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RECORDED VOICE: This meeting is now being recorded.

SÉBASTIEN BACHOLLET: Okay, thank you very much, and thank you for your participation. We received apologies from two participants, from one Board member, [inaudible]. I hope that this meeting will be short, but let's see what happens.

And I will take the four points and go from slide to slide, and if you have any question, just raise your hand and I will give the floor. And it's to give you an update of the active participants, the same list, but we have one more observer, and I keep, update that from their website and from what staff is doing.

Thank you very much. Not a lot of people, and some of the people are working on other topics today, because as you may know, [inaudible] there is [airing] at the [inaudible] in the next two days, I guess, and some people are working out maybe to be here or to prepare [hearing?] of somebody else, and it's maybe part of the reason we have less attendance today.

And it's not so, I'm using that when we have the two ombudsman who make a presentation, it was three weeks ago, and it was very well attended. As you can see, this is our sixth meeting, and we will discuss or re-discuss again, four of the items of this document. The policy between the subgroup, where we are with ATRT 2. I hope that we will join, if not, we will manage, and about stress test linked with

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ombudsman office. And one question about the control of the ICANN ombudsman office, and we hope to have some feedback from our ombudsmen who are in Los Angeles right now.

I have put the link to the Google Doc, because finally, I found a way to update the document and the way you're receiving work from that, it's the same it's in the Google Doc now. Sorry for the delay. I got some technical issue.

It's interesting because I was obliged to use another tool than Chrome, because Chrome was not working for Google Doc, but I used Firefox and it worked very well. Strange.

I had added this slide to remember whether the different topics we will have to discuss during the work of this working group. As you see, the ATRT 2 since last week, it's an additional path, but it seems to be an important one. We will come back to that in a minute. And it's to be able to have the list, and I will ask if anybody is willing to make one of those items to work other than just me on this document, it's why I put this 15 items in one slide.

Here, we have a possible [difference?] between the work stream two subgroup, design team, or drafting team, however you want to call them, with one liaison. What I would like to ask it's why I ask in the mail with the agenda today, I would like to have each one of those here to get us a short report on what they think would be important for this working group, who might be discussing the other.

If we want to start a change between the subgroup, maybe we don't wait the other, but we can try to find some issue we need to discuss

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here. If not, there is nobody further, I guess it's the right time to do it. As an action, I would like formally to request all the liaisons to give a short report of where we are on the issue of ombudsman on those groups, or whether our topic we need to discuss between those groups. Thank you.

Okay. I am back now to the other topic with the ATRT 2. Avri has done a very good job in taking all of the parts dealing with ombudsmen in ATRT 2 report, and sum ATRT one also, and it's now [inaudible] the document in our draft report, who is a member of the repository document with everything, but we will have to discuss in more detail.

And the... It's an important aspect because it was new one last weekend. It's still a topic, we need to see how we can deal with, and there are a lot of items in ATRT 2 we need to take into account. And it seems that, as you can see, they remove it from the work plan of the ATRT 2 implementation team, and it's really our duty to do this job.

I guess and I hope that we will be able to follow the job on that specific issue, but if I can ask every one of you to read in detail the different abstracts he made available, it will allow us to decide in which part of the document it can be dealt with.

Maybe we can... Okay. When I suggest it, I will go to the next slide, but as we will have time, I guess, especially if I am the only one talking tonight, we will take the document and see what it is those abstracts from the ATRT 2, and see what we can do.

Now the stress test, you already saw that there are two, we are talking about ombudsman, the 13 and the 34. And during our last call, we

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wanted to have a discussion with two persons who are in charge, who were in charge in work stream one of the stress test. And I chat with both Steven and Cheryl, who were not able to join us tonight.

I guess that Steve is preparing for the hearing and is quite busy. He's not available next week, then we will postpone this specific discussion on the 26<sup>th</sup> of September. I guess it will not be too late, and it will be okay. And I hope that both Steve and Cheryl will be able to be joining us 26<sup>th</sup> of September.

Okay, now the [inaudible] people is the current one of the ICANN ombudsman office. And one of the questions was how to deal with requests on CWG on stewardship, we identify new roles of the ombudsman as a place of escalation or complaints about PTI naming functions and service delivery. I know that [inaudible] wanted to give us feedback, but she's not able to participate in this meeting, then maybe she will give us next week.

But as we have asked for any further for the next item that [inaudible] increase, when they will be messengers will figure out where we are on that, then they are asking for the floor. That's very good. Go ahead Herb and Chris, I guess you will be given us some news about this topic. Thank you. Go ahead.

HERB WAYE:

Merci [thank you], Sébastien. I met with Kim Davies earlier this morning. He's one of the workers in the IANA group that will be transitioning over to PTI. Basically the PTI, their impression is that the term subsidiary, which we discussed last week, is not a legal term that

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can be used with ICANN. ICANN legally, I guess, doesn't have subsidiaries. That's way beyond my capacity and my knowledge, but what they will become over the next, well, actually as of October 1<sup>st</sup>, the PTI, which is the public technical identifiers organization, will take over from the IANA function, as a separate entity in the community.

They will... They have their own bylaws, which IANA doesn't have. They fall under the old ICANN bylaws. So the public technical identifiers group will be an independent group that, over the next three years, will transition from the, as far as HR goes, from a dependence on ICANN, to a completely independent group.

They... As much as they will be independent from ICANN, three of the Board members will be ICANN staff. So there still is a very, very strong connection, and they will be receiving 100% of their funding from ICANN. So we kind of agree that regardless of the direction they take as far as a separate entity, they will remain part of the ICANN community, and therefore will fall under the ICANN ombudsman bylaw as part of the community.

I am reaching to [inaudible] [Eisner?] from Legal. She was the legal contact for the transition to the new entity. And I'm waiting for a reply back from her, just in case there was some discussion of the role of the ombudsman in the future, but Kim does not believe that that was the case. Either it was not thought of and not discussed, or it was simply taken for granted that they will still fall under the old way of doing things.

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So that's basically where it stands with PTI. I don't think it's, it's nothing written anywhere as far as bylaws and policy and stuff like that goes. It's just going to be, I think, a normal transition that we will still maintain, our office will maintain an availability to the community from that aspect.

Chris, do you have any...?

CHRIS LAHATTE:

In other words, we don't think there needs to be any change to the bylaws, because the way we see it, they're already part of the ICANN, and therefore are able to access the ombudsman office. We take an [inclusive?] approach to complaints in any event. We don't try and exclude them because they might not look as though they are directly part of the community, because no doubt that an organization like PTI, which will have three ICANN staff members plus our Board members, is part of the community.

There is no difficulty as I see it, and any interaction with the PTI being available to the ombudsman.

SÉBASTIEN BACHOLLET:

Thank you Herb and Chris. Thank you very much. Please, go ahead.

UNKNOWN SPEAKER:

Thanks Sébastien. Yeah, I really would like to hear from Stan about the corporate organization form of the PTI. One concern, just from listening to Herb and Chris talk, is, as a lawyer, I think of liability issues. And so, if

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the ombudsman is part of ICANN, but you're going to be dealing with a separate corporate entity, where does liability attach?

I think that's a question we could also ask for Sam, if we can use the ombudsman as part of the ICANN community, how do we differentiate with which organization you're actually legally responsible to, when you take on two PTI chairs. Because if something goes wrong, and there is a suit, who gets sued?

I think that is something we should ask [Sammy?] because of liability issues from what I just heard. Thanks.

SÉBASTIEN BACHOLLET: Thank you. Chris, go ahead.

CHRIS LAHATTE: Yeah. I think this can be answered by the ombudsman role, not being one which makes decisions, and accordingly, pretty difficult to [inaudible] on a recommendation, which is all the ombudsman will ever do. The ombudsman will either attempt to mediate a result, and the mediated result is pretty difficult, if not impossible to litigate about, or if, as the ombudsman makes a recommendation, then it's up to whoever receives that recommendation to accept or reject it, so there is almost no chance of any liability from a lawsuit, because there isn't a decision on which a lawsuit could be founded. Thanks.

SÉBASTIEN BACHOLLET: Thank you. This is Sébastien speaking. Go ahead, Ed, please.

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ED: Yeah, I mean, I have, again, as a lawyer, I can find lawsuits anywhere. Somebody files a complaint with you guys and you don't act in a timely way, or what I consider to be in a timely way, that's a lawsuit. You don't make a recommendation in time. You don't take proper consideration in terms of doing your duties, your fiduciary duties.

I can find a lawsuit pretty much anywhere. And I think we need to get that clarified as to who I sue. Is it PTI? It is ICANN? Because you're an employee... I guess you would continue to be an employee of ICANN. My concern is the corporate form of PTI, my understanding is it's going to be separately incorporated as PBC in California, in which case, the sharing of the ombudsman makes me a little bit queasy.

But it's something... None of us are experts in this. I'm sure Stan can provide some assurance to me, or clarification to everybody else. I just would like, if we can, just to get that question [to him?] as well.

SÉBASTIEN BACHOLLET: Thank you Ed. Herb, please go ahead.

HERB WAYE: Yes. Merci [thank you] Sébastien. As I mentioned, we are reaching out to Legal, ICANN Legal, Samantha Eisner, and hopefully we'll be able to discuss that with her, whether she sees a role for the ombudsman in the PTI function or not, or whether they will have their own internal, and I know they will have their own internal complaint process. I discussed that with Kim this morning, whether that can be escalated to either the



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ombudsman, or potentially through ICANN to the IRP, or the reconsideration, again, is something that we're not clear on, and we're waiting for information from ICANN Legal on that.

But as I think the crux of our conversation this morning with the IANA people was whether or not PTI will remain part of the ICANN community, and as far as we're concerned in our open view on the community, we are very reluctant to, I guess, tell somebody that they can't use our services.

We are much more inclusive than non-inclusive. So we would, of course, look at that for the time being, but we'll get some legal advice on that and get back to you.

CHRIS LAHATTE:

If I could add, this is Chris LaHatte for the record. Because the ombudsman is not an employee of ICANN. The ombudsman is a contractor to ICANN, and reports to the Board. That's rather different from the status as an employee. And that means, of course, we don't have any authority to tell the Board to do anything, because we don't have status as an employee.

We only ever have that ability to make a recommendation. It's very important to think clearly about that, because that, in Californian law, means that it's pretty difficult to sue an ombudsman. And it's not the place, but there is a reasonable amount of legal authority to that effect. Thanks.

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SÉBASTIEN BACHOLLET:

Thank you very much both Herb and Chris. And I think it's with important points you made. If you allow me, I will take off my hat of rapporteur and give you my thought about that. I think we need to find a way to be sure that it's not the people who know or who are willing to come to the ombudsman, will come, but we have to a way, as the CWG on stewardship, ask us, or ask that to be put in place.

That the ombudsman's role take into account, be a place for escalation for complaint about PTI naming function and delivery. I have a short exchange with [inaudible] earlier today, before she was traveling to Brussels for the meeting of the Board. And she told me the exchange she had with Legal, and I will not tell you what she will tell us next week, but at the end, I thought that we need to find a place to write something.

If it's not in the bylaw, and I can understand, we don't need to put it either in the ICANN or in the PTI bylaw. Maybe we need to see in the framework of the ombudsman office. We can't add those information, to allow people to know about it. And if so, how we write it, what we write, I have no clue yet, but I would like you to think about that.

And as we will have to discuss the framework of the ombudsman and compare it with the other, with the [inaudible] of other organization, it will be interesting at that moment to see if we can add this. And I will change this slide to see if there are some other places where we can put this information, and if it's useful. Thank you.

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I finish my statement as a member of this group, and I'm coming back to the rapporteur role or chair of this meeting. Any other comments or addition to this discussion about the PTI inclusion?

Okay. It seems that none. Yeah, please, go ahead.

HERB WAYE:

Thank you Sébastien. Just one last little comment is that, as far as we're concerned, an addition that expands our scope to a broader base in the community is more than welcomed by our end, simply because we've always tried to be as inclusive as possible and have stretched the bylaw which says staff, Board, you know, decisions, actions, or inactions.

We've tried to stretch that as far as we can out into the community into the past, and adding something to the bylaws that expands the role and makes it much more clearer for the community, that they are actually, that we're actually available to them, will be embraced wholeheartedly.

Thank you.

SÉBASTIEN BACHOLLET:

Thank you Herb. Okay. Maybe, even if Avri is not here, we can change the document and go to the [inaudible] document. I would like to talk a little bit about where we are with the ATRT 2, just to be sure that we all share the information. I will go directly to ATRT 2. Still working on this document.

The first part, recommendation 9.3, was already in the document, but since the last meeting. Avri had a lot of excerpts from the ATRT 2 with

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each number, and the first one is almost a repetition of what we have already. But it's important to see we have to discuss about the role of the ombudsman, the role vis a vis employees, and we start towards this discussion, and we need to come back on that, but it's an important part, because some people were saying that, no, the ombudsman must not be in charge of dealing with employees requests, and some others say, yes.

It came from ATRT 2, then we have to discuss it. And the ICANN [inaudible] online and other whistleblower, and that's the some part we need to discuss. And then there are other recommendation, coming some from the ATRT one and if you see the recommendation 23, it's written that as soon as possible, but not later than June 2011, and we are five, more than five years later, and we are still...

It's not really done. It was to see the link between the independent review process, the reconciliation process, and the office of the ombudsman. This should be a broad assessment of the accountability and transparency. And the inter-relation between the three functions. I am not sure that this group alone will be able to do this. That's something we will need to discuss.

The next part from page 52 of the ATRT 2 report is a review of the office. And it seems that now it's according to our folder, our end. And we will have to do it. We have in page 53, the question of the independence of the ombudsman. I guess, we have slightly exchange on that, but it's a topic we will have to come back, and then there are the bylaws who are to be taken into account, the office of the ombudsman.

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I will not go too much more detail on that part of the document, but that's all, with some footnotes, but that's all what we have about the ombudsman into the ATRT 2. That's all, but it's important. And I wanted to be sure that we have all of this information, and if there are some points or comments from participants, it will be good. Thank you.

Yes, please go ahead.

HERB WAYE:

Thank you Sébastien. If I understand correctly, do they want us to take over the ATRT function? Because if they are looking at having a review or an evaluation of the office conducted, that is something that I could begin working on right away. I've had discussions with several ombudsmen in the industry that do that. They do it either on an annual basis for an ombudsman's office to do an evaluation of performance, or they can do it as an one-off for an organization to review, similar to the review that was conducted for ATRT one.

So if that is something that we are looking at that we would have funding for, I know that the proper people to contact, to get them to do it, people that are beyond reproach, in the industry that do this for ombudsmen's offices around the world. So, you can maybe carry on this discussion, and if we do need somebody to come in, I have the contacts that can get us somebody that is respected in the industry, you know, beyond reproach. Thank you.

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SÉBASTIEN BACHOLLET: Thank you Herb. I have a question then. I have no answer for that because my understanding was with the different [inaudible] really accept from the ATRT 2, I am not sure that my understanding was the right one. But if you look to the red part here, the recommendation 9.3 on the link with the ombudsman inside, were removed from the work plan of the ATRT 2 implementation team, to avoid duplication with our work.

And my understanding was, we will be the one doing this review and doing this. I am not sure that we are anymore asking for outside expert, because it could have been done last year, because it was supposed to be done last year. My understanding was we will not ask for outsider, maybe one of our recommendations could be, we still need to have an outside review.

But I'm not sure we will do it in parallel because, at least it's my understanding. And I can be wrong on that, but it's an important topic that we need to discuss together. Okay. Kavouss, please, go ahead.

We can't hear you for the moment, Kavouss.

KAVOUSS ARASTEH: Do you hear me, please?

SÉBASTIEN BACHOLLET: Yes, now it's okay. Go ahead.

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KAVOUSS ARASTEH:

Yes. I think, with respect to your understanding, you may be right, but I think this group could not decide whether you need or you need not outside. Perhaps that will be one of the points that you report to the previous CCWG. And you will pick it up.

They may, I don't know, [submit?] before you. Sorry, after you. Unfortunately, it was postponed. But I think some of this principle issues or something like this, it is better you also consult the whole team, because there are not sufficient number of the people here to decide this sort of thing.

This is very critical. This is my suggestion to you. Thank you.

SÉBASTIEN BACHOLLET:

Thank you very much Kavouss. You always are ahead of everybody, but we are discussing here to discuss and to see what we want to send. I will make a report to the CWG working stream two full team. I will report on that. I will report on the previous discussion about the bylaw, or anyplace to put the PTI topic.

And all of that, but for the moment, we need to hear to change what are the different understanding of the situation. And as I say, I have, I am just giving you my feeling about the situation, but I have no clue if it's the right one or the wrong one. And then, of course, we will need to discuss both with the CCWG, but also with ATRT 2 implementation team, to be sure that we are doing at the right way.

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And importantly, there are no Board members here, because it's also, they are concerned because ATRT 2 implementation, it's under the Board capability, and it must be taken, that must be taken into account.

Okay, thank you for this discussion. I would like to come back to the four points now, if we can bring that please, or we're doing it. I will come back just to be sure before finishing this meeting, that there are two requests. One is to take the current document and who is willing to be in charge of one of those items?

At least the fourth and first one, because [inaudible] but if someone is willing to take one, please send an email to the list or to me, and we will figure out. That's one point. And I really would like to ask different people in charge of the different part of the document. I don't want to be the only one editing and changing this document.

And the second question is here. I repeat that I would like very much that each of the liaison give us a report, or give us their mind about what could be the dependency between our group and one of those, the groups that they are liaison with. And it will be useful to have that starting next week, at our next meeting.

And next meeting, will be Monday, September 19<sup>th</sup> at 5 AM UTC. And we will follow on the discussion of the document. And once again, I have all the charter title here. Yes, Kavouss, please go ahead.

We can't hear you Kavouss.

Still I can't hear you.



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KAVOUSS ARASTEH: Can you hear me? I just have a small question if you allow me.

SÉBASTIEN BACHOLLET: Now, yes. Go ahead Kavouss.

KAVOUSS ARASTEH: Yeah. What is the difference between recommendation and advice? I see at the next meeting you have titled, very good, but some of them, what do you mean by advice and recommendation? Either you provide recommendation, or you provide advice. Not both.

SÉBASTIEN BACHOLLET: You may be right. And at the end, we could put the two together, but in fact, there... When we took all the items we have to discuss, one was about the recommendation in link, in liaison, about the change necessary to ensure that the ICANN ombudsman has a true independence and authority.

And that's what was called recommendation. And advice to the future ombudsman, do we need...? There were discussions about new bylaw changes, formal, we are insisting formal, how we are to be more involved with the community. And it's, yes, maybe at the end, all recommendation and advice will come together.

But for the moment, in this document, the recommendation came for a specific topic, and advice for another topic, roll out of the discussion and of the document. That's the only thing. And the title, all of the

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document may change, it's just the draft. Thank you for your comment on that.

Herb, please go ahead.

HERB WAYE:

Thank you Sébastien. Could that possibly be a typo? I'm wondering if advice potentially could have been advocate? Because there is a potential for the ombudsman role expanding into that of an advocate for various community groups, or portions of the community. And I'm wondering if advice might have been written instead of advocate, if we look back at possibly my PowerPoint presentation from a few weeks ago. Is that possible?

SÉBASTIEN BACHOLLET:

You may be right. Yes, I put some of them, and advocate in one part, but it's not to see if we have... The definition of the role will be setup somewhere, and I get before, but some advice can be given to the future ICANN ombudsman's office. And maybe this advice will be to be more an advocate than anything else. But I'm not struggling with the words here. And I can put slash advocate, and we will see what's happened [CROSSTALK].

HERB WAYE:

So it would be advice coming to the ombudsman's office from CCWG subgroup, and not confusing recommendations by the ombudsman, or advice given by the ombudsman, because we, I don't think, have a role giving advice to the organization. Thank you.

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SÉBASTIEN BACHOLLET: Yeah, and you're right, and maybe I will figure that out in the next revision of the document. That's a good topic, and we are talking about advice to and not advice from the ombudsman's office.

Okay. Let's go to any other business. Do you have any comments, questions, topics you want to raise now, or you want to raise for a future meeting?

If not, I will just conclude this meeting and thanking you for your participation. And one of the reasons I keep this meeting going from one week to another, I really would like to have, maybe I am dreaming, but to have a document ready for some exchange outside of this working group, and hopefully outside of this CCWG accountability, prior to Hyderabad.

In time to be, to allow in a change in the draft before that. And if I am [wrong], sorry about that, if I am not, please help me and help us to do that. I will not do it by myself, I need your help. We need to work together. And to the ones who are participating, thank you very much. The ones who will be listening or reading the notes or the report of this meeting, thanks also.

And please, come and participate. Thank you very much for your participation again, and talk to you next week. Have a good weekend. I hope all the best who will participate to the hearing. It's very important for the future of this transition, of the IANA stewardship.

Thank you very much, take care, bye-bye.

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**[END OF TRANSCRIPTION]**