
MICHAEL KARANICOLAS: Wonderful. Thanks again to everybody for joining us. I'm going to suggest that we just dive right in to try to be as economic as we can with people's time and because, obviously, there's a lot of substantive material here to discuss.

I would be happy to introduce the changes that have been made since the last draft if people would like. Or if people are interested, we can also just jump into discussing any issues that people might have with it. Do people want just a brief introduction?

UNIDENTIFIED FEMALE: Yes, please.

MICHAEL KARANICOLAS: Okay. I'll just introduce briefly the main themes. As I mentioned I think in my previous e-mail, the Executive Summary and Background sections haven't really been tampered with very much. The Whistleblower Protection sections and the sections on Interactions with Governments have also not changed since the last draft. So we're happy to receive feedback on those, but there's nothing that needs to be – if you read the previous draft that was circulated at Hyderabad, then it's just the same stuff.

We've added in some new material to the DIDP section, mostly just in response to either the discussions that happened at ICANN or – I'm getting feedback from somebody, and I think it's not me, but I'll just go on while we resolve that – the discussions that took place at ICANN or

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inputs that I received either as part of the [forum] discussions or on the sidelines of that or by e-mail.

So the main changes to the recommendations to take note of are the introduction of an idea of a duty to document, which basically is something that's very commonly found in particularly western access to information systems. But it's basically built around ensuring that there is a proper paper trail in order to make sure that the access to information system remains meaningful. So basically what that says is that ICANN should be making sure that when they're making these decisions that there is a proper paper trail which is left behind.

There's a recommendation in there in terms of centralized processing, that ICANN should delegate particular employees who have the responsibility [an employer or employee who have the responsibility] to respond to access to information requests and to publish that so that there's a little more consistency in the system and so that people know [what they need to deal with].

We included a caveat that there should be a reasonable amount of time devoted to processing access to information requests as opposed to only responding if they have a readymade document on hand.

There's a clause about severability – and this is very boilerplate for access to information systems – where basically it says that if you receive an access to information request for let's say a 20-page document and one of those pages has a bunch of sensitive information on it but the other 19 pages are fine that rather than refusing the

request, you try to black out sensitive information and release the remainder of the document.

There is a clause about limiting attorney-client privilege. We've heard a lot of feedback from people who want more clarity about the role of ICANN Legal. So this is basically a suggestion that they consider limiting the ability that they apply attorney-client privilege so that it only applies in cases where there's pending litigation or pending negotiations and it doesn't apply to more generalized policy advice.

This is also something that we've seen in governmental sectors, but it will be interesting to – and it's also based on a statement that the ICANN Legal representatives made at ICANN that they were open to this idea. It's a recommendation that's made not in as strong language but mostly to suggest the idea to explore about how that can be narrowed to provide more clarity into ICANN Legal's role.

There's also a provision there on open contracting. We've already heard from Chris Wilkinson that this may interact with ongoing discussions on I think the accountability or a different working group, which of course we're open to. If you look at the recommendations, we're not generating a regime. We're just basically suggesting that there should be open contracting rules and publication of contracts over I think \$5,000.

The other new section to consider is the section on Board Deliberations, which is all new, partly because that's something that hadn't been addressed in the previous version even though that was one of the four topics that we were meant to examine and also because we have

previously had a broader section title Proactive Disclosure where this was meant to go into and then we heard some people complaining about mission creep and expanding beyond the original parameters. So we thought it best to go back and focus just on the original parameter, which is the DIDP, Interactions with Governments, Board Deliberations, and Whistleblower Protection.

But we needed recommendations for Board Deliberations, so we basically went back to [broader] standards of how this is interpreted at governmental level, which is basically a parallel process when you look at cabinet documents and the like. So it basically says that rather than just allowing the Board to withhold material whenever they like by a vote among themselves, which is the way the system is currently structured, that in excising information from the minutes of their meetings the Board should be required to tie it to a particular exception listed in the DIDP to ensure that the DIDP has this comprehensive list of the information that shouldn't be made available and to make sure that the Board is only using that power when they should be using it and that there should be an appeal mechanism [against] those Board decisions.

Now I included that as an IRP appeal mechanism. Steve DelBianco yesterday said that might be too ponderous a system, so I am open to any recommendations if people think a different system would be more effective. Currently, I'd be open to what people think about that.

It also includes a mention of rather than withdrawing information entirely from the minutes that information which the Board decides to excise should be time limited so that the Board should generally say,

“This information should be withheld for a year,” “This information should be withheld for five years,” or whatever, or potentially even just revisited after a year to ensure that once the harm or sensitivity has passed that the information does end up getting out there.

That is my brief summary to the changes that have been made since the last version was distributed. I would love to hear any feedback that people have or ideas or whatever. I guess I’ll throw it open right now. I see David McAuley with his hand up right now.

DAVID MCAULEY:

Thanks, Michael. Just a couple of comments. First of all, thanks to you and to Chris and to others who had a hand in drafting this. There’s a lot of good in this, and I think you deserve thanks for it.

I do have some concerns, and I’ll note them now. One of them is – and this is just sort of endemic across some of the Work Stream 2 groups, and it seems [acutest] perhaps for those of us who were engaged in Work Stream 1 – but the participation rate is very low. That’s just a fact. But I would encourage us as a group to encourage ICANN to get involved. I just recall back in Work Stream 1 when ICANN got involved fairly late, I think the Board got involved fairly late, and it sort of disrupted things.

There’s much in this document that I think will garner their attention. That will be up to them. Especially the attorney-client privilege, that’s their issue to discuss. But I would just encourage us whenever we deal with ICANN personnel to encourage them to get in here and take a look and get active. I’ve done that myself. I’ve discussed sometimes things

with ICANN Legal in relation to the IRP group, not this group, and I try to encourage them to get involved in all of these subgroups.

Anyway that being said, I would repeat something I've said before with respect to nondisclosure agreements. It's my personal view that nothing should upset any existing term in a nondisclosure agreement. If there's going to be a change to nondisclosure agreement handling going forward, if there could be a public interest override – I'm not sure I think that's a good idea, but if it happens – I would think that we should as a group urge ICANN they should have to in any nondisclosure clause have in prominent language a statement that this nondisclosure agreement is subject to public interest override.

With respect to redacting information from the minutes and [going] to IRP, I saw Steve's point about IRP being ponderous and expensive. It certainly can be, but I don't think that's the way we should look at this. I think that whether the minutes and the redactions are subject to IRP should be simply viewed in the context of IRP. There's a definition as to what qualifies under IRP as a dispute, and it is things that violate the articles or bylaws. So if a redaction does, then I think someone might have a claim; if it doesn't, I would think that they don't. So I think we should look at this particular thing, not so much in this subgroup, but the issue would be: does this qualify under the IRP bylaw?

Then I would like to submit some written comments, and I'll do that within the next week. Thank you, Michael.

MICHAEL KARANICOLAS: Okay, I can respond quickly to the points that you made. Regarding encouraging ICANN personnel to get involved, I think that's great. It's wonderful to have as many people looking into this as possible, and I'm very happy for the word to get spread around.

In terms of the nondisclosure agreements, I think we did have – I see Bernard's hand is up. I guess maybe I should address that before I go too in-depth into this. Bernard, did you want to speak?

BERNIE TURCOTTE: Thank you. Just a quick comment on David's encouragement to get ICANN involved. I don't think I'm breaching any state secrets. The Board is currently preparing how to approach and, beyond the liaison, to get involved as the work in the various subgroups starts getting ready. And so I think that's not a worry. I think there was certainly a focus when we started Work Stream 2 that the Board would approach this differently this time around. Thank you.

MICHAEL KARANICOLAS: That's great to hear, and we look forward to greater involvement from them and to hearing back their thoughts.

In terms of nondisclosure agreements, we had a pretty robust conversation about this in Hyderabad, which I know, David, that you were feeding some thoughts into. The sense that I got from the conversation was that there was a lot of support behind opening up the contracting rules. That's what I was hearing, both on the floor and afterwards, is that people seemed very strongly supportive of that. If I

had seen pushback on this, then certainly then I would have scrapped the idea. But my sense was and is still that this is strongly supported. I am open to being corrected, but I do think that the sense I've gotten is that people want to see some discussion of this.

Now in terms of applying it retroactively, personally I agree with you, David, that it's a little problematic to go back to agreements that have already been signed by ICANN. If this was at a governmental level, I would probably take a different position. But because we are fundamentally talking about a private contract, I agree that it does strike me as well personally that it would not be fair if an agreement has been signed and a contractor is going forward with ICANN on the understanding that documents are going to be confidential, I agree that it's not really fair to them to go back and tear that up. I think that – unless I'm mistaken – I believe that the way that it's currently phrase is that existing NDAs should be respected. Again, I'm open to feedback on either side of that, but I personally agree with you on that point.

In terms of expressing it clearly, that's also I think already expressed in that. I think that we did hear the objections that you've raised remotely in Hyderabad and tried to factor that in as best as possible.

It's interesting when you talk about the IRP already applying because the IRP applies to any breach of the bylaws. So really all that would mean is that if the bylaws say that an exception to the minutes that the Board removing information from the minutes would need to be grounded in a specific exception, so we already have the IRP for that. That's an interesting thing, and that would sort of mean that the process is already there, which is good.

Again, I saw a little bit of chatting, I saw a comment from Avri basically saying that we shouldn't be creating yet another problem resolution [inaudible] and I personally agree with that. I don't know that it's appropriate to create an entirely new mechanism just for this stuff.

So those are my initial thoughts to what David said. I see David's hand is up. I'm not sure if this is a new hand or the previous one as well. I'm happy to hear from you again, or if we can open it up more, that would also be good. Yeah, go ahead. Thanks.

DAVID MCAULEY:

Thanks. I did want to make one or two comments. First with respect to the IRP, I agree with Avri. I wouldn't argue that we should have another dispute resolution venue. I'm simply saying that if someone felt that a redaction in the Board minutes did constitute a – or wanted to appeal it rather – I think they could go to the Ombudsman. An appeal would be eligible to go to IRP if the redaction amounted to a violation of the bylaws or the articles. I think that's something I think the Ombudsman could say, "This is a [colorable] claim," and do it in a manner in which ICANN didn't have to disclose what they redacted.

What I'm saying is I don't think our document should specify something that's eligible for IRP. I think the bylaws tell us what's eligible for IRP. They say that now. They say that something that's going to go to IRP must constitute a violation of the articles or bylaws. If we go beyond that, then we'll need an amendment to the bylaws, which is possible.

Then also on the nondisclosure agreements, as you said, I did attend remotely and so I may not have had the sense of the room. I thought it

was a little bit more mixed. But if we do going forward make the nondisclosure agreements more open, I think some very prominent disclosure needs to be made. And I'll make a note of that in the comments that I submit in the next week. Thank you.

MICHAEL KARANICOLAS: Okay, great. I also wanted to mention regarding submitting the comments in the next week, we have been asked to keep to a particular timeline on this. I think that we want to get this resolved sooner rather than later. I think that we've gotten – I don't want to say pressure – but we've certainly felt that there's a feeling at ICANN as well or not at ICANN but it feels like we're being pulled forward as well. So can you make that on Monday let's say that you could submit comments?

DAVID MCAULEY: I don't think so. I have a lot on the plate, as we all do. I guess I understand that as rapporteurs you may be feeling more pressure to pull this forward. This is a very thick document. There's a lot of meat in here, so I don't think so. I'll do my best, but I don't know. I do know that...

MICHAEL KARANICOLAS: Well, you've also had I think a lot of opportunities to submit comments previously and haven't really availed yourself of that. I mean, we had the [inaudible] [sessions in Hyderabad a month ago].

DAVID MCAULEY: I don't agree. No, wait a minute. Michael, the document that you put up was on Friday at 5 p.m.

MICHAEL KARANICOLAS: This idea, this conversation and what you're saying now is substantially the same thing that you input in a month ago and you had an opportunity to contribute that a month ago. And you also had several opportunities at the front end of the process to feed in ideas.

DAVID MCAULEY: I agree, and I did feed them in and I thought they were pending, and then I saw the new document which I didn't think captured them. And so I will do my best to be more quick, but I can't guarantee Monday. And I don't feel the sense of time pressure that you do.

MICHAEL KARANICOLAS: Well, I mean, again, we have a deadline. We have a schedule on this. We're meant to be on the short track and we're meant to be wrapping this up. Again, we've gotten these schedules coming out. Again, so I guess just I would ask you to submit your further comments as quickly as you can, please. Hi, Chris.

CHRIS WILSON: Yeah, hi. I just wanted to chime in. I think assuming we stay on the "quick track" (which I get confused whether it's Track 1 or Track 2, but notwithstanding that) my understanding is that – and Bernie can correct me if I'm wrong – that ideally that quick track means we would have a

public comment period [that] I guess would begin no later than January 18, which would provide the requisite 40 days or so up to the ICANN meeting in Copenhagen. I think assuming that the subgroup want to stick to that timeline, and again it's up to the subgroup, then that's the target we're looking for.

Obviously, with the holidays approaching and people will be taking vacation presumably and doing other things, then between now and January 18 really is a short window. But I think obviously if we could get comments from folks next week before people leave or check out for the holiday season, that would be great. Then we could try to dive back in, in earnest the beginning of January when people come back and we focus on this and see if we can get to yes if you will in time for the January 18 deadline.

I think the next Plenary – maybe Bernie also can add insight here – I think the next Plenary is scheduled for January 11. I don't think there's one before that. So ideally if as a subgroup we can come to agreement on the report and the recommendations by that Plenary, then the Plenary can then review it, etc., and then maybe the 18th is a doable deadline for then public comment. But that's the general window of time we're dealing with right now. If we find that members of the subgroup are finding that there's more there that they missed or whatever or they didn't see or there are other issues that have cropped up, we can adjust.

To Michael's point, I think obviously ideally we would like to get these – because we've done so much work up to this point – it would be nice to be able to produce a product for Copenhagen. But we are human beings

and we have a variety of conflicts and other issues that we have to deal with. But that's my general sense of the timeline.

I don't know, Bernie, perhaps if you wanted to throw in any more clarity there, that would be great.

BERNIE TURCOTTE:

Thank you, Chris. Yes, you are correct. The schedule currently has the next Plenary as being Wednesday, 11 January, and the one after that being Wednesday, 25 January.

Now as we saw on the Plenary yesterday, there will be a requirement for two full readings once this group has reached consensus that they have a report for the Plenary. So I think those are just the realities we're dealing with.

MICHAEL KARANICOLAS:

Okay. Why don't we I guess move forward in the conversation to see if there's more feedback into the present draft. Again, the January timeline in terms of getting readings through the Plenary and having a proper public comment process, yeah, I think that we should be hopefully trying to meet that. But again, I guess we also need to have a proper conversation on this as well. So we'll ask participants to submit comments as soon as they can. Are there any other comments for now on the existing draft?

CHRIS WILSON:

Michael, did you want to address Christopher Wilkinson's comments? I don't know. For those who may not have seen it, I did address his one comment regarding the Interactions with Governments recommendation. I sent an e-mail out yesterday I guess to the subgroup as well as the full Accountability list. I don't know if you wanted to – if you already have, maybe I missed it. I apologize. But if you wanted to speak to that now for the record, that might be helpful for folks.

MICHAEL KARANICOLAS:

Oh, sure. I'd be happy to. I don't think Chris is in the call, but let me just bring up his comments. While I'm just bringing that up, Chris Wilson came back with a response for [Interactions] with Governments. I did mention briefly the procurement policy and how this is interacting with the discussion taking place at SOs and ACs Accountability. I don't necessarily see a conflict between that conversation and this, as we're not putting in a specific set of principles for the procurement policy. We're not establishing a procurement policy or trying to establish a procurement policy here the way we're trying to [reform] the recommendations. It's more about adapting the idea of open contracting, which I think is not really mutually exclusive for the other conversation. So I don't necessarily see a conflict on that, but there's potentially [room for engagement].

In terms of what he mentioned about the cost of implementation, there is a mention of monitoring and evaluation of how the transparency system is working as well as a mention of tightening up the timeframe for responding to access to information requests. I personally don't think that the resource demands of this are going to be that high. It's

not that complex to track, for example, what percentage of DIDP requests are refused versus granted and what's the average time length for response and publishing that quarterly let's say. I wouldn't see that as necessarily being a big administrative hurdle to overcome.

But ultimately, my feeling on that is I'm not sure that we should be getting into the budgeting aspect of it because, first of all, I think it's probably beyond the expertise or the understanding of a lot of people within this subgroup have of how money is allocated and how much money is there. I'd stand to be corrected on that. But generally speaking, I think that those kinds of allocation decisions are certainly beyond the scope of what we're meant to be looking at. So I would suggest that we put the recommendations in and we try to be reasonable and try not to ask about something that's unrealistic in terms of a resource perspective but that we don't generally dive too deeply into costs of implementation.

The final thing that Chris raised was whether ICANN refers to the Board and the executive staff, whether it addresses the transparency of the ICANN community as a whole. That's an excellent question. I think that my sense in having these conversations is that we were just referring to the Board and the staff, not the Empowered Community. But again, I'm open to suggestion on that and would love to hear what people have to say to that.

"Budgeting could be handled by adding 'reasonableness,'" says David McAuley, "to be judged ultimately by the Ombudsman." Sure. This is speaking a little outside, we're getting a little outside of my understanding of ICANN. Does the Ombudsman make those kinds of

budgeting decisions? So we're talking about expanding powers of the Ombudsman essentially, which makes me a little uncomfortable because there is an Ombudsman subgroup. I don't know. Do people feel that we really need to address the budget issue at all? Okay, I'm seeing a lot of hands up, so why don't we just throw it out there. I see Alan first.

ALAN GREENBERG:

Thank you very much. A couple of issues. You said: does the Ombudsman make budget decisions? The Ombudsman doesn't make any decisions. The Ombudsman can make recommendations, however, on pretty much anything that we deem to be within his or her scope.

In terms of budgeting, I think a statement of reasonableness should be made. The example you gave of quarterly reports – well, if quarterly reports are going to break the back of this thing, then we're in big trouble. On the other hand, other disclosure issues could be very expensive to handle. So I think a reasonableness statement somewhere in our document is reasonable.

The question of transparency of the volunteer parts of the organization, the SOs and ACs and things like that, I think it's a very relevant issue but I think it's really something that falls within the accountability of the SOs and ACs and not within our domain. Thank you.

MICHAEL KARANICOLAS:

Okay, great. Thanks so much for those inputs. Noted. I recall now that there is a reference to reasonableness in terms of processing time spent

and time spent in processing applications, I think. As I recall, it says that they should devote reasonable resources, but I think that we could also add reasonableness in terms of the resources put toward monitoring and evaluation if people would feel better about that. David, do you want to go next?

DAVID MCAULEY:

Sure. I'll just add my voice. I guess it was Christopher that brought up budgeting, and I would agree with Alan that reasonableness should be inserted. It's true that we would be adding something to the Ombudsman, but on the other hand we're adding something to ICANN here in terms of the time to respond, in terms of maybe adding a team giving assistance to people who don't know what they're looking for and things of that nature. That could get out of hand, and so I think the addition of reasonableness would be a good one. Thank you.

MICHAEL KARANICOLAS:

Yeah, okay, great. Thanks very much for that. Jean-Jacques?

JEAN-JACQUES SUBRENAT:

Yes, thank you. Can you hear me?

MICHAEL KARANICOLAS:

Yes, loud and clear.

JEAN-JACQUES SUBRENAT: Good. Thanks. Two [words]. I would like to dissociate the notion of reasonableness, which I support in this project, from the notion of the Ombudsman having anything to do with judging budget allocation or resource allocation in any way. I speak as a former member of the ICANN Board. For me, it's quite clear that not only in the period where I served on the Board but even now I don't think that the current or any other Ombudsman would go into judging how resources and budget should be allocated. I think we should make that clear. Thanks.

MICHAEL KARANICOLAS: Okay. I see Bernard's hand is up. Is that a new one or is that the previous one? Okay, that's that. So in terms of finding a solution maybe to this, what if we included a reference to reasonable processing and reasonable [inaudible] monitor and evaluation but we don't include any specific reference to the Ombudsman making those kinds of decisions. Does that sound like a good solution to people? I see a thumbs up from Jean-Jacques, so maybe that's [inaudible].

CHERYL LANGDON-ORR: Can you note a green check from me? I'm away from the keyboard at the moment.

MICHAEL KARANICOLAS: Okay, wonderful. And I see a green check from Vidushi as well and from Alan. All right, great. So we'll do that then. But I see David mentioning what about reasonable costs? Was that in reference to what I just said? David, do you want to clarify?

DAVID MCAULEY: In reference to what you just said in the discussion we were just having about budgeting.

MICHAEL KARANICOLAS: Okay. Can you spell what you mean when you say “what about costs” a little more clearly?

DAVID MCAULEY: I think it would depend on the instance, but it seems to me that costs could be flexible. In other words, if the matter at hand is relatively light, then there should be some limit on what ICANN pays to do it. There is referenced in the document – I can’t pull it up right in front of me – to answering as soon as possible, for instance. Let’s say there’s a 30- or a 60-day time limit within which to reply. I believe the document says but you’re encouraged to do so as soon as possible and to give it best efforts, or whatever it might be. It seems to me that costs would come into play there if the request is a routine thing, it wasn’t something of urgency – those kinds of things.

MICHAEL KARANICOLAS: Sure. It becomes challenging for ICANN to determine first of all about urgency because if they don’t see the full scope of the request in the background – it could be a journalist working on a deadline, it could be whatever. So the phrasing of as soon as possible is basically meant to essentially express that there should be a reasonable prioritization to this and that when you say 30 days that doesn’t mean you necessarily

sit on it for four weeks and then look at it but that it should be viewed as a priority.

I personally don't think that – I don't see a huge difference between saying as soon as reasonably possible and as soon as possible, but would as soon as reasonably possible solve that issue for you?

DAVID MCAULEY:

Yes, I guess. I mean, I wasn't really meaning to talk about as soon as possible but really using that as an example of how cost might be impacted. But sure, as soon as reasonably possible I think is a good phrase.

MICHAEL KARANICOLAS:

Okay, great. So thanks very much for that. Vidushi I see in the chat says "perhaps defining reasonable becomes problematic," and I completely agree with that. It's more, again, supposed to be just a flag to say prioritization, not to say exactly where in the prioritization it should be, just that it should be viewed as a priority.

Are there further comments on the current draft? Vidushi?

VIDUSHI MARDA:

Hi, Michael. Can you hear me?

MICHAEL KARANICOLAS:

Yes.

VIDUSHI MARDA:

Okay, [inaudible] for the record. I just want to start off by saying thank you so much to everyone who has worked on this draft. I think it looks really comprehensive.

I had a couple of substantive comments, but before I give you those, I think I'd really like to express my support for Clause 7, 10, and 11 under [DIDP]. Research that is carried out at I'm not sure actually is really problematic clauses that have been used to circumvent the [DIDP] process.

However, under sub Clause 11, it says: "The exceptions for 'trade secrets and commercial and financial information not publicly disclosed by ICANN' and for 'confidential business information and/or internal policies and procedures' should be replaced with an exception for 'material whose disclosure would materially harm the ICANN's commercial, financial, or business interests.'"

I'm not sure whether the replacement would actually achieve what we're hoping to achieve because in instances where ICANN has decided to not disclose information, the replacement text would still hold. I think what we need to try and put in there is for ICANN to give us a reason as to why that disclosure would impact ICANN's commercial, financial, or business interests or how it would do so. So that's my first substantive intervention.

The second one is respect to proactive disclosure. I think we could add something to that list and that is for ICANN to disclose where it gets its money from and from whom. [At CIS] we filed a DIDP request asking

them where they got their money from, how much they got from each person, and for what purpose. ICANN responded to us and [inaudible]. This was to better understand conflict of interest and to better understand ICANN's commercial [inaudible]. So if [inaudible] I think that it's within reason to ask for the proactive disclosure to be given on an annual basis. Thank you.

MICHAEL KARANICOLAS: Okay, so thanks very much for those for those inputs. Regarding the proactive disclosure thing, we used to have a section of this document that was just called Proactive Disclosure. We switched from that to specific sections on Transparency of Board Deliberations and Transparency of Interactions with Governments, basically in order to counter some complaints that we heard about mission creep essentially and about pushing the substance of this document beyond what we were supposed to be looking into.

So from that perspective, I'm a little bit leery to start building proactive disclosure back into it partly because we've already gotten that criticism, which I think we have to be sensitive about. While I don't deny at all the [inaudible] of that information and I'm very sensitive to what you're saying about how useful it would be, what I think we can do – I'm reluctant to start going down a proactive disclosure path again. What I think we can do is try to structure the access to information system in a way so that this information can be requested and received as much as possible.

I see that you've posted a link on there. I'm just going to finish responding before I look at that. In terms of the exceptions for trade secrets and commercial and financial information, I think the idea is to try to – so there are two things that I heard from you. One is that you're worried that that provision as [inaudible] phrased wouldn't allow for a particular type of information to be released. It drifted in and out a little bit at that portion of your comment, but I think that's what I heard you saying.

We can't necessarily – I don't think we can design an access to information policy that would design it around individual cases. I think that what we need to be aiming for is a broad rule that captures where information should be disclosed and where information should be withheld. That's what I think the aim was in Number 11. I think that Number 11 should be rephrased. Absolutely right, please do suggest alternate wording.

But it is also too important to recognize that obviously ICANN has commercially sensitive information. ICANN has their own commercial interests, and they have to operate in a way that doesn't necessarily compromise that.

Cheryl says, "We need to be careful." You also said that thing about providing reasons, which is great. I think that the DIDP already says that ICANN needs to justify their withholding of information within the exceptions. They need to explain to the requester why they're doing it, if I'm not mistaken. That's my understanding of what the policy already says, but I stand corrected.

I think that we already mentioned a provision about providing requesters with more information about appeal remedies. I think that they already are required to do that since they build on our foundations. Sure. So that's my understanding of it. But obviously, if you want to make a suggestion for rewording Recommendation Number 11, then that would be great. It would be better to get a specific suggestion for rewording it than an expression of a particular type of information.

Vidushi is saying in the chat that her [inaudible] shows that this is the most often used clause. Yeah, okay, so do you want to just get back with a recommended rewording? That would be helpful.

I see a few people typing regarding that and regarding – I think that we have addressed both of the comments that were made. ICANN does not have commercial interests. Some of its stakeholders do. Sure. That's also I think a good point. Jean-Jacques is saying that we shouldn't be accrediting the notion that ICANN should be a commercial venture. But ICANN does have. I mean, they have a bank account.

Maybe commercial interests isn't the word or maybe there are issues with how that's understood in different contexts, but they have their own financial interests to look after. Obviously, they're not a for-profit. They're not meant to be driven by the profit motive. But I think there does need to be a certain degree of sensitivity around their need to not do things that compromise their financial integrity.

Again, I feel like we're falling down the rabbit hole a little bit in this discussion when we talk about commercial interests. Currently, the recommendation is "material whose disclosure would materially harm

ICANN’s commercial, financial, or business interests.” Am I correct in hearing that the “commercial” aspect of that is raising a flag for some people? If so, then we can delete that aspect of it, but the exception already says commercial information not publicly disclosed by ICANN. I see David and Alan’s hands up, so I’ll get some other voices on this.

DAVID MCAULEY:

Thank you, Michael. I really don’t have – I find this discussion interesting, and I don’t know where I stand. With respect to Jean-Jacques’ point, I don’t think we’re falling down. I know you feel a time sensitivity. It think that Jean-Jacques should make his point and have a chance for people to give it some thought and see where it goes. Maybe there’s a discussion around this. Thank you.

MICHAEL KARANICOLAS:

Yes, that’s fine, and I think that’s what we’re doing now is talking this out. Alan, do you want to go ahead?

ALAN GREENBERG:

Sure. ICANN is not-for-profit, but ICANN enters into all sorts of commercial ventures and commercial agreements. They rent space in buildings. If that’s not commercial, I don’t know what is. So there are all sorts of aspects that might not be readily disclosable at any given time, and I think some of them fall under the rubric of commercial. So I have no problem at all using that word.

MICHAEL KARANICOLAS: Okay. So I see there's a strong disagreement on this and there's also a robust dialogue taking place in the chat, which is great. Jean-Jacques feels strongly against an exception for ICANN's commercial, financial, or business interests. Okay, can we agree potentially to talk about ICANN's financial and business interests or the commercial interests of its stakeholders?

I'm just jotting that down: "the commercial interest of its stakeholders who have those interests." Okay, for the sake of making it a little more concise, can we just say the commercial interests of its stakeholders so it's not redundant, or do you feel strongly that it should be "of its stakeholders who have those interests"? "Of some of its stakeholders." Okay. So "the commercial interests of its stakeholders who have those interests."

Is there any opposition to changing it so that instead of saying "ICANN's commercial, financial, or business interests" it's "ICANN's financial or business interests or the commercial interests of its stakeholders who have those interests"? That's our suggested language. Does anybody object?

CHERYL LANGDON-ORR: I thought we were adding "some" before stakeholders. That's all.

MICHAEL KARANICOLAS: So "or the commercial interests of some of its stakeholders who have those interests"?

CHERYL LANGDON-ORR: I don't to have the "who have those interests" if I have the "some."

MICHAEL KARANICOLAS: Okay.

CHERYL LANGDON-ORR: It was either/or for me. I thought "some" was probably better because it indicates that not all stakeholders will have commercial interests, but those who do come under this.

MICHAEL KARANICOLAS: See, when you say the commercial interests of some of its stakeholders, that seems like we're privileging some interests over others. But I don't feel strongly about that. So if that's going to resolve.

CHERYL LANGDON-ORR: I'm sorry I jumped back in without putting my hand up. Can we do the final wordsmithing without it being right here and now? I think the indication is we don't want to indicate that all stakeholders have commercial interests nor do we want to indicate that there will be a variability in responsibility for disclosure between those stakeholders who do have commercial interests. There's got to be a way of saying it. I'm just not sure that wordsmithing in chat at six or eight minutes before the end of a call is going to get us the right results.

MICHAEL KARANICOLAS: Yeah. Vidushi says she wants a little bit of time because she has already asked about revisions. “Since this is about paragraph 11, I remain of view stated earlier regarding NDAs.” Okay, so why don’t we invite any alternate wording of the exception that people want to submit hopefully in the next few days or early next week, and we’ll try to resolve that if that works.

Ricardo says, “If a stakeholder does not have a commercial interest, they don’t have to open any information,” which I think that’s a good point. But again, there are a lot of different opinions on this. Okay, so why don’t we – I don’t think we’re going to arrive on agreed-upon wording now just based on the disagreements that are there. So why don’t we have people submit some ideas, and we’ll try to send around an amended wording of that one as soon as we can.

Just to make use of the five/six minutes that we have left, can we push the discussion forward and ask if there are any other areas that people want to draw attention to or comment on? Or if there are no other areas, then I guess we can just keep on that discussion. Does anybody have any comments on the section on Board Deliberations? Which I don’t know that we’ve discussed very much in this call and which is an entirely new section so should at least be discussed I think.

Okay, so having discussed most aspects of this, then I can see about three or four suggested amendments, including references to reasonableness, as soon as reasonably possible, clearer reference about retroactivity on NDAs – though I guess David wants to do a written submission on that as well. I see David there. Yes?

DAVID MCAULEY:

Thanks, Michael. Just in the interest of being clear, when I mentioned the points, I said those are the principle points I have. I do have some clarification items that I noted, not on the phone, that I'll be commenting on just to say is this right, am I reading this right, and perhaps suggesting clarification. So I don't want this winding up discussion to limit what we can say in our comments.

Just to give you an example, I can give you one example, in a number of places this makes reference to human rights. In human rights documents, I think we need to make sure that we acknowledge the fact there's a group working on human rights and nothing in this is meant to undermine the bylaw or the framework of interpretation of what the human rights group is doing. So it's just a point of clarification. Thank you.

MICHAEL KARANICOLAS:

Okay, duly noted. Do we have anything else? Anything else that people want to flag or discuss before we wrap up today?

Okay, so not seeing anything else, there's a couple of submissions that we're very much going to look forward to getting hopefully sooner rather than later. And unless there's anything else, I guess we will wrap up this call. All right, so thank very much to everyone, and I look forward to hearing back.

[END OF TRANSCRIPTION]
