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RECORDED VOICE: This meeting is now being recorded.

GREG SHATAN: Hello and welcome to the fourth call of the jurisdiction subgroup of the accountability CCWG.

First, is there anybody who is on audio only? I see a number of phone numbers that may indicate that people are on audio only or that they dialed in separately from the Adobe.

I'll take it that nobody is on audio only then.

If you're a phone number make sure to identify who you are so that we do have an understanding of who's in the Adobe room. Are there any changes to statements of interest?

I'm hearing no changes to statements of interest. We can move to the second item of the agenda. I guess that first item constituted a welcome. And this is a question which we have discussed in the past, it was on the agenda for yesterday's plenary session but perhaps for the better, it did not make it on to the actual call due to lack of time. I think that gives us an opportunity in this subgroup to move this issue forward and hopefully to resolve it within this subgroup, obviously, anything resolved in the subgroup is to be presented back to the plenary CCWG anyway, as with every subgroup. But I think within this subgroup, we can come up with an approach to... [AUDIO BREAK].

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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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UNKNOWN SPEAKER: Greg, I don't hear you.

GREG SHATAN: Does everybody hear me?

UNKNOWN SPEAKER: Now, I can hear you.

GREG SHATAN: Very good, ok. So if we could begin the discussion on this, I know several people have contributed to this in the email list and we can go back and look at some of those as well if those people are not available on this call, Matthew Shears for one, indicated that he could not join but wanted his remarks noted, or noted that he made remarks. If I could, let's see, I see a hand up from David McAuley.

David.

DAVID MCAULEY: Thank you, David McAuley, for the record. I thought what you were asking just now was for those of us who have contributed to sort of restate that briefly if we can and I'm happy to do that. I was unexpectedly, for personal reasons, offline entirely Monday and a good portion of Tuesday, although I did attend the plenary CCWG as well as the human rights meeting yesterday.

But I saw your mail with the list of questions that are somewhat repeated on the agenda today, and I have to say that I agree with Pedro,

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who if I have it correctly, came on the list and said: “we really need time to grapple with this.” I’m of the view that these questions are important and that they are the nub of the work of this group and I really think we should not go to the plenary CCWG until we’ve had a fair chance; which to me is several weeks probably; to discuss this, to digest this; maybe to break it down and ask people to go off and look and come back to the sub-team and report on various aspects of it.

And it seems to me that to go to the plenary the best time may be the meeting in Hyderabad; I don’t know if that’s the best time, but I think some time should be taken by us, the sub-team. I think we’ll be the experts by the time we go through this and I think the plenary CCWG will be happy that we go off and do our work and we will know more than they do and I think we need to present to them crisp and clear questions and alternatives, and with people speaking to it with various sides that may be represented clearly and that have thought this through. So anyway I’m of the view that this is gonna take some time. Thank you very much.

GREG SHATAN:

Thanks, David. I will note that we have discussed this, I think from our very first meeting, but perhaps not as focused as these questions have put it to us. But I do agree that it’s best for us to resolve this and take the time necessary to do so. On the other hand, I’m not sure we need to go all the way to Hyderabad to do that. And finally, while it’s important to settle this, I guess we’ll have to consider whether this is the nub of our work or to some extent a red herring, as interested as some people

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might be in the topic, whether this needs to be the nub of our work or not. But let's move on. I have Kavouss next in the chat.

TIJANI BEN JEMAA: Can I talk about me?

GREG SHATAN: Tijani I'm sorry, the Adobe connect iPad app does not put people's hands up in order, which kind of sucks. So I'm going to get into the regular program in the computer, but if Tijani is up first then Tijani, please.

TIJANI BEN JEMAA: Thank you very much, Greg. I do agree with David, absolutely I agree with him. I want to tell you Greg that, as for the [inaudible] it was only about the [inaudible] is it necessary that one of the attendees asked to remove it, and you asked him if there is a consensus, and then you said: "no we can't keep it." And that was all the discussion about this issue. I don't understand why you want to bring it to the CCWG plenary, if they will not tell us, if they will decide or they will tell us what we have to do, we don't have to be there. We are here to discuss it together, to try to find consensus, we have the layers of the jurisdiction, let's seek them one by one and work on them and the first one will be the [inaudible] of corporations and headquarters. Let's discuss it, let's have a consensus inside the room and then when we have the consensus we go to the CCWG and tell them, "This is our position." Or when we have a problem that we cannot solve, in this case, we decide together, what is the

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problem, what is the question. And then we go to the CCWG plenary and bring it to them. So, my points of view, perhaps for the gap analysis, it was about asking about the meaning and or have more inputs about that. This is good. But for the [inaudible] of cooperation and the [inaudible], I don't think we have to go now to CCWG. We didn't start discussing that, we have to start our work; as I said in the CCWG plenary; we have to start our work, we have to go directly to the point. We are turning around from those weeks, so I think that we have to start by discussing the layers one by one and have a consensus everyone. Thank you.

GREG SHATAN:

Thank you Tijani, I do think you understate the amount of attention we have given to this question beforehand. In any case, we are taking the approach to resolve this in this group. The reason to take it back to the plenary was to see if there were views on what our remit from Work Stream 1 had been. Not to look at this question kind of from the ground up, but here we are and let's look at the question fully, and as I say let's try and see if we can resolve both of these questions so we have a proper approach to this layer, or layers, going forward. I have Kavouss next.

KAVOUSS ARASTEH:

Thank you, Greg. You said that these questions have been constituted by some people, who has asked for inclusion of [little b] on the [inaudible], who has proposed that? And why we need to discuss that? It is already in the bylaws and there is a procedure how to change that

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and the current location. Why we bring this question back? I want to [inaudible] who brought that and what is the logic or rationale that we spend time to discuss this issue which is one of the most sensitive and critical issue that perhaps we should avoid discussing something which we know the results. So could I have some logic or rationale, why this question should be discussed under this group? I have no problem if you raise it to the CCWG, because I would have the same argument, but having discussed this [little b] is totally [inaudible], totally. Thank you.

GREG SHATAN:

Thank you, Kavouss. I do think we have at least a couple of members of this group who have at least looked at the second question as being an open question. And I think we have at least a couple of members who believe that this is essentially a closed question and that the idea of moving ICANN is out of scope and therefore can't be part of our... or shouldn't and won't be part of our recommendation so, if we all agreed on that formulation then I think we can get past this actually very quickly. But I don't think that's the case, but we have a good queue lined up so we can take some further views. Your views are noted. Milton?

MILTON MUELLER:

Hello. So, I just want to distinguish very clearly between people who think this issue of a recommendation to change the place of incorporation is a bad idea, and would think it is actually literally out of scope that we cannot even discuss it. Based on what I know now, I think it's probably a bad idea. But I'm pretty certain that Work Stream 1

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deferred this question and put it into Work Stream 2 very deliberately so that it could be discussed.

I would say that there's something, there's kind of a bad precedent, a tendency within ICANN processes, to try to several issues by ruling them out of scope, thereby short-circuiting a proper discussion and resolution of the question. And I would urge us not to try to do that, or do that as kind of a strategic gain, that doesn't gain anything. People might win in a short-term procedural sense by blocking any discussion of it, but in the long term, they would lose because they wouldn't really be resolving the issue in a way that satisfied everybody, that it was what we all wanted to do.

So my understanding is that this issue should be out of scope, but my opinion on this is going to be pretty clear, I'm not against discussing it, but I think I agree with David that if this is going to cause the big debate, we want to not get involved in it until sometime just before the Hyderabad meeting. We want to make sure that we are all on the same page in terms of this being part of our discussion. So that's all I have to say.

GREG SHATAN:

Thank you, Milton. Briefly, I do agree with you that I've seen scope used for purposes of gamesmanship. And just like policy and implementation can be used for those same purposes. Yet at the same time, I think there is a legitimate side to scope discussions and I hope to stay on that side. I think we need to look at both questions, A and B. Basically, between the two questions we have three alternatives, at least, three

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major alternatives. One is, we don't discuss anything relating to ICANN's place of incorporation or location of headquarters. Second is, we have a full and free discussion of the effects, including the gap analysis of ICANN's place of incorporation and location, including potential remedies. But do not have on the table the potential remedy of this group telling ICANN in a few months that it's gotta pick up and move out of California or out of the United States. The third alternative is that we have that same discussion, but one of our options is the option that we will recommend to the CCWG and then up to the ICANN board, that ICANN move. Those are kind of the three choices. I think we kind of need to distinguish between those three and it's not just "we can't talk about it" or "we can talk about it" and everything's on the table, there's really a middle path. Let me call on next on Jeff Neuman.

JEFF NEUMAN:

Hi, this is Jeff Neuman for the transcript. I am on the side of that I think the subpoint 2B, should be and is out of scope. The rationale I have is not for gamesmanship as pointed out, but really for the practicality that everything we did in Work Stream 1, the empowered community, all the bylaws, millions of dollars of legal advice and everything else, was all predicated on California law and the California incorporation. To me, it begs the whole issue of... if Work Stream 1 had really intended us to discuss the possibility of moving it, why wouldn't we have started with that question as opposed to pushing it to Work Stream 2? That to me makes no sense. 2A asks, should the topic of the effect of ICANN's places and corporation and location be discussed, and I think that is in scope because we all have to talk about the effect on the accountability mechanisms, settlements of disputes and the effects on contracts and

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things like that. Part B, [Inaudible], and I'm looking at the chat, I believe it's out of scope simply because I don't believe it's a possibility of moving it, but if we have to discuss it, we have to discuss it. Like you said Greg, I believe this issue has been discussed ad nauseam and I'm not sure what is gained out of talking about moving it or not. Thanks.

GREG SHATAN:

Thanks, Jeff. And just to clarify one thing, when we're talking about the scope, we're talking about the scope of this subgroup in Work Stream 2, we are not talking about putting this permanently off the table. There have been some proposals to basically try to make this perpetually out of scope, if you will, for all future explorations. And that's not what we're discussing. We have a subgroup with a certain amount of time and a certain amount of topics that we think we've been tasked to discuss and bring back as part of Work Stream 2. So this is not an intention to weld ICANN in perpetuity to California, but rather a question of what this group will be examining in its work.

JEFF NEUMAN:

Greg, this is Jeff. Just so I can clarify, my comments were on the scope of Work Stream 2. I want to clarify, because you made it sound like it was a perpetuity question, mine is just on Work Stream 2.

GREG SHATAN:

Thanks, I didn't understand that, I was kind of trying to underline that, or distinguish it and probably did it clumsily. I turn to Phil Corwin.

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PHIL CORWIN:

Thank you, Greg. Phil Corwin for the record. Let me say a few things quickly. Number 1, for reasons that have been stated by some of the previous commenters and also been stated both in published articles and the “Lightning Round”. I was thinking, my own personal view is that the logical thing to do would be to enshrine ICANN’s U.S. incorporation of fundamental bylaws similar to what’s already been done with the incorporation of the empowered community and the PTI.

Having said that, that doesn’t mean I’m going to try to press this group to reach that conclusion, because, of course, the current situation, the default situation, is that ICANN is a California corporation operating under U.S. laws. I don’t think we should use scope to preclude any discussion of this question within this Work Stream 2 working group. However, I do think that if it becomes apparent and I think it will become apparent rather quickly, that there’s little to no possibility of this group ever reaching consensus in favor of changing ICANN’s place of incorporation as a Work Stream 2 project, that we should recognize that and move on to jurisdictional issues in which we’re much more likely to get agreement regarding contractual practices, effects of jurisdiction on hubs in non-U.S. offices, things like that.

And of course we can never take any topic off the table permanently for the ICANN community, there’s nothing we can do here that precludes a future discussion years down the line.

To sum up, I wouldn’t use the scope issue to preclude any discussion, but I wouldn’t prolong that discussion if it becomes clear that there’s no possibility of consensus for any changes in the present arrangement for ICANN. Thank you.

GREG SHATAN: Thanks, Phil. And perhaps that's a better phrasing than scope because scope has an undertone of trying to close conversation, in a sense, prematurely. I was working on a web redevelopment project for a law firm that I was at before and we had one guy in the group whose basic job it was to yell "scope" whenever we started trying to add new things to the project after we already decided what the project was going to be. And everybody would shut up about it as soon as he yelled "scope". That's not the intention, we are here to discuss it and to see if we have a rational conclusion at this time that it is not a recommendation that we are going to make...

PHIL CORWIN: Right Greg, and that is my point. I think there are people who in good faith believe that this question was available for discussion in Work Stream 2 and we shouldn't try to prematurely stop that discussion but we also shouldn't prolong it if it becomes clear that it's an issue on which we're not going to reach consensus as a group and we'd be better off spending our time on other jurisdictional questions which are important and where we can probably reach agreement. Thank you.

GREG SHATAN: Thanks Phil. Turn to Pedro next.

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PAUL MCGRADY: Greg, before...this is Paul McGrady here, second in the queue. Unfortunately I'm not at my computer. I tried to raise my hand in the remote Adobe place but that's not working. Thanks.

GREG SHATAN: Ok Paul, you're in the queue. Pedro?

PEDRO DA SILVA: Ok, hello, can you hear me?

GREG SHATAN: Yes.

PEDRO DA SILVA: Ok, thank you very much, nice to be with you again. I see these two questions under Item 2 as belonging to two different steps in our exercise. I think Question A is exclusively related to scoping and it is definitely a question we should be discussing now. My answer to that is yes, that the scope of our work here should include examining also the effects of ICANN's place of incorporation. We have already identified during Work Stream 1 that it is a multi-layered issue and we need to deal with this point and we need to identify all those different layers that make up these multi-layers as a start in order for us to move forward and then identify our priorities.

So, definitely, Question A is about scoping and should be discussed right now. But Question B, I think, is not the correct time to discuss this at

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this moment. Because I think it's about recommendation, and recommendation is actually the final step of our work. I think while there are very reasonable and very plausible arguments in favor of not moving ICANN from California or for not changing ICANN's place of incorporation, those arguments are very valid and I think they will be valid today as they will be valid in nine months' time when we will be at the time of making our recommendation. With the advantage that in nine months' time we will have discussed more in detail all those aspects. We will be more informed about details about the jurisdictional issues and we will have the input of experts. So we will overall be in a better position to make actual recommendations eventually, deciding that we should not recommend ICANN not to change its place of incorporation. So yes, this is a question about the actual recommendation we will make and I think this should be done in a later step, probably one of the latest steps of our work. So I wouldn't put this out of scope right now at this moment. Thank you.

GREG SHATAN:

Pedro, if I could ask a follow-up question. You talked just about timing, but not about substance; the previous speakers have discussed their views of the substance of the question. Could I ask you to discuss yours as well, please?

PEDRO DA SILVA:

Sorry, what do you mean by substance of the question? I don't have yet an informed position about whether we should change ICANN's place of incorporation or not. I mean, I think we need to have input from

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experts, we need to analyze all these different effects that the jurisdiction of ICANN's incorporation has on ICANN's policies and accountability mechanisms. Once then I will be able to give an answer to that question. I'm not able to do that right now. That's why I'm asking that we shouldn't, let's say up front, remove this from this scope. I think it's part of the scope, discussing that, analyzing that and only once we are have having found that we would be able to express our viewpoints on that.

GREG SHATAN:

Well the first question, and let's again say the first question is also out of scope; gives us free range to discuss the effects of ICANN's place of incorporation, location, that suggestion that a number have raised for the reasons that you heard and maybe we'll hear from others; that this should not be among the recommendations that we make in order for us to, for instance; to preserve the work of Work Stream 1 and for other reasons as well, no need to reiterate on a one hour call. Do you find those unpersuasive?

PEDRO DA SILVA:

I mean, I'm not sure if I understood what you said. But I mean, these arguments that all of our accountability mechanisms are based on California law; as I said I think they are very plausible, very convincing. But I think maybe other arguments may be brought in during our exercise here and I think we need to, based on all these different arguments, make a decision. Certainly, I think it's very; I don't know if the word is correct; very appealing that we will not change the place of

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incorporation. But I think we should defer that decision to make a recommendation to a later stage. I think the arguments available right now are good, but I think other ones may come in throughout our discussion.

GREG SHATAN: So, your basic position is now we should keep that option open?

PEDRO DA SILVA: Yes, I think we should keep that open.

GREG SHATAN: Thanks, Pedro. David McAuley.

DAVID MCAULEY: Thanks, Greg, David McAuley, for the transcript. Just to clarify what I said earlier and also to (what) speaks to what has been said by some of the previous speakers. I think what our work is a little bit complicated by the fact that the Work Stream...the annex 12, which is our remit, is stated in paragraphs 25-31, sort of short but it's a little bit opaque. Nonetheless, it does tell us that our work is primarily with respect to the settlements of disputes within ICANN, and then it goes on to say, but not necessarily the location where ICANN is incorporated.

To me, that makes paragraph 2a in your questions within our discussion, paragraph 2b I believe we will discuss, but I think it's not correctly stated. It's not so much as making the recommendation, but identifying

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alternatives, I think identifying alternatives is within our scope; clearly in paragraph 30. But paragraph 30 also says that what we're doing with respect to a gap analysis is not deciding if one exists, we're confirming one. I think there's an implicit gap analysis done Work Stream 1 that says, "ICANN's incorporated in California, it gives us the ability to create certain accountability mechanisms, it doesn't create others". We've done that, we believe from Work Stream 1 that these lead to what we need.

So, all we're really doing now is confirming that that's the case. With respect to the place of jurisdiction, just to talk a little bit of substance; one of the things about California law is that it's been a proven system; 18 years, no material problems that can't be resolved. So, I think what we'll do with respect to 2b is get to it, but not in mind of doing a recommendation but rather simply identifying alternatives. Thank you very much.

GREG SHATAN:

David just to follow up, do you think that we should have on the table as an alternative, moving ICANN out of California?

DAVID MCAULEY:

I personally don't. And like Pedro, I haven't developed a full argument. While I haven't, I can tell you the top reasons that I have that immediately come to mind are, California laws, what we have that's been proven over 18 years, it works well. We have to demonstrate that a problem exists, I think. It can't be resolved; a significant problem; before we would move. I can't imagine moving just for transient reasons. But I also think that we should identify alternatives in case a

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problem arises in the future. But as far as an alternative on the table right now for purposes of making an alternative? No, I don't. And I'll develop that argument as we go along, but I'm certainly not there yet. Thank you.

GREG SHATAN: Thank you, David. Just to confirm the cue, we have Kavouss, Christopher Wilkinson and then Paul McGrady. Kavouss?

KAVOUSS ARASTEH: Yes, thank you very much. I think we should be tactical, pragmatic and logical. From 24<sup>th</sup> of April, 2015, all discussions about [inaudible] community was based on that location in California. However, there is a provision that ICANN board could change that. That is alternative which we would not recommend at all. I believe that, as someone mentioned, if you try, not only in a three months, but three years; there would be no consensus at all on this [inaudible]. And there is no logic to propose that; leave it to the CCWG without any output from your group.

If someone at CCWG propose that, [inaudible] we need to just leave it to them. I don't agree that we discuss this question now or later at the level of your meeting. It is unresolvable and there will be no consensus at all. So, as I mentioned in simple English, we eat the whole time on this [inaudible]. Get it out, not discuss it, if someone wants to discuss it, CCWG, they can raise it as did all initiatives. But we could discuss the [inaudible] as David mentioned.

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It is partly in the Work Stream 1 and part of...I don't know, part of 31 or whatever in the reports of the Work Stream 1. We could discuss it, but please do not advocate in any way or make any conclusion that we need to have an alternative. We don't need to have anything on the [inaudible] at all. But it is not out of the question, I can change that based on the bylaw and if somebody wants to propose it to the CCWG, they can propose it on the CCWG consensus; I don't think that we have any consensus.

By the way, please carefully, listen and read the testimony two days ago mentioned. Some people they assured the senators or committee that, "don't worry, there will be no change in the location by the group" however bylaw has something as if they proposed that, that is the situation, whether the committee agree or don't that still raises another thing. So, I suggest that, remove the IRP definitively from any discussion of [inaudible]. Thank you.

GREG SHATAN:

Thank you, Kavouss. Move on to Christopher then Paul.

CHRISTOPHER WILKINSON:

Hi, good afternoon everybody. Thank you, Greg. First of all, I've made my basic position very clear in another call. Secondly, I would like to thank Philip Corwin for the flexibility that he has just expressed. Thirdly, it would not surprise you to learn that I am basically in option A. I have no further comment on those positions that have been taken by Pedro and Kavouss on option B and the scandal that it is not my role to take a position.

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Within option A, I am particularly interested in ensuring that the dispute resolution processes and IRP are accessible to participants worldwide; that they are not necessarily limited to the American legal system, and as I think I mentioned before, my main concern with this respect relates to the cost of dispute resolution. Dispute resolution should limit the available to individuals and to non-Americans. And recent cases, if you've had the opportunity to read, suggest that in certain circumstances, IRP can result in extraordinarily high cost. So I think we need to look into the... yes, the [inaudible] system if that's what that code word covers; the [inaudible] system that addresses the question of access to dispute resolution in IRP, independently of U.S. incorporation and U.S. jurisdiction, which obviously for the foreseeable future will remain as it is present. That's my expectation. Thank you.

GREG SHATAN:

Thank you, Christopher. Move on to Paul McGrady on the phone.

PAUL MCGRADY:

Thanks, Paul McGrady for the record. Two things, one I wanted to state a position with regard to a specific question. But two, I'm putting on my hat as a GNSO counselor, we have been asked to approve a budget for Work Stream 2 and if in fact going out and surveying other jurisdictions to find alternatives is going to be on the table, then that budget that has been proposed won't be inadequate.

So, I guess, I need to hear one way or the other whether or not we're actually going to spend the next several months doing this and spend several millions of dollars doing this at some point, so that I can report

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back to the council and we can deal with the budgetary issue before we tell the CCWG and the ICANN board that the small amount that they proposed is insufficient. With regard to the substance of the question, I think that our remit is pretty clear, which is, this issue of changing the formation jurisdiction of ICANN is not necessarily part [break in audio]. We can do our work and get it done sufficiently without addressing this topic, that's why the length which has...

So if it is not a necessary topic, then I think the question is not whether or not if this is in scope or out of scope, it is an elective. And I think that then the question should be, is there consensus that we discuss this topic. Because what we're saying is, if we decide we want to discuss this topic, and I think it's a bad idea, that if we decide that we want to discuss this topic, what we're saying is we would like to discuss a topic that is not a necessary topic in order for us to complete our work.

And for us to add in a topic that is not necessary in order for us to complete our work, maybe we need a consensus call on whether or not we want to add in that extra topic. Because the extra topic, to be very clear is going to cause a lot of concern about ICANN's future and it will cost that 7, 10, 12, 18 months of work and it will cost millions and millions of dollars. So before we go down this path and waste millions of dollars on a topic that I think not very many people in this community have a stomach for, I think we should call a consensus on whether or not we want to include this unnecessary topic in our work. Or the alternative to just get on with our work and deal with only necessary items. Thank you.

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GREG SHATAN: Thank you, Paul. And I'll note specifically your suggestion for consensus Paul. I'll take that under advisement and I think that's a very helpful viewpoint to add to the mix here, especially coming from the council point of view, we may have some other councilors here as well. Let's turn now to Tijani.

TIJANI BEN JEMAA: Thank you very much, Greg. Tijani speaking. There is an echo. It's ok. I heard at least twice, two people saying that we will not reach consensus. If we don't reach consensus we will [inaudible] our recommendation will be by consensus, by full consensus and we have to say that it is a full consensus. Or by block consensus, if we get only block consensus, if there is a disagreement we just have to mention it, that's all. I don't know why we spent all this call discussing this like this. Why we don't go through the layers one by one, as it was recommended? We are tasked to discuss the layers, so let's dig in, let's talk. I think that we don't have to lose more time to discuss around this point, we have to go through the points one by one and we have to discuss them. And when we don't have consensus, it not a problem, we have to report it that's all. Thank you.

GREG SHATAN: Thank you, Tijani. We went through the cue and I think we heard a variety of topics there. I've seen a couple of comments in the chat, I've seen Eric. We'll clarify later what he has eluded to in the chat and that would be good. I think this is not a discussion we can have in one meeting. We need to look at whether and how we bring this to a close

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or whether we have this kind of on the table throughout what we do. I think that it's not just affecting our recommendation but I think it really affects our exploration throughout, and as Paul McGrady has indicated; really kind of the overall scope of our work, well before we get to the issue of recommendation. We need to know what are the potential tools in our toolkit before we start moving forward on this. Given that we're now past a quarter to, rather than read Matthew Shears' into the record in any way, I just ask that you'll look to Matthew's comment and you can try to take some of this out of the transcript and in a document where it can be looked at and pressed, edited and added to by others. I do think that this is an issue that a number of us in the group do want to see this issue resolved now and a number don't. So, we will continue this. I'd like to take a little time to go to the gap analysis. David if I could ask you to just come back, because I think what you said earlier about the gap analysis is a good potential level set for what the gap analysis is, I've seen some different potential interpretations in the chat. But given that we're supposed to confirm and assess something we need to know what that something is. David.

DAVID MCAULEY:

Thanks, Greg. David McAuley here. And I agree with those who believe that the annex 12 discussion of jurisdiction is not as clear as we might hope. But with that being said, what I took away from those paragraphs is basic direction from Work Stream 1, that when it said ICANN is located in California, that is why the accountabilities are structured this way; California can do these it can't do other things and it's in the bylaws, etc. I took that as Work Stream 1 saying, especially when you look at the comment about not necessarily moving location; I took that

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as Work Stream 1 saying, by and large, the California regimen that we have in place now, meets the accountability provisions that we just put in place. We have California advice all along, those two meet and that's why they are saying in paragraph 30, one of the things we should do is confirm and assess the gap analysis, meaning that gap analysis. Which to me is, no material gap exists. That's the way I read that, that's basically why I see the jurisdiction language saying, therefore we're going to focus on dispute resolution and how that's impacted by jurisdiction. And that's why your only role with respect to other jurisdictions is not to recommend them but rather identify them if we ever need them. And so, I know it's not explicit and I admit that But I believe that there is a gap analysis that was done in essence, indirectly I supposed, by Work Stream 1. It would basically be reading paragraphs 26, 37 and 30 together, that's how I've come there. I hope that's responsive Greg, thank you.

GREG SHATAN:

Thank you, David. I'll turn to Kavouss.

Kavouss I'm not hearing you.

KAVOUSS ARASTEH:

I don't know what happened to paragraph 2, little a and little b. Did you drop totally 'b'? Or did you retain that? I think there was an overwhelming majority to totally drop 'b' and discussing 2a. With respect to the gap analysis there were gap analysis mentioned, and there are three or four lines about that, and it is; Work Stream 2 or this group need to identify and address those issues, and also address the

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[inaudible] or advocating IRP with respect to the distinct resolution. So little 'a' remains to be discussed in gap analysis needs to be dealt with or needs to be addressed. Am I correct, please? Thank you.

GREG SHATAN:

Thank you, Kavouss. We did have some discussion of 2a, I think we did tend to settle more or spend more time on 2b, some folks discussed both or specifically discussed 2a alone. My preliminary impression, and I would like to confirm this here on this call or in the coming days, is that there is little support for seeing that any discussion of the effect of ICANN's place of incorporation and location is out of scope. In other words if we would be able to look at the effects of ICANN's place of incorporation and location and effect or influence can be positive or negative. So not necessarily saying it's detrimental or by using the word effect or otherwise. I didn't hear anybody speak to the idea that we should take any discussion of that location and incorporation off the table. So if there is anybody who thinks that we should not even discuss the effects of ICANN's place of incorporation or location, perhaps we should get a red 'x' from those people. This is not a formal consensus call but just a sense of the room.

PAUL MCGRADY:

Greg, this is Paul McGrady. Can I get a clarifying question about what you're asking?

GREG SHATAN:

Yes.

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PAUL MCGRADY: Can I give an example? So what you're talking about I think; is the effect of the jurisdiction, not the issue of formation of the choice of the jurisdiction itself? So, for example, and this is a hypothetical example; say we did an analysis and we found out that for certain common causes of action that an agreed party might have against ICANN, there is under California law there is not a possibility for attorneys... And we came to the conclusion well that might kill people taking that step to preserve rights if ICANN overreaches. And so we want to suggest a new accountability mechanism to ICANN that would somehow fill the gap of what it costs to make ICANN deal with an issue so that an agreed party who maybe didn't have deep pockets could in fact hold ICANN accountable. So that would be an analysis, in fact that perfectly makes sense to me and that seems to be in fact the intended scope, rather than the red herring of the issue of where ICANN is formed. Am I understanding that correctly, is that what you're asking about?

GREG SHATAN: Yes, that's why I'm asking. Whether we can do things examining whether attorney's fees are not available which might kill people, on the other hand, California is not generally a loser pays jurisdiction, which has the opposite of a chilling effect compared to a loser-pays jurisdictions; in my view at least. So it would be that kind of analysis, and to some extent, that kind of analysis should be on the table, whether or not we have an end conclusion that we're going to recommend right now that I can move out.

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So, if there are any folks who think we shouldn't even have that kind of discussion, I'll ask for red text; red x's. I don't want to confuse the x's from the text.

Seeing no red x's, I'm gonna say provisionally that the answer to question 'a' is that this discussion should be in-scope. Given that while we have a robust participation, not everybody's here, I'd like to put that on the list for further comment. I thank Milton for briefly revealing the awesome extent of his powers in the chat. He's indicating that he could command the winter stock. Pedro?

PEDRO DA SILVA:

Yes, hello, thank you. Just quickly to the gap analysis, we're running out of time, but I think my understanding is contrary to what David stated, that we haven't performed any gap analysis. Actually in our last discussion, I put forward my understanding that gap analysis, basically, the analysis between the difference between our, let's say requirements, accountability requirements and how they got implemented under in the bylaws and under California law. We have throughout of our work in Work Stream 1, let's say worked under methods that started from accountability requirements, and then got to actual means to put those requirements and make these requirements operational. When we got to that point, I think we have discussed all these different models, designator and membership model and I think there probably may be some...just saying one area, that there may be some (tools) we had to adapt our requirements to those tools that were available for us to implement them. So I think the gap analysis is

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something that we need to do and was tasked by Work Stream 2 to perform it. So I think that this is still some work to be done. Thank you.

GREG SHATAN: Thank you, Pedro. Dually noted and I think we should put both your formulation and David's formulation into the document, which we can make reference to and try to come to some determination about what gap we're talking about.

Pedro, sorry. Tijani.

TIJANI BEN JEMAA: Thank you Greg, Tijani speaking. I don't think they have two interpretation of the analysis. They have the same interpretation but they have two points of view. One thinks that it was done through a same one, the other is saying, "no it wasn't, and we have to do it." So if Pedro thinks that we have to do it, can we constitute a small group to try to make the analysis and to come up with the third findings, saying that this is when gap always know gap. Otherwise it [AUDIO BREAK].

GREG SHATAN: Thanks, Tijani. I think that, whether or not gap analysis was done.

TIJANI BEN JEMAA: Analysis [AUDIO BREAK]

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GREG SHATAN:

Sorry. Since our assignment is to confirm and assess the gap analysis, we'll need to have a group regardless, but first, we need to decide what the gap analysis is that we're conducting. I think there are a couple different views on that and there is some other documentation that came around about that.

Since we are at the top of the hour, I think it is time to wrap this up. But I do encourage us to take this actively to the list, we have an hour a week on the call and we have 167 hours a week when we're not on the call and even if you do other things like sleep and work and participate in 19 other ICANN activities, there should be enough time to keep the momentum going between calls. Vinay and I will try to do a better job of providing momentum when things slow down a bit as well.

So with that, I would like to ask people, on their own, go back to the two google docs and continue to make notes on them. The first google doc, I resolved most of the comments; I felt that they have been taken care of. There were a couple that I think were ongoing points that should be left next to the documents; I did not resolve those. There's more to say about that. One of the things that's in the google document is the multi layers of jurisdiction and I would like to get to that next week if possible, and it would be very helpful if people could look to that first portion of the first google doc, so that we can have a more advanced discussion of these multilayers of jurisdiction. And if you turn to the second google doc as well which has had some interventions but not many that would be great. So you should have received an invitation for our next call, and I've taken the liberty of scheduling calls out for the rest of the month. We preserved our location at 13:00 and 19:00. So next week's call is on Monday, so it's kind of a short week. Monday at 19:00 on the 25<sup>th</sup>,

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followed by... I don't have the other ones in my calendar yet, but they will be announced shortly through the end of October. And so, with that, we are over time. Kavouss, I see your hand is up. If we can make it brief?

Kavouss, I'm not hearing you. Ok, hand is down. Ok, well, we have a number of topics...

KAVOUSS ARASTEH: I'm so sorry. I feel that little 'a' and gap analysis needs to be further discussed. Thank you.

GREG SHATAN: Thank you, Kavouss. Ok, with that and various assignments, we will adjourn this meeting and we will reconvene hopefully after a good amount of work on the chat and on the documents, on Monday, 19:00 ETC. Thank you all and goodbye. Operator, you can stop the recording.

**[END OF TRANSCRIPTION]**