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MICHAEL KARANICOLAS: Hi everyone. So thanks very much to everyone who's joined us for this meeting to discuss our first draft for the Transparency Report for the Cross Community Working Group. So you should have gotten the document via email and it's right in front of you now. I'm going to suggest that we just sort of dive right in and start talking about, basically just to go section by section.

And first we'll talk about each section to see if anybody has specific feedback and to discuss some questions and issues that have been raised. And I was hoping to allow a little bit of time just at the end to just sort of ask you guys what you guys have thought of the process so far and just to listen to any feedback on avenues forward.

So with that being said, I'm going to skip over the discussion of the Executive Summary at the moment, unless anybody has particular areas they want to address because really, the Executive Summary, if there are issues in the body of the paper then that will change the Executive Summary and we're really just looking at the summary of what's there.

So, not seeing any objections, I'm going to move us along to another section which, I think, hopefully should be fairly straight forward because it probably doesn't bring up any major policy challenges, which is the sort of a little Background on Transparency and the Right to Information.

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And again, I'm going to pause and see if anybody has any specific feedback on that. I don't expect that this one will be that much (inaudible). All right. But in any case, hopefully someone, maybe Chris or someone else can take a look at that while I'm moving through this. So anybody have background on Transparency and the Right to Information? Okay, good. I didn't think that would be too controversial.

So moving into the more substantive type things. The first sort of substantive section, including the recommendations, was on reforming the DIDP. And obviously a lot of people provided feedback and input time on this which was very helpful. So I'm going to just start by I guess throwing it open a little bit and asking what people's thoughts are.

Or I guess, while people are trying to sort of get their thoughts together, maybe I can start with a comment that we got in from Brett, which is to say, from what I understand, ICANN sometimes denies the DIDP request if the information is already publicly available. And Brett has suggested that we include a requirement in their denial, if you request information that is already publicly available elsewhere, that there should be a requirement for ICANN to direct the requesters to where that information is. I think that's an excellent idea and I was planning to include that, unless there are any objections? Okay, so let's pass that over to David, while I try to take a look at what Ed has said. David, you want to...?

DAVID MCAULEY:

Thanks, Michael, it's David McCauley for the transcript purposes. By and large I think it's a sensible -- I mean, I was thinking of what happens

when the information is publicly available as well, and my experience, and some of the others on this group share the experience of working in CCWG on Accountability Work Stream One, where there was just a flood of information. And sometimes it was hard to find a particular email that might have some impact on an issue that was discussed in month one, but came back up again in month eight, and it presents some difficulties.

But my concern when I thought about it was, is we should have a mechanism, I think, to make sure that people invoking DIDP don't look to ICANN to do their research for them. And so I think it's a reasonable request on the one hand, but I can see how it can be abused on the other, and so I guess what I'm saying is we should be cautious how we approach the subject. Thank you.

MICHAEL KARANICOLAS: Okay, thanks very much, David. There is, I think, an exception within ICANN, or within the DIDP, for requests which are unduly burdensome, I think. I don't have it on me now but I definitely should have. But I think that that might be covered under the vexatious requests, but that's certainly a very legitimate concern. Does anybody else want to comment on that?

I think what I might suggest as a potential way to address that, because I'm viewing this process as being kind of a dialogue with ICANN where we're going to present particular recommendations and I assume that the staff who actually going to have to implement will have their own response.

What I might suggest is that we present Brett's recommendation and then see how it's received by ICANN, to see if they think that it would be an institutional problem.

Good idea? Bad idea? Maybe, David, do you think that that would solve your problem? Or potentially, we could also explicitly label that within administrative--a similar requirement we have under that (inaudible) thing where so long as this doesn't constitute an undue administrative burden to—Okay, David says he's happy with the idea (inaudible) go back I think.

DAVID MCAULEY:

Michael, I got off mute since you asked me so I think it is a good idea and I think it would be a good idea, especially since in the area of vexatious requests, we're sort of trimming that a bit, which is fine. We have to be careful on that side too. But yes, I think it's a great idea to get ICANN's feedback, in this sub-team and some others as well. Thank you.

MICHAEL KARANICOLAS:

Okay, great. So I think that's great that we've gotten that resolved. So Avri is saying, "I worry about documents that cannot be found through search (inaudible) and expansive notion and use of vexatious request accusations." So we are hoping to narrow, I wouldn't necessarily call it narrowing the scope of the vexatious, well, actually we are narrowing the scope, but the main change that we're making to the questions that face this response is that we're requiring permission from the Ombudsman before that exception is invoked.

And that is basically a way of saying, first of all, that we recognize very much that that can be a legitimate exception but also to try to ensure that it's not abusively invoked. So that's one of the things that we've done and I think we also, if memory serves, did trim it slightly—let me just double check that. We trimmed it in order to allow for unduly burdensome requests but to remove—oh sorry—no, we are still allowing unduly burdensome requests, I think. Yeah. So David's asking, "What about email archives for a group like CCWG?" Do you mean whether those would be subject to ICANN's requests?

DAVID MCAULEY:

Michael, no, I was engaging in a chat with Avri, and Avri had made the point that she was worried about documents that can't be found through reasonable search method, etc, and putting that burden on the requester. And I made the point in return that wouldn't ICANN face that same hurdle. And the example I was using was email archives. CCWG for Accountability is an excellent example. Because it's just mountains of emails and many of them are very, very important in later deliberations.

I also might mention one other thing. I think what this is going to raise at some point is the idea, and I'm not saying I'm one way or the other on this, but the idea of cost. For instance, if ICANN is going to be asked to go off and do a bunch of research, is there going to be a mechanism—we should discuss, at least—a mechanism for whether, I don't know, do they charge for DIDP? I've never made such a request. For the paper, or whatever. So anyway, those were my comments and they were really in response to a chat entry with Avri. Thank you.

MICHAEL KARANICOLAS: So I would ask the group because, I have to confess I haven't used the DIDP, I guess ever since (inaudible) I've just been writing this thing about reforming it, I've made a lot of access information requests from many different contexts, but not from the DIDP.

My understanding is that they don't charge costs but I would be very open to be corrected on that. They don't charge for access, that's in line with what we see in Better Practice countries as well as in most international organizations that have access information policies. In terms of the resources, the short answer is yes, this will cost more money to implement.

First of all we're talking about a shorter time frame which means that there is going to be greater resources devoted to that. When we narrow the language on refusing requests that means more are going to be processed. I think inevitably there is going to be some resources that are going to need to be expanded in terms of making these changes. It's going to make the system more expensive.

But I would argue that this is something that is of structural importance to ICANN. They cannot be a multi-stakeholder organization with stewardship over a core public resource without fulfilling strong transparency obligations. And what we've seen over the past few months with the suspicion over what ICANN does and the crazy fearmongering being thrown around about this Russian and Chinese takeover of the internet.

I mean, I saw these stories and what I saw is, this is why you need transparency. You need a transparent organization to make sure that there isn't room for these kinds of rumors to spread. Because if ICANN is an open book then I think it becomes much less of a target for these kinds of conspiracy theories.

So that's the argument that I would make although I do certainly anticipate cost and expense coming up. I'm having a bit of a challenge right now because I'm trying to keep up with the chat as well as presenting. But I'm just going to keep moving us along until I see a hand up, if that's all right.

We will discuss the recommendations, I guess, together, once we get to the end of it. But why don't I push into Ed's recommendations that he's just—oh sorry, I see a question.

CHRIS WILSON:

Michael, this is Chris, with regard to Ed's recommendations, his email is somewhat lengthy so it's hard to put it into the chat. I was only able to cut and paste a snippet in there. So I don't know if Bernie, or Yvette, or Karen or someone maybe could turn his email into a PDF and put it up on the screen at some point or put it in the notes section so we all can see it easily.

For those that can multitask and look at your email, you can find Ed's email there. But it might be easier for all to put it into the room itself, I don't know if that's feasible. Yvette says she's working on it now so that's great. So maybe once that gets up we can then dive in. Sorry to interrupt.

MICHAEL KARANICOLAS: No no no, please. It's slightly challenging getting a big lengthy thing just as the meeting's getting started. But I do see a question while we're working on Ed's response. It's from Jean-Jacques which asks, "When we talk about the Ombudsman's mandate, to be accurate, does he have a mandate resulting from a vote or is it simply his responsibility?"

So when I refer to the Ombudsman's mandate, I do just mean responsibility and not in terms of an elected mandate. I think the Ombudsman is just appointed as far as I understand it. So perhaps the language is troubling and I'd be happy to shift back to the word 'responsibility' if that would solve the problem. I see Jean-Jacques' hand is up.

JEAN-JACQUES SUBRENAT: Thank you, Michael, hello, this is Jean-Jacques. Yes, because for people who are not as familiar with the ICANN as with perhaps international law, it is puzzling because people may wonder how the Ombudsman is actually appointed through a vote, is it through another mechanism? And that's why I proposed that we replace throughout. I haven't read the whole thing but I suppose that this word's used more than once. It should be changed rather to 'responsibilities'. Thank you.

MICHAEL KARANICOLAS: I have no problem with that and I'm very happy to institute those changes unless there's any objections. Great. So I think Ed did mention

something about the Ombudsman though which I guess the most useful thing to do is to start going through his comments themselves.

I see Alan has responded by saying, “Mandate can refer to responsibilities due to being elected or else just being commissioned to do something.” I mean, I agree with that but also there’s a potential that I think there may be language differences and I think that ‘responsibility’ doesn’t take anything away from it which is why I’m very happy to change it.

So we’re looking at Ed’s responses now at the moment. His first one which I saw and was hoping to throw out there because if it’s correct then it’s an important thing. He said that appeals against refusals or other non-compliance with the DIDP are referred for a reconsider request to the IRP rather than the Ombudsman. My understanding was that the appeals were handled by the Ombudsman so if that’s incorrect then that’s an important thing to correct.

Can anybody else offer information about that? Because my understanding was that the Ombudsman made those decisions. So if that’s wrong then that’s a very important clarification to get. And I see a few people here are typing so why don’t I hang back until we hear. Okay so none of the comments were based on that. Okay, I see David’s hand up?

DAVID MCAULEY:

Thanks, Michael. I just went to the DIDP page and there is a section called Appeals of Denials and it’s very short, I’ll just read it. It says, “To the extent a requestor chooses to appeal a denial of information from

ICANN, the requestor may follow the Reconsideration Request procedures or IRP procedures, to the extent either is applicable, as set forth in Article IV, Sections 2 and 3 of the bylaws.” And then there’s a link to the bylaws.

MICHAEL KARANICOLAS: Okay. I’ll tell you what, I’m not sure this is going to be settled now so why don’t dig into this a little bit more deeply and report back? So this is going to be something that I’ll have to look into in terms of Ed’s email and whether this is incorrect. So why don’t we just shelf that and I will look into it. Why don’t we move forward?

Emphasis of human rights. Okay, so this is an interesting one. So I think that Ed’s second point is that we should avoid the discussion of human rights because that will conflate our mechanism, our process, with the broader discussion of human rights that’s already going on.

I disagree with this for a few reasons. I do think that it’s important to paint access of information as a human right because it is a human right. That was sort of the purpose of that whole initial section, was to present this as more than just a governance issue. This is a fundamental responsibility that ICANN has.

If they’re going to be managing something as important, as globally significant as this, there is a responsibility there beyond just a matter of good governance. But if people think it would be counterproductive, I’d be interested to hear other opinions.

CHRIS WILSON: So, Michael, this is Chris—sorry David, go ahead.

DAVID MCAULEY: Thanks Chris and Michael. I was just going to say that I agree with Ed. And Michael, one of the reasons you said that it's important to state is because access to information is a fundamental human right. Well that's the very thing that the HR sub-team is debating. And I understood when I read it and I actually wasn't going to raise the point but since Ed did, let's just say I agree with him. Thank you very much.

MICHAEL KARANICOLAS: Okay. So from that perspective then does that mean that the introductory and background section as a whole should be removed? Or does that mean that we should be, sort of, re-framing it? So am I hearing that it should be re-framed as a—I see Avri has her hand up.

AVRI DORIA: Yeah, I do have my hand up, thank you. I agree, I think that it's not good to base the requirement for transparency on human rights because should we get to the point where ICANN can claim that it is not so bound by human rights related to the freedom of information then we lose transparency. So transparency has to stand on a very solid foundation of its own.

On the other hand I think it's fine in an overview to talk about the relationship to human rights, but just not to base it on human rights. So if that distinction makes sense I would suggest taking that kind of approach. But we don't want to get undercut because it's a human

rights and it's not one that we're supposed to have to respect. Thank you.

MICHAEL KARANICOLAS: Okay, so what I'm hearing then is about a need to not necessarily remove all of the discussion of it as a right but to re-frame it more clearly that we're grounding it in an argument for better governance, which I think can definitely be done. And I don't necessarily have an objection to. Great, and I'm seeing support in the chat so I will do that. Okay.

So why don't we move on to this point number three which, again, I think deals with the background section of it. Which is to note that ICANN is not a nation state, it is not an IGO, it is not an NGO. So he's suggesting that the group poses a question to our independent council on the following lines, in examining the current defined definitions of non-disclosure, which of the exceptions from disclosure would be necessary to keep so that ICANN remains compliant with California law.

Are there any additional documentary items or that may be in ICANN's possession that you wish to be excluded from public access and/or inspection on the basis of California statutes?

So he's very, obviously, correct that ICANN's not a country. But the reason why I'm trying to ground it in inter-governmental or national standards is because the California standards are quite weak, frankly. We don't want to base it in an American system, because it's going to lead to very poor levels of disclosure. And I think that we can be more ambitious than that.

Obviously ICANN is subject to California law. If we just ask them to do the bare legal minimum of what California State law requires them to do, it's not asking them very much. And frankly, I think it would be a big step backwards. But I'm open to other people's thoughts.

JEAN-JACQUES SUBRENAT: Hello, this is Jean-Jacques. Yes, Michael, I think this is an important point. The problem with referring to an international organization or something resembling that is that then you have to invoke specific international or national law.

There's one element which is missing I think or it doesn't come out strongly enough. It is responsibility of any organization, beyond frontiers or borders, which in fact performs a public service. And in this case, in the case of ICANN, it is a service to the global public worldwide. I'm not formulating it very well, English is not my mother tongue, but if you get the gist of what I'm saying maybe you can translate that into proper language. So it's the notion of serving the public interest worldwide. Thanks.

MICHAEL KARANICOLAS: I understand completely, I think, and I can agree completely on that ICANN is the steward over the whole (inaudible) which give him this responsibility. The challenge is when I hear you say that, that immediately, to me, pushes us towards saying, "Well, this is why it's a responsibility and it's grounded in the right to information."

And that's the ideological grounding of these international responsibilities. It's that you have things like the International Covenant on Political Rights, which recognizes the right to access information. You have national laws around the world. You have international treaties and statements by international rapporteurs. Human Rights Committee of the UN that people have the right to access information.

And so that was how I was trying to ground it originally but I think there was opposition to pushing it towards a human rights position, because of confusion with the ongoing discussion of a human right responsibility. So what about this? What about if I include clarifications about the unique status of ICANN? What if I point back, I retain the discussions of access as a human right and ICANN's responsibilities, but I maintain that our focus on this document is to ground it in ICANN's responsibility?

And that being said, unless I hear arguments otherwise here, I feel that we add the unique status of ICANN and that it serves the public global interest. Okay, great. Which hopefully is what I was at because that's sort of what I was trying to say. So that sounds fantastic.

So I think that's a great solution, which Jean-Jacques just mentioned, which is to add a reference to the unique status of ICANN and a more clear discussion of its role serving the global public. Unless I hear any objections I think that that's an avenue that we could go on in terms of the background section. And obviously I'll circulate more drafts. I'm seeing Chris's hand up.

CHRIS WILSON: Thanks, Mike, I just was going to say, I think that's a good plan of attack. I do think, with regard to Ed's specific point about interplay with California law, maybe as part of background we -- I don't know, do we try to compare and contrast where we are with where the current state of play is, this California law—maybe I missed that in the document. But I think maybe there's an effort just to demonstrate how we are above and beyond what is minimally required in California, but provided it's that better understanding of contrast might be helpful, I don't know.

MICHAEL KARANICOLAS: As Ed notes, ICANN is a California Public Benefits Corporation. That applies particular standards on ICANN. Now I assume ICANN is complying with that law. I can't imagine ICANN is violating California law. And I also don't think we necessarily need to try to persuade ICANN to comply with California law because it would be a pretty big issue if they weren't.

But I think that what we're trying to do in this document is to push them significantly beyond that, in light of the fact that they are not just a Public Benefits Corporation but they also play this crucial public interest role, serving the global community as gatekeepers over this – or not gatekeepers, but stewards over this critically important resource.

MICHAEL KARANICOLAS: This is why I'm a bit concerned by Ed's suggestion here because if we try to ground this in California Law, then essentially we're going to end up arguing from a much weaker standard and probably a standard that they're already complying with, we're not pushing them forward. I see Alan's hand is up.

ALAN GREENBERG:

Thank you, I think the overall thrust of what we're doing does not need to be and shouldn't be to prove that under one statute or another or some set of rules ICANN must do things. I think that our job is to come up with what we believe is a reasonable level of transparency given ICANN's position as responsible for a key part of the internet and given its responsibility to consider the Global public interest.

So I don't think we need to prove that it must do it because of some law or mandate. I think our job is to put together what we think is a reasonable set of expectations, given where ICANN sits in the world, and then by going through the CCWG Accountability and the board we end up getting it.

So I think the whole concept of trying to find the rationale for why they must do it because there's some compelling law or whether it's Human Rights or a statute under some grounds, I think is the wrong tact. I don't think we need to do that, and if in fact there was some compelling law or equivalent, we wouldn't even have this workgroup in place to begin with.

So I think we're trying to find a reasonable ground, reasonable set of expectations and then push them through the process that we're doing, I don't think we can find the law-based or rule-based rationale for doing it. Thank you.

MICHAEL KARANICOLAS: Sure, thanks' so much for that, I agree. I would just maybe put it a bit more than reasonable, I would hope we would be like ambitious rather than just reasonable, but I do certainly agree with the idea.

And I don't think we're looking for a particular legal framework or legal requirement, but I think that the utility of grounding it back to existing laws or existing standards that are in place elsewhere, even though ICANN is a unique organization, is I'm worried that if we don't say, "Well, here's how it's done at the World Bank and here's how it's done in the Indian government," and this and that, if we don't have anything properly grounded under, then it purely looks like we're just pulling these standards out of the air, as opposed to what I think is a stronger argument, which is to point to the way things are done elsewhere and point to existing examples of better practice and just say, "Here are appropriate models to follow based on other organizations."

I see Alan has his hand up again.

ALAN GREENBERG: Yes, thank you, Yeah, I support that completely, but the discussion we seem to have been having up until now is to find the rationale why ICANN must do it as opposed to what you just said of examples in comparable organizations, to other places of what they do, and we should match that level of transparency and openness.

I think those are two different ways of approaching it and I strongly favor what you're talking about now of using comparable examples, in the World Bank, or in governments, or wherever, as opposed to saying they must do it based on certain statutes.

MICHAEL KARANICOLAS: Okay sure, I think in part this might be my sort of core as an activist coming through and the fact that I'm used to dealing with nation states, and I'm used to sort of, for lack of a better word, "browbeating" them into improving their policies. So I'm used to having raise arguments with them in a very forceful way because I've encountered a lot of opposition from states.

Maybe the ICANN process doesn't require that same level of force in making their arguments, I'm certainly sympathetic to that. But I think that we seem to have arrived at a degree of consensus on this, which is great.

And I think that we also – sorry, just going back to Ed's thing again. Looking at number 4, which mentions the Appeals process. Again, Ed disagrees with me saying with the proposal that ICANN should establish an external oversight panel of three members to hear Appeals against DIDP Refusals, which would sit on an on-call basis and hear appeals when they come in.

Ed says that initial DIDP requests are handled by staff, the boars reserves the ability to manage staff and correct improper staff behavior before the matter actually gets handed to an external panel, and an initial appeal of the DIDP denial should go to our advisory consideration process before being escalated to outside party.

I think that's not a bad idea, and compared to access information systems around the world, an internal appeal is frequently used as a first recourse, so that's not a bad idea. I do think that there needs to be

some sort of independent appeal at some level, whether it's the second phase or beyond that.

Whether or not the review panels that I have suggested are the best way to do it I'm certainly very open to, but I would support adding an internal review as a first step, and Ed is also suggesting whether a revised IRP process would be suited in DIDP appeals.

I don't know necessarily that much about how the IRP process works, so that's something that I can look into, but I'm very keen to hear what people think. And I see David's hand is up.

DAVID MCAULEY:

Thanks Michael, it's David McAuley. My understanding of the IRP process is that a DIDP denial would be reviewable at IRP if the denial amounts to a violation of the articles or bylaws. Thank you.

MICHAEL KARANICOLAS:

So it would be subject to appeal if it potentially violated the bylaws and presumably that would include if it violated the disclosure policy, is that correct?

DAVID MCAULEY:

Not necessarily. The bylaws actually speak about IRP in the context of a DIDP denial. The section is 4.3B, just one second, B, it's under the Definition of Disputes in the IRP portion of the bylaw. And under Disputes it says, one of the things that would be covered is if the action

resulted from a response to a DIDP request that is claimed to be inconsistent with the Articles of Incorporation or bylaws, and that's it.

Now, violating the disclosure policy would in all likelihood be a violation of the articles, but I'm just guessing at that, I haven't briefed out or know about that, but that's the standard that I just read.

MICHAEL KARANICOLAS: Okay, and can I ask, does anyone know, and again I apologize for my ignorance on this, but the IRP processes, who are the decision makers in those processes, does anybody have a clear understanding of how those work?

DAVID MCAULEY: I can speak for that as well, it's David McAuley again. The IRP is an independent panel basically, and I would disagree with the point that you made earlier, that you need something independent. In my view, this will be independent and it's under article 4 of the bylaws.

And what it amounts to is a panel of three arbitrators out of a standing panel of at least seven arbitrators, and these are people that are objective and skilled. There's a certain skill level they have to have and training etc., etc., knowledge of the DNS and all that kind of stuff.

But these are independent and one of the knocks on IRP before the transition was that the standard was ineffectual, but the standard's been changed, and now there is a substantive review of claims and there is a mechanism for the empowered community to enforce these

decisions. So it would be a panel of judges basically, panel of arbitrators, you can look at it that way.

MICHAEL KARANICOLAS: Okay, so that does sound a lot better that sounds reasonably independent. There would be questions about the expertise of the IRP people, potentially we could like ask if they have -- included in their qualifications for serving on the IRP that we should include some access information or understanding of (inaudible) transparency issues as one of the criteria of how these guys are appointed.

But to me, what I'm hearing is, first of all in terms of the initial recommendation of having an internal appeal, I think that people will support that, which is good and I'll add that in.

In terms of the secondary one, it sounds like we should be directing this to the IRP's rather than to an external appeal panel, which from what I'm hearing, it sounds good as well. So I'd be happy to add this after I just do a little bit more research myself.

So we dealt with Ed's input. I'm going to move it back to the DIDP. I guess we've eaten up a lot of time on this, but I'm going to move it back to the DIDP very quickly to the broader section. After, if there're any other issues that people want to raise. Okay. Oh, I see David again.

DAVID MCAULEY: Thanks, it's David again. Sorry to take up so much time, but in the document -- which by the way I'm very grateful to you for, I think it's very well done. In the document, on page 6 of 18, at least that's how I

print it, I'm roughly on page 6, it says, "In the specific context of the right to information, this translates into a similar three part test," and then there're three bullets for the test.

And as I read the test, and the third bullet says, "The harm to the interest must be greater than the public interest in accessing the information, and the public interest must override."

My question to you Michael is: what about non-disclosure agreements that ICANN enters into with business partners. Are we clear that those are covered as things that ICANN need not disclose? That's one question.

Counter balanced against it, I guess some people may be concerned that ICANN, if that's the case, may abuse the non-disclosure agreement process. But I was just wondering, what were your thoughts when you wrote this about non-disclosure agreements? Thank you.

MICHAEL KARANICOLAS: Yes, I think that that's a major issue. The weird thing is, looking at the DIDP right now, I'm not sure how they're going to withhold information (inaudible) a non-disclosure agreement. I do need to go through it again, but I'm not sure if they have the proper procedure there.

That being said, the abuse of use of non-disclosure agreements is a huge potential concern, and I would suggest that we should include a specific discussion on that. I was going to put that proactive disclosure, because Chris already touched on it in that in that section. But basically a need

that ICANN should not be entering into non-disclosure agreements except where it's absolutely necessary or for external reasons.

You know, countries all over the world, in their contract, and they live by requirements of transparency whereby if you sign some kind of a -- if you submit a tender or whatever to a State Government, there are expectations of transparency that are not the same that if you perform a similar business test along with a private company. And I think that we should be thinking, pushing ICANN to consider themselves, embracing a similar kind of standard rather than the private sector code. I see David's hand is up again.

DAVID MCAULEY:

Thank you Michael, very quickly. I tend to disagree with what you said in the latter point. But with respect to abuse of use, when I read the document I thought that the issue may come up, abuse of use of non-disclosure agreements.

When you write up something on that, I would suggest that one alternative that we'll at least look at is: If we think it's an issue, that it be an appeal that's vested in the empowered community. It seems to me that it be something important enough that the empowered community would want to take care of that, rather than an individualized DIDP appeal. I'm sure there'll be other thoughts on it, but that's a suggestion. Thank you.

MICHAEL KARANICOLAS: Do you mean an appeal on reviewing the disclosure agreements or an appeal to when the disclosure agreements should be entered into?

DAVID MCAULEY: No, I'm sorry, I was making reference to the idea that if you're going to rewrite this with abuse of use of non-disclosures in mind, in that particular subject area, if it ever became an issue that it would be something that the empowered community may want to address. It's just an alternative for us to consider, that's all. And the empowered community can make appeals to the IRP.

MICHAEL KARANICOLAS: Sure. I mean, I see a challenge here. First of all, I don't think ICANN should be going back and rewriting a contract that's already signed. If ICANN signed a non-disclosure agreement last year on a particular issue, if it signed a contract I think it's reasonable to expect that they're going to live by their word on that, but to me it's about going forward and ensuring that non-disclosure agreements aren't entered into.

And Chris I think raised a very interesting idea, which is to consider certain subject matters with a presumption against non-disclosure. I think that's a very interesting idea. I see Alan's hand is up hand is up.

ALAN GREENBERG: Thank you, two things. First of all, non-disclosure clauses and in contracts are a part of business in many ways. There're all sorts of things, including software, that you have to commit to keeping certain

things confidential. Besides, I don't think we can stop ICANN from doing that, I don't think we want to stop ICANN from doing it.

Using it abusively is a different issue altogether and wording like that would be good, but I think we have to accept the fact that some level of confidentiality is going to be associated with contracts that ICANN signs. And I don't think we can pretend anything else other than that. Thank you.

MICHAEL KARANICOLAS: I don't think anyone would argue with (inaudible) with it entirely. It's just about minimizing it to the sense that it's absolutely necessary. And again, I think it's about pushing them beyond a standard that we would accept from any other business because of the public interest aspect of what they do. But that's something that we'll think about more carefully.

I think, even that it's 04:50, we should push onwards, although I'm really enjoying this discussion. I think that we should push onwards to section B on proactive disclosure. And I have to apologise because we haven't quite finished this section. Chris did a wonderful write-up and I was supposed to add some sections to it which I haven't been able to do yet, probably dealing with budget transparency and the like.

So that being said, are there any comments on what we have on the subtheme regarding proactive disclosure policies? Again, I guess it's a little bit tough because --

CHRIS WILSON:

Sorry Michael, this is Chris. I know Brad had raised a question in his email I guess from a few days ago with regard to this section, and he specifically asked me that we clarify or make it clear that what we're including, I think he was including the education engagement type of vendors in the disclosure. I think that's certainly the intention if we want to write it more clearly, I can certainly attempt to do that.

But I should also note that in engaging a little bit of dialogue with Xavier Calvez, ICANN's CFO, get a little more information about what exactly these types of vendors are etc. Seemingly that this notion of education engagement vendor has really only come up in one contact and that is with regard to the IANA transition, and seemingly only has come up I guess in FY15.

And so I think the point of this disclosure is not to get wrapped around the (inaudible) of the education engagement and vendor per se, but that is captured, but also to capture other internal and external use of people to interact with Governments if you will.

And so obviously those particular vendors with regard to the IANA transition certainly fall within that context, but I think we need to be careful of not drawing it too narrowly where we're only talking about that sort of limited subset of individuals or companies etc.

And obviously I think if it's going to the Commission of non-disclosure agreements, I think this is a subject matter, if you will, that augers for – you know, leaning towards disclosure rather than not. So I think now we're stating that there are business practices and understand that

there's confidentiality requirements. I think it's important that we have these types of disclosures.

And I should say, if any of these vendors happen to be some of the top five "highest paid contractors from ICANN", then ICANN is obligated under law to report them in their 990. And indeed ICANN has a policy of over disclosing in that sense, that they're disclosing contractors above a million dollar reporting threshold. And I think we've sort of learned that wavers are not necessarily sought confidential, where it was (Inaudible) sought for that disclosure either. So I think there's some precedent here.

Obviously we have disclosing of vendors, I think I can rework words a little bit more if we want to make it clear of what we're talking about, but I also think we need to be careful about not overly circumscribing where we are, and not being too narrow in our definitions. So I just wanted to put that out there and sort of acknowledged Brad's email from earlier in the week. Thanks.

MICHAEL KARANICOLAS: Okay, great. Unless there's anything else on the proactive disclosure, thanks so much for bringing up Brad's email which is very good, and which I think we can -- unless there's anything else, I do want to move forward to whistleblower section, because I see that Barbara's here. She did such a great job drafting this and so I want to make sure we can have a bit of a chance to assess it, with particular reference to the areas of discussion that she raised. I see Jean-Jacques' hand is up.

JEAN-JACQUES SUBRENAT: Yes. Thank you Michael, this is Jean-Jacques speaking. I should've reacted a minute ago, sorry for being late, but it's still about subtheme two, proactive disclosure policies. And I noticed on, might be paragraph 4, that there is a mentioned of IANA transition, and I think that throughout the text we have to be very careful, especially in light of the fuss which was made in the Senate and the Congress in recent weeks, just before transition. We're not talking about the transition of IANA, we're talking about the transition of oversight of the IANA functions etc. Thank you. This is important.

CHRIS WILSON: This is Chris. Jean-Jacques, that is important, so I think when we use the term IANA transition, it's sort of shorthand for the actual oversight of the IANA function. And I think it also, when you speak of the IANA transition, we talk more generally also about the accountability reforms etc, etc. So it stems from more than just the actual IANA functions contract.

But obviously, we could be more clear on exactly what we're talking about. And really, and this disclosure by the way, is meant to go beyond whatever engagement took place with regard to the IANA contract itself. It's intended to be other interactions with government, I think there's a footnote in the document that speaks of the CEO's interactions with China, with regard to the world internet conference, as well as his interactions with Brazil with regards to the Net Mundial Conference from two and a half years ago.

So we're not talking specifically about the IANA contract, but obviously to the extent that we mention it, we can certainly be more clear about what we're talking about. So I appreciate the feedback.

MICHAEL KARANICOLAS: Okay. So I do want to move us forward just because I do want to get attention to our protection, because it's really important that we consider whether we want to accept the NAVAC's recommendations or not. The way that it's currently drafted is basically following the NAVAC's recommendations and supporting them. I think that that's the right approach to take, but hopefully that the community can talk a little bit about -- that we can have some discussions of whether people think that we've taken the right approach on that. I see Jean-Jacques' hand is up. Okay, I see Jean-Jacques' hand is down.

Are there any thoughts about the whistleblower protection section? I think that this was very well drafted, I had a few tiny issues but I don't want to be talking for the whole time, so I really want to make sure that anybody else who wants to raise any concerns or questions had a chance to. So please – oh, Barbara.

BARBARA WANNER: Thank you. Can you hear me Okay?

MICHAEL KARANICOLAS: Yes. Loud and clear.

BARBARA WANNER:

Great, great. Okay. Yes, as I said, I think in my email to the group, there's no (inaudible) here, so I welcome any edits that people want to make to this. What I tried to do, particularly under the first section, is express my own frustration about trying to actually find this policy on the ICANN website.

So I just offered, you know, some practical suggestions about how one could improve the ability for -- a member of the ICANN community could do a search for this on the ICANN website, but the area where I would really welcome the input from this group concerns the scope.

Now, the NAVAC's report recommended that the hotline policy be opened up, if you will, and made accessible to business partners, and they offer a definition of what business partners is, would constitute.

And I heard one comment from one member of our group, Mr. Holmquist, Ricardo Holmquist, and I think he's on the call today, and I welcome his comment, but he had concerns with that on grounds that -- actually I even redlined the text to incorporate his concerns, that the only ones that should have access to the hotline, other than employees, might be temporary workers that, the way in which business partners is defined, would make it too all encompassing, could open it up to registries, registrars, governments and so on.

And so I proposed some redline facts that people also share his concerns, but that scope is too broad, and happy to share that with the group. But other than that, I'm very, very open to any other comments people have concerning this draft. And yours in particular, Michael. So I just wanted to cite and acknowledge Mr. Holmquist's input. Thank you.

MICHAEL KARANICOLAS: So just until we see another hand, because again, I don't want this call to be just me talking. I don't necessarily see the harm in broader application, and in allowing people from broader backgrounds to use the hotline. I don't necessarily see a negative to that. But certainly the idea of visibility is there. I see David, so let's hand over because it's great to get more perspectives.

DAVID MCAULEY: Thanks Michael, it's David. I think the document of whistleblower is well done, but I have to say I've read it very quickly having spent a lot of time on DIDP, so my request would be that we also make sure that we bring this up in the next call. Thank you.

MICHAEL KARANICOLAS: Sure, absolutely. I see Ricardo, so maybe he wants to follow up on the commentary that he made.

RICARDO HOLMQUIST: Can you hear me?

MICHAEL KARANICOLAS: Yes.

RICARDO HOLMQUIST: Yes, the business partners that are included in the NAVAC's recommendation, they include things like temporary (inaudible), also a broader eco system of business partners. Some of them, maybe should be going through the Ombudsman or any different (inaudible) than the whistleblower as I understand.

But business partners, they open it like anyone that has a contract with ICANN, and this includes any registers, registries, all this eco system of our (inaudible) relationship instead of we are business partners like (inaudible) agency or whatever, that is a kind of supplier of ICANN.

So I recommend that we divide the business partners. One thing is the ones that are suppliers to ICANN and the other thing is the eco system of ICANN is internet related, but it's very different. The ones that ICANN gives them a (inaudible). Sorry for my English.

MICHAEL KARANICOLAS: I definitely think there needs to be more clarity over who the hot line is available to. That was one of the things (inaudible) me. I think it was like third parties as defined by ICANN, which seems to be a bit of a vague standard, so certainly I think that we should try to clarify that.

But I really would ask, what is the harm with having more people have access to this? I'm sympathetic (inaudible) certain people there's Ombudsman around as well. If they also had access to this hot line, I'm not seen that, but I'm very curious to get the rationale for narrowing it.

I see we're running up against the end of the time as David has pointed out and that --

DAVID MCAULEY: None, but we should divide it, who's a whistleblower and who's not.

MICHAEL KARANICOLAS: Sure. Okay. So, we'll look for better definitions as well. (Inaudible) top of the hour, of course. Just before we go, I just wanted to mention very, very briefly, in terms of our avenue forward, I think that we had originally – ICANN broadly wants to get a copy of this, and they had originally asked us, I think for a copy for general circulation by today, and what I'm going to suggest is that the rapporteurs take another crack at it, basically based on some of the feedback that we've gotten today, and then produce a copy that's for general circulation on Monday, if there are no objections to that.

Because there are concerns from ICANN, like they want a copy so that they can review it well before (inaudible) and if we wait until the next call, and then post after that, then we're I think basically just on the fly.

Sorry, CCWG. Sorry, my bad. As long as it's shows (inaudible). Yeah. Absolutely, we will definitely do that.

Okay. So, that sounds good to me. I see Alan's hand is up.

ALAN GREENBERG: Yeah. I was just going to basically say that I have no problem with the rapporteurs creating the next version, but it should note where it says, "Draft not reviewed by this working group yet". We don't want to be in a position where you say something in good faith, but it may be

significantly disagreed with, and we haven't had a chance to expose that, so it should just have the byline saying, "It hasn't been reviewed by this group yet."

MICHAEL KARANICOLAS: Well I get that, but we've also had substantial feedback from the group and we're basing our revisions based on that.

ALAN GREENBERG: Yeah. No. No.

MICHAEL KARANICOLAS: So like I'm happy to call it a draft, and I'm also happy to put a footnote in to talk about. Why don't I put a footnote at the top that clarifies the process and how this was done, and says that the latest draft was done based on this feedback and the rapporteurs prepared a new draft for Monday. Like, I'm very happy with that.

ALAN GREENBERG: That's fine with me.

MICHAEL KARANICOLAS: Okay. So unless there's anything else, I'm going to suggest that we call it here, and thanks very much for this wonderful discussion, which I obviously enjoyed. And yeah, I look forward for the engagement on this.

CHRIS WILSON: Thanks everybody.

BARBARA WANNER: Thank you guys.

[END OF TRANSCRIPTION]