
CHERYL LANGDON-ORR: Thank you very much. A little bit of administrivia for today's call. Today is the 13th of the Work Stream 2 Support Organization and Advisory Committee Accountability Subgroup Meeting on the 1st of December – I don't know why it's 13th on the notes, but anyway – 1st of December, 2016.

On today's call we have an agenda is out in the Adobe Connect room. Is there anyone who has only connected via the audio or phone bridge and is not in the Adobe Connect room, can you let us know now?

Not hearing anybody, we'll take the roll call from the Adobe Connect room. There's one number there which is only a telephone number ending in 4154, if you can let someone know who your name is then we will have your [inaudible] is available.

Okay. With that, I would like to ask is there anyone who needed to make an update to your Statements of Interest?

Not seeing anyone in the AC and not hearing anybody, we'll mark that off our administration for today's call as well.

At this stage of the meeting, is there anyone who has Any Other Business they'd like to let us know they want to bring up at the end of the meeting?

Kavouss, you have some Any Other Business. Please go ahead.

KAVOUSS ARASTEH: Thank you. Good day. Any Other Business you mentioned, the first one is kindly requesting colleagues to speak slowly and separating [inaudible] response from the other.

Second, I provide you my advance apology if by mistake I type in chat it is not intention. It is not shouting. And I don't allow myself to shout to anybody at all. I am not a professional typer or typist. Mistake can be sometimes [inaudible] but that is [that]. Please consider that.

And the third one is my request today – co-rapporteur or rapporteur – please kindly provide sufficient time for participants to express their views, i.e. please kindly if possible, shorten your intervention. Thank you.

CHERYL LANGDON-ORR: Okay, Kavouss. I don't believe I speak too fast but obviously if it's a problem for anybody, let us know in the chat and whoever is speaking will try and slow down.

As to the [inaudible], I'm quite sure when you look at chat, you'll see if you've had your caps lock on as the rest of us do, and we'll note that that was an error in the chat as most of us do.

And as to the interventions length, we will as I think we always do in this work group make sure that there's as good a balance as possible with anybody who is making an intervention.

That said, that wasn't Any Other Business but rather administration updates and requests. If there's nobody who has any particular topic that they're going to put in Any Other Business at this stage, we'll get on

with the business as it is listed in today's agenda. And with that we will move now to a quick review of the action items from our last call.

Our last call's action items listed in the hyperlink from the agenda. Is there someone who wants to say something? I heard somebody then.

GREG SHATEN: This is Greg Shatan. I'm on audio only.

CHERYL LANGDON-ORR: Thank you, Greg. We'll note that and jump in as required. Thanks for letting us know.

The action items from our last call, all of those have, in fact, come to pass with the exception of what we'll refer to as an open action item that we would like people in this group to attend to, and that is if you would like to volunteer particularly to join the second of the two small Drafting Teams that we've put together, we would very much value more people stepping up to join the group that is going to be reviewing and ensuring that our reporting gets started in the framework for our reporting continues as we go towards our work in 2017.

With that, I want to now move to a very brief update from the Plenary call that we had for the CCWG. The CCWG Plenary meeting was held for I think just about everyone yesterday now, and in that call we had an opportunity for reporting. We reported as all the other work teams did. And in that we noted a couple of things that I want to make sure if you weren't in that call you are all aware of. The most important, I suppose, is the fact that in the Plenary session as we had said we would do

several meetings ago we had on the agenda our recommendation that we move our timeline from what was known as Track 2 – in other words, the shorter of the two timelines for the project – to the Track 1 timeline – that is the longer of the two timelines for the project – and that was approved I believe unanimously. But rest assured now, ladies and gentlemen, we are now on a Track 1 timeline and the slide relating to that that CCWG used will be updated shortly if not already.

The second thing we did is we reported on our updated dashboard. We referred to our meeting in Hyderabad – thank you very much. There it is. There's Work Stream 2 timeline and we will now be in that longer Track 1. Thank you very much for that, staff – dashboard and perhaps we have the slide for the dashboard? If not –

Someone has their line open. If you're not speaking, it would be quite helpful if you could mute. Thank you very much.

I believe it looks like that the dashboard slide is being updated as well, and there we have it. Thank you very much. We have updated our slide that we used in our Hyderabad meeting to this particular set of data in front of you – primary changes, a reduction now to three tracks in terms of our particular scope. [Inaudible] the effectiveness the track, meaning that we now have three rather than four tracks that we had reported on in Hyderabad and a few changes in terms of our reflection of what we've done since Hyderabad meeting and a small increase in our progress before we proceed.

That's it from those updates. I'd like to now take a sip of water and [inaudible] and move to Steve and Farzaneh to give us a very brief

update now on anything that has happened in the two recently created Drafting Teams.

Who's going first? Steve?

STEVE DELBIANCO:

Thank you, Cheryl. I'll note that on the dashboard it reflects only three tracks not four because as we reported from Subteam 2 in our last call Track on Effectiveness has been dropped. So those three tracks reflect the latest Subteam 2.

On our last call when we went through Subteam 2's documents, I made several edits to the documents and I put the link into the chat and would welcome others that would want to participate at refining that document. You do realize, though, that we can't put a lot of new text into our draft report on the tracks for IRP and Mutual Accountability Roundtable until we give those thorough discussion. Today we're going to tackle the IRP inside of an AC or SO, and that'll be one of those. I hope that on a future call we'll do a deep dive into what if anything is viable about MAR so that we can complete our draft report and I think that'll move this along.

With respect to the Subteam 2 document, Alan Greenberg had made suggestions on our last call and I made edits to the document to reflect Alan's suggestion. He mainly suggested that using the phrase "global public interest" would potentially trigger a whole new process of defining what that is. So I used more neutral words to just indicate that the Board acts in the interest of global Internet users, not just the stakeholders of an AC or an SO.

And then Avri Doria had given two edits that I reflected. One was to put brackets around the preliminary conclusion, all of it. And the second is to indicate that “serves community of an AC and SO” might include both participants and non-participants – those who were not participating even though they were eligible – and that they may need accountability mechanisms of their own to challenge efforts of an AC and SO to perhaps failing to do appropriate outreach or excluding someone who would otherwise have been eligible, and the non-participants would need those kind of accountability rights as well.

So those are the edits, Cheryl, that we made on the last call. Again, after today we’ll do a lot of edits to reflect the discussion that David McAuley will help us get to on IRP. Thank you.

CHERYL LANGDON-ORR: Thanks very much, Steve. I note Kavouss’s hand up. Kavouss.

KAVOUSS ARASTEH: One question – whether I would raise it now or I wait. And that is, I am not quite sure about whether we discussed the real application of [IRP] to the SO/AC Accountability. If it is not the time, I wait until you come to that because I need an explanation of how we do that. Thank you.

CHERYL LANGDON-ORR: Okay, Kavouss. I think we will use your question as a segue to our next agenda item because that is a substantial topic for today’s agenda. But before we do move to David, I just want to see if Farzaneh had anything she wanted to say in terms of updates.

FARZANEH BADII:

Hi, Cheryl. Thank you. I don't have anything else to add. You've covered everything. Just that after this meeting and we will discuss the IRP we are going to [edit] the document in Subteam 2 with regards to IRP and then we are just going to take it from there. That's about it. Thank you.

CHERYL LANGDON-ORR:

Thank you, Farzaneh. Appreciate you agreeing to what I know is an incredibly hectic schedule as you locate yourself from one part of the world to the other. Thank you for finding the time to join us.

Kavouss, in terms of your question, our message now from looking at IRP will be take the time to listen to David McAuley who is the current lead on the IRP Subteam. He's going to bring us all up to speed and make sure we have a common understanding and I'm sure he will be also more than happy to ask any particular questions about IRP with a specific relevance to our mandate, in other words, in terms of its use and application, if indeed we decide to recommend such a thing for a Support Organization on Accountability Committee work.

We will then take some time to listen to both Sebastien Bachollet who, of course, is lead on the work team that is looking at the Ombuds Office and the review thereof, and also Herb, our current ICANN Ombuds who, if he's not joined us already, is going to do his best to do so because obviously any [IRP] activity has some relevance to them. And it's at that stage which we will then [inaudible] much our discussion and deliberations at the very beginning of our work in this topic.

You have your hand up again. Please, go ahead, Kavouss.

KAVOUSS ARASTEH:

Yes, I want to understand the IRP was designed to address the issue of action or inaction of ICANN Board or staff in relation with the topic which cause [harm] to somebody. Here with respect to SO/AC Accountability, I would like to be clear that for what reason he raise or the [recourse] to the IRP, [ask] for what action and what inaction, and then do we need to go to the escalation and after escalation we go to the IRP Panel or directly [inaudible]. So we need a little bit of explanation to describe the situation. I am not against. I'm not in favor. I would like to understand the applicability and how we do that. It is not designed for SO/AC Accountability. It is designed for action or inaction of the Board or of the staff with respect to the Bylaws, the mission of the [inaudible]. Thank you.

CHERYL LANGDON-ORR:

Thank you, Kavouss. I'll take that as a statement. I think that statement is probably a reflection of where many of us are at this point in our thinking within our work team's mandate.

Alan, over to you.

ALAN GREENBERG:

Thank you very much. I just wanted to respond to that. We're looking at the IRP because several people have said it may be a vehicle that could be used. Kavouss is completely correct that it is ill-designed as it is designed today because it only addresses whether ICANN has followed

its Bylaws. When we first started discussing the issue, I raised the point and I think Steve or somebody agreed that if we were to decide that the IRP was a correct vehicle to use for AC/SO Accountability, then its process would probably be amended to say in the case of such a use it is the rules of the AC or SO that are being violated as opposed to the Bylaws.

But this is brand new territory that we're looking at whether it is a good vehicle or not. So yes, if we decide it is a good vehicle, we have a lot of work to do. Thank you.

CHERYL LANGDON-ORR: Thank you, Alan. I think that's an even more extensive segue to hearing what David has to tell us about IRP. David, over to you and thank you for joining us.

DAVID MCAULEY: You're welcome, Cheryl. Thank you very much. I will do my best to heed Kavouss's request to speak reasonably – I tend to lapse sometimes into pretty quick speaking.

You described me as the current lead of the IRP Implementation Oversight Team, Cheryl – the word "current" is an important one there. Becky ably led this group until she stepped up onto the ICANN Board at the conclusion of the Hyderabad meeting. And since that time I've taken over the lead and we've had one call.

I'm happy to discuss the IRP as a potential tool for SO/AC Accountability. I will mention to folks – I'm sure most folks know this – but the IRP

process is in the Bylaws at Article 4.3 which is fairly extensive. It's a good Article to take a look at and answers most of the questions that people may have. In my view, Kavouss just a few minutes ago stated that IRP is designed for ICANN Board or staff inaction or action that causes harm to individuals. I would say it's a little bit more specific than that. It's not just "cause harm." It has to be harm that amounts to a violation of the Articles of Incorporation or the Bylaws. There are some specific clarifications, for instance, that claims with respect to PTI service, claims with respect to ICANN enforcing contracts with PTI, etc. etc. There are some explanation that those do fit within that description, but basically the IRP is for claims that ICANN has violated the Articles of the Bylaws.

It is my opinion that the IRP would not be a good vehicle for SO's and AC's Accountability, that is where the SOs or ACs are being called to account as defendants, if you will, in an IRP. In fact, I think it's untenable. I think it's simply not available. And if someone made a claim against an SO or an AC today, I believe that a Panel would dismiss that case for lack of jurisdiction.

The reason I say that – the most specific reason – is in Bylaw Section 4.3B there are definitions, and a "covered action" is one of the definitions and a covered action is what an IRP can address.

I'll just read it. It's very brief. "Covered actions are defined as any actions or failures to act by or within ICANN committed by the Board, individual Directors, Officers, or staff members that give rise to a dispute." SOs and ACs are not in there.

Beyond that explicit reference to the fact that the IRP is designed to deal with ICANN, references throughout 4.3 indirectly and by implication – and pretty strong implication – show that this is an action that’s simply dealing with ICANN and not with the SOs or the ACs. And anything from 4.3X which indicates that ICANN has consented to be bound by the IRPs to some of the definitional phrases that talk about this is meant to hold ICANN to account, etc etc.

That’s the first reason I would say that this is simply not a good vehicle. The second is, SOs and ACs to my understanding are not legal entities, they’re not persons, they’re not legal entities. I guess someone could make an argument that they’re constructive unincorporated associations or something like that, but I don’t think it would wash.

That actually brings up the question of cost. And the reason I say that is IRPs don’t render monetary judgements. They simply say an action or an inaction was or was not within the Bylaws and the Articles. But costs and money become an important part of an IRP, and I’m basing this now not on the Bylaws but on my experience at having read through a number – not all of them but a number of IRP decisions – when they award cost and I see what the costs are, they’re staggering. Hundreds of thousands of dollars to defend or to prosecute an IRP – U.S. dollars I’m talking about.

So these costs can escalate, and I don’t believe that SOs or ACs have that within their budgets. I don’t know. I shouldn’t speak for them. But beyond that, I don’t believe they’re legal entities. I don’t think anyone could say, “We will now bring an IRP against, for example, the GNSO.”

Who is the GNSO? How would you get a claim to be made against that organization unless they have some legal standing?

And so I see for those two reasons that IRP would not be available or good for SO/AC Accountability. As we discussed yesterday in the Plenary meeting, Greg Shatan made a very good point – Bylaws are iterative, they're changeable. I think it would take a change to the Bylaws to be able to bring an SO or an AC within the ambit of IRP, and I think it would take a change in the SO or AC make-up to do the same.

That's roughly all I have to say, but I'm happy to answer any questions.

CHERYL LANGDON-ORR:

Thank you very much, Dave. I think some of what you said will be greatly appreciated by some of our members who have previously raised some concerns that were specific or echoed in what you outlined.

We have a speaking list and the first person is Christopher Wilkinson. Christopher.

CHRISTOPHER WILKINSON:

Hello, do you hear me? I was going to make a longer statement but I think David has done it... there's interference. I think David's done it for us. I have noticed that the [inaudible] IRP cases [inaudible] that the costs were [inaudible] but that's not the issue now. The issue that David just said [inaudible] is that costs of anything like that for a typical SO and especially AC would be completely off the map. So I support David's points. Thank you.

CHERYL LANGDON-ORR: Thank you, Christopher. Yes, I thought you would be one of the first who'd be smiling as I listened to David and his introduction to this topic.

Next person is Kavouss. Kavouss, over to you.

KAVOUSS ARASTEH: Yes, I think the reason and argument given by David was quite convincing. If we finish to that, that that issue perhaps it would be good in the report we have an explanation given why IRP cannot be applied as a vehicle for SO/AC. But once we listen to everybody and come to the consensus that yes, it is not a good vehicle and cannot be applied and so on so forth. But let's engage in whether people have different views and after that maybe you may kindly make some summary of what has been discussed.

CHERYL LANGDON-ORR: Thank you, Kavouss. Indeed we will. Christopher, is that an old hand or do you have a follow-up question?

GREG SHATAN: Can I get in the queue please?

CHERYL LANGDON-ORR: You may, Greg. The queue now, I'm assuming that Christopher's is an old hand. Is Steve, David – is yours a right of reply to what was just asked or statements made?

DAVID MCAULEY: I would like to and I'd like to add something that I neglected to add at the beginning, so thank you.

CHERYL LANGDON-ORR: Over to you first then please, David. Go ahead.

DAVID MCAULEY: Thank you, Cheryl. It's prompted by a question that Jorge put in the chat. I should have mentioned that it is true that if an SO or an AC makes a final decision to ICANN or makes a recommendation, etc. to ICANN and ICANN acts on it, an individual can bring a claim against ICANN that ICANN's action based on the SO or AC input violates the Articles or the Bylaws. That would be a claim against ICANN, however.

The other thing I meant to say is, it is true that SOs and ACs can be parties at an IRP but they can be parties as claimants. In other words, the definition of claimant in the IRP specifically includes SOs and ACs among others – the Empowered Community and others. Thank you.

CHERYL LANGDON-ORR: Thank you, David. Yes, that's very important. Obviously, that's something we worked long and hard in Work Stream 1 to make sure that happened.

So the speaker queue now is Steve, then Greg, then Sebastien. Steve.

STEVE DELBIANCO:

Thanks, Cheryl. David, it was an excellent walk-through and you took us literally with respect to what the CCWG final report asked, which was, “Assess whether the IRP would also be applicable to SO and AC activities.” And I think your first answer is, would not be applicable. What I would add in the middle is, well perhaps it could be amended to be applicable because you were reflecting what the Bylaws say today in the absence of a legal entity for some of the ACs and SOs.

Even if it could be amended, the real question at the end is probably that it should not be applied because of the considerations of cost and complexity that you brought up if it [wouldn’t] really put us in a recommended position if we amended the Bylaws to say that they could apply to the decisions or inactions of an AC or an SO because that gets us to the point of deciding whether the IRP should be used in a normative way against an AC and SO.

And I think that with the availability of an alternative means [of] challenging an AC and SO, an alternative means is far more lightweight and that would be the notion of using an Ombudsman. There’s also individual challenge mechanisms inside of many of the ACs and SOs where participants and I hope nonparticipants could challenge an action or inaction of an AC or an SO within those internal processes.

I know in the Business Constituency where I live they allow members to challenge decisions of the Executive Committee or challenge procedures that are executed inside of the BC. And we also go to the Ombudsman from time to time.

So I think, David, you were very direct in addressing the question of would it be applicable, and I fear that just saying it would not be, the way the Articles and the Bylaws are written it sort of bakes the question of could it be changed, that there might be an advocate out there who wants the IRP to be used against ACs and SOs and they could simply claim we could change those Bylaws.

So I think we ought to include in the discussion a conclusion about whether they should be applicable, and I do sense from your preliminary discussion the answer is probably no. Thank you, David.

CHERYL LANGDON-ORR: And thank you, Steve. Over to you, Greg, followed by Sebastien, and then Alan, and then back to Kavouss.

GREG SHATAN: Thank you. First I want to say that I violently agree with both David and what Steve just said, that in short, the IRP is not fit for purpose for dispute resolution relating to SOs and ACs and we need to make it clear that it's not just a technical question but a substantive problem and is a whole can of worms we would get into in using the IRP as a dispute resolution mechanism, or indeed having a dispute resolution mechanism that exists outside an SO and an AC. So we would have to go through a lot of substantive questions about what constitutes standing, what constitutes a covered action, what constitutes a claim. For instance, if the Leadership of IPC appoints Joe Smith as the participation coordinator, is that something that can be challenged by a member? Is that something that can be challenged by a non-member? And what

would the basis of that be? Our Bylaws? ICANN's Bylaws? Some natural law?

This is something that would have to be built from the ground up. I agree it needs to be much more lightweight. I can't speak for other SOs, ACs, [SPGs]. We could not afford something like that without – it's just beyond imagining [we would] really have to appear [pro se]. We have a bunch of lawyers, that's great but they have A) day jobs, B) policy jobs, and C) management jobs within IPC so that ain't going to happen any time soon either.

I think this is a dead end and, while certainly SO/AC Accountability is important, a method for challenging SO/AC decisions is really something that needs to be designed from the ground up and not just grab the nearest nuclear weapon that seems to be at hand. Thanks.

CHERYL LANGDON-ORR:

Thank you very much, Greg. You often make me smile. It's awkward to make myself not giggle when you sometimes use some of your references – nuclear weapon indeed. I think it's a bit like using a laser to cut butter. I thought I might get one of my metaphors into the record as well.

David, is that hand a right to reply now?

DAVID MCAULEY:

Cheryl, I just was going to reply briefly to something that Steve and Greg said. I'm happy to wait.

CHERYL LANGDON-ORR: No, [jump right in].

DAVID MCAULEY: Okay. I thought the phrase – I need to make two disclaimers. One is I'm taking off my hat as lead of the IOT and making a personal statement because I believe that's what Steve was asking me, and then secondly I'd have to do it with your lead because I'm not a member of the SO/AC team. Those things being said, I would say Greg's phrase "fit for purpose" is a good phrase here. IRP is not built for SO/AC Accountability as I see it. And not only would it take a Bylaws change but in doing a Bylaws change it would take a radical material restructuring of the SO/AC concept into a legal entity with some kind of budget to be able to handle such things. I would imagine personally it's probably unwise, or I would recommend rather that you assess the effectiveness of other Accountability measures before you even contemplate something like that. But those are personal opinions. Thank you very much.

CHERYL LANGDON-ORR: Thanks very much, David. And they're personal opinions that are very valuable to our work. Your inputs and interventions are not only invited but they're more than welcomed. And I would note in the chat that your offer to do a quick write-up and share it with us would be greatly appreciated, and I'm sure you're watching the chat. There's excellent conversation going on on this topic with a number of people weighing in with some very good language that we might end up incorporating in some of our outcomes, I would suspect.

Our queue is now Sebastien, followed by Alan and then back to Kavouss. Sebastien, over to you.

SEBASTIEN BACHOLLET: Thank you, Cheryl. I will be very short as Steve has said more eloquently that I would have done it what I wanted to say. It's important that we explain why even if we change the Bylaw why we will not push to use IRP in that process. I think it was very [compelling], all the [expected mission] and I support what they say. Thank you very much.

CHERYL LANGDON-ORR: Thank you. Next is Alan, and then kavouss. Alan.

ALAN GREENBERG: Thank you very much. Several points. First of all, in case it's not clear, I strongly oppose the use of the IRP for this purpose, so I'm not arguing for it. But in our final discussions, assuming we end up not supporting the concept, I think we need to be very careful and meticulous to separate the arguments that have to do with it's not in today's Bylaws from it's not advisable to do. Throughout this discussion today we've been intermixing them, and I think we really need to separate them and make sure that those who have suggested [inaudible] –

Am I back again?

SEBASTIEN BACHOLLET: [Inaudible] yes you are back.

ALAN GREENBERG:

Okay. Thank you. So I think we need to make sure that we separate the arguments. They're compelling on both sides but don't intermix them.

I will note that in at least one case I know of, and there may well be more, there are AC/SO actions that are appealable to the Board. Those by definition once the Board has taken action or inaction on that appeal obviously is subject to the IRP already.

And in terms of things like funding, there have been cases and there are cases where AC/SOs are either funded for something by ICANN or indemnified for certain costs for ICANN. So again, let's make sure that the fact that this would cost money does not mean it's impossible. There are already counterexamples that we could be indemnified. The fact that we don't want to spend that much money on it is a different issue altogether. Thank you.

And I am done in case that wasn't clear.

SEBASTIEN BACHOLLET:

Maybe it was Cheryl who were out of and she need to come back before she can speak? I don't know. Cheryl, if you are with us we can't hear you.

ALAN GREENBERG:

[Inaudible] Brenda's [inaudible] something.

CHERYL LANGDON-ORR: I have returned. My line was open. I could see you all [I only] listen to you all through the telephone line but the audio for some reason from me had zapped out. Let me assume that we did hear the rest of Alan's intervention and I'll look at the transcript to see what it was, and the next person in the queue is Kavouss.

KAVOUSS ARASTEH: Yes, do you hear me, please?

CHERYL LANGDON-ORR: We do indeed. Go ahead.

KAVOUSS ARASTEH: Okay. I think once again, the argument given by David is better if he so kindly agreed put in the paper [but at least] the current Bylaw and then saying all the reasons. However, if we could add [unless] we modify the Bylaw. However, the issue is that why we modify that? Even if we modify Bylaw and allow IRP applies, it's practical difficulty of implementation [but] including the cost so we should not make that changes. So I think we should give all reasons and think that no current Bylaw does not allow and amending Bylaw to allow that would be difficult implement, and [the] costly and maybe other difficult legal difficulties may arise. We don't know yet. So I don't want to go and request that yes we may modify the Bylaw to allow that. We should not do [that the saying] we would have serious difficulty. Thank you.

CHERYL LANGDON-ORR: Thank you very much, Kavouss. Is there anyone else who would like to make an intervention and a comment, a statement, or an observation on the discussion that we've had so far on this matter, which does seem to be uniformly heading in a particular direction.

Mary's agreeing in chat.

And I think the interactions in chat on this topic have been extraordinarily helpful and I believe uniformly supportive of what has been said which is that this is an inappropriate tool for Accountability on this matter.

Great. We have Avri and then Steve. Avri, over to you.

AVRI DORIA: Thank you. I seem to have caused a little bit of noise on the line, so I'll be quick. I definitely agree that directly we do not seem to have a reason or a Bylaws mechanism for that, however, I just wanted to point out that it seems to me that it's really only one step removed in the fact that most anything can be appealed to the Board, the Board then has to either make a decision or not make a decision, but by appealing a SO/AC type item to the Board it may indeed become IRP material because also it could be addressing items that were in Bylaws related to the SOs and ACs.

So an outside person for example, could indeed have an avenue to that. It is an indirect route, and I'm not saying that we should in some way enforce it or reinforce it but I did want to point out that it seems to me

that there is actually an avenue. It just requires that one hop through the Board first. Thanks.

CHERYL LANGDON-ORR: Thanks, Avri. Steve, you have your hand up? Steve?

STEVE DELBIANCO: Farzie's next in the queue, Cheryl. She doesn't have [inaudible] in the Adobe chat.

CHERYL LANGDON-ORR: She doesn't. Sorry, I didn't see – I was looking in the Adobe room and I didn't see that. Okay. Over to you, Farzie.

FARZANEH BADI: Thanks, Cheryl. Just to – because we are going to make the report just to wrap up, the question here is whether the Independent Review Process should be applied on ACC's activities. We can answer in three parts that it would not be [applicable] as IRP is currently described in the Bylaws. And then while it could be made applicable – relatively made applicable – amending the Bylaws is not advisable considering the design of the Independent Review Process at the moment it is not suitable for applying it to the SO and AC activities because the process is very complex and extensive and there are other alternatives that we can use to challenge SO and AC's activities.

That's the conclusion that's the wrap-up of this discussion from this.
[Inaudible].

CHERYL LANGDON-ORR: Thank you very much, Farzie. Yes, I was going to call upon you at the end of discussion to make that sort of summation, so that's excellent. Then if you want [to] perhaps copy some of that text to the record in chat, I'm sure staff will appreciate the [inaudible] specifically in the notes section.

David, over to you.

DAVID MCAULEY: Cheryl, thank you.

CHERYL LANGDON-ORR: Go ahead.

UNIDENTIFIED MALE: We seem to have lost him.

CHERYL LANGDON-ORR: I was no longer confident that [inaudible] wasn't me. Yes, are you back?
David?

DAVID MCAULEY: I'm sorry, I mangled the mute button. That's my fault.

CHERYL LANGDON-ORR: We've all done it.

DAVID MCAULEY: Two points. I think Farzie's summary was a good one, and secondly in response to Avri I think it's a fair statement to say that the substance of SO/AC activity can be reviewed at IRP to the extent the Board adopts it and takes some action based on it. Again, the "defendant" would be ICANN, not the SO/AC. But I would mention that if that's the vehicle for doing something like that, panels sitting in judgement in such cases tend to take a view of such claims in two ways.

One is they'll take a certain view of ICANN does it of its own volition, but if ICANN takes an action based on the recommendation of a group, there may be some discretion given to ICANN so you're not guaranteed to get the same outcome I would think as if ICANN took the action of its own. So that's just a personal statement based on my experience in courts. You can take it for what it's worth, but I think it's a fair statement that Avri's making. Thank you.

UNIDENTIFIED MALE: Cheryl, are you still with us?

STEVE DELBIANCO: I'm not hearing Cheryl. One point I wanted to remind us is that over the two years of the CCWG there was a point very early on [in] only the first few months when CCWG was making everything about holding the

corporation, ICANN, accountable to the community and there were some Board members, perhaps even ICANN staff or management who pushed back a little bit on that, and understandably so, to say, "It isn't just about whether the corporation is accountable. What about the ACs and SOs? Shouldn't they be accountable, too?" And there was no denying that is a legitimate question and that's what gave rise to some of the things that ended up in our final report and in the Bylaws, and in particular that's where the suggestion came from to try to come up with something like an IRP against ACs and SOs.

That's just a bit of historical context. Cheryl, do we have you back on the line?

Not hearing Cheryl yet, Kavouss, you're in the queue.

KAVOUSS ARASTEH:

No, sorry. I withdraw. Thank you.

STEVE DELBIANCO:

Okay. So we've put into the notes of the main chat a brief summary of what we heard from Farzaneh and we'll put that into the draft report that was the Google doc the link of which I circulated earlier on the call. At this point Subteam 2 then will document at least the preliminary conclusions reached on this call for purposes of a review from this entire SO/AC of our draft report before we put it forth to CCWG Plenary.

I don't think we need to do that review now because we want to get Track 2 done [on] Mutual Accountability Roundtable.

I do hear an echo. I wonder if that could be corrected.

I suggest that because for us to conclude that the IRP is too expensive and complex and that there are easier means I think that'll rely upon on us coming up with conclusions in Track 1 beforehand.

If you recall, Track 1 is where we look at each of the AC and SO's existing Accountability mechanisms, and if we judge that those are largely adequate or can be made to be more adequate, that makes it much easier to justify the conclusion that the IRP is far more expensive and complex than existing means and alternative means of challenging.

So that's roughly where all of the three tracks will piece together.

Cheryl, the echo is coming from your line. Is there a way to –

Thank you, Cheryl.

I realize we have 10 minutes left and I did want to turn it back to you with an effort to frame up where we go next. I guess the hope is that we would move to a similar call that's substantially dedicated to the remaining track of Mutual Accountability Roundtable. But in the next couple of weeks we expect the ACs and SOs, and at least in the case of the GNSO, the underlying stakeholder groups and constituencies, we expect them to be getting their answers back to us. And those answers I can tell you [were] going to be rather complex.

The Business Constituency alone has an answer that's about 14 pages long because it includes the current and pending version of the Business Constituency Charter, which is our own little version of our Bylaws. So once we put together a team – this is Subteam 1 – to analyze all of

those questions, to do a review of the Accountability mechanisms, that's going to really make Track 1 a heavyweight portion of our draft report. And I imagine that Track 2 on Mutual Accountability Roundtable and Track 3 on IRP will be much more brief, tending to build off of what we've found to be the case in Track 1.

Back to you, Cheryl.

CHERYL LANGDON-ORR:

Thank you. Brenda's luckily very quick on the draw with that unmute. I can only apologize for the bizarre behavior of my telephone system in today's call. I mute locally and so that echo was happening on the line even though my phone was actually muted, so mysterious indeed. I apologize for all the noise issues.

We've managed to, I think have a very worthwhile discussion, and I don't believe much has changed in the ensuing discussion since we've had the summation from Farzaneh. But let's look very briefly now at next steps which to some extent Steve has also covered while I was battling with telecommunications mysteries.

The summation of today's interactions I think is probably best to also go to the list in writing, so obviously we'll be updating the text record, the Google docs, and such, as Steve has outlined. We obviously have Mathieu as part of that team as well, but I'd like to remind you all that Review Document Drafting Team is open and they are very keen to have more than just the co-rapporteurs and Mathieu step up to be part of that, so please put your name forward and let us know if you want to be included in that. We will obviously then alert the list and I would suggest

we will take an expert to our list with the particular outcomes from our deliberations and discussions today.

The action items and recordings and transcripts from our call comes out from our staff very promptly indeed. When we send the updated material on our conversations and discussions today on this topic to the list, we'll also make sure that we send a link so that people who may not have been on this call can review the material and the notes that we've discussed here in today's session, and we'll give ourselves shall we say somewhere around 72 hours or so for anyone to come back on the list to make any comments or suggestions or perhaps even counter-arguments to what seems to be a strong consensus of view in today's meeting.

So with that and five minutes left on the call, that's our proposed next steps. Is there anyone who wishes to make any comments before we wrap on this part of the agenda?

I'm just looking at the chat. Kavouss is saying to the rapporteurs, [others] for positive contributions. Yes, thank you. Thank you, Kavouss, it's been a very useful and very efficient conversation today. David, will I get you to lead the way on all of our [gnarly] subjects if they all end up as well managed as today's conversation has been. You're a good luck charm. [Inaudible] I do want to extend our deep thanks for you to join us today. [Inaudible].

DAVID MCAULEY:

Thank you very much.

CHERYL LANGDON-ORR: [Inaudible]. There's a virtual round of applause coming your way and a literal one in the little attendees list from me at least. It was I think very, very, handy to have your baseline walkthrough which reassured many of us with some of the thoughts and fears or concerns that we've had on this topic.

With that, let's look to our next meeting and staff, if you could be so kind as to tell us which date it is – 19:00 UTC on the 8th of December. So our next call will be 19:00 UTC on the 8th of December. I'm unaware other than the next steps, in other words, the update of the material from today's conversation on the Adobe Connect [SO]. I'll try that again on the Google documents reporting and the making sure that the list is integrated in that and allowing for any follow-up. I think that's the only action item coming out of today's call.

I would just note that I've had a follow-up piece of information from Thomas Rickert who is, I'm sure you all remember, is the co-Chair of CCWG who got the short straw and ended up with having our topic as one he is joining. Thanks, Thomas, for joining us today. He has mentioned that a previous action item [on him] to reach out to other ACs and SOs to get them engaged in one of our Drafting Teams. You have started to work with [every aspect] on that so thanks for that report back and we'll just pick that up in another call and see how we go.

With that, I'm close to wrapping but I'm going [inaudible] business after Sebastien. Sebastien, over to you.

SEBASTIEN BACHOLLET: Yes, sorry Cheryl. We have echo it's just to please accept my apologize. I will not be able to join you to the next call because there is a conference organized with [AFNIC] and ISOC France about all the work we are doing in Work Stream 1 with Work Stream 2 and the IANA and so on and so forth at the same times and it will be difficult for me to be at both places even virtually. I'm sorry about that. I hope that it will not be too difficult to eventually to put the question about the Ombudsman at the next meeting, but it's up to you and I will follow reading the transcript afterwards. Thank you very much and sorry for that.

CHERYL LANGDON-ORR: Nothing to be sorry about. You're apologies are noted, Sebastien. Thank you very much for that. We will reach out to you as we are preparing our next agenda, Sebastien, and follow up on a call that is not obviously the one you're unable to attend on the 8th of December.

With that, ladies and gentlemen, we come towards the top of the hour and it is the final call for any other Any Other Business.

Not seeing any, I would like to thank staff and thank you all for attending today's call.

Mary, sorry. You've got a hand up at the [death knell] of the call. Go ahead, Mary.

Mary, I'm not hearing you. You might be muted.

Okay. We are at the top of the hour. Mary? Is that you, Mary? Go ahead.

Mary? If you're trying to talk, I'm afraid we're not hearing you. Might I assume that from the chat it was going to be a reference to gathering or meeting up at the after IGF, and some of you noted that you would be at IGF, obviously informal meet-up [so good] especially if you do some drafting.

With that, I'd like to thank you all, ladies and gentlemen, for your time today. I encourage you as I always do to work between our meetings on our Google docs and to donate some of your time to our Drafting Team activities, and of course, to use our list.

With that, at a minute past the top of the hour I'd like to thank you all and bring this call to a close.

This meeting is now terminated.

[END OF TRANSCRIPTION]