
HYDERABAD – WS2 CCWG Accountability Face to Face
Wednesday, November 02, 2016 – 09:00 to 18:00 IST
ICANN57 | Hyderabad, India

LEON SANCHEZ: Good morning, everyone. Could you please take your seats? We will be beginning now. We have remote participation and we need to stick to our schedule in order to have the remote participants actually join us. I'll hand it to my co-Chair, [Mathieu].

THOMAS RICKART: Good morning, good afternoon, good evening, everyone. This is Thomas Rickert, the GNSO appointed co-Chair to the CCWG. Can I get confirmation that the recording has been started? Brenda says yes, and the technical folks. Thanks so much.

I'd like to welcome all of you to this Face-to-Face meeting of the Accountability Group in Hyderabad, and we would like to start on time because we have a lot of work to do today. But before we dive into substance of our work, let's do a little bit of administrative work first.

For everyone who is in this room, you find coffee over there. Lunch will be served in this room so you don't have to leave this room. We can stay here and you will be fed, which is good. We will have Göran here after the coffee break for one hour, and therefore let's make sure that we are on time in order to make sure that we make the best out of the time that we have with Göran.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

I would like the rapporteurs of the Staff Accountability Group, the Transparency Group, and the Ombudsman Group, to meet Leon and myself for a little huddle in the coffee break so that we can discuss a few things before we meet with Göran.

But the idea in general, so that everyone knows, is that we're going to have this meeting, this one hour, with Göran in three blocks, if you wish. First we're going to ask him to present his idea of the Complaints Office in a few minutes so that we don't base our views on hearsay but that we get firsthand information from Göran. Then we would like to ask the rapporteurs of the three subteams, because these three subteams have the closest relationship to what Göran is planning to do, to specify to Göran what their requests of Göran are so that they better understand how his initiative and our work can be really intertwined and that there is no competing outcome. And as a third step we would ideally like to agree on concrete steps with Göran or someone appointed by Göran to work with us so that we make sure that this is a cohesive scheme that everyone is working on.

I guess these should be my administrative introductory remarks except for the usual roll call that we're going to take from the Adobe room so please make sure that you are joining the Adobe room. Also, if you want to raise your hands, please do use the functionality in the Adobe room for that matter. If you're on the phone line only, please do speak up now so that we can add you to the list of attendees. If you have an updated SOI, please indicate so so that you can speak up now. But since we have updates to SOIs so rarely I'm not going to pause

now. But just please make yourself heard if you have an update to share with this group.

Finally, I would like to get your attention for the expected standards of behavior. I think there's even a slide outlining the expected standards of behavior, so these are the ground rules on which we are working together.

And we do want to hear as many of you during the day today. So we would really like this to be a meeting of all of us where everyone gets the opportunity to speak. So as usual, we do have a clock lurking in the background so if we see that there is a need for making sure that the statements are not too long, we might make use of that clock.

Why are we here? We are here to work on Work Stream 2. And as you all know, the Transition is now over but still the turnout in the subteams is not as good as it should be. And I think that the subteams in Work Stream 2 deserve more attention because these are great topics to work on.

Prior to the Transition happening, you know a lot of people may have thought, "Okay, I'm not sure whether I should really invest time in this because I'm not sure whether the Transition will actually take place." This uncertainty is over. The Transition is done. Others might say, "Okay, now the Transition is done, why bother and work on Work Stream2?" But as you may recall, in Work Stream 1, we did only those things that were really needed to get the Transition done. And we've often used the analogy of an architecture – the Accountability architecture that we're building. So you might see this as the robust

foundation of a house that we built and we built this house but there is no furniture in it, there are no windows in it, there is no door in it, to make it a place worthwhile living in.

Let's now make sure that this house gets windows, that it gets furniture, and that it's a good place for the multistakeholder community to live in. So our work is only half finished. Let's make sure that we finish it entirely and let's particularly make sure that it's finished because we are under observation of the global community. They want to see whether we can deliver on our promise. We did it for the first half but now we really need to make sure that we get the rest done.

So this is the "why." We are here for the reason to make Work Stream 2 happen, to complete our work, the important pieces of work that are underway. So let's work on that full throttle.

How should we work on that? These remarks in the next two or three minutes are my personal remarks only, so if you don't agree with them, just blame me. Don't blame my fellow co-Chairs.

Let me tell you a little story. I was Chairing this quite controversial GNSO PDP Working Group on the Protection of IGO and INGO names, and some of you in the room have been on this team at the time. We worked on recommendations and we got rough consensus on the recommendations. And those who didn't like the outcome of the consensus really hated and do hate the outcome of the PDP Working Group. But when this was brought to the GNSO Council it was unanimously adopted. And even those who hated the

recommendations, as much as they could, grabbed the mic and said, “We still vote this up because we worked as a community. We got to consensus. And now we support the process. Now we support the consensus.”

And I think that’s exactly the way it should be. Unfortunately, with our Work Stream 1 recommendations, with our report, this was not true. We saw individuals not from somewhere that didn’t know, but we had individuals in our group with all the knowledge about what we did and they went out and tried to torpedo the process as much as they could. And not only did they torpedo the process, but they were misrepresenting facts. They were putting the outcome of our work upside down in order to make sure that the Transition doesn’t take place.

This is something that I hope we will not see in Work Stream 2. This has been called unfair by some. I would call it backstabbing to work in this team and then go and have other motives and other criticism that hasn’t been raised inside this team to basically torpedo this whole process.

I guess this is something that we should not have in future, particularly since the world is watching us now. This is the first opportunity for the community to work under this new regime and the community itself needs to be accountable and play by the rules.

So in conclusion, we have done something very remarkable in Work Stream 1. We’ve done something unprecedented in Work Stream 1. Let’s make sure that we don’t just rest on our laurels but that we take

this to the next level and that we show to the outside world that this really works and that we can deliver the full Accountability concept.

Let me quote my friends from the Rock band Van Halen who said, “Only time will tell if we stand the test of time,” in their song, “Why Can’t This be Love?” So we can’t know now whether multistakeholder model as we see it today will be there in a couple of decades’ time, but we are now setting the rules and we can work on the probability of whether this is going to succeed or not. And all the topics for Work Stream 2 are important to make sure that this overall concept is robust enough not only to protect ICANN and ICANN’s mission, but also to function as a role model for other challenges that we see in the Internet world that could make good use of a multistakeholder model approach.

With that, let me end my introductory remarks. Thank you for your attention, and over to Leon for the next agenda item.

LEON SANCHEZ:

Thank you very much, Thomas. Our first agenda item is the PCST Report, and I’d like to highlight the excellent support and work that the PCST and the ICANN Finals Team has been performing. I would like to thank, of course, Bernie as the head of the PCST, and I’d like to hand it to Bernie so we could have a report and after that I’ll make a couple of remarks on that. So Bernie, you have the floor.

BERNARD TURCOTTE:

Thank you, Leon. Good morning, everyone. I'll do some introductory remarks. I'll go through the reporting for the community part of the figures. And we're fortunate enough to have Xavier Calvez to my left here who, as you know, is the Senior Finance person at this table, and he'll go over the remaining reports for the ICANN part.

It's been a process, just to catch everyone up. In Marrakech, the PCST was formed to understand the expenses to date on the Transition and to help set up a financial tracking system and responsibility for part of the Transition budget for Work Stream 2. So it's not a question that we're responsible for the entire budget, but we've been allocated certain parts and we are responsible for those parts as to how we manage them.

We then produced the budget for Work Stream 2 while we were in Finland, and that budget was last month approved by all the Chartering organizations. So we do have an official budget for the Transition which includes Work Stream 2 and the IRP IOT.

We are tracking against those elements. As you will see in the report there are two main sections. There's the community part – the part that this group is responsible for, and your co-Chairs have accepted to be the ultimate persons responsible for managing that part of the budget. The remainder of the budget is the responsibility of ICANN, and we will be tracking that on a regular basis.

We needed to do a little work to get started. We have today the reports. For those who are not familiar with the ICANN Fiscal Year, it begins at the beginning of July. And so we are presenting today the

results for July, August, and September. We have also established a process whereby 30 days after the close of the month every month the numbers will be made available, will be presented to the co-Chairs to make sure everything is okay, and then within five days after that they will be made public as these numbers have been made public. So everyone will see exactly where we are on the spend rate and how we are doing this, and we will have the ability to answer questions from the community when these things are presented should you have any.

We only have five minutes so I will make this very quick. For the community part, which are the top lines, we only have IRP Phase 2 and Work Stream 2. For IRP, the only expense has been external legal expenses which are well within the parameters of what was forecast for that. The project was frontloaded so although it's a significant part of that budget, that is not unexpected.

For the Work Stream 2 versus the elements of the budget for which we are responsible, which is travel and legal and other professional services, for those three months we have had no expenses. Obviously, funding for travelers to this meeting will mean that there will be expenses in the next report which will cover October and then further costs will be included in November.

Before I hand it over to Xavier, I will take any questions if anyone has them.

It doesn't look like it. I'll hand it over to Xavier for the ICANN part. Thank you.

XAVIER CALVEZ:

Thank you, Bernard. Good morning or good evening or good afternoon, everyone, depending on where you are. I just want to take a step back on what Bernie explained and Thomas just said a little bit earlier, too, that we needed to take things to the next level, and I think the process that led to the approval by the chartering organizations of granting the CCWG co-Chairs the authority to manage a budget relative to a fraction of the activities of this group is a historical move in the life of managing resources for working groups at ICANN. So I think it's an admirable step forward, and it's the multistakeholder at work – the model of multistakeholder – and it's all about accountability and Transparency. So I think this is a reality. It's not just words. And this reality is embodied by the co-Chairs in their acceptance to taking this responsibility of managing the budget, and the PCST is simply there to support them in their role and enable them to be able to demonstrate to you as members of the CCWG but also to the public their responsibility in managing those costs and the Transparency about it.

On a multi-basis, as Bernie said, this report will be published after it will have been reviewed by the co-Chairs and understood by the co-Chairs and we will also support the co-Chairs in producing forecasts on an ongoing basis so as to have a maximum visibility as to the future costs associated with the activities here so that there is planning and anticipation of any possible issues in the future, which is what a forecast helps doing.

Relative to the Transition implementation and general activities, you can see that there is a fairly significant amount of resources that has been incurred over the first three months of the Fiscal Year, which is what this period covers. Not surprisingly, since the implementation of the Transition has largely included the activities relative to the PTI and its formation, of all the contracts that have been put in place to organize the relationships between the various partners including the PTI but also the RIRs, the IETF, etc. you're all very well aware of all the relationships that have been put in place under contracts. And that activity has taken place during the three months' period that we're talking about right now. So there's been an intense amount of activity of the staff support, of yourselves – you have participated to these activities. There's been, of course, large support of the legal firms in writing contracts, various iterations on the contracts, and that is reflected here in the legal services that have been incurred.

Of course, this work was a one-time work and is largely completed. Therefore there will be little costs incurred relative to that specific part of the implementation, simply because the implementation is basically completed from that perspective.

So [a large] – the costs were again frontloaded here relative to the implementation. And it is expected that these costs will be minimal through the rest of the year.

So this is why you can see in the comments, for example, that though the three months that have passed represent only 25% in [quotes] of the Fiscal Year because it's three months out of 12, there is about 33%

of the budget that has been spent due to those frontloaded implementation activities.

At this stage, I won't go further in the details. I will simply check if there's any questions or comments from anyone in the room or in the Adobe room.

LEON SANCHEZ: Thank you very much, Xavier, for this explanation. Thank you for all the work that you have been performing throughout these months. And I see that Sebastien Bachollet has his hand up. Sebastien?

SEBASTIEN BACHOLLET: Yeah, maybe I just got the answer. The last column – 25% for everything – it's [they] are taking into account the three months over 12 months. Okay, that's not very clear, but okay.

And my second question maybe it's for Bernie, it's we will have to include somewhere in the budget what we will do about the review of the Ombuds Office, how we will deal with that in the future? Thank you.

BERNARD TURCOTTE: As to your second question, we're still working on that so I don't have a solid answer for you, but we're aware we have to do that. Thank you.

LEON SANCHEZ: Thank you very much. Next on the queue is Kavouss.

KAVOUSS ARASTEH: Thank you. Good morning or good day to everybody. A similar more or less question is that I understand relation between 33% and 25%. What is the guesstimate for the next three months? Do we go to 40% instead of 25%? And the last and more important question that I raised to one of the co-Chairs and the answer was not very convincing is that, is there any time limit to complete the work within the framework of the budget as a guideline for the rapporteur of the [eight] group know that they don't have unlimited time available because the budget is limited? Thank you.

LEON SANCHEZ: Thanks, Kavouss. Bernie or Xavier?

XAVIER CALVEZ: I'll try to answer the first part of Kavouss's questions. I think that to provide a rough estimate to your point, I'm suspecting that we will be closer to the 50% or maybe a bit over – between 50% and 60% - spend after the six months' period. This is three months. If we look at the next quarter of activity, we will be a bit over the 50% simply because we are now already over the 25%. But from this point on I'm expecting the spend to be a little bit more leaner. Staff support is fairly leaner, and there is not as much looking forward as much legal spend as there has been over the past three months due to the writing of the Agreements.

There is the budget for legal fees that is available on the basis of the requests that will be formulated to use it, but I'm expecting that to be spread over the remaining nine months of the year. So I would expect that we would be in the 50% to 60% at the next three months' mark, and I'm using three months because we've passed three months now so it's three months forward. But the report will be produced on a monthly basis.

Regarding the work on the WS2, I'll let you answer, Leon.

LEON SANCHEZ:

Thank you very much, Xavier. Kavouss, on the co-Chairs side, I can tell you that yes, we are aware that we have limited time to carry on Work Stream 2. Nevertheless, we have to remind ourselves that Work Stream 2 was structured to leave those points that were far more complex than those of Work Stream 1 and also would take more time to be discussed and agreed by the communities. So my take on this is that, although we have been having many calls in the different groups and some of them might seem to be theorizing in the points that they're discussing, I think that one of the expectations of our face-to-face meeting today is that we will be able to refocus those groups that have been discussing things theoretically in order to bring them back to pragmatism so that we are able to actually make progress on the different working groups with this theoretical basis that has been already discussed, but then landed it into a pragmatical terrain. So I think that would be one of the expected outcomes of our face-to-face meeting today. I hope that answers your question.

I see no other hands raised on this topic, no more questions. So I'd like to thank, of course, Xavier and Bernie, for your input and your updates. And since we are now responsible for our budget, I think that the next step is to actually review how are we going to report on our progress and our budget. And for that I would like to invite Karen Mulberry to the table so she can present to us the Dashboard that has been introduced in previous calls for the progress tracking of our group and also highlight that this is the first time that we have a tool like this dashboard for this working group and this is the first time we are responsible for the budget that we're spending.

So we need to, of course, [honor] the work that we have been doing in Work Stream 1 and act in full Transparency, for that is this dashboard so that we can be transparent about how we are spending the money that the community has approved, that the different chartering organizations has approved, for the CCWG to actually spend for their work. Also keep in mind that we will be speaking about legal costs later on today's meeting, and I have a proposed way forward to address the different legal issues that might be coming up in the different subgroups.

Now I would like to hand the floor to Karen so she can present to us the dashboard. Karen.

KAREN MULBERRY:

Thank you very much, Leon. I wanted to let everyone know that what we have to present today is actually factual data. What we've shared in the past has been a template with data that has been populated to

give you an example of how things would look. So today we've got actual data as of October for the activity of the CCWG, both the plenary and subgroups.

If you look at this slide, this is a general summary of the activities of the group for the month of October based on what we can capture from e-mails that are exchanged by the group by the number of participants who have signed up versus the number of people, because we can't discern on a meeting whether you're a participant or not, the number of people who are participating in meetings.

So you can get a good sense of the activity. As you can tell, we've had some drops in terms of the average community members participating in things as well as the number of different constituencies that have participated in sessions.

Those are the top two pods. If you look at the bottom, that's the timeline that was agreed and the tracks for the various subgroups. This was a guide. So using that, we've tried to gauge the progress of the work of the group itself.

Next slide please.

These are the subgroups' progress report. Each subgroup submitted a report. We asked to have the information in by October 25th so that we could produce an official report with all the data by November 5th. So our plan is actually to publish this on November 5th, but this is the status report. This is where each group has indicated where they stand

with their progress, and a summary of what they're focusing on and the updates from the group itself.

This will be done every month so the community will have a sense of where everything stands.

Next slide please.

We will also include in the dashboard the budget update similar to what Bernie just presented to the group. We'll try and capture that so it's all in one location, and we have notes in terms of what the budget details are and what that means. There again it will be updated and reported on the 5th of the month.

Next slide.

Each of the subgroups have been asked to submit a report, too, so we can get some details of the specific activities within the subgroup – how many participants have been attending the various conference calls –

Slide please. Thank you.

So each subgroup will have a report like this. It's filled out by the rapporteurs in terms of the scope of the work they're doing. You can see the details from the wiki page which we've captured in terms of the rapporteurs, how many active participants have signed up, the observers, and links to various details. And then you can see the activity based on the number of meetings, the number of active participants, and then the number of e-mails that are exchanged on

the list that was created specifically for that subgroup. That's the data that we can track.

We have the Work Plan Summary so you can see the outline of the approach that the group has decided to take for their work, and then the updates that they're provided.

So each subgroup will provide reports like this on a monthly basis and we will post those on the wiki so the community can get a sense of how well the work is progressing here in this group.

Next slide please.

Here's another example of the Human Rights Subgroup and the data that we've captured and the status that was reported by the subgroup. As you can see there will be all of those for every subgroup.

If you move to the Appendix please, and that's slide #17 in this deck.

It's a measurement of progress that was developed so that each subgroup can report on their progress using a common format between them. So there's similarities in comparison of progress for everyone so you understand what it means when they say they're at a different percentage. This is the key that was developed.

This is presented to you for consideration. If it is acceptable, we would like to publish it on the 5th of November. It will be posted on the wiki page for the CCWG Accountability and you can use that then to report on progress and success to the rest of the community members and within your constituencies.

Any questions?

LEON SANCHEZ: Thank you very much, Karen. We do have a question in the chat by Jorge Cancio, and he's asking on how is the average participation rate calculated or established? So if you could please give a [slide] of that.

KAREN MULBERRY: Let me go back –

The average was calculated based on the number of participants over time and then you know you've got X number of meetings, X number of participants, and it equals the average for that period of time. It was just something very simple to project participation and participation rates in particular.

LEON SANCHEZ: Thank you very much, Karen.

Are there any other questions or comments? Avri's got a question as well I think.

AVRI DORIA: I can speak to it.

LEON SANCHEZ: If you could please. Avri.

AVRI DORIA: I didn't raise my hand on it, but I'm being grumpy about it all, in that we've basically created more work for the rapporteurs who are doing this. We now got a set of metrics that basically it's like teaching to the test. We're going to have to do our work in a way that can be measured favorably. For example, if a group decided to do all its work in Drive documents, it won't be measured.

I can't say I'm happy about this. I can understand doing it, but I'm just very grumpy about it. Thank you.

LEON SANCHEZ: Thanks, Avri.

Any comments to that, Karen?

KAREN MULBERRY: I'm sorry, it's the data we have available. I wanted to make sure we reflect the attendees and the people who have signed up to be participants and the number of meetings. That's what we have to work with.

LEON SANCHEZ: Thanks. I see Jorge's hand is up. Jorge?

JORGE CANCIO: Thank you. My virtual hand has disappeared because I have some problems in accessing the virtual room. But it was a follow-up question, because if I understood you correctly, active participation is

measured by the showing up of those who are registered as active participation in one of the Adobe room meetings, or how is it measured exactly? So we have 100 members, for instance, in the working group as active participants and we have 10 meetings and 40 people out of the 100 show up in one of those 10 meetings and they sum up to 40% of participation rate, or how is that established exactly? Thank you.

KAREN MULBERRY:

[When] you say the participation rate is averaged and it's based on the indicators that you noted, we ask and initially when we [were] formed the subgroups for people to sign up to be active participants. Those names are listed on the wiki pages. They're added to as people indicate that they want to be active participants, so it's not a stable number. It grows. There's also people who sign up to be observers, but we try and track the active participants because it was defined as those who indicate that they're in that category will actively be helping out the subgroup. They're not just following the work of the subgroup, that they had volunteered to be active members. That's the data we have and then we just average that based on the number of people who participate which we capture from the meeting records.

LEON SANCHEZ:

Thanks, Karen. I have three people in the queue and I'm closing the queue with Niels. So I have Kavouss, Alan, and then Niels. So Kavouss, could you please take the floor?

KAVOUSS ARASTEH: Yes. Thank you very much for the information. Apart from the openness and transparency, to what extent this information is useful for the public to be published? Because we are not checking the validity and the way that has been gathered. Apart from that, without making it simpler for everybody, how much time you have spent to prepare this for? Does it really outweigh the activities that you have done to prepare all these details and so on so forth? Just to know the usefulness of that and in the next three months will be more difficult according to all those? I have seen many groups and I know the degree of activities and question raised, so to what extent they are useful for the public? Thank you.

LEON SANCHEZ: Thank you very much, Kavouss. Any reaction to that, Karen?

KAREN MULBERRY: I would defer to the co-Chairs in terms of the usefulness of the data. The data itself is captured from the meeting reports and what has been reflected on the wiki pages by who's signed up for what. So the data is what it is. It does take a little bit of time to prepare, but the value – and the co-Chairs can express their opinion on what that means.

THOMAS RICKERT: Let me just briefly respond to that. Ultimately, whether you think it's useful or not is not just for us to determine. It's a discussion for our group. But if you look at accountability of our group and transparency on where we are, we think this is useful so that the community can see where we are with the different projects. This is quite a big project also in terms of project management. We have 10 different topics that are working in parallel. So we from a Chairing perspective need to get a view on how far the different projects are, whether we need to assist certain projects particularly in order to make sure that we all deliver on time. I think this information deserves to be out there for those who are interested. Whether you think it's useful or not, maybe that's a discussion for us to have on the mailing list. We're open to that. But we definitely think that this is helpful and we also think that we really take transparency of the work on the way to the next level if we publish this type of information.

LEON SANCHEZ: Thanks, Thomas. Next in the queue I have Alan Greenberg.

ALAN GREENBERG: First a quick question. The attendance as you pointed out, the membership changes over time. Is the denominator captured at the time of the meeting or is it the high water mark ever, or what?

KAREN MULBERRY: It's captured at the time of the meeting.

ALAN GREENBERG: Okay. I guess this is going to sound like I'm against transparency, but people sign up for these things as participants for a variety of different reasons, some with the good intentions and never fulfill it but they don't take their name off. Others have motivations that occasionally they're going to want to participate so the rules are, if you want to be able to speak you have to be a participant.

I think we're going to end up seeing very low numbers which will be used against us, to be blunt, saying that there was such low participation the recommendation are not valid. Whereas I suspect of the real people who really want to participate, the actual number is much higher.

I understand it's probably too difficult to ask each of the participants, "Are you really participants or not?" but I'm a little bit worried that the numbers will end up making us look like we have five people who are making all the decisions and everyone else is just shaking their head yes and not paying attention. So I do have a worry about that. Thank you.

LEON SANCHEZ: Thanks, Alan. Next in queue I have Niels.

NIELS TEN OEVER: Thank you very much. Aside from my content question I have a bit more of a process question, specifically pertaining [to] the first orange

indicator, namely the production of a subgroup draft for consensus. We have had since the beginning a regular subgroup drafts, but for me it's a bit unclear what you mean. Does this mean that there is a draft on which there is consensus, which is moving to consensus, or [does it] seems a relatively broad [an] indicator that's not completely clear to me. So it would be great if you could elucidate it a bit.

KAREN MULBERRY:

Yes. To respond, what we were trying to outline is when you have a draft that's stable in the group that you're going to present to the Plenary for discussion, trying to track that. I know you have drafts within the group, but then the process needs to go to the Plenary for their review – two readings – for it to be adopted and then move on so that we can issue it for public comment to gather further feedback on the subgroups' recommendations.

Just trying to come up with a mechanism for capturing when the work goes from the subgroup to the Plenary for discussion.

NIELS TEN OEVER:

But that seems to be the second indicator, right? Produce a draft for CCWG's consideration. So that seems to be the point that you're describing – once we have consensus in the subgroup for it to move to the CCWG and then the next indicator is CCWG approval. So what would be the first indicator? Because now the first and the second indicator seem to mostly overlap.

KAREN MULBERRY: Pretty much so, yes. You could indicate within your subgroup that that draft is where you are in terms of your status of the work. I was looking at it in terms of you've got a stable document at that point. Because you've got, in terms of scoping and other development, different steps.

If you have some suggestions for a better way to define what that step might be, I'm very happy to make some modifications to make it clear. Our only intent was to have measurements be uniform for all the subgroups so that people have a good sense of the progress and there's some commonality that we can establish.

LEON SANCHEZ: Thanks, Karen. What I'm hearing is that the Dashboard seems to be a good idea, a good tool, for us to continue reporting our progress, but certainly needs to be adjusted at some ends. I would like to add as an action item to actually have feedback from the larger or the Plenary CCWG as to which points should or could be adjusted to better reflect how the different subgroups are working and progressing in their respective topics. So this should be or this would be a discussion carried out in the list so that we can, of course, listen to the different points that could be actually improved in this reporting dashboard.

With that, I would like to thank you, Karen, for your presentation on the dashboard and I would like to go to our next agenda item. I do note that Greg had his hand up but I have closed the queue with Niels so I apologize for that, Greg.

I'd like to hand over the floor now to my co-Chair, Thomas.

THOMAS RICKERT:

Thanks very much, Leon. We need to speed up a little bit in order to get back some of the time that we spent on this discussion, which hopefully we're going to continue on the list. I would like to invite Larisa to the table. She's going to give us a brief update on ATRT 2. And after that we're going to have a quick update on ATRT 3 and the discussion with the Board, and Steve DelBianco has kindly agreed to update the group on this, so Steve, if you want to come to the top table please do now so that we don't have a lot of much time between those two sessions.

Larisa, over to you, and I would also like to welcome Lars to the table. Hi.

LARISA GURNICK:

Hello, everybody. I'll see if we can get you all back on track. Last time I was with you to talk about the ATRT 2 implementation update. We showed some slides and provided some links. So at this point I just wanted to remind you that we do provide quarterly updates and the update as of the September cut-off will be published very, very, shortly. And overall the ATRT 2 implementation work is winding down, which is good, just in time for ATRT 3 to get kicked off.

Brenda and Karen, I think will be posting the links in the chat room so that you can find your way to the ATRT update that's posted on the wiki.

Additionally, I just wanted to clarify – I know that there were some tasks that were originally included in ATRT 2 implementation that ended up getting moved out of that work plan due to potential overlaps with the work that you are all doing, one of those areas being the Ombudsman. So I think that there will be a discussion later today on that topic, but I just wanted to let you know that funding for the independent review of the Ombudsman function which was originally envisioned as part of the ATRT 2 implementation, that that work was envisioned as part of the ATRT 2 implementation. Funding for that has been secured as part of the ATRT 2 implementation funding so you all will have an opportunity to move forward with that work under the subgroup in Work Stream 2.

And then as we followed some best practices and project management disciplines in the implementation of ATRT 2 recommendations, we certainly learned a lot about the process of implementing and measuring and tracking and reporting out and welcome feedback from you as to how we might be able to make this better for our next implementation project. And also I wanted to at this point introduce Lars who will talk just very briefly about some of the related areas between ATRT 2, ATRT 3, and some of the other work that he's doing with us. Lars?

LARS [HOFFMAN]:

Thank you, Larisa. Thanks, Thomas, and everyone for giving me the floor for a couple of minutes. Yes, so I'm going to be talking just very briefly about Accountability and Diversity and just wanted to call to

your attention there's obviously two subgroups here for Work Stream 2, and it's also something that will feature in the Operating Standards that are linked to the reviews. That's a community-led effort that I'll have the pleasure to support as the staff, at the very least I hope it'll be a pleasure. We'll kick that off on Saturday this week. I hope many of you can make it. As I said, Accountability, Diversity, Transparency, are all issues that are important for your effort here, but it's also something that you might want to take into account when it comes to the Operating Standards for the Review Team.

Both Larisa and I have some experience for various areas within ICANN that we worked at. Some of you might know I worked in the Policy Department before, so we have some expertise and insight that we would be happy to share with you if there's any support that you might need from us. So it's really just a call to A) it would be great if you can help kick off the drafting of the Operating Standards on Saturday, and also if ever you need to have any support in terms of research or other information that you may need, feel free to reach out to Larisa and her team including myself.

I think that's all for me, Larisa.

THOMAS RICKERT:

Thanks so much, Larisa and Lars. Any questions for Larisa or Lars?

Sebastien, your hand is raised.

SEBASTIEN BACHOLLET: Yes, thank you. Just to understand, that's a discussion we had within work Stream 1 and Work Stream 2 about Diversity for example and Transparency of the Review Team as the review are now embedded in the Bylaws. [inaudible] created another parallel track here that we don't need? I am not sure I understand well what we are doing and what you are proposing to do.

If it's not clear I can repeat it, but it seems that you were having some... [You can replace] mimics and I don't –

THOMAS RICKERT: No, Sebastien. I think it's just an acoustic issue that we're having. Can you please repeat the question for us?

SEBASTIEN BACHOLLET: Yes, about the acoustic issue, I would like the co-Chair to ask to have the headset right now and not waiting for the interpretation for tomorrow, because the headset will help the acoustic to be better taking care for us. And I have the same problem to hear you then it's bad for all of us.

To be short, it seems that Lars is starting another group to talk about Diversity, Transparency in the Review Teams. It's exactly part of our job in work Stream 2. It was in Work Stream 1. [inaudible] created a parallel track taking outside of what we are doing or there's something it's our responsibility. Because I remind you document we produce in Work Stream 1 where Leon was co-Chair about Diversity, we specifically write something about any new Review Team groups

need to be as much as possible diverse, and that need to take into account other duties or other way to be created and it's why we have this Diversity group, Transparency group.

I just want to be sure that we are not duplicating the work and asking us to be in two different place to discuss the same thing. Thank you.

THOMAS RICKERT:

Thanks very much, Sebastien. That was loud and clear. Lars, you want to respond to that?

LARS [HOFFMAN]:

Thank you, Thomas. Yes, thank you, Sebastien. I'm so glad you asked that question because I don't think I was particularly clear. The aim is not to create a second process or to take anything away from your remit or the scope of your work. As you point out correctly, the reviews now fall into the new Bylaws and the new Bylaws also call for Operating Standards to be developed through the community consultations and to support those Bylaws.

Aspects that fall under the Operating Standards for reviews are issues that are related to Transparency and Diversity, and I just want to say that there is an overlap potential with your work so if people who are engaged in this process here in the Work Stream 2 and also might be interested in working together on the Operating Standards, I'm not kicking off the group. I'd just be supporting the group and we're starting the discussion on how the process will work with the community on Saturday.

So it's not something that is underway I'm kicking off or any scope will be taken away from you. It's just that there is some overlap in areas and subjects that are important for you as well as for the Operating Standards in future reviews. Thank you.

THOMAS RICKERT:

Thanks very much, Lars. I suggest that if there are remaining questions open for Sebastien on how this would work together, I suggest that you take this offline and we take it back to the Plenary if need be.

With this, we would like to thank the two of you for being concise, for giving us an update on ATRT 2. And now without any further ado I'd like to hand over to Steve DelBianco to give us an update on ATRT 3 and the interaction that we had with the Board.

STEVE DELBIANCO:

Thank you, Thomas. The Plenary for the Face to Face in Helsinki, if you recall, at the end of that day this group took up a proactive concern that we were well aware that the ATRT 3 was scheduled to begin in January of 2017. We were well aware that the scope of ATRT 3 had significant overlap with work Stream 2 in two ways. Six of the nine Work Stream 2 projects dealt with the same kind of accountability that would have been within the scope of ATRT 3 and the volunteers who would work on ATRT 3 have a significant overlap with the people that are in Work Stream 2.

So we tried to be responsible. We debated at the end of that meeting sending a letter to the ICANN Board informing them about the

potential overlap and recommending a solution. In August the 8th we made a recommendation where we suggested that ATRT 3 could begin in January or even sooner but that we recommended they limit their scope to the implementation of the ATRT 2 items and not dive into the six specific areas that the Bylaws anticipate for ATRT 3 with respect to accountability of the Board, public comment input process, effectiveness, interaction with the GAC, etc.

That letter went to the Board. Subsequently we were able to get the ICANN Bylaws amended with the completion of the Transition, and then the Board replied to us on the 24th of October, and that's the letter that you have in the Adobe chat. The Board acknowledges that we have valid concerns about overlap and, given that the Board realizes it's out of their hands, they took our letter and their reply and forwarded it to the Chairs of the SOs and ACs. Because a number of you are aware that the Affirmation of Commitments was the governing document of ATRT3 at one point, but the Affirmation of Commitments might still be alive but it's a vestige of the past and the ATRT 3 will be governed by the Bylaws from now on.

So in those Bylaws in Section 4.6 the ATRT 3 team will come together in January and they may assess certain items, but they shall assess the implementation of the prior ATRT 2 implementation.

I do hope that the leaders of the SOs and ACs will understand that there isn't a significant need to dive into the overlapped items of Work Stream 2 and it ought to be clear to them that we can handle those and that ATRT 3 should just look at the implementation of ATRT 2

items to a greater degree than what the dashboard that staff puts out, but a substantive, a qualitative, assessment as to whether they've been implemented and then get back on another five-year cycle five years hence when ATRT 4 would be able to look at the implementation of things that came out of Work Stream 2.

In Annex 9 of our actual final report from the CCWG – that was the section of our recommendations that dealt with the reviews – we had said that, “After the Bylaws have been implemented that ICANN and NTIA should mutually agree to terminate the Affirmation of Commitments, thus leaving the Bylaws to control the ATRT 3.”

I'm unaware as to whether they've mutually terminated the Affirmation of Commitments, but be that as it may, let's park that for now and allow us to focus on the fact that the Board has acknowledged that CCWG made valid recommendations to avoid overlap, the Board has pushed it over the SO/AC leaders. So Thomas, at this point all I would recommend is that we be sure that Crocker's letter is accompanied by the analysis that the CCWG did. I realize they have our August letter, but we did a four-page analysis on where the areas of overlap lie and I believe that that should be conveyed as well. Thank you.

THOMAS RICKERT:

Thanks very much, Steve. We do have time for one or two questions. There don't seem to be any which is great. Let's make sure that we follow up. I guess while this is not really our core mandate, we should

stay in touch with the Board and the SO/AC leaders in order to make sure that this works as seamlessly as possible.

STEVE DELBIANCO: Agreed.

THOMAS RICKERT: Thanks so much for being concise, Steve, and for providing this very condensed update to where we are with ATRT 3. Thanks so much.

Sebastien, may I invite you to the table? Sebastien, as you know, is working a lot on the Ombudsman Subteam and he is going to provide you with a little update on where the Subteam stands and there will also be room for interaction with the Plenary. So I would suggest that Sebastien does a quick presentation of where things stand with the Ombudsman Team and then we're going to have a little Q&A before we have our coffee break.

Sebastien, over to you.

SEBASTIEN BACHOLLET: Thank you. Short and prepared, but I will not give you the presentation. I already give you a short presentation during the last call and I will not repeat it. I want to concentrate myself when we will have the presentation on one single topic, it's where we are regarding the review of the Ombuds Office.

I [have] just take those elements out to show you four slides. We accept – I don't know if we have the possibility to say no to take on board the recommendation from ATRT 2 to review the ICANN Ombuds Office. Now that the budget is confirmed, our next step would be or could be – it depend also of your agreement – “Commissions evaluation and oversees the contractor” That could be the role of the ICANN Ombuds Subteam. “Analyze any issue raised and propose recommendation if required as per the new context of the ICANN Ombuds Office.” And we will have to revise the schedule to take all those tasks into account.

One of the questions here it's how we deal with the other subject, “New responsibility for the ICANN Ombuds Office,” for example. Do we do some work in parallel? Do we do everything on the same...we wait for the review to be done to relaunch our group to work on those other issue.

I don't know where the slide is but, or are. They are supposed to be on the deck somewhere. Can we –

THOMAS RICKERT:

I just resent the slides to staff. Can I get confirmation that staff has it and that it's going to be uploaded?

UNIDENTIFIED MALE:

[Inaudible]

THOMAS RICKERT: Okay. Thank you.

SEBASTIEN BACHOLLET: Okay. Thank you. Then we need obviously to prepare for this external evaluation of the ICANN Ombuds Office. For that we need to develop requirements and deliverable list, “Identify review oversight mechanism for the vendor. Develop vendor selection process.” When I say “develop,” I hope that ICANN Procurement has already selection process, but to be more specific on our need. “Confirm a final report acceptance process.” And we think that the external evaluation could include the following; “[Create] Ombudsman Charter and Operation.”

If you can go to the next slide I am talking about.

“To see what is [current] Charter against industry Best Practice and the recommendation for any change necessary to ensure that the ICANN Ombuds Office has a tool, independence, and authority needed to be an effective voice for all ICANN stakeholder.”

And to finish, we will need to define the role of the different entity. [Us here] as CCWG on Accountability Plenary session, the ICANN Ombuds Office Drafting Team, the current Ombuds Office, the staff, and [I list] – you can change the slide please. I list the following staff. Of course, someone following us here as policy staff support, as a multistakeholder strategy and strategic initiative including the one specifically in charge of the review just to be sure that we are doing in the same standard that other review. I guess Legal and Purchase will have to be involved one way or another.

That's the end of my presentation and I am open to have any discussion, question. Thank you.

THOMAS RICKERT:

Thanks so much, Sebastien, for this quick overview and sorry for us not having had the slides ready in the AC room from the very beginning.

Herb?

HERB WAYE:

Good morning, everybody. Seeing as this is a face-to-face meeting, for one of the first ones I will be attending as the Ombuds, I thought I would take the opportunity to say hello to everybody and stand up so that you can actually see my face. And if my office will be opening up tomorrow and I invite all of you to please drop by and say hello. I'm looking forward to meeting you and discussing some of this as we move forward. Thank you.

THOMAS RICKERT:

So Herb is over there. Welcome, Herb, and thanks for your active participation in the subteam and helping to make this work. Are there more questions from your side?

Kavouss has raised his hand. Kavouss, please.

KAVOUSS ARASTEH: Yes, I put my question in the chat but I can't raise the hand unfortunately. [inaudible] the system. The question is that, Sebastien, have you identified any difficulty with the existing situation that you are planning to do so many things? Thank you.

SEBASTIEN BACHOLLET: In one hand, yes, it's more work, more things to be done. But in the same time I think for the organization as it was planned for a long time one day we need to do it, and what a better time to do it including in our Work Stream 2 work because it will help us as a whole group to better understand where we stand with the current Ombuds and we will have an outside input to help us to define how to move the Ombuds in the future.

For example, I am waiting for some help in the answer as, can we add to the Ombuds Office some other activities that it's not really [called] as an Ombuds or not, and we had this discussion internally, to have an outside view of I guess it will be someone with a very good knowledge of Ombuds Office it will be helpful.

Yes, it's more work but at the end I think it's better for everybody. The question will be, how we will handle that in the agenda. And that I have no yet answer on that. I need to work with staff to define the agenda for the future on those issue. Thank you.

THOMAS RICKERT: I don't see any other hands raised. Okay, that seems to be it for this part of the session so Sebastien, would you like to make any concluding remarks?

SEBASTIEN BACHOLLET: Yeah, I want to be clear and not to say you need to say yes now, but that means that if I understand this discussion for me it's a decision that the subgroup will become the review overseeing team for the future, and we will have to decide if we can do some parallel work within the review. I have no real clear mind on that, but we will come back to you on that and we start as soon as possible to find a reviewer and do the review. Thank you.

THOMAS RICKERT: Okay. Thanks so much, Sebastien. I see one more hand raised. Steve, please.

STEVE DELBIANCO: Sebastien, in the SO/AC Accountability work Stream 2 Team, one of the things we have to look at is how to resolve conflicts that might arise within an SO and AC and its Accountability. I wanted to ask you, is it realistic to expect that our Ombudsman would have sufficient resources and knowledge that they could help to resolve say a conflict that occurred within an AC and SO, like within the GNSO if one particular individual or group felt that the Accountability and Transparency standards within the AC and SO were not being

honored? Would the Ombudsman be an appropriate place to go for help on that? Thank you.

SEBASTIEN BACHOLLET:

Thank you, Steve. I think it's an interesting question because in one hand if the office will have the resources, if it's not in this office it will be somewhere else we will need to have. And the question of the resources it's not for my point of view a first question. Can we do that? I am sure yes it is in remit, and its capacity. Then I really think that it's a good point.

But taking into account your question, it's remind me that we have to find the way for all the subject we are in connection with [between] one subgroup to our Ombuds Subgroup, how we will deal that not to delay your work also. That's a question I need to handle in the next few weeks because I don't want because of this review that the whole Work Stream 2 delay for six months. Thank you.

THOMAS RICKERT:

Thanks very much. Good follow-up question, Steve, indeed.

And with that I think we can adjourn for the coffee break, but not without having thanked Sebastien, particularly since the Ombudsman group is now sort of a Steering Committee for the Ombudsman related work that needs to be carried out in the next couple of months. So thank you for that and thanks also for accepting that broad mandate.

Okay. We're now going to have a 15-minute coffee break and as you know, after the coffee break we're going to have our discussion with Göran. So I would really like to ask you to be here at your desk on time so that we can make full use of the one hour that we have with him.

Thanks so much and let's stop the recording for the coffee break.

[COFFEE BREAK]

THOMAS RICKERT:

Can I ask everyone to get back to their seats? We're going to start momentarily. I would also like to ask the rapporteurs for the Transparency, for the Ombudsman, and for the Staff Accountability Subteams to join us at the table.

Okay. Can everyone please take their seats? We would like to start. We want to make the best use of the one hour that we have with Göran. Again, can I ask the rapporteurs for the Transparency Subteam, for the Ombudsman Subteam, and for the Staff Accountability Subteam to join us at the table?

I'm looking at Brenda. Brenda, can we get the recording started again? Is it running? Oh, okay. I see the thumbs are up. That's great.

Welcome again to the next topic on the agenda of the CCWG face-to-face. We're now going to have one hour with Göran Marby to discuss the interlink between his concept of the Complaints Office and our Work Stream 2 work.

Thanks very much, Göran, for accepting the invitation to join us today. Göran, we had thought that would be good for us to have three sections of this one hour, first of which would be your presentation of the idea of the Complaints Office so that we can better understand what your plans are. We've invited the rapporteurs of three of our Work Stream Subteams – i.e., Staff Accountability, Transparency, and the Ombudsman – to the table to give you a brief overview of where they are because these three topics are most closely linked to your idea or potentially linked to your activity there so that you can better

understand where these subteams are with their work and what they might need of you and ICANN to complete their work.

As a third step, we should have a discussion with the whole group. I'm sure that there are a lot of questions. We should also hopefully agree on some concrete next steps on how we can make sure that what you're doing and what our team is doing is really a coherent project so that we're not doing redundant work or even have conflicting outcomes.

With that, I'd like to hand over to you to give us a brief overview of the Complaints Office idea. Thanks.

GÖRAN MARBY:

Thank you. First of all, thank you very much for inviting me. This is my start-up session for the whole ICANN meeting, and what is more fun than to be here with you? And that was actually honestly meant.

Before I start with the Complaint Office, I want to take a step back and look a little bit at what you achieved through the [authorization] with the new Bylaws. With the new Bylaws, some things have been sharpened out slightly. One of them is the role of the community, the role of the Board, and the role of the organization.

To take a step back, you could say that it's very clear that the community writes the policy and decides about the policies and the community is to find, without ICANN, anyone working for the ICANN organization.

So to answer the question of, “Are the members of my staff members of the ICANN community?” the answer is actually no. And that’s the way it should be.

The second one is that the Board has two roles in this. The first role is to instruct me after advice to go and implement policies. The other one is to be my overcoat because, as you know, ICANN is also an organization which is based in California.

My role, then, is twofold. One of the roles is to support and facilitate the policy work that happens within the community. The other role is to run the organization. The checks and balances that are built into the system I think make the policy work easier for you in the community.

That also tells me that I’m, as I said, when we were in Finland, I am not the CEO of ICANN. I’m not your CEO. I’m the CEO of the ICANN organization. According the Bylaws, as you know, everybody who works in the ICANN organization actually reports to me. That means that I’m the most accountable person in the whole process. I’m the one who’s responsible if something goes wrong, if you don’t think that we’d proceed, and if we don’t do things well enough.

In that context, I want to make transparent the things that don’t work. I want to make sure that you know and I know, with things that you complain about, what I do in my organization as a part of the accountability back to you as the community.

Therefore, as many organizations have, you have someone as a central point, where complaints come in. We already handle complaints internally, but I want to improve the transparency of the complaints. Therefore, we're going to take all complaints into one person, and that person will publish all the complaints that come in that have to do with the organization. We will also publish the answers, recognizing if we do anything wrong, correcting the things if we do anything wrong, and we're going to be public about it.

So for me, the Ombudsman – and being Swedish, where the whole word and the concept was invented – handles the whole of ICANN – some part of that could be included in the things I do as well, which I do accept – and also reports to the Board, and the Board instructs me to do certain things.

I think the discussion you're having about the Ombudsman is very, very important because it is a very important function. In Swedish, the word “ombudsman” really means to take care of someone without a voice. That is a very, very important part of that role. That is part of the history of the ombudsman from the Swedish perspective.

But the Complaint Officer is one who will handle the practical fix. For instance, it could be things like the rumors I heard about reimbursement and invoicing and that conference calls haven't worked, down to “Have you actually done the implementation the right way you should have?” So those are the real things that I'm looking for.

Maybe you should take them later, but in the concept you also asked me some other questions as well. Maybe we can come back to them, but this is just to give a frame of where we are in the process. I see it as a complementary function to the Ombudsman. It's very much, in this sketch, relating to the things that my people do within the ICANN organization.

Thank you.

THOMAS RICKERT:

Thanks very much, Göran. I'm not sure who wants to first. Sebastien? This is actually meant to be a very, very concise snapshot of what the subteams are doing and explaining to Göran what the interface between his initiative and the subteams are. If I could ask all of you to keep your sentences brief so that we have as much time as possible for discussion and interaction with Göran.

Sebastien, please.

SEBASTIEN BACHOLLET:

Thank you very much. As I am very concerned with the question of diversity, I need to raise here an issue: we seem to use words with not the same meaning. It's part of the problem for why we are here.

When I read your blog on the 4th of October 2016, you wrote twice the word "organization." For me, and I guess for others, because of my participation in ICANN, I am participating in the organization. It's so true that a few years ago we were also calling the organization – or the

corporation, if you wish – ICANN.org. ICANN.org was when we were supposed to talk about everybody. Then we have here a misleading word.

You wanted to give a name to staff, and I can understand that. I have no problem with that. But by using “organization,” you have taken a word used for other things and used it for the whole organization. That means staff, the Board, the community participants, and so on and so forth.

Now that I realize that you are talking about a Complaint Officer who will take care of what is happening within what you call your organization – that means within staff or with staff – we can read it, or I can read it, a little bit differently. That’s the first point.

The second is that you have the right to do what you think is useful for ICANN and for the organization or for staff in hiring a Complaint Officer. But it was from our discussion within the subgroup of Ombudsman a little bit strange that we are still defining how we want to evolve this role in having a new one created within staff without coordination. It’s where we stand, also, on that issue.

As I have the floor, I want to raise a third issue, and that’s something we already face in ICANN in general. It’s where new people are put. I just want to recall that, as a group, we are supposed to deal with not the complaints but the question about domain names [were] also on the legal. After a few months, it was thought that it was good to be outside of Legal. Frankly, if I have a complaint, the last place I will go is to go to Legal first.

That's the elements we discussed in our group and some of my personal point of views – the last one, for example – but I guess it gives you a feeling of where we are in thinking about that.

Thank you.

THOMAS RICKERT:

Sebastien, thanks for this. I would like to give the other rapporteurs the opportunity to briefly speak to their subteams. Let me reemphasize that this is about presenting the work of the subteams and the links there might be to Göran's initiative. I know that there's a queue forming, and we will go to the queue afterwards.

Michael, the floor is yours.

MICHAEL KARANICOLAS:

Hi. For those of you who don't know me, my name is Michael Karanicolas. I'm one of the co-rapporteurs for the Transparency Sub-Group. My other co-rapporteur will be along in the afternoon.

From a transparency perspective, I'll start by saying it's great to see a Swede who's represented here. You said you're from Sweden, right? Sweden had the world's first access to information law about 200 years ahead of the rest of us. So that's a good start.

The Transparency Subgroup has been looking into three major areas. One is the Documentary Disclosure Information Policy (DIDP). The second is ICANN's proactive disclosure policies; what information is

out as a matter of course on the website. The third is the rules around whistleblowers.

When I hear talk about a new Complaints Office or new review mechanisms, the connection that I immediately make with the subgroup's work is to the DIDP and specifically to mechanisms for reviewing DIDP responses that ICANN gives out.

I think that there's certainly a need for a lot more clarity on how these review mechanisms work. I think that one of the things I've been hearing is a need for a strong appeals process to have a proper reconsideration, particularly where requests for information is refused, and to make sure that it's an independent process, a robust process, preferably for something that has a de novo reconsideration of the decision-making that led into the refusal.

I would be very interested to see how this sort of a complaints mechanism might interact with that idea or, generally, what kind of thoughts are there around ICANN's current process for reconsideration of refusals.

THOMAS RICKERT: Thanks very much, Michael. Let's continue with Jordan Carter.

JORDAN CARTER: Thanks, Thomas. Jordan Carter here, one of the two co-rapporteurs for the Staff Accountability Group. To my left – you're right – Avri Doria is the other. We're both going to make a couple of comments here.

Göran, I just want to start by saying it's great to have an ICANN CEO here listening and engaging with this group in an open way. That is a new and nice thing to see. So thank you for dedicating an hour to this this morning.

The Staff Accountability work had a relatively narrow scope, as agreed on Work Stream 1. One part of it was to work with ICANN on a document that expresses the respective roles of the staff, the Board, and the community. The other was to get into the existing formal processes for staff accountability for whether there's aspects of the code of conduct, or performance, or management, and so on, that keep staff engaged with and accountable to the ICANN community.

All that is in the context of not falling off chairs and not trying to interfere, I think, with the management responsibility that you has as the CEO to hold staff to account and to be the responsible person who the Board can hold responsible for how the organization performs.

I guess we need access to information from inside the organization to do our work. We can't invent our own story about what the performance system is or about what documentation already exists. So I've submitted a list of questions through the accountability staff on that, which we will need some answers to.

I think we're also interested in the group about your take on the culture of the organization. How do you want the staff to be in relation to the community? What's the vision that you have for that as a leader in the ICANN organization? Your own perspective an advocacy for an appropriate culture is really important.

I'll turn over to Avri for a couple of other questions that we've got.

AVRI DORIA:

Thank you. A couple of questions. It's interesting when you talk about your people not being part of the community. I do believe they probably are a part of the community when they go home at night, so there is a certain amount of confusion I have in dealing with that, especially since we have been talking over the last couple years about how that works.

One of the questions we have is on community-facing staff. You really have two kinds of staff. You have one that's the pure operational one that's community-facing.

Now, how do we interact with that community-facing staff? Are there points of accountability other than you, or is there ways to work things out with staff that don't involve waiting until there's a complaint and going to a complaint person?

So I'm basically trying to understand the other points of accountability for dealing with issues before they become complaints, before they get that far. So that's one of the issues.

The other one that we've got is that we're a group talking about staff accountability and yet we don't have any staff members dealing with the group. We have one that's a representative of it, but we don't have any staff members participating as themselves as staff members dealing with these issues.

So one of the things that we came up with in the group is we felt that we needed to come to you and ask for permission for them to participate – they are your people – and whether it is even possible for them to participate safely without repercussion so that, if we got a staff member to come and participate in the group with us – we’re talking about staff accountability, after all – would they be able to talk to us honestly and openly without getting themselves in trouble with their bosses or their bosses’ bosses?

So those were the kinds of issues we have. It feels hard to talk about staff accountability without genuine staff members in the room.

Thanks.

THOMAS RICKERT:

Thanks very much, Avri and the other rapporteurs, for sharing some insights in their current state of play with the subteams, as well as the questions for Göran.

Before we move to the queue, Göran, I would like to give you the opportunity to react to what you’ve heard so far. By “reaction,” I mean you’re not limited to just responding the questions that you heard. Please feel free to share any observations that you might have.

GÖRAN MARBY:

I think I’m here to answer as many questions as I can. And they’re good questions. I want to share something that we are actually doing internally as well.

Just on the word “org,” one of the reasons I’m doing this – and I’ve been speaking to a lot of the constituency leaders about this as well – is because one of the most important things for me is to have a diverse and engaged community, which means that we have to work to have new people on board. We have a language, sometimes, within ICANN, which prohibits – when I meet new people coming in, they are swamped in acronyms, and people talk about it because they understand the narrative.

So what we’re trying to do and what I’m trying to do is to find a way of describing the different roles to make it easier for people coming in. You know what it is, even if I – sorry, Sebastien, if I – it’s not intentionally that I’m trying to do it. It’s only to clear out the roles. Also, where the decision-making process actually lies is also to try to tell people coming in on the different roles.

I even asked my team not to speak in acronyms all the time because I’m trying to open up the language to have a diverse community and not scare people coming in. So that’s a part of it.

Was “org” the right thing? Probably not, but we haven’t figured out anything else because there is the systematic organization where people are employed and get salaries.

The Bylaws change everything or nothing, compared to how you look at them. I don’t know if anyone saw the fantastic intermission I had together with a guy called Ted Cruz, where I tried to explain to him that we are replacing one oversight with another one and that we’re replacing the U.S. government with the community and that we’ve

built in checks and balances to do that. I think those checks and balances are very valid and should be there, and the clarification of those roles are important.

You have certain places like how the Board should act, and you put in things that I should do. Accountability is an important part of that.

But I also feel responsibility: if something goes wrong in my organization, I'm the guy you should turn to. I think you want that. I think you want me to be able to go and say and then fix something.

There has been maybe a little bit of too much bubbles. Sebastien sort of said the JJ bubble or the acronym bubble or the David Olive bubble. Actually, they are connected. They are an organization, and I am the one who actually holds those bubbles together.

I'm going to ask one question because I have it her on the whistleblower function. We are now, after a decision, coming in to face the organization where we need to change some things we do. One of the things we're saying is that we have to deserve the right to serve. In the facilitation of the community and of the Board, we are actually in the service business.

Yesterday I went out internally and said, "We're going to do five different groups internally," because you know that culture doesn't change because I've written it on paper. Culture changes when you actually start working on it. So we're starting on five new projects internally. The first one is actually ICANN organization culture and ethics. What does it mean to work for the ICANN organization? What

does it mean? What ethics should we have, and how do we behave? How do we behave in an environment where we are a serving environment? What is the ethics of it?

Can we have two roles? No. We have to have one role, and we have to engage with my staff, with my people, to try to change that. I do it in a bottom-up process, where I actually engage the staff into talking about that. They just gave me an idea of, along the line, when we should actually let you in and have you talk with the people who are working on the culture and ethics internally, because you want to tap into that.

The other thing you mentioned is what I called demand-driven outreach. One of the things that really makes it possible going now is that we have to work together to have more people coming on board, and we're definitely going to do that, as well as sharing best practices, internal core knowledge training, and internal communication [inaudible], which to staff means something else.

Transparency is important. Communication exists when the receiver actually understands what we say. We are very at disclosing things, but we're not very good at actually writing down the conclusion of what we've done and make that. We're not talking about that we shouldn't do everything in public and open. Sometimes it's needed to write a narrative of why we're doing something because that's transparency: when the receiver, regardless of language skills, regardless of background, can actually understand with how you ended up, for instance, with a decision.

So we're starting a process also with the Board and also internally for how we can not only open up things but also put it into – we're not taking anything away. We are still talking about how you can read what we say in the minutes. You can go through that. But we're also trying to figure out a way to be transparent by actually giving a narrative.

For instance, if there is a Board resolution, you should, in my dream, be able to follow all the things that have happened before that Board resolution so you can actually tap into the different decisions that led up to that. This is not the simplest of projects. That's a very big project going forward. But I think transparency is going to be very important.

[inaudible] function. In this narrative, we already decided that it's going to be part of the training we do. We do sexual harassment training. We do [anti-corruption] training internally for everybody who comes in. We're going to add whistleblower training as well, as well as other trainings, do that we at least train people.

I know what I am and I love discussions. So far, I haven't fired anyone who talks back to me. Not in my life. I think that, in an organization, the people who works for me are the only [effectory] I have. The only competence I have is the people working for me. If I don't listen to them and let them engage with you, what purpose do I have? It's easy to say, but if they criticize me, what can I say? I try to do better. I don't always agree with them. I won't always agree with you, but that's the perspective I have.

I just want to mention something about myself as well. There are very committed and loyal people who voluntarily work for us. I have to provide to them to be able to provide to you a good working environment so they actually can actually feel joy in doing it. They are not machines. They are people, and we all belong in on their passion and their knowledge.

One of the things we're doing right now is working internally with culture values and also making sure they can actually have a life when they're working so we can be even better supporting them. If you don't think we support you enough or we don't do things, you have people there that you can talk to, and I'm very happy for that. I know you have a lot of interactions.

I don't want everything to be complaints, but I want to know if there are complaints so I can see the trends going for them. So I'm actually looking [forward] when it comes to cooperation. I think I'll stop there.

THOMAS RICKERT:

Let me just double-check with the rapporteurs for whether they got sufficient information for the time being or whether they have follow-up questions before we move to the queue.

Avri?

AVRI DORIA:

Yeah, if I can. If I understand correctly, any staff member that wants to participate in their groups has the ability to do so and they would be

safe in doing so. That's one thing. The other is that the complaints is not a single point of access, as it sometimes sounds, but that interaction with staff about issues remains possible and that there are many points of interaction. Whether those can be called accountability or not I'm still uncertain.

GÖRAN MARBY:

The question is stated in such a way that is not resembling the way we run the organization and cannot run the organization, to be honest. We discussed this a little bit when we met the last as well.

I'm doing this to be able to aggregate the complaints so we know about them. Since I came on Board, with interactions with you, there are certain trends about complaints. One of them has been [trouble]. I want to know so I can actually see that it's a real problem there, like invoicing. There's a lot of practical things. So I can go in and see that this is the problem. Today they are not transparent to you. So see this as a service to you as well as me.

The only thing we're going to take away is we're going to make it anonymous for the ones who complain if they don't want to be seen because they should be able to complain without being seen.

To answer your questions, I haven't heard that anyone has come to me and said they would like to participate or said they had been prohibited from participating in any group we're doing.

THOMAS RICKERT: Maybe as a follow-up to Avri's first half of the question, we can put on the record that you don't have any issue with staff participating and this is with your blessing, basically. Because I think she wants something on the record that encourages staff to be on the group and speak their minds.

GÖRAN MARBY: I don't have any problem.

THOMAS RICKERT: Great. So there's a long queue. All of you have been patiently waiting for your opportunity to speak. The first one is going to be Alan.

ALAN GREENBERG: Thank you very much. In the interest of disclosure, I have said some of this to Göran privately. The two issues that Sebastien raised I think are really trivial and really important. One is the use of the word "organization." I understand you said that maybe we picked the wrong one, but I think it's really critical that you are the CEO of the corporation. The "organization" is a term that we have used forever to talk about everything, including the volunteers. I think the perception is going to be very wrong and misunderstood if you keep using the word "organization" to be the corporation and the paid employees and contractors. That's number one.

Number two, similar thing on the reporting structure. As able as the Legal Group may be to support this function, there's a long history in

ICANN of mistrust. There was a session on our agenda which was a high interest topic on essentially transparency of legal advice to the Board. It seems to be transformed into another title and another topic. But due to the long history, whether it is the right group or not from your perspective and their perspective, the optics of it are very bad. Thank you.

THOMAS RICKERT: Göran, please.

GÖRAN MARBY: The word “org” has been used and had been blessed. I've been asking for alternatives and everybody comes back that maybe there is not a good word for it. If you understand, there is no hidden agenda here. It's a try of clarification. We will always pick something. When I pick anything, there will always be different opinions on it. Maybe we will pick something and we can live with it.

I want to point something out which I think is important when it comes to the bubbles, the JJ bubble, Akram bubbles. There's always been a CO and the CO has always made decisions. Or the Board has made the decisions. Sometimes it's not always been clear who's taken those decisions.

One of the reasons I'm saying the way I'm saying it is because I want you to know that I'm accountable to you. It's not the Akram bubble. It's not a JJ bubble. It's not the David Olive bubble or anything else

because I want to come back next time we have this meeting when I have done mistakes or [inaudible] such mistakes and I should sit here and answer to these questions regardless where it happens in my organization.

Everybody reports to me. In the end, everybody reports to me. It doesn't mean that you don't have the right to do interaction and everything has to go through me. That's not the thing. The thing is that I'm trying to be responsible in what we do. I think that we can do that together regardless of the history or regardless what we're going to do. Thank you.

THOMAS RICKERT:

Thanks very much. Next in line, Robin. Robin Gross.

ROBIN GROSS:

I wanted to also talk about this new Complaints Officer position that's been created for the General Counsel. The new CEO may not be aware of this but one of the main issues that we worked on in Work Stream 1 was to try to take some of these issues out of the hands of the Legal department. There's recognition that the lawyers, the Legal department have a legal obligation, have a fiduciary duty under the law to protect the organization.

For example, when we were dealing with the reconsideration request issue in Work Stream 1, the overwhelming view both of the members of the CCWG and also in the Public Comment forum was that we

needed to remove the ICANN Legal department for making the initial evaluations of reconsideration requests and these kinds of issues because of that conflict of interest that the Legal department has with respect to representing the organization and then providing a fair adjudication or evaluation of the issue.

It seems unfortunate and maybe you weren't aware of this but it seems like you are now taking what the CCWG did in Work Stream 1 and entirely reversing it by creating this Complaints Officer position and giving it to the General Counsel's office to deal with.

It seems like you're undoing the work that we did in Work Stream 1. Maybe you just weren't aware of the comments that we received on this issue, the overwhelming concern that we need to remove these kinds of evaluations from the Legal department and into more objective hands, hands that don't have a legal obligation to protect the organization.

I think you may want to rethink that position as you become aware of what we did in Work Stream 1 and the concerns that were overwhelmingly raised in Work Stream 1 regarding the Legal departments. Thank you.

GÖRAN MARBY:

For one, I'm well aware of what happened in Work Stream 1. I actually fail to see the connection between what I'm asking the Complaint Officer to do because it doesn't go together. I can see in your facial expression that I have to explain myself. We're talking about where my

staff when there's an area for complaints with my staff. It's got nothing to do with the processes.

If we misbehave in the process, that's where I would like you to have the complaints. If we don't follow the process, that's when I want to have the complaints. It's not a question of about we intervening in something else because the only power this person has is the powers given by me. The only power I have is the one that's given by the Board which is said in the Bylaws.

There's no way for me to intervene with this person in anything else that has to do how people report to me. I'm also responsible for what the Legal departments are doing as well as I'm responsible for what David Olive is doing. If you're think I cannot create more powers than I already have, I can only use the ones I already have. I can't go outside the scope of this. Thank you.

ROBIN GROSS:

If I could just quickly follow up. I can explain the connection that you don't see. It is that these kinds of issues need to be evaluated by hands or people who are not legally obligated to protect the organization. We need more neutrality, more fairness, if you will, to the community.

There is a legal obligation by the General Counsel to protect the organization. When they give you the initial evaluation which, yes, you're free to dismiss or not, there is concern within the community that that evaluation that you're given is one sided. That's the part where we need for you to take those initial evaluations out of the

hands of somebody who has a conflict of interest with respect to protecting the organization.

GÖRAN MARBY:

Just to have a dialogue about it, with that, I also have a conflict of interest because according to California Law, I also have that together with all my officers. It's also that the Board has a point at certain offices. We all have to follow the law and protect the organization. But we also have to protect the Bylaws because the Bylaws are the ones that actually runs our organization as well. It's in the Bylaws that defines the code book for us is – and that goes for everybody. The way they run the organization is through the Bylaws.

THOMAS RICKERT:

Thanks very much. I guess this is an area that we might need to follow up on offline or continue the conversation elsewhere. I see Fiona's hand is up. Fiona, not sure where you're sitting. Over there. Fiona, please.

FIONA ASONGA:

Thank you very much. Thanks, Göran, for sharing with us your views on what you're doing within ICANN. I've been in ICANN for a while, maybe shorter than most of everyone else here. I'm just thinking as you redefine organization to someone out there who's not part of ICANN. What are we telling them ICANN is? If the organization is only

staff, then where does the community come in? Then who are we? As in to then an external party, what is ICANN?

I'm looking at it maybe from a very simple, very basic, very naïve and unexperienced perspective because I run a membership based entity that serves the technical community in Kenya and we have the community that gives us input in terms of policies and everything else that we do and then we have the Secretariat who's the staff. When we talk about [Textbook], we talk about everything together. [Textbook], as an organization, cannot exist without our community and without the staff.

We're like getting into a situation where we're trying to say we can separate the community and the staff within this organization. Then the organization becomes the staff and then there is the community hanging somewhere. We have Bylaws and our Bylaws tie to the community and parts of the community and how those interact with the Secretariat. I call it the Secretariat because that is what I really see the function of the people who are paid to ensure that what we need done is done.

As we are walking on mechanisms for diversity, the one thing that is a big challenge then is: so, what are we going to be looking at in terms of mechanisms that would support diversity within ICANN? Are we looking at diversity within the Secretariat? With ICANN, as an organization, it's very clear because we'll say it's staff, it's Board, it's all the community, it's becomes clear. But when we start breaking it down, then I'm thinking, okay, so we decompartmentalize and have

mechanisms for staff, mechanisms for community and then the Board who are the bridge in between.

For purposes of keeping things simple, sometimes I think we try to make things clear and we overcomplicate in trying to make things clear. I think it's important that you keep things simple enough so that everybody can understand especially because ICANN brings together a number of entities who are not speakers of English. Because we are not native English speakers, it's important that we use terminology that is easy to understand and easy to explain because it becomes very difficult for me to go back and start explaining, "Oh, ICANN organization is this." Then I'll be asked then what is the community. What role does the community have to play?

ICANN, as an entity, as an organization, is both the staff, the community and everyone who comes in. We can maintain that understanding we've had over the years. It makes it very simple and easy for us to be able to explain to entities who want to come into ICANN, what ICANN is all about because now I'm getting a bit confused on what is ICANN.

GÖRAN MARBY:

Thank you. You're right. It is confusing. It's extremely confusing. Let me know, I've been confused since I started. For me, ICANN is the whole thing. It's the community, the Board and what I call the organization for right or wrong. Why do I say that? Because in the Bylaws, there are actually defined two different things. We went down

the road “secretariat” by the way. Then someone said you run the [L] servers as well.

We do several things. We have a billing machine. Is that part of the community or it's something else? We actually say, within what we do, we are a Secretariat for the community. But I think to be personal with you, one of the reasons I took this job was when I spent some time with the Board, yes, it's almost a year ago now, when I read in, I tried to nail it out what is my role, what am I supposed to do.

Funny enough, on this next Board meeting we have in this week, the end result of that will come as a resolution where the CEO and Board, there's a paper now what I'm supposed to do and my responsibilities. Those never exist before. It's going to be a living document.

I think going back to it, for me, ICANN is all of us because it's built around three different things. The community writes the policies and decides upon them. That's the center of gravity of ICANN. ICANN is not the center of gravity of Internet. We also have our dear friends and a number of community and a protocol community to belong us and everybody else. That's the whole ecosystem.

We have our role. What that intentionally is trying to do is actually to push what the community's responsibilities are and say that these are not my [policies]. My job in this respect is to serve you. You may now think that, “Okay, what is he coming from?” That is what I'm telling internally. That's what I'm saying to the Board. That is what I think my job is.

I also have some other operational things to do, in this I'm facilitating the policy work. I use the word [felicitation] very important because it doesn't mean that I actually intervene in the policy making process. In the implementation, there are things we have to do. I think we have to improve some of that. There's a lot of things we need to improve. But the basic role are defined in the Bylaws and I'm very happy about it.

When it comes to diversity and different language, I'm not a native English language user either which you probably hear sometimes. We need to be much better when it comes to supporting different. I can do what I can. Right now, for the first time, we're actually reporting to the Board about gender diversity within the organization. So, I actually know how many people working for me which gender they have defined by two.

I think that's going to be even more important working together with the community because it's going to be demand driven. You also have to tell us where we can support you better, where which type, how do we make diverse and engaged community going forward. You have to help me, to tell me what I'm supposed to do in that. Thank you.

THOMAS RICKERT:

Thanks very much. Next in line is Tijani. I'm sorry. I skipped Kavouss unintentionally. Kavouss, please take the floor.

KAVOUSS ARASTEH:

No problem. Intention or not intention, I know that I was in the queue. Thank you very much. It was not intentional.

Yes. Most of the things that I wanted to say is already in the chart. Look at that one. But I think I am surprised of the degree of distrust that some people express and mixing up the issue of diversity, transparency and accountability, transparency of the work being done and it's continued enhancement, in particular, involving the staff in the day-to-day operation to express their views and respect to what they said to the extent that they are applicable to the work and to get benefit of that experience is supported is no problem.

What I have the problem is dual responsibility and dual accountability. A staff could not be accountable on one hand and the CEO and the other hand, to the community. We break totally the hierarchy. Staff may be in doubt that “Why I should be accountable to the CEO or to my supervisor? I am accountable to the community.” Then who is the community? How the community could implement that accountability? If they do so and it's implementable, they bypass the CEO and the entire hierarchy of the situation. You create an unhealthy organization in the work.

We should be very, very careful what we are doing. The community is not to go to the micromanagement of the ICANN. The community give general guidelines and in a proper order the staff are accountable to the CEO and CEO are accountable to the Board. As far as it is mentioned in the Bylaw, accountable to the community. But the staff shall not be accountable to the community at all because, first of all,

they break the management, hierarchy and second, it is totally unimplementable if the community wants to ensure that the accountability of the staff is implemented.

We should be very, very careful. The remaining part what I have to say are already told in the chart. Thank you.

THOMAS RICKERT: Thanks very much, Kavouss. Göran, would you like to respond to that?

GÖRAN MARBY: Thank you very much. One of the reasons why you have a hierarchical organization is so you can have the ability to delegate. But you can only delegate things to do. You cannot delegate responsibility. I've been a manager for too many years probably but I always think that it's important that the people who works for me has the ability and the mandate to perform the work they have because usually they're much better than doing it than I doing it anyway.

By trying to make it a little bit clearer for the people working for me, it's actually to be able to have the mandate. They don't have to go back and ask me for any single question. That goes anything from budget which you decide but also how we actually do things. That's why you actually have a hierarchical organization so you can say that this is your responsibility going forward.

But I also think and I hope that you want to hold me accountable that next time we sit here and we can make the tradition if you want to, I'd

love to come back. We can go back and you can point to me things that I have to improve or have to do different or I can explain what we actually done like I'm doing now.

But I have to agree with the sense that I'm trying to run a conversation with a purpose and the purpose to [a lot of extent] is important to the community. That's the position I'm taking on this. Thank you.

THOMAS RICKERT:

Thanks very much. Now, it's your turn, Tijani. Sorry for that.

TIJANI BEN JEMAA:

Thank you very much, Thomas. First of all, I would like to thank you very much, Göran, for your project of creating content bureau. Even if, first, I agree with all the comments made about your use of the word “organization” to be the group of people paid by ICANN. I heard your answers and I still think that we have to define better the words so that they are not used for several meanings.

Second, I think that this bureau shouldn't be part of the Legal department. I will explain why.

The third, I agree with Avri that it shouldn't be a content bureau. It might be an issue bureau or something like this because we need to address things before they become complaints.

Why I love your initiative. I like it because you are defining well things. This is very important. Staff is staff while they are working with us. At

home, yes, they are part of the community but here, they are staff. They have duties, they have responsibilities. I think that your initiative is to have a channel of communication with the community so that you know what are the concerns of the community. That's why I think it shouldn't be part of the Legal department.

We may go to this office to tell you how you can help us better, why it should be in the Legal department in this case. I say again that it is a very good initiative but we have to consider all those points before doing it. Thank you.

THOMAS RICKERT:

Thanks very much. Before I give the opportunity to Göran to respond, I see that there are audio issues in the Adobe room again. I hope that Farzaneh, in particular, can hear this. She says, “No sound again. I'm going to give up.” I don't want you to give up. If there are issues and if you can't dial in, please do indicate in the chat. I hope that ICANN can get you a dial out. We will try to make that happen so that we don't lose you attending these sessions. Göran, please, if you want to respond to Tijani.

GÖRAN MARBY:

Thank you. Trust is something that you earn that's not something that you get. You have no reason to trust me at all because I haven't proven myself yet. I'm well aware of that. I can only hope that over time, I'm being consistent in what I do. I will do mistakes, I will do things that you don't think is the smartest thing or I could have done them

differently. I hope that I can have your trust even if you don't always agree. I hope that over time, we will come up past those things.

I give you one promise is that I will not do anything. I don't do anything in backrooms or anything. Anything I will do will be transparent to you because that's what I see or to the Board. Over time, I hope that some of that mistrust will disappear and I will hopefully gain your trust.

I don't expect that to happen over three meetings or anything else. I have nothing else in mind than to try to improve how I support the community because that's the job I took. I also have the job to make sure I have a good and competent staff that can support you. We can also have a life because you want them to be passionate, you want them to be engaged, you want them to be able to give you support and therefore you have to be able to attract good people.

I'm going to do things that you may not like but I will come here every time and I will talk to you about them and maybe you will see my reasoning and maybe not. How I set up my organization, how I communicate internally. Hopefully, over time, we will come back and have these discussions. Thank you.

THOMAS RICKERT:

Thanks, Göran. Last speaker is going to be Greg. Please.

GREG SHATAN:

Thank you, Thomas and thank you, Göran, for joining us here. Two comments which we can build on a number of the comments you've heard before may agree with some and disagree with others. First, I actually think staff accountability may be the most important thing that this group can look at because the staff does so much of the day-to-day work of the organization and really so much of the day-to-day work for the community if things are going well or to the community if they're not going as well.

That relationship which often works very well and sometimes doesn't is critical to the overall tripart type functioning of ICANN in the ecosystem. I only regret that I haven't spent more time on staff Accountability Working Group. it's one of the seven that I'm signed up to be a member of. I apologize for not being an active one.

I do want to perhaps disagree with some that have said this staff accountability shouldn't be on our watch, very much important. I understanding they also have to be accountable to the organization for which they work. But the organization as a whole needs to be accountable to the community because that's why we're in this room in the first place.

Secondly, with regard to the Complaints Officer, I think there's a lot of back story here and the ICANN Legal staff and the GC for whom I have a great deal of respect as fellow attorneys. But on the other hand, their role has often been seen as protecting ICANN from the community. Thus, putting the Complaints Officer under the defender of the faith

seems to be a less than optimal fit ideally be somebody who is under no such umbrella.

It's a different role than the Ombudsman but having a role that sets bureaucratically within an organization that is often been seen as the defender of fortress ICANN with the community on the outside of the fortress walls, not on the inside, I think creates a not the right framework and starting point for that to be seen as an office that will deal with complaints without fear or favor. Thank you.

THOMAS RICKERT:

Göran, please.

GÖRAN MARBY:

One of the reasons why we started talking about this was actually a blog from you so feel partly responsible for what I call the trinity where we tried to explain. It was an excellent blog which I read very early.

If you want me to be responsible, I seem to be coming back to that and on your trust over time, I also have to set up things the way I think or needed in doing it at a given point in time within my organization. That is for practical reasons because if I would not do that, I will not be accountable and responsible for the whole thing. That is the way.

I know their history, there's a lot of history everywhere. You may or may not agree. Give it the benefit of the doubt and see how it works. We can come back in a year and see how the discussions goes. We can

see and if I'm wrong, I'm going to be happy telling you I've been wrong. I know that I do mistakes and I will correct them if I can.

Could I say something just to point this out as well? One of the most important reasons I think we have going forward is actually the– and you can check this with my staff. I don't want us to try to solve problems that is not ours. I could agree with you that sometimes my team, my staff has been trying to solve issues that is not ours especially implementation process.

I'm actually telling and instructing my whole team that we're going to be neutral in implementation process. The things that the community has to sort out, we can start working with them and try to support them. But if it doesn't work out, we're going to give it back to the Board. We then can engage with the community how to sort those things out.

I know that could be seen as a change of direction. I think it's very clear. That's why one of those intersections is going to be very, very important going forward. I'm having a speech with my whole team here and the instruction I'm giving them is to be neutral.

That's a culture change maybe and that is because we've done it for the best of courses. But I think it's important to recognize that especially now with the new Bylaws, the community are responsible for the policies and we should make sure that that's where the policy making process happens. If anyone on my team engaged differently, please let me know. Thank you.

THOMAS RICKERT: Thanks very much. We've ran out of time. I'd really like to take stock now and hopefully agree on next steps. Firstly, can I make it an action item for staff to copy the chat history of this session and make it available to Göran because Göran, you haven't seen this now but there has been a very vivid discussion in the background on the benefits and the issues there might be with the Complaints Office and the relation to ICANN Legal.

Maybe you can clear one thing for this group and that is whether the Complaints Office has a decision-making function or whether it's merely a collection or collecting function for reports that are coming in.

GÖRAN MARBY: It's going to be a scale. Simple things should be addressed directly by the Complaints Officer. If there are structural things that we have to address for some reason or investments they have to do, it will end up with me. That's the way it happens.

Coming back to you, Avri, which is very, very important, we're not trying to add a layer on complexity. We're trying to aggregate so we have a visibility on complaints coming in so we can actually handle them. If I see trends about them and sometimes you have to go structural changes to make a trend. I think most organizations I worked in never have had this kind of complaint department for the stakeholders engaged in it. I don't use the word "customers" because I

don't think we are a customer at all. We are doing something completely different.

But I want to know so I can aggregate and know what to do with it. But if there are simple problems that could be solved, I delegate those. More structural ones end up with me. Sometimes even if they are bigger, they're going to end up with the Board or maybe in the budget which is taken by the community.

THOMAS RICKERT:

But then I guess there are couple of follow-up questions with respect to the role of ICANN Legal that we might need to discuss more. What if a complaint is about ICANN Legal and ICANN Legal itself making a determination on the complaints? There are potentially conflict of interest issues.

GÖRAN MARBY:

All complaints that comes in will be public and will be put on the work page, all complaints. There's no way no one can hide in it. All complaints will be published. We will take away the names of the complaint-er. What is the word for that? Complainant?

THOMAS RICKERT:

Complainant.

GÖRAN MARBY: I'm not a native. That's my swing that's coming in. Sorry. There's going to be a total transparency on the questions coming in.

THOMAS RICKERT: I guess the underlying fear, at least, that's what I sensed from the comments that have been made is that the hierarchical structure and the fact that this is with ICANN Legal may lead to a situation where people do not complain because we have these other mechanisms in place as well. That may be worthwhile discussing as well.

You said that you don't want acronyms, you want plain language. But with your new Board initiatives on the ethics for staff with the request for reconsideration with the Ombudsman, with the IRP, with the complaints office, we might need to set up tutorials for people on how to complain because they might not understand what competencies there are and what the limitations of these functions are. That's for sure worthwhile discussing more.

In practical terms, there were a couple of questions from the Staff Accountability Subteam to obtain some information. Can you give us an indication of the time that you need to get that information to us?

GÖRAN MARBY: I don't know the answer so I'm looking at Theresa.

THERESA SWINEHEART: Apologies. Thank you. Yes. We received those late last week and we'll be looking at early December. We'll get those turned around as quickly as we can.

THOMAS RICKERT: Okay. Awesome. I guess with respect to the different functions that I tried to list in my previous statement, I think it would be beneficial for us to interact with you or one of your team in between meetings. We certainly do appreciate that you are not sufficiently deterred from this group, that you actually want to come back. But I think we would be well advised to liaise between those sessions in order to clarify any issues that might be and also flesh out the answers to the questions more.

GÖRAN MARBY: I'm happy to do that. No problem.

THOMAS RICKERT: We will follow-up with you. As the case may be, we will certainly delegate this to your team members as appropriate. That's been great. We went into overtime for six minutes. You've been very gracious with your time, Göran. I think everyone will agree that this was a very interesting and fruitful discussion. Certainly, we couldn't remove all the concerns or answer all the questions but I guess it's an excellent starting point for our work in this important field. Thanks so much, Göran. Would you like to make any final remarks?

GÖRAN MARBY:

No, thank you. I'm looking forward to coming back to you. I think your questions are very wise because they show something to me which I think is important and dear to my heart. You actually care about the people working for me, which is very important. We could have made different views on how to solve that but we all know that without the people that works in the staff or the whatever you want to use, you are so welcome to come up with a better name that you all agree upon.

We've been trying, I spoke to 21 constituency leaders and they all said, "Yes, there should be a better name." They were all voted down somewhere. I'm not married to that word. Anyway, thank you very much for inviting me and thank you for having me and thank you for taking time from you. Bye.

THOMAS RICKERT:

Thanks very much, Göran. Let's move to the next session before we have the lunch break. I can release the rapporteurs for all the subteams from this table except for SO/AC Accountability whom I'd like to invite to the table. We're going to discuss the SO/AC Accountability work and the questions as well.

SO/AC Accountability rapporteurs. Cheryl. No, take your time. Take your time. Steve? Am I looking at the wrong version of the agenda? Staff, you need to help me with this.

Familiar faces at this table. Cheryl and Steve, thanks so much for joining us for the SO/AC Accountability discussion. I'm not sure who of you is going to speak first. Is it going to be you, Cheryl?

CHERYL LANGDON-ORR: Nice. We're getting started, I suppose.

THOMAS RICKERT: Okay. Over to you.

CHERYL LANGDON-ORR: Thank you, Thomas. Hopefully, those people who've had problems particularly Farzi, one of our co-rapporteurs with the Adobe Connect rooms have now managed to get dial ins because we would very much like to have today's chat on the work from our topic which is accountability of the Support Organizations and the Advisory Committees as interactive and as open and, of course, as inclusive as possible.

We will be watching the Adobe Connect room if you are just on a audio in, in other words, we've given you a dial out or you've dialed in and you are unable to put your hand up in the Adobe Connect for whatever technical reason, feel free to interrupt in a pause and we will put you in the queue. Under normal circumstances, as usual, we'll run the queue providing my glasses can see the fine print on the tiny little tablet I'm having to use because I'm having connection problems here today, we will get take everybody in good order.

If needs be because we have a very short amount of time, we will limit the amount of time for interventions. I would ask that people only make a single intervention per topic unless we have the time available.

I'd like to draw your attention to our update for the community which is in the slide being shared in the Adobe Connect room. It shows that we are currently running at around 35% of our work in progress. We had hoped before the progress then is but like many of the topics, this comes into the best laid plans [solved] and we have been unable to get as far along in our four specific tracks as identified in this document.

The first track being effectiveness. The second track being a discussion on an accountability roundtable which really should also be seen as any form of mutual accountability or not. I'd love the focus to change without making it more difficult for me to see. Thank you very much.

Track three is the primary part of our work that we will be continuing on with which is preparing a detailed working plan and enhancing the SO and AC Accountability. In this, we have started with the preparation of questions which we are about to speak to which goes out to the ACs and the SOs hopefully in short order.

Track four which is another very important part of our work which is a mandated as was the discussion of any mutual accountability is to assess whether or not the IRP would also be applicable to SO and AC activities.

I said I'd get it started but I'm now going to call upon Steve, my fellow co-Chair, to make help us continue. Over to you, Steve.

STEVE DELBIANCO: Thanks, Cheryl. We'll be presenting for second reading a series of questions that are necessary for us to do the work that's in track three. But before we do that, just a brief words, tracks two, three and four for this group were dictated by the Bylaws that created this Work Stream 2 project. That is to say we were told to evaluate the feasibility of a mutual accountability roundtable.

I would report that I believe the chances of that being seen as feasible and desirable probably not good right now.

CHERYL LANGDON-ORR: Miniscule.

STEVE DELBIANCO: Miniscule. Track three, we've got to do it. That's the key to our work. Questions will help us to get it done. With respect to track four, the IRP is a very heavyweight mechanism, expensive mechanism for remedy and things that might happen to an individual or organization who's having trouble getting into or getting elected or having their reviews considered within an SO or AC. That is one of the reasons I asked Sebastian this morning about whether the Ombudsman can be relied upon as a resource that would have access to the assisting to the accountability issues within an AC and SO.

Let me say just a word about track one. Where did that come from, effectiveness? Our work in the SO/AC Accountability took a hard look at the fact that the Bylaws require that every AC and SO, with an asterisk for the GAC, that every SO and AC periodically do reviews of its organization and ICANN contracts with an outside firm to perform the reviews. For every one of us except the GAC, that review is supposed to look at “whether any change in structure or operations is desirable to improve its effectiveness”.

A number of you, since you all belong at ACs and SOs, have had your effectiveness evaluated without any clue as to what the word effectiveness means. Our SO and AC set up track one to say that can we explore what it means to be effective as an AC and SO serving your designated community. That's where that track came from.

We haven't done too much work on it yet but believe me, if we don't do anything about it, then you'll continue to confront every few years, you'll continue to confront, “Well, what does effectiveness mean?” when ICANN hires its outside consulting firm to see whether the ccNSO or the ALAC or the GNSO need to change their structure to be effective.

We'll do our best and take a look at it but I don't know whether we'll get anything out of it. Cheryl, I guess we should then move to second reading on the questions we think we need for track three. Staff, if you can bring up those questions.

We did one reading on this previously because the Bylaws charged us to review and then recommend improvements for the accountability

in the SO and AC level. To do that properly, we wanted to make sure we knew what it is that you as ACs and SOs hold yourselves too with respect to accountability.

These questions which have been circulated before gives a little bit of preamble to describe what it is the SO and AC Accountability group is doing. Then take a look at the questions. If you'll scroll up a little bit to the questions. Thank you. A little bit higher so that just the questions are on screen, if you could.

Brenda, thank you. Great. The first thing we said is that the designated community, all we did was repeat from the Bylaws what the designated community for each of the ACs and SOs is because the ACs and SOs are creatures of the Bylaws. As such, what do the Bylaws say that your designated community is and we simply listed that out.

Then if you scroll higher, Brenda, thank you. We ask you, what is your interpretation of that? For example, do you view more broadly or narrowly than the Bylaws? This is an opportunity for the ACs and SOs to explain that we see it a little bit differently and we'd like to hear about that.

Then we ask, please just point us to the resources which may or may not be published online, it may not even be in writing. Point us to your procedures that you use to do outreach to that target community, how you allow them to participate, how you allow them to join, to get elected, to make their views known, transparency mechanisms. Were these policies updated recently? All right.

Then finally, challenging or appealing. Do you have mechanisms for challenge or appeal? If you don't, that's fine. It may just be that it goes to the Ombudsman which is part of the discussion we have with Sebastian this morning. Then if any of your policies were unwritten, we ask them to please describe to the extent that you can. You can get them back to the SO and AC team.

Now, we also note earlier on that if a group like the GNSO has several subgroups within it, we're inviting the GNSO leaders to push the same set of questions down to the business constituency, the IPC, the non-commercial users' constituency and push it down to see whether they would want to provide answers as well.

In an ideal world, all of these documents will be instantly available. They're not. If staff have more resources, I'm sure that the staff papers that were done for Work Stream 2 would have dived into and given us the answers. Staff didn't have the resources to do that. We are faced with the task of asking the rest of CCWG Plenary to allow us to send these questions on behalf of the CCWG to the SO and AC leaders. Right, Cheryl.

CHERYL LANGDON-ORR: Thanks, Steve. Yes. That's exactly what we're asking you to consider today. This will be an opportunity for any fine-tuning with the accent on the term "fine-tuning" on what we've presented. Yes, they are very general. Yes, we are asking for self-assessment. But to be honest,

that's okay. It is absolutely up to each AC and SO to decide how it wishes to deal with these very general self-reporting questions.

Indeed, if they wish to provide as with any other information how they deal with it internally is absolutely up to them. Are these questions perfect? No, but they are time critical. The reason they're time critical, ladies and gentlemen, is because this gathering here is an opportunity for these questions with your permission to at least be socialized with the Advisory Committee and Support Organization leadership.

If we had run our timetable in a perfect world, these would have been distributed before this point in our proceedings. That did not happen so we are seeking now final deliberations, final reading and with your support, Plenary, sending out these questions literally by lunchtime today if we possibly could.

I'd like to just ask if Farzi has an open line. Is there anything, Farzaneh, you'd like to add as one of our rapporteurs. Testing the system here. Farzi?

THOMAS RICKERT: Farzi has indicated in the chat that she doesn't have anything to add.

CHERYL LANGDON-ORR: Fantastic. Thank you. The fine print is so small, Farzi. I have no way to find out what you've written in chat. I'll look at it in a moment. In that case, I'd like to put it to the floor that these questions are now open. Perhaps, Brenda, you might want to just scroll back to the beginning.

Looks like, Brenda, you've got a question from the list. Go ahead, Brenda.

BRENDA BREWER: I do have a question from David McAuley. He asked, “How long will the SO/ACs have to answer the questions?”

CHERYL LANGDON-ORR: Noting that the ACs and the SOs will be engaged in a lot of business during this meeting, we would like to give them probably around the 28 to 30 days after this meeting closes. Perfectly, we would like to have something in in the early December but not to mid-December timeline. So 30 days after we get back from this Hyderabad meeting.

THOMAS RICKERT: Thanks very much, Cheryl and Steve, for the presentation. We have a queue. If you make your interventions, can I just remind you that this is the second reading of questions that you know for quite a while. I think we can only accept minor tweaks. We can't reopen that debate entirely. But the goal is to actually close this off during this session so that we can send the questions to the SO and ACs.

First in line is Kavouss. Please.

KAVOUSS ARASTEH: Yes. Thank you very much. I think some of the question may be difficult to answer within that time limit and in particular, if they are

questions of substance. The first one is one of those. What is your interpretation of designated community defined in the Bylaw and so on? Are you inviting the SO and AC to go and to analyze the Bylaw and express their legal views with respect to the validity or otherwise of the way that this community has been designated, has been described in the Bylaw?

I don't think that that would [work] to ask that questions. It does not help. Maybe the remaining part of the question, what is your view about the extent to which that community is composed or is meant is okay. I.e., for instance, is the GAC only those people who are attending the meeting or the entire member of the GAC or beyond that. That may be but not what is your interpretation. You do not ask the SO and AC to make any interpretations of the Bylaw. Thank you.

THOMAS RICKERT:

Thanks, Kavouss. Fiona.

FIONA ASONGA:

My comment is I think that the questions that have been asked are very important and important for the different Supporting Organizations and Advisory Councils to be able to then begin to think of the different accountability mechanisms that they need to put in place because they are fundamental in ensuring that the ACs and SOs are accountable to the entities that they claim to represent.

I choose to [defy] with Kavouss. I think the first question is very important in terms of the respective SOs and ACs confirming for status that the way they are described or we summarize them is correct as one of the designated communities. I think that is what this is trying to achieve which is helpful in terms of ensuring that the SOs, we are on the same time with the SOs and ACs on who they are or who we claim they are as well as what accountability mechanisms that they have in place. I think I would support this moving forward.

THOMAS RICKERT:

Thanks very much, Fiona. Just for information, I suggest that we collect the input that we receive and then the rapporteurs will get an opportunity to respond. Jan.

JAN SCHOLTE:

Yes, thanks. Really good questions, I think really well put together. Just one dimension of accountability that I don't see is clearly is about evaluation so any review processes that are practiced. I see the transparency dimension, I see the participation consultation dimension, I see the review and complaints dimension. I don't see the review evaluation dimension in there.

THOMAS RICKERT:

Thanks very much, Jan. Alan.

ALAN GREENBERG: Thank you. As we've been going over these a number of times, we've regularly said that the words may not apply we're asking for interpretation. I think the overall questions need to have the covering envelope of if the questions don't quite apply to you, then modify them as necessary to give your best answer.

The definitions that we're using don't apply in some of the cases. Each of the SOs and ACs are very unique. With our own knowledge that they're not perfect, let's just make sure that we've conveyed that when we go forward. Thank you.

THOMAS RICKERT: Thanks, Alan. Cheryl and Steve, you've heard a couple of points. Who wants to go first reacting to that?

STEVE DELBIANCO: A real quick reaction. Jan, the question saying mechanisms for challenging or appealing decisions is our attempt to learn to what extent the ACs and SOs have a challenging appeal mechanism, how they would handle complaints from somebody in a designated community who can't get in, who can't get elected or won't be allowed to join, can't get their views considered. That aspect is there.

The word “review” isn't in here since the reviews of the ACs and SOs, the review of their accountability occurs because the Bylaws dictate it. Those reviews are not run by the AC and SO. They're run by ICANN

Board and management who hires the third party to come in and do a review. I don't see the reviews is being relevant to this set of questions.

JAN SCHOLTE: Can I just come back on that directly?

THOMAS RICKERT: Please do.

JAN SCHOLTE: It just would be to ask the groups to ask whether they're doing anything else. They may be doing other things. Then it's good to know and one might learn between the SOs and ACs what they're actually doing.

THOMAS RICKERT: Cheryl.

CHERYL LANGDON-ORR: Thank you. Thanks for that, Jan and Steve, because I made a note that we need to ask any internal or other activities. I think if that's the case, then we've rounded that off a little bit more. I take that as fine-tuning and we will address that.

For Kavouss, I thought that we were fairly careful. If we could just roll now, Brenda, up to seeing the first question please on screen. We were

fairly careful to not suggest by these defined terms out of the Bylaws that we weren't asking the designated communities to reconsider or to reassess. We were simply providing these designated community definitions as a reference point.

If it's not clear to the ACs and the SOs that these outlines from the Bylaws are only a reference point and that our question is to ask what interpretation they have, what belief they have is their designated community should it be different to exactly as defined.

We felt to simply say, "What do you define your designated community to be?" a little too open. We were providing the Bylaw excerpt as a reference point. If that isn't clear and you couldn't let us know in the chat, please, I'd really love, for example, some feedback from the other Support Organizations as well. If that's not clear, then we can certainly put something in the preamble to make it clear that that is what we're trying to do. Hopefully, that takes care of that point. Please, we're not asking to review Bylaws, that is entirely different matter and one that would have a huge time constraints.

Going to Alan, again, this is something that we could add to our preamble or perhaps a covering note so that we can say, while we recognize that not everything we ask will be applicable to all Support Organizations and Advisory Committees, it would be appreciated if you can note where this is not the case or if there is additional information for us to make. I think that will round that off.

Fiona, I didn't think you had a particular update for us to do. I think what you were saying is that it is important that we have this self-interpretation of the roles. Thank you for the support. With that, I think we've covered that group off. Thank you.

THOMAS RICKERT:

Thank you very much. While I have closed the queue earlier, we still have a couple minutes left in this session we can gladly hear Izumi and Jan.

IZUMI OKUTANI:

Izumi Okutani from the ASO. I agree with the suggested way forward including how this designated community section is defined that I think it makes it factual that we stick to the definition in the Bylaws, so support from this. I observe no concerns regarding the question. I thirdly would like to support on the comment made by Fiona that the review should come from the community, it shouldn't come from the CCWG being enforced.

Also, want to support Alan's point that each of the communities are different. I do want to highlight a bit of difference in the ASO. I think there's a talk about how each of the SOs and AC do the outreach for the wider group. It's actually the other way around for the ASO. We already have five regional communities. These communities actually elect the members of the SO/AC. We certainly would work on describing that and it's a bit different. I just wanted to highlight this as an example so that we all share the differences. Thank you.

THOMAS RICKERT: Thanks, Izumi. Jan.

JAN SCHOLTE: Yes, thanks. Just wondering if on the transparency, whether the wording could be altered in such a way that it invites people to give a response which is more than their norms of disclosure. In other words, what they do to encourage that what Göran in the earlier session talked about the effective communication so that the receiver is helped to understand what is actually there. Because otherwise, I can't see that the groups might reply or we disclose this, we put this on our website and so on and so forth. But they might not say this is what we actually do to try to make our communication clear especially to those who are not acquainted with our norms and behaviors and practices and acronyms and so on.

STEVE DELBIANCO: Jan, it could be an additional sentence where it says, “Transparency mechanisms for your AC and SO deliberations, decisions and elections. Please describe further attempts you make to explain the documents and procedures that you make transparent.”

JAN SCHOLTE: That's the spirit I'm getting at. Thanks.

THOMAS RICKERT:

Thanks very much for all your questions and comments. I think we can declare the second reading successful. The questions are going to be sent out. I think that it might make sense for us to add to our communication that should there be any question surrounding the questions that the SO/AC Chairs or representatives that are working on this should either approach you or their respective CCWG member because the CCWG member has a liaison function as well so that with those two additional communications windows, there shouldn't be any issues.

I don't see any further remarks or wishes to speak. With that, we can close this session and even break for lunch a bit earlier. I would suggest that we still stick to the starting time of 13:15 so that you have a little bit more time to refresh and discuss with your colleagues. I see that Sebastian's hand is raised. You want a final word, right, Sebastian?

SEBASTIAN BACHOLLET:

Not at all. I hope that somebody else will have final word. But I would like to ask if it's possible to find some minutes in this afternoon to discuss what we heard from the CEO. I think there are some question we need to take stock and discussing it among this group. Thank you.

THOMAS RICKERT:

I guess that's a good idea. There might be a couple of points in the afternoon's agenda where we might not exhaust the full time

allocated to those points and then we will gladly pick up that suggestion which is very valuable, Sebastian.

With that, we can end the recording for this session. Thanks, everyone. Let's reconvene in 70 minutes more or less. Thank you so much.

BRENDA BREWER:

Just to let everyone know, you're invited to the lunch buffet and it is open. Thank you.

[LUNCH BREAK]

LEÓN SÁNCHEZ: So, we're at 16th past the hour. So if you could please take your seats so that we can begin with our next session.

And I would like to invite to the table Greg Shatan.

UNIDENTIFIED MALE: [Inaudible]

LEÓN SÁNCHEZ: Oh.

UNIDENTIFIED FEMALE: [Inaudible]

THOMAS RICKERT: I guess you are the first person that overlooks this man.

LEÓN SÁNCHEZ: Thank you.

GREG SHATAN: Thank you León. Thank you, Thomas, I guess.

LEÓN SÁNCHEZ: Thanks. So, our next agenda item, it's an update on the progress that the Jurisdiction Subgroup has carried on and I would like to

stress the word “update” because we know that discussions in this working group are very interesting and very passionate. So, we wouldn’t really want to go into discussing the actual topics of the group in this session but rather just have an update on how things are going.

For that, I will handle it forward to Greg Shatan.

GREG SHATAN: Thank you. Brenda, could you put up the other document first?

BRENDA BREWER: Yeah.

GREG SHATAN: Thank you. This first document is our status update, which is consistent with León’s introduction. Here it is. So, the jurisdiction group has its genesis in Annex 12 as do we all. And, the jurisdiction section has a number of interpretation issues. But basically, the task is a consideration of jurisdiction in Work Stream 2 focused on – now the settlement of dispute jurisdiction issues by which I take that to mean the jurisdiction relating to bringing and resolving disputes. And we’re supposed to confirm and assess a gap analysis and clarify all concerns regarding the multilayer jurisdiction issue.

We initially tackled a couple of topics. One was confirming and assessing the gap analysis. We had some difficulty arriving at a common understanding of what the gap analysis was and confirming it and assessing it because there was no explicit fully carried out gap analysis in Work Stream 1, though there are clearly results from Work Stream 1 that can be deemed the gap analysis.

And, I think we made reasonable progress in getting to that point but we kind of hit the point where the discussion was getting a big circular. So [I] felt that what would make more sense is to put that aside and tackle an actual substantive discussion and then come back and see whether that discussion itself contained a gap analysis or considered a gap analysis.

So, basically, we're in a sense trying to rediscover the gap analysis in order to confirm and assess it.

The other thing that we spent some time looking at was whether and how we might deal with the issues relating to the jurisdiction of ICANN's location and incorporation, whether that was in scope at all, whether it could possibly be dealt with at all and if so, how?

Ultimately, we've put that aside again because it really is issues relating to whether that can be changed or should be changed or really fall into the nature of a remedy. And first, we need to

look for issues and starting of remedies and looking for issues that match them is really not the best way to go.

So, we are now fully engaged in looking at actual issues. But first, we had an important definitional point or series of points to deal with since what's referred to is the multilayer jurisdiction issue is itself not necessarily easily understood.

Certainly, the intention is that it refers to the fact that the word jurisdiction can cover a lot of different meanings and subtopics. And that we felt that it was important for the group to have common understanding of what those different layers of jurisdiction are and to have some common words other than jurisdiction that we could use to refer to them. Otherwise, we [would] have six different layers all hold the jurisdiction and it's kind of like George Foreman who has six sons all named George. It makes it a little harder to differentiate the topic.

So, we spent quite a fair amount of time looking at the multiple layers of jurisdiction and we've got a document that's in progress but I think in a fairly good state although definitely in progress. And that's the second document we'll be looking at today in a moment.

So, if we could just scroll down on the screen to number four on the list here. There we are. Our task was to identify something that was clearly in scope for the group because we spent quite a

bit of time early on discussing what was in scope and what wasn't without discussing anything that actually was in scope.

So, we decided we'd actually should actually have a substantive discussion and pick something that we could all agree was in scope based both on Annex 12 and all the other work of Work Stream 1, and that is here summarized in 4A1.

The influence of ICANN's existing jurisdictions are relating to resolution of dispute, i.e. choice of law and venue. You'll understand more clearly what that means when we look at the multiple layers of jurisdiction, the effect of this on the actual operation of policies and on accountability mechanisms.

So basically, what is the influence? The influence is an important word because it's neutral. It's not a positive or a negative. We can look for both positive and negative influences in determining what those influences are. And we've began a document, which is much more a work in progress and not quite ready for a public viewing, although you do have a copy of it, we will have a copy of it for your amusement and edification.

But where we are exploring what the influence is of the governing law or applicable law and the place or places where ICANN's disputes are resolved. But the main topic for the session here in terms of an update is taking a look at the multiple layers

of jurisdiction document. And, Brenda, if you could put that one up now, that would be great.

So, as it says up there in the heading, which I added kind of as the document was already being finalized, I realized it needed a little explanation for those who are not in the group who are watching it grow and to some extent mutate.

The primary purpose of this document is to define these various layers both generically and specifically in the context of ICANN. People started adding notes about the effect of jurisdiction here, which we intend to explore in more depth as we are in the other document I just discussed. But nonetheless to allow some room to work for folks in the group we've been adding to the effect of each of these jurisdictional layers as well.

Because it's important to understand these layers as we analyze things and also decide which layers we're really focusing on based on the charts that we have from Work Stream 1.

The first layer and this is kind of – these layers are in an order that make sense. We start with the jurisdiction of incorporation because that's where ICANN is created. Without incorporation, ICANN doesn't exist. It's like the dinosaurs or microbes crawling out of the sea and becoming humans, if you believe in that sort of thing which I do.

And so, this incorporation is the genesis of ICANN, which as we all know is incorporated in the state of California. Under California law, people outside of the United States call that Californian law but those of us in the states call it California law. And, it's worth noting that PTI created by our sister CWG-Stewardship is also currently incorporated in California. And our baby or Frankenstein's monster as you might look at it and the Empowered Community will also be incorporated in California when the life is breathed into it on the 13th moon of the year or whenever that will happen. So, that's the first layer.

And, the second layer if we can scroll down. The long footnotes are basically – you're reflecting the fact that this is a work in progress taken a lot of the sidebar conversation and turned it into footnotes. Because otherwise, if anybody has ever tried to read track changes comments that go on for a page and a half, it can't be nonetheless you have the electronic document in front of you, so I put it all in footnotes. So, again for edification and amusement.

The second layer kind of above the jurisdiction incorporation is the jurisdiction of headquarters location. This is the physical place where ICANN is located. And from a headquarters' point of view, it's located in Los Angeles County, California as set forth in the ICANN Bylaws. And as well PTI is intended to be and the

[ECR] intended to be located here as well to the extent they have locations.

So, of course, ICANN's headquarters location is only one of many locations that ICANN has. So if we can go down to the next topic, next major heading.

The jurisdiction of other places of physical presence for ICANN. ICANN over the years has found itself physically permanently located in more and more places as noted in 3B: Beijing, Brussels, Geneva, Singapore. Well, the first, Singapore and Istanbul are the hub offices and then the engagement offices are Beijing, Brussels, Geneva, Montevideo, Seoul, Nairobi and Washington, D.C. All places there form an exotic to me especially Washington.

And, each place that ICANN shows up and has a physical location is a jurisdiction under which it needs to act pursuant to the laws of that place at least to a limited regard. And so, that's another layer that we need to consider and keep separate from the headquarters and the incorporation location.

Next, we come to number four, which really brings us to the heart of what the Work Stream 2 Subgroup on Jurisdiction was created to look at. Yes, we're talking about the settlement of dispute jurisdiction.

There really are two pieces to that jurisdiction. One is the jurisdiction for the law used in interpreting new contracts or interpreting new disputes between the parties. When you see that handled in the contract, it's often under a provision called choice of law or governing law but where there is no choice or where there's a dispute on something between two disputants that have no prior agreement, it's dealt with under what's called conflict of laws principles.

So, it may or may not given contract be the law of California and in some cases, there are declared governing laws, interestingly, the ICANN Base Registry Agreement for the new gTLDs. It does not specify any governing law but it's clearly to my mind drafted as a U.S. law document as documents that originate under different legal systems tend to look somewhat different. And, this one looks like one that I'm familiar with.

So, conflict of laws can be used in various different ways to determine what country's law or what state's law within any countries like the U.S. will apply to a given dispute or interpretation of documents and the like. And this also governs the actions of the Empowered Community in any dispute that takes place.

So, we've been using the term loosely choice of law for this even where it's not in fact the choice of the parties but in fact would

be the choice of a court in looking at the given dispute. So, when you're dealing with a dispute, you deal with really two kinds of jurisdictional issues. One is this choice of law issue and the next one is in number five, if we could scroll down to that.

And that is what we're calling venue or forum is another word that covers this to an extent, which is the jurisdiction for the physical location of a litigation of any disputes. It could also refer to the type of dispute mechanism that's used. So for instance, something like the IRP falls under the concept of venue even though an IRP doesn't typically have a physical location as it's contemplated. You can ask Becky Burr for more on this particular topic.

It's conceivable that IRPs could end up having an in-person hearing somewhere but by and large, they don't have a physical location but they are a forum and furthermore, in some issues such as arbitration, you will also designate a provider.

So, if you look down at C, the Base Registry Agreement for new gTLDs specifies a location and a provider and a type of dispute resolution. So it really covers all three parts of this particular layer, so I guess we could call those sub-layers. So, it uses the International Chamber of Commerce or Arbitration Rules, so that's both, an Arbitration is the type of forum and the International Chamber of Commerce Rules are the rules of the

forum and physically, it's to be located in Los Angeles or if the registries and IGO Geneva.

So, this choice of law and venue are the two layers that we're looking at most closely and the ones that inform our discussion of the influence of jurisdiction discussion most completely.

There are a couple more layers. So, if we could go to number six, this layer has become peculiarly neglected in our discussion. This is a layer that comes kind of directly out of Annex 12, the relationships with national jurisdictions for particular domestic issues. I think we'll probably need to unpack the meaning of that particular phrase. That's probably one of the reason why it hasn't gotten much commentary because it's rather opaque but I think there are examples of that that will help flesh out what that ultimately means.

And the last layer, which is one that was specifically listed in Annex 12, which of course was done pre-transition is meeting NTIA requirements. Now, so one of the questions – and it doesn't say anything further about what this means, so part of our job is figuring this out. Another aspect of this is whether meeting NTIA requirements is still relevant after that transition.

So, first, we need to determine what if any requirements NTIA have that related to jurisdiction and then whether we need to continue to abide by them. We haven't really spent too much

time on that but I think it will become clearer while further in our discussion what their relevance is of this if in fact we decide that it continues to be relevant.

But at this point in the proceedings, we're not going to dismiss that one out of hand but it is at least there's an open question as to whether this is still a layer we need to deal with or at what point if we need to deal with it now, at what point does ICANN no longer have to deal with it.

So, we've been working on this document as you can see from the length of some of the footnotes, there are still some very robust discussion and views going on especially regarding the effects of jurisdiction, what are the positive or negative influences of each of these jurisdictional issues both again generically in an ICANN's particular context.

And, we hope obviously to continue to bring this document forward and one of our tasks post-Hyderabad is going to be to try to resolve some of these robust discussions down into some form of consensus rough though it may be for the group as ultimately we're going to have to end up with an end deliverable and this will need to be I think part of it.

So, so far, we've had a lot of good discussions but haven't necessarily made a lot of tough decisions or even necessarily easy decisions yet. So, from a procedure point of view, we've

been meeting weekly for an hour, we've been working on these two documents and as well a couple of documents that we've set aside.

We'll continue to meet weekly and emphasize hopefully robust work on the documents as really the centerpiece of participation in the group and I think we've had a number of very active participants, which is very welcome and a large number of not very active participants, which is not so welcome and a few participants that have been kind of in the middle who at least will pipe up from time to time.

So, like the other groups, we're looking to get the entirety of our membership involved as ultimately the decisions made will be collaborative decisions of the group and not just those who have made the greatest contributions in terms of verbiage or initial pieces for all of us to think about.

So, that's my status update.

LEÓN SÁNCHEZ:

Thank you very much, Greg. And I do acknowledge that some comments on the chat are directed to saying that this is just an update document and that it is not conclusive of course.

So, at this point, I would like to open the floor for any questions or comments on the update. And I see Parminder has his hand up. Parminder.

PARMINDER JEET SINGH: Thank you, Chair. I'm Parminder from IT for Change.

It really is a question to the Chair of the subgroup and perhaps also to the [plain regroup]. I just want a clarification about the scope of this group. I heard in the report that the heart of the matter is the contracts, which ICANN enters into and I clearly understand that area work.

Now, what clarification I would like to seek is, is it about that or is it also about a very distinct area about whether the U.S. public law. And if people don't understand this, the U.S. public law, U.S. competition law, U.S. security law, U.S. president special powers, the Office of Foreign Assets Control powers, the custom border authorities of U.S. – all these powers and the powers of the laws, which the legislature may make in the future as applying on the ICANN and possibly affecting the operation of its policies. Is issue under consideration? So, I just want a clarification that if only contract-based, private law-based disputes are under scope here, that's very fine but let the group decide that. And then, I would know that this group did not decide the other issues as not being in scope.

Now, what I see happening in this group is that it keeps on saying this is what really is our work. And by the way, we may be also looking at something. Now, this by the way, we may be does not really make it clear to me whether they are doing it or not. It's like the issue of being little pregnant. It's not possible to look at such a big issue in there by the way we may be doing it.

So, I simply without contributing my thoughts on the issue, I want to know whether these second set of issues, which I think are made perfectly clear about the scope of our being considered by the group or not and would the group reach your determination on this group issues or not. I fully understand that it would consider issues of the contracts, which ICANN enters into, which is a private law matter.

About the other side, I'm very happy if the group says no. This is not been considered but we are hanging like one-quarter into it, which is not something I can understand. Thank you.

LEÓN SÁNCHEZ: Thank you very much, Parminder. Greg, do you want to comment on that?

GREG SHATAN: I'll take a stab at an answer and to some extent it's not mine only to answer as I am a mere rapporteur and not a Chair, and

even Chairs in bottom-up organizations need to work from the bottom-up.

But in any case, let's start by thinking that this is a Work Stream 2 subgroup that is essentially growing out of the work of Work Stream 1 and we have about nine months in which to do the work that's within our scope. So, this is not the grand group on jurisdiction to end all groups on jurisdiction. It can't be and that's not what Work Stream 1 asked it to be.

So, when we look at the jurisdiction of dispute, it's not merely the jurisdiction for contractual disputes. And I think that's notable in five and six if you take a look at it. We're not limited to contractual disputes. We're looking at only dispute that ICANN may be involved in. Clearly, the Empowered Community enforcing the powers of community are not contractual as maybe others.

And really what we're starting with is looking for issues which is ultimately really what the gap analysis was, so we need to look at what the influence is of ICANN's jurisdiction.

But as it applies to really two particular things, one is the accountability mechanisms that's very specifically laid out in our charter, if you will, and the second is the operation of ICANN policies. So, we really need to look at everything within those two contexts.

And so, first, we need to look at issues and then we need to look at remedies. Depending upon the issues, the remedies may be – there maybe no need for remedies if we don't identify issues and some other issues, some issues if we do identify them may have remedies that don't involve significant changes.

We may conceivably run up against issues for which the only remedies are conceivably drastic but it's premature at this point to say what the remedies we'd be looking at are before we've identified the issues for which we're seeking remedies.

With regard to the question of public law, which is not a concept that really exists in U.S. law, we just call it law. That's not something that was specifically discussed in Work Stream 1 and it's not something that is in Annex 12. So, whether indeed we reach issues that are framed in that regard really depends on what we end up looking at with regard to remedies and really what we need to be focusing now on our identifying issues.

And then, if we look at potential remedies, we'll look at the positive and negative aspects of those remedies. So, that's the way I look at the work of the group at this point. Thanks.

LEÓN SÁNCHEZ:

Thank you very much, Greg.

Next on the queue, I have Kavouss and that would be the last intervention in this segment since we are running a little bit behind schedule. So, Kavouss, you have the floor.

KAVOUSS ARASTEH:

Thank you very much, Greg, for your presentation.

Up to now, at least I don't have any particular difficulty but I put something in the chat and I request you and the co-Chair to assure us that in dealing with this very complex issue that many of us, they have totally divergence of view. Even with respect to the venue and so on and so forth with many things, and the quotations of various U.S. law that you put there in front of the document, we would like the assurance that you would not end up with the status quo and we want that assurance that we need to address the issue.

This is one of the most important issue, at least for some of us, if not for all of us. And we need to properly answer these questions. I remember that in one of the issue was dealt with recently, it was mentioned that we have to be very careful in deciding the [inaudible] set on the matter because the community looking for having a properly addressed jurisdiction, therefore, we should be very careful in our decisions.

So, everybody looking for your group to have a proper response to the jurisdictions, you have a lot of work before you – and still you are on the first part. And on that first part, there is a lot of divergence. I don't know how you deal with that to bring the ideas together and then have a sort of reconciliation of those different reviews among lawyers, jurists and solicitors. I am not part of those. Thank you.

LEÓN SÁNCHEZ:

Thank you very much, Kavouss. Any reactions?

GREG SHATAN:

Thank you, Kavouss. First, it's not just before me. It's before all of us who are in the Jurisdiction Group, so I think we should all be thinking about how to reconcile views and not just the rapporteur. Although I understand that I need to think about it more than most, which is why I don't get a lot of sleep.

I don't come into this with any preconceptions and indeed I don't think we can say that the status quo will or won't change for the sake of change. It's not good neither is your action or resistance to change. Any particular change that's suggested will come out of first looking at issues and then looking at potential remedies if we identify any issue for which a remedy is a change of some sort, then we'll need to look at those changes and we

need to look at the positive and negative effects of those changes.

And as Jorge points out in the chat, I think we have a number – any change that we do look at has to be looked at through a number of filters in terms of upsides and downsides in order to determine ultimately how that change would work in the grand scheme of things.

So, I would say that there is no desire to defend and protect the status quo. There is a desire to keep us within some limits because we don't have five years for this group. We have nine months. And clearly, the task in front of us has to bear some rational relationship to the time assigned it and these are not just coincidences.

Now, these are intended to be somewhat limited topics. So, I think we will go where this leads us within the parameters of the groups work. Thanks.

LEÓN SÁNCHEZ:

Thank you very much, Greg. Jorge, do you want to add something to that? I see your hand raised.

JORGE:

Thank you. Thank you so much. I was thinking that as we are having this face-to-face discussion and it's a good opportunity and I didn't realize that we were going over the assigned time. But I think it would perhaps be good to talk about an idea we have shared in this subgroup a couple of times in this Plenary session.

And this is that apart from the well-founded contributions from all the subgroup members, it would certainly be very interesting to hear the views from registries, registrars, other parties that are part of the ICANN Community and also other interested parties for instance on how the IRP works and to seek their views about what the impact is of the present jurisdiction be it generally or be it because of the venue established in the existing contracts or be it of the rules applicable to applicable law.

And so, I think that would be a very useful input for the subgroup in our way to develop recommendations during the next year, the first half of the next year. Otherwise, we risk entering into an academic exercise with all due respect to academics. But it would certainly be interesting to hear the experience and the opinions from those especially those who are outside the U.S. jurisdiction, how they feel with this legal framework. Thank you.

LEÓN SÁNCHEZ: Thank you very much, Jorge.

Greg.

GREG SHATAN: Thank you, Jorge. I think that's an excellent and very pragmatic point to make and we may want to consider as some groups have even putting out some sort of a survey document. Because right now, the contributions from members of the group that kind of lessons learned pragmatic, I've lived through jurisdictional point, have been not entirely present. We've had discussions by some very knowledgeable people but not those who have not the same knowledge in the trenches of an actual experience.

So, those who have been involved with disputes involving ICANN and another suggestion was to hear from ICANN Legal for their point of view and to be taken as such. As clearly, they deal with jurisdictional issues in a variety of ways as well. So, I think we need more real world facts and experiences even if they're anecdotal to help inform our work and we may also conceivably want to go to experts whether it's outside counselor or other legal experts.

But first, I think Jorge's point is very well taken, which is that we need to understand some actual jurisdictional experiences

rather than talk about it in – as Jorge says, the academic plain.
Thanks.

LEÓN SÁNCHEZ:

Thank you very much, Greg. And I think that's a very good suggestion, Jorge. Thank you. Because that will lead us into the pragmatic grounds and I think that the jurisdiction group really needs to go deep into pragmatic rounds.

And, I think that might take away from this update. Greg, thank you very much for updating us on the progress of this group. I think that one might take away is that the group should continue to look at issues first and finding possible solutions in the second place because otherwise, we might be taken the wrong path.

So, I think that is perfect to what you're doing and we should continue to identify, which are the potential problems and issues that could be arisen by jurisdictional matters. And after that, then we could propose solutions to those issues identified. And for that, this kind of survey I think will be most helpful and productive for your work.

And of course, trying to address a little bit of what Parminder was saying I think that since we will be looking at issues, then I would assume that the discussion will be wide in all aspect. So, I

don't think that while we try to keep the discussion focused, I don't think that anything is ruled out. So I think that is also something that I take away from this update.

So, thank you very much, Greg, for updating us. And, we'll now move on to our next agenda item. And for that, I would like to invite Becky Burr to the table and welcome her to the IRP Update session. And I would like to hand over the floor as well to my co-Chair, Thomas.

THOMAS RICKERT:

Thanks very much, León. And while Becky is coming to our table, the purpose of this next session is to sought out the remaining questions with respect to the IRP. We had the first reading on those during the last call, so we hope that we can finalize our discussions on those and put out the document for public comment.

And, I'm not sure. Becky, are you ready to take over?

BECKY BURR:

Yes. If somebody has the clicker, I'm ready.

THOMAS RICKERT: I'm afraid we don't have a clicker. We have human clickers that kindly move forward slides when we tell them, when we kindly ask them to.

BECKY BURR: I thought she was going to give me the [inaudible] of it.

Can we go to the next slide?

So, just to provide some context for the work that the IRP Implementation Oversight Team or the IOT has been doing, to implement the Work Stream 1 recommendations with respect to the enhanced IRP, we need to initiate a tender process for selecting an organization to provide administrative support for the IRP.

We need to select a standing panel and we need to develop detailed rules of procedures consistent with the ICANN Bylaws. That's a fairly significant undertaking.

Sorry. Next slide.

That's a fairly significant undertaking but it is one that we can do, we can make significant progress on by updating the existing rules to reflect the Bylaws.

So right now, the International Centre for Dispute Resolution or the ICDR provides the forum and the arbitrators for ICANN

Independent Reviews. They have a very highly developed set of rules and procedures for the arbitration proceeding.

In addition, ICANN has developed and the ICDR applies an ICANN-specific set of Supplementary Procedures. And the Supplementary Procedures provide that if there's any inconsistency between the way the ICDR rules work in the way that ICANN Supplementary Procedures work, then the ICANN Supplementary Procedures are the ones that prevail and better applied.

So, the first step in getting this and to make sure that we get the benefit of the enhanced IRP as quickly as possible, the first task of the IOT was to revise the Supplementary Procedures to reflect the substantive and procedural changes that are in the new Bylaws as a result of Work Stream 1. And so, that is what we have been doing.

I'm going to go quickly through the sections of the rules here and we'll talk a little bit more about the areas where the group had some trouble reaching consensus. I think many of you will remember that we had a discussion on September 20th in the Plenary about those areas and we had a further discussion in October, our last Plenary on this. So what we would like to do is sort of consider this the second reading and be able to move

forward and issue the proposed Supplementary Rules for public comment.

I just want to make sure people understand that the process by which the Supplementary Rules are changed is that the ICANN Board approves some. There's not actually any kind of consultation role with respect to these except for the fact that the Bylaws now call for this Implementation Oversight Team on a going forward basis.

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The first section is definitions. Most of the definitions reflect some of the changes we've made. There's an emergency panelist now that is appointed to deal with request for stays or injunctions. There's the procedures officer to handle and make decisions about joined or consolidation of two kind of cases that are about the same thing.

The significant material definition that's been added is the definition of the dispute, which covers all of the areas where one could invoke the IRP process. So, actions or inactions that violate ICANN's Articles of Incorporation or its Bylaws claims that ICANN is not enforced its contractual rights under the Naming Function Agreement or complaints by direct customers of the IANA Naming Function that the SLAs are not being met, and that is subject to a mediation proceeding.

Next slide.

The Section 2 of the Supplementary Procedures talks about scope. And this was one of the issues that the group dealt with, that the group spent a considerable amount of time talking about.

When you change the rules in a typical proceeding like this, the standard approach to this is to say that the rules that we're in effect at the time that you filed your claim continued to be the rules that that operate and that apply until your proceeding is closed.

Because we are sort of deliberately iterating on getting these rules changed, we anticipate that with respect to some of the procedural aspects, these are going to be 25 pages permitted or 26 pages permitted, those kinds of things might change as we get the full implementation forward.

The one thing that can't change and I think this is material to our discussion about the Supplementary Procedures, this is the standard of review because the standard of review is in the Bylaws and it cannot be changed without a corresponding vote of amendment to the Bylaws subject to requiring the consent because it's fundamental of the community.

So, to the extent, we have determined that we will let claimants who come in now under these supplementary rules make the case that they should be able to take advantage of future changes in the rules. That will be limited to changes that are really procedural in nature. It will not apply to the most important things, substantive standard of review.

We also talked about allowing people who are in open IRPs right now to make the case that the new rules, that all of the new rules should be able to applied retroactively backwards. The problem with that is that the standard of review that we are replacing is also in the Bylaws.

And so, there were a lot of concerns about – first of all, it's unusual to allow a sort of retroactive application of changed rules. It creates complexities and it has the potential for actually causing a violation of the ICANN Bylaws to occur.

So, although there were a lot of people who are pretty upset for reasons that I fully understand and share that – who are very upset about the way in which the current standard was arrived for that or the standard prior to October 1 was arrived at, and it continued in assistance on this highly differential standard, the consensus not without dispute and I think there are people who feel pretty strongly that we're doing the wrong thing. But the recommendation is that we not permit this to apply

retroactively. And we'll have a chance to talk all about these when I get through the slides.

Next slide.

The next section is on the composition of the IRP panel. It spells out how the panelist for a decisional panel are selected what you need to do before you establish the panels and it talks about what you do if there's as deadlock in the selection process or if there's a substitution that's needed in the event of the vacancy removal, which is something that we had to deal with.

Next slide.

The time for filing was also a source of significant conversation. And, the consensus that we brought this issue to the plenary twice, once in September and once in October. And based on the consensus in the room, the proposal is that a claim needs to be filed within 45 days of the date on which you first become aware that there's been an action or inaction that's had a material effect on you. But in any case, it has to be within 12 months of the date that the alleged violation occurred.

That is kind of balancing of the need of the fact that somebody might not become immediately aware that they've been affected and the need for finality. And I think it is just a balance and a kind of cut where people came out.

I just want to make sure that people understand, however, that the action or inaction can take place more than 12 months after the Board votes on something. So, the Board may adapt a policy recommended through a PDP and there's no violation there.

But two years later, it might apply that policy in a way that actually violates the Bylaws. And at that point, you would still have the 45 days, so we're not saying basically there's a one-year period in which you have to know everything that's going to happen.

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The next section talks about how the review was conducted and I just want to start by saying the goal is to resolve these disputes expeditiously and cost effectively while ensuring fundamental fairness and due process. So that's the place where we started.

In the interest of that goal, the recommendation is that the proceeding should proceed by electronic means wherever possible and the only exception would be in extraordinary circumstances and the extraordinary circumstances test is that you – an in-person hearing is necessary for a fair resolution of the claims, an in-person hearing is necessary to further the purposes of the IRP, which is the dispute resolution.

And on the considerations of fairness and furtherance of the purposes outweigh the time and financial expenses of an in-person hearing. So, there's a requirement that if somebody says, "No, I want an in-person hearing. I want people to fly around and come into a room and have this in-person hearing," then the panelist will do this balancing test. They'll apply this test.

The second thing about this – and this is consistent with the current language – is that ordinarily, you should resolve the facts in the papers themselves, in the written submissions of the parties and you shouldn't have a hearing to kind of hash out the facts. But in cases where that is necessary under the tests that I've just described, then the panelist can determine that fact witnesses are appropriate and the testimony and cross-examination will meet that test and will be permitted.

So, we have provided for the current procedures just say basically you can only have or legal arguments that is actually not been several panels, IRPs have rejected that approach and this just reflects the fact that we're saying, "No, where it's necessary for our fairness, you can go ahead."

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The written statements just talks about how long the submissions can be 25 pages, double-spaced, what kind of type font this is like real lawyer nonsense.

Next page.

The current rules do not have any provision for consolidation of two claims that are very similar, which you would want to do in the interest of efficiency rather than having two IRPs. You'd want to have one intervention. So, where somebody who may be affected by the outcome of the IRP gets to intervene or joinder where somebody is a necessary party to get this right.

The Accountability Working Group recommended that we include these provisions, so that's what this section does and this is where the procedures officer is created to resolve questions regarding consolidation and joinder.

Now, I don't know if Kathy Kleiman is in the room but Kathy has raised some very interesting questions with me about the need for input on a notice of a proceeding and an opportunity to participate in IRPs if you are an affected party. So, when we put this out for a public comment, we're going to ask specifically about that.

Next slide.

Discovery methods – this is like what makes everybody hate U.S. lawyers and U.S. litigation as like this massive discovery that goes on for years and cost millions of dollars. On the other hand, the working group really felt like, it was important to be able to

ask ICANN to provide documents or other information that's likely to be relevant and material to resolution of the dispute.

So the Bylaws provide for a mechanism for having the panel ask ICANN to provide relevant and material information. But the depositions where one side out of court sits in a room for two days and ask questions or interrogatories, which are endless list of question that need to be in writing, that is not permitted under these rules.

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We do have a provision that says a party can ask to have something dismissed where the claimant hasn't met the standing requirement, they haven't shown that their material are affected by a specific action or inaction or where the request lack substance is frivolous or vexatious. So, that require some judgment on the part of the panel but the notion is you don't want to have a whole long process if somebody is just trying to delay for no good reason or to irritate people.

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Again, we did provide in the CCWG recommendation for interim measures of protection. So, when you file a case or as you're filing a case, maybe you haven't been affected yet but if whatever the action or inaction is allowed to take to go forward,

you could have a material effect, then you want to ask the panelist. And, in this case, it would be the role of the emergency panelist to the side whether to tell ICANN not to take further action or to maintain the status quo.

So, we did have a test for when that would be appropriate. That's in the Bylaws and in the CCWG recommendation and it's now reflective in these rules.

Next step.

The standard of review – this is the biggest change and this again just reflects the work of the CCWG. The standard prior to October 1st was highly differential to ICANN and basically, you needed to show that the Board was uninformed or misinformed or acting in bad faith. That was the standard. The panels did not always apply that standard just to be here.

So, here, we agreed that there was going to be an objective de novo sort of from the beginning examination of the dispute to determine whether the actions or inactions violated the Bylaws or where there's a failure to enforce the Naming Function Agreement or failure to meet the SLAs.

There's one place where the standard of review has to be a little bit different and that involves where ICANN is making decision based on an application that's required, statutorily required,

fiduciary duties and there as a requirement of law, the panel cannot replace the Board's reasonable judgment within a certain standard. That's something that we have to have in there as a matter of California law. And again, this is just a translation of the Bylaws.

Next slide.

This basically says how the decision is written and how it's – what it's going to issue and it also provides for a description of why the panels got to where they did based on prior IRP decisions, the articles and the bylaws and normally applicable law.

Next slide.

Again, we did provide a new section for an appeal. A claimant could appeal to the full panel, so the seven-member panel sitting together within a certain amount of time and we created a standard by which the full panel would take that up, a clear error of judgment or the application of an incorrect legal standard. That's now in the rules.

Next slide.

The cost provisions have been changed a little bit. Each ICANN bears a cost of the panel. Each party bears its own legal expenses. That includes lawyers, counsel and experts and the

like except that ICANN bears those costs if it's a community IRP. It gives the power of the panel to shift administrative costs or fees to the losing party if it determines that the defense was frivolous or abusive. But I can't do that with respect to a community IRP.

Next slide.

Next steps, hopefully, we will find consensus here and agree to release these updated Supplementary Procedures for public comments. The comments will be received and considered by the IOT. They may be updated as we go along. It may well be that the ICANN Board adopts these standards, these procedures. One thing the ICANN Board is going to have to do right away is adopt section 11 which is the standard of review because that is now what's mandated in the ICANN Bylaws for claims filed as of the 1st of October.

We have a draft IRP request for calls of expression of interest to identify potential candidates. We'll finalize that within the group and issue it and then start working on the detailed procedures for identifying those panelists, reviewing the expression of interests and figuring out the process by which the community will select the Standing Panel for the Board's approval. Remember that the process is that the community selects the

panel and then it's subject to ICANN's approval. We have to have processes and procedures for doing that.

We have quite a bit of work to do but this will, by adopting the Supplementary Procedures, we will have essentially implemented all of the requirements of the Bylaws, the amended Bylaws.

Questions, discussion on these. I'm sorry it's a lot of legal mumbo-jumbo to take into account but these are essentially rules for a legal proceeding so it's hard to avoid that.

THOMAS RICKERT: Excellent. Thanks so much, Becky.

BECKY BURR: Okay.

THOMAS RICKERT: We have had a question from Jorge in the chat. But we do have a little time left. Jorge, do you want to make your point to everyone to hear on the translation?

JORGE CANCIO: Thank you very much for giving me the floor. I think there are many other important and substantial issues coming from the

presentation Becky made. I'll just make the reference to the chat. It's a suggestion for the IRP Working Group to also take into account more ambitious rules in developing the Bylaw rule on the language to be used in the proceedings. I'll leave it at that.

BECKY BURR:

Okay. I do think that there is this requirement in the Bylaws that the proceedings will be conducted in English with the provision of translation as necessary. I think what you're asking and I think it's entirely appropriate is for the IOT to think about what that means and how we provide real meaningful assistance to those for whom English is not a first language. That's entirely reasonable. We're not suggesting the work is done. This is let's get the requirements implemented and then continue to work on it. It's very much an iterative process.

THOMAS RICKERT:

Thanks very much. Any more questions for Becky? Remember this is the second hearing on the remaining questions on the IRP. Next step for our group would be to have this published for public comment. It's not carved in stone as of now but at least we should make sure that there are no questions or concerns coming from this group. I see that Alan's hand is raised. Alan, floor is yours.

ALAN GREENBERG: Thank you. I don't have a question. An immense amount of work has been done on the CCWG by many people over the last several years. Given that, I'm immensely impressed with the amount of effort and position that you put into all this. Thank you, Becky.

BECKY BURR: Thank you. I just want to say I will be stepping down as the Chair of the IOT because I, at some point in this process, go on the Board. I'm not going to walk away from this. I will continue to be part of the team. But I think I want to say I'm really proud of this community. Thanks.

THOMAS RICKERT: That was almost my part, Alan. But I'm glad you [inaudible] I think we can't. Nice one. Kavouss, you had raised your hand as well.

KAVOUSS ARASTEH: Yes. One comment and one suggestion. The comment is that I made some editorial, almost editorial and one addition before the meeting to Becky, I hope that she has taken into account. Now, a suggestion before Becky step down formally, I think

CCWG needs to formally express its profound appreciation and thanks to the very valuable hard work that she has done once again after the first work done in CCWG Work Stream 1 and present this appreciate in a formal and normal manner with a big round of applause. Thank you.

BECKY BURR: Thank you.

THOMAS RICKERT: Let's have a round of applause now. Steve, your hand is raised.

STEVE DELBIANCO: Thank you. Great work on this. We're about to publish it for public comment. This was second reading today as Thomas said. Earlier today, when Cheryl and I were up there, we were talking about publishing a handful of questions for second reading. But that doesn't represent the consensus of CCWG that what the answers are. They were just questions. This is answers.

BECKY BURR: Yes. Yes.

STEVE DELBIANCO: When we publish this, we are publishing it as the CCWGs consensus updated documents. Right?

BECKY BURR: Correct.

STEVE DELBIANCO: Correct. Great. The public comment that comes back is for folks that haven't been paying attention, didn't know about it. Your group will need to stay together in order to answer the public comments, analyze when they come back.

BECKY BURR: The IOT has to stay together because it has a huge amount of work left to do. Because we now have this in the Bylaws as something that, in an ongoing way, is going to work with to make sure that rules continue to be up to date and the like.

Yes, it's not going away. As I said, there is no requirement for public comment on these but we all felt like it was the right thing to do. We get good ideas from the community for doing it. Also, we want the community be aware of the ways in which the rules are changing.

STEVE DELBIANCO: That's great. The follow-up to this though was for the Chairs. Let's make it perfectly clear that CCWG, the Plenary is endorsing this document to publish it with all due thanks to the IOT for the work you did generating. But we will own these documents when we publish them.

BECKY BURR: Correct. Correct.

THOMAS RICKERT: Yes. In fact, this is something that we're going to discuss later today when talk about the co-Chair's announcement following up to this meeting. This is going to be one of our major achievements that we are signing off on this piece of work and present it to the community.

Do we have more questions? This is your last opportunity to speak up. Otherwise, I would deem the second reading successful. It looks like we can take that off the list. That's awesome.

Actually, we had agreed previously that we would try to deal with the substance first and then talk about the administrative matters. If I had to pick one of the subgroups that I definitely did not want to chair, it would have been this one because this is just so- it's important work. Every single mistake that you can

make on this can have huge impact on ICANN and make it vulnerable to attacks. I think that Becky and her team have done an awesome job in getting this done, explaining it patiently to our group over and over again so that no one is left behind. I think that deserves all applause in the world for Becky and her team.

I think with Becky, and she just said, “Well, I need to move on and do other things”, there's another side to this and that is Becky's new role as a Board member. I think it really shows her maturity to say, “I can't possibly continue leading on this effort which is ultimately a tool to beat the Board with.” It's not really appropriate for her to write the standards by which she might be tackled in the future.

I think this also shows that she has fully grasped what this accountability and corporate governance topic is all about so that she makes room and moves on. Good news is now we have a Trojan horse on the Board.

BECKY BURR:

No. They might not think that's good news.

THOMAS RICKERT:

Let's give a big hand to Becky again for this remarkable work. Fortunately, she will not leave us entirely but she will continue

to be engaged in that group. Now, you might ask yourself who will take over to continue working on this. Although he's not in the room today, we have secured the yes, the greenlight from David McAuley to step into her footsteps which I think is relatively easy for him because he's already done a remarkable job in working on this topic.

I think that he's the best substitution for Becky that we can think of. The subteam will be in capable hands with David. David, I recognize that you can't object to being appointed now which is a benefit for us now. But actually, we have secured your approval of this. This is great. Thanks, David. Thanks, Becky. Let's now move on.

The next topic that we're going to discuss is the Guidelines for Good Faith discussion. Do we have Lori online to discuss with us? Because I think it would be good for us to be able to hear Lori. Lori, your microphone still shows to be muted in the Adobe room. But she's in the AC room definitely. She's fixing it. Awesome.

While Lori is fixing our audio, let me seize the opportunity to thank Lori already for her work on this topic. I think she felt a little alone at the very beginning getting volunteers to work with her on this important topic. Now, we see that there's a document that I think is in pretty good shape for us to discuss.

We do hope that this is one of the documents that we can put out for public comment shortly after the Hyderabad meeting. I think that's excellent progress that's been made in that subteam. Lori, are you with us now on audio?

LORI SCHULMAN: I'm getting there.

THOMAS RICKERT: Awesome. Welcome, Lori. Over to you.

LORI SCHULMAN: Can you hear me?

THOMAS RICKERT: Yes, we can hear you all right.

LORI SCHULMAN: Can you hear me?

THOMAS RICKERT: Lori, we can hear you all right.

LORI SCHULMAN: Great. I'm not sure if it's coming through my phone or my headset. Sorry. Yes. If someone could [post] my document, that would be helpful. Is my document posted in [Adobe] connector?

THOMAS RICKERT: Lori, let me just have a check with staff. Can we have Lori's document published in the AC room please?

LORI SCHULMAN: Here's the PowerPoint.

THOMAS RICKERT: The upload is in progress. Let's just wait for a second or two and back over to you.

LORI SCHULMAN: I can't just start even without the PowerPoint. I can just discuss the [inaudible] in which we approach the task. We do have the early draft, guidelines. This is not a consensus document but it is a place to start. I did want to remind the group that initially, there's a confusion over what's [past about] [inaudible] because of the main guidelines and standard of conduct presumed to be in good faith with exercising [inaudible] of ICANN's Board members.

The task here really is not about the conduct of the Board. It's about the concept of any [assets] of decisional participants who may wish to remove [inaudible] Board member. Under the new ICANN Bylaws, it's an [inaudible] that a decisional participant and members to remove the individual [for them]. These actions are indemnified provided the decisional participants is acting in good faith. The purpose of this subteam is address guidelines of conduct, that would be considered good faith on the part of the decisional participant in order for the indemnification to apply. [inaudible].

THOMAS RICKERT: Lori, excuse me. Lori, excuse me for a second.

LORI SCHULMAN: Yes?

THOMAS RICKERT: Maybe it's just me but I find it extremely difficult to follow because the audio quality is not great. Let me look at Brenda. Brenda, I think Lori is speaking through the AC room. Right? Can we dialogue to her and maybe get a better audio quality?

LORI SCHULMAN: No, I'm on a dial out. Can you hear me?

THOMAS RICKERT: It is a dial out already?

LORI SCHULMAN: [inaudible] Hold on.

THOMAS RICKERT: I would suggest and I'm looking at Brenda again. Brenda, maybe we can try again to dial out to Lori hoping we get a better audio quality than this. Brenda? Brenda? Can we try to dial out to Lori again hoping to get a better audio quality this time? I'm sorry. I can't hear you.

BRENDA BREWER: Okay. Lori, could you try speaking again? I believe we've cleared up your audio issue. You need to speak through your telephone you dialed in.

LORI SCHULMAN: [inaudible]

BRENDA BREWER: Okay. We'll get your number and call out to you, Lori. Stand by please.

THOMAS RICKERT: I'm sorry for this interruption but I think it's almost pointless to listen to her if you can't really understand a word. It would not be appreciative of your hard work, Lori. For the other remote participants, we're just pausing for a minute or two in order to get Lori back on the line with better audio quality.

STEVE DELBIANCO: Yes, Thomas, could the staff publish the link to the actual document that we'd be putting out because the progress report is noticed in the agenda and Lori's outline but the document that CCWG would be publishing is cannot be made available in Adobe.

THOMAS RICKERT: Bernie and Karen, did you get the question from Steve? Can you maybe resend it to the list?

LORI SCHULMAN: Can you hear me now?

THOMAS RICKERT: Yes, Lori. Let's give it another try.

LORI SCHULMAN:

Okay. I'll give it my best shot. Please stop me if you don't understand. I will speak slowly. I'm going to very briefly describe the task of the group. That is to focus on the behavior of the decisional participants who may wish to remove the individual Board member. This is important because under the ICANN Bylaws, in order for the decisional participants to be protected under ICANN's Bylaws indemnity which means decisional participants would be paid back from legal expenses or any other damages they may be open to if they make such a [inaudible] Board member.

That's what this is about. Protecting [inaudible]. The group decided that we would propose a minimalist set of guidelines that would put the responsibility of putting specific processes in place by each SO/AC. This is because we do not interfere in the decision-making process of any particular SO/AC.

The SO/AC may have different expectations and standards for Board members who are chosen to represent them. The guidelines will know [inaudible] or should have a decision-making process. The process must be [inaudible] to document the decision made including verifications and the step taken to make the decision.

Our thought is not to be superstitious but establish principles that are fair and useful comments [inaudible] even if different

[inaudible] standards apply for different interest. Through the guidance from the Work Stream 1 [inaudible], we will not be listing specific causes of action. Each SO/AC could have a different standard for what constitutes [inaudible] of action for Board removal but all SO/ACs must follow the same guidelines in order to elevate the concerns and actions [inaudible]. The proposed action may be suggested but should be able to be explained and accepted by others.

After these discussions, we came to a complicated process. What you see on your screen is the first part. This is the proposed guidelines for the Board removal actions for all Board [groups]. It may be for any cause/reason. This is an open question here, a draft being issued. Specifically, if we're not [inaudible] causes or [inaudible] causes. Is there a better word than [inaudible] because it had a legal implication? Do we want to say reason not for now or some other term?

All removals should be facts based. Insufficient details to verify facts or reasoning, supply evidence if available, include references [inaudible] Bylaws and procedures if the decision is a specific Bylaw or procedure [inaudible] degree. Any [inaudible] should be [inaudible] and professionalism. That's a very important [inaudible] action. This whole issue is about minimalist, fairness and good faith.

May have the second slide, please? Is the sound okay for people?
Oh, my God. Sorry, guys.

THOMAS RICKERT: Lori, we have been in touch with our great support staff. They have recommended that you might wish to disconnect your line and Verizon is going to dial you again. Sometimes it works if we just try another time. I'm sorry for all this hiccup but please do disconnect your line and we will momentarily call you back.

In the meantime, Leon is going to tell you some jokes.

LORI SCHULMAN: Hello. I'm back on. Is this better?

LEON SANCHEZ: That was a short joke.

LORI SCHULMAN: My computer speakers are muted. [inaudible]. I'm doing this again.

THOMAS RICKERT: Lori, I'm afraid we just have to live with the bad sound quality. But we recognize that you're doing your best so why don't you just continue. Thank you.

LORI SCHULMAN:

Okay. We left off [inaudible] which would apply to all work group actions. But then here's the second prong for removal of SO/AC [nominee] because there are special issues here. We should establish the SO/AC to establish expectations for Board member effectiveness with regards to representing SO/AC interest. Submit the expectation to the Board members in a reasonable time, in a specified table of time upon taking a seat on Board, clarify that the expectations are in addition to any clauses [inaudible] that may be brought forth without limiting across [inaudible]

The SO/AC is responsible for developing procedures for consideration of the removal procedure notice which would include reasonable finding and investigation, written verification of claims, consistent voting method for accepting or rejecting a [inaudible] before the elevated [inaudible] SO/AC.

Could you please move the slide?

Okay. I'm going to [inaudible] those that are not on the [inaudible]. I wanted to discuss [inaudible] with this section because this concerns that SO/AC may actually be creating specifically contrary to Work Stream 1 proposals.

On the other hand, from the point of view of a Board member, it is reasonable to expect some sort of transmitted standards. Alan Greenberg has to study a formulary to this. The way the current rules are written if an SO/AC appointee is [inaudible] and the SO/AC [inaudible] in theory, the Board member could be removed.

If the Board [inaudible] the SO/AC is not [inaudible]. It sounds absurd but it's not absurd. It's a privilege thing [inaudible] very easily. What would be a good solution to not [inaudible] but at the same time give Board members fair and useful notice. We have also asked the Legal Committee for assistance. The questions that we have code relate to review these procedures and whatever [inaudible] they end up to make sure they are meeting whatever [rudiment] standards will be in place of the California laws whether it's in a code or [inaudible] decision.

We've also asked for an opinion on whether or not it's appropriate for ICANN Legal to receive these guidelines as they essentially report to the Board. We have asked for a conflict of interest opinion as well. You're parting me on getting signed so help me out and I'm also working off note. Again, I apologize for the awkwardness. I was wondering if anybody has questions or comments at this point.

One of the questions that we had is should the group for this standard form that all communities must use to raise the issue of [inaudible] body either the specific SO/AC Board member but the [inaudible] participate in the case of a [inaudible]. Basically, should we have a standards claims form?

To answer your question, we're not at this public policy. It will be an actual report according to the standards that's out initially [with the state] of play recommendations, challenges higher background. But the bottom line is if we don't have this particular set of guidelines to figure it out, writing a letter to the Board is going to be meaningless.

THOMAS RICKERT:

Lori, if you agree, I would like to move to the queue. We have Izumi and Julie. Izumi, you're first.

IZUMI OKUTANI:

Thank you. Thank you, Lori, for this update. I understand the basic concept of this is that it's ultimately up to each SOs and ACs to make decision about removal of its Board as they appoint their respective Board members but at the same time keep a good balance that this happens in good faith.

I saw I think in one slide before this that there's a need to verify facts. I'd like to understand who is the party that verifies that?

Would it be fair to understand that it's the SOs and AC themselves, they just try to verify or double check as a part of their process that the reasoning that they give is based on facts or is there anything that you have in mind?

The second point is that I think I heard something about ICANN Legal team. I wasn't really sure. I wasn't clearly able to hear the details. What has ICANN's Legal team has to do with this? Was it to just make sure that it's in compliance with the ICANN California law or was there anything additional that was suggested that they will take part in this process? I just want to clarify these two points. Thanks.

LORI SCHULMAN:

Thank you, Izumi. In terms of the verification, we haven't done a [deep dive] but initial thinking is that the SO/AC will have an internal procedure to verify. But if the community thinks that there should be [inaudible] and verify it, we can certainly include that in the proposal.

In terms of ICANN Legal, yes, it's the reason we asked the question was for the latter part of David. We believe that the issue of good faith is an issue that is a legal issue as well as a fact-based issue. We want to make sure that we were meeting any sort of [minimum] criteria that may be established through California regulation or case law.

The second part of this is the group that [discussed] that ICANN legal essentially reports to the Board and in some cases may actually represent the Board. Therefore, would there be a conflict of interest where the legal team to actually review the [said] guideline. I'm not sure. As an American attorney, I can tell you I'm not sure. We thought it would be best to exercise a caution to get these legal questions answered.

IZUMI OKUTANI: Thank you. I wasn't able to fully hear so it will be really helpful if you're able to send this to the CCWG Plenary mailing list just to make sure that I heard it correctly. Thank you so much for the clarification, Lori.

LORI SCHULMAN: You're welcome.

THOMAS RICKERT: Next is Julie.

JULIE HAMMER: Thank you. Julie Hammer, SSAC rep. Lori, thanks very much for the briefing. On your rough cut of the first draft of guidelines, under paragraph 2, you've suggested that each SO/AC for their nominee firstly needs to establish expectations for Board

member effectiveness. Then under B, you said transmit the expectations for the Board members within a specified time.

Could I suggest that you might think about adding another step in between there being to actually ensure that potential candidates for the Board member position be made aware of the expectations because it's really more important or it's equally as important for them to be aware before they're appointed as a Board member as well as have it refreshed for them after they're appointed. Thank you.

LORI SCHULMAN: Thank you. I think that's an excellent suggestion. We can certainly work with the [inaudible] with that. I'm hoping that the ICANN staff are taking notes here. I guess I can [listen] to the recording again as well. I think that's an excellent point.

THOMAS RICKERT: Thanks very much. Next is Alan.

ALAN GREENBERG: Thank you. I've put a comment in the chat saying fact based is okay as long as the fact can be we no longer think you're the appropriate Board member to represent us or not to represent us to be there. We spent an awful lot of time doing Work Stream

1 on the issue of whether there needs to be a cause as opposed to a rationale. We simply have to say what the problem is. But the problem can be very- it does not have to be objective. It can be very subjective. I think we need to be very careful that we don't impose us a rule now that we very carefully eliminated the first go around.

We appoint Board members because we believe the Board member will be of like mind. The Board member does not represent the AC/SO but we believe we'll represent the philosophies of or something speak. If it comes down to the point where we believe if we had a selection today, we would no longer select that person, that's a good rationale to remove them.

I think we need to be very careful not to put in place rules which will prohibit an AC/SO from ever doing that. That is the reason we're doing it under California law, there needs to be no reason whatsoever. It's just a done deal. I think we need to be really careful.

Certainly, from my perspective, I think it would be very hard for an AC/SO to set all of the possible expectations in a way that are not subjective and then have to stand behind them afterwards. I think we're on a slippery slope of reversing a Work Stream 1 decision if we're not careful.

THOMAS RICKERT: Thanks very much, Alan. Let's bear in mind that we have made it one condition for our work that we would check that none of the Work Stream 2 recommendations would undo recommendations we have in Work Stream 1. Lori, would you like to react to Alan's point?

LORI SCHULMAN: Yes. These are discussions that we are having in the work group. In fact, may not be the right place to work probably because that Alan [has a play] and Robin has mentioned to the chat in our discussion. We are aware that it may not be the optimal language. But where we get stuck here, if we're asking them to see, how can we be [inaudible]? What standards would be applied for that reason [inaudible] arbitrary but at the same time the result violate Work Stream 1 or impose [inaudible]. This is a very, very tricky draft to the problem.

This is why we're posting this very early and why we want the feedback because the red flags are key to what's working a language that will [inaudible] master, having a lot of [inaudible] but at the same time, having guidelines that are being implemented in good faith and an arbitrary decision is not a good faith decision. I don't think it's a new debate, Robin. I just think we have to find the right wording.

THOMAS RICKERT: Milton's hand is up. Milton, please.

MILTON MUELLER: I really think that this elaboration that Lori is going through has gone off the track. I think we had this debate. The whole point of being able to remove Board members is to give the community an essentially sweeping and unlimited ability to remove Board members because they don't want them to be on the Board anymore. That's part of the accountability. It was debated at length as to whether there should be at least specifics things. We all agreed that we did not want to limit the reasons for removal to any particular thing. It was simply a matter of the community no longer wants this person on the Board.

Now obviously, that power could be considered to be arbitrary. But what prevent it from being arbitrary is that you need the support, overwhelming support of the Empowered Community in order to do that. It's not like one group of five people decides they're mad at a Board member and they get rid of him. It's going to be a lot of work and a lot of trouble to remove a Board member. If indeed you can get that level of support, that's all you should need. It's not arbitrary to say that you have to get three fists of the Empowered Community or maybe it's even four fists to do that.

Let's make it clear that the Board members are serving at the behest of the community and the community doesn't need a specific justification to remove them. It's their right to appoint and to remove.

THOMAS RICKERT: Thanks, Milton.

LORI SCHULMAN: I want to suggest and say I really promise that [inaudible] it's about indemnity but about the indemnity [inaudible] not just the Board members. What [inaudible] participants need to happen some [inaudible] from a Board [inaudible] or a Board member action of any place that would incur some sort of [inaudible].

THOMAS RICKERT: Lori, I'm sorry. I couldn't really hear what you were saying. I would suggest that we do the following. Robin has also raised her hand. Maybe we hear Robin now and then we go back to you, Lori, and hoping that you can be understood better.

LORI SHCULMAN: Thank you.

ROBIN GROSS:

Hi. I'm also concerned that we've drifted significantly off track from what this work team is set up to do which is deal with the indemnity issue, not with restricting the removal rights at all. I think we need to go back. We need to look at what this subgroup was originally chartered to do. I know when we set it up, a number of us were very insistent and got reassurances a number of times that this wasn't going to, in any way, limit the community's right to remove their Board members. It was only going to set up some standards with respect to indemnity. I think we need to go back and do what we agreed to do in Works Stream 1. Thanks.

LORI SCHULMAN:

Robin, that is what we're talking about. We're [inaudible] that we have to go back to the word. That's what I said, this is a drafting issue. We understand that the indemnity is not just for the Board but it's also for the decisional participants. If a decisional participant makes a move for the Board member for any reason, and the Board member [resigns], that decisional participant is [inaudible]. I want to [inaudible]. The question is what are those [standards]. Without limiting what the [inaudible] do, we still need some sort of boundaries for what is considered good faith. This is extremely tricky. We thought it [inaudible] but we've bought these [inaudible] as challenges which is why we're bringing it [inaudible].

THOMAS RICKERT: Thanks, Lori. I see that Alan’s hand is raised. I would suggest that we take your intervention as the last intervention for this session, please.

ALAN GREENBERG: Just a very short one. My recollection is that what we're trying to do here is make sure we set expectations for the AC/SOs so they understand ahead of time under what conditions they might not be indemnified and they may be sued over the removal. The kinds of things we were talking about initially were if they state something which is categorically false or misrepresenting facts, they are not acting in good faith, then they may not be indemnified. As long as they're acting in good faith even if it is a very subjective rationale, then that's okay. But if they lie, all things are off.

THOMAS RICKERT: Thanks very much, Alan. I see that there's a discussion going on in the chat which I think reopens some of the issues that we had closed. It is a fact that in Work Stream 1, we had agreed that the Empowered Community can remove both members without cause. There doesn't need to be any cause.

The reason why we are discussing this today is that there has been an exchange with our legal advisors around the clause which I think Alan has been asking for because Alan at the time asked that the SO/AC Chairs that bring forward the request to have a Board member removed should be protected from being sued by the Board member in question.

Then our lawyer said, well, you can't just have general indemnity if you do something illegal if you accuse that person of something that is not founded, then we can't protect. Then there was the subsequent question of when is this boarder crossed? What is okay to bring forward and what is not okay? The idea was that we would give some guidance not that much to the Board member but more to the Empowered Community as to what rules they need to abide when it comes to removal of Board members so that they can benefit from the indemnification that ICANN would grant them.

I think that this discussion is an excellent one because there is great prep work by Lori and team to take the point that are outlined as a starting for the deliberations. I think we are in the feedback loop with the plenary now showing that there seems to be a disconnect when it comes to cause for removal. Actually, that's something that is neither for the Plenary to discuss again nor for the subteam because that is ticked off the list with our final report.

We would ask Lori and team to refine the paper and further work on it with legal support to specify or to further refine the document based on the discussion today. I think we can't take this much further today other than going on record, again, thanking Lori and her team for the work on this topic.

Thanks, Lori, also for presenting to us under this very adverse circumstances with bumpy audio. It's difficult already to present remotely but doing that with all the hiccups that we had on the audio is even worse. Thank you so much for doing that. Thanks for your remarkable job with the subteam and we will follow-up on the list in order to take this work forward.

Great. Thanks so much. With that, we can move to the next agenda item which is the session on transparency. We have 25 minutes left before the scheduled coffee break so we made some time. Michael, are you okay doing the talk now? Yes? because then I'd like to discuss transparency now then we're going to break for coffee.

That will allow us to follow Sebastian's recommendation earlier and revisit the discussion we had with Göran and try to transform our vivid memory from that debate into actions for this group so that we can follow-up with him in a former manner.

Thanks for your flexibility and thanks for the staff for bringing up the Transparency report now. Welcome to Hyderabad. I'm not sure who's going to go first. Michael?

MICHAEL KARANICOLAS: Sure. We probably need more than 25 minutes for the whole discussion.

THOMAS RICKERT: We can have it. Let's see how-

MICHAEL KARANICOLAS: But we can certainly start. Thanks very much for that. I want to keep my introductory remarks on this pretty brief because as I see it, the purpose of this session is less about us presenting and more about listening and facilitating discussion so we can get more feedback about the current draft document.

I do want to say as well that the document is still evolving we think. You'll notice that we did include, as part of the document, some questions for further discussion. Those are hopefully areas that we're going to address as we go partly through today and partly through further discussions on the list. Hopefully that will lead to a few more ideas being included before the draft is finally approved.

If you look into the discussion – so as part of this introductory discussion – I want to mention those areas for further discussion and then we can open it up and I’m hoping to hear some feedback.

The first thing that I want to draw your attention to is at the very end of the DIDP section we mention the first area for further discussion which is the appeals process. Obviously we’ve heard a lot about how the IRP Review is being revamped and so that ties into that idea which, since that will be a major mechanism for reviewing the process.

Another area potentially to consider including is earlier today we heard Göran mentioning stronger need for documentation, and that’s certainly something we can consider including potentially a duty to document which something that a lot of national access to information laws incorporate. It’s also worth potentially including specified conditions under which ICANN should or should not be entering into Non-Disclosure Agreements as part of its contracting.

We haven’t included a particular position on this at the moment because it’s quite controversial, but hopefully we can discuss a bit further and come to some sort of consensus on how Non-Disclosure Agreements should be approached by ICANN.

Another area to potentially include with respect to exceptions is severability and the idea where a request for information is rejected, instead of refusing altogether, ICANN should be considering just severing out that information and blacking it out so that instead of refusing to disclose the 100-page document because one page contains sensitive information, they should just cut that information out.

A couple of other ideas are, where exceptions for third party information – either because it's commercially sensitive or sensitive to privacy – are triggered, that there should be procedures for consulting with those individuals just to see if they would consent to the disclosure because obviously if the individual impact doesn't have a personal problem with it, then that would waive potentially the exception.

There's also consideration of the degree to which requests in ICANN and responding to requests should need to do a reasonable amount of processing in terms of putting the information together as opposed to just providing documents that already exist.

So those are some ideas of elaboration under the DIDP section.

Under the proactive disclosure section, so far we've really focused on interactions with governments. We are very keen to hear from you what other areas of information you think should

be proactively disclosed, and really what that comes down to is what categories of information are there that would be useful to the community? And so that's really an important area to clarify based on what people are interested in seeing.

Some potential areas to start would be whether ICANN should develop a registry of the types of information [on] which they have available in order to facilitate access requests, whether they develop a user friendly guide to using the DIDP, and whether there should be more of including a description of the procedure for how requests are processed by ICANN, and a description of ICANN's record management processes.

Finally, with the whistleblower protection section, the main area that we isolated for further discussion is how the NAVEX recommendation to allow business partners to access the hotline should be understood and whether we support business partners being able to use the hotline.

I realize that those are some new ideas that I'm just throwing out there. I'll circulate them in written form later on so that we can have a discussion on the lists as well. But for now I'm keen to throw it open to any comments that we have either here or by people participating remotely on the draft as it's been circulated or any of these ideas that have been floated.

Unless – did you want to add...?

Alright. Let's open it up and have a conversation.

THOMAS RICKERT: Great. Thank you. I see Robin's hand is raised. Robin, please. And then Parminder.

ROBIN GROSS: Thank you. I just asked this question in the chat but I will repeat it here because I think it's important. One of the things that we agreed upon in Work Stream 1 was the need for significantly more transparency with respect to Board deliberations. And so I'm just wondering how we're coming on that particular issue, where that fits into the three categories here or if that's something separate or just basically how we're coming on that one. Thank you.

MICHAEL KARANICOLAS: That's certainly an area that needs to be clarified more. One potential idea which we've seen done by other parallel organizations is to have a mandated disclosure after a particular period of time. So if there's a sensitive topic under discussion, you would mandate disclosure after five years, say, or 10 years, depending on the level of sensitivity. That's one idea.

We also need to look a little more carefully at what exactly is being put out by ICANN and what more needs to be done in terms of Board deliberations specifically. I've seen the information that's available. I'm very keen to hear specifically what material should be put out there proactively. Please –

ROBIN GROSS:

Yeah, if I could just follow up. Some of the things that we talked about in work Stream 1 were the Board having the same sort of transparency that the GNSO Council has, for example. It's mailing list is open. We can listen to the GNSO Council meetings live. These are just very basic transparency mechanisms that the GNSO Council has had in place for a number of years for developing policy and I know these were things that were recommended in Work Stream 1 regarding Board deliberations. So have these types of issues been explored in this group?

MICHAEL KARANICOLAS:

No, not yet. But it's good to hear this kind of stuff. Again, I wasn't around for Work Stream 1. I'm relatively new to ICANN. So this is one of the things I was really hoping to facilitate is just brainstorming about what should be built into the proactive disclosure section which is more than the other ones, a work in progress. And so this is great to hear, and thank you for that.

THOMAS RICKERT: Parminder and then Ed Morris.

PARMINDER JEET SINGH: Thank you, Chair. I'm Parminder from ITforChange India. I do not participate in this working group so it's an outsider's view from what I heard the Chair speak.

I wonder whether the group has tried to lock, stock, and barrel, apply the disclosure laws of the U.S. government for ICANN? And if they haven't, what would be the reason for that? Is there anything which you can tell me which ICANN does and government of the U.S. for instance doesn't do? It also enters into private contracts, it takes services from private companies, everything that I could possibly see ICANN do.

Why I'm saying this is that ICANN promotes itself as an open system and what it lacks in [representivity] as a legitimizing thing it makes up by saying that it is open and transparent and therefore its standards should be higher than governments who have other kind of legitimacies supporting them.

But I am not sure whether the standards of even the U.S. government and I can even proudly say of the Indian government because India has one of the best right to information laws as such. So why don't we just put the whole

law as it is applied to government of the U.S. and say this is the default and see why and for what reason it cannot be applied to ICANN [stratuses]. I don't see anything that ICANN does which government of U.S. doesn't do.

Even falling upon Robin's questions, I understand that the needed transparency of any government meeting in the U.S. is extremely high. You have to have very solid exceptions not to make the full record of every U.S. government meeting public. And why wouldn't it then also be applied to ICANN?

And my problem with some of the [legitimacy] issues with ICANN are that there is an attempt to import corporate culture into governance systems. I take ICANN to be purely a public interest governance body, and therefore should be going by the standards of public governance and not of corporate behavior. Thank you.

MICHAEL KARANICOLAS: As part of this process we did look at the models that are in place in different governments around the world, the U.S. government included. But the U.S. isn't the best transparency standard to follow, as you said very correctly. India has a stronger system in many regards so we were looking at that as well.

We also considered models that are in place because ICANN is, of course, not a government strictly speaking. We looked at models that are in place among international financial institutions like the World Bank, and among UN organizations just to broaden out how Transparency policy could be designed. There are certain areas where I think it is good to follow governments. There are certain areas where it's important to diverge a little bit.

On the exceptions, for example, we wouldn't want to see a standard taken that's similar to the U.S.'s standard on exceptions because the U.S. standard on that is quite over-broad as are most countries. Although India is, again, better than most.

The one thing though that I think was really fantastic that you mentioned just now is about open contracting, because that I think is extremely relevant to this discussion. It's the fact that governments around the world do this kind of stuff totally routinely, and it's absolutely known that if you do a contract with the United States government whether it's a procurement contract or services rendered that there will be openness applied to it. In Canada it's \$5,000. Anything over \$5,000 will be proactively disclosed. And there will be information like the identity of the contractor, the nature of the services rendered, often times even the pricing system, areas that have some

commercial sensitivity potentially, but it's just part of the process that when you contract with a government you expect that there will be a greater level of openness.

I do think that we should be looking for closer to a governmental standard from ICANN. And I think that I would certainly support the inclusion of stronger standards around open contracting. We've heard that from some people as part of the group. We've also had people opposed to that on the group and so that's a discussion that I think needs to be taken further, but it's really good to hear statements in support of open contracting and in support of open [delivered] of processes which, again, I think is a very good addition.

THOMAS RICKERT: Thanks very much. Ed.

[ED MORRIS]: Thanks, Thomas. And thank you, Michael, for all the hard work the group's put in on this. Some good stuff. Two quick questions. One on the defined conditions of non-disclosure – I notice in the recommendations you're not touching the deliberation, the two that state that ICANN can withhold documentation if it's being used for internal deliberation or when they're working with the SOs/ACs as well. What I've found in my requests, when we're

trying to pinpoint where a decision is being made within ICANN, we often can't do that because they're invoking those DCNDs. So my suggestion would be to have some sort of an Ombudsman check on those two as you're doing for some of the others.

The second regards other things we should be taking a look at. If you look at the transcripts – I'd recommend you go to Morocco – because we had a list of 10 or 11 things we wanted to look at in this group. A lot of them I don't think have been deliberated. One of which, which was important to me, was requiring Board members to disclose speaking fees when they're speaking before industry and trade associations, corporations, and the like.

That is Accountability. It's also Transparency. But great work. Thank you very much for your efforts on this whole [inaudible].

THOMAS RICKERT: Thanks very much, Ed. Michael, would you like to respond to that?

MICHAEL KARANICOLAS: Those both sound like excellent ideas. Requiring Board members to disclose speaking fees is another one under proactive disclosure, so that's another great idea to include.

THOMAS RICKERT: Sebastien.

SEBASTIEN BACHOLLET: Thank you very much. First of all, I would like to remind to our colleague who's first language is English that we have people with it's not a native language and we have people online and speaking too quickly even if it's not interpreted it's a trouble. Thank you.

Second point, I just want to be sure that we are not expanding too much scope of this working group. And the second, its' things we are asking for Board member to do, we may ask ourself if we will do it for us, and if yes, then we need to do it in each SO and AC. We have now to be taking into account not just the Board. It was done in Work Stream 1. Now we have to take into account the whole community. Thank you.

MICHAEL KARANICOLAS: My apologies for the quick speaking. I'll try to slow it down. I have heard that before.

In terms of whether we are expanding our mandate beyond what we're supposed to be doing, I don't think that's an issue. I think that everything that we've discussed both in this paper

and today has been core to Transparency and core to what we're meant to be looking at.

In terms of the actual request about disclosing speaking fees and whether that's on the level or not, I think it would be great to have more discussion about that. Your feedback on that has been noted and I'd love to hear more from others on it.

THOMAS RICKERT:

Michael, there has been a question from [Fin] in the Adobe. You're not in the Adobe here, so let me read it for you. "Why is the proposed additional disclosures limited to interaction with governments? Would it not provide a clearer picture of how, when, and to what extent, ICANN engages if the proposal is extended to interaction with all external parties?"

CHRIS WILSON:

Chris Wilson, co-rapporteur with Michael on this subgroup. I think to answer the question at least off the bat, certainly one of the mandates coming from CCWG's report was that specifically talking about Transparency with interaction with governments [and] to some extent that's why we've led with that because that was one of the core break-outs from the Annex 12 for the Transparency Subgroups. So that was an issue that was raised during the course of Work Stream 1 deliberations and

discussions somewhat in respect to engagement that the former CEO had done with China and Brazil from a variety of different capacities. So I think that led to that sort of specific focus coming out of Work Stream 1. So that's why we've, at least initially, provided a recommendation on that specifically.

I think we can certainly look into if there are other parties or other engagements that the community is interested in learning more about getting more transparency, that certainly they should start raising those with us and be specific if you can. I think we need more above and beyond what just external parties means.

I think we're open to talking about that and thinking about that, but welcome some specifics on that.

MICHAEL KARANICOLAS: Just to add – the proactive disclosure section needs to be expanded and I think that we're clear on that hopefully in the draft, and we're very receptive to additional areas that people want to see published.

THOMAS RICKERT: Thanks to the two of you. I guess what I'd like to discuss briefly now are the next steps. And I guess that we basically have – or I would have three questions for you. One is, we see from this

discussion that there are wishes from the group to look into some more areas, but first question to you – what do you think is needed from your perspective? Hadn't we had the discussion today, would you say this is good to go? Or what information are you missing that we can potentially help you with?

MICHAEL KARANICOLAS: Again, the main one was the proactive disclosure. But I wouldn't say that this draft is good to go in the sense that I think it needs to be expanded and I think there are additional ideas that need to be discussed and potentially worked in. The way that I see things moving from here on would be that we would take some of the ideas that have been shared around here and work them into the draft and then circulate it again for approval before we can consider the second reading part of this concluded. But that's where I see us going from there.

THOMAS RICKERT: I think that we might benefit from some interaction with ICANN Legal or Göran following up on the discussion this morning because we are really potentially interfering with them on how they can source third parties as contractors. So in order to make this process as efficient as possible, I think my reaction would be – let's give this group a relatively short period of time to comment on the existing draft.

So let's not wait for you to explore the points that we've discussed today but let's send it again to the whole Plenary. The Plenary please provides feedback on what's missing so that you can then incorporate all the group internal feedback into the updated draft. And in parallel we should maybe come up with a list of questions for Göran that he can pass on to Legal so that we reach out to them as well before, then as a third area we would finalize the document, seek consensus in this group, and put it out for public comment. How does that sound?

MICHAEL KARANICOLAS: I'm not sure if we should potentially seek consensus here before we put sensitive questions to ICANN Legal and to Göran, particularly because it's good to... I think there may be a danger of pushing the conversation away from trying to find consensus among this group and to try to find the group's position if we invite ICANN Legal to comment prematurely. But I'm open if people think that's a better avenue to go.

THOMAS RICKERT: Before moving to Parminder, my thinking was that we could probably do well with some information on the position of ICANN Legal why they are doing certain things the way they're doing them so that this group can take it into consideration

when it comes to finalizing the document and doing the consensus call.

Parminder, please.

PARMINDER JEET SINGH: Yeah. Again, I'm not really sure what kind of gains a reference to Legal can give, and I'll elaborate on that. I would like to hear a potential issue which could be [there] in an organization being transparent. There is a cost to that, I know, but a legal problem in saying that we would disclose this information if this is done prior to making a contract, not post making a contract, what happens with the legal teams normally is that it's difficult for them to understand that it's not just an issue of efficiency but it's a public interest. We are a governance body. We are not a corporate body. And I do think that it's possible that doing open contracting is a little more expensive. Less companies may want to apply.

But governments do it, and they take a more expensive route because it is in public interest to share that information. And whether that nuance gets lost when we take a very legalistic view of things, and I really cannot understand the potential issue in an organization saying before they make a contract that this would be the frameworks of our contract and these are the informations which we are going to share. I can't see what kind

of a potential problem. I'm ready to hear of any potential case which could be contrary to what I'm saying.

THOMAS RICKERT:

Thanks, Parminder and I would suggest that you take the point of open contracting into consideration when you're working on the next draft. So I think that as a minimum – and I didn't hear or see any objection to that – we will push the current version of the document to the Plenary. We'll give the Plenary some time to review and add to it. Whether or not we're going to have a feedback loop with Göran or ICANN Legal, I suggest we discuss later this afternoon when it comes to following up actions with Göran, because I guess that's where it really belongs. Because I guess the issue of prematurely reaching out to ICANN would apply to the other subteams' requests as well.

We have reached coffee time, and I will not leave you this table without saying your names loudly and clearly, Chris Wilson and Michael Karanicolas, you've done an awesome job on this paper. I think that if you haven't read it, please do read it. It's an awesome read and I think it's nothing short of brilliant as a first draft to be presented to the Plenary. So a big round of applause for you guys and your team. Thank you so much.

Coffee is ready. Let's reconvene in 15 minutes.

[Break]

THOMAS RICKERT: This is the two minute warning. We're going to reconvene in two minutes so please go to your seats, get seated, and we will restart again.

Okay, so let's get the recording started again. We're going to move to the request for external support agenda item in a moment. That's going to be led by Leon. But as you know, we have made some time by being faster this morning, which is good. We would like to use that time to work more in two areas which you don't find on the agenda at the moment. One is the proposal made by Sebastien to discuss concrete follow-up steps based on the discussion that we had with Göran, and then Chris and Michael from the Transparency Subteam have also asked whether they could get a little bit more time to discuss with the groups some of the questions that they are still seeking input on.

So hopefully we can accommodate both areas. We will go first with the follow-up actions on Göran and then move to the Transparency Subteam Part 2 discussion.

With that, maybe I can get an indication from Brenda whether the recording has started again. So I see thumbs up from Brenda and the tech folks.

With that, I'd like to hand over to Leon.

LEÓN SÁNCHEZ:

Thank you very much, Thomas. We have a slot for request for external legal support. Before going into that I would like to suggest a way to approach legal requests. We have had a Legal Committee working through many months now and this committee is now asleep in a way, that we haven't been receiving any legal requests so far. But of course, legal requests are beginning to show again.

My proposed approach to this, and this of course is open for questions and comments on how to address the different needs of legal support, would be to of course gather the different requests from the many subgroups that will be needing legal support and from there I believe that since we have a tight budget we need to be cautious that legal costs are the biggest part of the expenditure on the historical budget for CCWG.

One way of being mindful of the limited resources we have available for this second stage of our work would be to have the Legal Committee assess the legal requests by the subgroups, of course, and as a first approach direct those questions to ICANN Legal and get the response from ICANN Legal, and of course, take that response back to the subgroup that submitted the request. And if the subgroup finds that the response from ICANN

Legal does not comply with their expectations or might be biased for any kind of reasons, then we could of course direct a more precise question to our external legal counsel as we have done previously.

This is, I repeat, a suggested approach and I would like to open the floor for comments on this approach. Would it be feasible for us to have our first stop on ICANN Legal regarding legal requests from different subgroups then have this information back to the subgroups be evaluated by the originating subgroup and if it fits the purpose then we save some thousands of dollars, and if not then we will be directing the questions for external legal counsel.

Are there any questions or comments on this end? I see Robin's hand is up. Robin?

ROBIN GROSS:

Thank you. I think it's important that we have the Legal Committee look at the requests on a case by case basis and make an evaluation for each individual request whether or not ICANN Legal or our outside independent counsel is the appropriate place to start. Some of these questions are going to be inherent conflicts of interest by asking ICANN Legal to do the initial work. And since they're tapping into our budget it's just as much as our external legal counsel I think some of that budget

could very well be wasted by having an automatic presumption that everything goes to ICANN's Legal department first.

Again, I think we need to have the Legal Committee evaluate each request on its own merits in terms of who has the appropriate legal expertise, who has the appropriate conflict of interest position on a particular issue, and make those determinations considering the budgetary restrictions. But I'm concerned that what's been proposed is pretty much ICANN Legal is going to eat up most of our budget and only when a subgroup is unsatisfied with the answer then it would go to an outside counsel. And I don't know that a subgroup is necessarily going to be in a position to know if that question was answered properly given the conflict of interest that ICANN Legal has inherently.

So again, I think we need to have these decisions made on a case by case basis depending on the merits of the particular question. Thank you.

LEÓN SÁNCHEZ:

Thanks, Robin. I see that I skipped Sebastien involuntarily because I wasn't on the AC room. So Sebastien, I see that your hand is up but I don't know if that's an old hand. It seems to be an old hand.

Okay, so next on the queue would be Ed Morris then I have Fiona, Kavouss, and Parminder. So, Ed?

ED MORRIS:

Thanks, Leon. Robin took most of the words I was going to give, but I also want to point out that when we sold our budget to at least the GNSO Council, there was a lot of discussion about the role of the Legal Committee. There were counselors who did not believe we had given this group enough money – the \$1.4 million – to actually sufficiently vet the legal questions.

One of the reasons we're able to get counsel to approve the budget was we said, "Hey, the Legal Committee is going to decide where the questions go. We're changing the plan now." So as a GNSO Councilor I would say if we're going to change the plan, I need to go back to the Council and say, "Hey guys. It's changed. Do we still support this budget?" Because that's how it was sold to us.

So I do agree with Robin. The Legal Committee's got to take a first look at this. The subcommittee members do not have the legal expertise to know whether the advice coming from ICANN Legal is correct or not. That's why they're asking the question. So I think the Legal Committee has to play a bigger role in sending the questions out. At least that's my view. Thanks.

LEÓN SÁNCHEZ: Thanks, Ed. I think that Thomas wants to comment on that.

THOMAS RICKERT: Yes. Thanks very much, Leon. In response to Robin and Ed, let me suggest that we don't reopen that discussion on the process. We have discussed this in the Plenary a couple of months back. I guess there might be some confusion here about the role of ICANN Legal. The idea is not to have all legal work that needs to be done done by ICANN Legal in the first place. But in order to be cost-efficient with the limited budget that we have, we wanted to insert an extra feedback loop into the process in order to ensure that we don't duplicate work, that ICANN Legal may have commissioned an outside law firm previously.

So let's say we have a question, then we would ping with ICANN Legal, "Do you have something on that?" and they can then play it back to us, we can see whether that's sufficient. If we're not satisfied with the answer we can go to our lawyers always, but this is just to make sure that we don't spend money that has already been spent elsewhere.

So it's a cost-efficiency measure rather than binding us to ICANN Legal or ICANN Legal's external advice. Ed, you have a follow-up?

ED MORRIS: Yes. Thanks, Thomas. In that case, instead of just sending it back to the subteam, why don't we also send it to the Legal Committee who basically are made up of lawyers for the most part. So if the Legal Committee has a problem with advice received from ICANN Legal we can send it out again. In other words, one of my concerns is that the subteams won't have the expertise to evaluate the legal advice.

THOMAS RICKERT: No problem. Noted.

ED MORRIS: Great.

LEÓN SÁNCHEZ: Okay. We'll note that and that's absolutely reasonable. Thank you, Ed. Next on the queue I have Fiona.

FIONA ASONGA: I was just going to ask whether we had challenges with the Legal Subcommittee because it had worked so well in the past if they can reconvene and then play their role like they did when we were working on the Work Stream 1 document that would be very helpful.

Then also when looking at external support I wanted to find out what is our current position on dealing with their advices. Do we still have access to the same advices we had when working on Work Stream 1, and can we also reach out to them and how.

LEÓN SÁNCHEZ:

Thanks, Fiona Yes, as I said at the beginning, the Legal Committee is alive and will convene of course as the requests begin to come in. As for the advisors, we do have something pending with the advisors, right? So I guess that's something we need to come back to you with an answer because we do have something pending with the advisors.

Next on the queue I have Kavouss, then Parminder, and then Greg Shatan. So, Kavouss.

KAVOUSS ARASTEH:

Yes. Thank you. I think the request for the external legal view should be limited, number one, to the absolute minimum required, and then I don't believe that all eight subgroup [they] required external legal views except maybe one or two which has critical. I don't want to name them. However, I agree with you that the legal question should be raised to ICANN Legal group. If they reply is not convincing or still require external support, then goes to the co-Chair to validate that and make a

request. So it should not be directly from subgroup to any external. Thank you.

LEÓN SÁNCHEZ: Thank you very much, Kavouss. I'm closing the queue with Greg. Your comments have been noted, Kavouss. Thank you. We will of course take them into account for moving forward.

Next in the queue we have Parminder.

PARMINDER JEET SINGH: Thank you, Chair. I think the Jurisdiction Subgroup is [prima face] group which is very legalistic in its very nature. Everything, almost every element, is about the legal frameworks and I'm concerned about the [paucity] of legal resources to help that group. [Two], there's also the kind of conflict of interest which Robin spoke about, the conflict of interest are quite obvious with relying solely on ICANN's Legal team, but also beyond that U.S. Legal teams. You probably need to go out to get a more global view of the jurisdiction which is the whole point of the jurisdiction question.

I think we need some kind of external legal support but going beyond the traditional supports which have been available. Thank you.

LEÓN SÁNCHEZ: Thank you very much, Parminder.

I think that we can add an action item for the Legal Committee to actually have a meeting very soon. We need to have a meeting on the Legal Committee so we can of course continue to deliver our work to the Plenary and each of the subgroups.

I'd now like to turn to Greg Shatan. Greg?

GREG SHATAN: Thank you, Leon. I think first, if in fact ICANN Legal's advice is essentially a freebie and there seems to be some discussion of that in the chat and I'd like that to be absolutely confirmed that we –

THOMAS RICKERT: We confirm.

GREG SHATAN: Thank you. We might as well take it for what it's worth. But then the question is, what is it worth? There can be different kinds of legal questions. There can be those that are neutral, fact, questions and then there are those that require interpretation, and two lawyers can come up with very different interpretations based on their goals in giving that advice. So I think it would be

important if the Legal Committee is not looking at things on the way out, we may want to look at the advice that's coming from ICANN Legal and help the subgroup in question determine whether in fact this is advice that perhaps should be augmented by independent advice or whether the advice is something that can be taken at face value.

Remember that we got independent counsel at the beginning for good reason, and that reason hasn't evaporated. So I think in terms of trying to strike a balance here, we can at least give ICANN Legal a shot and there may be certainly some questions that would naturally fall to them that may be historical in nature or we can get purely neutral, but I think we need to be careful about a reliance on ICANN Legal for interpretations.

With regard to external legal advice, I'm assuming that we're being cautious here so that there'll be ample money saved up for the Jurisdiction group to utilize the vast majority of the budget for actual external legal counsel. And I do appreciate that.

On the other hand, of course, we're only looking at the issues and remedies that are going to be in front of us so I'm not anticipating that we're going to need a 170-country survey on jurisdiction either, so I hope that doesn't disappoint all the lawyers waiting in the wings to give such advice. Thanks.

LEÓN SÁNCHEZ:

Thank you very much, Greg.

I think that clarifications have been made. I think that the message is there. We're not trying to change the rules here, we're just trying to add an extra layer so that we can save some of the budget that has been allocated for this task. And of course the Legal Committee will continue its work and will continue its role in actually analyzing their legal requests and directing them accordingly to the proper legal advisors.

Okay? Are there any other comments or questions on legal support?

Of course, if you have any requests for legal support, as we are reconvening or resuming more than reconvening the meetings of the Legal Committee, we would kindly encourage you to send those legal requests as soon as possible so that we can analyze them in the Legal Committee.

I see that Robin's hand is up. Robin?

ROBIN GROSS:

Thanks, Leon. I just wanted a clarification about what I think I just heard you say. So if you could just confirm, that the Legal Committee would look at the requests and make the evaluation

as to what the appropriate place to send that request would be initially.

LEÓN SÁNCHEZ:

That is correct.

Okay. So over to you, Thomas.

THOMAS RICKERT:

Thanks very much, Leon.

Now we have a little bit of reorganization to do for the rest of this meeting. We have time until 18 hours local time and we are through with the official agenda apart from AOB and the communiqué discussion. You know we are going to put out a co-Chair statement informing the community about what we have achieved during today's meeting. So in order to allow for maximum time of interaction on the Göran follow-up and Transparency, I would like to confirm with you whether there is any AOB that we need to discuss today. Any AOB?

There doesn't seem to be any. So we've done AOB. That's good. On the communiqué drafting, our dear fellow co-Chair Mathieu has been taking notes in addition to staff notes so he's working on something at the moment. Hopefully we're going to have at least bullet points ready in roughly an hours' time for this group

to discuss so that we can agree on the messaging coming out of this meeting in the remaining 20 – 30 minutes of this meeting.

What I suggest doing between now and the time we discuss the communiqué or the announcement that we're going to publish, let's discuss the Göran follow-up. And I would suggest that we take about 30 minutes to do that. I would like to discuss this in two areas.

One is that I think we had a lot of concerns that were raised that were put out there by some of you in the chat and in corridor talks. So let us please make a little collection of the comments and concerns that you might have so that we can put them all in one place in a follow-up communication with Göran.

And then as a second step let's go through the individual subteam work again and discuss what follow-up action we need to bear in mind when it comes to the subteams' work.

I hope this is an okay approach for everyone. So let's now use the first 15 minutes as of now until roughly 16:30 local time to give the opportunity to members of this group to raise concerns or reframe the concerns that you had when hearing Göran's suggestion of a Complaints Office, and maybe to give this a positive spin if you also have suggestions as to how his approach can be improved to maybe better work with what we're doing, we should also put that on the record. I think it's not good

enough to just say, “This is a crappy idea. Go home.” Although he said that he’s willing to listen to that. But I think that Göran – and I’d really like to go on record again applauding him for taking the time with us and acknowledging that this has been a useful exchange and that he wants to further engage with us – so let’s try to be constructive in our criticism.

And with that I’d like to give Tijani the floor first to be the first one to intervene on this.

TIJANI BEN JEMAA:

Thank you very much, Thomas. As I said, I appreciate the initiative of Göran, but with some, if you want, improvements. First of all, don’t put it in the legal department.

Second, don’t call it Complaints Office. I don’t know – “Feedback,” “Concern,” anything. Because it is not only about complaint. It can be about proposal, about improvement. So if it is in this way I think it will be a good, because it is a channel of communication for the CEO to understand what is the concern of the community and to address them before they become problems. Thank you.

THOMAS RICKERT:

Thanks very much, Tijani. I’m surprised that there’s no one else in the queue. Doesn’t anyone wish to speak?

Sebastien.

SEBASTIEN BACHOLLET: I wanted to leave possibility to others to speak, but if nobody's taking [inaudible]. A few points. The first one it's we see a difference with the previous CEO. The previous CEO was saying very often yes, and sometime we're taking into account what we say. Here we just say things and they say, "Okay, yeah But I have already decided and it will not be changed."

Yeah, I am very often pessimistic of where we are going and I will follow and we suggest him to change the name of organization, but I may be so far from the organization that it was already discussed with some Board member, with some leader of the community, and then he think that it's done deal. Why I say that? I say that because I talk with some Board member and I say that also because I just received a mail with written something about staff as an organization. And I really think that I will take strong words, if [he] is here to stall our organization it's not good. It's not his organization or if it is his organization we are part of this organization. But if [his] organization is just staff, I am not sure that we need a CEO and President to run 300 people.

The second point it's that we told him that the question of the Complaints Officer raise us problem and question, the place

where it is, the scope, and especially in the discussion we are having in our subgroup on Ombuds but also on Transparency also on Staff Accountability and so on. It's a trouble.

Then if you want to have some proposal, I have some proposal. Why you don't call the whole staff his team and leave the organization for the full group of the team, the Board, and the community? But I am not paid to find a new word to call the staff.

I really think we need to be able to have discussion and not just, "Okay, I listen to you and I go back to my room and maybe in six months I will come back to talk to you." If not, that's not an exchange. It's just we say things and then we wait for a long time to have an answer.

As a French song say, "[speaking in French]" – I will try to translate it. "It's may be a detail for you but for me, it say a lot." This first interaction is worrying me. It's good to have it, but we need really to be sure that we will be on the same page soon. Thank you.

THOMAS RICKERT:

Thanks, Sebastien. Alan, Fiona, Kavouss, and then Jordan.

ALAN GREENBERG: Thank you very much. What Tijani said I think is the summary. The term “organization” is a very general one. We are an organization. ICANN including all the volunteers is an organization. The staff is an organization. Me and three friends going out to dinner is an organization, I suppose. Trying to use the organization and have everyone understand he means the staff or the corporation is just going to cause confusion and I don’t see the merit in that. Staff I think is a fine term. The ICANN Team I will disagree with Sebastien. I think that would be another level of confusion.

I don’t care what the right answer is, but let’s not do things which cause confusion and dissent within the organization.

THOMAS RICKERT: Thanks, Alan. Fiona and then Kavouss.

FIONA ASONGA: I think some of the things that we need to pay attention to in regard to Göran’s discussion this morning is to a large extent the definition of organization because then it determines what our scope of impact is going to be in terms of whether we’re looking at staff, the community, the Board, and some of the areas we are looking at a combination of all the three. And when I’ve gone through the new Bylaws because I’ve had to go back and check

again, in those Bylaws the organization will refer to the other supporting organizations, the Chartering organizations. I think it's only two places where we mention ICANN and organization together, and in those cases we are talking about ICANN not becoming a government led or intergovernmental organization and we are talking about activity of ICANN mission [to turn] in regard to multinational governmental or treaty organizations. And those are the only two areas where we talk of organization out of supporting and chartering organizations.

So his explanation that it is in the Bylaws I think he would need to relook at those Bylaws and he needs to also appreciate the fact because we are a global, multistakeholder community it is important that you keep things simple and therefore organization for this community that influences what the Board and the staff have to do. The organization is everybody. It's the community, the Board, the staff.

The other thing that he needs to remember is because we are a bottom-up process, for us to be able to change that understanding, then we need to have some dialog. So it is not yet done and we are asking for the dialog, because that dialog will influence how we work moving forward. Thank you.

THOMAS RICKERT:

Thanks, Fiona. Kavouss?

KAVOUSS ARASTEH: Yes. Thank you. I take it from the point that Tijani mentioned, let us not call it “Complain” or “Complaint” channel. I would call it as he said – he is absolutely right – “Feedback” channel. [Really], but not “Complaint.” So “Complaint” has a negative connotation. “Feedback” has a positive connotations.

If we want to support the bottom-up approach to balance the top-down approach, we need to establish this feedback, and this feedback is improvement. Otherwise, if we just say keep the top-down approach, it creates reactions, frustrations, and sometimes negative consequences. So we have to put that [one]. So call them “Feedback” channel and put it in a both way as top-down and bottom-up together to working for the management. Thank you.

THOMAS RICKERT: Thanks very much. I’d like to close the queue after Tijani. But let me just say that I’m very surprised to hear you talk about terminology rather than the fundamental concept. I would have explained some of you to say, “We don’t want this office in the first place.” Or the remit of this office – I haven’t heard any one of you saying for this office to collect what’s coming in and publish what’s coming in, that’s fine. But it shouldn’t have any decision-making role whatsoever. So is this group actually okay

with that? I'm not suggesting that you should have an issue, but I just find it interesting that we are primarily talking about how to call this thing. And I'll get to you in a moment, Milton.

Let's move through the queue. Alan, is that an old hand or a new hand? Old hand? Jordan.

JORDAN CARTER:

Thanks, Thomas. I'm hopefully not going to get into a terminological inexactitudes dialog. In other words, I don't give a damn what it's called.

It seems to me Göran explained it as a role of accumulating complaints and having an organization-wide view of what they were and small one-off things being resolved by this person and important systemic things being picked up by him. The blog post that he published or announced this in actually describes something quite different, which was a Complaints Officer to receive, investigate, and respond to complaints about the organization's effectiveness.

I think that introduces the conflict of interest possibility that Robin and others were speaking of this morning where the Legal department, defender of the faith, defender of the fortress – I think it was Greg's term was one of those – is a concern [where] somebody's led to resolving things because back in my youth as

a university student I remember talking to someone from the Police Complaints Authority in New Zealand and they weren't interested in dealing with complaints, they were interested in making complaints go away and not being recorded in the statistics.

I don't think that's what Göran is intending, but when you're mixing a complaints function with a defender of the truth and the life type of mindset – which unfortunately the ICANN Legal Team sometimes seems to have – you're creating a problem where you didn't need to.

So I don't care if there's a Complaints Officer – having a single point which could receive these in addition to the other feedback seems reasonable – if it sticks to the last part of the blog post where Göran said, “I want to be clear that this in no way replaces or supersedes the important role of all ICANN's formal Accountability mechanisms.” So this doesn't become a place where reconsideration requests are folded in or anything like that. It seems inoffensive, but in terms of the optics or the way the community responds – based on the dialog we've seen here anyway – it would be better located somewhere else in my opinion. Thanks.

THOMAS RICKERT:

Thanks very much. Steve.

STEVE DELBIANCO:

I think that Göran’s view of organization/corporation, Board, and community, has to be seen as a contextual view. When he explains the community, the corporation, or organization, and then the Board, then it’s clear. We, the broader group or the community, those who work for the ICANN corporation, are the organization in that context and the Board sits in between.

So I don’t believe we have to improve upon that given that Göran seems to have embraced that distinction in his mind and it works. There are some that might find it a tiny bit confusing and to call it an organization instead of a corporation, although I think it’s fine because it’s a non-profit, public benefit, corporation also known as an organization.

I would encourage us to leave that alone and instead focus our initial interactions with the new CEO on the far more substantive matters. Robin brought some of it up with respect to understanding the interpretation of fiduciary responsibility in public interest. We have yet to have that conversation with the new CEO, but it would be great to take on faith his three-part description of how he sees the world and then work harder on the more substantive concerns that actually will matter going forward.

In that regard, I’m just advising us to leave it go. Thank you.

THOMAS RICKERT: Thanks, Steve. Tijani?

TIJANI BEN JEMAA: Thank you, Thomas. First of all I said from the beginning that it is a good initiative if it is improved in a certain way. Something that I don't like in it is to make everything public. Sometimes the feedback that you give to this office might be the result of misunderstanding, and if you make it public it may worsen the relationship between people. So the public part should be the part that is definite. The intermediary phase shouldn't be public because it might cause more harm than good things. Thank you.

THOMAS RICKERT: Thanks very much, Tijani. Siva? I'm sorry, Siva. Milton was first, then you, Siva. I do apologize. Milton, please.

MILTON MUELLER: I think Jordan said some of the things that I wanted to say, so I can try to make this short. I think the main concern I have is just the sort of insularity of the viewpoint that we saw from the CEO that he didn't seem to understand the problem associated with putting ICANN Legal in charge of this intake and investigation of complaints. And the reconsideration process reforms that were

part of the Accountability mechanisms raises, as you very explicitly, and Robin made that clear in her attempt at dialog with him – and it just did not seem to sink in. I think, to me, this verbal discussion of whether we call it the corporation or the organization I'm glad that you flagged that as kind of a sideline issue. That's not really the point.

The point is he doesn't seem to understand one of the chief motivating features of some of the reforms and this is very disturbing, very concerning. It's not clear how we can change that without provoking this defensive reaction. So if you have any good diplomatic ideas about that, I hope you can advance them and execute them.

THOMAS RICKERT:

Just a quick reaction. I think that it was not or we couldn't expect the CEO to come to this table and pat our back and simply say, "Okay, I hear this. I will change things." I have no reason to believe that if we explain to Göran what the rationale for our concerns is, that he will listen. And I think we need to find the right format, may it be through face-to-face interaction or not putting a critique of his Complaints Office idea but to maybe have a follow-up communication in writing to him where we explain some of our viewpoints which I think wouldn't harm.

Because it will not only be him but also his team taking note of that communication.

And I think the conflict of interest thing as well as many other points that have been raised by this group are valuable inputs from veterans of the organization that I think he will take very seriously.

Siva, please.

SIVA MUTHUSAMY:

We have very limited information about what the CEO wants to do with the complaints function. It is probably a very good initiative. The idea originated in improving staff accountability, but my broad comment here is that this new system that is being created or being contemplated should arise out of taking a more comprehensive picture of what existing mechanisms there are and what improvements are being contemplated to the Office of the Ombudsman, etc. Without that comprehensive understanding and comprehensive view, this creates a completely new process.

Even talking about that Complaints Officer system, again the point is that one might have grievances or problems but does he or she always go to a Complaints Officer to make a formal complaint? That happens only in extreme cases. So probably

instead of creating a Complaints Office, we could look at other bottlenecks in hierarchy whereby people are prevented from jumping a level of hierarchy to make a higher person understand the problem.

If those bottlenecks are removed, then they'll have an ongoing flow of fairness and justice within the organization. I think the summary of what I'm trying to say is that it needs to be much better thought of. It could be much better designed than creating a Complaint Office, a new system. Thank you.

THOMAS RICKERT: Thanks very much, Siva. We have Greg and Ed, and after that I'm going to close the queue. So please.

GREG SHATAN: I think several people have said what I might have said, but just to have my own thoughts – I think that clearly putting the Complaint Office or Officer under an organization that we've generally viewed as being used to absorb complaints and concerns without giving any recourse has created ripples of discontent with regard to it. The thought behind the Complaint Office may be the most positive in the world to try to provide a single point of contact where these sorts of issues can be raised, and it's not entirely clear how this person differs from the

Ombudsman. If the difference is that they're really part of the organization and they're not in essence willing to deal with the organization at some remove, then it just seems like a worse version of an Ombudsman because it doesn't have the ability to poke at the organization.

If I look at New York City government, for instance, we have both a Public Advocate whose job it is to basically act in opposition to the mayor on behalf of the community at some elected position and we have the Controller who, while they can deal with the budget, also generally acts as someone who can poke at the Mayor and deal with any shortcomings they see. Neither of them are perceived as being under the Mayor's watch. Indeed if anything, they are a big thorn in the Mayor's side.

If this Complaint Officer is in a position where they can be a thorn in the side of the organization if the complaints are well-founded, that's great. But putting it in an organizational sector which has not been historically seen in that regard is very sub-optimal at best. So I think this needs to be better defined, better thought out, and I do agree with you, Thomas, that Göran is listening and I think he'll take this under advisement. But I think we also need to amplify and add onto this when we see Göran. Not every time or else he'll get bored of us but certainly should mention this as we move forward. Thanks.

THOMAS RICKERT: Thanks, Greg. Ed?

ED MORRIS: Thanks, Thomas. I agree with much of what's been said before. My big fear here comes from the reaction of the current Ombudsman to this proposal. Herb has said he welcomes the department and he looks forward to working with the Complaints Officer. That's my biggest fear. This seems to be, although perhaps not the intent, the end result of this is to capture the Ombudsman's Office by ICANN Legal or whoever it's going to report to. So I'd suggest that as we develop the Ombudsman proposal we have to build some safeguards in to make sure that their contacts are arm's length.

The Ombudsman is an independent contractor at ICANN, not an employee for a reason. And if he's going to work hand-in-hand with an employee of ICANN, that's not his job and that's not the independence we need of an Ombudsman. So I'd suggest we have to take a look for this further as this develops within the Ombudsman proposal itself so we can guard against this.

THOMAS RICKERT: Thanks, Ed, very good point. As I mentioned earlier, we should discuss how the subteams follow-up with Göran and maybe I

can ask Michael to specify what his [ask] of Göran and team are at this stage, if at all. And while you're gearing up for that I'd like to spend ten seconds on bubbles.

So have all of you been okay with the notion that there might be an Akram bubble, a JJ bubble, and a David Olive bubble, but that ultimately everything is related to Göran, because I think that would create sort of a ICANN Organization black box thinking which I think we did not want to have. But we want to have interaction at various levels. We want to be able to settle conflicts at all levels and not push everything necessarily to the ultimate accountability person being Göran. So unless I hear disagreement from you that's a point that I would really like to mention and follow-up communication with Göran that we're trying to break this up. I think that some of us have vivid memory of the way [inaudible] left the organization which was actually a black box. There wasn't a lot of transparency around what happened inside the organization. So I'd like to also help find a mutual understanding and alignment that we don't want a block or a wall to be confronted with, but we want an open and transparent organization. Tijani, please?

TIJANI BEN JEMAA:

Thank you very much. I forget to tell you that it is out of the point that this will be a decision-making body. It is only for me a

channel of communication for the CEO to get the concern of the community regarding the work of the staff. Thank you.

THOMAS RICKERT: Thanks, Tijani, that's noted. So Michael, in terms of the transparency group, we had a little chat after the last session in the coffee break where you and Chris asked whether we should loop in Göran and ICANN Legal now to get some feedback or whether we should do that after having further refined the documents. So you might wish to speak to that and also specify what information you're exactly asking for.

MICHAEL KARANICOLAS: So I'm relatively new to ICANN, probably newer than most if not everyone here. But I'm definitely not new to these kinds of processes. And I've engaged with international financial institutions, UN Institutions, governments on trying to improve transparency and my experience pretty much universally has been that there's going to be resistance and a lot of push back.

I can virtually guarantee that Legal is not going to like some of these suggestions. And, so from that perspective my experience and my instinct is that it's generally better to get your ducks in a row first before you start presenting proposals. That it's good to achieve consensus and to have a solid position before you start

reaching out. But, that being said again, as I said that's the approach that I'd take under the circumstances of advocacy that I've been involved in previously. But I'm also new to ICANN and I am open to the idea if people think that that's best of bringing people in earlier in this case because it's again different from the context that I'm used to.

So that being said, I do think it might if we're going to be asking for input, potentially we could look into general questions about the areas that we think are going to be particularly contentious around non-disclosure agreements, around board deliberations, around broadly applied harm tests for exceptions, around more resources towards promoting the DIDP and to fleshing out the procedural stuff. If people think that it would be useful to reach out and get them on side early on, then I'm receptive to that. Although, again, instinctively I know that they're not going to like most of these proposals.

THOMAS RICKERT:

And you're probably right, because we might make recommendations that really impact on the day-to-day operations in ICANN Legal when it comes to contracting with third-party. At the same time, I think we should remember how we started this whole process. And when we started the accountability work, the first thing we did was create an

inventory of what ICANN had to offer already. So I think following up on that practice it might be a good idea for our group to reach out to ICANN Legal and ask about their current practices. And maybe the rationale for why they're doing the things they are doing at the moment. I think that's not only courtesy in a post-transition trust environment that we're trying to establish, but it may also be helpful for this group to base its consensus recommendations on information from ICANN Legal as the concerned party in that regard.

So I'd like to hear if this group wishes to finalize the paper first and then hear ICANN Legal as suggested by Michael. And while, Michael, I fully respect and understand the points that you've raised, my suggestion would be to engage early with Göran and his team so that we better understand they're operating the way they're doing and maybe we even see some beauty in the way they're doing certain things so that we take that into consideration when we're doing our consensus report. But that's just my five cents.

I saw that Kavouss's hand was up, so Kavouss please take the floor.

KAVOUSS ARASTEH: Yes, I fully agree with your suggestions. We should start with ICANN first what is the situation today and then make improvements as suggested, but not vice versa. Thank you.

THOMAS RICKERT: Thanks very much. Greg and Ed, if I could ask both of you to keep it brief so that we can also talk to the two other subteam's topics.

GREG SHATAN: That's an old hand. How's that for brevity?

THOMAS RICKERT: Well, that was fast for once. Ed, old hand as well?

ED MORRIS: Very, very quick, Thomas. I actually agree with your suggestion. In our very young CEP Group we've involved ICANN Legal from day one. Sam's been exceptional in helping us understand the process better without really trying to influence us to date. And she's providing us names of folks who have been involved in CEP so we can try to get more petitioners involved. In other words, it's been a plus involving them from day one. So I'd agree with your approach to get them involved right now.

THOMAS RICKERT: Awesome. Michael, you've kindly given a summary of the points that you want to ask. What I would suggest doing is if I could ask you, put them in an e-mail, send them to the Plenary list so that the Plenary can add questions to that if they feel like. And that hopefully maybe in a matter of the next 14 days we can assemble all the questions that we have for Göran in one e-mail so that he only has one document to respond to. Is that acceptable?

MICHAEL KARANICOLAS: Yeah. That's no problem. Just one thing regarding circulating the draft to the Plenary, can I ask that you give me about a week just to add in a lot of the ideas that have been raised here today, rather than circulating immediately. Again, it'll be quick. But I just want to work it in because the proactive disclosure section particularly, but generally I think there a fair number of things to add.

THOMAS RICKERT: Sure. You get that week. No problem. Thank you so much, Michael, and Chris again. Now, let's move to the Staff Accountability Group. Avri and Steve, you had already raised some questions with... I'm sorry, Jordan. I do apologize.

JORDAN CARTER: Yeah. I'm not Steve and Steve's not Jordan, at least as far as either us know. We do have a list of questions that we've written to ICANN. I had a quick chat with Theresa after the session with Göran. She's committed to delivering answers to those by early December. So that'll get us on the track to sharing the information that ICANN already has in response to the Work Stream 2 requirements for our group. The other action for us that came out of the discussion this morning was to look at this question of the complaints officer and its relationship with ICANN Legal. And so it started a conversation on the list and we'll pick that up in the work of the group in the coming weeks.

THOMAS RICKERT: Göran mentioned these five teams or working groups that have been established by the Board, one of which deals with, if I'm not mistaken, the code of ethics or something along these lines for board members. Do we want to accept his invitation to participate in that in our response to him or do you guys have any views on how we should follow-up on that?

JORDAN CARTER: It might be good to find out more about what they are and what he intends to achieve through them as a start.

THOMAS RICKERT: So, I guess that's a good point. Maybe we just note that in our communication with Göran we just mention that we noted with great interest that the Board has set up five subteams, that we are willing to engage with those and that he should please specify what the next steps for these subteams would be so that we can find volunteers that will work with those subteams. Okay?

That leaves us with the Ombudsman Group. So Sebastian, is there anything that you would like us to include in our communication with or follow-up with Göran?

SEBASTIAN BACHOLLET: I think the subgroup on the Ombudsman Office must concentrate on the review of this office and yet if at the end there is no need for the Complaint Officer it would be great. But let's do the work first and we will see what's up and our decision about the extension of responsibility for the Ombudsman Office is in our hands. And let's do the work. And I don't think we need to ask him something except to support the review as quick and as high as possible to do this review in good timing to allow the Work Stream 2 to finish sooner rather than later. Thank you.

THOMAS RICKERT: Okay. Thanks for that, Sebastian. Nonetheless, I think that the point made by Ed is one relating to the Ombudsman Subteam and that is that we put in a word of caution that the Complaints Office should in no way interfere with the work of the Ombudsman or jeopardize the Ombudsman's independence in deciding or helping with conflicts. That will be done through our work about the independence. We are working on that issue and it will be an input I don't think we need to say to Göran, "Hey, guy your new Complaint Officer can't speak with the Ombuds." It will be the result of our work will show that it's something the new Ombuds will have to take into account to be really independent and we will explain all that I'm sure.

THOMAS RICKERT: Okay. Let me briefly respond. I guess this is maybe a different strategic approach. We can certainly say that the subteams are going to work and we present this to the community and afterwards to the Board. I would think that since Göran has opened the door for dialog and since he has indicated that he's willing to listen that we should engage early because he might not even see the connection between ICANN Legal Ombudsman and the potential conflict there. That the Ombudsman's Office might be hijacked to use the most negative term that I can think of at the moment with this new initiative. Which I think would be an unintended consequence and I think, therefore, it might be

just forthcoming and kind of us to highlight all the issues in our dialog that we see at this stage. Sebastian?

SEBASTIAN BACHOLLET: Yes, you can do that but first [inaudible] as a job is that completely specified. Secondly, there is no one. And if you're read the block of Göran, it's written, "This person will work closely with Ombudsman [inaudible]." If we are concerned with that the only answer will be within the result of our subgroup. Thank you.

THOMAS RICKERT: Thanks, Sebastian. Greg, new hand?

GREG SHATAN: Still old.

THOMAS RICKERT: [Laughter] I'm getting older. Great. So it looks like we've covered all the three subteams. Are there any concluding remarks that you would like to make with respect to the discussion that we had with Göran? If not, I would suggest that based on the notes that we have that we will prepare a communication to Göran, share that with the group so that everyone can add to that, so

that we keep the dialog going because I think this is an excellent opportunity for us to engage with Göran.

Awesome. Let's conclude that part of the agenda and let's now revisit the discussions on transparency. So Chris and Michael, you asked for a little more time to discuss with the Plenary some of the outstanding question that you have in your team. So I would really like to invite you again to the top table and take the floor. And this is really meant to be interactive.

In the first part of this, you heard Chris and Michael primarily informing the group about the paper they've written so far. And I think now you're trying to squeeze some more information and use out of this group, right?

MICHAEL KARANICOLAS: Yeah. Absolutely. And we actually got... the main reason why I wanted to come back here and to chat a little bit more is because we were getting so much good stuff particularly about new areas of information that people want to see published. And I was hoping to expand on that a little bit as well as to have a little more of robust discussion about the recommendations before I go back and revise.

And I just want to start briefly by mentioning something that was brought up in the chat regarding the non-disclosure agreements

and open contracting. David McCauley mentioned that any change to the DIDP Disclosure Rules as to NDAs should not be retroactive. And ICANN should disclose these changes to folks considering NDAs, considering contracting with ICANN. I actually completely agree with both of those points. That in terms of making them retroactive, if there are contracts that are already existing that have non-disclosure agreements, like, ICANN having signed that I think has to respect it. You can't just shred something that's been agreed. So what I'm talking about is changes going forward potentially. Obviously, if changes are made to that process then there needs to be openness about that so that people can make an informed choice about contracting in the future. So I completely agree with both of those points. Can we open it up and see if there are further comments on any of these issues?

THOMAS RICKERT: Do we have any comments?

MICHAEL KARANICOLAS: If not, then I'll be kind of embarrassed for asking for more time. I see a hand up, Christopher Wilkinson.

THOMAS RICKERT: Chris, your mic seems to be mute so if you could un-mute. There you go. Chris, if you are speaking, we cannot hear you.

MICHAEL: So Steve DelBianco has a hand up as well. Should we go back to that while we try to resolve the thing with Chris?

THOMAS RICKERT OM: Yes. Please, Steve.

STEVE DELBIANCO: Thanks. The transparency of ICANN's contracts with lobbying organizations and consultants that were deliberately designed to influence a government or a body of governments was what gave rise to the transparency about those contracts. We concluded that lobbying alone was too narrow a definition too U.S.-centric and that it was necessary to expand the definition. And all that made great sense and we've, I guess, in the space of today expanded that particular problem-solving to something that I didn't think it was a problem.

This notion of fully open and transparent contracts for basically everything the company contracts with. When we do that we significantly endanger the underlying problem we were going to solve since we will create some unintended consequences with

disclosure of all contracts. And I'm not even sure that it solves the problem we were trying to solve. When I say it endangers, I'm suggesting that if the transparency of all contracts becomes objectionable for reasons we've even yet to discover then that objection could kill what it was we set out to do in the beginning which was to get more disclosure on consultants that were used to influence the government process.

So I think you don't need to dive headlong into this open contract unless we can fully justify why we think we need that. You seem to be suggesting that it's rather customary for government entities to do that. But ICANN is not a government entity, not in any way.

So I would ask you to look at standards-based organizations, non-profit organizations that convene like the IETF, do they have an open contracting – if they loan contracts at all. I think many of these organizations rely so heavily on volunteers that they don't have too many contracts. But, inevitably they'll use travel agents, they'll have consultants that serve them, maybe a marketing firm and they do have some contracts. So let's look there and not to governments for the model on this open contracting. Thank you.

THOMAS RICKERT:

So is that—

PARMINDER JEET SINGH: Yes. Taking on from what I had earlier been trying to advocate, I mean, trying to respond to the previous speaker. I don't understand why should ICANN not be like government in those aspects of government which has a very long democratic creation of public interest governments. I understand governments are considered bad in some ways. But what is right about governments is that they have a long democratic tradition and these principles have been evolved in a proper [legitimate] manner and they are celebrated, the [transparency] principles.

None of the things which the previous speaker spoke about are things which governments don't do. They do all those kind of contracts. I haven't found the justification why would ICANN not do it. And I think ICANN is unlike an NGO, like, I'm an NGO and our NGO does follow all the transparency that government follows by [our own coalition], but we are talking about a public interest organization which is [monopolizing] its area. There's no choice for people to take records to another government's form in this particular area and, therefore, it is a government organization.

And no reason has been given why we should not uphold the highest transparency levels. And if we find that governments are the ones which hold highest transparency levels in this area than

why do not we at least read those standards and I always think we should be meeting high standards because as I said earlier, ICANN's legitimacy is found more in its openness and transparency than in any kind of structure representativeness which is quite lacking in ICANN. So though I saw advocacy of we should not do it, but I have not been able to find reasons why we should not do it. Thanks.

MICHAEL KARANICOLAS:

Just to as well follow-up, I agree with that. I mean, just to as well follow-up on the question about derailing matters of governance or derailing the original purpose. I mean, our agreement was broader than just that. So we're supposed to be looking into the DIDP, we're supposed to be looking into whistleblower protection. It's meant to be a broad review. And I do think as I think was spelled out in the report that there is a broader interest in transparency at ICANN for a number of reasons.

One, is to enjoy the benefits that transparency entails which is generally it improves decision-making processes, promotes accountability, it generates trust between the organization and its constituents. But I also do think there's a lot to be said about a need for transparency and responsibility for transparency among the organization because of the role that it plays. That

being said, I understand that there's a lot of different positions on this, so I'm happy to keep that dialog going.

CHRISTOPHER WILSON: Let me also add, in working on these recommendations, we did learn that ICANN does proactively disclose all contracts that are in at least \$1 million or more. So at least we have a dollar threshold that ICANN itself has proactively used for its disclosure. The question to the Plenary and others may be that we decide that we want a lower threshold, \$500,000. That maybe critical mass, if you will, amount of money. I don't know, I'm just using it as an example. That may not be sufficient— I see Ed shaking his head perhaps— that may not be a way of looking at it, but I'm throwing it out there because it's one way of focusing the broader picture.

But folks should know, I mean, I didn't know this until during the due diligence that ICANN to its credit does proactively disclose contract there in excess [inaudible]. I don't think there's a lot of contracts that are in excess of \$1 million. But I think part of that is from a bookkeeping point of view. I think it's easier for them to draw the line at \$1 million rather than \$25,000, for example. But I think it's one way of looking at it and perhaps others may have thoughts yay or nay, but that's one thing.

I see Denise's hand. And I know Christopher Wilkinson I think is locked and loaded and then Greg Shatan and then Denise. Christopher?

MICHAEL KARANICOLAS: Okay. There's a question that David asked a while back.

THOMAS RICKERT: David McCauley posted a question in the chat and then we'll go to Greg Shatan. But David's question is, "Should not SSAC and RSAC get a chance to okay change on DIDP as to root zone or L-Root Information, page seven of draft."

MICHAEL KARANICOLAS: So I just want to clarify something quickly which is that I very much understand the sensitivity about a lot of this information and it's important to fully understand the context of the changes being proposed. Which is that rather than a categorical exception for anything that has to do with the root zone it'd be understood as only information which is harmful, who's disclosure would be harmful to the security of these processes. To the security aspect of it or cause some other harm to what ICANN does.

It's important to clarify that under this change any information which is harmful if disclosed would still remain subject to an exception. All that we're looking to change by moving from a categorical exception to a harm-based exception is information... the only additional information that would be made public as a result of that is if that information had no actual harm. If there's no harm from the disclosure, it should be disclosed is what we're saying. So it's important to frame it in that way.

And, again, I'm not an expert on the technical side. But I can see, for example, historical information, maybe it's 20 or 25-years-old about how security was managed that's no longer relevant or no longer how things are done, that might be of interest to historians or people writing papers. That kind of stuff is what we're looking into. So that would be my response to David's exception on that. But, again, I'm keen to hear more on that or on the other issues that we've raised.

THOMAS RICKERT:

Thanks, Michael. So I think that we have Chris on audio now. So Chris would you like to make comments or questions.

CHRISTOPHER WILKINSON: Yes. Very shortly, [inaudible], I am not proposing anything like governmental public procurement of [inaudible]. If you want to know about that [inaudible], but there is an advantage for entering [inaudible] to diversify the [inaudible], to reduce costs and in the context of ICANN to make it clear that the services offered and the expertise available concluding languages is not limited to a certain jurisdiction. That's all I would say at this time. Thank you.

THOMAS RICKERT: Thank you, Chris. Any follow-ups on that, Mike.

MICHAEL KARANICOLAS: I couldn't really understand that. Sorry.

THOMAS RICKERT: Yeah. Unfortunately it seems that there's an audio problem for us to actually listen to what remote participants are trying to tell us. So, we apologize for that technical issue.

I have three more people in the queue, I have Greg Shatan, [Jan Schulte] and Kavouss. So I'll go with Greg. I'm sorry? Okay. Greg?

GREG SHATAN: Thank you. I'll try to use my usual brevity. In any case, I would caution this group or the subgroup against mission creep. I think

each of us have to be aware in each of our subgroups of the remit that was have Work Stream 1. We're all dealing with fascinating topics of Jurisdiction, Human Rights, Transparency that have many aspects or ramifications. But it's not the job of any of these subgroups to plumb the depths of any of these topics. We have particular remits that came out of Work Stream 1. So I think that we all need to be careful as much as we might be enticed by either our own interests or those of members of our subgroups to go broad.

Secondly, I would caution as a general matter against the idea that ICANN is a quasi-governmental organization. It's a sui-generis organization, it is an organization rooted in the private sector. Whatever we do with ICANN, having it follow governmental rules or governmental concepts I think is a fundamentally incorrect premise and one that I think is fraught with peril. Thank you.

THOMAS RICKERT: Thanks, Greg.

MICHAEL KARANICOLAS: Just quickly on the idea of mission creep again. I take your point. I don't see how our work can be interpreted that way when you consider that we're supposed to be looking into the DIDP which

is a determination of what should be published and what should be withheld. And non-disclosure agreements which would subject information to not being disclosed is fundamentally part of that.

THOMAS RICKERT: Thanks, Michael. So next on the queue if I'm not mistaken is Denise.

DENISE MICHEL: Thank you. Denise Michel, I'm with the Business Constituency. This has been I think a really useful discussion. I think that the disclosure of people who are contracted or consulting with ICANN on a paid basis should be disclosed. It's a click of the button, I think, for ICANN Finance to provide a public spreadsheet. I think the amount should be on the order of \$1,000 or more rather than \$500,000 or \$100,000. I think the standard that this subgroup should be aiming for should be a standard that's commiserate with our objectives of transparency and accountability not based on a particular government standard. But rather let's find a standard that's appropriate for the ICANN Community. And in that vein, the ICANN Community should know if ICANN staff is paying people in the community to provide services or to advocate for ICANN. That's just one example.

I also appreciate the need to keep particularly sensitive contracts out of the public eye. I think security is a perfect example of that. I also could see the need to keep particular amounts of the contract out of the public view for competitive and other effectiveness reasons. But the name of the individuals or companies I think would be important to disclose.

And finally, I would caution that if there's going to be exceptions to this disclosure policy that the subgroup craft it very carefully and very narrowly. Which I'm sure you will, given that you've already reviewed the challenges inherent in the current DIDP language and how broadly they seem to be interpreted in withholding a lot of information that the community has requested over the years. Thank you.

THOMAS RICKERT: Any comments, Michael?

MICHAEL KARANICOLAS: No.

THOMAS RICKERT: So next, I think it's Fiona. Fiona, did you have your hand raised? No. Okay. So then next would be John and then Kavouss. So Jan?

[JAN SCHULTE]:

Okay, thanks. No, just the qualification about harm just to be careful. Harmful to whom? Harmful for what purpose? Harmful determined by whom? If you don't get specific about some of those things then you've opened up a minefield for... I mean, I can imagine people in this room saying, "Oh, if it's going to be determined by so-and-so or by this department or that department. We're not very comfortable." A suggestion in the previous remark was made just the criteria would be things like effectiveness and security. Well we've also heard for much of this process that we don't actually know what those terms mean.

MICHAEL KARANICOLAS:

So when we talk about harm, there should be a list of specific harms which is the exceptional rule. So it won't just be we will withhold it if there's harm. It would be we would withhold if there will be harm to the security and stability of the Internet. We will withhold it if there will be harm to ICANN's commercial dealings, etc. So there should be specific exceptions that are based on genuine legitimate and enumerated interests.

Now, in terms of who makes the determination that's an excellent question. And that comes down to the procedure for assessing the request. Which, number one, I think we need a lot more information on and number two, hopefully, there will be a

rigorous system of oversight which we heard about earlier with the IRP. So that if people feel that the assessment of harm has not been correctly done there can be a de novo determination of whether the legitimate harm is there.

[JAN SCHULTE]: Yeah, but I would still caution the criteria of stability and security, stability and security for whom and for what purpose? Again, I don't think that such terms actually answer the question.

MICHAEL KARANICOLAS: So we can try to clarify the harm as best as we can by spelling out the exception clearly and specifically. But there's always a degree to which that's going to be a case by case determination. And so I think that we should try to make as specific as possible, but there's always a limit I think.

THOMAS RICKERT: Thanks, John. Thanks, Michael. Next is Kavouss.

KAVOUSS ARASTEH: Yes. Thank you. Michael, you said something that I have a little difficulty to understand. You said, "actually harmful". Let's me say, "actually" that means harm has already occurred, it's too

late. So perhaps you meant “potentially harmful”, but not “actually harmful”, number one.

And now my question is what is the criteria to decide that something is harmful or harmless? Are you talking about technically harmful? Are you talking financially harmful? And what is the criteria to decide on that? Thank you.

MICHAEL KARANICOLAS: Okay. So, obviously, when we talk about harm, the assessment is done before the information is released. So certainly we’re talking about the potential for harm rather than harm that has already taken place and then ICANN goes back and said, “Well, we shouldn’t have disclosed that.” This is an assessment that takes place when a request comes in. So from that perspective, yes, we’re certainly talking about the potential for harm. But I wouldn’t necessarily phrase it as the potential for harm as much as I would the likelihood of harm, because it’s meant to be something that is likely to occur.

In terms of how to assess that, I think that does again come back to the specific list of exceptions where you list specific values and say this is what we’re looking for in terms of harm. And generally these are values to ICANN’s abilities to fulfill its mandate, though in certain cases they will be individual values as well. Such as personal privacy and third-party commercial

interests which can be also legitimate exceptions. Generally speaking, you'll have a specific enumerated list. DIDP already has such a list. Many of these do have a requirement for harm. But what we want to see is that there should be a universal requirement for harm and a tightening up of the exceptions that are listed in line with the recommendations that are there.

THOMAS RICKERT: Thanks. I have Julie Hammer and then Parminder. So, Julie?

JULIE HAMMER: Julie Hammer from SSAC. Just picking up on the point that you were making about assessing particularly security and stability harm, but perhaps some of the other types. Sometimes time plays a factor in that assessment and so when you're discussing those sorts of provisions perhaps also include the fact that sometimes remediation can be put in place that will mitigate the harm and that a delay in releasing such information might simply be possible.

MICHAEL KARANICOLAS: Yeah. Time is a key factor. It's great that you brought that up. A lot of strong access to information policies mandate disclosure after a particular period of time or we'll say that when a particular harm is time-tested, but the information should be

released after that process is done. So if there's a pending announcement by ICANN that's going to be made in two months' time and the information pertains to that, decision-making to that process which would be harmful if it was prematurely disclosed. Then they'll say there's an ongoing process we will release it later on and then arrange to release it then, so that's very common among strong right-to information policies.

Just going back to the idea of— because I see it's circulating in the chat to the idea of governmental standards versus... and where ICANN fits into that. I don't think there's any disagreement that ICANN is not a government and that ICANN shouldn't be adopting governmental standards [inaudible]. Certainly governmental standards wouldn't work in terms of ICANN because there are unique aspects to the organization that need to be factored into developing this process.

That being said, the reason why we bring it back to governments so much in terms of discussion of standards is that while international financial institutions, UN organizations, NGOs all have their own access to information policies, the vast bulk of the standard setting work on this stuff and the progressive work on this stuff and the vast bulk of experience in having a right-to information policy is done at the governmental level because

more of these things are in place in governments than elsewhere.

So that tends to be why we look to governmental standards and it's not necessarily about trying to force a governmental standard onto ICANN. I think it's about a common recognition that there is a need for strong transparency here and so we're looking for strong models to apply. And if you're looking for strong models, generally the best ones come from governments, which is why we look there for standards, not because we don't recognize the unique status of ICANN or the need to craft a unique approach as a result.

THOMAS RICKERT: Thanks, Michael. Next I have Parminder. And I will close the queue with Parminder.

PARMINDER JEET SINGH: Thank you, Chair. I'm sorry, but I would be taking forward the discussion on the nature of ICANN as a body which I've been doing earlier but which follows from what the Chair of the group, Michael, was discussing just now.

Now, I want to take issues with what Greg said about it not being a quasi-governmental body, but being a private party. Now, private word outside U.S. has very different connotations. It's a

for-profit, private interest body. This is not a private interest body, it is a public interest body. And public interest bodies are generally seen on the governmental sites.

Many of the NGOs in India are expected to meet the same standards of transparency as government and in many other countries as well. Because the issue is if you are taking public funds and are trying to uphold public interest, you should be under public scrutiny and public scrutiny is only possible if people in public can see what you are up to. That's the logic. I do not understand just the user word "government" being a bad word as accepted in this hemisphere. Therefore, should not be applied to ICANN is an extreme view.

Also to remember that in the Articles of Incorporation it is written that ICANN exists to lessen the burden of the government. I know that is written to take tax exemptions, but that's precisely the point. It is doing the nature of work which is governmental. It's a part of its incorporation document. If it is doing work which is [nature] of government then it is to stand up to same kind of public scrutiny. The big difference about ICANN is the fact that it's not just a public interest organization as for example, my organization is but it's a monopoly service provider of a public interest service which makes it closest to government. And that should therefore define what kind of transparencies that must be applied to it.

Another issue which Greg said on a different count which I had to comment on because Greg is the Chair of the subgroup in which I am most interested is about that we should somehow, naturally take a narrow interpretation of our mandates and not take broad interpretation of mandates. I think this is one view. It is, of course, closest to the status quo view. Other people would be more interested in change. People do consider this as a quasi-constitutional moment for ICANN. It's the first time in more than a decade that ICANN is revisiting its systems. Normally, when countries do after so long they also consider it something to revisit all their systems.

So to say it is somehow natural in the processes that we should take are narrow, you have the mandate, not take a broad view of the mandate. I think is not something that is acceptable since also he's the Chair of the group. Again, as I say, in which I am most interested. I would also appeal to him not to bring this view to the interpretation or mandate of that group as well. I think the interpretation we should take is of what can best be done to uphold public interest in the given situation that we are and that could be narrow, wide or somewhere in the middle. Thank you.

THOMAS RICKERT: Thank you, Parminder. Okay. I believe that there are no more questions or comments on this track. So I would like to thank again, Michael, Chris for your work. And we'll be expecting that updated report in a week or so as you said. So, thanks again for your work.

MICHAEL KARANICOLAS: And thanks to everybody for participating. I think this has been a great discussion and I found this tremendously helpful in terms of clarifying positions. There's been a lot of really useful feedback, so thanks to all of you.

LEÓN SÁNCHEZ So I think it's time for us to review our communiqué as you may call it or our blog posts or whatever you want to call it. So we have on the screen a draft post for us to review. I would like to hail Thomas so we can go through it.

THOMAS RICKERT: Thanks very much, Leon. As I mentioned earlier Mathieu was kind enough to take some notes on what should go potentially into the communiqué subject to your approval.

The text that you find in the Adobe Room is not final text. So this is basically a strawman of what we want to communicate. I'd

like to outline this to you very briefly so basically we're saying that we met on November 2nd, and we would put in some statistical information on how many attendees were there. Then we will explain that we have the Work Stream 1 recommendations done and that we now need to work on Work Stream 2. That's basically to explain the demarcation between Work Stream 1 and Work Stream 2.

Work Stream 1's purpose is to disseminate the new accountable principles into several key parts of ICANN's day-to-day operations throughout the organizations and develop a culture of accountability. Then Mathieu suggested that we include a quote along the lines of the analogy that I was using earlier about Work Stream 1 being the foundation of the house and being the rough construction of the house, but that now we need to finish that house with windows, doors, furniture and what have you. So ICANN comes – will likely come up with a nice idea on how we can frame this.

Say that we have the dashboard that we discussed this morning, we will link to the dashboard as a source of information about the status of our work.

Then we're going to talk about the various achievements of this group. So that is the consensus on the draft Supplementary Rules for the IRP which we're going to publish for public

comment. That's the questions for the Supporting Organizations and Advisory Committees with respect to SO/AC Accountability. The questions that Cheryl and Steve have been working on that we're going to send to these organizations.

Then the fact that the Ombudsman Subgroup will act as a Steering Committee to oversee the external review of the Ombudsman function – and maybe we should actually say Ombudsman and not just Ombuds – within ICANN which was mandated by ATRT2 which is also a nice link to how our work is intertwined with ATRT2.

Then first set of proposed guidelines for bringing proposed Board removal actions is available and will be further refined. That's the [inaudible] discussion that we had where we're going to see an updated draft based on the discussion that we had today. And the comprehensive set of recommendations to enhance ICANN's Transparency policies that we discussed with Michael and Chris. The group will further investigate the suggestions received and engage with staff on the proposals then assess consensus within the group.

So that's basically an outline of the iterative process that we're now going to take with respect to Transparency. And finally, we're going to add a paragraph on our engagement with Göran which basically we describe as constructive discussions,

interactions between the groups items of work and recent initiatives such as the introduction of the Complaints Officer and constructive dialog was initiated and the group looks forward to further exchanges between and during meetings. And finally, we will recognize the outstanding dedication of the volunteers in the CCWG and express our gratitude to ICANN staff for the diligent and skilled support.

So that's quite concise, brief. I think this adequately captures what we did today. Does any one of you have any concerns with putting out a statement along these lines? I see John's hand is raised. Please?

[JAN SCHULTE]:

Thanks. The third paragraph, it's just about the wording. You can read it as though we approved the Work Stream 1 proposals today. So it's at the top, it says, "After the adoption of its..." we didn't adopt those recommendations today. It's just English.

THOMAS RICKERT:

Okay. So I'm sure that Hillary Jett from ICANN Communications will follow this discussion and take that into account so that we might make the language unambiguous.

[JAN SCHULTE]: Do you want to also mention that there was a discussion of jurisdiction, quite extensive, we didn't finalize anything. But there was quite a discussion of it?

THOMAS RICKERT: The jurisdiction discussion was more an update, so what exactly would be the message to be conveyed?

[JAN SCHULTE]: The message to be conveyed to outside audiences would show that we were talking about jurisdiction. That it wasn't off our agenda. That it was part of what we discussed.

THOMAS RICKERT: Okay.

[JAN SCHULTE]: I'm thinking that there is a world out there that might be wondering are we doing anything about this and so on. And even though we didn't come to any conclusions it would still let them know that we discussed it.

THOMAS RICKERT: Okay. So Mathieu is surely listening to this so maybe we can put in an additional sentence on the state of play with respect to

jurisdiction. Which by all means would be helpful and Mathieu is confirming this in our back channel and in the Adobe chat as well. So any further comments? Milton, please?

MILTON MEULLER:

You could go down to the paragraph about Göran. In a way this is just English, but the repeated use of the word “constructive” has the flavor of the lady doth protest too much. I think you could just say, “Discussions focused on the interactions between the groups items of work and recent initiatives such as the introduction of the complaints officer, a constructive dialog.” So you only need to say it once.

I would like to put, “Discussion focused on the interactions between the groups accountability reforms and recent initiatives such as the...” Just to be more specific about the potential for tension there, if that’s okay with you.

THOMAS RICKERT:

Thanks very much, Milton. And since Mathieu is not here and he can’t complain, let me say responding to your point. Since this was written by Mathieu certainly it needs to be polished. Tijani and then Kavouss.

TIJANI BEN JEMAA: Thank you very much. I would like to react to Göran remark regarding jurisdiction. We discussed jurisdiction, but we discussed all the other topics of the nine subgroups. So if you will mention that we discussed jurisdiction, you have to say that we discussed the other topics. I don't see why we have to speak specially about jurisdiction. We didn't take any decision. We didn't have any call for consensus, so I think that it should be treated as all the other topics. Thanks.

THOMAS RICKERT: Thanks, Tijani. Kavouss?

KAVOUSS ARASTEH: Yes. Maybe put Complaints Officer into inverted comma. Perhaps we have to find another way because it's not quite acceptable this talking of complaints officer. You have to find another word. I have one, but I have to consult with you and others and so on, so forth.

THOMAS RICKERT: Okay. So, I hear you. Let's just collect this and I'm sure Hillary will hear this. I guess for this statement it makes sense for us to use the same terminology as Göran has used to make sure that people understand what we are discussing. But to put it into

inverted commas I think makes sense. Greg's hand is up or is it again the old hand that you put up.

GREG SHATAN: No, this is a new hand.

THOMAS RICKERT: New hand?

GREG SHATAN: Just briefly. I agree with Tijani that if we're going to call out the discussion on jurisdiction we should mention the other agenda items that we in fact dealt with. We didn't actually deal with all nine of our subgroups, for instance, we didn't get to human rights. But for the ones that we did, we do mention someone them like the Transparency discussion. But if we're mentioning status updates we should encapsulated the agenda. I think just putting in a mention of jurisdiction as a sop to those who are watching us is probably not a good idea as much as I enjoy the attention.

THOMAS RICKERT: Okay. Thank you. So we take that feedback and we will come up with an updated draft that's polished and, hopefully, that will take into account your views adequately. So I think this meeting

is now coming to an end. We can even end the meeting a little bit earlier.

Before I come to my concluding remarks, let me just say that Julie has informed us that Lyman, that she's the only representative of her group during this meeting. Lyman had an accident and let's just put on record that this group wishes him swift recovery and we hope to welcome him at the subsequent meeting again. So please do convey that message from us to him.

Unless there are any other final remarks from your side, let me thank our excellent staff.

Let me thank the tech folks. In the back of the room you've done a remarkable job despite the technical difficulties that you had.

Our support staff, helping us with the AC Room with notes, with all the slides and stuff. So thanks Bernie, Karen, Brenda and all the others.

Thanks to our excellent rapporteurs. You kept us going and I think it's very remarkable that we've come thus far. Let's keep up the momentum.

Maybe this can be conveyed to him, thanks to Göran for spending so much time with us and starting this discussion with us.

Thanks to Mathieu who got up very early this morning his time zone to attend this meeting and he survived. So he's been of great help in the background, thanks so much.

I'd also like to thank the remote participants. I know that it's particularly challenging to follow a discussion in the Adobe Room for hours and hours and it was great to have you there. And we saw that you've been very active because you've commented and contributed in the chat and otherwise. So that's been greatly appreciated. So let's give a big hand to the remote participants.

And finally, he's been hampered by an incoming flu, but my fellow co-chair, Leon. He's done a splendid job here as well. Thanks to all of you and have a great and fruitful ICANN-57.

[END OF TRANSCRIPTION]