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GREG SHATAN: Hello, everybody. Thanks and welcome to the third meeting of the Jurisdiction Subgroup of the CCWG Accountability. Why don't I let Vinay take you through the rest of Agenda Item #1? Does that work for you, Vinay?

VINAY KESARI: Absolutely. Thank you, Greg. I just want to confirm if everyone can hear me?

UNIDENTIFIED MALE: Yes, I can hear you.

VINAY KESARI: Okay, that's great. Hi, everyone and welcome to the call. To begin with I just wanted to confirm that we know who are on this call. Is there anyone who is on the phone alone? If you are, please could you identify yourself?

DAVID MCAULEY: Vinay, hi. I'm on the phone only.

VINAY KESARI: Okay, great. Thank you, David. Apart from that, if anyone has any changes to their SOI you can mention that. Otherwise, we'll just assume that everyone made the right declaration. Okay, thank you.

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*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.*

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Greg, I think if you don't mind, I will move on to Agenda Item #2.

GREG SHATAN: Please do.

VINAY KESARI: As Greg had mentioned in his e-mail, we do have a Q&A that has been released by ICANN in response to some of the U.S. domestic developments that have taken place in the last week or so. In particular, question #7 is something that I think we will find interesting. Is it possible for us to place the response to question #7 into the notes in case there are people who haven't had the chance to look at that?

GREG SHATAN: That's been done, Vinay – under #2 in the notes as well as now being put in the –

VINAY KESARI: Okay, great. Thank you so much. As most of you will notice, the question posed was, "Will ICANN relocate its headquarters outside of the United States after the transition?" And there is a specific response to that, "No, ICANN will not relocate its corporate headquarters location after the transition."

This goes on to talk about the fact that, "California law is the basis for the new mechanisms created to empower the ICANN community," and so on. Apart from this, I didn't have the chance to listen in on the whole

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of the Senate hearings when it happened a few hours ago, but I did listen in on some bits of it and I think there was some specific questions posed by Senator Cruz to Mr. Marby, ICANN CEO, on the issue of whether ICANN might move out of the U.S. at some point in the future and I think he asked for a commitment that ICANN would not ever move out of the United States.

I believe there was a specific response by Mr. Marby which was very circumspect. He pointed out that he was not the final decision maker and that it was a decision left to the various ICANN... to the community, and he subsequently pointed out that it was a complex mechanism and that no one party or even set of parties would be able to make such a decision on their own.

I just want to open it up to see if anyone has any comments on this and to see if there are any specific perspectives on whether any of these developments have a bearing on [our] work and whether they might affect the scope that is open to us.

I'm not sure whose hand went up first – but can I start with Tijani?

TIJANI BEN JEMAA:

Yes, thank you very much. I'd like to ask what is the value of this Q&A and of this point #7 our work? I am really confused because I don't see the importance of it. If you [inaudible] or oblige this or make us take a decision or another or make a recommendation or another, it is only an [information], yes? It's an [information] everyone has seen it. I don't think it is of any importance for us. We have to think about everything, discuss it, and I think that we did everything in Work Stream 1 for ICANN

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as an incorporation in California so this is not something that will add anything with this question and this Q&A document that you present, and we have all read before and I think that we don't have to spend time on it because we have very important things to do, especially for the multi [layer] jurisdictions that we need to discuss. Thank you.

VINAY KESARI:

Thank you, Tijani. That's a very valuable perspective. I think the purpose of this was just to assess what kind of different perspectives there are on this issue.

CHRISTOPHER WILKINSON:

I'm speaking in a private capacity, but as most of you know I was responsible, in the European Commission, for the primary negotiation with Ira Magaziner and others in 1998. When I receive a document I normally read the last paragraph first.

Greg, if this activity is to be oriented to enshrine the place of ICANN's corporate jurisdiction in the fundamental Bylaws, I think we can call it a day. This would be very, very, damaging to ICANN and indeed to the present existence, which I accept and I've lived with this for 20 years and this has not caused enormous problems, to the prospect of U.S. jurisdiction.

The U.S. jurisdiction has been frankly quite benign for 20 years, and most people have lived with it without undue concern. What I'm really concerned about today is frankly the activities of the Sidley Law Firm. Instead of the pre-existing, as I said, benign relationship between the

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jurisdiction and ICANN and the rest of the world, we are increasingly confronted with scores of pages of contractual stuff which many of us have only just begun to read. If the maintenance of U.S. jurisdiction means that you guys – and I speak to the American legal profession – you guys will try and codify every detail of the relationship between the parties in ICANN in the manner that Sidley is proposing, then I think you will invite serious opposition to U.S. jurisdiction.

I think there are some large blocks of legalese which should be frankly withdrawn. I for one have lived comfortably most of the time with U.S. jurisdiction. I'm not frankly questioning that. But if you guys want to go in the direction that Sidley is leading you, I think when the rest of the world starts to read the contractual relationships which have been drafted, if you please in translation into all the active ICANN languages, we're on a hiding to nothing.

So please, first of all, delete this business of enshrining of – I'm a Vicar's son and I know what shrines are – and I don't think enshrining ICANN in the fundamental Bylaws is an appropriate use of language. But that detail apart, first of all delete that last paragraph completely. Let's have an open discussion. But above all, please keep this legal business under control.

Just a question, what's going to happen politically when the government of India gets the whole of this last document which is supposed to be signed by the public technical identifiers? Who the hell are they? I'm sorry for the strong statement, but I can describe to you the pre-conditions of maintaining U.S. jurisdiction, and we are not going in that direction in the present status. Thank you.

GREG SHATAN: Christopher, there are several questions in the chat asking what direction is Sidley leading us to? What am I missing? What is the issue? I am missing something, too. That's the first question. If you could respond to that, thank you.

CHRISTOPHER WILKINSON: The main thing is that I read these documents as codifying extensive [inaudible] –

GREG SHATAN: Could you clarify which documents you're referring to just so we know which documents you're referring to please.

CHRISTOPHER WILKINSON: I'm referring particularly to the contract of the Naming Community. It's about 38 pages long.

GREG SHATAN: Is it the Naming Functions Agreement?

CHRISTOPHER WILKINSON: I seriously fear that these documents will give rise to furious disputes which will destabilize IANA and destabilize the Domain Name System. I'm frankly alarmed. Thank you.

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GREG SHATAN: Thank you, Christopher. Another question from Tatiana, that I think responds to this. “Are we reopening the issue that was sealed in work Stream 1?” And I would add in the CWG on IANA Stewardship as well. Are you suggesting that we reopen the ICG proposal and the Names portions of it, or do you think that there is something in the implementation that is causing concern?

CHRISTOPHER WILKINSON: Unless I missed something, the CWG proposal does not propose to enshrine indefinitely ICANN’s jurisdiction in the fundamental Bylaws. I see where this is coming from and I think it is destabilizing.

GREG SHATAN: Where do you believe that proposal is coming from?

CHRISTOPHER WILKINSON: Read the e-mail archive.

GREG SHATAN: For the benefit of those on the call since we’re having a discussion in real time, could you help us with that answer.

CHRISTOPHER WILKINSON: Not just now. I don’t want to [intune] individuals in any particular case. I’ve already responded in the e-mail archive weeks ago to this issue. As I said, we don’t [read] most of this.

GREG SHATAN: We have a queue so we should probably move on to Pedro.

PEDRO DA SILVA: Thank you very much. Thank you also for both of colleagues who spoke before me. I would like to echo a little bit what Tijani said with respect to this Q&A that was presented to us. First of all, I'm not sure who signed it, whether it's one representative of the ICANN Board or the ICANN Board as a whole, but I think we need to see it as a viewpoint and not necessarily containing statements that would be supported by the whole community of stakeholders of ICANN.

And with respect to question #7 specifically, I think it's more misleading than anything else. I think it mixes concepts such as the location of ICANN's headquarters with ICANN's jurisdiction and also with California law which, although these are intertwined/related, they are not equals. I think, as Tijani said, our objective here is to see and to assess the issue of jurisdiction as a multifaceted issue composing of many aspects and to analyze those aspects and then seeing which aspects we want to deal with.

But starting from as a premise that location of headquarter equals ICANN's jurisdiction equals California law I think is not a good start for us. So I would consider this Q&A not very helpful for our work here. Thank you very much.



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GREG SHATAN: Pedro, just to delve a little bit more into the distinctions you are making, if ICANN is headquartered in California that seems to speak to one aspect of jurisdiction in our multilayer jurisdiction list which is the domicile of ICANN which has certain jurisdictional influences. When you're referring to it not being associated with jurisdiction, what other jurisdiction of ICANN are you referring to?

PEDRO DA SILVA: Yes, what I said was that they are interrelated but not exactly the same. When I say other aspects of jurisdiction, for example, the jurisdiction of the places where ICANN has offices it certainly has some interference to the way that ICANN operates to some degree, and I think it's our task to analyze that as well.

For example, in contracts between ICANN and a registry/registrar I think there's also jurisdictional issues that are not necessarily related to the jurisdiction of ICANN headquarters. Maybe it is, but it also has other I think jurisdictional aspects that go beyond that. That's why I asked us to be careful, not to interpret those concepts as being the exactly the same.

GREG SHATAN: Thank you, Pedro. I think that does definitely touch on the multilayers of what people call jurisdiction. Hopefully we can distinguish between those and the different effects that they have as we move forward.

I'll take my hand down and call on Kavouss next.

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KAVOUSS ARASTEH: Thank you, Greg. First of all, I don't know how all of a sudden this questions/answers comes and they posted on the screen. Just take note of that and we don't want to discuss that. This is totally misleading. I think the method of discussion is left to the people to discuss and decide in their own answers and understanding. I hope that you have read [inaudible] before the start of the meeting.

GREG SHATAN: Can you explain in a little more detail why you say it's misleading?

KAVOUSS ARASTEH: I think we are not very well structured how to address these jurisdictions issues. I think we open the issue and we never be able to close that. So at the end we will be consensus by exhaustion. So I am very, very, disappointed the way that the meeting is going. Thank you.

GREG SHATAN: I'm sorry you're disappointed. I would not predict that we're going to end up failing to close the issue or by exhaustion, but then again maybe I'm just more optimistic than some people.

I'm calling on Tijani.

TIJANI BEN JEMAA: I'd like first to tell Christopher that we are working on document that was shared by Greg and his colleagues today. Christopher was speaking about CWG which is different. So we are working on a document. Let's

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try to continue on working on this document and not on other document because if we take other documents we will not finish. Our consideration today is for this document that was shared today by Greg.

I understand and I see to what he is pointing, Christopher, but it is different from what we are doing now and our work will be our work. We will not be conversing with the other points of view or the other consideration, the other analysis. We have our analysis. We are working on it. And I hope that we will not, as Kavouss said, finish by a consensus by exhaustion. I don't think so and I don't hope so. So let's go immediately to the multilayer jurisdiction, our main subject today. Thank you.

GREG SHATAN:

Thank you, Tijani. I'm reminded of folks in Los Angeles who leave baseball games after the seventh inning to avoid the traffic even though the games go to nine innings. I think Kavouss's prediction is somewhat like leaving the game in the first inning but in any case, as I say, I remain optimistic.

Vinay?

VINAY KESARI:

Thank you, Greg. I just wanted to quickly respond to Kavouss's point. I think that firstly, it's important you feel disappointed that this was brought up. As far as I'm concerned – and this is a personal perspective – I think it is a relevant input. The answer to this question to me is a relevant input. It is not a determining factor as far as I'm concerned, but

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it is a relevant input. And the fact that at least two people have stated that this is something we should not be discussing, I think that those are useful responses in and of themselves and it's actually useful for people to hear that response.

I disagree that it's something that should not have been mentioned at the first place. It is a relevant input. It does not have to affect outcomes in any particular way. But it is something that should be discussed.

GREG SHATAN:

Just briefly, I think that in terms of scope, I would like to suggest for the consideration of this group that anything relating to the CWG Stewardship and the direct implementation of the PTI which is where IANA will live post transition and also of the transfer of the IANA IPR to the IETF Trust should be out of scope. I suggest saying that he did not follow the CWG, sadly I followed it far too closely, but I think that it is really something we are not going to change, and whatever effect we may think it had or not is probably, again, out of scope for the discussions of this subgroup.

So I think that before we leave #7, I'd like to know – some people said they thought it was misleading and I'm not sure why that was. But in any case, I'll put my hand down and I think Kavouss is next in line.

KAVOUSS ARASTEH:

Hello, Greg. I agree with what you said about CWG. We are not dealing with that issue. It is out of our scope. May I request you to kindly go back to your agenda? Whether you consider me optimistic or

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pessimistic, that is your judgement. But I remain to be concerned that we are not taking the proper way how to deal with the issue. We are just discussing here and there without concentrating and focusing on a special issue or a specific issue. Either you go to your agenda or please dismiss this document totally and take note of that, it is out of our scope. This one and anything about CWG and IANA transition, PTI and other, let's go back to your agenda. That is the only thing that we have agreed. Thank you.

GREG SHATAN:

Thank you, Kavouss. I agree with you on terms of CWG. In terms of question #7 in front of us, that is the second item on our agenda which is what we're currently on. And for those of us who had the pleasure of watching or listening to the hearings today, we can discuss this in more detail next week, but there were repeated references and statements while at the same time no commitment that ICANN would remain a California corporation in perpetuity. I think that's worth noting. I'd like to raise again the question of why this statement is misleading.

Pedro?

PEDRO DA SILVA:

I wasn't hearing very well but I think your question, Greg, was why we consider this question misleading. I think the answer is misleading. I will repeat myself. I think the answer is misleading basically because it limits the issue of jurisdiction to California law and ICANN's place of where ICANN is headquartered. I think it is, of course, a very important part of

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our discussion, but not the only part. And I think it doesn't bring in new information for our discussion here.

I think because of that I ask that we should not consider this, as it doesn't bring any new information and it strives to limit quite a lot our concept of jurisdiction and the concept we will be working on we have already agreed is a multilayer one and it should not only be limited to this aspect that is being highlighted here in this Q&A.

GREG SHATAN:

Thank you, Pedro. A follow-up question. Do you believe that the discussion of where ICANN's headquarters is located is within the scope of this subgroup?

PEDRO DA SILVA:

Yes, I think this is one aspect of this multilayer jurisdiction that we need to consider. But I think it's important that we don't pre-judge anything or that we start with a premises or results that are cast in stone. I think we should be very open, that we have a very open discussion here. First consider what exactly all those layers of jurisdiction. We had already an exercise. We have already made our first attempt or initial discussion during Work Stream 1 and we came up with a non-exhaustive list of layers. But I think our first duty here would be to map or to list all these layers of jurisdiction and then once we have this list we agree on those list and we discuss which are the ones that we should tackle.

That's precisely the proposal I made in Helsinki that I sent you an e-mail about remembering about this. Because I think the first step would be

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list or map the points of intersection between jurisdictions and ICANN's operations. And I think that would be a start for our work here. Thank you.

GREG SHATAN:

Thank you, Pedro. I'll just note for those who may only be on audio a couple of comments in the chat on this. Jeff Neuman says, "I do not believe that the place of incorporation is in scope for this subgroup." Tatiana Tropina also says, "I also don't believe that the place of incorporation is for this group to decide." Jeff goes on to say, "As Mr. Marby said during the testimony today, ICANN's entire new structure and Empowered Community is all based on California law, and if we deviate from that then ICANN's entire model and everything we've worked on for the past number of years gets thrown out the window."

So I think we at least have a difference of opinion on this. So this is, I think, an open item and one which I think we will need to decide relatively soon in our work in order to determine whether we are looking at this.

Robin Gross also comments in her trademark pink, "Jeff and Tatiana are right. We can't redo all these reforms at this point."

I will call on Kavouss again.

KAVOUSS ARASTEH:

Yes, Greg. You are a smart person. We have decided after a series of options, having multi-membership, single membership, voluntary member, designator, sending a designator. All of them based on

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California law. So there is no question that we discuss the location of ICANN. It has already been decided and agreed. And even we discuss whether that should be in the fundamental Bylaw or standard ordinary Bylaw. I don't think that we need to discuss that. We are discussing jurisdiction. This has nothing to do with the location of the ICANN.

So I request you kindly to go back to the agenda and questions that you have raised, the process for the settlement of this [rule] within the ICANN involving so and so and not discuss the location of ICANN. It is not our term of reference. It is not our duty. And it has already been decided and we don't want to reopen, and in fact we cannot reopen discussion. We are not allowed to do that. Thank you.

GREG SHATAN:

Thank you, Kavouss. I think that, just briefly, if we consider the multilayers of jurisdiction, which are listed in the Google Doc, domicile does influence certain types of jurisdiction. That's not to say that it should be within our scope, but it at least is part of the generic discussion of an aspect of jurisdiction as well as the place of incorporation, which goes even more toward the question of jurisdiction since that makes the corporation operate under the state's laws as well.

So I think it is a jurisdiction question but I don't think that necessarily means it's within scope. This is not a group that is intended to examine every jurisdiction problem possible.

Tijani?



TIJANI BEN JEMAA:

Thank you, Greg. I think that we are all in agreement now. I think I said I believe that those Q&A are not important for our work. Everyone confirmed the same. Because the comments on the chat is people who said it is out of our scope. And all the comments that have been now mentioned said that when we speak about jurisdiction we are not speaking about location of the headquarters or incorporation of ICANN. So we are all in agreement. Let's please move. We are all okay with that. Let's move. We need to discuss this multilayer jurisdiction that we need to discuss and it will not be an easy task. Thank you.

GREG SHATAN:

Thank you, Tijani. Any other comments on this question? Hearing none we should move on to the Google Doc. I recommend that if you can you try to open the Google Doc itself so that we can look at it collaboratively. I will note in terms of participation that the last change made in this document was seven days ago, which is basically the time of our last call, which basically means that no progress was made between calls in terms of dealing with this. And I'll also note that other than administrative e-mails, virtually the only e-mail in this group was Pedro's in the last couple of days. I think we need to try to step up our level of activity in dealing with each other and in dealing with the document in front of us. So I just encourage that level of engagement.

Actually, what we have here, this is not the document that I want to put up. We need to put up the Google Doc we've been working with since the beginning. I don't know if staff needs a copy of that [in] here

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because no changes were made in the last week but it still requires our discussion.

TIJANI BEN JEMAA: Greg, the one that you shared today please.

GREG SHATAN: Yes, that is not what we intended to discuss first. We had started discussing the main Google Doc that we've been working on since our first meeting, and the intention is to continue to deal with that. I can share that again if people did not have it, which I will do now.

Bernie has given us the link. Unfortunately, the pdf that gets generated loses the comments, and actually, unfortunately, loses some of the text as well. So it's a little less than perfect solution.

In looking at the document itself on Google, it begins with a discussion that's been labeled "Scope." I think there's been some objections to whether this in fact is the scope or main issues that need to be investigated or focused or not. But this states that the main issue that needs to be investigated within our group relates to the "influence that ICANN's existing jurisdiction may have on the actual operation of policies and accountability mechanisms. This refers primarily to the process for the settlement of disputes within ICANN involving the choice of jurisdiction and of the applicable laws, but not necessarily the location of where ICANN is incorporated."

So I think this raises a few questions. Kavouss?

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KAVOUSS ARASTEH: Thank you, Greg. I put in the chat some time ago that different people have different understanding of gap. Could you kindly either now or later on put in your document what do you mean by gap? You want to analyze the gap, gap analysis, and gap between what? Gap is a shortcoming. Gap is [inaudible]. Gap is something is not available. What do you mean by – what is not the definition, the description – of gap in this regard? What gap you are discussing? What analysis you have to do? Because you put in three elements – the gap analysis, [contain] the gap analysis, assess the gap analysis. What is the gap analysis? What is the gap? Thank you. Gap between what and what? Thank you.

GREG SHATAN: Thank you, Kavouss. I think that's a good question. This is language that is in Annex 12 to the Work Stream 1 final proposal, and we have been gifted this sentence which is the first bullet point in this group which starts with the header, "Consideration of jurisdiction in work Stream 2 will focus on the settlement of dispute jurisdiction issues."

Put that focus issue to one side for the moment, but not for long. "Concerning and assessing the gap analysis, clarifying all concerns regarding the multilayer jurisdiction issue." We could go back to the CCWG and ask what we meant by that. I don't know that we should do that immediately. I think that it's probably better for us to get a general definition of what a gap analysis is and then decide what gap analysis it is that we are confirming, or more providing.

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Generically, my understanding of a gap analysis is that it is an analysis of whether what you seek to accomplish can be accomplished in full under a given set of conditions and if not, what are the gaps and how can you close them or can you work around them or live with them? That's obviously a very generic definition but that's I think the general understanding, or at least that's mine and you can certainly add to that because if it's one of our actual assignments from the Work Stream 1 to Work Stream 2 is to confirm and assess the gap analysis, we'd better know what that means.

Jeff Neuman.

JEFF NEUMAN:

Thanks. I would proposed in that italicized language on the top – and I proposed this for the other document that you posted as well for the scope – that we take out the word, since we were just talking about incorporation, the word “necessarily,” because that leaves a lot of vagueness. Let's be definitive and say that “This refers to the process of settlement of disputes within ICANN, including the choice of jurisdiction and of the applicable laws but not the location of where ICANN is incorporated.” Let's just get that clear and then move on. Otherwise, you have language of “not necessarily” and it's incredibly vague. Thanks.

GREG SHATAN:

Thank you, Jeff. Thank you for bringing up that suggestion as we're looking at this document. I was hoping that you would bring it over from the other document where you discussed it.

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I think this ties back to the discussion we were having that was started by looking at question #7, and I think that we'll need to decide as a group whether taking the "necessarily" out is how we see the scope. As I said, that's still I think an open question.

Kavouss?

KAVOUSS ARASTEH:

Yes, Greg. Thank you very much for your very general description of gap analysis. I do not agree with Bernard what he put in the chat. It is a lot of words putting together that are not consistent with each other and they are not coherent and just some words. You put them, you will be totally lost. So I agree with very general thing that you have said provided that you put something as the Chair or the rapporteur of this group your understanding of gap analysis and what we have to do, but not what Bernard put in on the paper.

I'm very sorry, Bernard. I apologize but this what you said is not clear. It totally confusing because a lot of words that when you put them together has no meaning at all. So we have to have a more simpler way, maybe explore what Greg said for the next meeting. What is the gap that we have to analyze and we have to fill up? If we have that, we would be in a better situation. Thank you.

GREG SHATON:

Thank you. I think that maybe what we should do is start another Google Doc just to try to have a definition of gap analysis. I am assuming that Bernie probably found that analysis or had that definition from a

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resource that thought it made sense. It is wordy. There are other definitions of gap analysis that differ in both tone and in some instance, substance. So we should come up with what we mean.

Pedro has his hand up and then I'll go to what Jeff says in the chat.  
Pedro?

PEDRO DA SILVA:

Yes, Greg. Thank you very much. With regards to the concept of gap analysis, if I recall correctly when we had this discussion in Work Stream 1 I think what we meant by gap was actually the difference between the accountability requirements that we as a community elaborated and how these requirements have been implemented given the legal jurisdictional tools we have within the California non-profit law. So it's actually the gap is the difference between the requirements and the actual implementation of those requirements and whether those requirements have been implemented in full or not. So I think that is the gap that we need to let's say we agree that we would identify as part of the work of Work Stream 2.

And with regards to the proposal of Jeff, I think it would if we remove the "necessarily" here we would contradict the agreement in Work Stream 1 and set aside one aspect of the discussion of jurisdiction that have agreed to some extent it would be part of this discussion. So I think what has been written in work Stream 1 actually indicates some focus but actually does not exclude other aspects of jurisdiction to be discussed. And I will again call for us to be open here in this discussion to consider all these relevant aspects of jurisdiction, make an exhaustive

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possible overall list of aspects of jurisdiction, all those layers, and then as a second step of the work here, consider which are the aspects we should make recommendations on. So I think that's it. So I wouldn't agree with changing this wording that we have agreed in Work Stream 1. Thank you.

GREG SHATAN:

Pedro, Jeff said that he thought that the language was ambiguous. And certainly if you take out the word "necessarily" it probably is unambiguous. But if you don't think this language is ambiguous, I'd like to understand how you think it would work in our explorations and what potential recommendations it could lead to.

PEDRO DA SILVA:

I don't have a recommendation right now, but I think it would be premature for us to start changing the wording we have agreed on. I think it needs more reflection, more discussion, and then I think we should come up with more detailed recommendations. But at this point I think simply because as I understood, Jeff's proposal was simply set aside this discussion of jurisdiction of a place of incorporation which isn't necessarily what we have agreed in Work Stream 1.

GREG SHATAN:

Thank you, Pedro. I think there are clearly two proposals with regard to our scope and the issue of the location of incorporation. So I think that we'll need to take that further, and this may be one of the things that we do take back to the CCWG Plenary, as the plan is to report back to

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the CCWG and also if we have open questions that we don't feel that we can resolve as a group we can bring those back to the plenary. I'm not saying that we can't resolve this one as a group, but I think right now I don't want to prejudge where we're going to come out. So I think we need to put a pin in this.

Sadly, it's now 3:57 so we're really close to the end but I think we have two significant issues that we should continue to discuss, especially try to get more voices on these topics. One is the issue of whether the scope should include the location where ICANN is incorporated and also how that relates to jurisdiction.

Second is defining what a gap analysis is – generically and more importantly what it means in the terms of this particular exercise. Jeff Neuman had a suggestion in the chat which hopefully makes its way into the notes as well. I think it did. I see that. Good. “A better way to state this is, ‘What are the issues that arise due to the current jurisdiction in which ICANN is located?’” That's perhaps another phrasing of the same question.

Pedro, please go ahead.

PEDRO DA SILVA:

I just wanted – because I saw some reaction in the chat – and I think at least some people seem to be afraid that by discussing ICANN's place of incorporation we are necessarily coming to the conclusion that ICANN should change its place of incorporation. And I think if we start with this premise, I think we are going the wrong direction. I think we should discuss this and at least in the beginning try to assess how the law or



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jurisdiction of ICANN's place of incorporation interferes with ICANN operations and in order to leave this so that we can properly assess all those different aspects of jurisdiction. They are I think and presumably there are different aspects of jurisdiction that are related to ICANN's place of incorporation. Not all of them, but there are different aspects and I think we should at least as a first exercise enumerate all those aspects, be it anti-trust law or labor law or all these different aspects of law that I think we should consider as a first step of our exercise. And then evaluate whether there needs to be some recommendation given on that aspect.

But I think by eliminating the discussion of the jurisdiction of ICANN's place of incorporation from our discussion here we will be limiting quite a lot and not attending the expectation of many stakeholders in the ICANN community.

GREG SHATAN:

Thank you, Pedro. We've now reached the top of the hour and I think I would classify the kind of analysis that you were talking about as being under "effect of jurisdiction," and whether that's the effect of jurisdiction of an incorporation or domicile or choice of law or of venue for settlement of disputes, there are effects that result in that. I think before we get to that we should look at the multilayers of jurisdiction, the different types of things that we end up calling jurisdiction which is at the top of page two of the document in your screen. I think that would be a good place to stop and to suggest that we look at those issues.

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I'll call on Tijani and then I'll close the queue.

TIJANI Ben JEMAA:

Thank you very much, Greg. First of all I'd like to know why we stick to Google Docs. We have, and staff knows very well, that we are always working in the ICANN wiki. And the wiki is accessible by everyone everywhere in the world while Google Docs is not accessible in some parts of the world. And when we are working on the wiki, it is the [arrangement] that ICANN is working with. So why we don't work on the wiki, because the wiki is more accessible and because we are more familiar with the wiki is my question.

My second point, we need to go as Greg [inaudible] the multilayer jurisdiction. It is the most important point that we have to start with and this is something that we need to work on immediately. All other aspects are really not important as the multilayer if we agree on those layers. I think we are close to a solution. So let's start by addressing the [issue] which is the multilayer jurisdiction. Thank you.

GREG SHATAN:

Thank you, Tijani. I think that coincides with my suggestion as well. In terms of the wiki, I have to confess that while I've used the wiki for reference when things are put there by ICANN staff, other than the SOI I've never edited the wiki, had any call to use the wiki. So this may be one of these things that varies by stakeholder group or Advisory Committee or community that you're in, but I'm not sure whether we have any experiment with who has what experience with the wiki. So perhaps what we will do is experiment with the wiki rather than the

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Google Doc for one aspect, perhaps the gap analysis discussion and see how people like working with that versus this so that we can at least give that tool a shot.

It's my understanding that ICANN is exploring a truly collaborative real time – the possibility of having something that's more like Google Docs that allows for real time collaboration – but there isn't one yet which is why we turned to Google Doc.

In any case, we're now over time by about the same amount of time as we started late so we had our hour, just slightly time shifted. Our next meeting has been sent out to you as an invite. We are back on a 13:00 time because of our rotation which may not always go so neatly, but we are meeting at exactly one week from today but at 13:00.

I encourage everyone to be very active on the list and very active on the documents wherever they may live so that we can come roaring into our next meeting with a good deal of progress between now and then.

With that, I'd like to thank my co-rapporteur, Vinay Kesari and thank all of those who participated and hung in here. I will call this meeting adjourned and ask that the recording be stopped.

**[END OF TRANSCRIPTION]**