
MATHIEU WEILL: Roll call for this meeting, we'll use the Adobe Connect list of participants as a basis, but are there any participants to the meeting who are audio only at this point?

THOMAS RICKERT: Hello, Mathieu. This is Thomas. I'm on audio only at the moment.

MATHIEU WEILL: Hi, Thomas. Thanks for joining. I know you are not in the best of your health at this point, so we hope you recover soon enough for the Hyderabad meeting, obviously, but even faster than that. Anyone else? Okay.

Any updates to Statements of Interest? No?

I think we have a pretty busy agenda for today with a number of updates from the groups as well as some interesting discussions on the road to Hyderabad. So I will now turn to Leon for the next agenda item. Leon?

LEON SANCHEZ: Thank you very much, Mathieu. Hello, everyone. Our next agenda item is just a reminder of the ICANN Standards of Behavior for Meetings. As you may well know, this group has been characterized to be one that fully respects each of the participants and we don't want the Hyderabad meeting to be the exception. So this is just a reminder to observe the

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expected standards of behavior as per ICANN's usual standards of behavior.

We have this beautiful slide that has been set up by staff to remind us of the different standards of behavior. If you don't know the standards of behavior by now, we kindly encourage you to review them. And if you have any doubts, don't hesitate to come back to us so we can help you understand the standards of behavior.

I don't know if there are any questions of the standards of behavior. Just as long as we remain respectful of the views and we remain inclusive of everyone that wants to participate, I think we have continued to manage a successful meeting, as we have done previously.

[inaudible] there is also a link that will be circulated previous to our Hyderabad meeting that contains these standards of behavior so that everyone is familiar with them when we get to Hyderabad.

Avri is asking who enforces the standards of behavior. Well, so far, I think that is a good question, Avri. As per the charter, the chairs are allowed to establish contact with those participants not complying with standards of behavior so we can find a way for them to comply and, of course, take this into the usual friendly manner that we have managed to ask everyone to comply.

Our next agenda item is the Review of the Actions Items from the Plenary, if we could have the action items on the screen please. The first one is the subgroup rapporteur should have established an issues update for their subgroup [to submit to] the CCWG by end of business Friday, 21 October. This will be the base for the work in Hyderabad. I've

seen a couple of reports that have been sent to the plenary list. We definitely encourage you to review them so we can have a fruitful discussion on them in Hyderabad. We will be going through updates on each of the subgroups in this meeting as per Agenda Item 5, so I won't go deep into this action item.

Then the second one is that the Ombudsman subgroup is awaiting confirmation from staff regarding funding [for the] [inaudible] from funds outside of Work Stream 2. I believe that this confirmation has already been done. I don't know if anyone on staff would like to expand on this confirmation, but we do have confirmation about this action item. Anyone on staff would like to comment on this? Alright, so let's move to the next action item. I see Bernie's hand is up. Bernie?

BERNIE TURCOTTE:

Just a note. We got this confirmation late yesterday. We're still working out the details, so there's really not much to report except that this funding is settled. But the mechanics about how we'll work with these groups are still being worked out. Thank you.

LEON SANCHEZ:

Thanks, Bernie. The next action item is the CCWG Accountability [inaudible] the response from the Board on its request with regard to ATRT3. Yesterday, Mathieu circulated a letter from our Chairman of the Board in which they replied to our letter on this issue. This correspondence states that will be a subject to discuss in Hyderabad with the larger community as the Board feels that they are not in position to take that decision on this issue, but rather the community

should guide the Board on how this issue should be advanced. So we do have a reply from the Board on this issue, and I think we will discuss this further in Hyderabad. I see Bernie's hand is up. I'm not sure if that's an old hand or a new hand. Bernie? That's an old hand. Okay.

Okay, so this would conclude the review of the action items. I would like to turn back [inaudible] to Mathieu for our next agenda item.

MATHIEU WEILL:

Thank you very much, Leon. We're now getting into the first substantive item of our agenda related to the IRP group. This is [inaudible] Work Stream 1 implementation. As you know, one of the outstanding items is setting up the IRP. We have the rapporteur for the IRP subgroup – IRP is for Implementation Oversight team – for an update on the progress of this group. You will remember that we had a small number of items to resolve before we could move forward on the supplemental rules, so Becky will provide us an update. Becky?

BECKY BURR:

Thanks very much, and good morning, everybody. We last spoke about these three open issues in September. I think we developed some more sense of consensus around some of the issues, but I'm hoping we can reach closure on them today so that we can publish the entire set of supplementary rules along with the explanatory paper for public comment.

This is just background on the team and the chairs. Let's go straight into the issues. We seem to have lost. I don't know if anybody is seeing

anything. I'm not seeing anything on the slides. Okay. Brenda? Bernie? The slides are appearing blank to me. Is anybody else seeing them, or maybe there's just...

BERNIE TURCOTTE:

We're having a minor technical glitch, Becky. We're working on it.

BECKY BURR:

Okay, so while people are working on it, let's just chat through the three issues. One is the deadline to file after an event that constitutes or could constitute a Bylaws violation. The draft language said that a claimant would have to file a written statement of the dispute with the [provider] no more than 45 days after a claimant becomes aware or reasonably should have become aware of the action or inaction giving rise to the dispute.

The relevant language from Annex 7 actually talked about becoming aware of the alleged violation and how it affects them as opposed to the reasonably aware.

We had several choices in terms of this, and when we discussed this my sense was that people wanted to use the "becomes aware of the material effect of the action or inaction giving rise to the dispute" but also wanted to have an outside time by which the dispute had to be filed. We had talked about 6 months and 12 months and 24 months. I believe that the people that we heard from in our conversation last month, most people were comfortable with the two-year period, but there were definitely people who suggested that it should be shorter.

I think what I'd like to do is solicit any comments at this point on the outside period for filing a claim. Now, while people are thinking about this one, obviously, there is a great need to have a sense of closure and that decisions that get made are closed and not reasonably contestable. On the other hand, there are things where we would not know how ICANN staff, for example, would interpret a provision of a contract and you could not possibly know until that interpretation was actually on the table. The notion was to find a compromise there.

As I said, we had some people arguing for 6 months. We had some people arguing for 24 months. One year, 12 months, is sort of a compromise. It's sort of the midpoint in there. I would propose that we take alternatives too with a 12-month date of the action or inaction. Of course, if we're talking about an interpretation of a contract or something like that, it would be 12 months from the offending interpretation as opposed to 12 months from the date the contract was entered into.

I'm not seeing any hands on that.

[MATHIEU WEILL]:

Becky, just a quick clarification. What we're trying to do here is a first reading on these items. We've actually already discussed them, but our plan is to do basically our first reading today and try to resolve these issues in Hyderabad at the latest. So that will be our second reading.

Obviously, I'd like to just remind everyone, this is not the final version of the documents. They're not going to enter into force right after that. We'll go for public comment after that. So in that sense, I think the

proposal that you're making is a good one because it's also enabling for getting inputs from the public on this approach. I would encourage people to step in, obviously, and with maybe a priority to those who are not in the IOT because in the IOT these issues have been discussed already at length. I think what's valuable is to make sure we get the feedback from the plenary [through] the other participants and members in the plenary. I think, Alan, you're perfectly quite right to start. Go ahead.

ALAN GREENBERG:

Thank you very much. Regarding the delay under which you can file, there was a case recently where ICANN published an implementation plan. It happens to be on Thick WHOIS, but it doesn't really matter. The registries made a comment on the plan objecting to one of the terms in the implementation and in parallel with that filed an IRP just in case because the time deadline is so short currently.

It's not clear to me, however, when the deadline should have started. In this case, ICANN published a plan to do something but did not formally decide to do it because it was still out for comment. It wasn't clear that the clock even started ticking until a decision was made that this, indeed, was the plan that was going to be followed. When do you become aware of it? When you become aware of a possibly of something happening or it definitively did happen? It's the starting point that I'm not sure we have full clarity on.

BECKY BURR: I actually think that the registry filed a request for reconsideration as opposed to an IRP.

ALAN GREENBERG: You're right. I'm sorry. Correct.

BECKY BURR: That's okay. But just to take that, if the staff implementation plan was simply a proposal that was out for public comment, that clearly would not start any clock ticking. It would be a final decision that the implementation as proposed is moving forward.

The other thing that happens, of course, is that there are provisions for constructive engagement and conciliation, and those all [toll] the required filing period. So in fact it will be very infrequently that 45 days would be a hard deadline because we have built-in processes for ICANN and claimants to [move] together to talk to try to resolve misunderstandings and the like.

ALAN GREENBERG: Thank you.

BECKY BURR: But in that case, Alan, I think it probably would have been had a final decision on the implementation plan been made. That's when the time period would start.

[MATHIEU WEILL]:

Thanks, Becky. I think basically we are looking at moving forward with Alternative 2 with a period of 12 months from the final decision, and we'll carry that over to the second reading.

The next item, Becky?

BECKY BURR:

Yes. Cross Examination of Witnesses at Hearings. The current rule essentially says that "all hearings shall be limited to argument only," which is so that people would be making legal cases. But we did provide that there could be face-to-face hearings called if it meets that standards presented, the extraordinary standards: it is necessary for a fair resolution of the dispute, it furthers the purposes of the independent review process itself, and the interests of a fair resolution outweigh the costs and delay.

When there have been face-to-face hearings, typically there have been fact witnesses. A number of people believe that if there are going to be witnesses, then cross examination should be allowed. Others were concerned about the added complexity that this brings.

One approach is that we can say that the IR panel would determine if a "party seeking cross examination of a witness has demonstrated that such cross examination is necessary for a fair resolution of the claim, necessary to further the purposes of the IRP, and considerations of fairness and furtherance of the purposes of the IRP outweigh the time and financial expense of witness cross examination."

I think many people would argue if there are going to be witnesses, if there are going to be fact witnesses at a face-to-face hearing, then the other side should have an opportunity to cross examine. The standard is that that's something that we would have to think about: if one side can have a fact witness, is the other side entitled, [should they permit it]?

On this one, I think the weight of opinion is that the determination about whether the hearings include fact witnesses and the limitation to argument only goes away is something that should be made at the extraordinary level. The appearance of a fact witness is necessary for a fair resolution of the claim, necessary to further the purposes of the IRP, and considerations of fairness and furtherance outweigh the time and financial expense of witness cross examination.

If the determination to expand the face-to-face hearing to include fact witnesses is made, then the IRP panel should determine whether [and I guess this is] all other types of hearings: telephonic/video hearings.

I think that activity in our conversations we have gotten this a little bit wrong. What I would like to propose is that the question about whether hearings are limited to argument only is the question that is subject to the extraordinary standard. The party seeking to expand to include fact witnesses has demonstrated that it meets the extraordinary standards, and then once that happens if the claimant makes that case and the panel determines that has been made, then cross examination of fact witnesses should be permitted.

This is a slightly different approach than we had discussed, and I will write it up and send it around to people. But I think what we are talking

about is applying the extraordinary standard to the question of whether a hearing is limited to argument only and then if it is expanded to include fact witnesses, the panel will determine in its discretion whether or not to permit cross examination.

MATHIEU WEILL: Thank you, Becky. Maybe test whether there's anyone who is feeling very uncomfortable with that approach moving forward. I think there's a comment from Kavouss in the chat about Alternatives 2 and 3 which are quite close. But I think the quote you are suggesting is also – I'm interpreting silence as assent on the way forward.

BECKY BURR: Yes. Thank you.

MATHIEU WEILL: Let's move to the – I think we have one last item on this?

BECKY BURR: Yes. The one last item, I do not see it here.

[MATHIEU WEILL]: We're trying [to find] slide.

BECKY BURR: Here we go. Typically when you change substantive rules, the standards that apply are the rules that were in place at the time an independent

review was started. Right now – and I’ll be very concrete about this – right now, well not anymore but prior to the transition, the Bylaw standard for review provided a lot of deference to ICANN. ICANN has in some independent reviews argued quite robustly on that a very high degree of deference should be provided to the decisions of the ICANN Board.

The Accountability CCWG rejected that very high level of deference and said, no, there’s going to be a de novo review and the panel is going to determine based on a review of the facts whether ICANN violated the Bylaws or not.

The question is, what happens to the independent review cases that are in process right now? A number of people have said ICANN has been on notice for a really long time that the community didn’t like the standard that was put into the Bylaws in 2012, I think it was. ICANN has known for a really long time that people didn’t like the process by which it was adopted and didn’t like the standard and that the standard was going to change.

So it would be unfair for ICANN to essentially continue now, particularly after the rules have changed for everybody going forward, to continue to insist on the deferential standard. So in an extraordinary case where a decision turns on the standard of review, the parties should be able to say it would be unfair to proceed in this way.

As Avri has pointed out, it seems like we allow, and we do allow, retroactivity to future changes in the supplemental rules. The problem is that the standard of review is actually in the Bylaws. Most of the

supplemental rules are not in the Bylaws, and they can be changed. They are essentially procedural, and they can be changed in a procedural way. The standard of review is in the Bylaws, and it cannot be changed except through a Bylaws change.

My concern, I have the utmost sympathy for people who are annoyed about the deferential standard, but I do think that if we made the standard of review affirmatively retroactive and somebody could say, “No. I’m going to reopen my case based on the standard of review,” then what they would be doing is saying we want ICANN to apply a standard that is different from what the Bylaws say. So somebody who may have been the beneficiary of the application of the standard of review in the Bylaws immediately has an IRP case saying ICANN is violating its Bylaws.

Even though I understand absolutely why it seems unfair in the extreme that ICANN could have kept insisting on this deferential standard once it was clear that the standard was changing, I think we have a Bylaws violation. Avri is asking if we’re only talking about cases in progress, why does it affect closed cases? It wouldn’t affect closed cases. It would affect open cases, but there are a number of open cases. So without having gone through [with] a fine-toothed comb here, we don’t know what will happen.

Kavouss is making a plea in the chat to not make the rules complex and not understandable. I think that what we’re talking about is a very complex legal problem, but the simple solution and the solution that, in fact, is standard in these cases is that the rules that are in place at the time you file a claim are the rules under which your claim is considered.

I would propose – I’m stepping out of my Chair role in a moment here – to say, essentially, I think that’s the rule we should apply.

Now, ICANN can choose how hard it wants to argue that standard, and IRPs have rejected the deferential standard in a number of cases. What I am saying is we should, given the extremely complex and particularly contentious issues that arise, we should choose the ordinary path of applying the rules that are in place at the time a claim is filed.

MATHIEU WEILL:

Thanks, Becky. I understand that, in your view, that’s the safest option and probably simplest as well. Any objection to that approach to be carried forward in the second reading and then the public comment? I am seeing none, but obviously it’s a sensitive issue, so we might have to discuss this on the list. But it’s carried forward.

One last item, Becky, is once we have the supplemental rules, we’ll need to select candidates for the IRP. Any update on the progress on that side?

BECKY BURR:

Yes. David McAuley, who is on the call, has put together a draft request for expression of interest for the panelists, and that will also be something that we’ll finalize and circulate and have available for further discussion and revision in Hyderabad.

MATHIEU WEILL: Thank you, Becky. I think that's good because these two pieces are the key parts of the architecture of the Work Stream 1 recommendations, and it's really good to see that we're making progress. I'm hopeful that by the time the regular [ICANN] meeting in Hyderabad opens, we can report some significant steps forward on that path. So that's really excellent. Thank you to you, Becky, as well as the rest of the IOT group for that product work.

And I think that we've been quite productive. We can now move to the reports from the subgroups. And I'm turning back to Leon.

LEON SANCHEZ: Thank you very much, Mathieu. And as I said, [preview] will be going through the reports of the subgroups on the progress that they've made through the calls that they've held in the last couple of months. And the first group that will be reporting for us is the Transparency group. And for that, I would like to hand over the floor to Michael Karanicolas. Michael, could you please update us on the Transparency report?

And by the way, I just want to say that we do have a report on this and this will constitute the first reading on the Transparency report [inaudible]. So Mike, could you please take the floor?

MICHAEL KARANICOLAS: Hi, can you hear me? Hello? Hello?

LEON SANCHEZ: Yes, Mike [inaudible]

MICHAEL KARANICOLAS: Okay, great. Sorry. Alright, so yeah, thanks very much for that. As you all have hopefully seen, we've developed a first draft of the Transparency report. I think we had a robust process where we started by soliciting feedback and got some great ideas in from people in the group. We presented a first draft of our working group paper last week. We circulated it to the subgroup last week and then had a meeting on Friday to receive initial feedback from them. And then based on that feedback, we revised it again.

As you can see, it's divided into three major sections. The first deals with reforms to the DIDP. The second is related to proactive disclosure information that should be published by ICANN as a matter of course. And the third is based on whistleblower policies that ICANN has.

For the most part, I want just to give a brief introduction as to the issues that we tackled and the issues that we are still looking at. There are specific recommendations for each of these sections, but through the research and also through the meeting on Friday, it was also revealed to us that there are areas that we need to consider quite a bit more.

So I also included as part of the paper a few discussion questions or questions for further thought that we intend to address as part of this process. So if you're going to give feedback – we welcome feedback on anything, obviously – but in particular, any guidance on the specific questions that we asked would be particularly helpful.

With regard to the DIDP, that involves first considering how the IRP process works with the DIDP, which I guess is going to tie into a previous

conversation. We're not looking to have parallel processes, but it is worth thinking about in that context. And second is how the DIDP should apply to nondisclosure agreements that ICANN has signed where there were different opinions that have been raised on that at the meetings.

In terms of proactive disclosure, right now, we're only dealing with lobbying transparency. That needs to be extended to discuss more information about financial transparency and more information about how Board deliberations, information about them, should be made available. So those are areas that we're still exploring.

With regard to whistleblower protection, we're looking at, the main question that we need to ask is whether we should allow the whistleblower hotline to be available to business partners and who should be able to access it, basically, how widely that process should be available.

Beyond that, I think the best thing to do is to just let the document speak for itself. We'd be very happy to hear any feedback that people have as to our approach and the recommendations that we've provided. I see Kavouss's hand is up.

LEON SANCHEZ:

Thank you very much [for that update]. Yes, Kavouss is first on queue so, Kavouss, could you please take the floor? Kavouss, if you are speaking, we can't hear you. You might be on mute. Kavouss, we cannot hear you.

KAVOUSS ARASTEH: Hello, do you hear me?

LEON SANCHEZ: Yes, we hear you now, Kavouss. Thank you.

KAVOUSS ARASTEH: Okay, sorry. Sincere congratulations to Michael, Chris, and Barbara for a very good piece of work that they have provided and they are frontrunner within these nine groups that have been established for Work Stream 2. Congratulations. Well done.

I suggest that, if other colleagues agree, we just take this document as the first consideration and not taking as the first reading because there might be some question. At least, I, for one, did not have time to go through the document in detail. I may not have any comment at all, but I suggest that we just take it as a consideration and go to the first and second reading at a later stage if everybody agrees to that suggestion. Thank you.

LEON SANCHEZ: Thank you very much, Kavouss. Are there any other comments? I see that Farzaneh is asking whether the group is at the [recommendation] stage. I see no other hands. Yes, Sebastien Bachollet's hand is up. Sebastien, could you please take the floor?

SEBASTIEN BACHOLLET: Thank you, Leon. I didn't have obviously the time to read it as I was preparing for this meeting and for the Ombudsman subgroup. But I know that in my report, I guess I will give you later, there are some points that we have to discuss with both groups. I think it will be useful to have those, how we want to organize cross-subgroup work on certain items and here, there is one between the Transparency and the Ombudsman Working Group. Thank you very much.

LEON SANCHEZ: Thank you very much, Sebastien. Let's not forget that the readings are our way to have the document read for public comments and not in [a final] stage. So I would encourage us to have this as the first reading of this report that has been put by the subgroup. This doesn't prevent us, of course, from reviewing it in a deeper way. It also allows us to post our questions and comments to the list and also in our face-to-face meeting in Hyderabad.

I would encourage us to keep this as a first review from this report and try to, of course, flesh out the different details that need to be put in place in order for this document to be ready for public comment before our Hyderabad meeting and, of course, continued discussion in Hyderabad with the adjustments that should be made as per the questions raised and the comments made by the larger group.

Are there any other questions or any other comments on the Transparency report at this stage? I see Steve DelBianco's hand is up. Steve?

STEVE DELBIANCO: Thank you, Leon. I'm aware that over the last two years, we've had several individuals who used the DIDP and were very dissatisfied with the way in which ICANN responded. I wanted to ask whether this Transparency team included individuals with experience at DIDP and whether their experiences are reflected in the recommendations so that we can avoid those problems in the future. Thank you.

LEON SANCHEZ: Thank you. Mike, would you like to comment on Steve's remark?

MICHAEL KARANICOLAS: Sure. I can't say specifically how many people within the subgroup have used the DIDP because, obviously, I don't have that information for everybody who's participating. But what I can say is that there has been work published by people and comments made by people on the list of who has frustrations with the DIDP and how it works. And certainly, we have taken that into account.

Oh, actually, no, that's not true. As I think back to the specific comments that we've gotten, we've heard about people who were complaining about overuse of particular exceptions which we factored in, we heard about people that were complaining about delays and how it was taking too long to get responses which we certainly factored in. So that experience did play a role, although the main focus of the analysis, I think, was on improving the policy itself. We were mostly focused on how the policy should be improved, but the specific experiences certainly were important context to informing that.

STEVE DELBIANCO: Mike, as a follow-up, was Ed Morris particularly active in the DIDP section?

MICHAEL KARANICOLAS: Yes, we got detailed feedback from Ed on this draft.

STEVE DELBIANCO: Thank you.

LEON SANCHEZ: Thanks, Mike. Thanks, Steve. Are there any other questions or comments in regard to our Transparency report?

Okay. So as I said, and I know Kavouss comments on the chat this will need to be reviewed carefully before we get to our, maybe in Hyderabad, so that we can, of course, address the different issues that have been raised and hopefully be ready to do a second reading on this on the report in Hyderabad. If it's not possible, well, of course, the discussion should continue until we are ready to have a final version for this report so that we can go to public comment.

With this, I would like to turn back to [inaudible] Mathieu for the report on SO and AC accountabilities. Mathieu?

MATHIEU WEILL: Thank you very much. Just as an addition to what you said, I think on the Transparency as well as in the other documents, I encourage everyone to share their questions. Even on the list, any discussion we can start on the list and take over during our meeting is bound to be more productive. I think I've read some concerns or issues from a number of participants in the chat. I think if we can start a discussion on the list, we'll be even more efficient.

Now turning to the second update which is the SO/AC Accountability Group, I think Farzaneh is going to provide this update. Farzaneh, are you here with us?

FARZANEH BADI: Yes, I am.

MATHIEU WEILL: Yes, I do hear you.

FARZANEH BADI: Mathieu, can you hear me?

MATHIEU WEILL: Yes.

FARZANEH BADI: Okay. So [inaudible] upload [inaudible] out. Okay. Our group, according to the CCWG Work Stream 1 report, is charged with coming up with a

[inaudible] to enhance our SO and AC accountability. This is one of the tasks that the report has [inaudible].

In order to carry out this task, the group decided to first ask SO and AC what sorts of accountability [inaudible] they have in place. We discussed with the group how to formulate the questions.

And oh, I'm sorry. You can't hear me? Oh, okay. I thought I had [good] audio [inaudible].

MATHIEU WEILL: It's, indeed, a little muffled but the volume was good for me, at least. For some, it's faint.

FARZANEH BADI: Okay. Shall I shout or is that not going to help?

MATHIEU WEILL: That is quite good here.

FARZANEH BADI: Okay, so I just speak closer to the mic. Then I will discuss with the group how to formulate the questions to be forwarded SO and AC Chairs. Based on the group discussion and comments, we came up with the following questions.

The first question is about Designated Community. The Designated Community is actually defined by the Bylaws, but the group asked –

sorry, it's not somehow [inaudible]. Okay, so the group asked, the group has laid out how the Designated Community is defined by the Bylaws but also asked the SOs and ACs what sort of interpretation they have of the Designated Community, if their interpretation is more broad or narrower than the Bylaws [definition]. We are not defining the Designated Community of each SO and AC. We still have a different interpretation based on relaying that and their response.

Then the [inaudible] questions are about accountability-related policies and procedures. We asked, what are the published policies and procedures by which the SO and AC is accountable to the Designated Community? For example, the policies and efforts in outreach to individuals and organizations in the Designated Community who did not participate in SO and AC and also the policy on procedures to determine whether individual organizations are eligible to participate in SO and AC [inaudible] discussion working group [inaudible].

And also a question on whether they have transparency mechanisms for the SOs and ACs on celebrations, decisions, and elections and whether these policies and procedures have been updated over the past decade. If so, if they can clarify what sorts of community [inaudible] they have addressed with that [policy].

And another aspect of the question is mechanisms for challenging or appealing elections. And the other question is about whether they have unwritten policies that are relevant to be exercised and if they can describe those.

These are the set of questions that our group has come up with in order to send [inaudible]. And we wanted to receive questions within the plenary to receive comments and feedback. Thank you, Mathieu.

MATHIEU WEILL: Thank you very much, Farzaneh. I see Steve's hand is up, so first in line for question or comment.

STEVE DELBIANCO: Thanks, Mathieu. I'm one of the Co-Chairs along with Farzaneh and Cheryl Langdon-Orr, the rapporteurs in this group. I wanted to add two elements of clarification.

The first is that we are able to find many documents online to answer what the charter asks us to do, but we thought that for the avoidance of doubt, we wanted to put these questions to the SO and AC leaders so that they can inform us of documents that we might not even find online or describe practices that an SO and AC uses which aren't written down anywhere. All of that would be helpful information, and we didn't want to take for granted that if we couldn't find it on the SO/AC's website or Wiki, that there were no such policies anywhere.

The second clarification is that we fully understand that most ACs and SOs are supported by ICANN staff, the group that works for David [Olive]. To that extent, we'd welcome if SO and AC leaders referred some or all of these questions to the particular ICANN staffer that supports them so that that staffer can gather the references, documents, and links that we are asking for.

Of course, the SO and AC can add any color or interpretations that they see fit. We did note on the first page of these questions that we repeated from the ICANN Bylaws – the old Bylaws, not necessarily anything that’s changed recently – we repeated the target or Designated Communities for each one of the SOs and ACs.

Remember that each of us as SOs and ACs. We are creatures of the ICANN Bylaws for the most part. That’s why we exist because the ICANN Bylaws created us, and so there is where we turned to understand who we are supposed to represent. We are inviting your clarification or interpretation on whether that Bylaws description fits what you think of as your served community, your Designated Community. So I hope that helps to clarify. Thanks again, Farzaneh.

MATHIEU WEILL:

Thank you very much, Steve. I see Kavouss’s hand is up and then I have a question of mine as well. But Kavouss first.

Yes, Kavouss. Kavouss, you have significant background noise if it’s your sound that we’re hearing, but we can’t hear your question, or if you’re speaking, we cannot hear you.

Maybe while Kavouss is trying to fix, we’re trying to fix the audio issue with Kavouss, a question of scope, actually, that came to my mind when I heard you speaking, Farzaneh, was in the case of the GNSO, are we planning to ask only the GNSO or also the stakeholder groups and their constituencies? What’s the scope of our inquiry here with these questions? [inaudible]?

FARZANEH BADI: Yes. Mathieu, actually, we discussed that with the group and the last discussion that we had, the group did not agree. They will specify that the question should be forwarded to the constituency and the stakeholder group. I think it's up to the SOs and ACs to decide whether they want to send the questions to the various stakeholder groups and constituencies as they have [inaudible] that is the [inaudible].

MATHIEU WEILL: Thank you, Farzaneh. That's very clear and that's a very useful clarification, I think.

Kavouss, I hope your audio is back.

KAVOUSS ARASTEH: Yes, I think it is established. I have one general comment that I shared with somebody privately and that is the following. Any question to the SO and AC which provoke or invoke any investigation by one SO in relation to the activities and conducting of the work of other SO and AC will give rise to some sort of unhealthy environment, retaliations, competitions, and problems, e.g., the GAC should not put in question how discussion is being held in GNSO, how decisions is made in GNSO, and so on and so forth. So we should not put the SO and AC in front of each other.

This is the comment that I make and I would like to have assurance that that is not the case because I saw in one draft made by somebody, this is the case.

Now, having said that, I heard that the question is raised today, Chief or head of SO/AC. No, the question is addressed to SO and AC, to the head of the SO and AC because Chief or head of SO and AC is not or are not authorized that on behalf of the SO and AC without being discussed there to bring something back to the group. So we should avoid that.

And thirdly, I heard from Steve DelBianco that there are information available to the secretariat, and then he said that the same thing is asked from SO/AC. We should not have two parallel paths. Either you get the information from the ICANN staff, put them together and revise your question, but send these to SO and AC but not in parallel. You should not put or create two parallel courses of action because that may give rise to some contradiction of information.

Either you trust the SO/AC and ask them the question, or you trust the ICANN staff and don't ask SO/AC. But you do not ask both of them at the same time, maybe one after the other. You ask the staff at ICANN to provide information, gather them, and tell them to SO/AC but not at the same time. So that is the difficulty that I have.

And fourthly, questions are very, very nice but answers are very, very difficult. Thank you.

MATHIEU WEILL:

Thank you very much, Kavouss. Just my understanding from what Steve said about ICANN staff was not that the questions would be sent to staff, but that, for instance, the GAC secretariat or the GAC staff support might be able to prepare a response on behalf of the GAC so that it doesn't create any additional burden on the volunteers and the

different members. So I think your concern is taken into account, Kavouss, on that one.

And I think your point on the accountability between the different SOs and ACs seems to be taken into account. Certainly, we'll have to double-check that, but I'm confident about this.

Cherine, you're next.

CHERINE CHALABY:

This is a question to Steve and Farzaneh. When Kavouss asked his question, it just triggered a thought in my mind and this is just for clarification. When we worked on the accountability of the Board, it was clear that the Board is accountable to the community and its stakeholders. That's clear.

Now we talk about SO and AC accountability. I would appreciate some responses to this question. Who are they – the SOs and ACs – accountable to? And what are the checks and balances? I'm not clear on that, and really I would appreciate to know where the thinking is going from Steve or Farzaneh. Thank you.

MATHIEU WEILL:

Thanks, Cherine. Farzaneh, Steve, or Cheryl – who wants to answer?

STEVE DELBIANCO:

I can take a crack at it, Mathieu. It's Steve DelBianco. Cherine, the charter for this SO/AC Accountability Subgroup in Work Stream 2 is precisely to dive into those questions and answer them.

The work our group has done so far says that, when you want to know the accountability of an SO and AC, you start with the community that the SO and AC was created to represent. Therein on page 1 is the list of how the Bylaws describe ALAC's designated community and GNSO's designated community. So the first level of accountability is to the community that an AC or SO was designed to serve.

Within that, there's a discussion of members of that designated community who maybe choose not to participate in that AC or SO or perhaps they're unaware by lack of exposure. Perhaps they chose to participate and found it difficult to penetrate the acronym soup or they were not eligible to participate.

So the targeted community – the designated community – is one universe, and within that universe we are trying to discover the degree to which it is open to participation from any member of that community.

The second and broader level is whether the global Internet stakeholder group, which implies all Internet stakeholders – whether there is any accountability to that broader group on the part of an AC and SO.

We don't believe that the Bylaws are at all clear about that. We don't believe that the charter for Work Stream 2 SO and AC Accountability explicitly calls for that. But there is a paragraph on the mutual accountability roundtable. It came from one of our outside independent

experts, and it made its way into the charter for this group and the Bylaws and otherwise.

So we are going to be attentive to that, although our group does not have a clear opinion about whether and how we need to change the way that an SO and AC exposes its deliberations and policies to the boarder world and how well it considers public comments that come from those outside of the designated community.

Cherine, I hope that's helpful.

MATHIEU WEILL:

Thanks, Steve. Yes, this is precisely where the group needs to focus its work, and I think that's part of the questions they're raising.

Is that okay, Cherine?

CHERINE CHALABY:

Thank you, yes. Thank you, Steve.

MATHIEU WEILL:

Thanks, Cherine. Next is Alan, and I will close the queue after Kavouss because we'll need to move on. This discussion will obviously be carried through to Hyderabad and on the list.

Alan?

ALAN GREENBERG:

Thank you very much. I just wanted to make clear. I have no problem starting with the Bylaw definitions, as it were, but they were not written, I do not think, for this kind of exercise.

For instance – and I’ll pick another AC and SO, which we’re not supposed to be doing, but I will – the GNSO is open to certain categories of people, which makes it very clear that it is only composed of those who choose to participate. In my mind, they probably have some obligation to represent or think about those who have not chosen to be members or don’t even know about the GNSO.

The ALAC is written in a different wording that one could read it as, “For only the individual users that choose to participate, it is their home,” or we actually have to think about all four billion years.

So the wording there is somewhat vague, and I think the challenge right now – and that is the process the group is following – is to ask the ACs, “What do you think your constituents are (or who they are) and how is it that you relate to them?”

There’s going to be a lot of variation. Each of the groups is very, very different from each other. It ranges from the ASO, where the constituent members are formally represented and there is no question about the others. There are no others. To the other extent, in the ALAC, we’re talking about four billion people, and we don’t regularly send them all e-mails.

So the answers are going to be very different from each of the groups, and I think our challenge right now is to at least get some answers and

then see if we can make some sense out of them and then find some common ground. Thank you.

MATHIEU WEILL:

Thanks, Alan, for accurately describing the different steps that are taken by the group right now.

Kavouss, that will be a last question since it's your second intervention on the topic, can I ask for conciseness in the spirit of leaving time for the other groups?

KAVOUSS ARASTEH:

I don't know whether this is seven or two or three, I don't know. But if you count it, no problem.

I have difficulty [with] mutual accountability for the reasons provided before. I have difficulty with asking the SO and AC, What is your interpretation of "designated community"? This is a very, very legal and complex question. It's a waste of time for SOs and ACs. This has already been settled in the first stream, or Work Stream 1. We should not ask this question – what is your interpretation of "designated community"? I do not agree with that. Thank you.

MATHIEU WEILL:

Thank you, Kavouss. In the interest of time, I think we can note in the conclusions that you stated this view about not asking this question and try to work this out on our way to Hyderabad, where we'll try to finalize this set of questions.

I think we're not that far on this. I fear there might be a little bit of misunderstanding on the intent here, and I'm sure we can work this out easier in a face-to-face meeting.

With that, I'm now turning to Leon for the next subgroup update.

LEON SANCHEZ:

Thank you very much, Mathieu. I'm not sure if we have Lori Schulman back with us. I believe that she had some problems with the Adobe room, and I don't see her in the Adobe room.

So I would like to then have an update from the Human Rights Group. For that, I would kindly ask any of the rapporteurs from this subgroup to please provide an update. I believe that Niels could be in a position to provide an update on this, but I don't see him online as well.

I'm not sure if we have someone from the Human Rights Subgroup that's able to provide us with an update on the work that you've been doing.

If that is not the case, then I think we could go to...

TIJANI BEN JEMAA: Leon?

LEON SANCHEZ: Yes, Tijani?

TIJANI BEN JEMAA: As for the Human Rights Subgroup, Niels has sent you a status report about our work. I think you may read it. It gives the state of our work. But to give you the last word about that, we are not yet ready to give you any recommendation or any final work or any proposal for our work. Thank you.

LEON SANCHEZ: Thank you very much, Tijani. Just as a clarification, I didn't mean to skip any of the items that are in the agenda. I was just trying to substitute the items that I was supposed to [chair] with the next available item [on hand.] So there are of course no intentions of skipping any of the updates from the different subgroups.

Tijani, thank you very much for this intervention on behalf of the Human Rights sub-team.

With that, I will now turn back to Mathieu so we can go to the next agenda item, which is staff accountability.

MATHIEU WEILL: Thank you, Leon. The next agenda item is actually the previous one, if you're following correctly. I'm sure you are following this quite closely. We are now moving to the Staff Accountability Subgroup update, and I assume that Avri is going to provide us this update.

Avri?

AVRI DORIA: Hello. Certainly. Thank you. We did submit our report – can I be heard?

MATHIEU WEILL: Yes, perfectly.

AVRI DORIA: Nobody's tell me, "I can hear" – okay. I did submit a PDF. I wouldn't mind it being shown, as all the previous ones were. We didn't quite make the 21st deadline, but we did make the 23rd over the weekend, so hopefully that's no reason for excluding that update.

We are still in the early stages, but we have been trying to gather information. We started our effort to gather information even before [inaudible] issues report, since our issues report was one of the ones that came later. But unfortunately, the questions we had submitted for the issues report didn't make it into there, so they're still pending.

We have subgroup dependencies with Ombudsmen, Transparency, and Diversity that have turned up in our discussions. We've had few meetings, but we are working mostly within a document on Drive. It was a very successful way of working in the CWG on some of the subgroups, so we're trying to keep our meetings at a minimum while working online.

What we do have is a fair number of staff dependencies. One thing we have done is tried to schedule a meeting with Goran, first for the whole group. When that wasn't successful, we decided to schedule a private one between the two co-rapporteurs with him. We think that's going to

happen, but then there were accusations that we weren't being transparent about it. So hopefully it will still happen.

We really wanted to ask him several questions, one based on his role in setting the culture of staff. We wanted to understand what his policy and approach would be. We also had a discussion where we thought it was very important that staff members be able to participate in a group on staff accountability as members, but safely, without any fear of repercussion if they said anything that wasn't approved by their direct managers or beyond.

We asked a bunch of questions because it really is like working with a black box in some sense on various documentation that defined staff's role vis-à-vis the community – that what powers have been delegated by the Board to the CEO in terms of broad independence of action.

We're looking for elements, and that's where I'm in the – moving down here – I didn't [talk about] description issue at all. But the questions show up, so I've talked about [state-of-plan], dependencies. We're in the section on questions. What elements of following documents or similar document systems are in place regarding code of conduct, transparency, application criteria, induction, training, key performance indicators, and cross-functioning communication influence.

Are there any conflict-of-interest firewalls between different ICANN functional units? We're asking how staff accountability to the community is broadly expressed, audited, monitored, and reviewed. We're asking whether ICANN takes feedback from the community on

matters related for staff accountability and how does it solicit, accounts [for], and consider the feedback.

What processes are in place to respond to community concerns regarding staff accountability, including appropriate escalation preference, which went into the ombudsman? What role does ICANN see the ombudsman function as playing, helping to assure appropriate staff accountability?

A question has come up recently: are individual staff members accounted to the ICANN community, or are they only accountable to the ICANN business organization, the staff hierarchy? In other words, are there multiple points of staff accountability for the community, or is only the CEO accountable?

Those are questions we've been researching on our own and have not found answers online easily. Perhaps they're there, but we haven't found them.

As I said, we asked some of these informally before the issues report was written. Now we've had the questions online for a while, but we haven't made a formal request. I guess we're trying to figure out our next step in making a formal request. Who do we make it of, since having the list there for staff to see what wasn't adequate to precipitate answers? So how do we make this formal? And are we in a position where we'll have to use the DIDP in order to get this kind of information. We really don't know what our steps are in there.

We also have a pending question where we want to know what actions are being taken with regard to reports of staff accountability activities

that were brought up in the .registry LLC versus ICANN IRP decision. So we've been looking for some signs of that action to understand how that has been treated, since it was an accountability issue, to help us understand better the work we're doing.

So we're still on the Copenhagen track. We hope we get there, but we do have a lot of questions so that we understand the basics of where we're working. Thanks.

MATHIEU WEILL:

Thank you very much, Avri. It's very thorough work you're describing and nothing that surprises any of us, considering the amount of skills and experience in your group.

We are planning to have an exchange with – yeah, I can see you – Goran in the face-to-face meeting. I assume some of these questions would be good to address with him as part of this exchange. Am I correct?

AVRI DORIA:

If you're asking me, I'm hoping that he does participate. I'm also hoping that he does have the conversation that Jordyn and I have asked to have with him. But we have not gotten confirmation of that yet.

MATHIEU WEILL:

Yes. [inaudible] Considering the details in the questions sent to me, an intervention in the plenary from Goran is not going to be sufficient to address everything, but it certainly would be a start.

Any comments on the update from Avri and the Staff Accountability group? We have a discussion in the chat regarding accountability, the reminder that obviously staff is accountable to the hierarchy. I think this is well-noted and part of the subgroup discussion already.

Any other questions? If not, considering we have 40 minutes left, I – oh, Sebastien?

SEBASTIEN BACHOLLET: Sorry, Mathieu. Just very short, if you can hear me. One of the items we need to discuss is a question of the newly-created complaints of this within the legal department of ICANN. I think it's in link with staff accountability and with others, like the Ombud Subgroup. It's a question we need to raise with Goran in Hyderabad. Thank you.

MATHIEU WEILL: Thank you, Sebastien. That's indeed noted and perfectly appropriate.

We are going to – yes? Someone wants to speak? Hello? No, that was probably just in the background. So we're moving to the next item, which is a previous one. I think we have Lori back online.

LORI SCHULMAN: Yes.

MATHIEU WEILL: So back to you, Leon, for the next update.

LORI SCHULMAN: Hi. Can you all hear me? Can you hear me?

MATHIEU WEILL: Yes, Lori.

LORI SCHULMAN: Okay. I'm only on the mobile phone. I do not have access to the room at the moment, so please bear with me. I'm reading from my notes, not out of the chat. So I can't see what people are saying.

I'm assuming right now in the room on the reviewing is the annotated first draft of guidelines. Our group has made progress with the guidelines, and we are now discussing this very, very preliminary draft. I would call it not even a first read, but a pre-first read. We're hoping to have something more finalized by the report by the end of the week so we can submit it for Hyderabad.

I do think it would be a good idea for the group to at least see the direction in which we're heading and to get meaningful feedback as early as possible so that we can include it in any draft moving forward.

As I reported – I think it was two weeks ago – I submitted a written report to the list, and I had expressed that our group decided that we would keep the guidelines as simple as possible, in as much non-legalistic language as possible, and to really leave the specific procedures and specific guidelines at the doors of the SOs and ACs, particularly when it comes to the removal of SO/AC Board nominees.

Based on the discussions that we had in the group [inaudible] with the draft that you see, there's a Part 1 for all Board seats and a Part 2 that applies for SO/AC nominees, since there are two tracks for Board removal.

For all Board seats – I will read it aloud if people will indulge me – it can be for any cause. We're not going to name specific causes. That was part of the report in Work Stream 1. Petitions for removal should be fact-based with sufficient details to verify facts, supply supporting evidence that's available, include references to applicable Bylaws and our procedures if the assertion is that a specific Bylaw or procedure has been breached, and be respectful and professional in tone, as this is a very serious matter.

Part 2 is the track for SO/AC nominees specifically. I will tell you that bullets A, B, and C are where we would really like feedback on whether this group thinks that the first three bullets are even necessary. There's been some questioning among our smaller group that perhaps, by having these first three bullets, we're actually setting up cause and may be contrary to the report. I think it is important to discuss.

On bullet D, everybody seems to be in agreement. But, one, we would expect that the SO/ACs would establish expectations for Board member effectiveness with regard to representing SO/AC interests, transmit the expectations to the Board members within a specified period of time upon taking a seat on the Board, clarify that the SO/AC expectations are in addition to any cause that may be brought forth without limiting the cause. This would be the provision that allows, again – with the report that says we don't want an exhaustive list of causes.

And, D, develop procedures for consideration of SO/AC Director removal petition notices that include 1) a reasonable timeframe for investigation, 2) written verification of claims, and 3) consistent voting methods for accepting or rejecting a petition.

So these are our basic guidelines. We do have some questions – you’ll see them in the footnotes there – like whether or not we want to elaborate as to what we recommend is fair timeframe, or do we leave that to the SOs/ACs? Again, we refer to a reasonable standard, but it would be very helpful for the community, perhaps, to create some document – a side document – that would talk about what those expectations might be, given that this is a first impression issue for ICANN.

We are also debating whether or not the group should produce a recommended standard form that all communities use to raise the issue of Board removal to their respective body, whether it’s to the SO/ACs or to the decisional participant in case of a NomCom appointee.

That’s where we are. I do want to add two notes to this draft. One is that we did send a question to the legal group, letting them know that we do believe we will need some type of legal advice and legal time, the first being on – it’s the opinion that I’ve expressed in the group – the whole issue of diligence, whether or not an individual or a group is acting in good faith, really rests on process and that as long as we have a clear and documented process we should be able to meet a good faith standard.

However, given the quirks of California law, we certainly did want our guidelines reviewed by a very experienced, independent attorney to make sure there aren't any red flags, that we're not missing any provision of California law that would make these guidelines irrelevant or not useable.

However, following that question, we did also express a concern about a possible conflict of interest with an in-house team that reports, essentially, to the Board. So the question we put to the legal team is whether or not this particular conflict has been vetted in terms of creating guidelines for good faith conduct for petitioning a Board member's removal – or the entire Board, for that matter – and whether or not having a legal team that reports to the Board is sufficient to review it.

I'm also adding that our Board liaison, Lito Ibarra, and our second Board liaison, Rinalia Abdul Rahim, have both volunteered that the Board will also be putting some input into this document, which I think would be very helpful at this stage because we are working as a community. I think to leave the Board input out would be leaving out an important party to the process.

As I can't see the chat, I'm going to stop and breathe. If anybody has any questions, you're welcome to ask and I'll answer to the best of my ability.

LEON SANCHEZ:

Thank you very much for this update, Lori. I see that there's a question by [inaudible] legal team [inaudible] on that. Let the legal team

[inaudible]. The legal team should of course be meeting soon so that we can begin to address the different issues that are posed upon us. We can of course provide a quick reply to those issues.

So, yes. This is the first request that has been posed to the legal community. I think this is a good start for us to get back on track with the work of the legal community. So, yes, the legal team [inaudible].

I see that Alan Greenberg's hand is up, so, Alan, I give you the floor.

ALAN GREENBERG:

Thank you very much. I just wanted to highlight one of the difficulties that we have. I'm part of this team. You will recall that, in the CCWG, we had long discussions on whether Board members needed to be removed for cause, which tends to be a legal term, or we could simply do it because – we in the AC/SO or the group of ACs/SOs, as applicable – there had been a parting of the ways, so to speak.

We ended up siding on the latter. To use the ridiculous example, if we wanted to remove a Director because they wore purple pants, then that is our rationale. It's not cause. It's a rationale.

Terms like “the removal has to be fact-based” brings into question: is the fact that I don't like purple pants and you're wearing them sufficient? Is that really a fact, or does it have to be some misdemeanor that you have done, some specific [inaudible] done, which can be said in violation of what we believed?

So we have this conflict of trying to put words in to make sure that people are acting in good faith and have a process they can follow, and

at the same time, not be limited because of the way the CCWG decided that there doesn't need to be a cause but there does need to be rationale.

That's the tightrope we're walking. I just wanted to highlight that. And –

LORI SCHULMAN: Alan?

ALAN GREENBERG: Just where the words come in is going to be interesting.

LORI SCHULMAN: Hi. Yeah. I think, to your point, that is a key issue we're facing. This document may in fact not adequately address it, but we needed to start somewhere.

I'm wondering if then maybe we, instead of saying, "for any cause," do we make it so loose as to say "for any reason." "Reason" is different than "cause." It doesn't have the same legal ramification. But then when you go to "reason," you go back to "reasonableness." It's the reasonableness – I think we could agree on that – that, to just remove a Board member arbitrarily doesn't make sense, that there should be some sort of bumpers that we put into place so that Board removal is not arbitrary. Because I don't think the community said, "Well, arbitrarily anybody can be removed, just because." I don't read it that way, but if others do, I'd be interested in knowing.

ALAN GREENBERG: I believe – but I certainly will bow to those who actually have the words in front of them – that the wording we used is that there has to be a rationale, but not a cause, and I'm not sure where reason fits in-between the two.

LORI SCHULMAN: Well, yes. That's where, again, I think posting this very initial thought to the list early to get this kind of feedback so we can get correct wording, wording that comports with the spirit and the letter of the report, is vital because we are trying to keep it simple so we do have to be careful, but we don't want to waste the words either.

ALAN GREENBERG: Just for the record, I wasn't saying I disagree with what's here. I'm just pointing out to the whole group the difficulty, the tightrope we're walking. Thank you.

LORI SCHULMAN: Yes, thank you. I appreciate that, and I kind of used that as an opportunity to let people understand what we are talking about internally as well, that [where] the wordsmithing – if there are other words that the community, and particularly this group, if there are other words that you can see as substitute wording, that's what we're asking for that might bring some clarity to this.

This document is up on Google Docs. I will be sending a link out after this call. We'll post in the link to our internal group list, but I don't see any reason not to post it more broadly if people have an interest.

LEÓN SANCHEZ:

Okay. Thank you very much for this answer, Lori, and for the question, Alan. Are there any other questions or comments on this issue? Okay, I see no other questions, but I do want to point out a reference that was made on the chat by Kavouss, [the SO & AC] subgroup Co-Chairs and rapporteurs in regard to the belief that they're pushing the group [and not conducting meetings].

I would kindly encourage those who are not in agreement with how things are being conducted in any other subgroups to, of course, approach the co-chairs and approach the rapporteurs, but to also avoid this kind of confrontational pinpointing in our meetings, as Mathieu has pointed.

I believe that our rapporteurs in the different subgroups provide us with the best of their efforts, and they deserve our utmost respect, as Mathieu has pointed. I do want to acknowledge the great work that all of the rapporteurs have done in each of the subgroups, and of course, encourage everyone to keep this conversation in a respectful way.

So Kavouss, we note your disagreement, but we do believe that all rapporteurs are doing a good job in a neutral way, and the fact that someone or a group of persons are not in agreement with the rapporteurs doesn't mean that they are actually not doing their work or

delivering as we expect. So with this, I would like to turn back to Mathieu for our next agenda item. Mathieu?

MATHIEU WEILL:

Thank you very much, León. If I'm not completely lost, our next item is Ombudsman, so Sébastien is going to have the floor. Just a timing perspective: we have less than 25 minutes left, so I think we need to consider the fact that we'll have more time to discuss in Hyderabad, and if we can have the last two updates pretty brief, that's certainly going to be helpful for us to start discussing the agenda for the Hyderabad meeting, which is still our next item. I'm sorry for that, Sébastien and Greg. Sébastien?

SÉBASTIEN BACHOLLET:

Thank you. I will say, as usual, the last one gets less time, but I was hoping for three hours for presentation, and I will just get five minutes.

I would like to make a point about the organization: I do feel that we don't need to discuss here the presentation. It could have been the best way, it's just how I make my presentation, and if you have any question, keep them for our face-to-face. It will be more productive than to have presentation within our meeting in Hyderabad.

We'll go very quickly – and sorry for that – and contrary to all the other, I have a PowerPoint presentation and not word document. I hope that you are okay with that. I feel more comfortable with this type of presentation than to write something. Maybe it's my [problem] with skill, not just English, but writing in general.

Okay, I will go quickly on what was the result of Work Stream 1 because all participating in this meeting know about it. But it's just to show you that we have taken that into account. It's already done, this one. Those ones, it's quite a long list, but it's what we are doing. I will come back into detail on our work plan. That explains that, and I will come back again on that later on.

We have some issue about comment with staff accountability, and that's a point that was raised about coordination between subgroups, and we heard about that already.

And then, obviously, we try to liaise with the other subgroup. First items we're working about the stress test number 34, and we are still working on that and need to take into account the new accountability model, and particularly the empowered community.

I will also go very quickly on this one, because we already got a full presentation about what's happening with some of the ATRT2 recommendations, and [part] is now in our basket. I think I will also come back on that later on. But now, the question about the funding seems to be resolved, and we need to see how we will work on that issue. We have an open question and awaiting for inputs from the team who were – ATRT2 implementation team, sorry – about some of the other points of the 9.3 recommendation from the ATRT2.

We already discussed that ICANN ombuds office will handle complaints [inaudible] PTI. We will work on how to implement that in the document about the ombuds office.

Then, you already heard about DIDP, Documentary Information Disclosure Policy, and from this Transparency subgroup, we get two points that are related with our work.

One is the role of the ombuds regarding some documents if they are not released to the requester, and the second is how the ombudsman can be included in the way to make known by participant this possibility of using the DIDP and also if the ombuds office could be in charge of some basic statistic or not. It's something we will discuss later on in one of our [inaudible] common meeting with Transparency subgroup to discuss that specific issue and to decide what to do with it.

We have at least four items where we will need some inputs. The one with human rights, could be ICANN ombuds office be asked to deal with human rights complaints? The question of diversity, I know that there is a discussion about having an office on diversity. Where it is based, and is it included in the future ICANN ombuds office or not? It's something we will need to discuss with the Diversity subgroup. A question of the election, and the last point is about complaints officer, and I already talked about that earlier in one intervention.

Of course, we still have in mind that we have to review the independence of the ICANN ombuds office and the question of the charter of the ICANN ombuds office versus the industry best practices.

We need – now that we know the budget this year – the subgroup needs to develop the requirements and the deliverables at least for the one who will make the review, and how we will oversee the vendor, what will be the vendor selection process. I am sure that there are

already well established practices within the ICANN staff to do that, then we will follow them. When we get the report, we will have to work on and to transmit it to the full CCWG. And we, of course, will have to take into account the new Bylaws, the empowered community, and the role within the ICANN ombuds office.

I will go to the last slide, and now that we have the confirmation of the budget, we need to prepare the evaluation requirement document, and of course, we will have to discuss a schedule. Either it will be – anyhow, we need to reorganize the schedule to include that, and we will have to discuss after we have the [inaudible] if we stop the work of this subgroup or if we have some parallel work we can do.

I think that at least the newly created function for the ombuds can be done in parallel, but it's an open question. I will be happy to have this feedback either now or in Hyderabad. So that's my report on the ICANN ombuds office drafting team for now, and for the Hyderabad meeting also. Thank you very much.

MATHIEU WEILL:

Thank you, Sébastien. Great that you're ready for the Hyderabad meeting. A couple of other information that you said is this recent news that the ATRT2 external assessment would be sort of part of the group's work, and we'll also have an update on ATRT2 on our agenda, provided by Larissa from ICANN staff in our agenda in Hyderabad. Those are all related points.

Moving on to the last update, if there's anything new to report. Handing it over to you, León.

LEÓN SANCHEZ: Thank you very much, Mathieu. The next subgroup to report is the Jurisdiction group, and I just want to note that we are 13 minutes before ending this call, so I would kindly ask for brevity and a very concise report on this. Greg, please update us on the Jurisdiction subgroup.

GREG SHATAN: Can you hear me?

LEÓN SANCHEZ: Yes, we hear you.

GREG SHATAN: Okay, thank you. In the Jurisdiction group, we've been meeting weekly, and having considered and then set aside a couple of early issues, we moved on to a couple of the key topics for the group on which there is broad agreement, at least that it is properly before the group.

First is going through the multiple layers of jurisdiction, which were initially set forth in Annex 12, and trying to expand our understanding of those and make sure that we have a common understanding of them, first in the subgroup, and then we can communicate out.

For each of these layers of jurisdiction, you'll see in the document in front of you, we have tried to explain what, factually, that jurisdiction layer refers to. Then the last subsection under each is at least a

preliminary exploration of the effect of that layer of jurisdiction on ICANN generally. Then we'll be moving on to more detailed discussion I'll mention in a minute, but so far, we have identified the jurisdiction of incorporation, jurisdiction of headquarters location, jurisdiction of other places of physical presence. It's also been suggested that jurisdictions where ICANN has important assets maybe are a related or a separate layer of jurisdiction and one for which separate effects may be on the list as well.

I see a question in the chat, "When was this report circulated in the subgroup?" This is just the multiple layer of jurisdiction document that we've been working on, so I took the most recent state of it, cleaned it up a little bit, and have provided it here. This is our working document, so it's accessible to all people at all times, unless you have Google Docs access issues, in which case, we'll send around PDFs from time to time.

The next layer, and one which is of particular interest, is the jurisdiction for the law used in interpretation of contracts, what we're referring to as choice of law or governing law, the law that in fact is chosen by the parties.

And here, we are – this is where we need to dig deeper, since the focus of our group for Annex 12 is looking at the effects of ICANN jurisdictions for use in the disputes on ICANN's operations and policies.

This is, as I say, a document in progress. Some parts of it are more settled than others. We are also working on – let me just go through the last bit here?

There's also the jurisdiction for the physical location of disputes, which we're trying to call venue, which also brings in the type of forum, whether it's a litigation or an arbitration or IRT. In some cases, the actual providers specified, such as the ICC or the ICANN IRP panel.

Then, one layer which listed in Annex 12 but which we really haven't had any comment on yet is relationship with national jurisdictions for particular domestic issues. There may be comments on this in one of our other documents, but we need to bring it in here.

And last, one listed in Annex 12 is meeting NTIA requirements. It has been suggested that now that the transition has been consummated and the NTIA contract has expired, NTIA approval requirements is not a factor and that this layer should be deleted. We'll need to look further into that question of whether this is still a relevant layer for our work.

The other piece of work that we are working on at this point is trying to answer a question that's really posed in Annex 12, which is, what is the influence of ICANN's existing jurisdictions relating to resolution of disputes, i.e., the governing law and the venue, on the actual operation of ICANN's policies and accountability mechanisms?

Here, we have another Google Doc that we are working on, and it is far from settled and really so much of a working document that showing it to the group at this point would be premature. Of course, the document that's in front of you is also a working document and not a consensus document. Although by and large, the text that's in black doesn't seem to be causing controversy, at least not at the moment.

The point of our exercise that I just mentioned to you of answering this particular question is to look at something where we're not talking about whether this is in scope or out of scope but really about the substance of the question of what are the effects that ICANN's jurisdiction has on resolving disputes and then how ICANN's policies operate and how the accountability mechanisms operate.

And the question of influence which is taken from Annex 12 is important because it is not a positive or a negative term. There can be positive or negative influences, so we will be exploring both. To the extent we find that there are influences or really concerns that are raised that need to be fixed or can be considered possible candidates for fixing – it relates back to the so-called GAP analysis – we'll then need to consider how we can remediate that or what the cost-benefit analysis is of remediating that. Ultimately, that will be also part of our recommendations to the extent that we find any issues that appear to require fixing, so to speak. So that is pretty much where we're at.

Just to mention briefly that the two items we put aside, first was the question of whether it was in our scope to recommend moving ICANN's headquarters or place of jurisdiction from California in the United States. What we agreed to do was to put that aside and see if we had a problem that required fixing and locate potential fixes and see if there are any problems where the only viable fix would be moving ICANN. So we will revisit it in the context of a particular issue, rather than discuss it as an abstract point.

And last, the GAP analysis that is mentioned in Annex 12 has so far been somewhat elusive because there is very little discussion actually in Work

Stream 1 of a GAP analysis occurring. So we need to come back, again probably in a specific context, to see what GAP analysis there is and what the results of it may have been and what it could be. Thank you.

LEÓN SANCHEZ:

Thank you very much, Greg, for this brief update. We have five minutes before the top of the hour. I note that Kavouss' hand is up. I guess that it's worth noting that this is an update report and this is a work in progress and that nothing has been agreed. And as Kavouss is stating on the chat, it's a good start for the group. I see that many are in agreement with Kavouss, especially from the governmental sector. Kavouss, would you like to add anything to this very briefly?

KAVOUSS ARASTEH:

Yes, I want to add something very quickly. The main problem we have is applicable law, and we have to start on that as soon as possible. This multiple layer that we have some result, but applicable law, as soon as we open our mouth, they will say that, "No, this is not policy. This is implementation," and we never reach any point to [sort out] what is applicable law to what case. We should have several cases, and we should discuss what are the applicable laws under those cases. Thank you.

LEÓN SANCHEZ:

Perfect, Kavouss, thank you very much. I don't want to expand on this discussion. I think this is going to be something that we will be discussing in Hyderabad. Therefore, I would kindly encourage everyone

to follow the discussion on the list, and of course, in our face-to-face meeting.

And with this, I would like to turn back to my Co-Chair, Mathieu, for our next agenda item.

MATHIEU WEILL:

Thank you very much, León. We actually have three remaining items in three minutes, so I think part of the conversation will certainly have to move on to the list, but it's important.

First one is the agenda and plan for Hyderabad. What you're seeing on your screens – can we move one step up, please – is our draft agenda. We are trying to shape an agenda with time slots that match – the discussions that we've had right now during this session were really a preview of what we need to expand on during the Hyderabad face-to-face.

We'll have basically four sessions with as little administration as possible. We'll still need some. We'll have an introduction to the dashboard that staff has been preparing in order to raise the transparency of the reporting from our group to a new level, and actually, pretty proud of what the staff has been designing for this.

You need to be aware that rapporteurs are being asked to provide some input in terms of updates that can be incorporated into this, and that by the time we are in Hyderabad, we're hoping to get some financial reporting, as well as, obviously, these updates. A draft mockup type prototype dashboard is going to be shared on the list shortly after this

meeting because we won't have time to discuss this at length. But we'll have time in Hyderabad to discuss so that the full community can be updated on our work.

So we'll have IRP. We'll have the various groups with time slots that really, we've tried to match to the amount of discussion we're anticipating.

Can we go to the next slide? There are two things that might change from the slide that you're seeing. One is obviously the exact timing of the exchange with the ICANN CEO. It's not confirmed yet.

The second is that we need to have a discussion on ATRT3, following the recent letter from Steve Crocker. We'll have to find a way to spot it somewhere. I noted from Sébastien that he's announced a significant discussion on the ombudsman, which might need to be placed somewhere. We'll discuss this with the various rapporteurs.

That's how we're seeing the agenda right now. We'll share this draft on the list so that everyone can chime in. Our goal is to provide clear slots so that people can join into the conversation at specific hours. You have seen today that we'll have more than enough for very substantial discussions, and hopefully, to be able to report at the end of the day of significant progress and calls for input from the community.

That's it for the face-to-face meeting, and I'm moving straight on to AOB after that. Are there any other business to be raised? Chris, your question about Work Stream 2 subgroup reports, no, there are some reports and discussions in the morning and others in the afternoon.

That depends on the topic. So we'll share that indeed on the list, so everyone can chime in with their respective requests, please.

I do hope we'll have most of the group available for the full day. That's why we are getting there and getting significant support from ICANN. But obviously, if there are any specific issues, we need to anticipate on that.

Good. So with that – yes, Terri, we will need to look at the proposed dashboard on the list and in Hyderabad as well – I think we are good for this call. Thank you so much for the very interesting and useful discussions. We're set up for a good meeting in Hyderabad. Safe travels to all of you who are going there. I will be participating remotely but certainly following very carefully what Thomas and León are doing onsite.

Thank you so much, and have a good day, night, morning, whatever is your time [schedule] right now. Cheers, and talk to you soon.

[END OF TRANSCRIPTION]