess – and this is a tricky question – whether we want the IRP – the Independent Review Process – to be applicable to an SO and an AC activity.

So in GNSO where I live, if GNSO was undertaking a particular policy, could that be challenged within the GNSO by invoking an Independent Review Process? Because currently, the Independent Review Process is for action or inaction of ICANN’s, the corporation’s Board and management. We don’t bring it

down to the level of our ACs and SOs. So that's an open question for us to consider in Work Stream 2.

Now, I did earlier indicate that Stress Test 33 and 34, I indicated in the Stress Test response that we can challenge the Board's acceptance of a tainted decision that wasn't truly accountable, but it's a different matter to do an IRP or reconsideration within the GNSO or within an AC and SO. I think that it possible that you would challenge decisions that are made, but you might also challenge a Charter if it's exclusionary of individuals or entities that would otherwise be part of the target corporation.

So let me conclude with the last slide, Grace, it's on a proposed approach. Since I think in a lightning round just as Phil Corwin did, it's provocative to suggest an approach and then take the arrows from the rest of you in the room.

The SO and AC outreach to their community, in order to make sure they serve their targeted community that they have them on their rosters is a matter of effort and we are not going to be able to always demand that the results of accountability can be quantitatively measured. It is sometimes just our best effort. I know in Business Constituency to reach out to smaller businesses in different parts of the world – and that isn't just a diversity requirement, I wouldn't call that diversity at all – for us, our core membership are businesses who are registrants and

users of the Internet and we have an awful lot from North America and Europe but not enough from other parts of the world.

So in order for us to serve our target community, we need more of those community members to be vocal. So I don't see that as a diversity, it's simply completing the collection of a target community. So I think that that is going to be very difficult to measure if you wanted to actually do statistical analysis of where they all come from. And that's because of the second bullet.

I believe that an SO and AC is accountable to the stakeholders who actually determine that it's worth their while to participate and assert their views, to join a working group, to join the Business Constituency, to vote when we're putting positions up, to draft positions that we have. And that investment is one that is an indication of how important they think it is.

There are going to be times that entities from different parts of our constituency are just going to take a pass. They're not actually interested in the policy we're working on. And their non-participation doesn't mean that the SO and AC is not accountable. It will change over time.

And that brings me to the final bullet here, the effectiveness of an AC and SO policy in serving the targeted community, is more

important than whether the AC and SO made its decisions with full participation of all conceivable stakeholders. So effectiveness – getting back to what the organizational reviews have to look at – we need to work on the definition of effectiveness that says, “Is it serving the interests of this targeted community?” as opposed to “We don’t know whether it’s serving their interests but we know they were all in the room when they voted.”

So I’ll close with an example. Britain made a momentous decision to leave the EU last week, and that decision was tallied only from the 70% of Brits who voted. Not the 30% who failed to vote. But the interests of all Brits must be considered in how that decision gets implemented. So the participation rate could be less than 100% in making a decision but you need to be 100% conscious of your target community as you implement a decision that was made.

So thank you. I’ll take a queue of questions.

MATHIEU WEILL:

Thank you very much, Steve. And first in line is Thomas Rickert. Thomas, where are you?

THOMAS RICKERT: French humor. Isn't it nice? Steve, I have I guess it's two questions for you and that is with respect to the depth of analysis or suggestions that you want to make. You're focusing at the SO/AC level. Would you include the constituencies in that review?

Let me just give you two examples. Let's say the Registrar Stakeholder Group decided tomorrow that in order to become a member of the Registrar Stakeholder Group you need to have one million domain names under management. Or let's assume the ISPCP decided tomorrow that in order to become a member of that group you need to have an annual turnover of at least 500 million or what have you. Or if you started charging membership fees. Where do you see the line of what should be within and without outside of the mission of this task? Because you were mentioning that SO/ACs need to be accountable to the stakeholder groups who decide that it's worthwhile to participate and assert their views, and wouldn't you agree that this may be a little bit too narrow because those that can't afford to come to ICANN meetings but still care but it's not worthwhile because they might not want to spend their whole annual budget on a travel to an ICANN meeting.

I guess you're understanding what I'm trying to get to but maybe we can inform the discussion by [soaping] a little bit.

STEVE DELBIANCO: Thank you, Thomas. Grace, if you go to slide 3 for just a second I'll reiterate what is in our Bylaws already and has been for at least 10 years. The periodic review of the GNSO, Thomas, looks at little Roman numeral three there – whether an AC/SO Council is accountable to its constituency stakeholder groups and organizations. And I think your point is a good one. You have to ask whether the constituency is accountable to its targeted membership. So if a constituency itself has exclusionary behavior preventing new entrants from getting in, that was part of what Larry Strickling asked us about in Stress Test 34. And our answer to that, to answer that Stress Test affirmatively, we have to assume that it goes to the level that Thomas indicated.

So these reviews do look at the underlying constituencies – and I'm aware that the GNSO review just concluded – did analyze the degree to which our constituency, the Business Constituency, had representation of its targeted community. So I believe it should go to the constituency level in the targeted groups that they serve.

MATHIEU WEILL: Thank you, Steve. I am closing the line after Bruce Tonkin because we have quite a long line but it's an important topic so it's good that we spend some time on this. But we also need to

keep some time for the next topic which is going to be Transparency. So next is Sam Eisner please.

SAMANTHA EISNER:

Thank you. Steve, I really appreciate the suggestion of needing a definition of effectiveness as it relates to reviews. I think that that's a great suggestion. I heard Thomas talking about when you're looking at that effectiveness in that measure, looking more internal into the subparts of the group. But I have a concern of going into the exercise with the preconceived notion that effectiveness is only measured by effectiveness to the targeted community and not about what effectiveness might mean in relation to other parts of the ICANN community as well.

So I think that that is another important component of an organization can be serving its targeted community well but it might not be effective as a mechanism or input or however it might want to interact with the rest of the ICANN community, and I think that that's another important thing that should be considered.

STEVE DELBIANCO:

Yes, good point. Go ahead next in the queue.

MATHIEU WEILL: The next in the queue is Kavouss.

KAVOUSS ARASTEH: Yes, Steve. Thank you very much. I just first comment on one of your issue raised that the participation. You put in question the very fundamental issue in the entire world that participation, your view would be 100%. If there is a voting for anything, any democracy electing/selecting somebody, that you want that 100% of the people participate. No. It cannot be done. But if it was 70% a very high degree of participation. What you want to 100%? How you can to do that? Is it not possible to go to the 100% of participations? You just change entirely the criteria. That was a good thing but sometimes we have a decision based on 40% participation, but the result of that decision based on the majority has success on having simple majority. So I don't think that we can change that issue.

And then I would request you to come back to your four elements. One of the elements that you want that the IRP will be applied in the question number four. I think you make it quite complex, the issue. We have sufficiently serious problem with the application of IRP and you want to apply for that particular question? It is very, very, difficult, very theoretical. And then with this particular round table, I have no problem but round table will be just a [show] talk, will talk and talk and so you could

extend your views. We can get together, coffee, tea, and talk and then until there is no way how to implement that. No problem.

Effectiveness definitions, I think we have tried to define something, I don't say what we have defined and we have not succeeded. How you could define effectiveness and what are the criteria you use to measure that effectiveness? So I think we should a little bit go from theory to practice. Not put too much theory in the process. Thank you.

STEVE DELBIANCO: Thank you, Kavouss. I'll answer those in reverse order and do it quickly. The word "effectiveness" has been in the Bylaws for 12 years. We didn't add the word. It's there already and it's part of the organizational reviews. It doesn't apply to the GACs, so it's not something you've had to endure, this forced march of a review by an outside party.

UNIDENTIFIED MALE: [inaudible].

STEVE DELBIANCO : I know, but AC/SOs like GNSO, we are subject to the effectiveness word and as Sam indicated from staff, it's up to the Board to define it. And when we last did a review, when the RFPs

went out to the firms, I led the BC on a comment to staff saying let's define what the word effectiveness means so when we hire this outside consulting firm to evaluate the GNSO's effectiveness they'll have a clue what they're supposed to look at. Well, staff and the Board declined to take me up on that offer, but maybe that's something we handle in Work Stream 2 is try to define effectiveness both to the AC and SO and to Sam's point perhaps to the broader community.

Your second question was the IRP in round table. If you'll go to the slide that has all four items, I believe it's slide three. There they go right there. Kavouss, this is in the report. These are the words we put on paper, and the ICANN community and the Board of Directors approved these words. That is why they're here: this notion of number four, of looking to whether the IRP should be applicable to SO and AC activities. We're not making this up. This is in our approved report, and part of Work Stream 2 is to figure out if it will work.

Your first question was 100%. Go to slide five, Grace, if you would, please. Kavouss, I naturally understand you'll never get 100%. I was making the point that whatever you get for participation, turnout, as it were, you still have a responsibility when it comes to implementing that decision to consider the interests of 100% as you implement because there are people

that lost that vote, but they are still constituents of the targeted served community.

MATHIEU WEILL: Thanks, Steve. That's a useful clarification, I think. A very short follow-up, very short because the line is [inaudible].

KAVOUSS ARASTEH: I have no problem with question four [whether], but should we take into account advantages and disadvantages going through that process? Thank you.

MATHIEU WEILL: Thank you, Kavouss. Farzaneh, where are you? You are here. Please.

FARZANEH BADI: My question is because according to article four, section four of the Bylaws, the GAC is not subject to this review and they should provide their own reviews. I was also wondering if you are giving them the liberty to decide if they are subject to this IRP or not, or if they are going to even be considered in these accountability reviews. Thank you.

STEVE DELBIANCO: That's a great question. I look forward to you being on the Work Stream 2 SO/AC Accountability Team, along with GAC members so we can explore that. I certainly don't have a position going in.

MATHIEU WEILL: Thank you, Steve. Christopher.

UNIDENTIFIED MALE: This is coming from the author of Stress Test 18. I've learned to be a little more careful as I tread on GAC matters.

UNIDENTIFIED MALE: You had already mentioned stress tests, which was the first level of stress, and now you've even mentioned 18. I think that's going too far.

CHRISTOPHER WILKINSON: Thank you, Christopher Wilkinson. Steve, thank you very much. Really interesting and if I may say so, so far, so good. I agree with question four. I'm also touched by the concern for the English population, but I shall not comment further on that in this context.

My only point for now is to make a link between this discussion and the discussion we had this morning about diversity. Whether it's gender diversity or geographical diversity or

diversity in other parameters. It transpired this morning that whether it was at the level of appointments to the Board, appointments to the Nominating Committee, appointments by the SOs and the ACs to their own governing bodies, that the issue of diversity is really somewhat entrenched in the whole of the ICANN structure. I would strongly recommend that in addition to all of the above, you have a number three and a half or a couple more bullet points to address that SO and AC accountability includes their responsibilities to respect the obligations of ICANN on diversity.

As a footnote to that, I would echo I think what Cheryl also said this morning, that the Nominating Committee cannot accept the burden or responsibility for the whole of the diversity of the ICANN structures insofar as the lack of diversity as an effect imposed on the Nominating Committee by the SOs and ACs themselves. That won't do.

STEVE DELBIANCO:

[inaudible] I'll answer just briefly. I believe that diversity is something that informs the composition of the group, but accountability to an AC/SO is about execution, not composition. However composed, a decision will get made, and then it will be implemented. It's in that that you ask whether the AC/SO is

serving the interests of the targeted community it was created to serve.

At that point, that community has a theoretical definition, the business constituency or global business users and registrants. However the composition was, whether we were diverse, once we've made a decision, our execution is really not looking at diversity anymore.

CHRISTOPHER WILKINSON: Participants are part of execution and are included in accountability.

MATHIEU WEILL: Thank you, Christopher. I think obviously there's a link between the two. I think that cannot be challenged. Jonathan.

JONATHAN ZUCK: Thanks, Mathieu, and thanks, Steve, for your framework here. It feels related to the discussion we had a little bit about diversity. I'm with you that I think there is a separate issue associated with accountability and implementation. It would surprise me if the definition that appraisers of the SOs and ACs have fallen on in the past was really very different from effectiveness in serving the community that it was meant to represent. It would surprise

me if the definition that they came up with was very diverse from that.

It suggests that that, too, might be too general to be actionable or measurable, that without a set of objectives for an organization that might need to be created by that organization so that there's something with the greatest specificity on an organization-based level, that they're then held accountable for later. Did you do the things you said you would do or accomplish the things you said you would do and make the changes you said you would do? That needs to be the basis for defining effectiveness. Just saying, "effectiveness in serving your constituency" isn't too far removed from effectiveness. I guess that's what I'm saying. We need to make it less top-down and put the onus on these organizations to set objectives for themselves and then be measured against those objectives. I think that's the only thing that would work.

MATHIEU WEILL:

Thanks, Jonathan. I think it's an interesting comment to take into account. Jan.

JAN AART SCHOLTE:

Likewise, Steve, really systematic and clear. That's really helpful. Just looking at the proposed approaches, just a couple of

questions about clarifying some things. On the first point about the effort, are you drawing a distinction between outputs and outcomes here? Effort sounds like it's just trying, and I think you mean more than just trying, but that it's the output. When you say not just by results, is it not by results or not just by results? Are you going to be looking at the results or not? I'll just give you a set of questions if that's okay.

STEVE DELBIANCO:

I would say if you started with results and the results exhibited that your outreach efforts have been successful because you've suddenly got business constituency members evenly spread across the globe in proportion to population, that would be a result that's self-evident that you've gotten the community that you represent to be part of your members.

If that result doesn't achieve, then the next thing you look at is the level of effort at the outreach. The Business Constituency works extremely hard at outreach, and we haven't cracked the code yet on how to make it happen, but our efforts could be recognized even though the results may not be attained.

JAN AART SCHOLTE:

Maybe it's not just a question of effort in the sense of trying, but it might also be effort in the sense of mode because you might

be working really hard but doing it the wrong way. In other words, it's not just about effort. You might want to look at the mode as well as the effort.

The other thing is there's this slight tendency in that line perhaps to reduce accountability to outreach. I think accountability is a lot more than outreach, so you might want to look at that.

On the second line, I think it's what Thomas already suggested. You want to look at the reasons why people decide that it's not worthwhile. If they're deciding it's not worthwhile because they don't speak English and they're not comfortable with the way that the place works, it's not because they didn't think the issues were not worthwhile. You perhaps want to look at the reasons why people decide it's not worthwhile.

At the very last, I suppose effectiveness and target community are not self-evident. Again, even targeted community, ALAC might not have seen the human rights organizations as part of their target community seven years ago, but now they would. Again, one might want to say that targeted community is something to interrogate, as well. The existing AC/SO definition of a targeted community might actually be excluding people who want to be part of that community. They regard themselves

as being part of the target, even though the existing establishment doesn't regard them as being part of the target.

Anyway, I think they're all really great things, but maybe some fine tuning of the language could help.

STEVE DELBIANCO:

Jan, let me just thank you. All three points, I wrote down. In particular, the target community is in the Bylaws where we describe, "Here's what ccNSO, their target community is." Country Code Name Supporting Organization. ALAC has a targeted community that's defined in the Bylaws. You bring up the point that perhaps that should be revisited or interpreted from time to time to see if it's excluding somebody who logically would be part of it. All three of your points are excellent. I appreciate that.

MATHIEU WEILL:

Thank you, Steve. The next is Sebastien.

SEBASTIEN BACHOLLET:

Yes, thank you very much. I think it's very important to set that target and to have new targets. We are talking about ALAC. In fact, we need to talk about At-Large because it's where our

community is coming from and it's what we try to represent through the bottom-up process with a different organization.

For all the organizations, we need, I think, to be more accountable to have a transparent process for selecting any leaders for any position. That's something we need to add in our work to do the accountability approach. It's something that it's not done and not very clearly in every part of this organization.

The last point is that we just not need to find a way to be accountable to our own community in each silos, but as some said, to the overall community. One SO to the other SO and AC, and one AC to the other SO and ACs, it's important. We work hard to talk about the Board, but now we need to work hard to talk about ourselves. Thank you.

STEVE DELBIANCO:

Thank you, Sebastien. In an ideal world, we'd have a true web of accountability between and among the ACs and SOs. Let's aspire to that, but this particular Work Stream 2 thread is about whether any given AC or SO is accountable to the stakeholders it was supposed to serve. That does look internally, and the external balancing act of their interest versus the global public interest is something that we actually lean on the Board to do, as guided by the Bylaws and core values that we've designed.

MATHIEU WEILL: Thank you, Steve. Last in line is Bruce.

BRUCE TONKIN: Thank you, Mathieu. When I look at the second and third rows on this slide, firstly starting with the second row, which is accountable to the stakeholders, if you look at any market sector, typically it has some sort of organization or association that represents that sector. That organization often interacts with government or with other parts of the community.

Typically, for a particular market sector, you'd hope that a significant percentage of that market sector chooses to be members of that organization. Obviously, a much smaller subset of those members will be active members. Then there's also often a need to survey or somehow communicate with a wider part of that market sector that chooses not to be a member of that association.

If I compare ICANN and talk about some specific examples, if I look at the Government Advisory Committee, the set of members that could possibly be members of that group is probably around a couple hundred. You would then look at the current membership of that group and say it's a pretty representative set of members. In other words, there's a

significant portion of the 200 governments [that] are members of the GAC. Then you would say that there's a reasonable portion of those members that are fairly active.

I think it's a good structure for row 2 in that if the GAC is genuinely accountable to the members of that GAC and doing what the members want to do, it's pretty reflective of the set of governments. Likewise, if you look at the ccNSO, there's a couple hundred ccTLDs. There's a reasonable proportion of those ccTLDs that are members of the ccNSO, and then a reasonable portion of those, in turn, that are quite active. I think it's a solid structure for that.

I think it gets much more difficult when you're looking at sectors that are very large. You're obviously a member of the Business Constituency. We're not talking a couple of hundred. We're probably talking a billion. There's probably a billion businesses. If you said, "How many of those billion are members?" A tiny portion.

The question then is, "What is a reasonable number?" I think this picks up some of the diversity things. At least you'd hope that – obviously, you don't have a billion members, but even if you had 100 members – that the 100 members were kind of a fairly diverse sample set. I think it's one of the things that we need to make sure, that of these big groups – ALAC's another example.

Several billion people on the planet that use the Internet, the numbers of people that [are] directly in ALAC is much smaller than that. The number of those that are active, much smaller again.

I think one of our real struggles is these really big sectors: the business sector, the non-commercial sector, the individual citizen sector. Massive. How do we make sure that we're getting a representative sample that are members, which is your row 2?

Then your row 3. I think those really big groups probably need to be looking at how do they systematically do some kind of surveys or something to engage the wider pool? The business constituency, if you had a billion people that could be a member, let's say you have 100 members. I think you have to do something systemically beyond that 100 members to ensure that you actually are meeting that last requirement. In other words, how do you measure that you're effective?

STEVE DELBIANCO:

Excellent point. You hit it on the head, and that's why I kept using my BC as an example because it's such a challenge to have representation of the different subsectors and segments in the business user community. Those who participate sometimes is very few that will be able to dive into the arcane details of the UDRP policy or a new gTLD round. Thanks, Bruce.

MATHIEU WEILL:

Thanks a lot, Steve, and thanks for the lightning talk and getting us in pace for this important topic.

I will now invite Avri to join for a transparency lightning talk. I think the takeaways on these items are really about speaking about accountability to the targeted membership. A bonus would be that we can also work on the other web within ICANN.

Obviously, the definition of effectiveness is probably going to be an interesting issue to explore in this work. The scope, also, we've clarified includes constituency, stakeholder groups, and various subgroups. I've also noted support for the mutual accountability roundtable [restoration]. That's worth noting.

I will finish with a final personal note that when we were in Frankfurt last year, about 18 months ago, we developed a framework for accountability with transparency, consultation, review, redress, etc. I strongly suggest that this framework be included in the background paper for this particular topic because it would be extremely useful to build upon something that we've shared together before that.

With that, I am now deleted to welcome Avri for a talk on transparency.

AVRI DORIA: Thank you. I'm delighted to be up here. Apologies, I have no slides. I have no funny pictures. I probably won't be funny at all.

UNIDENTIFIED MALE: Good stuff.

AVRI DORIA: Thank you. Transparency is a subject that comes up whenever accountability is talked about. We've talked about transparency in every one of the accountability reviews that we've had. One of the things that came up in the ATRT 2, which was a reference back to ATRT 1, which was a reference back to reviews that had been done before, was the culture of transparency and a discussion of the fact that we don't have a culture of transparency. We have a culture of opacity.

What I mean is in a culture of transparency, everything is open to view except for those things that you decide to close. In a culture of opacity, everything is hidden except for those things that you decide to show. We definitely are in a culture of opacity, even though the ATRT 2 did recommend that we start moving towards a culture of transparency.

A culture of transparency doesn't mean that there aren't things that aren't secret, that there aren't things that go according to Chatham House. It means that you intentionally decide at each

point. “Aha. This is something that has to do with privacy of an individual. This is something that has to do with corporate negotiations and therefore must be secret, or at least must be secret for some point of time.”

In a culture of transparency, you have a set of reasons for what things can be hidden, and you log them. You actually say, “There are documents on X and those have been put away because of reason Y.” You have that. In a culture of transparency, you occasionally go back and you say, “Those things that we hid five or ten years ago, do they need to remain hidden? Can we start revealing some of the stuff that we did keep secret?”

While ICANN has been improving remarkably in terms of revealing things that it keeps secret, it still has a long way to go. When you look at the DIDP, the Document Information Disclosure, you find that a lot of the time, people don’t even know the specific document to refer to. They know that something was talked about. They know there was a decision, but in terms of being able to refer specifically to what they want, it’s very difficult because there isn’t even a transparency about what we’re hiding. We don’t even know what secrets there are.

Of course, anybody who’s worked in secrecy knows that the first objective in being secret is not let anyone know you have a secret. One of the things that we really need to look at in

transparency work is how do we change? Do we really want to change? Just because ATRT has recommended it doesn't mean that we necessarily want it. I think we do.

If indeed we do want a culture of transparency, how can we move there? What does it mean? What are the good reasons for opacity? What are the good reasons for having a review to let something become visible that wasn't visible?

One of the things we have to think about when we talk about accountability of the SOs, the ACs, or even the staff is the transparency. A lot of what we're doing, even in the SOs and ACs, are not transparent. Some of them attempt to be. GNSO and At-Large or ALAC make a very strong attempt to be transparent, at least at the top level, though not necessarily all of the constituencies and stakeholder groups and RALOs beneath them are. For the other part, it's very varied.

We really have to have a good concept of transparency in order to be able to start talking about accountability, and how can you be accountable if you're not transparent? Very much, transparency does feed into that.

The last thing that I wanted to mention on that, which refers to accountability – and nobody did a lightning talk on this – was the topic of staff accountability. One of the things that we have to realize is that we live in a situation where the staff has trouble

being transparent. How often have any of us heard things like, “I can’t talk about that,” or “It would be worth my job to tell you what really happened,” or the things said with a sad little smile: “I couldn’t possibly comment?” This is purely a subjective judgment on my part, but you see a sort of fear in many of the employees about what they may or may not say.

We do have a whistleblowing mechanism. As far as I can tell, it’s not used very often. ATRT 2 did a review of it and decided that it really needed a more professional review to see the extent to which it worked. In a transparent, culture, whistleblowing should almost be unnecessary. It should still be possible. It should be safe. It shouldn’t cost somebody their job or their future, but it should almost be unnecessary.

I think that when we start talking about staff accountability, we have to do it with a view to making sure that they have access to being transparent. For the institution itself, what goes on in that very large part of ICANN that is the staff needs to be transparent to all of us anyhow. Therefore, without good whistleblowing, without staff feeling the freedom to explain why they do things they do, for them to explain the regime they live under with the various bosses and what they are told and what they are not told, we have trouble talking about accountability at all.

Thanks. What’s what I wanted to say about transparency.

MATHIEU WEILL: Thank you very much, Avri. You actually covered almost two topics in one talk. That's quite amazing.

AVRI DORIA: [inaudible].

MATHIEU WEILL: I think that's efficiency. How do you define efficiency?

We can take a few questions for Avri on those issues if there are any. Kavouss, I assume this is an old hand in the AC room. I see Fiona. Are you in the AC room as well, Alan?

ALAN GREENBERG: I was just going to suggest that maybe I can go on and then people comment on both because there's a huge amount of overlap between what I was going to say and [inaudible]

MATHIEU WEILL: There's going to be a break in between because I think many of us will need to make a break to have their minds refreshed for the discussion. My suggestion is to take a few questions. Obviously, if the line is too long, the discussion will go on after Alan and Ed have had the opportunity also to speak up. Fiona.

FIONA ASONGA:

Thank you, Mathieu. Mine is just a question I'd like to pose in reference to what Avri has just raised. She has mentioned that the issue of transparency cannot be discussed in isolation without discussing accountability because every time you have to look at accountability issues, the question of transparency has to come into play. I would just like to pose a question to everyone. As we go through the lightning talks, I'm realizing that there are a number of overlaps on some of the issues. Will we at one point consider those overlaps and see which areas can practically be merged? Have we really looked at [inaudible] that we continue as is? Thank you.

MATHIEU WEILL:

The plan is that every recommendation is discussed by the CCWG as a whole in order to make sure we don't introduce contradictions between our recommendations. I think that's the way we will address this. That's the first order of addressing it. In some cases, we might request two subgroups to liaise and coordinate upon a certain topic or subtopic because obviously there are links between the various items. I hope that addresses your question, Fiona.

I lost my list here, but I think next is Kavouss.

KAVOUSS ARASTEH: I don't think that we should exaggerate the scope of transparency to the extent that we intervene and bypass the hierarchical management in the name of transparency and asking or interrogating the staff no matter at what level to say whatever which has not been coordinated, which has not been discussed. Based on his or her understanding or her presumption or impression of the situation, which may not reflect the reality. We should be quite careful not to go to that extent.

In fact, having some definition for transparency, transparency is something that you will open unless [the team] that you decide not to open. It is not transparency. It is partial transparency. Thank you.

MATHIEU WEILL: Thank you very much, Kavouss. Would you like to comment?

AVRI DORIA: Just a quick one. I don't think that I actually meant to put in any notion of interrogating the staff. I think it was the notion of a freedom for the staff to speak.

MATHIEU WEILL: Thank you, Avri. Sam, you're next.

SAMANTHA EISNER: Thanks. I have a similar line of concern as Kavouss mentioned. I think as the Work Stream 2 for staff accountability was scoped, there's a lot of emphasis put onto understanding how staff is to relate to the community and the lines of responsibility, those lines of authority. I think those are things that really would benefit all of us to understand. We need to understand what to expect of each other, what you can expect of me when you come to me versus going to my boss versus going to the Board. Those are things that make sense.

Though I'd encourage when we get into the issue of staff transparency, because staff accountability could be different from staff transparency. People get concerned when they're on staff, not because they're told that they shouldn't talk, but because we recognize that we hold a responsibility, both to the organization and to the community. There needs to be an understanding that when I say something as ICANN staff, I'm often considered as speaking on behalf of the organization. I don't have authority to make many decisions on behalf of the organization or to state a position. We're all very conscious of making sure that we don't add confusion to situations or put

things in that might actually hinder our ability to continue to relate to each other appropriately.

As we move through the staff accountability, I know that a good section of that will have to be, how do we communicate with each other? We make sure that there's a base understanding of the restrictions that staff believes they're operating under as well, and not assumptions. I think that there's a lot of need to make sure that we have a common understanding and that the conversation is done actually with staff, and that we're seen as an effective part of that conversation so that it's not based on things that might not actually be in place or might not be addressing situations that don't need to be addressed.

MATHIEU WEILL:

[Would you] like to comment?

AVRI DORIA:

Certainly, there's a difference because discretion and keeping things hidden because of fear. I think that you can often tell the difference between the two in the interactions. Of course, there's a difference, but still within a culture of transparency, more can be talked about. Certainly, I'm not in a position to say. We all have that, even within the SOs and ACs. I'm in the NCSG,

but I hold no office, so I can voice an opinion, but I always have to say, “But it’s just an opinion. It’s meaningless.”

This happened with a question asked before. “Aren’t the staff stakeholders too?” I’ve tried to say, and you’ve probably heard me try to say, “Of course they are. They are of a different sort, but then again, each of the stakeholders is of a different sort.” But if you're going to consider them stakeholders, then they have to be acting within their own stake and not only under orders to act. They have to have the ability to talk. They have to have the ability to have known constraints, but also be free.

When we get into those discussions, that's really the kind of meat that I would love to see this get into.

MATHIEU WEILL:

Thank you, Avri. We’re not far from staff unions in this discussion. I’m looking forward to bring my French expertise on that.

Steve.

STEVE DELBIANCO:

Thank you. In the chat, I pasted the four items of transparency that are in our report and are now in ICANN’s Bylaws. We have four specific areas of transparency in Work Stream 2 that we

have to look at. I enjoyed every minute of Avri's discussion of staff accountability as a function of transparency. I get that we'll have to cover transparency in the staff accountability, but with respect to the four things that we have to look at in transparency as part of our new Bylaws, it's rather constrained. It's the document inspection, the DIDP, Board deliberations, ICANN's interactions with governments and the whistleblower policy.

I look forward to the next set of lightning talks, but we need to focus on that which we've already approved and begun, or we're not going to be able to satisfy what the Bylaws require of us right now.

MATHIEU WEILL:

At the same time, as I said, Avri was somehow addressing two topics at the same time. That can fit the other topic.

The plan was to break now, but I have three more speakers, so I will provide you with the choice of either speaking now and delaying the break shortly or wait for the next discussions on transparency, which will take place and be first in line for that follow-up discussion. Chris?

CHRISTOPHER WILKINSON: I'll be very, very briefly. Seriously, I just wanted to pick up on something specific Avri said when she was talking about fear and the difference between. I'm here, Avri.

I don't know where this is going to go and how this will move forward, but if I can just recommend, we do actually have in this community people who have been in the community and on the staff, and come off the staff and come back into the community. We have got the ability, if we choose to do so, to do some real research for want of a better way of putting it, of actually asking what happens in real life. It could even be anonymous and protected. I just wanted to mention that.

AVRI DORIA: Thanks. Believe it or not, in the context of ATRT 2, I did indeed do some of that and think it would be really valuable to some more of that.

MATHIEU WEILL: Excellent suggestion. Jonathan.

JONATHAN ZUCK: Thanks, Mathieu, and thanks, Avri, for your presentation. I appreciate your comments about a culture of transparency. I just have one caution, and that is that at least it's been my

experience that transparency is not an end unto itself, but instead really a tool of accountability.

What we're really looking at is effective transparency, not just blanket transparency where people are overwhelmed. You have obscurity through transparency by having too many types of materials. Actually, developing a culture of accountability is the umbrella concept under which we develop transparency practices that actually have an impact of greater accountability because transparency is, I believe, a means to an end and not an end unto itself.

MATHIEU WEILL: Short comment, Avri?

AVRI DORIA: I would actually probably argue, if we were sitting down and being philosophical, that it is both. That transparency is important in itself and it is important as a means to other things, to accountability. I believe, and this would be a long philosophical conversation, about why it is actually important in and of itself.

MATHIEU WEILL: Thank you. [inaudible] now, please.

UNIDENTIFIED FEMALE: Thank you very much. I just want to clarify a little bit on one point Avri said. In particular, whether ICANN staff is a stakeholder, I understand within ICANN as an organization, sure, staff is a stakeholder. In a broader sense outside ICANN, I don't know. Do we all share that ICANN staff is a separate stakeholder than ICANN? Whether we see that, how can we indeed see ICANN as one body that is accountable as one? If we start separating staff with the Board and so on, then how can that help us having ICANN as one accountable body? That's my question.

AVRI DORIA: I probably am in a minority that argues that staff itself have a very special stake that is different than the role of ICANN itself. They are people. They are employees. They are subject to not quite the union, but indeed, as people, employed and they have a specific stake that is affected by ICANN itself. As I said, a very different sort of stakeholder. It wasn't what I was asked to talk about, but I would argue that yes, they do. That doesn't change ICANN the corporation's responsibility, but there's also staff members as people who are stakeholders in what happens to ICANN.

MATHIEU WEILL: Thank you, Avri. Christopher, I'm sorry, but I closed the queue twice. Make it very short because we really need to leave space for the last two lightning talks. It's still going to be about transparency, so you'll still have room for [inaudible].

CHRISTOPHER WILKINSON: I understand your point of view, and thank you. For the sake of argument, a few weeks ago, I would have shared [Athena's] qualifications, but the recent discussion of the staffing of the PTI leads me to the conclusion that unfortunately, it is the CWG itself who has created the fact that the ICANN staff, particularly in IANA, have become a stakeholder in their own right.

AVRI DORIA: I thought they were before that, so sure.

MATHIEU WEILL: Any last words, Avri, before we break?

AVRI DORIA: I never have last words.

MATHIEU WEILL: I know. That's why I'm asking. With that, break for 15 minutes. We reconvene at 25. Stay tuned because we will keep discussing transparency. Thank you very much.

Okay, everyone. We're going to reconvene. If you would be kind enough to get back to your seats. Alan, maybe you could join us on the table as you are the next speaker.

Can I ask you all to be seated? We are going to resume our session on transparency. We have two remaining talks, one from Alan Greenberg and the other from Ed Morris. I will now leave the floor to Alan for his lightning talk.

ALAN GREENBERG: Thank you, and I hope it will be very lightning. I don't think I can stretch this out to five minutes. First slide.

Avri mentioned the expression, culture of transparency. The other expression that was used in ATRT 2 was transparency should be in the DNA of ICANN. You shouldn't have to invoke a Freedom of Information Act or the names of various national legislations to try to get information, if indeed you can even find out the information exists.

Next slide.

That’s true, particularly if the information is largely unimportant and innocuous.

Next slide.

If trivial information is impossible to get, we have to presume that more substantive information is also not available, and there’s going to be a reluctance to present it. ICANN has lots of information on the web. There’s no shortage of things people can point to. At times, I’ve often thought that something wasn’t available, and in fact, someone said, “Oh yes, it is there,” and pointed me to the page. Then I would ask, “How would you have expected me to find that page, since the webpages don’t have, as many others do, a breadcrumb trail of saying where is it on the hierarchy? It’s just a page. It is linked, but you can’t find it.”

The presence of information doesn’t necessarily mean it’s correct or accurate because there are times when it seems that ICANN has been more intrigued with presenting information than making sure it’s actually usable.

Next slide.

I’ll give a couple of real life examples from the days I live. I, in the last few months, regularly got information from somebody, or rather an e-mail from somebody. Never heard the name before. I would go to the ICANN directory, and the name’s usually there.

They're very good at putting names of new employees in directories. Sometimes it even says how recently they've been hired. It doesn't say what department they work for. It doesn't say who they are in any context at all. I've on occasion asked my staff support, "Who is this person?" The answer often is, "I don't know. I'll check." Eventually, someone comes back and says, "They work in such and such a department."

If you have a problem with dealing with someone, the natural thing is – and Sam mentioned her manager, her boss. Try to find out who someone's manager is sometimes. ICANN published the executive organization chart. Doesn't publish anything under it, and sometimes it is literally impossible to find out if X reports to Y or Y reports to X. It's not obvious from how they deal with the public. If a decision is handed down, who made the decision? Who can I appeal to? It's an unknown in the past. Some of these things get really difficult. Then you have information which is clearly disclosed, but not quite right.

Next slide.

I'll tell you, this is not on the web right now. Thanks to the Wayback Machine, things that ICANN published last year will live on forever. Here it says that Akram Atallah is the owner of contractual compliance. You may remember there was a WHOIS review that talked about where compliance should report, and

there's been some dispute. Just in case you aren't sure what the word owner means, it's defined.

Next slide.

Owner is the name identified with each entry that is responsible for the work in ICANN.

Next slide.

What we were told when this was identified by one of our people, that Akram Atallah has nothing to do with compliance. He is not responsible for the budgets. They're managed solely by someone else, and that person reports directly to the CEO. Go back to the previous slide.

How can you reconcile that to an innocent person looking at the web, these two facts? Who do you want to believe, the pretty picture or what we were told offline? Go ahead, please. The next one.

Where does transparency start? Next slide.

It's got to be everywhere. It really does. Next slide.

There's going to be a cost to transparency. It's largely in time and effort. It takes time to fill in those directory items where someone is in a department. It takes time to say where they moved when they changed departments, but it's really

important. I'm told there used to be an internal distribution when someone changed departments, so at least the staff would know when someone moved. I'm told that doesn't get done anymore at all.

Next slide.

I disagree that transparency is only for accountability. Transparency, if it's really there, gives trust. We have been sadly lacking in trust at ICANN in many ways. There are some people who believe that this whole accountability thing might have been avoided if we had had trust in the Board and in some other parts of ICANN over the last several years. Maybe yes, maybe no. It's moot, too late to turn back the clock, but trust is really important. In the absence of information, people presume the worst.

Next slide.

As the examples I've given, if completely innocuous information is impossible to get, then it's going to be second nature to suppress the stuff you really don't want people to see. We really, really need to make sure that information is available, it is not easy to hide and doesn't have the incentive to hide it. Right now, the comments Avri made about staff being reluctant to say things, I can't tell you how many times I hear, "There's

something going on, but I can't tell you about it yet." Sometimes that goes on for several years.

It's discouraging in an organization that prides itself with being open and transparent. That's not the way some of us end up seeing it. Thank you.

MATHIEU WEILL:

Thank you very much, Alan. That was lightning, very to the point. I'm going to turn to Siva for a question or comment, and then I'll ask you whether you think this is more on the transparency subgroup or on the staff accountability subgroup. First, just to give you some heads up, and Siva.

SIVA MUTHUSAMY:

Alan, I agree with all of your observations about transparency and the need for transparency, but I have a totally opposite question. Do you have any exceptions to the position that everything should be transparent? Have you thought of any situation? I'll just give an imaginary scenario. What if ICANN Board was to make a decision that would affect the stock markets? How transparent should the deliberations be? It is required to be kept confidential. Likewise, have you identified exceptions to the rule of transparency where certain matters

have to be deliberated in secrecy or in closed doors? Who do you approve of such exceptions? Thank you.

ALAN GREENBERG:

Of course. There is a huge number of things that cannot be revealed at any given time. There are things that probably will not be able to be revealed for a long time. There are certainly time-sensitive issues. The list couldn't go on and on. That's not the issue.

The issue is where there is no reason to not disclose something, why is it a secret? There's no shortage of things that cannot be revealed at any given time to any given person for completely valid reasons.

I'll just add that you cannot really unweave the intersection of transparency and staff accountability. How can you hold staff to be accountable when you can't find out who it was that did something?

MATHIEU WEILL:

There's no question that transparency of staff in terms of who's doing what and so on can be a very significant part of staff accountability, but compared to the four items we had identified in a transparency subgroup, there seems to be a little disconnect because the only aspects related to staff transparency is the

whistleblower policy. I'm wondering whether because of the way our mandate is framed as Work Stream 2, whether it would not be more appropriate to carry the concerns that you legitimately raise through the staff Accountability subgroup, rather than the Transparency subgroup, which is really framed into only four topics. Maybe it's just food for thought after this meeting.

The next is Tijani.

TIJANI BEN JEMAA:

Thank you, Mathieu. Tijani speaking. I agree with you, Alan, that the alternative of transparency is lack of trust. I do believe that there is a lack of trust. That's why we don't have the transparency.

The discretion doesn't bother me at all, but the lack of trust do. This is at all levels. Sometimes, the information concerns you and you don't have it. It is hidden from you. This is a lack of transparency for me. Thank you.

MATHIEU WEILL:

Thank you, Tijani. Want to comment? No? Thank you. Kavouss.

KAVOUSS ARASTEH: Yes. Thank you very much. You go to some countries and you look in the telephone directory, you don't find the name. You ask the information. It says that the owner of the telephone does not want that his name appears in the booklet. How you can talk about that? We don't want someone registered in a conference, it is asked, "Do you want that your name appears in the e-mail?" "No. I don't want appear it to appear in the e-mail." It is not lack of transparency. It is personal decision. Some people, they do not want.

There are some addresses or something that people continue to ask question and make problem and does not allow that person to work properly, then it is not a lack of transparency. It is disturbance. We should think it over, also. There are some occasions that it is causing problem. It is not harmless. Maybe some, deeply harmful. Thank you.

MATHIEU WEILL: Thank you, Kavous. Alan?

ALAN GREENBERG: As Siva asked, "Are there things that should not be transparent just because they're in ICANN's record books?" Of course, and individual privacy is one of those things that we have an

obligation to protect, so certainly there are lots of things that may be in that category that should not be released.

MATHIEU WEILL: Thank you. Next is [Cherin], and then we'll move to Ed's presentation. [Cherin].

[CHERIN]: Just a comment and a suggestion. I fully agree that improving transparency will improve trust within the community, particularly in relationship between the Board and the community. I think that's very important.

The other thing it will improve, in my view, is the quality of the deliberation and the quality of the decisions because this one thing, you deliberate quietly, knowing it's not going to be recorded. Once you know it's going to be public, you have to improve your performance. You have to be much more careful about execution. You have to be much more careful about the rationale. You really have to think much harder, and I think that's a plus for all of us.

In terms of the scope of the work, Steve DelBianco mentioned those four elements. You said that the staff transparency ought to be taken into account into the staff accountability. Actually, I agree with that, but perhaps also when we do the SO and AC

accountability, we ought to look at also transparency because that's not one of the four things, as well. I think we need to be transparent, like Alan said, everywhere. If we're only transparent in one part and not everywhere else, it is not complete. Thank you.

MATHIEU WEILL:

Thank you, [Cherin]. Indeed, this transparency will be part of the discussions of SO/AC accountability, as well. Probably transparency is everywhere in all of our topics. The Transparency subgroup only has these four items to dig into more deeply.

Alan, would you like closing remarks?

ALAN GREENBERG:

Just one. The transparency and staff accountability are woven together. If you look at the entry I put in the Google Docs for this talk, I mentioned I could have done this under staff accountability. I had to pick one or the other. You didn't give me the option of a joint one, and I didn't think you'd give me ten minutes if I put it under both.

MATHIEU WEILL: That was correct. You assumed correctly. You know us. Thank you very much, Alan.

Our next speaker is Ed. Go ahead.

EDWARD MORRIS: I follow the A Team of Avri and Alan, which is always an honor and a difficult thing to do. My talk's going to be a little bit different. I want to focus on our work in WS2. As Steve pointed out, we have four tasks we've been charged to do, and I'm going to focus on one in particular. That is the reform of the DIDP and a suggested way forward.

First, I want to take a broader point which I think can inform our process going forward. In Work Stream 1 on this issue, this group kicked butt. Getting inspection was something that members of this community have been fighting for for a decade and a half. The investigation right was something that most of us never even thought of. The fact is, this community was led in the [end] on this issue, not by ourselves, but by the ICANN Board. Investigation was a Board proposal.

I think what that tells us is within the community, there is definite consensus that what we're trying to do is create a corporation going forward that is open, transparent in a way that frankly leads the world. What we've done in investigation

and inspection makes us, in many ways, the most transparent corporation in California that I've seen in the PBC laws.

How do we go ahead and do this? First of all, in some of the other matters of whistleblower disclosure, what I would suggest is we sometimes have the tendency in the CCWG to try to recreate something that's already been done before. There's a ton of whistleblower policies out there. Why don't we take a look at what other organizations have done, and then take best practices and try to adopt them here?

The DIDP is a little bit different because it's [inaudible] to what we do here at ICANN. Here's my proposal going forward. First of all, a lot of you may not know what a DIDP is. We talk about it like everyone on the street knows what the Documentary Information Disclosure Policy is. Basically, ICANN already claims that it's open and transparent. The default is transparency. If the staff decides not to release documents on the website, you can ask for one or ask for the document that exists through a DIDP request. Then staff again decides whether or not to approve it. If you disagree with the staff decision not to approve it – we'll talk about what they use to decide whether or not to give you the document – it then goes to the Board through a reconsideration. The Board has never contravened a staff decision not to release a document.

Basically, what we have is the staff deciding what to release. Then you ask for something that isn't released. The staff decides again not to release it, and then the only appeal are the folks that are advised by staff not to release it. I think one of the things we need to look at is an independent review and appeal process for denials of documentation under the DIDP.

Let's take a look at the DIDP itself. The document shall be released unless it fits into one of 12 categories contained in something known as the Defined Conditions of Non-Disclosure. They were established years ago. That's not enough. Staff is also, before denying release of a document, supposed to balance the reasoning for non-disclosure against the public interest in disclosure. There are some of us who don't believe they do that. They do at times. I've gotten some contractual information that they actually specifically stated, "We think it's in the public interest to release this."

In the NCSG, we have sent some of our doctoral students out to do research in this area. Unlike a lot of areas we have been working on here, we have hard data now. I can tell you that about 87% of DIDP requests are rejected, but through a study that we released last week, [put] online by Sarah Clayton out at USC, I can tell you that if your request is shorter, at least in [inaudible] I believe it's two times more chance of getting the information than if you have a long request. If you were certain

categories of requesters, you can be denied by some subcategories, but inaudible]. In other words, there's a lot of arbitrary decisions being made. We want to end that. We want to replace that with something that's knowable.

How do we go forward? I have a suggestion. As I've said, I've seen a lot of cooperation with the Board and staff in trying to make this work. What I do is I ask Sam and Jon and Amy and the nice folks at ICANN Legal, "You have the 12 DCND conditions. Are there any you think we can get rid of?" If they say, "We don't need this anymore," it's gone. For those that think we still need, ask them to give a justification as to why we need this.

On the other hand, we have a lot of data on how the DCND has been used or abused, depending upon your point of view. Once we get ICANN Legal's justification for having these exceptions to a general policy of disclosure, we can then match it with the data as to how it's been used and as a community come up with a decision as to whether we want to keep these exemptions from a general rule of transparency.

I think that's a way forward that is practical, that allows us not to have to reinvent the wheel, and actually could work. There's one thing I want to point out at the end. When we start talking about transparency, ICANN is a really unique organization. It's a private corporation with a public duty and a public interest. At

times, in the NCSG in particular, I have my members that go on list and say, “Norway has this brilliant Freedom of Information Act request, and by the way, I can’t wait until I get a DIDP department to implement it.” Folks, we’re not going to have a DIDP department, and we are not a country. At the same point, some of my friends in some of the other communities are coming on other lists and saying, “ICANN is a corporation. We need to compare our disclosure policy to Coca-Cola.” That’s not right either.

I think what we need to do is find a balance between what is needed to become a truly transparent organization, but at the same point, there is a need for some opaqueness and secrecy. As a community and as a group, we have to sort out what that is. I’ve suggested a way forward, at least with the DIDP, which in my view is the big enchilada of this entire matter. Thanks.

MATHIEU WEILL:

Thank you very much, Ed, for digging into one of the key questions on transparency. Are there any questions for Ed?

This is surprising. Is this because you know he will disclose anything you request?

CONSTANTINE ROUSSOS: I have a question. It’s Constantine from DotMusic.

MATHIEU WEILL: Sorry, Constantine.

CONSTANTINE ROUSSOS: We actually have a DIDP reconsideration request right now, and we have a question on the definition of the public interest. If there's no definition of the public interest, how can the staff make a decision on the public interest? If they do make a decision based on the public interest, why don't they define the public interest? We posed that question in our reconsideration, and I guess we're asking the BGC. Please let us know what the definition is so we know how staff came about with this decision. What is the definition of the public interest?

MATHIEU WEILL: Can you disclose that, Ed? I'm not sure you can.

EDWARD MORRIS: That is confidential. No.

MATHIEU WEILL: What I can say on this is it's been highly discussed on our mailing lists about the definition of public interest. Our conclusion as a working group, with no binding ability on anyone, was that we were not going to attempt to define, and it was not our role. It

was not our mandate. That’s all I can say. Many have been on the record saying there is no agreed definition of public interest across ICANN at this stage. Alan?

ALAN GREENBERG:

Thank you. Just wanted to follow up. Avri had mentioned the Whistleblower Act or Whistleblower whatever. There had been a disclosure request filed on that quite a while ago, and it didn’t get a particularly satisfactory answer. When the ATRT 2 requested the document, the first reaction, I think, was, “We should file a disclosure request.” We said, “We’re an AoC review. We shouldn’t have to file a piece of paper.” We were then told to have the Chair of the committee ask the CEO of the organization if we could see a copy.” We eventually did get a copy, a huge amount of redactions, most of them telephone numbers of the supplier, which we really didn’t care about. It’s that level of work to get something which most corporations proudly post on their website.

MATHIEU WEILL:

Thank you, Alan. You don’t have to comment if you don’t want to.

EDWARD MORRIS: If you look at the studies I mentioned, we're seeing that ICANN reflexively denies requests for information, rather than approves them. I hold the record. I have a DIDP, the only one in history, that had all 12 reasons of non-disclosure as listed for not giving me the document.

MATHIEU WEILL: Congratulations.

EDWARD MORRIS: Lord knows. I went through seven requests, and when I got one approved, we didn't know what to do with it, literally. I asked for the information. I got it, and I literally didn't know what I wanted to do with it because I didn't expect to get it. That is our current transparency policy, which is why we need to change it.

MATHIEU WEILL: Thanks, Ed. Steve, you're next in the line, please.

STEVE DELBIANCO: Thanks. Ed, thank you for focusing on one of the four like you did. It's fine if that's the only one of the four that you wish to work on. We'll find other people to fill in the others. There's more than enough meat, and you have the experience firsthand and the scars to prove it on DIDP. I don't think that folks who

step up to the subgroups in Work Stream 2 have to necessarily shoulder all three or four threads. Make this the one that you lead, and we'll recruit other volunteers to help. Thank you.

MATHIEU WEILL: Thank you, Steve. One last question here. Can you state your name?

BERIN SZOKA: I'm Berin Szoka. I run a non-profit in the U.S. called TechFreedom, a civil society group. I have two questions, if I may. Maybe I can break them up to make this easier.

First question is, as to the transparency point, how much more comfortable would you be if the community had gotten membership rights under California law, which includes statutory rights to get access to key documents that are enforceable under California law?

EDWARD MORRIS: I was very much in favor of membership. I believe the first meeting was on December 9th, 2014. I mentioned membership in meeting one. California law gives you inspection. We have inspection. We ported the California statute and brought it back

into our proposal – [that’s what’s] been approved by the Board – into the Bylaws. We have inspection.

We even have more than inspection because the investigation right is inspection plus. I know there have been some folks – Karl Auerbach, for example – that say, “No, you want the statutory power.” Yeah, I would have loved to have had membership, but in terms of this narrow field, we have something better than what’s provided under California statute, at least in my view.

BERIN SZOKA:

I’m not clear if the enforcement mechanisms are the same, if you want to comment on that. But I did have another question unrelated to that, unless you want to comment on enforcement.

EDWARD MORRIS:

As Steve says, it’s a Bylaws violation, and it can be enforced like pretty much the entire – all of our Bylaws.

BERIN SZOKA:

My second question is to the question the gentleman over here asked about the public interest standard. I’m a telecom lawyer. Our Federal Communications Commission in the United States operates under a public interest standard. I can tell you, after 80 plus years of the FCC operating under that standard, that it is no

standard at all. It means nothing, other than that you can get a majority of the commission to vote for something.

So I'm curious to know why anyone here thinks that the public interest standard will mean anything other than that a majority of the Board of the ICANN leadership will vote for something. And in particular, what would be wrong with doing what other agencies have done? For example, our Federal Trade Commission has a similarly broad standard. It's not the public interest. It's unfairness and deception. But it at least has issued policy statements, just like the antitrust agencies have issued guidelines, that give you more conceptual clarity on how the agency will actually decide what its standards mean.

Now, it's still up to a vote of those agencies, but at least they have some standards to be held to so that they can have to analyze in a detailed way what the public interest means.

I've read what's in the current text, and it doesn't seem to me to do anything to really constrain the discretion of the agencies. So what makes us think that this is not simply going to resolve into ultimately political decisions?

MATHIEU WEILL:

Thank you for your question. You're giving me the opportunity to correct something I've said. There is something in our proposal

about public interests. If you read the draft articles of incorporation, there is a reference to public interest as determined from time to time by bottom-up multi-stakeholder processes.

Becky, would you like to give the exact wording?

BECKY BURR:

Yes, and it appears in two places. It does appear in the mission commitment and core values, where we say that the global public interest should be determined by the bottom-up multi-stakeholder process and in the articles of incorporation.

The notion was that we didn't want a sort of imposed on from a far concept, that the purpose here, rather than trying to define pie-in-the-sky is that the policy development process at ICANN, the bottom-up multi-stakeholder process, would be the source of the global public interest.

MATHIEU WEILL:

Thank you, Becky. I think, with that, we will – oh, no, we need to turn to Anne for maybe the last word on this before we move to the next agenda item. Anne?

ANNE AIKMAN-SCALESE: Hi. It's Anne Aikman-Scalese with the IPC. I just wanted to report that, historically, the working group was advised – this one – by ICANN staff that there was a tentative definition of global public interest that was arrived at in May of 2014 and defined global public interest as follows: ensuring that the Internet becomes and continues to be stable, inclusive, and accessible across the globe so that all may enjoy the benefits of a single and open Internet. In addressing its public responsibility, ICANN must build trust in the Internet and its governance ecosystem.

I don't honestly know what sort of community testing this tentative definition had gone through; whether it can be viewed as a bottom-up definition or what it was intended for – the purpose of that at that time – but it was something that staff had reported to our working group. Thank you.

MATHIEU WEILL: Thank you very much, Anne. I think this will be our opportunity to thank Ed for his talk.

From this talk, I would point out a few takeaway. On transparency, obviously let's all remember what we got from Work Stream 1: inspection and investigation are important steps forward. The institution of a culture of transparency is certainly something that we need to refine. Obviously, some work needs to be done related to the twelve conditions. I appreciate the

offer to do this investigation based on facts and actual experience and certainly will be expecting something back on this from the subgroup, and also to focus on the four items that have been identified in the report.

We've also covered staff accountability quite a bit in this section. So I think this is really good because it also helps us see the expectations that we could have from this part of the discussion. We heard that there is a need to clarify the guidelines for our staff, in terms of transparency. Maybe they can't be transparent all the time, but can at least clarify this framework in which they can provide information or express their views.

I'm certainly looking forward to a discussion about whether staff is a stakeholder or not, and as Alan mentioned, a number of probably expectations to reinforce transparency about who is doing what, what are the responsibilities, and who people report to as a way to enhance staff accountability, but also ICANN accountability as a whole.

I think, with that, this closes this third lightning talk session. I'm now turning to Leon for the next agenda item.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Mathieu. I would like to invite to the table Steve DelBianco. We are going to have a discussion/presentation on ATRT 3 and Work Stream 2.

As you might be aware, there are some issues that are a matter of discussion in the ATRT 3 and that are also in our Work Stream 2 plans. So it's how to address this, how to avoid collision in issues and topics, how to avoid duplicating work, and how to avoid interfering with one group's work and the other.

I think Steve that has prepared something for us. Are you going to show some slides, Steve? Staff, could you please –

UNIDENTIFIED MALE: It's already in there.

LEON FELIPE SANCHEZ AMBIA: Huh?

UNIDENTIFIED MALE: They're in there.

LEON FELIPE SANCHEZ AMBIA: Okay, good. Steve, you have the floor.

STEVE DELBIANCO:

Thank you. We first brought this up on May the 26th in a document that Karen Mulberry from staff and I circulated, and then again on the 20th of June because it only stimulated a couple of quick replies. I realize everybody is in volunteer fatigue mode, but this needs your attention. This is not a presentation as much as it is an invitation to come up with a better way of doing this, because if we don't take action, we're looking at an overlap between ATRT 3, which starts in January, and six of the nine Work Stream 2 projects, are about accountability.

As W.C. Fields once said, there's a time in everyone's life when you have to grab the bull by the tail and see what's coming. This bull by the tail is going to dump on us if we end up with two parallel projects for most of 2017, where we could end up with conflicting recommendations, volunteer overload, or sequencing, where we come up with a recommendation in Work Stream 2 and hand it to ATRT 3 and they ignore it or go in a completely different direction. Let's save ourselves the trouble.

I only have two slides to try to tee this up for us. ATRT 3 is supposed to begin in January of 2017. Six of the nine projects have accountability and transparency in them. It wasn't hard to pick them out. The words "accountability" and "transparency" were there.

Now, why is January [’17] so special for ATRT 3? After all, ATRT 2 – and I’m looking for Avri because she is very familiar with how that worked – commenced in February of 2013, and the Affirmation of Commitments (that’s the governing document until the new Bylaws become effective), the AoC, called for an ATRT review every three years. So it’s due any day now to get started on third ATRT review.

Now, the Board, seeing the overload of reviews in 2016, saw it fit several months ago to consult with NTIA and agreed that the ATRT3 would start in January of 2017. And that’s just fine.

But meanwhile, we developed Work Stream 2, and six of our nine projects are going to overlap. The new Bylaws that we’ve adopted – we brought that Affirmation of Commitments into the new Bylaws, and they require reviews no less frequently than every five years, instead of three years.

So ATRT 2 I said convened in February of 2013. That means that ATRT 3 could begin as late as February of 2018 instead of January of 2017 under our new Bylaws.

Whenever I have this discussion with staff, they remind me that the Board has a resolution, or that we have an Affirmation of Commitments in place. But now let’s also remind ourselves that we have a new set of Bylaws. When the new set of Bylaws are adopted, we are recommending letting the Affirmation of

Commitments expire, because that's a bilateral agreement between one government and ICANN. By bringing all of the Affirmations of Commitments and review into the Bylaws, we don't need to have the AoC. So the five-year clock cycle would be what kicks in.

Let's go to the second slide, Grace. It's the second of only two slides here. I wanted to present three options for this group to consider. Now, this group can't make the decision on execution, but if we have a recommendation, my guess is that we'll get cooperation from the Board and staff and NTIA.

Option 1 would be to let Work Stream 2 and ATRT 3 just operate in parallel, stretch the volunteers out, and figure out how to reconcile conflicting recommendations when they're done. I don't like that one so much, but there may be those of you in the room who think that's just fine.

I did hear that some folks did want ATRT 3 to begin, mainly for the purpose of assessing whether ICANN has implemented the recommendations that were approved out of ATRT. Therein lies a neat idea because it's my understanding that staff is doing evaluations every quarter on the extent to which ATRT 2 recommendations are done, and they publish it each quarter. Fadi mentioned that in the letter he sent to Larry Strickling.

Option number two is to delay the start of ATRT 3 until Work Stream 2 finished its recommendations because, again, six of the nine are accountability-related.

The third option is to go ahead and start ATRT 3 in January 2017 but just focus on reviewing that implementation of prior recommendations and hold on opening the door for new recommendations until Work Stream 2 finishes. I have a feeling that could be the most prudent path. It would take some doing for us to work this out and bring it to do the table.

Now, there are consideration in picking which of the three options we want. I mentioned community volunteer fatigue. It's many of the same people in this room who would be on ATRT 3 and Work Stream 2. There are nine projects in Work Stream 2, and six of them are related to accountability.

I talked about the conflicting relations, and then, finally, one of the most important discussions is the leverage. I want you to consider this for a minute. With the AoC reviews, as articulated in the Bylaws, we note in Paragraph 3 in Annex 9 that ATRT recommendations can be rejected or modified by ICANN's Board for purposes of feasibility, time, or cost. Neither the Affirmation of Commitments nor the Bylaws implementation requires that all recommendations are implemented. The Board has to give a rationale and explain. They have to take public comment, but

they don't have to implement every recommendation that a review team comes up with.

Within six months of report of an ATRT, the Board has to determine whether to approve it. If they don't approve it, the written rationale should include – and the Board shall promptly direct implementation of anything that [was] approved.

Now, if the community disagreed with the Board because it kept rejecting an ATRT 3 recommendation, well, the community could invoke an IRP and challenge that decision and get a binding result if the Bylaws indicated that a bottom-up multi-stakeholder process that made a recommendation should not be rejected by a Board.

So that's a long way of saying that maybe, through ATRT 3, if we came up with some really tough accountability recommendations, we'd have some degree of leverage with the Board.

But now I ask you to compare that with Work Stream 2's implementation in the new Bylaws. This is Work Stream 2 as a special set of Bylaws that we wrote about how to implement the recommendations that CCWG comes up with.

It says, "The Board shall consider consensus-based recommendations from CCWG on Work Stream 2

recommendations with the same process and criteria that the Board committed to use for the CCWG’s final report on Work Stream 1.” That’s good.

The Bylaw also says that, if the Board determines by a two-thirds vote that it’s not in the global public interest to implement a Work Stream 2 recommendation, it has to initiate a dialogue with us, the CCWG. The Board has to provide a detailed rationale, and then we are supposed to mutually agree with the Board upon a method to work this out and find a mutually acceptable solution.

Then we would have an opportunity to report back to the Board with a revised recommendation. If, after this process, the Board still believes it’s not in the public interest by a two-thirds vote, they can send it back with rationale. If they decide not to implement on the second time with the two-thirds vote, the Board is not allowed to substitute its own accountability improvement, unless and until the CCWG reaches an agreement.

So in no case does CCWG or the community force something through without Board approval. But the CCWG Work Stream 2 has significantly greater leverage at achieving the implementation and approval of particularly tough accountability improvements.

I wanted to save this presentation until after the lighting talks because several of these lighting talks have brought up the notion of some, well, pretty dramatic transparency and accountability ideas; that if we work through Work Stream 2, we're going to want the extra leverage of having Work Stream 2, rather than relying on ATRT 3 to make it happen.

With that, Leon, I'll put it back to you in the hope that would try to get to a decision on this. We've talked about this for about six weeks without much movement, but I'm trying to make it seem urgent because, if we as the CCWG were of one mind on this, we would work with staff and the Board to begin to rearrange things on ATRT 3.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Steve. Just to be clear, we have three options on the table, the first one being Work Stream 2 and ATRT 3 operating in parallel with the risks that Steve has highlighted in his presentation. Delaying the start of ATRT 3 until Work Stream 2 finishes is the second option. The third would be to begin the ATRT 3 as scheduled in January 2017 but focusing on reviewing implementation of ATRT 2 recommendations so that the group looking into ATRT 3 could wait until Work Stream 2 finishes its recommendations, and then continue to move forward with ATRT 3.

Now the floor is open for comments and questions. The first in the queue is Anne Aikman. Anne, you have the floor.

ANNE AIKMAN-SCALESE: I apologize. It's an old hand. But I do want to point out that Samantha has posted a link in the chat for those interested in doing further work on apparently a strategy group on the definition of the global public interest. Samantha's link leads to a sign-up for that purpose.

LEON FELIPE SANCHEZ AMBIA: Thanks, Anne. Next is Avri.

AVRI DORIA: Thanks. I may have been one person that did comment on this before. I'll start out by saying I was very upset that we delayed and didn't do ATRT 3 already, before getting to the point of having the WS 2 start. In other words, if we were going to do a level setting and a "Let's check where we are. Let's check how accountable we've been to the previous recommendations," which I'd say was probably middling, and making other recommendations, that would have been the time to do it.

I agree that trying to do it simultaneously with WS 2 is probably an insane thing to try. I think that the only reasonable option that's up there is the middle one.

I don't think that we should denature ATRT into being something that just reviews but does not recommend, so therefore I don't think the third one is practical. I think that the first one, as people say, would be confusing if nothing else.

So I really think that the second one at this point is the best option. But I reiterate: I think we make a mistake, and I think I said so at that time, too, in not having done it already and not going into WS 2 with both an analysis of where we were and recommendations that were specific to issues at the moment. Thanks.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Avri. Steve, do you want to comment on that?

STEVE DELBIANCO: If I could. Avri, thank you. Number three doesn't say that ATRT 3 doesn't get to make recommendations. It says that ATRT 3 doesn't begin work on its recommendations until Work Stream 2 is finished, but that, if ATRT 3 could convene earlier, it could put

a sharp eye on the question of: were the last set of recommendations implemented or not?

That may not be satisfactory to the members of the ATRT 3, in which case it might be sufficient to rely on these staff reports that come out each quarter and begin to focus attention on them. We can do that without waiting for ATRT 3 to convene.

So the differences between 2 and 3 are matters of degree because that all depends on whether we want to put a sharp eye on implementation. What would your view on that be?

AVRI DORIA:

Well, first of all, then you're talking about taking an ATRT and extending it for several years as opposed to it being something that gets done in a year, which is still the optimal idea. So I really don't think it's practical.

As I say, it's a pity that we didn't do it already. But to try to do an evaluation in one place while we're trying to make changes in another place just does not make any sense to me at this point.

STEVE DELBIANCO:

And I'd like to be deferential to your experience. You've been on both ATRTs.

AVRI DORIA: Only the second.

STEVE DELBIANCO: Only the second one. But if your experience indicates that it's more practical to just delay all of ATRT 3 until we finish Work Stream 2 accountability items – and it wouldn't be until we finish all of Work Stream 2, but at least until we finish the six accountability and transparency segments of Work Stream 2, because there are three others that are unrelated to that.

But I would concur with your recommendation with either 2 or 3.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Steve. Next in the queue I have Roelof.

ROELOF MEIJER: Thank you, Mr. Chairman. Is it too late to come up with an Option 4?

UNIDENTIFIED MALE: [inaudible]

ROELOF MEIJER: It's not? Okay. How about if we leave everything that is – how did we say that – also probably going to be covered by the ATRT 3 to

the ATRT 3 and we just focus in Work Stream 2 on those things that are not going to be dealt with ATRT 3? I think then, in the end, we could cover the program of your third consideration, Steve, by just endorsing, as CCWG, those recommendations of ATRT 3 that we agree with, because I think then they will still have the power of the CCWG over them.

STEVE DELBIANCO:

Roelof, that's a very creative idea. The notion is: let Work Stream 2 pause on all six of those accountability/transparency items. The people who are interested in those should go jump into the ATRT and get on that team, then, like Ed Morris wants to work on transparency in DIDP. So rather than park that, Ed goes to work on the ATRT 3 team. When they finish, to get the leverage of the Bylaws implementation, you say, "Have the CCWG embrace those recommendations coming out of the ATRT 3 so they get implemented with greater leverage." That's a great idea.

ROELOF MEIJER:

It's great. My starting point is that, as a group, we're not looking for more work that is absolutely necessary.

STEVE DELBIANCO: Thomas just asked, “But what if they contradict?” I think that Roelof’s point is that in Work Stream 2 six of our nine projects wouldn’t even start. That’s what Roelof’s point is.

ROELOF MEIJER: To be more precise, if ATRT 3 comes up with ideas that our group doesn’t agree with. That’s what I meant by “conflict.”

STEVE DELBIANCO: Okay. Then our group didn’t agree with – well, if that were the case, we could create conflicts, or the ATRT3 recommendations would have somewhat lower leverage at getting the Board to adopt them. But it would not be pleasant to have disagreement on what it is, particularly when it’s roughly the same individuals. Most of you who are in this room who would work on ATRT3 –

ROELOF MEIJER: Thomas, I think for that particular case we will have the Empowered Community. So if ATRT comes up with the recommendation that the CCWG doesn’t agree with, I don’t think we should have the power to stop – as a working group, we should have the power to stop that recommendation.

Of course we will not endorse it, but it will be up to the Empowered Community, if the Board wants to implement that

recommendation, to stop the Board from doing so. That should not be the CCWG, in my opinion.

STEVE DELBIANCO:

Roelof, is there a risk that the ATRT 3 may not pick all six of our accountability areas? If you go back one slide, Grace, to the previous slide. Previous slide, please. Thank you.

Roelof, these six items at the bottom of the page are now in the ICANN Bylaws as Work Stream 2, so we'd have to have some assurance that the scope of ATRT 3 would cover them all.

ROELOF MEIJER:

Well, the risk that you run, I think, is that, if they don't, we will conclude that after the work of the ATRT 3 has finished, and that would still mean that we would have to do work on it.

In my opinion, running parallel processes is not a good idea. Also, in my opinion, postponing ATRT 3 even more is also not a good idea.

Now we can divide the work bit, and in the end, the CCWG still can decide what it wants – if it wants to endorse the recommendations that are aligned with the work that we have to do, if they don't want to endorse them, or if they want to continue work after the ATRT has finished.

But it would probably mean less work for us now, so we can make more progress at the same time.

LEON FELIPE SANCHEZ AMBIA: Thanks, Roelof. I guess this is going to be – yeah, a longer discussion. But it’s useful to have these [inaudible] around the table.

Next in the queue I have Alan Greenberg.

ALAN GREENBERG: Thank you very much. I will comment on that suggestion, but first I have a question. In Option 2, which is no longer there, makes a presumption that Work Stream 2 finishes by February 2018. Some of us have dear hopes that it will finish well before then, but Option 2 presumes it must finish or we’re in violation of the Bylaws, as we have discussed ad infinitum with regard to the WHOIS review. So I wouldn’t make any presumptions on that.

With regard mandating that ATRT 2/ATRT 3 take up the work that we want them to do, we have very carefully crafted the Bylaws to say we’re giving them discretion as to what they want to pick and what they want to sit on. They have a huge job in reviewing the past work to begin with. Our target normally has been to do it within one year.

As you, Steve, are well-aware, I personally think that the size of new reviews that we've mandated is somewhat bloated, that the size we're specifying is about twice the size of any previous one.

Let me finish. But even with that size, it's an awful lot of work, given that you know some percentage of the people never quite pull their full weight. So I don't think that deferring to the ATRT to do the work is a viable option for many reasons. Thank you.

LEON FELIPE SANCHEZ AMBIA: Thanks, Alan. Steve, do you [inaudible]?

STEVE DELBIANCO: No.

LEON FELIPE SANCHEZ AMBIA: Okay. I'm closing the queue with Pedro, and next is Jonathan Zuck.

JONATHAN ZUCK: Thanks, Leon. I guess, as a kind of corollary to Avri, I would mourn the fact that Work Stream 2 exists, frankly, because I think it was just born out of paranoia about Work Stream 1. What we hope is to have an ongoing process of continuous reform that would be reflected through the review processes that we have in place.

So I think the really unfortunate thing is that there is a Work Stream 2, frankly, and that that's what has created this crazy conflict that's taking place.

I guess, jumping off from what Keith Drazek said in the chat, I'm almost inclined to find some way to call Work Stream 2 ATRT 3 and put ATRT 3 far enough off that it can review the implementation of the recommendations we're putting in place.

Having all of these crazy recommendations coming right on top of each other I think is the height of ridiculousness for an organization that's had so much trouble with implementation historically. So as far as an alternative, I would skip ATRT 3 in some way. I know it's in the Bylaws, but I believe that everything has a solution. We have some lawyers at our beck and call to find that solution.

As Steve suggests, maybe there's some subset type of activity that has to do with implementation of ATRT 2 recommendations that some track – maybe that's a Work Stream 2 track or something like that. But I think talking about these things in concert is in and of itself a mistake.

But if everyone feels like we're forced to do that, then some variant on Roelof's suggestion is the right one. I'm facing it right now, starting the CCT review at the same time that the PDP for

subsequent procedures is taking place. The irony of that is that the first half of the PDP's efforts will be to conduct a review.

So instead of one feeding the other, they're happening in parallel. What we did in that case was the Review Team chose some subset of issues and reported those issues back to the PDP to limit their activities or at least postpone their activities. I think that addresses the one limitation on Roelof's suggestion: if we got guidance from the ATRT in terms of what topics they were going to take up, those could be the ones that we postponed.

But I think all those solutions are hateful, and the real issue is actually, I think, to skip ATRT 3.

LEON FELIPE SANCHEZ AMBIA: Thanks, Jonathan. Okay. Next in the queue I have Siva.

SIVA MUTHUSAMY: This is on Option 2: Delaying the start of the ATRT 3 until Work Stream 2 finishes its recommendation. Now, my first question is, does the CCWG have the mandate to determine when the ATRT 3 should start or should not start?

The next point is, if it does have the mandate, or even otherwise if ATRT 3 starts the day after Work Stream 2 finishes its recommendations, what if ATRT 3 disagrees with some of Work

Stream 2's recommendations and wants to take a re-look at three or four of the [topics'] recommendations and comes up with contrary recommendations?

Another solution would be to look at how different ATRT 3 and CCWG is. CCWG is more open. It's more participatory. It's open for participation from everyone, whereas the ATRT 3 is constituted with a fixed number of members.

So I don't see any harm in both processes going forward simultaneously. This one is visualized as a continuous process to look at accountability improvements on a continual basis with a certain mandate with wider participation. So it could come up with its own recommendations, which could in all probability be accepted by ATRT 3 and incorporated by ATRT 3 as a limited group, a group with a limited number of members who often deliberate in retreats and closed meetings. They're only for deliberation. So it's probably – ATRT 3 is constituted by the Board, and let it also go on.

So there are several options. It's not a clear-cut solution. I'm just laying all these three points. Thank you.

STEVE DELBIANCO:

Just to briefly respond, Siva, there's no mandate for us, and of course there doesn't need to be. The Board had a mandate

called the Affirmation of Commitments, and it negotiated with the other party to the affirmation, the U.S. government, and said, “Let’s set it up for January of 2017.” That was a little later than many community members wanted and somewhat later than it was called for under the affirmation.

If we come up with a strongly supported CCWG consensus on the right way to sequence these things, we would make that recommendation. We’re in a very cooperative mode with the Board right now, so you don’t need a mandate if you have a good idea.

At the end of your statement, you said you wanted to do them both simultaneously, and I wrote that down. And then you finished by saying that the Work Stream 2 recommendations would then probably be accepted by ATRT 3. But that’s sequential. That’s not simultaneous then.

So you’re right back to: delay the start of ATRT 3 until they finish. You ended your statement on the second bullet, not on simultaneous.

SIVA MUTHUSAMY:

Okay. Maybe the end was not very clearly worded. I was [inaudible] came to the floor. What I meant is that the

recommendations of one group could be accepted by the other.
So [inaudible] –

STEVE DELBIANCO: But that’s sequential.

SIVA MUTHUSAMY: No, but this one is to go on as a continuous process, so it’s not –

STEVE DELBIANCO: It is continuous, but it’s every five years. It’s not every day of every year. It’s once every five years. That’s still continuous, mind you, but it’s not something that’s ongoing.

LEON FELIPE SANCHEZ AMBIA: Thank you, Steve, and thank you, Siva. Next in the queue I have Bruce Tonkin.

BRUCE TONKIN: Thank you, Leon. Just picking up on Steve’s comment, procedurally I think what could happen if this group decided that it didn’t think that we should start the ATRT 3, as you say Steve, the proposal would come to the Board, and then the Board would discuss with you as government a change in that provision. We have a current agreement with the U.S.

government, the Affirmation of Commitments. So both parties could obviously say, based on the community's wishes, "We want to change that agreement."

So, yes, I agree. It's an option. But from the Board perspective, we'd want to get the U.S. government to approve that before we would go ahead with that. So it's just a straight procedural expectation, if you like.

Getting back into the substance of the options, I lean a little bit more towards that third option, partly because I think what's most useful for these review teams to focus on is the effectiveness of the changes that have been made since the last review, which I think can be quite narrowly scoped. You can basically say, "Here's the changes that were made. Were they effective?"

And I don't think it should be a year-exercise. I think it should be a 60-day-exercise. I think we've got to get these review teams down to something more manageable. In an engineering-project sense, you don't spend two years reviewing a project that take you a year. We should be able to do these reviews fast: "This is the changes. This is the data. Was it effective? Let's move on."

While that's happening in parallel, what I think your Work Stream 2 groups could be doing is actually looking at best

practices in other environment. They're two very different things.

One is: the changes that were made – did they work or did they not? That can be the focus of the ATRT team. In parallel, while that work is happening, if you picked a topic like transparency, what are some of the best practices in other organizations that we might want to bring into ICANN? What are some of the mechanisms we might want to use for accountability?

You can actually start surveying practices, getting input from outside of the ICANN environment. That's why we want to bring in external advisors to some degree: to get new ideas, fresh ideas. Let's look at those fresh ideas. You could be looking at that in parallel with the ATRT 2. Then, when you start choosing recommendations, you would have the output of the ATRT 3 and the output of the initial work that you've done, and then you can move into recommendation mode.

LEON FELIPE SANCHEZ AMBIA: Thanks, Bruce. There seems to be a problem with Kavouss in the AC room. He was supposed to speak after Siva, but then something happened. So, Kavouss, if you may.

KAVOUSS ARASTEH: No problem. You put me at the end.

LEON FELIPE SANCHEZ AMBIA: Okay.

KAVOUSS ARASTEH: If you [keep] me, no problem. Thank you.

LEON FELIPE SANCHEZ AMBIA: Okay. Thank you very much. Next in the queue would be
Jan Aart. Jan?

JAN AART SCHOLTE: Thanks. I just see that there are rearrangements being proposed
here. I'm just remembering that the Work Stream 1 package was
agreed on the understanding that there was going to be a Work
Stream 2, and that that Work Stream 2 would finish within a year
after the completion of Work Stream 1.

A lot of this would change that. There's also a question of what
would happen with those issues that are in Work Stream 2 but
not on ATRT 3, like diversity, for example. I think a number of
people might be worried that these kinds of changes would
result in such issues getting lost, which is I think why they were
included in Work Stream 2 in the first place.

STEVE DELBIANCO: And that would argue for – you would take any of the three options. You probably wouldn't be as inclined with Roelof's option, since it might ignore a Work Stream 2 item for as much as a year-and-a-half to two years.

JAN AART SCHOLTE: I see the attractions in what he's saying, but unintentionally I think it does go against the spirit of what Work Stream 2 was created to do.

LEON FELIPE SANCHEZ AMBIA: Thanks, Jan. Thanks, Steve. Next in the queue I have Fiona.

FIONA ASONGA: Thank you. I think, based on my experience working in ATRT 2, many do not understand the challenge that there is in the ATRT 2 reviews because every ATRT 2 review has to review all other reviews that have taken place since the previous ATRT 2 review.

During ATRT 2, the SSR review had just completed, and ICANN had not yet even begun going into implementing their recommendations of the SSR review. So ATRT 3 has got a responsibility, when looking at the SSR reviews, going back to the last implemented recommendations of the SSR review

process, which is going to the previous SSR review before ATRT 2, and then come into the reviews that have been done between after ATRT 2, looking at implementation of the recommendations and the challenges therein.

Then we want to add in all the Work Stream 2 issues related to transparency and accountability. I think it's going to be an overkill on the ATRT scope of work because they'll all be having all the three other SO recommended reviews being reviewed now as part of the Bylaws – the Consumer Trust, SSR, and WHOIs reviews.

Then they also have to look at the ATRT reviews and the recommendations. Even if the team is big, it's much more difficult to make decisions with a large group. We did recommend for the group to be almost double what it was before, which means then that there's going to be challenges within ATRT 3 to even achieve the targets because of the large group, the [blotting] of the group. There is no guarantee that those who volunteer will be able to work on the review processes and the Work Stream 2.

So it's important that the two are kept separate. As the CCWG, we have control of our timeframe. We can review our timeframe and make an effort to try to close on issues in good time and give a – at least by the time ATRT 3 is starting, if we have our

draft recommendations already having been receiving public comment and public review, it will help significantly in enabling ATRT 3 in beginning on the work that they need to begin, even within the timeframe we have.

But I think that the onus is on us. We're sitting here to decide: are we going to shorten the timeframe, or are we going to prolong it? Because that is within our scope to do, but we have to do them sequentially. I wouldn't recommend doing them at the same time, partly because of the confusion it will also create in the community as we seek public input and feedback on issues. For the purposes of clarity, it would be good to have it as a sequence. Thanks.

STEVE DELBIANCO:

Fiona, one quick reaction. So you're favoring Options 2 or 3 but not 1. I get that. But a year ago we identified that the AoC required the ATRT Review Team to review all the implementation of all the other reviews, and we concluded that was crazy.

So the new Bylaws are different. The new Bylaws require each team to review the implementation of its previous recommendations. The ATRT no longer has to look at all the others, so that's all gone in the Bylaws that the Board approved.

They're just not effective yet. Once the new Bylaws are effective, that problem that you just explained disappears. Okay?

Now, the ATRT 3 that we're discussing today, the one that's supposed to start in January 2017, yes, it's under the terms of the Affirmation of Commitments – the old rules – because the new rules haven't been adopted officially in effect. They were approved by the Board, but they're not in effect until we do the IANA transition.

So some of what you're saying is going to be solved, but I appreciate you giving us your perspective of: Don't do them in parallel. Thank you.

FIONA ASONGA:

Just to respond to that, that's the reason. Because they've not yet been effective is the reasoning I'm explaining the whole thing again.

However, we need to focus on making sure that, even when the new Bylaws become effective, we still cannot throw in the Work Stream 2 issues into ATRT review. They have to run separately, one then the other. That's really the point I'm trying to make.

LEON FELIPE SANCHEZ AMBIA: Thanks, Fiona. Next in the queue? Kavouss.

KAVOUSS ARESTAH: Thank you. I think there are clear conflicts between ATRT 3 and Work Stream 2. Sometimes there's a full-scale conflict – SO/AC accountability. Sometimes it's some degree of conflict between transparency – they call it transparency improvement – jurisdiction – they called it jurisdiction – they called it jurisdiction related to accountability – and Ombudsman – they called it Ombudsman improvement. So there is a conflict. We have to avoid the conflict.

The most clear-cut way is Option 2. However, if there is an urgency for the ATRT 3 to start and concentrate only on recommendations of the ATRT 2, still we should ensure that there should be no conflict between those recommendations and ATRT 2. So we have to take the most secure actions.

Community are the same community. We have to be very careful of the consideration, given the first [inaudible] community [volunteer]. It's a very important element, and also an element mentioned by Steve was that Work Stream 2 is more open, more participatory. So let's just take that one. People are talking of transparency, so there is a transparency, so we have to be consistent. Perhaps clear-cut would be Option 2. Thank you.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Kavouss. [inaudible], who speaks about [inaudible]?

UNIDENTIFIED FEMALE: [inaudible]

LEON SANCHEZ: What does that mean? Okay, so are there any other questions or comments on this topic?

I see a hand at the back.

KATHY KLEIMAN: I apologize. I'm not in the Adobe Connect. Kathy Kleiman with the Non-Commercial Stakeholders Group. I'm coming from actually the working group side. You're talking about doing things in parallel. We're talking about review teams going on in parallel. We've already got more working groups taking place in the GNSO policy development process working groups, big ones, three taking place in parallel. We don't have enough volunteers for all this, guys. There's just not enough people in our community to staff all of this in parallel. We are looking at burnout.

You're also being unfair to those of us who have children.

LEON FELIPE SANCHEZ AMBIA: Thank you very much, Kathy. Okay. I see that Thomas Rickert is in the queue. Thomas?

THOMAS RICKERT: Thanks very much, Leon. All very good points. I think that we are maneuvering towards a solution. What I'm hearing from different individuals is that we don't have enough volunteers at our fingertips to do everything [inaudible]. We hear that – and I'm paraphrasing here – we might as an ICANN community look extremely foolish if we have two competing processes running in parallel that might come up with contradicting resolutions or proposals.

Then let's just assume the Board adopts one of the recommendations and we have to challenge that with the new mechanisms. We are an IRP. We would make fools out of ourselves on the global stage. So that begs, I think, for sequential handling of these things.

I think Kavouss made an excellent point, that Work Stream 2 potentially has more resources than ATRT would. So I would suggest that our group comes up with a recommendation to the Board and the chartering organizations to pause ATRT 3 until such time when Work Stream 2 has its recommendations ready so that at least we would have a clear vision on how things could work.

I would like to ask whether there's any violent opposition to making such a proposal. I see that Jonathan is getting frustrated with me. Hopefully, I'm misinterpreting that. But I would also like to probably get the attention of the Board members in the room. I'm particularly looking at Bruce, who's our Board liaison, for what his thoughts on this approach would be.

I'm not trying to capture this from Leon, but we might want to hear Jonathan and then probably Bruce's instant reaction, which we can recap from you.

JONATHAN ZUCK:

It feels like an arbitrary effort to make sure that we check a bunch of boxes, and the practical effect of starting an ATRT review right on the heels of a bunch of recommendations coming out of the CCWG Work Stream 2 I think is just going to be crazy on the face.

At best, what we'll end up with is defining the ATRT review in a more streamlined fashion, in the way that Bruce has recommended. If that is in fact the objective, then there's no reason to wait.

But if we're trying to do a full-blown ATRT review right on the heels of a whole bunch of recommendations around

accountability and transparency, I think as a practical matter it's just going to be ridiculous.

So I think, if we're going to move forward with something that we call the ATRT 3, it should be the modified version, some variation on what Bruce and what Steve suggested as an implementation review or however we want to phrase it. Then there's no need to wait, except maybe because of volunteer fatigue or something, but it's a subset of people.

But I think just doing a regular ATRT 3 right on the heels of this would be ridiculous.

THOMAS RICKERT:

I think this is multi-layered. The suggestion that I was making was: who picks up the work? At least that's what I'm sensing in the room: a lot of folks would like Work Stream 2 to work on these matters that would be partially or in total picked up by ATRT 3.

I think it is yet a different discussion for how you scope ATRT 3. So I think that needs to have more discussion, and that discussion is probably not appropriate for us to have. But I think we as a group, if you all agree, or at least if we have rough consensus on that, should go to the Board and the chartering organizations and suggest that we do the heavy lifting on these

topics within the framework of what we've basically promised to the global community; i.e., that we would work on these topics in Work Stream 2 and then have a separate discussion to ensure that we're not doing something that is a moot exercise, basically; i.e., have an ATRT full-blown on brand-new policies or brand-new recommendations.

STEVE DELBIANCO:

Thomas, if I could. It's the third bullet. I think what Jonathan said is that, on the third bullet just strike the last five words. In other words, go ahead and begin ATRT 3, but only to review implementation of prior. And then they're done. That's what Bruce Tonkin said was a 60-day project. And not wait around for us to finish WS 2, only to duplicate that effort, too.

So I think that you're basically skipping the recommendations part, the new recommendations part of ATRT 3. Then, five years later, a new ATRT 4 will be born, and it will look back over five years on how well all this stuff worked out.

So it's really not skipping ATRT 3. It's just saying that ATRT 3 will have a very narrow scope of reviewing the implementation of prior recommendations, and then they can go home. Well, actually they don't go home. They move over and work on Work Stream 2 because we're going to need the help.

JONATHAN ZUCK: Or they make recommendations specific to reimplementation, modified implementation, or in synergy with the recommendations that are coming out of Work Stream 2. Look at them and say, “Oh, that looks like it’s addressing the implantation issue somehow that came up.” It doesn’t have to be recommendation-free, necessarily.

THOMAS RICKERT: We then only have a slight timing issue, probably, because, if that starts in January 2017, according to the plan that we have presented to you – I think it was on Slide 5 of this slide deck; maybe we can move to that – we would be ready in February with the easy tasks, and mid-year ’17 with the more challenging tasks, if we can stick to that agenda. But –

UNIDENTIFIED MALE: [inaudible].

THOMAS RICKERT: This one. Exactly. Let’s hear Bruce now. Bruce?

BRUCE TONKIN: Just a really quick variable. That January ’17 I think is “by January ’17.” Presumably you could bring that forward a quarter

if it'd help this work. You could actually start it in October with quite a simple [remit], which is that 60 days [inaudible]. But basically think about it as a quarter. If we started that round about the time of the meeting in Hyderabad or slightly before – and it has a very simple mandate – just tell us, was it effective or not? – and as Jonathan said, certainly they could identify some tweaks to those recommendations, but you wouldn't even be expecting that group to conduct a major piece of work in something completely new, because that's what Work Stream 2 is doing.

THOMAS RICKERT:

I guess that's an excellent idea. Since we would usually have finished in two minutes' time, what I suggest doing is we come up with a draft correspondence to the Board and the chartering organizations based on this discussion; i.e., we will go first with what we have promised in our Work Stream 1 report.

We will suggest that we do the heavy lifting on these things and that it's up to the Board to kick off ATRT 3 earlier. Or at least they would strip out the redundant work, right?

So no final decision made on that now, but we take that as direction from the group to draft something along these lines, which we're going to send to the list in the next couple of days.

Okay. I see nodding somewhere. Avri doesn't like it. We would love to make everyone happy, but maybe we can make sure that we smooth things out a little bit more on the list.

I see Kavouss' hand is up, and then we would really like to move forward. Kavouss, and then Avri.

KAVOUSS ARESTAH: Fully I agree with you, provided that we clearly explain to the Board the situations. They could take the responsibility if they do differently. Thank you.

THOMAS RICKERT: Avri, please?

AVRI DORIA: What you're proposing is not an ATRT review. It is not one under the AoC. It is not one under your new Bylaws. It's some new fantasy we're creating to say, "Let's do a review of where we're at," which is a fine thing to do. But don't pretend that it's an ATRT. It isn't.

THOMAS RICKERT: I don't disagree, Avri, just to be perfectly clear. But I think we have to make sure that we make the best out of the situation

and that we avoid that we do double work and end up conflicts that wouldn't serve the community well.

I think we can't go any further. I think the arguments have been exchanged. Thanks so much, Steve, for helping us with this discussion.

I promise to make this very brief. This last agenda item that was put into the agenda for 30 minutes will not last 30 minutes, but I think, nonetheless, we need to get some guidance from you as a group as to how we move on.

We heard a couple of lightning talks. All of them have been summarized to you, so I won't take stock on that again because that would be redundant work. But what we see is that there's obviously a different level of interest in the different items that we have on our list for Work Stream 2. We didn't manage to successfully get lightning talks for all topics in Work Stream 2.

I'm going to read out to you what the number of volunteers is that have subscribed to the different topics. For diversity, we have 31; human rights, 38; jurisdiction, 42, which is actually the leading topic in terms of participation; Ombudsman, 21; SO/AC accountability, 25; staff accountability, 22; transparency, 24; CEP, 9; guidelines for standards of Board behavior, 9.

So that is telling, not in terms of importance, but in terms of what resources you are able at this point in time to put into these topics. That begs the question of whether it's realistic that we kick off all these topics now as proposed in this timetable, or whether we probably want to start some of them a little bit later.

That's food for thought. I think we can't resolve it today, but please do think about it. Maybe you'll also say, "I'm brave enough to join a group that doesn't enjoy that much participation at the moment so that we can get it all pulled off," which would obviously be the favorite option in terms of timing. But the question is whether it's feasible. If it's not feasible, do you guys think that we should focus on the complex things now and start the others a little bit later? I guess that would be useful guidance from the group, from you as a community, so that we can plan in an accountable fashion.

The other question that we wanted to discuss but we're actually going to discuss it on the next call or on the list is sub-team leadership or rapporteurs for the sub-teams.

We have different ways to approach this. We could vote in folks that are rapporteurs. We could appoint people. What's your preference on this? Do you want to give it a little bit more thought and maybe come up with proposals [on] the procedure?

You can also privately send us e-mails if you would like to volunteer to lead on a sub-topic or a topic of a sub-team.

I see that there are hands raised from Sebastien, and then I saw that Kavouss wanted to speak, and Steve. Let's move to Sebastien first.

SEBASTIEN BACHOLLET: Thank you very much. Just a question. How many people are in multiple groups? Because I think, when you say 42 or 36, if they are doing everything in parallel, that means that those people need to have three times, or four times, or five times more than people in the one single group. I think it's an important element to decide how we'll launch all those groups. Thank you.

THOMAS RICKERT: Sebastien, I don't have that breakdown available, but we can work on it. That's helpful advice. Maybe we should take this as an action item for everyone. If you have signed up – and many, many of you have – do only subscribe to the sub-teams that you can actually put work into as participants if you can spend the time. If you can't spend the time, if you just want to read, change to observer status. I think if everyone does that then we can more easily understand how many people are actually willing to put efforts in that.

Maybe that's the way forward, Sebastien?

SEBASTIEN BACHOLLET: May I suggest that you ask another thing: to put priority? Say your name. This one is for one, and the other one second. And this is the third one. So it could be one way also to see what the priority is of each person. Thank you.

THOMAS RICKERT: Thanks very much, Sebastien. We will take that into account when we send that reminder to the volunteer base. We have Kavouss and then Steve. Sorry.

KAVOUSS ARESTAH: Thank you, Thomas. If you want to go to the vote for the leadership of the group, I suggest that we don't do that. Calls for volunteers? If for any group you have more than one, then we try to ask those [two] people interested to get together to see which one would be more comfortable to take the leadership. I think it is a tedious job, and we should welcome the people that are coming through, and we should not go to the voting.

Everything in the work is [inaudible] based on all of us in consensus. Let's continue these standards and not go to the voting. It doesn't help at all. For what? Is it a big workload for the

person who comes? Let's just thank them and congratulate them and welcome them and take [inaudible], unless there are two people. Then we can put them together with each other and come up with one of them. That's all. Thank you.

THOMAS RICKERT: Thanks very much, Kavouss. I wasn't suggesting that we should vote, but I wanted to put different options in front of the group. But that's helpful. Steve?

STEVE DELBIANCO: I think that, in Work Stream 2, our default should be to behave as we did in Work Stream 1. The Bylaws that we've written for Work Stream 2 say that the Board will behave in Work Stream 2, just the way they did in Work Stream 1.

You've said earlier we'd go with the same working methods that we've used before: staff support, transcription, open participation. So if we're going to have continuity from Work Stream 1 to 2, then let's do the rapporteurs the same way. Let that be the default assumption.

So as opposed to asking this room, "How would you like to select rapporteurs?" let's make it that we propose to do it exactly the same way you did in Work Stream 1. You asked for

volunteers, and the co-Chairs appointed somebody from among the volunteers.

In a couple of cases, we had two rapporteurs. Cheryl and I both did the rapporteur on Stress Test because we had two volunteers. It was a stressful situation.

UNIDENTIFIED MALE: Stress.

UNIDENTIFIED MALE: Can you elaborate?

STEVE DELBIANCO: Yeah. So I'm just saying to go by default the way we did it before, and only deviate if someone in this room makes a compelling argument that they have a better way.

THOMAS RICKERT: Thanks very much, Steve. Niels?

NIELS: Thank you, Thomas. I think we could maybe not need to get to a vote if people can make publically known, possibly in the sheets, where they would be willing to be a coordinator or a rapporteur, and then we see how many people would be willing to take up

such a role and position. Then it might turn out that not that many people have that time commitment to do that. That would then help us, and we have a self-selecting mechanism.

THOMAS RICKERT: Thanks very much, Niels. That's helpful. You wanted to speak, Cheryl? You get the last word for today.

CHERYL LANGDON-ORR: Wow. Thank you.

THOMAS RICKERT: Well, except for me.

CHERYL LANGDON-ORR: I was going to say this is unlikely. You're going to wrap up, I'm sure. Just on that, Niels, I think when people are volunteering, you should think that just on meeting time alone it's about three times what you do for the ordinary committee of the whole.

So if you're stepping up to be a rapporteur, you need to commit to about three times the meeting time to work with the leadership team in preparatory and post and drafting. Just keep that in mind, so when you make a commitment, you make it informed.

THOMAS RICKERT: Thanks very much, Cheryl. Now, we will send information on that to the list.

That allows me to conclude the meeting now. But before we adjourn, I would like to thank you all for a very fruitful discussion. I think we've learned a lot about the different topics ahead of us. For some topics, I think we learned that we need to shape our scope and the way we approach things more. Maybe that has already worked for the sub-teams. For other areas, I think we're much clearer now on a way forward and how to address the issues.

But there's a lot of work to be done. Look back on what we've achieved. I think we shouldn't be that afraid of the work to come. I think that's the Herculean task part of that whole work we've already delivered.

I would like to thank our staff, and I think they deserve a round of applause. I would like to particularly point out the tech folks. You will have noticed that we had some issues at the beginning, and they fixed in. So, a marvelous job. Thanks for that.

Thanks to the remote participants, who've been patient in the Adobe Room. It's very hard to follow a whole day of discussion remotely, so a big kudos to you guys.

Thanks to all of you, and thanks to my lovely co-Chairs. Let's adjourn now. Thank you so much.

UNIDENTIFIED FEMALE: Hi. Everyone, hi. Sorry. For those of you who need a shuttle, there's a shuttle leaving at 5:15. We're going to try to make it 5:30 just to give you guys enough time to get there. There's a shuttle heading back to the Scandic Marski, I believe. So for those of you who need a shuttle, it's there.

[END OF TRANSCRIPTION]