
GREG SHATAN:

Thank you, and welcome to the meeting of the CCWG Accountability Work Stream 2 Jurisdiction Subgroup Meeting #5. First, I will ask if anybody who is audio only can identify themselves so we can have a roll call.

Anybody audio only? So everyone is in the chat. There are two phone numbers that are not names. If you are 5189 or 5316, please identify yourselves. Also, 2932 joined as well. So if you could identify yourselves, that would be helpful. Thank you.

Last, in terms of formalities, does anybody have any changes to Statements of Interest? I hear no Statements of Interest. Nobody is doing anything new and exciting and different in their lives since our last meeting. Sorry to hear that.

In any case, let's move on to the substance of the call. Given the recent discussion on the list, which was inspired by our last call on gap analysis, I thought it would be best if we started our discussion with the gap analysis.

As we know, Annex 12 asks us to confirm and assess the gap analysis, so we need to confirm what that gap analysis was, implicit or informal though it may have been, and, secondly, to discuss how we are going to assess it to the extent which we are going to perform a gap analysis in order to assess the initial gap analysis.

I think that there were some good starting points raised in the e-mail by David McAuley. I thank him for a very good starting point for that e-mail

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thread, and I'm hoping that I can pick on David, perhaps. No need to read the e-mail out loud and [have that] but if you could hit on some of the high points, I think that will get us started here.

DAVID MCAULEY:

Greg, hi. I just had to get off mute. Yes, just to set the table, about I guess two weeks ago or two meetings ago, you had posted some questions on the list. In the last phone call, I believe that myself and Pedro spoke about the gap analysis. If I'm not mistaken, at the end of the call, you invited us each to further explicate what we were talking about or the points we were making on the list, and that's why I did what I did.

Without repeating it – by the way, I'll back up for a second. I'll say I have been quite busy today. I saw that Pedro has sent two mails and Milton has sent another. I haven't had a chance to look at them – I've been in meetings – but I certainly, will, obviously, and comment later if I think that's appropriate. So I'll thank them both for that.

Anyway, the high point of what I was saying is that it was my estimation, based on my recollection of Work Stream 1, which I was involved in from an early-on point – in light of the language in the Annex 12 that dealt with jurisdiction, it was my impression that what Annex 12 was asking us to do was to confirm a gap analysis. I took that to mean: was there one taking place? I felt that, in effect, one took place in Work Stream 1, and that's where I was coming from.

It was my belief that the accountability measures that we created in Work Stream 1 – and I tick them off in the mail, in the list – were

brought up and they were addressed and made to work or they were shaped once we decided that we were following a designated model. So it was my belief that a gap analysis was no necessary.

I know there's not uniform agreement in this group on that, but that was my position. That's why I stated what I stated online.

The second thing I'll say about it is – I think my phone battery is dying, so if I further comment it may have to be in the chat if my phone leaves. So thank you. That's my comment.

GREG SHATAN:

Thank you, David, and thank you for sacrificing the last bit of your phone battery to this call.

Pedro, do you think you would like to be able to speak to your e-mail as well just to have, I think, the two bigger e-mails on that thread brought into this call?

PEDRO DA SILVA:

Yes. Sure, Greg. Can you all hear me?

GREG SHATAN:

Yeah.

PEDRO DA SILVA:

Okay, great. Yes, like you, I would like also to thank David for starting this e-mail thread and somehow also starting this discussion.

Well, my conclusion is actually the opposite of David's, of course with all respect. I believe there was an intense discussion about a gap analysis within Work Stream 1, and especially prior to the Istanbul meeting and also during the meeting.

As I indicated in e-mail, there was, I'd say, a dedicated effort that was led by Mathieu to start this kind of exercise. But by that time, really our requirements for the accountability mechanisms weren't, I'd say, all settled. That's why I think a preliminary result of this exercise that I wouldn't call a full gap analysis but I'd say an initial intent to discuss this bit – the result of this was also preliminary. I highlighted this in the e-mail.

If you look at the documents that was the result of this discussion, one of the statements there was, when I read it, the CCWG Accountability found the association of all its requirements under California law possible but challenging and requiring some forms of trade-offs, especially with regards to the community empowerment model.

So it's an indication that there was, let's say, an initial consideration about comparing requirements to possible implementations, but there was actually no conclusion. By that time, we couldn't anyway conclude anything because our requirements weren't, let's say, finalized.

Based on that, I really think we [inaudible] this, let's say, exercise that we held during July 2015. We never resumed it, especially after we – let's say concluded our report, we never conducted again this kind of comparison between the requirement and implementation. That's why my conclusion is that we haven't actually made any gap analysis.

There was obviously many participant members of the group that have been expressing that there are no gaps between our requirements and California law. Of course, it's important inputs, but the working group as a whole hasn't conducted a formal, let's say, analysis, a formal assessment, of those gaps. That's why I said it is a task of Work Stream 2 and this still has to be done.

That's a summary, more or less, of what I wanted to express in my e-mail. Thank you.

GREG SHATAN:

Thank you, Pedro. Not seeing any hands at the moment, it'd probably be an appropriate time to bring Milton's e-mail into the conversation here, since he's not here to state it.

Milton responded to Pedro's e-mail. "I think Pedro makes important points. In particular, I see compatibility between his conclusion that was as follows. I understand that, with the variety of information we have at our disposal, some colleagues attempted to jump into conclusions about the ability of California non-profit law to conform to the CCWG requirements. However, given this is not a straightforward exercise and stakeholders have diverse viewpoints about it, it is important that a formal, impartial effort be made so it can be considered legitimate. Informal gap analysis based on individual assessments is not likely to be recognized as relevant input to the community."

I shortened that up a little bit. Apologies to Pedro. The conclusion of Steve DelBianco, that "This Work Stream 2 team should look at the gap analysis and confirm the conclusion. If there are enforceability gaps

note by our lawyers, we should analyze whether those gaps could be closed using any form of incorporation in any jurisdiction. In other words, even though Work Stream 1 suggests there are no major or glaring gaps, this Work Stream 2 needs to review and confirm or find holes in that initial, hasty gap analysis. I think that is a procedure we can all agree on, although for efficiency's sake, I would not want to evaluate any or every jurisdiction, but only those put forward by informed people as possible alternatives."

Phil Corwin had some comments on that as well. We do have Phil with us. If I could ask Phil, perhaps, to state his thoughts on that for this call, that would be great.

PHIL CORWIN: I'd be happy to, Greg. Let me try to find them. I'm right at my computer. Of course I've gotten back a dozen e-mails since I sent that out ergo. That's par for the course. Can you hear me?

GREG SHATAN: Yes, absolutely.

PHIL CORWIN: Okay. Yeah. Okay. Here we go. By the way, I have to say, personally, it's a bit disturbing to hear people saying now, with the transition likely five days away, that we're not sure the accountability system we've set up will work within the context of California law. It's a little late for that kind of buyer's remorse. Of course, we're at the brink here. And I noted that we wouldn't be talking about a gap analysis if we had collectively

stood up for the member model in October 2015, but that didn't happen, and we are where we are.

What I did say is that, if you're going to do gap analysis and you're going to say some particular requirement in the accountability arrangement – that there's some question about whether it can be effectively undertaken with California law, if you're going to then look at other jurisdictions, you can't just look for the jurisdiction whose own statutory framework would work best for that particular aspect of the accountability framework because ICANN can only be incorporated in one place.

You can't take a Chinese menu approach and say, "We're going to use Country A for this function and Country B for that function." It's got to be one or another, so you have to look at the entirety of the other country's law and then determine whether, as a totality, it fits better with the accountability framework we've set up or the California one. I would expect in most if not all cases that California law in totality would be better because we did design the designator model to work with the context of California statutory law. We got some opinion from outside counsel, though perhaps not the ultimate gap analysis, that it would reasonably do so. We're about to step off the precipice with that assumption.

Besides looking at the totality of a country's statutory framework, if it's being considered as an alternative to the U.S. and California, you have to look at if the judicial system has a reputation for efficient judgment and for fair judgment based on law and not other considerations.

You have to look at its political considerations. If ICANN relocated there, what are the prospects for its legislature perhaps changing some important point of law, now knowing that ICANN would be affected by that change?

So I think the point is, you can just disaggregate one accountability function and look at one other country being better on that function. You have to have a much more comprehensive analysis if you're going to go down that path.

Finally, if one concludes that Country X is better overall than California, which again would surprise me, but I wouldn't say it's impossible, you'd also have to look at how would an ICANN-incorporated outside the U.S. interact with the two new parts of the process that are required by fundamental Bylaws to be incorporated within California. One of course is the Empowered Community and the other is the PTI, which is going to administer the IANA functions.

So even if some other country was better for ICANN as an organization, would ICANN as an organization be able to constructively and effectively interact with these two other entities which, at least under current Bylaws, are required to be located in California and be under California law.

So that was the point of my comment. I've now repeated what I wrote. Thanks.

GREG SHATAN: Thank you, Phil. Just one quick comment before I go to Paul McGrady, who's next. In addition to the fundamental Bylaws, you mentioned, regarding PTI and – all of a sudden I'm blanking on the second point – the –

PHIL CORWIN: The Empowered Community.

GREG SHATAN: The Empowered Community being placed in south California per fundamental Bylaw. ICANN is placed in California per the Articles of Incorporation, which are treated the same as if not more than a fundamental Bylaw – certainly the same as a fundamental Bylaw in terms of the ability to change them. So that's also wrapped up in the fundamental Bylaw concept, if you will.

I'll now turn to Paul. Paul, we're not hearing you yet.

PAUL MCGRADY: Sorry about that. I had to unlock my phone to unmute it.

GREG SHATAN: You are unlocked.

PAUL MCGRADY: All right. I'm really disappointed because I was actually going to try not to say anything on this call just to prove to myself that I could do it.

I guess I wanted to ask two questions rather than make any comments. I think the first question is – and I think it was Steve DelBianco’s e-mail that did this – why would we automatically jump to finding a new home outside of California in order to fill a gap?

For example, UDRP exists primarily because the ACPA is too expensive and too local to use everywhere, so there is a mechanism that the ICANN community designed to fill a gap, and that gap is filled contractually.

If we find a gap in accountability under the normal operation of California law, why wouldn’t our reaction be, first, to see if we could fill that gap by developing some new mechanism rather than automatically trying to flee California as a result of that? So I’ll just throw that out as a question.

Secondly – again, I hope we don’t do that – in the event that do decide that California is no longer the place for us, how would we even go about picking which countries to look at? ICANN is now in California primarily due to historic accident of where the Internet was developed, and the president of the country took the initiative to form ICANN and put it where it is.

Do we have to look at all 200+ countries to make sure everybody gets a fair shake? Is it just the countries we like best that are part of the club? How do we even go down that path without looking at everybody? How long will that take and how much will that cost? Thanks.

GREG SHATAN:

Thank you, Paul. I put my hand up to join the conversation. This actually provides some good segue to what I was going to say. Listening to this conversation and looking at the e-mails, it seems to me that the gap analysis is at least in two parts.

One, the basic part, is to assess whether there are any gaps under California law, under the current jurisdiction we are dealing with, and whether here are any gaps between the CCWG recommendations and the implementation. In other words, are there gaps, are there shortfalls and shortcomings?

If the answer to that question is no and we were able to satisfy all of the recommendations fully, with the current jurisdictional framework that's in place, it doesn't seem to me to be any reason to start looking at alternate jurisdictions for any purpose, in particular for a purpose of place of incorporation and headquarters.

If we do find a gap, then it also seems to me that, under Occam's Razor and other such rules of thought, looking for the simplest solution would be first and the one that's the most contained and finding a solution that could be resolved without causing secondary effects. It would seem to me that we would have to find some issue that was so fundamental, not in the sense of fundamental Bylaw, but so critical, but yet somehow so unable to resolve while ICANN sits in California with regard to our accountability. As we know, we're particularly directed to look at the settlement of dispute, the jurisdictions in which ICANN and those who would like to engage in disputes with ICANN, can bring up and settle those disputes.

So to bring it back in a nutshell, it seems to me that, if we do conduct a gap analysis – and I do think that we should do more than just conclude that a gap analysis was done and no gaps were found, and it should not be a labor for the ages or else it would be the only thing that this group does because of our timeframe – then we have confirmed and assessed the gap analysis.

If we poke holes in it, as Milton put it, and find some gaps, then we have to look at ways to solve those. But it seems to me that the simplest and narrowest ways to solve those would be those that would be most favorable. Thanks.

Now I see Pedro has his hand up.

PEDRO DA SILVA:

Yes. Hello. Thanks, Greg. Yes, so actually, yeah, I need to say that I tend to agree, actually, with Paul and with you as well with regards to the, let's say, proposal of this. I think that, in order to participate in this subgroup, I'm actually hoping that we wouldn't fall into a competition between those who support California law and those who do not support it.

Actually, we should be doing more than that. Actually, we should actually, even before coming to this point of considering that, really assess the issue of jurisdiction with – one of ICANN's would be precisely the gap analysis; basically identifying, let's say, where requirements are not met and what possible solutions can be found. Maybe the solution lies already in the California law, and we may not even discover a possible other place of incorporation. Maybe it lies elsewhere, but I

think, prior to coming to this discussion on whether moving out or staying, I think that we should conduct this assessment as open as possible.

Also, this is, I think, in line with what I proposed. There's an overall approach to that group that, when considering the, let's say, jurisdiction multi-layer issue, is to basically identify all jurisdictional aspects of ICANN – let's say all those areas where jurisdiction actually has an influence on ICANN – and then identify to what extent this may represent an issue or not.

So it's really starting from a very open assessment of trying to identify issues, gaps, and problems, and then probably assessing any alternatives that may eventually lie in California itself or elsewhere.

So I really wanted to avoid – and you two also believe me that I wanted to be in this, let's say, discussion here with an open approach, not presuming or with hidden objectives. So in that sense, I think that we conduct this gap analysis as open as possible and not jump into conclusions. I think that's the correct way to go. Thank you.

GREG SHATAN: Thank you, Pedro. David?

DAVID MCAULEY: Thanks, Greg. Can you hear me?

recommendations of the CCWG Work Stream 1 can be carried out completely under the current jurisdictional framework without any gaps, and that, if we answer that question yes, there are no gaps and then that's the end of the gap analysis.

So I guess the question that I'm still grappling with is: when or why do we introduce the issues of alternative jurisdictions, and in particular the idea of alternative jurisdictions for ICANN to actually move to abandon California as the place of incorporation?

So I guess I'm not quite seeing, at least under the gap analysis – unless we find, as I said, a critical gap, an insoluble gap – why we're not just done if we say that there are no gaps or if we say that there are gaps but they can be solved in ways that have no significant jurisdictional effect.

Avri?

AVRI DORIA:

At the risk of inflicting my confusion on you all, I guess I have been hearing two things. One is that, to some, the gap analysis may not have been as complete as it could be and there may be some more need for analyzing the requirements and see whether there are other gaps, even if they hadn't been seen already in previous analysis. That's a definition of gaps, and there may or not be any in that respect.

I also understand that, after that, there would be a discussion of, as you said, all gaps and seeing whether those gaps needed any solution beyond what we could achieve at the moment.

I think, if we look at the questions that way, I'm not terribly confused. But we seem to always make the jump in the conversation of, "Oh my word. If there's a gap that we haven't discussed, then it means that we have to move."

Now, I see moving as Herculean, and I don't see any of us as Hercules. But I do see a theoretical possibility that we may discover gaps that we do not know already and that we may need to find mechanisms. Those mechanisms may be achievable in California, or they may need an assist from I have no idea what.

But by and large, the assumption would be that we did a good enough job in picking California that any gap that comes up should be able to find a solution in that space.

But I really get confused every time we say, "Well, gee, if there's another gap, then it means we have to move," or it means somebody's talking about moving. That's the piece I don't understand. Thanks.

GREG SHATAN:

Thank you, Avri. I think we share the same – "confusion" may not be quite the right work for it, but understanding of a natural boundary for a gap analysis. Even if there is a gap that is found, for solutions, start with the most modest one. The likelihood that we're going to find a gap that is a big and so insoluble that we deal with it, unless ICANN is put on the space station or something seems unlikely.

But I think, unless there's any other further comments on this point – and in particular on the point of when and whether it might fit to any

discussions that involve alternate jurisdiction – it seems to me that maybe we'll go on to the concept of assessing how we would assess and perform the gap analysis. Those would be 2B. So unless there's any other comments on this, we can move on.

As discussed, it seems, to me at least, that some form of an analysis, without potentially reinventing the wheel or incurring huge legal expenses, could be done – should be done? I ask that question – in order to look back at Work Stream 1 and see if there any recommendations that, as we are implementing them – and in many cases, the implementation is kind of built into the recommendation – or as we see them being implemented, are going to reveal gaps.

So it seems to me that we would need to come up with a methodology for doing that. Hopefully that methodology is not just assigning Sidley or Adler or both to do that work.

So I think we need to do more of a crowdsourced version of this. Maybe what we can do it find the shortest reasonable summary of the recommendations – and maybe that is unfortunately the entire report – and have people look for gaps, see if they can identify things that may be problematic under California jurisdiction, or at least where questions could be raised. That could be worth looking at and initially within this group.

If it doesn't seem like we can answer it in this group, those particular potential gaps could be brought to our lawyers or perhaps to other lawyers. If we believe the lawyers that we've been working with don't

have the right tools to look at a particular question, then we can bring it to our lawyers in a relatively restrained fashion, a cost-effective fashion.

So I think that it is what we need to do, and we need to approach this as a proposal-on-implementation-type of question. That's certainly something that those of us who have been in or around ICANN or just dealing with life are familiar with and doesn't require any special legal training.

If anybody has any suggestions of a kind of base document that we can use and put up in Google Docs, with apologies to those who have trouble with Google Docs – but we put it up in Google Docs and basically have at it.

One methodological question is whether we just use the free-for-all approach and let everyone just go where they will, or whether we do assignments to particular sections.

I think I have a tendency to want to do the assignments method because, if people are going to go where they will, they may as well just announce that as an assignment, rather than just running up to the document and starting to touch it. So we can put together an assignment list, so at least we know who is looking at which sections to identify a potential gap. Then, if we have any gaps, so to speak, in that list and you have sections that aren't assigned, jump into those points and fill them so that we have complete coverage.

I see a very good suggestion by David McAuley in the list that we should formulate an agreed-based question as well so that we will be uniformly following – I believe review – the report. So I think we have to decide

what the gap analysis question is, so I will entertain formulations of that. I think there were a couple of formulations in the e-mail thread that we had going, and we can pull one of those out in relatively short order.

I think, given our timeframes, we should have a limited time for this project. Perhaps we can try to get it done in two weeks. Since this is a Monday call, we have all of this week and next week to do it, although some of us will be out of commission professionally for a day or two next week due to the Jewish holidays. But, nonetheless, there'll be more than enough time and people, so everyone can take a few hours and do this work.

So I think that, if we could aim to have this done for the call the week after next, that would be good. At that point, we can at least evaluate where we stand. We should evaluate that next week as well. But if we aim for two weeks, then we'll have a defined project because this is the kind of thing that could take six months if you let it. If we do that, it'll be, again, the only thing we do.

Any thoughts? Any reflections? Any disagreements? Any agreements? I will take this where one of those points where silence equals ascent. I think that both that approach to this gap analysis and that timeframe, at least for us to have reviewed the entire document, through the use of teams, will take us, as Bernie notes, up to the October 10th meeting. We can review where we are there, and at least at that point, and see if we have so far identified any potential gaps that need to be discussed and perhaps questioned out to [counsel].

Any further comments? Hearing none, I think we have disposed of that question for the moment. We'll turn to making that a reality. I see a hand from Pedro. Pedro, go ahead, please.

PEDRO DA SILVA: Greg, can you hear me? Hello? Hello?

GREG SHATAN: I hear you.

PEDRO DA SILVA: Okay. Good. Thank you.

AUTOMATED VOICE: The host has left the meeting to speak with meeting support and will rejoin soon.

PEDRO DA SILVA: Hello? Can you still hear me?

GREG SHATAN: Yes, yes. We can still hear you. Don't know why that announcement was made.

PEDRO DA SILVA:

Okay. Good. I'm not sure I quite understood your proposal, and apologies for that. Basically, your proposal is that we divide among ourselves, perhaps according to different chapters of the Work Stream 1 report, so that each one could take on, let's say, one chapter or one specific accountability function, and within that, try to identify the gaps that we have been, let's say, only abstract in discussing.

If that's the case, maybe we should first make a clear separation while analyzing all those different sections of our report, try to make a separation between requirements and implementation, because I think in not all the cases are, let's say, very well-separated from each other.

I think one case where there is an actual, let's say, clear separation is in the Empowered Community mechanism, where we have, let's say, laid out all of the seven or eight functions that this Empowered Community has – all those eight powers that it has – seven or eight. I can't recall now the check number. The implementation, let's say, mechanism, which is the designator model – there we can make a very clear, let's say, separation between requirements and implementation.

I'm not so sure whether in other, let's say, powers that's the case, so I think maybe we should initially start to make this exercise where we list all those powers and maybe a table where we have all those powers listed in one column. In the other column we list all those, let's say, legal vehicles that allow those powers to be actually implemented or operationalized.

So maybe we should start from that, and then, based on that, start to actually identify gaps. That's my understanding of maybe how we should proceed.

GREG SHATAN: Pedro, could you explain a little bit more what you mean by legal vehicles?

PEDRO DA SILVA: I'm not a lawyer – sorry – so I'm not using the correct words, but I mean the legal mechanisms that California law has that allows the ICANN community or allows a specific accountability requirement to be actually implemented. So I give the example of the designator model, which is, let's say, a legal instrument that is within California non-profit law that allows to some extent – and maybe the evaluation of this extent is, let' say, maybe where the gap is – the exercise of those seven or eight powers.

So in that case, the designator model, which is foreseen by California now would be, let's say, the legal vehicle that I'm referring to, just as an example.

GREG SHATAN: Thanks, Pedro. It occurs to me, though, that, if the legal vehicle that we actually have, which is the designator model, does allow us to implement the requirements without any gaps, there's no need to go and look at whether others would have been better or worse or at the

same level but somehow different. So I'm just wondering why we would get into looking into alternatives before we identify gaps.

PEDRO DA SILVA:

Well, if you allow me to respond to that, maybe there will be different viewpoints of whether the designator model allows us actually to exercise those powers or not. Actually, Phil hinted to that, that the membership model actually I think allows those powers to be exercised directly, and the designator model actually does not; so indirectly. So maybe the possibility of removing all, let's say, direct or ICANN direct – so maybe there will be a different evaluation whether, let's say, all those powers can actually really be exercised or not. So I think there will be probably different viewpoints of that analysis, of that evaluation.

GREG SHATAN:

Thanks, Pedro. That clarifies things, at least for me, as to the point you were making.

David McAuley?

DAVID MCAULEY:

Thanks, Greg. I think I share what Pedro – I'm not quite sure exactly what we're doing, so I'll make a suggestion, just as Pedro was doing. I would agree with your point, Greg. I don't think we should go search for alternatives until we assess that a gap exists.

Having said that, the gap analysis or confirming the gap analysis or whatever we call it seems so important that we ought to have a crisp

question that we'll all be following, as I put in chat, and a crisp object of review; in other words, what is it we're reviewing. My suggestion would be that this is important enough that you and Vinay may want to touch base with the Chairs of the CCWG to make sure that these two statements – the question and the object of the review – are what they understand.

Then we in this group could then take a look at that and say what we think. The Chairs don't have any more authority than we do, but I just think we're sort of grasping a little bit. I share Pedro's concern that it may not be that clear.

That's not, by the way, a knock on your suggestion. It's just saying this is inherently difficult, and we ought to take the time to make sure that we get this crisp and clear and understandable.

Anyway, that's a suggestion. Thank you.

GREG SHATAN:

Thank you, David. I think that's a very good suggestion. We are putting this together as we speak, so I think it's something we need to clarify. I'm happy to work initially with Vinay and then bring it back to this group before or after bringing it to the Chairs: what our question is as we do this, and, as well, what the objective is.

I think that it makes sense, as we do this, not only to set a goal – I set it for October 10th, so we'd at least have confirmed and reassessed this gap analysis – but also to set a goal of being able to make a presentation of some sort – I'm not saying this will be a high-interest topic or

anything like that – to at least be able to bring this forward in Hyderabad, at least to the face-to-face meeting of the Accountability Group, where each of the subgroups is going to be asked to show the rest of the class whether they have anything to show for their project or not.

It will be really good for us to be able to say that we do have something to show for our project, which is at least a completed gap analysis. Ideally, either we find no gaps or we find gaps and then are able to resolve them by Hyderabad. But even if we don't, even if we have some gaps, it's at least better to have that than to say, "We're still doing a gap analysis. It's going to be great when you see it." I think we should be able to do that.

I see Phil Corwin notes in the chat, "Didn't our experts – and not inexpensive – outside legal experts, provide us with reasonable assurance that all the accountability powers of the designator model should be reasonably and effectively exercised under California law?"

I think the answer to that is yes. But I think that, nonetheless, we've been asked in Work Stream 2 to confirm and assess that analysis. I think it's reasonably appropriate that we put this to rest, not just as a legal opinion but as a stakeholder opinion, as a community opinion.

Part of me would love nothing better than to say, "Okay. Gap analysis is done. No gaps. Off we go," but I have a feeling that would not be universally satisfactory and therefore think that we at least kind of owe it to ourselves as stakeholders as really the judgement made at the

stakeholder level; that indeed there are no gaps or, if there are, we have identified them and ideally identified ways to fix them.

So I think, if that is done and done, then there can be really no further discussion until we see how things work out over the next several years of whether somehow we have a gap.

KAVOUSS ARASTEH: Greg?

GREG SHATAN: Yeah?

KAVOUSS ARASTEH: I'm sorry. I'm not connected to the Internet. It seems to me that you are looking to find out that there is no gap analysis, there is nothing to be done, so the show is over and the stage is empty. I don't think so. There is a gap –

GREG SHATAN: No, no, no.

KAVOUSS ARASTEH: You are turning this [section] around to make the people think there is no gap. But there is a gap. But what are the gaps? This is the question. We have to know the [inaudible].

GREG SHATAN: No.

KAVOUSS ARASTEH: I'm sorry. I don't agree with some of these distinguished colleagues that, if there we don't find anything, there is no gap. There is gaps, but we have to see what are these gaps. Thank you.

GREG SHATAN: Thank you, Kavouss. I was not saying that there are no gaps or that we could just move on and say the gap analysis has been done. I said the opposite. We're actually going to be spending most of the next month in many ways performing this gap analysis. We can't say that there are gaps. We can't say that there aren't. We can say that our legal counsel has advised us that they know of no gaps and that this should all work and that the acceptance by the community seems to be a reasonable indication that no major gaps were found that way.

But we are going to do this gap analysis, and we'll see if we come up with them. At the end of that, we'll be able to say, to the best of our ability as stakeholders, what the answer is to the question of whether there are gaps.

So I think that is what is in front of us for the next month, or at least two to three weeks because we want to be able to have enough time before Hyderabad to pull this all together and have something to show for it.

KAVOUSS ARASTEH: I'm sorry. I'm not connected. I cannot ask for the floor in the [inaudible]. But I think, instead of this – saying, "Wait until whether we identify" – the question should be raised: "What is the gap analysis?" and then ask the people to comment and provide information. If the results of these commence that there no gap at all, then we don't need an analysis.

So the question should be raised: "What is the gap analysis that has been referred to in Work Stream 1?" This is the question to be raised to the public. With 10 people, 14 people, on your call, I don't think that we can conclude that one. This should be formally raised: "What are the gaps that we have to analyze?" Thank you.

GREG SHATAN: Thank you, Kavouss. The gap we're analyzing is whether there is any gaps between the accountability recommendations that we had and the ability to carry them out under California law.

Pedro has been waiting very patiently with his hand up, so I'll turn to him as the final speaker.

PEDRO DA SILVA: Okay. Thank you very much, Greg. Very quickly, I wanted to support David's suggestion here that perhaps we should start by preparing a set of questions that somehow will represent our methodology for how to go on with this gap analysis. So maybe prior to actually doing the gap analysis, let's agree on a basic set of questions that will guide each one of us in doing that.

I think a deadline for the end of October to have the gap analysis ready is really to – as we have seen, it won't be a very easy, let's say, exercise. At least we should go step by step and perhaps starting with this kind of methodology for the gap analysis as a first thing to agree on, and then actually moving on to the actual gap analysis. So that's actually my comment. Thank you.

GREG SHATAN:

Pedro, if I could ask, is there anything beyond this question of, really, "Are there any gaps between this recommendation (whichever one you're looking at) and the way it can be implemented under California law?"

PEDRO DA SILVA:

I think we need to make this distinction between requirement and implementation, which is said I think is not always very clear in the way that some of our, let's say, recommendation are formulated. Maybe they are intertwined; our requirements together with how they are implemented. I think we need to have a clear view first as to a methodology for how to distinguish one from the other and then actually being, let's say, the evaluation of the gap.

As I said, it's not a binary [end] for whether there is a gap or not. Maybe the implementation of our requirements may be done at 80%, 90% or not. Or maybe someone views that the gap is implemented and somehow there's views that it's not implemented. So it's not like it's very easy to conclude that there is a gap or not, so that's why I think we

need to first have a clear picture on: what is requirements and what is implementation?

GREG SHATAN:

I think that in each case the requirements were sort of the policy side of this and the implementation is how it actually will be carried out. So I'm not sure that there's anything particularly complex about that. Again, the gap analysis, in my mind, is pretty basic, which is: can the requirements, can the recommendation, actually be carried out under California law without any gaps or shortcomings?

But we are over time. If there are people who think that is not the question that we're asking, maybe it'd be good quickly to hear that now. Then we can put something out on the list as the essential question after that.

Seeing no further hands and being 404, we've now spent an hour, having started four minutes late. I think it's time to state that the assignment is, first, that'll we come up with a question, and then we'll get started in the implementation of the gap analysis as quickly as possible. I think it is still highly feasible to get this done by Hyderabad, and given our schedule, look back at our work plan, which we'll need to. That takes us quite a bit [of way] into our work time.

I see Cheryl's agreeing with this question as stated. In any case, our time is up. Please look to the list for discussion quite quickly of both the question or potentially question – and maybe that there are more answers – “Yes,” “Yes, but,” “No,” etc. – and we'll see what happens with that. But I think we need to move into the process of getting

something done quickly. I think we have what I feel is a reasonable plan in front of us.

Thank you all for your participation in this call and your anticipated participation in clambering all over the Work Stream 1 recommendations and looking for gaps. With that, I will call this meeting adjourned.

[END OF TRANSCRIPTION]