
UNIDENTIFIED FEMALE: The recording has started.

THOMAS RICKERT: Thank you very much, operator. Good morning, good afternoon, good evening. This is Thomas Rickert, the GNSO-appointed co-Chair of the CCWG. I would like to welcome you all to this fifth call of the CCWG-Accountability Work Stream 2 on September 20th at 13:00 UTC.

As usual, we would like to take the roll call from the Adobe Connect room and I would like to ask those who are in the audio bridge only to identify themselves so that we can add them to the list of attendees. Anyone on the audio bridge only? That doesn't seem to be the case, so we're going to take the list of attendees from the remote participation room.

Also, I'd like to ask whether there are any updates to Statement of Interest? So if you do have updates to Statement of Interest or if you have not filed your SOI at all, please do make sure that you do so. It's no problem whatsoever to have an interest, but your interest and the interest you're presenting should be transparent to the whole community.

Thanks very much. So that's the first agenda item. My fellow co-Chairs, Leon Sanchez and Mathieu Weill, sent their apologies. They cannot be with us today, unfortunately. Maybe Mathieu can join for the second hour of the call but that's not yet done. So for the time being, you have to live with me as co-Chair. I hope that's not too bad for everyone.

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.

So let's dive into the substance of the agenda after these administrative points. So let's move to the second agenda item, and that is an update on the U.S. [inaudible] on the IANA transition.

As you know, our group is not involved in domestic politics and we do not think that it would be appropriate for us to do so. Yet, the debate in Washington in the political arena might be of interest to most, if not all, on this team. So we thought it would be a good idea to give an update to this group from those from our team that have participated in the latest hearing as a witness and those are Becky Burr and Steve DelBianco. They have kindly volunteered to give an update to this group. So we would like to keep this rather as an information session more than a discussion session, but certainly, if you have questions on the processes that are underway in the U.S., I'm sure that Becky and Steve will gladly answer your questions.

So I would suggest that we move to Steve now. Steve, are you on the audio?

STEVE DELBIANCO: I am. Can you hear me?

THOMAS RICKERT: Yes, we can hear you all right.

STEVE DELBIANCO: Can you hear me?

THOMAS RICKERT: Over to you, Steve. Yes, we can hear you. Over to you.

STEVE DELBIANCO: Thank you, Thomas. It's Steve DelBianco with the Business Constituency. On behalf of NetChoice, I did testify in a hearing last Wednesday alongside Becky Burr and Jonathan Zuck and a whole bevy, a whole panel, of witnesses. And I'd say the theme for this call is keep calm and press on. And that may not seem synchronized with what you saw if you watched the hearing, but let me try to explain a little of the atmospheric that are going on.

Conservative groups in Washington, as well as conservatives in Congress, don't like the idea of transition. And the reasons they give for it are often a long list of reasons and one can go down the list of reasons one at a time, visit those Capitol Hill offices as I have and many of you on the call have, and give matter of fact responses to the concerns and questions that are raised. But that doesn't change the fact that they don't like the idea of transition.

Despite giving good answers that address the concerns, there are two other factors that lead conservatives in the U.S. Congress to continue to oppose it. The one is the political positioning. It's an attractive political position to be against an administration that is taking a step to internationalize something that they believe is uniquely American.

And the second is the perceived disrespect to Congress. And that first arose when the administration in 2014, elected to announce the

transition without adequately consulting Congress, at least in the perception of some on the Hill, particularly those in the Republican Party.

That disrespect then was also maybe carried through one or two more times over the past two years as a letter or an inquiry from a member of Congress was perhaps not responded to as quickly or as thoroughly and specifically from either ICANN or from NTIA. Be that as it may, those are perceptions and those are political positionings.

On the other hand, Democrats in Congress have really not been as engaged and committed as one might have expected. Then if you watched the hearing last week, there was only one Democratic member who asked questions of witnesses like Becky Burr, Jonathan and I. That gave us very little opportunity, I think, to counter some of the concerns that were raised.

Now I want to turn to you, as industry Internet companies and those that rely on the web, are universally in favor of the transition. Civil society in the United States, for the most part, other than a handful of conservative groups are very much in favor of the transition and against a delay.

Intellectual Property interest, companies that rely upon the Internet for content – music, movies, software – they've long had concerns, legitimate concerns, about ICANN's perhaps lax enforcement of its contracts, particularly the obligation for registrars to investigate and respond when given reports.

That's not new and those IP interests continue to point to the fact that ICANN's compliance isn't as strong as it ought to be, but I don't believe that the IP interests are the factor for causing the Congress to get so spun off. Again, it's political positioning by many conservatives in Congress.

So where are we now? As of last night, the Senate negotiators are working on a Continuing Resolution to fund the U.S. government. They call it a CR, or Continuing Resolution. And attached to that, are a number of policy directives. They call them riders because they ride along with the resolution on the budget.

Currently, it looks as if the budget will be extended only to the 9th of December. That's roughly a nine week extension, a budget that would end on September the 30th. And during that period, the U.S. elections will have concluded on December the 9th and what we call a laying duck Congress will then decide how to extend the budget further.

So the rider that we're all concerned about would be a rider on the budget that would prevent the transition. So that would result in a nine-week delay of transition at least if that rider were included.

I'd love to be able to report to you this morning whether that rider will be in there, but the latest negotiations are happening right now on the Hill as there is many moving parts. There are many different policy riders unrelated to the work that we do here at ICANN and IANA, and all of them are stirred in a pot. There are concerns about avoiding a government shutdown, placating one faction or another, and it's really impossible to predict how it'll turn out.

Why don't we assume, for purposes of this call, we are likely to get a nine-week delay in transition since Secretary Strickley told Senator Cruz last week that if Congress spoke clearly, that it was not to use Congress department resources to terminate the IANA contract, that NTIA would [lead] to the will of Congress. They won't defy Congress or try to be too clever.

That would result in the fact that NTIA may extend. They might extend for a few months. They might take their contractual right to extend for a year. But again, as soon as things settle down politically, NTIA could then say that they would terminate the contract as early as they think is politically doable to do so. And ICANN, I am sure, would agree.

I'll conclude with a personal recommendation. And that is that we keep calm, that we not try to seize the Board's commitment to split the Bylaws so that the IANA transition stuff comes out and then we try to rescue all of the ICANN accountability at this point.

Let's leave it in the Bylaws. I know the Bylaws don't become effective until the contract is terminated, but again, I believe that after we get past the political season, I believe that this transition will get back on track. I say that mainly because the objections of those who want to delay it have all been sufficiently addressed. There really isn't much substantively left in their objections. Becky, over to you to add some to that.

THOMAS RICKERT:

So let's see whether Becky is here. The reason why we've asked Steve and Becky is because they are on the leadership teams so it was easy to

get them to provide an update. But certainly, it shall not go unnoticed that we have more individuals on this call that have provided testimonies at the last hearing or at previous hearings. So we have Jonathan Zuck, we have Brett Schaefer who was at the last but one hearing on the Hill as well as Paul Rosenzweig who has testified at the least hearing.

So what I would like to offer up to this group now is to give you an opportunity to ask questions on the procedural aspects on what's happening in the U.S. at the moment. I think this might not be the right place to exchange thoughts on what you observe on the Hill is right or wrong. I think this is not a place for an exchange of political thoughts. We've always abstained from doing that or getting involved in domestic politics and I think we should continue to follow this good practice.

I see that Greg's hand is up, so Greg, please.

GREG SHATAN:

Just to maybe offer my view on one thing that Steve said with regard to the Intellectual Property community, I think it's probably, obviously Steve is seeing much more of what's going on inside the [beltway], but I think as a general matter, the IP community has at least, let's say, a diverse view of the transition and many sectors are supportive of the transition. And that doesn't mean that they think that ICANN compliance is doing a fine job. They have the same concerns as many who believe that it's insufficient as a basis for this step. But I think there's a lot of support overall and hope that the result of this whole exercise will actually be a higher degree of compliance and

accountability for compliance and not a backpedaling from compliance in any way. So hopeful that, in fact, the idea of holding ICANN accountable will actually result in accountability for staff actions or inaction on compliance.

So I believe Steve is absolutely correct when he says that the IP community or those parts of it that are more skeptical or concerned are not the driver, but it's also only a sector of the IP community that believes that the transition should not go through kind of as-is, as soon as possible. And I just kind of wanted to clarify that to [extend the need of] that seemed clear. Thanks.

THOMAS RICKERT:

Thanks very much, Greg. We have a queue forming. So we have Avri and Milton and there have been some questions in the chat as well. And just to be perfectly clear, certainly, Paul, if you wish to present your view on what's happened during that hearing, you're most welcome to put yourself in the queue and speak to that. So please, if you're invited to speak up, this invitation goes to everyone.

The questions that have been mentioned in the chat, so there was a question from Megan, there was a question from Milton, and I think there was another question from Avri earlier if I'm not mistaken. Steve, could you please take note of these questions? And I would like to get back to you so you can offer answers to those.

Avri, the floor is yours.

AVRI DORIA:

Yeah, I have one question, actually, and one comment on a point that Steve made.

The question is I understand that a rider may say that NTIA cannot use any resources to end the contract. But I have trouble understanding what exactly, what resources they need to use to just not renew a contract. So that's something I don't understand.

The other thing I wanted to... I accept when Steve says we mustn't panic – panic is rarely helpful – but I also understand an undertone in his thing that sort of says, "We need to be ready for how we move on if, indeed, the continuing resolution does, in some way, postpone this. And one of the things that I wanted to go to was the WS1 accountability changes in the Bylaws.

I see absolutely no reason why the Bylaws would need to be split. There would just need to be a clause added that said stuff dealing with PTI is not active until and unless, but that the accountability things, to postpone them even further, I think, is deleterious to our future argument the next time there is a hearing. And I think it's right, appropriate, to show that ICANN is accountable. We actually go forward on that regardless of what happens with the approval of the transition. Thanks.

THOMAS RICKERT:

Thanks very much, Avri. Next is Milton. Then we'll go to Paul, and after that, I'd like to give Steve the opportunity to respond to all questions together.

MILTON MUELLER: Hey, I'd be happy to let them respond to Avri's questions before asking another one.

THOMAS RICKERT: Milton, that might be a great idea. So Steve, if you want to speak up and maybe speak to the questions that you collected so far.

STEVE DELBIANCO: Thank you, Thomas. Megan Richards, you asked about the nine-week extension and it's not about the transition. It's about the budget of the U.S. government. If the U.S. government is continued for nine weeks until December the 9th, then it has no funding on December the 10th, and that means that between now and then, Congress will, once again, have to work out a way to continue to fund the government for another extended period of time. The rider rides along with that budget so however long the budget is, is how long the rider typically lasts.

Avri asks whether a rider preventing the [extension] of resources would actually stop the transition. And it's true. We could all deliberate on whether they can use money that was unspent from last year, whether the Congress department has to spend any money at all to simply [hold its hand] as the contract expires. But all that may be a moot point as Paul Rosenzweig said in the chat. I believe that the Congress Department has a lot of other initiatives and it relies upon Congress to fund the Congress Department.

And I don't think the Congress Department will openly defy or try to be cleverly defiant of the will of Congress by allowing the contract to expire when Congress speaks in a clear voice saying that it should not do so. And I think that Secretary Strickley made that pretty clear on last Wednesday's hearing. And I don't think we have to burn too many cycles on this call deciding what we should do if, in fact, there's an extension of nine weeks.

Let's wait and see what comes out of the congressional negotiations in a vote that should occur later today. It may well be postponed to later this week. There isn't a need for us to figure out how to, as Avri says, to annotate every element of the Bylaws related to the IANA functions. And it's not just PTI. It's DFC, the IANA functions review, separation, all of the elements that are assuming ICANN runs the IANA functions, have to be deferred and the other elements can be retained.

I still don't see the need to do any of that unless and until we understand the length of the potential delay. And it may well be that Congress, not the administration, makes the decision in the months ahead of us, probably well before December the 9th because they won't wait until December 9th to extend the funding of the budget.

Go ahead, Thomas.

THOMAS RICKERT:

Thanks very much, Milton. I apologize. Thanks very much, Steve, and now it's Milton's turn to ask another question. Milton, please.

MILTON MUELLER:

Yes. Well, that answered some of my questions, but I think the concern I have is yes, Steve, you're right, we cannot factor out what to do with this nine week delay if it happened until it's happened. However, what I'm concerned about is the potential change of the U.S. political administration, that we will have a new President, will be elected by the time this budget rider ends and basically, a month after that, this new administration will be sworn into office, the existing Assistant Secretary will no longer be there. I'm just very confused about how we continue.

And also, I think I know the answer to this question, but I want you to make it clear to everybody else, if this happens the first time, what's to stop it from happening three more times as the Congress negotiates a budget with the new or the old administration? [inaudible] respond.

THOMAS RICKERT:

Thanks, Milton. Steve?

STEVE DELBIANCO:

All right. Well, make it quick because this is using up a lot of our agenda and it's true that if the Trump administration were looking to be sworn in, in late January, that would certainly color the will of the new Commerce Department to terminate and to take office in January. But a lot depends on whether the U.S. Senate remains in Republican hand. We don't, nobody predicts that the House of Representatives would change in its leadership right now.

But if, in fact, we saw an election that solidified opposition to the transition, I believe that's the green light we need to turn to ICANN's

management and board and hold them to the promise made in Marrakech, hold them to the commitment that made its way into the May resolution adopting the new Bylaws. And that was a commitment to implement, the new accountability reforms the community has asked for. It's precisely what Avri is speaking of.

I'm saying let's not go down that road until we learn the disposition of the next step, the next shoe to drop, which has to do with the elections, it has to do with the politics, and since it will only be nine weeks away, I don't believe we need to spin ourselves up until that need arises. We lose nothing by waiting several weeks, whether this election will make this transition a slam dunk or a distant possibility. We do not lose any leverage nor do we lose any of the [inaudible] reforms that we have baked in since we can hold the Board to the commitment of their resolution.

THOMAS RICKERT: Thanks very much, Steve. Paul?

PAUL ROSENZWEIG: Hi, can you hear me?

THOMAS RICKERT: Yes, we can hear you.

PAUL ROZENSWEIG:

Good morning, everybody. I'm only intervening because a couple of people in the chat seem to suggest that I should. I really have not too much to add and I certainly don't want to engender a political debate. A couple of quick points, first to your point, Avri, about the lapse. I actually agreed with you when this was first written and I still think it's "reasonable". But Secretary Strickely has said that he's going to not do it that way, so that's pretty much off the table. Whether we could wordsmith the rider itself and the lapse of funding is something a lawyer is going to have fun with. But NTIA said it won't do that, so that's kind of not relevant.

The other point that I would make is gentle disagreement with Steve about we lose nothing by waiting. My belief is that to some degree, some of the opposition to the transition is unanswerable and nothing that ICANN does will change that. But that there is a significant number of people in the middle for whom steps towards demonstrating greater accountability and an understanding of some of their concerns, particularly with respect to the jurisdiction of the incorporation which would actually be helpful in taking some of the issues that are troubling some of the more moderate, middle ground people off the table.

And in particular, to pick on Milton's point, there may be an urgency to have enough of an answer done by December 9th to push this forward in some way, manner, shape or form because of the pending election which is going to happen in 48 days, I believe it is, which may radically change what's happening.

So for those who favor the transition in the way that I do, I suggest that moving forward, in some way, manner, shape or form is the best way, is probably a better course of action. I would not just sit silently.

And then the last point I would make is simply that all of this may be moot as late as today or tomorrow. We will know before the end of tomorrow whether or not the Senate negotiators have included this in the bill or not. And that'll be that. And so, perhaps, we can reconvene in two days and decide what we need to do then.

THOMAS RICKERT:

Thanks very much, Paul. Kavouss, you raised your hand and I would like to close the queue after Kavouss so that we can move on to the next agenda item. Steve has not yet spoken, so Steve, I will also hear you. Let Kavouss start and then Steve and after that, we will move on. Kavouss, in case you're speaking, we can't hear you.

KAVOUSS ARASTEH:

With any question and clarification, without going into any analysis, the vote will happen. This is among the thousand of items which totally relate to the negotiations or to the issue of electoral campaign and totally political, listening to the presentation, we understand that what it's about, so the situation may change every day or it will change totally before the 9th of November. So I don't think that we would be benefiting from any things from this analysis apart from listening to the personal views of the [inaudible], which you may be right. So I suggest that listening to [Becky] and if there is any questions of clarification like the [inaudible] raised with Steve, we go ahead and go to the next

agenda and try to do our best to what we can do and raise what the situation will happen. Thank you.

THOMAS RICKERT: Thanks very much, Kavouss. Siva?

SIVASUBRAMANIN MUTHUSAMY: Sometime ago, there was some objection from the Senators about selectively [trivial] sum of money spent by NTIA on IANA transition. And the objection was, what that entailed did not have the authority of the allocation to spend money on transition. And now in the brief by Steve DelBianco, he talked about the U.S. budget process and said that the delays in the U.S. [budgetary] process could also affect the transition. And I want to know if the sum of money spent by the U.S. government on transition or the allocation or NTIA spending is so significant that it should also become a factor in transition. Can someone clarify that please?

THOMAS RICKERT: Thanks very much, Siva. Steve, would you care to respond to that?

STEVE DELBIANCO: Yeah. I'm sorry that I probably don't understand Siva's question in light of the explanations that have been given earlier. The Commerce Department has signaled that it will not openly or cleverly defy Congress. That is the signal they have sent over the past two weeks and in the hearing last week. And therefore, figuring out whether courses

are available from last year or whether resources are needed to terminate a contract, we are told by the Commerce Department, by the leaders of the Commerce Department that are above Secretary Strickley, that that do not want to openly defy Congress because of the consequences for that department are very significant and will be far broader in just the transition.

THOMAS RICKERT:

Thank you very much. Steve, I hope that answers the question. If not, make a note in the chat and maybe reframe what Mathieu, follow-up questions in the chat so that Steve can respond to that in the chat window in writing.

I would like to conclude by making two remarks. One is I would like to quote our new President and CEO, Göran, who said that no one should panic. And I think this is what we should take to heart as well.

We have done a great job. I think we have evidence to the words that the major stakeholder model works, that we can deliver high quality work products in a very short period of time. This has been an outstanding and unprecedented community effort, so let's not take away from that pride that all of us should have in what we've achieved so far.

But having achieved this, means that our job goes only thus far. So the things that are happening now are beyond our control and I think we should all patiently wait for the next couple of days or weeks on what's happening and then we will reconvene and discuss the potential consequences.

The second observation that I would like to make is that the notion of the test [drive] has been discussed on various occasions and in multiple [fora] and I saw this being discussed on the chat today as well. Please do remember that we have given a limited number of community powers to the Empowered Community. We've also come up with a Triple E approach – engagement, escalation, and enforcement – that shall help avoid that community powers will ever need to be exercised. So basically, we have baked consultation, extensive consultation between the Board and the community into the Bylaws in order to ensure as good as we can that everything works smoothly, i.e. that the decisions that the Board makes reflect fully the views and the wishes of the community. So that there's never the need for the community to challenge a Board decision. And it would only be such instance where the escalation is triggered that could result in the exercising of the community powers. So, doing a test drive on something that's a matter of last resort, might prove difficult because hopefully we will never the community powers being exercised.

Remember, when we started our work, we were looking for ways to replace the U.S. government [backstab] function and enhance accountability systems. So we're basically talking about the [backstab] function that, hopefully, never has to be enacted.

So, with that, I would like to end this agenda item. Thanks, everyone, for your participation, for your interest, and particularly, thanks to Steve for presenting this to us. We will keep the group apprised of new developments, and for those who are interested in some view, and some positions, please go to the ICANN website. ICANN is keeping

records of, made by certain actors on the transition so that you can see who thinks what and who supports the transition.

So with that, we can move to the third agenda item which is the Work Stream 2 work and what we see in Work Stream 2 is potentially a result of what we see in the political scene at the moment, i.e. we're seeing that there is light engagement by the community. It might be fatigue because Work Stream 1 was so extremely difficult and time- and resource-consuming. But also, maybe the uncertainty at the moment might make people think, "Okay, is this a good investment of time to be working in Work Stream #2?" So let's not forget the items in Work Stream 2 are all very, very important and relevant. And these need to be worked on and these all deserve appropriate attention from the community and the individuals working in this group in particular.

However, we do think that we need to potentially readjust our work plan in order to be able to deliver by the end of this planned Work Stream 2 phase. So I would like to hand over to Karen to show us through a couple of slides detailing the current state of play with subteams and how we can get the work done.

KAREN MULBERRY:

Thank you, Thomas. In looking at the schedule and planning based on what the group discussed in Helsinki, originally, the subjects were looking at, whether they were going to be on a lighter track, or a simple track for their topic, or a more complex track. And that led to various timing of when the output might be produced and next step actions. In looking at where we are with a lot of it, the output of the work with the

subgroups, it appears that we no longer need a public commentary this October, because that was the original plan for anything that might fall into this simple topic category.

So in trying to address how we might better plan our work for all the subgroups and the plenary itself to meet the deadline that has been established for June of next year. I took a look at, “What does that mean for the timeline?” In essence, what we have to do is, we look at the scope of work and planning for a very specific element at this point in time in order to actually get the work accomplished and conduct a public [comment] processes that were baked into [inaudible] requirements.

When you look at this and after ICANN 57 in Hyderabad, we need to really focus on developing the work product for those that can follow a much simpler path of which conclusion a little bit sooner. And in doing that, come January, we should be able to put those documents out for public comment, have the comments received and focus on that in our ICANN meeting in Copenhagen and finalize that work.

Again, for the next phase for the material subject topics that are a little more complex and require a little more effort, you can plan to have a public comment period, sometime in April, May timeline, so that when we reach Johannesburg, the group can focus on those public comments and finalize whatever documentation they have at that point in time and determine what their next steps are in terms of finalizing the work and handing it off to the charter organization.

So, I just wanted to get everybody on track and looking at how we might want to revise our timeline to meet what our mandate was and still allow for the work to progress on some reasonable schedule so that we can meet the public comment period and actually have something that we can during the ICANN meetings upcoming next year to really engage the community outside of the CCWG members in the discretions and work.

Any questions on this?

THOMAS RICKERT:

Thanks very much, Karen. How does the group feel about this? I mean, this is a slight change in approach, and time, and planning. So do you guys feel comfortable with using the readjusted planning and having public comments period as you see them on the screen in front of you?

Steve is – sorry – Ed is commenting that it looks aggressive but doable. I do agree that it's aggressive. Actually, that's verbatim with one of your colleagues said in the preparatory call that we had with all the subteam leaders yesterday. Kavouss, your hand is raised.

KAVOUSS ARASTEH:

Thank you, Thomas, I have no comment on what was said by Karen. But I have a general comment with respect to how we continue from now until the time that [go to] diverse public comment. If such is the appropriate moment, please allow me to talk, if it is not, I'll keep it under time because I have a general comment on the way that we are not proceeding. Thank you.

THOMAS RICKERT: Kavouss, please do feel free to comment on the way we approach Work Stream 2. I think every comment that helps us get the job done is very welcome.

KAVOUSS ARASTEH: Yes. My comment, without criticizing any distinguished rapporteur or co-rapporteur is that we should not go back to what we have discussed up to then in the Work Stream 1. In other words, we should not start the work from the scratch. We should just take a follow up action and try to clarify some of the ambiguous or shortcomings. I see the police aren't seeing the human rights the people start to write the books. [inaudible] start from the very beginning. We have discussed that in [inaudible] for months, so we should not go back to all those.

In jurisdiction we have the same thing. We discussed about 20 minutes, whether we have to change the location of ICANN in current trades in California. This is out of question. I don't think that that is the situation. Everything is properly mentioned in the Bylaw. If we're talking of the type of jurisdiction and applicable law, that's [solved]. But we should not start from the scratch in one hand and we should not end it up with some other people they make today that we don't need to do anything, everything is [perfect].

So we have to find a balance between the two and try to be constructive and objective and not to repeat the things, and so on, so forth. We should avoid to have an open exclusive microphone of discussion of the meeting, talking, and talking, and talking, from these

[things]. So, this is a direction should be given by your group by CCWG to all things that please, can we be objective, be constructive, and not repeat what we have done before. We just follow up what we can do. If we can do, if we cannot do something, we cannot do something. That's all. Thank you.

THOMAS RICKERT:

Thanks very much, Kavouss. I guess that's very helpful and we will surely come back to a couple of points that you mentioned as we continue the debate. And I think that Siva made an excellent point. In the chat he said, "Work Stream 2 ought not to be time limited." Earlier there was a discussion on one of accountability of a continuous ongoing process. That's a nice opportunity for me to briefly say that Work Stream 2 deals with a limited number of questions that we committed to look into during our project. And our project shall be finalized sometime into next year. So the group needs to take into consideration the time available so we can't try to make the ocean boil on each of those subjects. But we need to come to workable solutions in the time that we have.

Certainly, accountability and improving accountability is an ongoing task. And as you will know, we do have the ATRT reviews which we have now put into the Bylaws. So ICANN will continue to review its processes and approaches and will continue to improve, but this not all for Work Stream 1 and this is not all for the CCWG to look into.

Greg, you've raised your hand please.

GREG SHATAN:

Thanks. A different point, but still relating to our timeline. I think it's important for us – and we have 60 participants on this call, which is great – to recognize that the work in these subgroups won't get done if people aren't actively participating. I'm participating in two groups, really. One of which I'm a rapporteur in. To some extent, trying to hang on in a third, but I am at least trying to make proportionately reasonable contributions. I tend to see a lot of – relatively few voices in each of the groups doing a lot of the labor. And the numbers who came on as members, which we asked to commit to four to five hours of work a week for each subgroup has been, I think, frustrating to, at the same time I'm frustrated that I'm not able to give more. And I'm sure that given all of the different things that are going on, it's understandable that the last couple of weeks have seen some difficulties in gaining traction. But with only one call a week, it's important to have active discussion on the e-mail lists in between and to try to advance documents in Google Docs or wherever you're collaborating on a document. So I think it really behooves each and every one of us who has committed to be a member of subteam to try to dig in. You don't have to wait for the rapporteurs to start a topic. And if a rapporteur does start a topic, getting more than one response to it would be nice.

So I think this is basically just a call to those who are participant observers to become participant participants. Thank you.

THOMAS RICKERT:

Thanks very much, Greg, with [status]. This is something that I think we really need to discuss very openly and honestly. What we see so far is relatively little traffic on the mailing list. And if documents are produced

then it's primarily the rapporteur end up producing something. And while I applaud the rapporteur for doing that, I guess the idea was for the rapporteurs not to be the pen holders on every document that needs to be produced but for the rapporteurs to manage progress and manage the discussions but that actually, the writing would be more of a collaborative effort.

I do not see that happening, so it looks like a lot of folks on these teams, which are quite big by the way, maybe too big for really being working teams. A lot of individuals on these teams are waiting for something to be reviewed in order to comment on documents that are prepared, rather than sitting down and writing up something. And, I guess, the question is, how do we change this? How do we make these groups deliver? Ideally, we would get written input before Hyderabad from every group so that we have something that not only the groups can comment on, but that also the whole CCWG can comment on and the ways how do we get there?

Let me pause here for a moment, Christopher's raised his hand. Christopher, the floor is yours. Christopher, if you're speaking, we can't hear you, maybe you're muted? Christopher, we seem to have audio issues.

CHRISTOPHER WILKINSON: Is that any better? Can you hear now?

THOMAS RICKERT: Yes, we can hear you now. Fire away.

CHRISTOPHER WILKINSON: Yes. Thank you, a very short comment. Thomas, I agree that we need to have [broad] participation in the subgroups. I think there is not fatigue, as somebody suggested. I think it's more that we are facing a mountain of work. Greg has done far, far more than I have in several of these respects, and I respect his contribution greatly. However, I just think that I've gotten [inaudible] on my table here the licensing agreement between PTI and the IETFs, the IANA Naming Function Agreement – and I'm not even sure who the parties for that agreement would be – and working papers jurisdiction with enormous numbers of comments and some of the stuff is getting out of hand.

With all respect to our legal counsel, I would encourage the rapporteurs to ask them simply, and others, just to stop writing. We cannot work effectively in this format with documents written by lawyers for lawyers, some of them exceeding 20 pages. I think we need to introduce a sense of proportion and ensure that the subgroups focus on the policy issues and not on negotiating formal legal texts. Thank you.

THOMAS RICKERT: Thank you very much, Christopher. In reference to documents that I've introduced and discussed in the CWG and certainly there are a couple of individuals in this team that work both on the CCWG as well as on the CWG. I can say with a little bit of pride that our lawyers have not produced any documents for this group in the last couple of weeks, so I recommend that you make your comment in the CWG on the length of

documents and encouraging lawyers to be conservative with the words that they put into the documents in that form.

Tijani, your hand is raised, please.

TIJANI BEN JEMAA:

Thank you very much, Thomas. We've come to the question how to make the subgroups, perhaps more participative and [inaudible] of Work Stream 2. I would like to make two comments. The first one, that we need to be very clear, that our sole reference documents for this work is the output of Work Stream 1. The document that [inaudible] Work Stream 1.

The second remark is that we need to stick really, and really do our Mission, do the Mission of the subgroup. Try to make exactly what is needed. What you will find in the final document of Work Stream 2 or Work Stream 1 for the [inaudible] subgroup. Those two things will perhaps make people participate more and better in the work of the group [inaudible]. Recall my experience in that is, the two subgroups where I am more active or contributing continuously is that we don't go straightforward to the point. We are turned around, trying to find documents here, documents there. Perhaps that/this is better, perhaps this is not better. For whether we have to [inaudible].

We are perhaps spending more time on things that I find are not our real Mission. We have to do what is needed from us until we find the outcome of Work Stream 1 for each group. And we have to take [inaudible] find documents of Work Stream 1. Thank you.

THOMAS RICKERT: Thanks very much, Tijani, that's very helpful. There are no further hands raised so let's try to take stock because we've already moved one hour into this call.

Let's move to slide four. I'm not sure whether I could move the slides for you. But I guess what we do need is determination from the respective subteams whether or not they consider their topic a complex topic or a lighter topic so that we [bake] that into our planning. So if I may, I would suggest that each team, each subteam, gets back to the co-Chairs with that assessment in the next week or let's say the next ten days so that we can plan for that.

And with respect to getting things written, I think it was Avri who mentioned in the chat that a lot of folks are afraid of blank pieces of paper. Unless the rapporteurs now step up and say, "We can deliver the paper, the preliminary paper, let's say three weeks before we meet in Hyderabad" – three weeks because I think we need to make sure to give the group a little bit of time to digest something. Because usually a couple of days before the physical meeting starts there's a deluge of new documents that need to be read in preparation for the ICANN things. So, unless you all say, "We are confident we can deliver something in writing three weeks before Hyderabad," we really need to think about alternative ways of getting some ink on paper.

And one way to do this – and I'm not putting staff on the spot here, I've had a chat with Bernie on this one – an idea that I discussed with him was to have staff schedule interviews with the rapporteurs where the

rapporteurs provide information to staff. And staff would then transform the information offered by the rapporteurs or another individual on the team that's designated by the rapporteur. They would transform that information from the telephone interview into a paper so that we get some substance, some information, from the teams and get something in writing that people can either agree to or object to. But that may make it easier for everyone to get the discussion started.

Is this something that you would like as an approach that you would support? And let's be perfectly clear, this is not for staff to put in front of the group their own ideas on how things should work. The thinking, the brainwork, needs to come from the community, i.e. from the subteams and the rapporteurs. We would just use the staff resources as let's say, a tool, to transform thoughts via oral instructions, if you wish, into some papers that can be useful for the discussion.

So if you think this is a good idea, maybe you can give me an indication of that in the remote participation room. We have these green tics and red tics where you can say, "I like this," or "I don't like this." So I would really like to get some guidance from this group whether you think this is an idea we should pursue.

I see a couple of green tics. I guess a lot of folks are shy. No red tics so far. So I don't see any objection to proceeding on this basis so we would reach out to the rapporteurs with a separate e-mail and ask which of the rapporteurs would like to make use of that service. There might some who have papers and a way that would be ready for dissolution to the group before Hyderabad. So that we find out which groups are self-

sustainable, let's say, and which groups would like to get some staff assistance on putting something in writing.

So, it is certainly optional, Michael, there's no need, I guess we will be relieved if there was only little need from the subteams to make use of staff resources in that regard. It's just something we thought might be an idea to get some ideas in writing so the groups have something to discuss as a basis.

So, that looks great. Finally, is there any objection to working on the basis of this revised time plan? I read people saying this is aggressive but doable. That's a good sign. It's not a good time, but it's an aggressive timeline. I have not seen opposition to using that time plan.

Sebastien, you've raised your hand, so please do speak up.

SEBASTIEN BACHOLLET:

Yes, thank you. Sorry, I have a very bad voice, sorry about that. I hope you can hear me. Okay, yes, it's aggressive at the same time, from the previous schedule it will take more time and it will need more engagement time. I was really committed to have something done for the Hyderabad. I'm not sure that people participating the [inaudible] collective participant agree with me still, but I am still committed for that, and I will come back that later on during the call. But you have to take into account that some of us are just doing that in their spare time, and when you have time too, you would add time to time, it's not good either. And I really would like to urge all of us that if we decide this new schedule is a good one that we stick on that. Because if not, it will become undoable in the future. Thank you.

THOMAS RICKERT: Thanks very much, Sebastian. We do note that you have written something you've regularly updated the Leadership Team and the wider CCWG Work Stream slide that you've prepared on your progress so that's great.

There doesn't seem to be any opposition to using the revised time [trend] so let's take that as our new standard. That's good. So we have a result of this discussion. Please let's try to regain that momentum that we got after we discuss our report and let's make sure that we deliver by mid next year.

With that we can move to the next agenda item and that is going to be led by Karen again. Karen, the floor is yours.

KAREN MULBERRY: Thank you, Thomas. This was an action item that was noted on the 30 August Plenary discussion. There was a question to staff to confirm if there are any sessions the attendees needed to be on on November 9th at the ICANN meeting. Right now in terms of response there is a draft schedule posted. It shows that on the 9th it's Intracommunity work and wrap-up sessions so I can't really commit to say how important or relevant and what those sessions are because none of the details have been posted yet. I think the Meetings Group is still trying to align the requests with the available time and fill out those slots.

What I have is there's a link to the block schedule for the ICANN meetings you can follow along in terms of how things are progressing

and the information that gets posted, and hopefully that will help you make your decisions as to whether you stay on November 9th or if you like, you could leave.

THOMAS RICKERT: Thanks very much, Karen. I see two hands are raised. Kavouss.

KAVOUSS ARASTEH: Thomas, this is [inaudible] previous item if you allow me on the schedule. I have no problem with the older schedule [with] newer schedule. You can maintain that. But the rapporteur is kindly requested if there is no major development of the subject in sort of preparation of a working document they do not need necessarily to maintain the meeting time. We don't want just to meet because of the meeting. We want to meet if there is something really to discuss. That means we should rely on the e-mail exchange and the co-rapporteur or rapporteur with the help of others one way or the other preparing something, but not just have a meeting and repeating what we have before. We should move forward but not going back and so on so forth.

There is a need to review the strategy of the arrangement of the meetings topics. If there is no topics, even if you have a meeting two days before or three days before that there should be announcement that this meeting will not be held because there is no need for that. Thank you.

THOMAS RICKERT:

Thanks very much, Kavouss. I guess you're perfectly right. There should be no meetings for the sake of having meetings, and for those who want a little bit of education about this I highly recommend a video by John Cleese called "Meetings, Bloody Meetings." It's very funny, very entertaining, and that's on how you structure things, how you get them done, how you make them efficient. And one of the lessons learned there is that you shouldn't have meetings for the sake of just having meetings.

Sebastien, your hand is raised.

SEBASTIEN BACHOLLET:

Thank you very much. It's maybe not the right meeting to say that, but it's now the four or five time I heard the same question about the last day of the meeting in Hyderabad. I think that we must [staff] and not the staff here but organizing the meeting to have clear answer. I just want to take this opportunity to be my answer as I was Chair of the Meeting Strategy Working Group who [wound up] to this type of meeting, the C Meeting, the last day of the meeting was supposed to be only for the new bodies to be seated and to work together in the new way. It was done by GNSO in the prior meeting and at the AGM, and it was supposed to be for all the new bodies as a way to start their work. It was not supposed to be an open meeting with everybody.

It seems that something was lost in translation I guess, because my English is bad. But I suggest that I take an action item and going back to Nick Tomasso and to discuss with him about that and to come back to you with some right answer and complete answer. Thank you.

THOMAS RICKERT: Thanks very much, Sebastien. Kavouss, I'm not sure is that an old hand?

KAVOUSS ARASTEH: No, it is a new hand. Thank you, Sebastien. You raise the same question and that cause problem for some people. GAC has a meeting on 9th of November. What you think this is not formal? We have a formal meeting. We have a formal meeting with ICANN Board as well. And that cause problem for the Missions that is prepared by ICANN [inaudible] that 9th of November is not part of the meeting. Yes, it is. If there is a meeting, we have to attend the meeting. So I don't think that that is a relevant discussion. I don't think that we should get what is formal what is not formal.

So if there is a constituency or any SO/AC, prepare the meeting that meeting should be organized and we are about to attend that meeting, but not think that no it is not option, it is not option. So I don't think that this is the right place in CCWG to discuss [inaudible] the meeting. Thank you.

THOMAS RICKERT: Thanks very much, Kavouss. With that, I'd like to move to the next agenda item and that's going to be led by Bernie. Bernie, over to you.

BERNARD TURCOTTE: Thank you. Hello, everyone. Just a few very quick updates because we have some substantive work to do. Just to advise that weren't aware,

there were webinar presentations on the CCWG Accountability budget to the GNSO and the ALAC in August. The [proposed] budget for the transition and CCWG Work Stream 2 from Helsinki so far has only received approval from the ccNSO but is currently on the docket for the GNSO.

No external expenses have been incurred as of the beginning of September beyond the external legal costs for the IRP Implementation Oversight Team which has its own budget for legal advice and, of course, staff.

Of the 20 seats available in the budget for travel funding the face-to-face meeting in Hyderabad, only eight fully funded seats were allocated to represent all of the eligible requests made, and four partial funding requests for additional hotel [inaudible] per diems. The co-Chairs have opted to use the excess funding to extend the stay of the funded participants for the entire conference.

Currently awaiting the financial results for the CCWG expenses for July 2016. I should be having a call with the Finance Group later this week and hope to be able to present that possibly next week.

The [DCSP] has requested time at Hyderabad face-to-face meeting to update the CCW Accountability Plenary on expenses for the first quarter.

On the budget, any questions? Alright, not seeing any let's carry on.

Travel information – this is just a quick reminder the visa process for ICANN 57 Hyderabad is challenging for a number of people and requires

time and focus. So just a reminder, if you're thinking about going to Hyderabad please, please, get going on your visa application sooner rather than later. You have to send in your passport and it takes a while, or you have to make alternate arrangements to go directly to an Embassy or a High Commission and that can really take some time.

I know for myself in Canada, it took about 10 to 12 working days to get it done, so more than two weeks. The fees are also non-negligible and if you contact ICANN Travel, they have recognized this and they are working with visa processors and probably can assist with that.

That's all I have to say [unless] there are questions.

THOMAS RICKERT:

Thanks very much, Bernie. We have Tijani and Alan. Tijani?

TIJANI BEN JEMAA:

Thank you very much, Thomas. And thank you, Bernie, for this presentation. I am really sorry to tell you that the visa issue is a big issue. You will not find two countries that have the same rules, two Embassies, to India Embassies [in] two different countries that have the same rules.

For example, for my [age] for my country, they told me clearly that they cannot give me more than one [validity] which starts the day they deliver the visa. That means that I have to apply not earlier than 25 days prior to the meeting. So this is an issue for me. It is an issue not only for the [inaudible] for the [doubt] but perhaps it will not be legal but more than that, I will not find an itinerary after that that will be [inaudible].

The journey to Hyderabad is very long for me and if I get at the end an itinerary with several stops, it will be very, very, difficult for me. Because any reservation we made right now are already expired because no more seats on the plane.

This is one issue, and other issue of course related to this – late application. Why in a country which is in the same region – in Morocco – they gave visa for two months, and when I asked this Embassy here why there they gave two months, they told me each Embassy has its own rules. I want only to share with you the concern I have regarding the visa. Thank you.

THOMAS RICKERT:

Thank you very much, Tijani. I hope that you will get this sorted so that you can be with us in Hyderabad. Alan is next. Alan, please.

ALAN GREENBERG:

Thank you very much. I just wanted to say something similar but a different tone. The rules are different. They're radically different in each country. For instance, in the U.S. you must present travel and hotel accommodations. In Canada we don't have that. The length of time for the visas is different. Some countries are saying for a conference visa they will not issue it too early, even though it's a three month visa they still won't issue it early.

So don't presume that what you read on ICANN's website is the correct thing. Start dealing with the agency. There are many agencies that do this. In some countries, however, the Indian Embassy has designated a

specific agency to be the one they want to work with. I'm not quite sure how it works if you go through yet another one. There's probably an extra step involved. So do your homework on local issues. Don't presume that what you read on the ICANN website or the instructions you received are in fact exactly what you're going to have to do.

How they interpret things are different completely, in some cases even within countries, different groups within countries, different locations within countries, use different rules. It's interesting.

THOMAS RICKERT:

Thanks very much, Alan. Kavouss? And after Kavouss we're going to close the queue and move on.

KAVOUSS ARASTEH:

Yes, this visa for India cause a lot of problems for many people, spent a lot of time and so on so forth. Pages of questions that you have to [fill] and so on so forth. I made one simple mistake in a date. When I wanted to correct it, says, "No, you cannot correct it." Already they just said you have to start a new one. So I have to start a new four page. And then they said that because you have changed something, you have to pay another 162 [inaudible] for that one. I said, "Why? You have not yet processed. It's the first day I apply. I made a mistake. It is up to you to check if the mistake is identified." "No, no, no, you have to fill up and you have to [inaudible]."

Finally it was agreed that I don't pay the second time but it is very rigid. What I'm suggesting for future, ICANN should negotiate with the

country to simplify or made some arrangement while respecting the country's rules and procedures for visa but facilitate the visa application. It is not for this [inaudible]. It is very, very, rigid. Fortunately I have my visa now after so many weeks of work many, many, times before that but it is very, very, difficult. I hope that we do not have this problem in future. Fortunately, we don't have in Denmark and I don't know about South Africa. But the India it was very, very, difficult to get the visa. Very difficult. Thank you.

THOMAS RICKERT:

Thanks very much, Kavouss, for sharing your experiences as well [as] to the others. I do hope that all of you get this sorted. And for those who haven't started the process, please do so as soon as practically possible so that we can all meet face-to-face or at least for those who plan to come face-to-face to Hyderabad.

With that, we now need to move on and I suggest that we do a slight change in the order of our agenda. Since Becky is now with us, she's been basically waiting for putting some questions on the IOT for the IRP in front of the Plenary, and that's something that we will hopefully be able to close today. So I suggest after having consulted with my fellow co-Chair, Mathieu who's with us as of now that we discuss those and then hopefully we will have sufficient time to move to Greg and Sebastien.

So without any further ado, let me hand this over to Becky. She's going to guide us through a couple of slides with questions for the plenary on the IRP.

BECKY BURR:

Thank you, Thomas. It's morning time in Washington and if I sound like I'm slurring my words, rest assured I have not been drinking I've been at the dentist this morning. So I'm a little numbed up.

The Implementation Oversight Team for the IRP has been working initially on modifying ICANN's supplementary rules. These rules are supplementary to the arbitration rules of the International Center for Dispute Resolution. They're in place now. And we have been modifying them to reflect the changes with respect to the IRP that are in the Bylaws. The principle change and the most substantive change is modifying the standard of [review] to reflect the standard of review that is now in the ICANN Bylaws. There are some other parts of it.

We've had 10 meetings on this and we are very far along, but there are three open issues where we do not seem to have reached consensus. They are important and I think complicated issues, and so the group concluded during our last call that it made sense to bring the open issues to the plenary of the CCWG for consultation.

Obviously the full rules will come both to the CCWG and to the community. These are rules that under ICANN's Bylaws can be adopted by ICAN, and most of them are not controversial but we did think that in this case it is important to consult with the community.

The first question that arises is, we are changing the supplementary rules and the question is: what happens to IRPs that have been filed and are in process but are not completed at this point? What rules apply? The general rule when you're changing things like this would be the

rules that were enforced when you filed a court case, for example, or an IRP apply and if there are new rules they apply to claims that are filed after the effective date of the change. There are a number of people in the IOT who feel like that could work to be unfair to some of the IRP claimants that are in process, and those people have supported a change that would say if it would be unfair to somebody who's in process, we should allow the new rules to apply.

I think we have a slide that has the relevant language.

So our choices are essentially rather than the standard rules that are in place when you file/apply, some of the IOT participants would say that that is the normal course unless the panel determines that a requesting party has demonstrated that application of the former supplementary procedures would materially and unjustly affect judgment on the case as presented by the requesting party and would not materially disadvantage any other party's substantive rights. And then of course, anybody who is on the other side of that could oppose the request for application of the new rules, and the panel would make a determination in its discretion using the standard "materially and unjustly affect judgment on the case as presented by the requesting party."

I think this is an important thing for us to get right. We have been talking, for example, about a different standard of review for over two years now. On the other hand, we have to think about we have several IRPs that have been filed, they've gone all the way through the process and they are just awaiting the declaration of the panel. So if we had this potential for retroactive application of the new rules, you would certainly expect to see some people attempting to reopen IRPs.

I'm going to turn to Avri now, because I think Avri has strong views on this and they're important to hear and understand.

AVRI DORIA:

Thank you. I'm actually, and I have been one of the people in the IOT arguing for this. The only extra piece of information I wanted to add is that the IOT has already accepted a similar statement for what happens once these new rules are in place if these new rules have changed. So the logic that this change is asking for, that if you are in process and the rules change on you and they change on you so as to prejudice the ruling against you or to make it unfair, that you have a right to this kind of request.

We said that that was okay once these new rules are in place for any changes we make to the rules in the future, and so in sort of a parallel way it's looking at the current rules and saying that same sort of condition should apply to those currently in process. The thing I would say about it causing a complete rehashing and everyone would go for it, first of all it is trying to say that they have to have made the argument in their original case. It's not that they could submit a new case. They would be pointing out things that were in their original case and things that at the moment the panel may not be allowed to pay attention to dealing with Missions and Bylaws, dealing with issues such as that.

And also it's up to the panel to say that the original filing by the appellant is something that it does include this aspect. I expect that there might be a run on requests, but I don't see a run on changes to

that – that the panels would look at it quite fairly and apply this condition to the cases they had originally planned. Thanks.

BECKY BURR:

Thank you. All fair points. I just want to say with respect to the potential retroactive of updated supplemental rules, we are in a process of changing and we do expect changes and tweaks to the rules, although I do think that there's a difference in major substance in terms of the change in the standard of review in particular.

Kavouss?

KAVOUSS ARASTEH:

Yes. Thank you, Becky. I think this issue has been discussed sufficiently at length. Nobody – I emphasize – nobody, no rules is retroactively applied. However, depending on the situation, as is explained in this alternative and condition associated with that, I suggest that this alternative is a good proposal, not because it's made by Avri is always making good proposals, but because it sounds to resolve a long-standing discussion in the IOT. So I suggest and perhaps recommend that we take this alternative and do not reopen again discussion because issue is very, very, complex.

Just [for] information, outside the ICANN community in other areas we have had similar situations and similar course of action as contained in the alternative proposed by Avri has been taken and resolved and implemented and did not cause any difficulty. Thank you.

BECKY BURR:

Thank you. I note that Jorge is indicating that these issues are complex and it is difficult to understand, and I think that's totally fair. We do have some materials that we will circulate along with the current text of the supplementary procedures. But just to put it in its plain and simplest terms, the question is, when making a significant change to the supplementary rules under which IRPs are commenced, these changes are substantive, they involve the standard of review, they involve whether or not face-to-face hearings take place, and the like. And so the question boiled down to its most basic is – will the updated rules that reflect the work of the CCWG-Accountability with respect to the Independent Review Process apply to IRPs that have already been filed and are in process, or will they only go into effect as of the effective date and apply to IRPs filed after the date?

It may be that we just need to lay the predicate for conversation, but I'm curious if anybody else has reactions or questions about this that we can elucidate here. Okay, I'm not seeing anything so why don't we move on to the next issue?

THOMAS RICKERT:

Becky, just very briefly, just so that everyone knows, this is basically a check with the whole CCWG whether the recommendations that you're coming up with are on the right track, but certainly the CCWG will be presented with the full document once it's drafted so there will be more opportunities for everyone to take a view at the overall work product.

BECKY BURR:

Absolutely. But right now what we're trying to do is get input on some issues where we have not reached consensus within the group.

Okay. Let's move to the next slide if we could.

The other issue is a question of the deadline to file. The relevant text from our proposal is that "Claims must be filed within a certain number of days to be determined by the IRP Subgroup after becoming aware of the alleged violation and how it allegedly affects them."

The group is comfortable with a 45 day filing period, however, we do have some questions and would like input from the group on when the period commences. The draft – we have several alternatives. The proposed draft says that you must file a claim no more than 45 days after you become aware or reasonably should have been aware of the action or inaction giving rise to the dispute. We have an alternative to that, is that you have to file a claim within 45 days of the time you become aware or reasonably should have been aware of the material effect of the action or inaction giving rise to the dispute. And so the material effect is how you are harmed essentially. And of course, that would allow somebody who tries to register a name sometime after some rule has gone into place and they want to challenge it on the basis that it constitutes content resolution. Of course, they wouldn't necessarily know when the rule comes into effect.

And then another alternative is 45 days after you become aware of the material effect of the action or inaction giving rise to the dispute, provided that there's an outside time limit. In other words, the question is, when you become aware that you have been harmed – however, it

can't be more than 24 months from the date of the action or inaction – and the notion here is that it's important to provide some kind of finality and a time by which ICANN rules that have been adopted are in place and not challengeable.

What we're balancing really is, there are a lot of different equities in play here. Malcolm, I'd like to turn to you to talk about this.

MALCOLM HUTTY:

The issue here that we have different kinds of disputes that we have in prospect. Traditionally disputes were essentially procedural disputes. They were around disputes as to whether ICANN had followed its own processes and so forth. That's mainly when dealing with things like a new gTLD applicant. So there you have a claimant who is following the process closely and understands immediately how they're going to be affected. And in those cases, it seems reasonable that the balance of convenience is to require the claimant to make a very prompt filing and to err in favor of finality. But there are other kinds of disputes that we are now going to be protecting, the IRP is going to be responsible for adjudicating in the future, such as for example, a claim that ICANN has acted outside its Mission.

Someone is only entitled to bring a claim that ICANN has acted outside its Mission or otherwise broken the rules if they are themselves affected by it. So we may get a situation in the future where ICANN does something that someone thinks is outside the Mission but they are not directly affected at that time and not until much later. It would therefore be important to ensure that that person can still bring a claim,

provided they do so promptly after they've been affected themselves, and not to preclude them from bringing a claim because they weren't immediately affected themselves, and therefore time ran out before they even had an opportunity to challenge it.

So for that reason I think that alternative two is not the right way to go, and that some form of alternative one – I'm not sure whether that's the right wording but – something of alternative one must be used at least for those kinds of disputes although I would be content if procedural claims were ruled out after a fixed period of time so the only things that were alleged to be wrong on the face of them would be based on a running clock.

If we are to deliver the promise that we made in the CCWG report that is now in the new Bylaws that anyone has the right to make a claim to the IRP when they've been materially harmed, then we can't start the clock running before they've been materially harmed and that means that we can't go with the alternative two type situation.

That's my main comment with regard to the point that Becky raised. However, I would take the opportunity to say that the 45 days that Becky referred to does seem to be an extremely tight deadline anyway. We are, remember, also talking about claims by the Empowered Community. Do we really believe that the Empowered Community can go through all the steps that's required for it to decide whether or not it wishes to file an IRP and actually do so within 45 days? That seems to me to be unlikely to me. So I think the 45 days might be too short. I'm not sure why it needs to be as short as that except to provide ICANN with the benefit of protection from having a claim made against it,

which doesn't seem to me to be a proper reason. It seems to me that the purpose of a time bar is to ensure that the dispute can be resolved in a fair manner because all the evidence and the people will still be available. But the time bar shouldn't really be there to ensure that ICANN is immunized against a claim being made against it. If there was a proper claim available then ICANN should be there to face it. Thank you.

BECKY BURR:

Thank you, Malcolm. David?

DAVID MCAULEY:

Thank you, Becky. You're right, we have in the Implementation Team we've had a difficult time with this issue. I was originally one that held to the 45-day rule and I credit Malcolm whose position I think is reasonable with moving me off of that, and now I am a supporter of alternative two that is on the screen. I support alternative two because I do think whether it's 24 months or 30 months or whatever it is, there has to be a point at which it becomes final and ICANN can move on. And while it's true that citizens and countries can bring constitutional types of claims against laws at any point – 50, 60, 70, years later – ICANN is different than that. This is a bit of a business that affects registries, registrars, registrants, and I just think some finality needs to be in place.

That is why I am supporting alternative two. I do think that Malcolm raises a decent point about the Empowered Community and I also think it's fair to say we might have to tweak it so that if someone brings a reconsideration request, the time period to bring an IRP is adjusted accordingly, things of that nature. But I do recognize your point, Becky.

This has been a difficult issue for us in the Implementation Team. We've given it a hard run and I think alternative two is a compelling thing to do, while I recognize the passion and reason of Malcolm I simply don't agree. Thank you very much.

BECKY BURR:

Thank you, David. I just want to say one thing about the 45 days, and Sam or Amy can correct me if I'm wrong. I think that the 45-day period is tolled once the CEP – the Constructive Engagement Process – is kicked off. This doesn't in actual terms [inaudible] have to file a formal claim within 45 days. You have to essentially signal your intent to do so and enter into a CEP. From a "Is 45 days enough time to write a complaint" perspective, I think we should keep that in mind that's the way the CEP rules work right now.

Does anybody else have views on this? Any input from the group, the plenary? Alan, yes.

ALAN GREENBERG:

Thank you. I also support alternative two. I can empathize with Malcolm about delayed claims if you haven't been harmed or can't demonstrate harm initially, but there's got to be some reasonable limit on this. Thank you.

BECKY BURR:

Yes, Malcolm?

MALCOLM HUTTY:

I think people should be aware that if we were to say that there needs to be a fixed line, we are not taking the same position as, for example, you would have in a court of law where you said, “This is unconstitutional,” or something but instead you’d be saying, “No, ICANN can continue to act out of scope or ICANN can continue to do something that is discriminatory because you didn’t stop them doing it soon enough.”

I don’t think that seems to me to be what the report promised. I don’t actually think it’s compatible with the Bylaws.

BECKY BURR:

Thank you, Malcolm. I just want to say I think that Malcolm’s point is fair but I would just say that of course the community and individual members of the community who would be aware of this would have the opportunity to bring it. So what he’s saying, and I think we should be very clear about it, is that alternative two at some level depends upon members of the engaged community – either the Empowered Community or the registries or registrars or people in the community bring a test case to challenge it within that time period.

MALCOLM HUTTY:

Becky, if I may come in. Sorry. That’s exactly the issue and thank you for summarizing that. That alternative does depend on a watchful community moving in and arresting something where there is that sort of cause for concern even though there may be nobody who is actually has standing to do so because nobody has yet been harmed by it.

Whereas by contrast, the Bylaws promise that anybody who is harmed by something will be able to bring a case before the IRP.

This fixed time limit may prevent that from happening. It may mean that somebody who has been harmed by it does not have the right to bring it before the IRP because there was never any time when they were allowed to do so. Either they didn't have standing at the time or they were out of time by the time they had standing. That is not delivering on the promise that's made in the Bylaws.

GREG SHATAN:

I support alternative two, and participated sporadically in the subgroup working on this. I think we need to balance a number of factors, and I think that it strikes a reasonable balance. I think 24 months is quite a long time for even an only semi-watchful community. I would also note that the IRP is not the sole method by which an unconstitutional or out of scope, out of Bylaws action can be challenged. And of course we're not saying that we're going to allow ICANN to just act outside its Bylaws as long as they get [avarice] possession by doing it for 24 months. I'd look at an "innocent until proven guilty" concept on this. The question is what you can challenge, and clearly especially in terms of the various ways that we can deal with things within ICANN [inaudible]. Frankly, [it can] be necessary in court challenging actions if they're ongoing actions, then the question there about when the time stops or continues.

I think the idea of just having everything open forever for challenge by anyone who comes in at any time seems something that's not going to be helpful or appropriate in terms of balance. I think 24 months seems

about right. Not too long. I think it gives ample time to allow for that. And I think it is kind of a compromise that was struck in the subgroups that I support and this group. Thank you.

BECKY BURR: Thank you, Greg. Kavouss?

KAVOUSS ARASTEH: Yes, I was about to also reconfirm that I am in favor of alternative two, but I argue that 24 months is too long. I didn't really understand whether Greg was in favor or against or neutral. In my view, 24 months is too long. Couldn't we reduce that to some other time, not more than 12 months? Thank you.

BECKY BURR: Thank you, Kavouss.

I think that what we have here is a strong defense of alternative one from Malcolm and more people gravitating to alternative two with either 24 months or 12 months as an outside [date]. And I see Greg suggesting that 24 months might be a compromise.

Anybody else have anything to say on this issue? Thanks very much. Let's go to the final issue please.

Just by way of background, right now the supplementary rules say that face-to-face hearings will be permitted in very specified circumstances where it's in the interest of fair resolution, and furthers the purpose of

the IRP and balances the concerns about cost and timeliness and the like. And the group has reached consensus on that. But the current rules also say that if, in the event you have a hearing, it is limited to legal argument only. So essentially, the norm would be the lawyers would be talking about the legal points that they are making and there wouldn't be witnesses about facts and cross examination and the like.

The question we have not reached closure on is this question of facts, witnesses, and cross examination. A number of participants feel very strongly that if there are hearings then witnesses and cross examination should be allowed as a matter of course. Others are quite concerned about the added complexity, time, and cost, and have suggested a review of the question of fact, witnesses, and cross examination.

Could I get the next slide please?

Alternative one is that hearings would be limited to argument only unless the panel determines that the party seeking cross examination of a witness has demonstrated that the cross examination is necessary for a fair resolution of the claim, necessary to further the purposes of the IRP, which is efficient dispute resolution, and consideration of fairness and furtherance of the purposes of the IRP outweigh the time and financial expense of witness cross examination.

The notion here is the panel would have, if somebody objected to cross examination, the panel would make a determination that yes, this cross examination is necessary for fair resolution of the claim and the purposes of the IRP and that outweighs the time and financial expense. Another alternative is simply to leave this entirely and totally in the

discretion of the panelists without any standard against which to judge. And the third is that the sort of odd, hybrid, that we haven't really gotten to which is alternative two for face-to-face hearings and something else for telephonic or video hearings.

Really I think that the question is between alternative one and alternative two. So an examination of the need to have witness cross examination based on the interest of justice and purposes of the IRP and also taking into account time and expense, or if it's in the discretion of the panelists without a standard against which to judge.

I will turn to David first.

DAVID MCAULEY:

Becky, thank you. I was active in the IOT Team and I support alternative one very strongly. I think that if we just give the IRP Panel discretion with no further wording around it, actual trials will become a matter of course for IRP and that's not what is intended in an alternative dispute resolution mechanism. I think the panel needs to be given a reasonably high bar that is achievable but it's not a matter of course that there won't be trials. That's why I support alternative one and still do. Thank you very much.

BECKY BURR:

Thank you. Kavouss?

KAVOUSS ARASTEH: Yes. I think alternative one is very detailed situation, give all reasons. I don't have difficulty with that but I prefer alternative two which is simpler. We should not go to the perfection. But if everybody agrees on alternative one, I have no difficulty. I don't object to that but I am in favor of alternative two which is simpler. Thank you.

BECKY BURR: Thank you, Kavouss. Greg?

GREG SHATAN: Maybe being a little bit of a troublemaker, I'm not sure if I support any of these alternatives. My belief is that if there are going to be witnesses and if they are going to be questioned by their own counsel to tell the story the way their own counsel would like them to tell it, they should be subject to cross examination and allow them to be questioned by the other side. The idea of just putting on what can almost be a witness theater would have any chance for the other party to try to follow up or to poke holes or to get at other things seems to me just to be a very one-sided process. I'm not sure as a panelist – which I'm not – I would be at all satisfied just to see a one-sided show of having a witness being put on in their best light.

Even if it's just a purely factual witness who might be neutral, still I think both sides should get a chance to question. I'm assuming that one side is getting the chance to question since we're talking about cross examination. I think there is a question of whether or not to have witnesses, and that's not always to be answered in the affirmative. But once you've got the witnesses in the room, having a one-sided

operation with them to my mind is a really troublesome concept. Thank you.

BECKY BURR:

Thank you, Greg. Any other input for us on this point? Okay. I'm going to turn it back over to and thank you to the group for helping us out here.

THOMAS RICKERT:

Thanks very much, Becky and team for all your work on this. I will try to make this as brief as I can. It's important for me to go on the record asking Greg and Sebastien for their patience with me. I'm sorry we had to move the agenda so we will get back to you during the next call. Apologies for that. We will get back to the IOT-IRP topic with the finalized documents so that we can continue the conversation on that. I would like to thank all of you for an engaged discussion today. Let's keep fingers crossed for the political scene on the hill.

The call is now adjourned. Thanks, everyone. Good day.

[END OF TRANSCRIPTION]