
RECORDED VOICE: This meeting is now being recorded.

GREG SHATAN: Thank you. Hello, and welcome to the CCWG Accountability Work Stream 2 Jurisdiction Sub-Group, Meeting Number 8. First, welcome. Second, to set the stage, this is our second-to-last meeting before Hyderabad. We are meeting one week from today at 19:00 hours, on the 27th of October. That will be our last meeting before Hyderabad.

Secondly, we did have a meeting of the Rapporteurs, and just to note that I think we are experiencing some issues in this group that are no different from what most of the other groups are experiencing, and I think we're moving forward. But it would be helpful to get a wider variety of people involved, particularly in commenting on the documents; and even more than the marginal comments, actually writing text in the documents. Everything in the margins will disappear when the document becomes final. What is in the text will be edited. It may disappear too, but that's the field of play. Everything in the margins is commentary and will not get on the field of play unless it is put there. So the point of being a member in a sub-group is to engage in the system of the drafting of the documents as well as in the formulation of the positions and recommendations. So I once again encourage that. We have a few very active members, and we need more, moving forward.

So I see a request that the Rapporteur take on board the comments in the margin. That's not really the way I think it's best to work. I think it's

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.

best that the members of the group work in the document. The concept is not that this is a Rapporteur-written document. I think that would be inappropriate, in the sense that it turns the Rapporteur into a receiver of bits, of information. This is supposed to be a collaborative document; so requests that we get – if you have something that you think should appear in the text, you put it in the text. If you have comments on somebody else’s stuff in the text, it’s appropriate to comment; it’s also appropriate to suggest revisions to it.

That’s – there, I see a request for tips on how to edit a Google Doc. It’s basically like Microsoft Word, but I’m sure we can find a primer that will introduce it to those who have had the somewhat dubious pleasure of working in Google Docs.

On to the first substantive point, or substantive issue. We have the Multiple Layers of Jurisdiction document that has been set up for a couple of weeks, now. And let’s see if – I actually apologize; I think that there is a copy on the list that Vinay sent around; I don’t know if staff can grab that, or I will send it to Bernie’s email address. That would be good to get that up.

So the primary point of this document was to include – first, to define – what the multiple layers of jurisdiction are. Essentially, in effect, exploration, definition, exploration, so that we’re talking consistently about the same things. Here we have in front of us – I guess this is, unfortunately, the cleanest, or the clean version of the document. One of the challenges of – there we are. Now at least we have some of the comments and we can see the mess we’ve made – the creative mess that we have made in the document.

I think the important thing, here, first is to try to get these definitions correct and agreed to. This document has somewhat bled over into effects of jurisdiction and other commentary, if you will. Let's see. I see we have a couple of hands up. Not sure who was first between David and Kavouss; on my screen, it says David. So why don't you go ahead.

DAVID MCAULEY:

Greg, hi; it's David McAuley. I think I was second; I think Kavouss was actually first, so I should let him go first.

GREG SHATAN:

Thank you. The tablet version of Adobe Connect does not sort by who goes first. Kavouss?

KAVOUSS ARASTEH:

Yes, Greg. I have a serious question. I guess, or I see, that the tendency is that we do not make any progress. The way the discussion is going, many fronts are open, and when the earliest or multiple fronts are open, the battle is already lost. There is no concentration on what [inaudible] or want with the other.

I have downloaded all the emails, and I see that even with the simple understanding of what is the law, civil law, public law, private law, international public law, international private law, and what somebody told [inaudible] the lawyer, the state action [inaudible] public law, and private [inaudible] private law, and so on and so forth. It reminds me of battle – that the [inaudible] wanted to get into the battle. But he [inaudible] ten miles forwards, twelve miles backwards, ten miles

forwards, twelve miles backwards, but never reached the battle, and the battle was finished. This is the feeling that I have. I may be wrong, but that is that.

This is the eighth meeting, and still we don't know where we have to start. Do we start with the multiple layers? Do we start with the definition of the public law, private law? Do we start with the [inaudible]? [inaudible] says that we don't need to do that. Yes, I agree – for the time being, we don't need to talk about the [inaudible] of the ICANN [inaudible] for the time being [inaudible]. But let us know what we really – what are the talking points? This email, instead of resolving something, disturbs it; creates division. Someone said on the 1st of October that ICANN is totally a private company and does not under any public law. Someone insisted that we don't need to do anything at all. And then in a meeting ten days ago, there was one official that said that it is better to take this issue off the table. Are we going to take this issue off the table in a very clever manner, that means we discuss and discuss and discuss, and once everybody [inaudible] is the status quo [inaudible]. I am not [inaudible]; I am not [inaudible]; I am not [inaudible]; I am [inaudible], I am [inaudible], but perhaps [inaudible]. So please direct me where we are and how we proceed. I think that people don't want anything [inaudible], because they don't want to have anything under jurisdiction. They say that [inaudible] and everything should be okay. That's all. So please take [inaudible]. I hope that you can prove that [inaudible] I have misunderstood everything. But that is all this email said. I read all of them and put them together, and try to compare them [inaudible] to compare them with what [inaudible] contradictions. Thank you.

GREG SHATAN: Thank you, Kavouss. Unfortunately, a little hard to understand; a lot of what you said was muffled and also seemed to be going into the red zone in terms of gain. There was some distortion, as well. I guess I would ask, what is your suggestion? If you believe that we're not making progress, which I don't share that belief, but what would be your suggestion, having observed this and participated for making progress, as you suggest?

KAVOUSS ARASTEH: My suggestion is that you are the Chair [inaudible] establish an overall strategy and say that in order to solve the problem, we have to start with something [inaudible] somewhere. And what is that? Is that multi-layers? Is that definition of the applicable law? I don't know which one. Establish an overall priority that we can [inaudible] something without waiting for something else, and put the remaining parts to see whether we have time to go back, or no. But something which is efficient and top priority – which is that one? You're a lawyer, you're a good writer [inaudible] two pages of replies to one person. Two pages. And [inaudible] all of them [inaudible] good writing. I am not like you. I have to take hours, because I am too indecisive, and English is not my mother tongue. And you can [inaudible] what is the first priority – that we [inaudible] in order to take us somewhere you [inaudible] definition of applicable law that you mentioned several times, [inaudible] start from the multiple layers, or what? Where do you start? I am, as a person, as a member of this group, [inaudible]. Thank you.

GREG SHATAN:

Thank you, Kavouss. I do think, in fact, we have set priorities, here. I think we have one of them in front of us right now, which is the defining of the multiple layers of jurisdiction. Having a common understanding of what they are and moving into their effect. And I think more specifically, in the second document in the agenda, we are focusing, in fact, on a specific question, which is the influence of the jurisdictions for the – relating to the resolution of disputes and their effect, or influence, on the actual operation of ICANN policy and its accountability mechanism. So that is really where our focus is, in terms of problem-solving. David?

DAVID MCAULEY:

Greg, thanks. It's David McAuley, for the transcript. Like Kavouss, my hand was up for an issue before we got to multiple layers of jurisdiction, and what it is, is just a comment and a question. The comment is with relation to something that Christopher and Yvette have been saying in the chat. If there is a link to a brief tutorial for Google Docs, I would suggest that it be put on our Wiki space, and when you talk to the other Rapporteurs – they've all put it on their Wiki spaces. It would help. I'm one of those for whom the Google Docs becomes difficult at times, and I could use some help.

My question goes to what Jorge and Vinay and Farzaneh have also been talking about in the chat, and that is – when you tell us, Greg, that you would like us to put text in there, I've been making – I think – comments, but I guess what I'm reading now is that we should make

suggestions, rather than going into the left part of the document and actually changing text. Is that right?

GREG SHATAN:

Thanks, David, and I think – first, to take the Google Doc issue generally, I agree it would be helpful for those who don't use Google Docs a lot, or never have, to understand the general technical approach to successfully working in it generically. I'll ask staff from the other Rapporteurs if they have anything like that, or if we can put something together or find something and circulate that.

The second question is more specific, which is our working method in Google Docs, which would be the same, in a sense, if we were working directly in Microsoft Word. What is our working method in a document that we all have access to? Yes, David did not say that we should use Google Docs; he just asked how we should use Google Docs.

The working method that I suggest – first, Google Docs has three modes for dealing with a document. One is edit, which is like working without “track changes” in Microsoft Word – everything you put in just appears as plain text. You can't tell who put it in, or whether it's open for discussion or not. The second mode is “suggest” mode. Suggest mode is like working in “track changes” in Microsoft Word. Anything you put into the text of the document will appear in color; and each person, more or less, has their own color. And in the margin will appear a little note, if you will, that just shows who entered that particular text into the document. So that's what I called “suggest mode,” and you can do two things in suggest mode. You can add text to the document, itself;

and the other thing you can do is add comments, which only appear in the margin and don't change the text in the document part of the document at all. So I think, for the purposes of what we're saying, and in terms of having a common vocabulary, let's use the term "suggestions" to mean "suggested text that appears in the main body of the document." And let's use the term "comments" to mean "commentary that is typed directly into the comments field in the right-hand part of the document." So if you look at what we have on the screen, the words "jurisdiction of incorporation also of HQ location has the primary relevance," etcetera – that was put in as a suggestion. And then on top of that, someone else – me, actually – commented in the margin, "all law in the U.S. is public law." The term "public law" is not generally used in the U.S.

So ultimately, it's the text which initially appears as suggestions that will get edited and turned into our work product. The comments section is a place to have a discussion about what's appearing in the text. But we need to work on having stuff appear in the text, as well. So, that's the working method.

DAVID MCAULEY: That's helpful. Thank you very much.

GREG SHATAN: Yeah. And by and large, I would just say that if you do use Microsoft Word or any other text editor that is reasonably similar in approach, Google Docs is just about the same, just as long as you understand that

you need to be in “suggest mode” to work in what looks like “track changes.” Everything else is more or less the same, so that is the case.

So in the margin – “I think entering into Google Docs is necessary to have a collaborative document move along; it would be useful to have important issues, arguments, justifications in the e-list so others can see and if needed, weigh in.” I agree with that. I think that for broad-ranging discussions among the group, the comment balloons on the side of the document are not the ideal place to have a significant discussion about concepts. They are a good place to have a narrow discussion about editing a piece of text or comment on what that text is saying. The issue, of course, is that things in the mailing list need to get into the document. And as much as the Rapporteurs can and will, obviously very active in the list and monitoring the mailing list, we’ll try to bring concepts in; it’s also helpful when others who are participating are putting things into the document as things seem to move forward in a particular e-mail. This, again, is a collaborative approach. If I was the only person editing the document, I could have it as a Word document and then just circulate it periodically, but then nobody else would be able to see it, and nobody else would be able to work in it. This is supposed to be a collaborative process, so – and I think also, it would be helpful to have more questions. I understand some of us are lawyers, some of us are [inaudible] lawyers, even some of us are not. So it’s very helpful to have questions coming from those who want understanding. Probing questions; there are no questions that are out of scope. Within scope, there shouldn’t be any questions that are out-of-bounds, and as we initially approach any particular topic. Tijani?

TIJANI BEN JEMAA:

Thank you very much, Greg. Tijani speaking. I am really sorry that the spent all this time discussing whether we have to use, or how to use Google Docs. From the beginning, I said that ICANN is [inaudible] Confluence Wiki, which is very easy to use, which permits the collaborative work on a text, but one at a time. It is the only difference with Google Docs. There is also the option of comments, so people can make comments and the [inaudible] can include them or discard them, etcetera. So today, Pedro sent an email saying that he is not able to access Google Docs, and he was asking about the text in Word or PDF. I sent them. But it is a pity. Confluence Wiki is accessible everywhere in the world, and it is the tool that we are working in At-Large. From the beginning, it is always working. I don't know why we don't want to use it. Thank you.

GREG SHATAN:

I think it would be helpful – and we can look at that for another document; let's work on these documents the way we have them – if there is a primer on working in the Confluence Wiki that staff or those who have worked in it can circulate, that would be helpful for those of us who don't. So that would be helpful. But I think, for now, let's try to move to substance. And with this current document in front of us, everyone should have scroll control.

So, what I would like to do – and thank you, Matthew, for suggesting it – after this call, within the next 24 hours or so, I'll look to clean this document up further, and also then as a Google Doc, and also recirculate it as a Word doc for further comment. But I'd like to see if there are any comments, questions, potential additions to the

document in front of us. What do people think is missing from this? Are they happy with it? Have they read it?

Kavouss?

Kavouss, we're not hearing you right now.

Okay. Looks like Kavouss is having some connectivity issues. Anybody else have any comments on this document? Let's look – let's move through it somewhat quickly, and make sure that – David, please go ahead.

DAVID MCAULEY:

Greg, hi. It's David McAuley, for the record. This document in part gets to the topic of venue. And since I'm a member of the IRP Implementation Oversight Team, I just thought I would mention – and I think I've made a comment in the document, I'm having a hard time finding it right now – mention the venue considerations of IRP, just so that people can have them in the background. And briefly speaking, the idea of IRP is that it would be venue-less, almost. Both the existing supplementary rules and the new rules that are almost finalized will encourage the IRP panel to conduct the hearing by electronic means, to the extent feasible. If hearings are going to be required on a party's motion, they can take place telephonically or by video conference. I presume that a party could move to have a physical hearing in some place, and it would be up to the panel and their discretion to decide, based on the arguments of the parties, whether that would be the case. But even that would not touch on venue; it would simply be a place for a hearing to happen. And all of these things are to be decided by the

panel, with a view toward the bylaws and the Articles of Incorporation, in compliance with applicable law and IRP precedent. So I think it's a fair statement to say just in the background, as a matter of FYI, that when it comes to a venue for an IRP, it will largely be an electronic proceeding that is not going to have venue considerations. Thank you.

GREG SHATAN:

Thank you, Dave. And for those looking at this text, venue is covered in Section 5 of this document. And I think, David, the reason you did not find it is that it was – I think your comments were actually in the other document, the influence of jurisdiction document. What I did there is to get the conversation started in that document. It's a question of – I put in the two types of jurisdiction that directly relate to that choice of law and venue into that document, as well, so –

DAVID MCAULEY:

Okay, my mistake. I apologize for that, then.

GREG SHATAN:

No problem. As we move forward, or – obviously, we're moving forward toward a single work product, so that will need to be integrated there. I think Kavouss' hand is up.

KAVOUSS ARASTEH:

Yes. A simple question is that, are these 1, 2, and 3 are really venues of the [inaudible]? Because there is some quotations, more or less, from what is the bylaw, [inaudible] headquarters, and so on and so forth.

Why we associate that with a layer of the jurisdiction? Why? It [inaudible] some sort of conclusion. I have here that [inaudible] conclude [inaudible] 1, 2, and 3; later on [inaudible] everything is under the [inaudible] law and state law, or federal law, [inaudible]. Is that the case? Thank you.

GREG SHATAN:

Thank you, Kavouss. No, that's not the case. First, the numbered section headings – 1, 2, 3 here – are either taken directly from or based on the multiple layers of jurisdiction that were set forth in Annex 12 to the Work Stream 1 document, and part of our charge in this group is to define and explore the multiple layers of jurisdiction. And what is intended here, first, is a generic definition of what that layer of jurisdiction is; and second, a statement of the current situation. So maybe we can have a subheading that says that that's a statement of the current situation.

So, looking at the first section, 1A is a definition of this layer, generically. B and C are a definition, or rather, a statement of the current facts of jurisdiction. Whether they – and then, in a sense, that is what we need to examine. That's the body that we need to look at to see whether it functions or not, for purposes of operational policy and accountability. And then, in this case, D, which is a new subheading, "Effect of the Place of Incorporation," is at least again, an exploration of what the immediate effect is, first generically. And then ideally, we need to move forward into the question of how does this influence ICANN's ability to operate its policies and accountability procedure?

So that is the working method. And the intent here is to look at the – our job is to look at the existing jurisdictions and see if there are issues that are raised by them. So we have to define what those jurisdictions mean, what they are, and then look at what their effects are. So that is really where the rubber hits the road, to use a figure of speech. When we get to the next document, you'll see more specifically what it is we need.

So certainly, we can look at ways to refine this document; but this is to some extent a background document. The intent is to look at the actual influence issues in the second document. So we can get to that very shortly. If staff can get a copy of that ready, or if they need one of the Rapporteurs to do so, let me know and we'll move to that second document. But first, I want to see if there are any comments, changes, problems, issues with the text, or anything that's been raised in the comments of this Multiple Layers of Jurisdiction document. Yes?

KAVOUSS ARASTEH: Can I raise some [inaudible]?

GREG SHATAN: Yes.

KAVOUSS ARASTEH: Yeah. I'm having a problem with this first document, if that you called [inaudible] document. I have [inaudible] this document [inaudible] this document. First of all, I suggest that if you agree with other people like me, we create a sort of [inaudible]. This is the first [inaudible]. I will

come from Annex 12; or coming from the modification of Annex 12, being the legal quorum bylaws, [inaudible] of the sub-group [inaudible] comment and the last comment, any additional notes, or any additional comments or remarks. So I have no problem, because you [inaudible], most of them [inaudible] they are there [inaudible] from the bylaw [inaudible] are there, so I have no difficulty. But I would like to know whether the group has any comments on that. Because this is one of our tasks. To see whatever [inaudible] we have to remember that we have to develop that, we have to explore that, and so on. So this is a [inaudible] your considerations, and then you can go to the second document. This is my suggestion. Other than that, [inaudible] question to, or in accordance with, or as stipulated in [inaudible] bylaws [inaudible] put all of this in one color, and another color in the [inaudible]. [inaudible] group [inaudible] to [inaudible]. There is no need for further [inaudible] for you to add [inaudible] we need to [inaudible]. So it's one reason for [inaudible] similar [inaudible] human rights [inaudible] there was some disagreement, but at least it's [inaudible]. Thank you.

GREG SHATAN:

Thank you, Kavouss. I think the issue here is a little bit different than in the human rights subgroup, which is trying to interpret an agreed text, which is the bylaw. Annex 12 has a number of topics and potential focuses of the work. And so, what – in this case, the highest-numbered sections here, 1, 2, 3, 4, 5 – are essentially what's in that document as regards the multiple layers of jurisdiction. And everything else in this document is our work product. So I'm not sure that the same method

would work. And then, in the second document, we're getting more to the questions of substance on what those effects will be.

So, is there anything else on this document? If not, what I'll do is try to take on board or duly account for the marginal commentary and bring it into the text, and try to accept as much of the text as possible, so it's at least no longer in color. Everything is still a working document until we have consensus on it. But that will, at least, move this document forward. So staff, is it possible for us to switch to the other document now? Great, thank you.

Thank you. As we discussed in our last meeting, this question at the top is one of our overall focus assignments, and I think one about which there is no dispute as to whether it's in scope or out of scope, or generally that this is something we need to wrestle with and answer.

So in this document, again, just to try to set the stage for the actual discussion, section A here just repeats, although it's beginning to [inaudible] and we'll have to deal with that. Sections 4 and 5 of the document we were just looking at. So these are the two layers of jurisdiction that relate directly to the settlement of disputes – both to bringing disputes, adjudicating them, and to resolving them.

So this doesn't refer to the specific countries that might – or jurisdictions – that are in play [inaudible] we know that California is one of them, but there may well be others. But this at least defines the overall issue. In section B here, the idea under A1A1, choice of law, there is no answer to this question yet, but this was clearly a spot right here – this blank B1A1, asks, "Which jurisdiction's laws –" No, "which

countries' laws currently are in disputes involved in ICANN?" And clearly, we know U.S. law in California is one, but we know that ICANN is physically present in a number of other countries, and it's – the substantive laws of those countries may, in certain cases, apply to ICANN's activities, to its policies, and may be used or useable in the accountability mechanisms. But we don't yet have anything in the text here, and this is a place [inaudible] need to start. I understand that to some extent, we're looking for facts that may not be – because of the fact that we don't have a lawyer here from every jurisdiction in which ICANN has a physical presence – we can't answer in any real certainty what this is, but at least some contributions would be good.

In Section 2 here, venue, as we noted, venue goes to the physical location where a dispute may take place, and as we've been discussing, the IRP – except in the exceptional circumstance where there might be a live, in-person hearing – the IRP won't take place in any particular physical location. And it's never commenced in a physical location. It's commenced through the electronic process. Once the parties are engaged, there may be a hearing, under exceptional circumstances, that's live.

In addition to the IRP, other types of dispute that ICANN deals with are covered in Arbitration and Litigation. So we have some facts here about [inaudible] setup for ICANN. And again, Litigation – we need some exploration of where ICANN can be sued, and presumably also where ICANN can sue.

And then here, we have – we're finally getting to the meat of the question – we have the influence on the operations of ICANN's policy

and some contributions were made, overnight for me. I have not reviewed these, yet; but this is a first stab at some contributions, here, to what the influence of ICANN's existing jurisdiction, which is at least U.S. at the moment, is on how ICANN's policies operate. So it would be helpful for others to weigh in on these contributions, here, which I believe came from Parminder, both in terms of potential edits to the text – working in suggest mode, you'll come in in your own color – and then, if you have comments or commentary on these, then it's appropriate to use the marginal comments.

So I don't know if anybody – Kavouss, is that an old hand or a new hand?

I'm not getting a response. I'll go to Tijani next.

TIJANI BEN JEMAA:

Thank you, Greg. I have two remarks. Let's start with the IRP. [inaudible] we did in the CCWG for the IRP, now we will have a standing panel of seven persons, and since it is contracted by ICANN, and ICANN is located in Los Angeles, the IRP will be located in Los Angeles. Of course, the three persons of the dispute panel will be taken from those seven people, and if – when we speak about location, we have to speak about the location where the panel is working. We are not speaking about how [inaudible] is done. This is the first remark.

The second remark – 2A of this text, defines the type of disputes, and I can read contractual dispute with contracted parties, contractual disputes with other third-parties, and non-contractual disputes with a third party. I think that there is something missing, here, because

applicants for a gTLD or any TLD is not contractual party, yes? It is not a third party. I don't know who are the two other parties in this case; so I do not think this is the place for this kind of dispute. Thank you.

GREG SHAMAN:

Thank you, Tijani. A couple of things – I'm getting an echo – I think, first, we probably should explore your assertion that the fact that ICANN is incorporated in Los Angeles makes the place of the IRP Los Angeles. I'm not sure that that's the case, and I don't know if anybody else on this call has a view to that. We can certainly ask ICANN Legal if that's the case. My understanding is that it does not mean that it's taking place in Los Angeles, and it's not subject to U.S. law, except that it's subject to being an IRP [inaudible] is enforceable in a court of competent jurisdiction, which would include California, if it's being enforced against ICANN, because ICANN is available there for a suit. So I think that's an assertion that needs to be tested.

As far as third party – and apologies for using a term that's somewhat of a legal term of art – it does not mean that there are three parties in a litigation. A third party is for someone – nobody talks about second parties, at least among lawyers – a third party is basically somebody who is not you; somebody who is a stranger to you, who is not part of you. So it's really everybody else. Everybody else is a third party, so that's the sense in which that's used. But I can certainly go through the document and try to use a different term that may not contain any kind of unintended consequences, confusion of meaning. So, that's that. Kavouss, are you back online?

KAVOUSS ARASTEH:

Yes. I was [inaudible]. I was [inaudible]. One, we are moving in the right direction. This is a good start. Second, I know that you use the word [inaudible] it's coming from the Annex 12 and the bylaw, but I don't think that [inaudible] impact [inaudible], but not influence. There is no influence of ICANN jurisdiction [inaudible] influence. So we are not obliged to take the same [inaudible] as the [inaudible], so I don't think that there is – there is no influence. ICANN [inaudible] ICANN jurisdiction [inaudible]. Thirdly, I disagree with you in terms of the third party. Party one and two [inaudible] someone with complaints and someone with [inaudible] two parties. You say any party is a third party. Any of these two are not in any case considered a third party. Third party is a non-entity which is outside the first and second party. So that [inaudible] second and third party is [inaudible], yes. But it is not [inaudible] or associated in any case with the second or third party of the [inaudible]. This is my understanding of the third party. You have [inaudible] no [inaudible] international [inaudible]. [inaudible] together as something [inaudible] third party, but these [inaudible] are not part of those two issues related to [inaudible]. So that is the position of third parties. [inaudible] position. Thank you.

GREG SHATAN:

Thank you, Kavouss. I think I got most of what you were saying. Unfortunately, I think there was again some distortion. I think it may help if you back off from the microphone just a little bit, in future. But thank you for that. David McAuley?

DAVID MCAULEY:

Thanks, Greg. It's David McAuley, here. I just want to comment on the point that Tijani raised about the standing panel. It's my understanding that the standing panel will be selected – and one of the criteria for selecting the panel will be regional diversity. So my expectation is that the seven members, assuming that there are seven on the standing panel, will be dispersed around the world, and they will be working electronically.

It's a fair statement to say that because ICANN is headquartered in Los Angeles, that that law may come to bear at some point. But the rule – or the direction, rather – for an IRP is to decide cases based on the articles and the bylaws, and IRP precedent as influence by applicable law. And we all know that the term “applicable law” is under discussion in a number of these sub-teams, and is not clear, I think. It could be California, and it could be another place. Thanks very much.

GREG SHATAN:

Thanks, Dave. I think you raised a question – I'm sorry, [inaudible] put in the chat, because I don't really know the answer, myself – what substantive law is applied in an IRP. Is it a choice of law decision as one that might be made in a court? And we've had some discussion about conflict of laws analysis in the margin of some of the documents. Is it whatever the panel is to bring in, and I think that's what I've seen in the past, is, the panel seems to come from their own legal traditions, and seem to use a kind of a mix of legal traditions, almost like a smorgasbord, to come up with things. So it's certainly a good question. And whether ICANN's physical location has anything to do with that choice is a question, too.

I do want to be a little bit careful about the scope of this group, especially in working with the IRP-IOT Group, too. We need to look at what the consequences of ICANN's jurisdictions are, and if there is a substantive law question regarding IRP, we should get into it. But I think we don't need to examine everything about the IRP, because there is another group for that. Kavouss, is that a new hand or an old hand?

KAVOUSS ARASTEH:

Yes. [inaudible]. Could you put the question of Tijani for further discussion? The answer is not yes or no. The answer is not as David said, and perhaps not exactly as you said, that in addition to the diversity of [inaudible] and impact on this, it depends on the case. You could not say that totally outside California or the United States, or inside. It depends on the case, and on the IRP. So could you put it in the questions for further discussion? This is very important and [inaudible]. Thank you.

GREG SHATAN:

I am putting that – something like that – in the chat. And I agree that there is definitely an element of conflict of law decision in each specific case, that may vary. At least, that's what I believe. So we'll need to look at that.

We're down to our last few minutes, and I think this is a good discussion, here on this document. I would like to continue it on the list and in the document by continuing to make suggestions in the text and comments about the text in the margin, as well as using the email list

for more lengthy back-and-forth discussion. David, is that a new hand, or an old one?

DAVID MCAULEY:

Greg, it was a new one. I was just going to mention the bylaw section that has direct application here. It's fairly brief; it's Article 4.3V, as in Victor, and it basically – it's short; I'll read it. It says, "Subject to this section, 4.3, all IRP decisions shall be written and be made public, and shall reflect the well-reasoned application of how the dispute was resolved in compliance with the Articles of Incorporation and bylaws, as understood in light of prior IRP decisions decided under the same or an equivalent prior version of the provisions of the Articles of Incorporation and bylaws at issue, and norms of applicable law." That's it. So it seems clear that if push comes to shove, that if the parties make motions, the panel may have to decide these kinds of questions. But generally speaking, that's the sort of rubric within which the IRP panel is meant to address the question. And there's another section that says it will be a de novo decision, or proceeding. Thank you.

GREG SHATAN:

Thank you, David. De novo means without considering any prior dispute mechanisms between the parties. Or at least, without considering the results of those.

So just to look very quickly at our last two items, here. Preparation of status report; this is something the Rapporteurs are required to do for each group. It does not need to be long; it basically needs to summarize where we're at – a snapshot of our current state of affairs. So I will

prepare something, or Vinay and I will prepare something and circulate it around. With apologies, I'll probably put it up as a Google Doc, but I will also circulate it as a Word doc, or if it's short enough, just in the text of an email, and people can comment on that. That needs to be done by the end of the weekend, basically. Technically, Friday, but maybe the weekend.

And then last in our almost no time, is an open question: What do people want to accomplish in Hyderabad? Is there something a face-to-face of our sub-group would help accomplish?

Kavouss?

KAVOUSS ARASTEH:

At least, we should have [inaudible] all the questions that we need to address. [inaudible] multiple layers, very good, and then [inaudible] what else. But at least, we should have [inaudible] some people that are against [inaudible] but we should consider that we don't have unlimited time to [inaudible] time, and we have to have some [inaudible] management [inaudible] and we try to not have this direction of the ideas and the emails that the people would be further divided. We try to further the [inaudible] and so on, and so forth. So [inaudible] whether or not [inaudible] and in what [inaudible] have to do, in the order of priorities. Thank you.

GREG SHATAN:

Thank you, Kavouss. Tijani?

TIJANI BEN JEMAA: Thank you, Greg. Tijani speaking. Shall we have a face-to-face meeting for our sub-group? My understanding is that the [inaudible] not the sub-groups [inaudible].

GREG SHATAN: That's a good question, Tijani. I am not exactly sure how the day is going to be split up, and I am not sure if there are going to be times when the sub-groups are going to break out. Of course, for those of us who are involved in multiple sub-groups, that will require either difficult decisions, or perhaps not all the sub-groups breaking out simultaneously. So I'll try to find out from our Co-Chairs whether there is any sub-group time built into the face-to-face day. But at the very least, in the plenary, I expect that we'll spend some time talking about the topics at play in each sub-group. And we'll need to think – and again, we have one more meeting before the plenary, before Hyderabad – a week from today – what we would like to surface to the plenary group, whether it's conclusions, preliminary conclusions, or open questions, or the like. So I think that's a question we can explore on the list and next week, as we get closer to Hyderabad planning. So we've now reached past the top of the hour, and –

TIJANI BEN JEMAA: I may, Greg?

GREG SHATAN: Yes, please, go ahead.

TIJANI BEN JEMAA: Thank you very much. We need to know if we will have a break-out session for the sub-groups. Because this would be different, and we'd have to prepare ourselves. Second point, when we speak about our sub-groups in the plenary, I don't think that we will work [inaudible]. We will present our work, and we will get feedback from the group, from the plenary. This is, I think, the aim of the meeting. Otherwise, if we work there in the plenary, it will be a problem for me. Thank you.

GREG SHATAN: Thank you, Tijani. I agree with both of your points; I think that is what's likely to happen in the face-to-face, and at this point, I don't know of any plans to have any separate break-out times for any of the sub-groups, and we'll have to explore whether that's possible or not.

BERNARD TURCOTTE: Greg?

GREG SHATAN: Yes, Bernie?

BERNARD TURCOTTE: Greg? I'm going to answer that right now.

GREG SHATAN: Thank you.

BERNARD TURCOTTE: This was considered, and there are no facilities for sub-groups meeting, and there is no time available for that on the agenda. So currently, there are no plans whatsoever and no facilities whatsoever for sub-group meetings. It is all a plenary meeting.

GREG SHATAN: Thank you, Bernie. I guess we can always decide if we want to meet informally, under the third palm tree from the left, or something like that, at some point when everyone isn't booked into five different meetings, which may not occur. We could always at least have an informal call to a table somewhere, for those who can contribute. But we'll see. So it's helpful to know what to expect. Thank you, Bernie.

Kavouss?

KAVOUSS ARASTEH: Yes. Yes, one last [inaudible], sorry. I think that for the next week we need to please have an idea of open questions that we need to raise in Hyderabad in the [inaudible] in order to have guidelines for the entire group. It is something that we are not sure what it is, and we need some guidance and some advice or guidelines, we have to raise those open questions to the plenary in Hyderabad, because I don't think there would be any [inaudible] in our [inaudible] the one [inaudible] yesterday [inaudible] was the [inaudible] if there is no more [inaudible], we need to discuss the open questions that the people [inaudible] there is something that [inaudible] unclear, and people need to have some guidance or advice from the plenary. Thank you.

GREG SHATAN:

Thank you, Kavouss. We certainly should have some sense of the open questions and get feedback on those from the group, as well. I think I'll need to identify some of the [inaudible] questions. And one of the things I think we need to begin thinking about, given the limitations of legal expertise, what questions we might have for ICANN Legal, and what questions we might need expert legal advice on beyond ICANN Legal – whether it's U.S. law advice, or advice from elsewhere. So I'll just mention those as additional questions for the future.

So, at this point – Bernie, is that an old hand? Okay, old hand. Given that we're now seven minutes past the hour, I think we have made some good progress here, as well as discussed potential issues for lack of progress. Encourage everyone to be active on the list, active in editing the document in the so-called "suggest mode," and making comments in the margins on what you see in the document. And feel free to start topics in the email list – don't need the Rapporteurs to ask questions. I hope to hear from a wide variety of folk as we move along.

So, I look forward to our meeting next week, and to seeing many of you in Hyderabad in a little over – in less than two weeks' time. Thank you, and this meeting is now adjourned.

Bye, all.

[END OF TRANSCRIPTION]