MICHAEL KARANICOLAS: Once again, I'm Michael Karanicolas for the record, co-rapporteur of the subgroup. We've got Chris Wilson here who's the other co-rapporteur.

There's two main purposes for this meeting. The first one is to discuss the draft staff paper which was circulated earlier this week, and which hopefully some of you had a chance to take a look at. And the second is to develop an agreement for an avenue forward and base how we're going to take this process forward to develop our own recommendations.

So I'll start off just with a few comments about the staff paper. Then, hopefully, that can lead into some sort of a discussion if other people have ideas they want to share.

So in terms of the paper itself, it's a collection of different sources and background material that they've managed to dig up about this issue. I think like the Citizen Lab paper by Chris Parsons. I think like Sarah Clayton's background paper. But not too much direct engagement on the issues themselves, which to me suggests that they're very much looking to us for that. Which on the one hand is a good opportunity, but on the other hand it shows that there's certainly a lot of conceptual work that needs to be done.

And it says to me the fact that there isn't really any discussion about reforming the DIDP or models for what the DIDP should be. It suggests to me that we basically need to build up our own sort of recommendations, rather than sort of building on anything that's coming [in] from staff, rather than building on ideas that are there.

I also note that in their discussion of transparency reporting, ICANN seems to be a bit sort of torn between the different models that are out there. So they're talking about transparency reporting which is generally something that you see coming from companies in terms of a set report of, "Here's what we're doing and here's what we've disposed, etc." That's, of course, a model that private companies do. But we expect more from organizations that handle public funds like international financial institutions or [inaudible] organizations and even more than them, from government.

So we're seeing, I think, some discussion of the different models and I think there's some uncertainty within ICANN about where specifically they fall down. And certainly I think that our paper should be pushing towards the governmental side because that includes stronger standards for transparency and a stronger standard for disclosure.

I'll also note that while the paper that we've got doesn't really dive too deeply into whistleblower protection, there was a separate paper that was circulated on ICANN's whistleblower policy which was actually very good. So there has been a study which, in my estimation, was excellent that was previously circulated around about areas of improvement for the whistleblower protection policy, which fed quite a lot into the listed issues that I circulated before the last meeting and which we'll be building on quite a bit.

So I do think that there's a solid conceptual foundation for our discussion of improvements of the whistleblower protection policy, but for the DIDP we're starting almost from, not quite from scratch, but from a lower conceptual starting point.

In terms of the proactive disclosure provisions, looking at the list that's mentioned at the top where ICANN suggests posting a quarterly report providing the names of individuals acting on ICANN's behalf who have been in contact with government officials, names and titles of such government officials, the date, nature and purpose of these government contacts and a line accounting of the amount ICANN spends on government engagement activities. I would describe that as a good starting point, but generally speaking, strong transparency, proactive disclosure policies should go far beyond that. So I personally would like to see much more financial transparency and budgetary disclosures that are done on a routine basis, which is what we would expect from the government which is where I think the direction that we should be pushing these recommendations.

There's also been a fair amount of discussion within the background paper of Board deliberations. Again, I see this issue as [seeing] into the DIDP. The staff paper mentions a need to harmonize standards of disclosure and I see that basically as the role of the DIDP where essentially we'll present a unified standard for what should be classified and what shouldn't. And that should apply to a request for information and that should also apply to proactive disclosures.

I haven't yet had time to dig through sort of all the resources that are contained within the paper. I've taken a look at some of the background reporting as well as the Citizen Lab paper. And I think I read Sarah Clayton's paper previously, but it's been a little while.

I want to open it up briefly now after those sort of introductory comments and ask if anybody else has read the paper or has any

thoughts to share about the paper and how that should feed into our work.

CHRIS WILSON:

I wanted to echo your thoughts on the paper. I also wanted to make a quick comment I guess with regard to the actual interactions with governments. I think that the draft paper helpfully provides some links to the transparency level where ICANN is currently with regard to specifically lobbying activities and that term does have a legal connotation. And I think will probably be wanting to look at interactions that sort of or not necessarily per se lobbying as well.

And looking at some sort of consultative interactions, shall we say, with governments in ICANN as well. So I think we've provided a good starting point for sort of where we are now and I think where we perhaps want to go a little bit beyond as well. So I think the paper is a helpful floor, shall we say, and we'll be building the foundation upon it.

MICHAEL KARANICOLAS:

Yeah, I would say that. And there's also a lot of… Thanks very much for that, Chris. And there's also a lot of, I mean, the source material is very good. But I would note that there's not that much in terms of international standards or in terms of seeking to learn from parallel institutions and how they've approached this.

There is the paper from Citizen Lab which is good, but it's a little bit short. And also, the paper from Citizen Lab is more targeted towards telecoms, which is a different kind of transparency than what we would

expect from ICANN. So one of the things that also strikes me is that this paper, I think, indicates a need to in our recommendations begin by setting out strong statements about international standards of what the right to information is, why the right to information is important for ICANN and why it applies to ICANN, and why it's important for ICANN to embrace a strong transparency.

I really do think that this is a point that has to be made. We're hearing all sorts of rumors flying around about ICANN, about what it is, what it isn't. We're seeing a lack of trust among certain elements obviously, I mean, for political purposes in the U.S. But regardless, we're seeing a lack of trust of ICANN and a strong solution to that is to provide better transparency. I do think that our recommendation should begin by setting out international standards about what the right to information is, and I'm happy to help to build that in.

I see David has his hand up, so why don't we send it over to him.

DAVID MCAULEY: I have a question really. First of all, thank you to you and Chris for this paper. It seems very helpful and very rich with resources. But my question is about our work and it may be something I missed. But I guess it gets to prioritization. How will we tackle issues like DIDP, whistleblower, interaction with government, etc.?

And the reason I ask is I have a particular interest in DIDP because I'm also a member of the IRP Implementation Oversight Team. And in that team we're developing supplemental rules for IRP Procedures for the new IRP. There is a section on discovery in that, but really discovery of

the IRP as we're addressing it comes down to making a petition to the panel and the panel making a decision as to what can be seen. But in your petition to the panel, you have to identify what you're looking for. And so I think the DIDP is going to fit into the IRP process rather importantly and I think it will be important for us to get to DIDP.

But having said that, I think it would help us to have a prioritization so that we can start to focus on which area's first and then second, etc., if that's the way we intend to work. Thank you.

MICHAEL KARANICOLAS: So first of all, first off, just for the sake of clarity, neither Chris or I wrote this paper. This is a paper that was developed by staff, not by us. The paper that we've been working on, which is sort of a working document that's been shared periodically with the group as people have put that information in has basically just at this point been an identification of issues of possible areas of improvements which we're now transitioning on to discuss recommendations. So that's where we stand in terms of our own process.

In terms of the issue that you mentioned, in terms of the IRP – and again, I'm not super familiar with the IRP because I'm fairly new to some of this stuff, but I do know that [inaudible] information systems around the world tend to have where information is going to be used in upcoming litigation. Generally speaking, and that would include [mediated] processes. Generally speaking, there's a separate process for that. And generally speaking, organizations will have an exception

within their transparency policies for information that they need for coming litigation so that they're not put at a strategic disadvantage.

I'm not entirely sure how that ties into the IRP question. Generally speaking, we're going to want to push ICANN towards the system as being open by default. A position of maximum access with only limited exceptions or information which legitimately has to be withheld, like where there's a legitimate public interest in reposing the information.

So, generally speaking, somebody would want to make it more accessible, but I'm not sure how that ties into the specific process around the IRP. But presumably if ICANN is open by default there's going to be less of a need to go through formal discovery processes at least as far as that deals with information around ICANN.

In terms of our prioritization going forward, the purpose of this Work Stream has been divided into four parts: improving the DIDP, transparencies of interactions with governments, improvements of whistleblower policy, and transparency of Board deliberations.

Early on we shaped this slightly because we sort of recognized, again, tying into what we said earlier about unified standards. We recognize that transparency of Board deliberations and transparency of interactions with governments can basically be divided into the discussion of the DIDP and discussions of proactive disclosure. Both of those fall in general under a unified standard of proactive disclosure.

What information should ICANN be making public, but by default. Should it be published a month after the Board meeting or a week after the board meeting or whatever, or in quarterly reports or what have

you? So we've essentially divided it up into those three headings: between the DIDP proactive disclosure systems, including Board deliberations and interactions, government and the whistleblower protection policy.

We haven't taken up any sort of prioritization between the three right now. We've been working in parallel on all three of them. But part of the discussion today, I was hoping to agree to basically a work plan going forward. I'm going to ask, before we move onto that if there are any other comments on the staff paper that's been circulated.

Okay. So in the absence of that I am going to suggest that we move on to discussing our avenue forward. So one thing I do want to note is that the participation that we've had in terms of the substance of drafting process. Early on there was a lot of sort of enthusiastic submissions that we got about, here's the problems that we see, here's the thematic issues that we want to address. And that sort of dropped off in the last few weeks. We didn't really have any submissions to our last phase of the process which was start brainstorming on recommendations. The e-mails chains I set up after the last call which someone suggested didn't really get responses.

At the general leadership call, I think it was earlier this week, we heard other rapporteurs expressing similar sentiments. They said that it could be tied into this sort of fear of the blank page where it's one thing to sort of present people with it and ask them to [tinker] and provide feedback. But when you actually try to start drafting things, people tend to be a little more reticent to chip in.

Oh, sorry. The revised timeline. Chris has just mentioned that there's a revised timeline slide. Chris, do you want to just chat about that a bit, because that's probably good to inform people of?

CHRIS WILSON: Yeah, thanks. Maybe Karen, I can turn to you, Karen Mulberry. I think if she has the slide, if she could put that up. Or Brenda or someone from staff. For those that have not been privy to the CCWG plenary call earlier this week.

There was some discussion about sort of the timeline going forward for the Work Stream 2 subjects were At-Large, not just a transparency subject. But looking at, basically, the need to start really ramping up activity in these subgroups. In part, because there has been a bit of a lull for a variety of reasons. And in some cases, it's because there's still uncertainty about the actual transition occurring at the end of this month. And so I think that's also provided people pause to sort of do a deeper dive into additional work if they think this might not happen. But, I think that the consensus with regard to CCWG as whole was that now it's time to move on, move forward. The transition will happen when it happens, but it's important to continue to work.

The Board is committed to Work Stream 2. We've all committed to it. And it's important to move forward with all that very important work that all the subgroups are doing collectively. I'm sort of waiting, I guess, for the slide to come up for folks that haven't seen it already.

But basically, I think the goal was to get some substantive stuff on paper right now from each subgroup leading up to the Hyderabad meeting in

early November – ICANN 57 meeting in early November. And that ideally would mean we'd have something, I think, leading up to maybe approximately three weeks before the Hyderabad meeting. So I'm thinking roughly on or around October, I think, October 14 is roughly around three weeks before the start of the ICANN 57 meeting where there can be something looked at by the CCWG and sort of digest it a little bit, so that we can start the process of at least some recommendations.

It may not be that we have all our recommendations locked and loaded for then, but start getting the process for at least something, leading into ICANN 57 and having some discussion during that meeting. And then where we're sort of formalizing and then looking for a public comment period by the beginning of 2017, with the ultimate goal of all of the subgroups sort of finalizing all of their work as you can see in the timeline, by ICANN 59, by Johannesburg in June 2017. So you're looking at rough, a little over a year-and-a-half, 18, 19 months, 20 months to finalize this work. Obviously, I think many people realize that this potentially is a bit ambitious timeline. But I think everyone's willing within CCWG are willing to sort of embrace it and push forward.

Obviously, it's not written in stone. If subgroups continue, as our subgroup continues and we find that we need more time, we can certainly try to adjust accordingly. But I think it makes sense to sort of have something in place so that we can work off of. And I think this revised timeline provides that kick in the pants, shall we say.

But, obviously, open to further thoughts and discussion from members of this subgroup and whether they have thoughts or concerns or

support for the timeline. But I think to Michael's point, I think we're at the point now where we need to probably sort of put "pen to paper" and then get the subgroup to start formalizing thoughts on potential recommendations and then getting that up to the CCWG for consideration and development between now and the Hyderabad meeting.

So I hope that provides a sort of a general 30,000 foot overview of the timeline for us. And I'm happy to take questions that folks have. Maybe, Michael, I'll turn it back over to you if you want to –

MICHAEL KARANICOLAS: Sure. And I'll keep an eagle eye out for any questions or comments. But just in terms of our sort of avenue from here on in, we, as hopefully the people on the call have seen, I've already developed a document that spells out the themes and that spells out the specific problems that people have found within the different systems, within those different three categories: the DIDP, the proactive disclosure systems, and the whistleblower protection thing. That was produced thanks to a lot of great feedback.

In terms of the drafting process or just to build on what one of our colleagues mentioned which is the fear of the blank page, I think our initial strategy had been to try to get the information in. And given the sort of not strong response to that, I think that what we're thinking now is that we'll sort of take something forward and basically try to put something together in draft that can then be circulated around or feedbacks or inputs. And that being said, we'll always welcome

DAVID MCAULEY: Yes, thank you, Michael. In order to gain some momentum and start putting things on paper I would mention again, I'm going to sound like a broken record with respect to DIDP, but I guess I have an interest in that more particularly. We don't really have a blank paper, we have a DIDP policy that already exists. We could plop that on the table and say, "What needs to be kept? What needs to be ditched? What needs to be modified? What do we need to add?" I mean, that's just a suggestion. I'd be interested in what others in the group think of that that maybe to get us some momentum going. Thank you.

MICHAEL KARANICOLAS: The only thing that I would say to that is that we sort of have already done that in terms of the early stages of the process. I mean, basically, the first thing that we did right at the start of this process, was to take the DIDP and to basically say, "All right, what needs to be shifted?"

And so where our document has now… and it's not uploaded so I can't really share it around for this call, then share it for the previous calls. But where are current working document stands regards to that is we've isolated problems that include the scope of transparency, we've isolated problematic exceptions to disclosure, notably the overuse of legal privilege, the overbreadth of exceptions relating to the security and stability of the Internet, relating to confidential business

information, relating to vexatious and overly burdensome requests, related to trade secrets and related to drafts of correspondent that are all overbroad.

We isolated over classification of transparencies, Board deliberations within the DIDP systems, as well as the use of in-camera without a defined time limit. So someone noted that when the Board goes into in-camera deliberations and there should be consideration to restricting their availability for a set period of time, rather than just keeping it off the record. We looked into confidentiality clauses and the fact that DIDP provided the blanket exceptions for information provided to governments or international organizations and the expectation that it will be kept confidentiality, which leads to questions about why those agreements were entered into and how often they are and whether any consideration is for the value of the information is given before that's done.

We isolated the process for making requests which is not, in terms of the timelines, it says, "30 days to the extent feasible rather than having a binding timeline and statistical tracking of timelines in order to assess performance."

In terms of appeals and oversight of the system, we isolated a need to reconsider certain aspects of how the Ombudsman is involved, timelines for review process and giving the Ombudsman a broader mandate to track or promote transparency in ICANN, as well as considering whether the Ombudsman is the right body to be doing this.

We also isolated the public interest balancing test which currently flows both ways. And it's a little bit technical but basically the idea is that most public interest tests at the governmental level will say that, "If information is subject to an exception to disclosure, the public interest overrides that." The public interest is overwhelmingly in favor of disclosure despite the exception you should still disclose it. Rather than just saying that ICANN public interest test also says, "Anytime the public interest is against disclosure regardless of whether and exception applies that can withhold the information." So basically the public interest test also gives ICANN carte blanche to withhold any information they want if it's in the public interest and that's a problem.

So that's just what we've isolated in terms of DIDP. I'm just reading from our schematic overview for the Work Stream 2 Transparency Subgroup which was the subject of the consultations that we did over the first, I guess, month or so that we had this process. And thanks to all the wonderful feedback that we got from you guys.

So I guess what I'm saying is that now having isolated this stuff, the drafting process itself, I think that it sort of needs to be delegated and someone needs to just start writing basically so we have something on paper as Chris said. I've volunteered to take forward the drafting of the DIDP stuff based on what we have so far. Chris has said he would look into proactive disclosure with regard to interactions with governments and we can see about the rest of the proactive disclosure section.

I've seen a comment from Barbara about developing recommendations building on the NAVEX Report for whistleblower protection. If Barbara is still with us and she is—

BARBARA WANNER: I am, yes. Thank you.

MICHAEL KARANICOLAS: Would you potentially be interested in putting something together on whistleblower protection?

BARBARA WANNER: Sure. What I thought I would do is take that outline that you developed, because what I did is I set it to the side-by-side with the outline and the NAVEX Report and then began to sort of flesh out the outline. Would that be okay? Would that be acceptable?

MICHAEL KARANICOLAS: That's exactly what I was thinking.

BARBARA WANNER: Okay.

MICHAEL KARANICOLAS: I think the NAVEX Report is excellent. That's much better than any of the assessments that we've seen for the DIDP and the proactive disclosure system. That really spells out the problems very, very thoroughly. So I think that that's a great starting point for that. And if you would be willing to sort of take that forward, that would be fantastic, I think.

BARBARA WANNER: Okay. Sure. And then I know Avri and a few other people in the group have also been active in this work within the context of the other activities within ICANN. I would just welcome their feedback and their review of whatever I come up with as a first draft. How's that?

MICHAEL KARANICOLAS: Sure, that's excellent. Well, I think that we can present the first draft, we can share them around the group and people can provide feedback. But whatever process you want to use to take it forward, I think is great. So in terms of our timelines, Chris mentioned the 14th. That might be a little bit challenging for me. I was going to sort of suggest… Well, why don't we aim for the 14th and we may have to push it? I'm leaning until the 21st, but why don't we aim for the 14th? And I will aim for the 14th, sorry.

Okay. Right. So we'll aim to have each section completed by the 14th and we'll put them together then into a sort of cohesive document by the 21st to share. Does that sound good?

CHRIS WILSON: I think so.

MICHAEL KARANICOLAS: Okay. And, obviously, anybody that wants to, we'll circulate information or calls from… as development as drafts emerge we'll circulate them. Yeah, the 14th sounds good because we have a call on the 20th. That's

exactly right. So we can circulate for the 14th and discuss on the 20th. So that sounds great. Are there Any Other Business that people want to share? Is there any other questions? Concerns? Okay. So I do not see any other hands, unless there's anything else. I guess we can adjourn. Oh sorry, I see David again.

DAVID MCAULEY: Thanks, Michael. If this is the plan, does that mean we will or will not have a call two weeks from today? I don't know what the date is. I think the 6th.

MICHAEL KARANICOLAS: Oh right, I was going to suggest stopping that call as well because if we're all just drafting and I don't see a huge amount of [utility] to it.

CHRIS WILSON: I think that makes sense. And we can set up a revised call schedule with ICANN staff and get that out to everybody so they can plan accordingly. But I think we're at the phase now where we can, I think, communicate via e-mail if needed. And then once we have something on paper we can then have a more fulsome discussion afterwards on the 20th. But we'll send around and work with ICANN staff to finalize or revise conference call schedule and then send that out to everybody.

MICHAEL KARANICOLAS: Excellent. All right. So on to AOB if there's anything else. I'm not sure if we're already there. All right. Well, without anything further sounds like

we've got a good plan going forward, and thanks to everyone for joining us. And I guess we can adjourn. Thanks, everyone.

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