
GREG SHATAN:

Hello, welcome to the 11th call of the Jurisdiction Subgroup. First, I want to ask if there are any changes to Statements of Interest?

Hearing none, we can move on to the first item on the agenda which is to look at the questions that were proposed initially in a draft by Milt Mueller and Christopher Wilkinson based on the discussion that we had on the last call where we decided to go look outside of the group for actual experiences that others have had in dealing with ICANN and the effect of what we've been loosely calling ICANN's jurisdiction on those dealings with ICANN.

So I realize there's been a fair amount of discussion of those questions and last night or at least last night my time, I came up with a reformulation of the questions which I sent to the group in an e-mail. I realized we have not prepared that as a slide, but perhaps those more prepared than I have prepared such a thing and it is now in front of you on the screen.

Just quickly to note that the changes I made here from the... sent you the prior draft were relatively minor. In the first, "If the answer is yes paragraph." I added the word, "situations," along with "cases or incidents," to make it clear that we're talking about any kind of dealing with ICANN that falls into this description and not merely looking at court cases or IRPs or things that are a case in the formal sense of that word or the narrow sense of the word.

Also, added a note that affects can be positive or negative. That same note is the same changes made to second, "If the answer is yes,"

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paragraph. Also, added a new number three in response to a number of requests on the list that we... If there are other reported or verifiable experiences that have been had and that people who see the questionnaire want to supply, there's a way for them to do that. That question asks, "Do you have copies of and/or links to any reports of experiences of other parties that would be responsive to the questions above.

Again, the idea here is to look for actual experiences if they're not being told essentially in the first person that it be some sort of a verifiable report of an actual experience when you're not looking for, in this case, hypotheticals. I believe that's our job to come up with a hypothetical. We're not looking for kind of friend of a friend story or as they're sometimes called on the internet, folk stories, which nobody can actually find the original friend in those cases. They tend to be often urban legends so what we'd like here are facts about actual experiences.

Then last, there were comments that the term ICANN's jurisdiction was undefined and couldn't necessarily be gleaned from the questions. So a simple definition of what we mean by that is in the footnote that for these questions "ICANN's jurisdiction refers to A. ICANN being subject to U.S. and California laws, a result of its incorporation location in California. B, ICANN being subject to the laws of any other country as a result of its locations or contacts with that country or C, any choice of law or venue provisions in agreements with ICANN." So that's what's being referred to when we're asking what has affected the person providing the answer or any company providing the answer.

So I realize that this is... Somebody is providing some background noise. In any case, I see a couple of hands. Vinay, can I ask you to monitor the queue because I'm on the tablet which we have found does not put people in order?

VINAY KESARI: Sure. Absolutely. We have Farzaneh first.

GREG SHATAN: Go ahead, please.

FARZANEH BADI: Hi. So I just wanted to know what you say [inaudible] verifiable source, is it possible that we just provide the stories and the sources and everything and then we can just vet them, because I'm not very sure what you actually mean by verifiable stories. I know you've been explaining this but it's very difficult for me to kind of distinguish. I think it would be good if we just provide the story, provide the sources that we've gotten them from. And then I think the group can vet them and say this is verifiable, this is not verifiable.

Also, if we ask these questions from the community and the community that I'm talking about is the community that is affected by sanctions, and this community they don't want, some of them want to use the services and they don't want their names to be associated with some sort, so you must not actually get formal names that actual things have happened to them.

So just saying these things to consider and what I'm going to do is I'm going to compile the things that I have heard from the community and provide the source as much as I can. But I think the thing that would be [inaudible] the group thing.

VINAY KESARI: I think we have Kavouss next.

KAVOUSS ARASTEH: I'm not sure whether we need to associate [inaudible] with the first question. [Inaudible] discussion. Because in the question you mentioned if the answer is yes and the means to any [element] document, it means that copies [inaudible]. Why we need to [inaudible] delete that and to copy that leads to any relevant document [inaudible] [questioned one]. The second question that [inaudible] had been affected by that in the [inaudible] affect. [inaudible] Neither of the two influence affect the [inaudible] impact but please clarify [inaudible] with that impact or not [inaudible]. So please clarify the [inaudible] and delete any irrelevant document. Thank you.

GREG SHATAN: I think if I could respond with my thoughts on the first two questions and then we can get responses from anybody else that would like to respond. I think on Farzaneh's comments, if we do have things that are submitted, we haven't considered the exact form of submission and whether it could be put in anonymously or not. And hoping that people won't [inaudible] the system by putting in things that didn't actually

happen to anyone. But we can consider that. And the second part of this question which is how we [inaudible] the mechanics in sending this out. So — I’m getting a lot of—

Okay. Let’s hope that we have some better sound here. I see some support here for— [Inaudible].

Just in response to Kavouss’s point. There’s obviously an English language issue here “affect” and “effect” have a high degree of overlap in their meaning. We could rephrase the question to use the word “effect” rather than “affect”. Or we can rephrase the last little sentence to note that “affect” refers to positive or negative “effects”. But I think, perhaps, the latter would work. But either way, the point is that we’re looking for... and as we’ve said a number of time since the beginning of this, we’re looking for influences which may be positive or they may be negative. So that’s the point. So why don’t we continue with the queue.

VINAY KESARI: We have Parminder next.

PARMINDER JEET SINGH: [Inaudible]

VINAY KESARI: Parminder, I’m sorry, your voice was completely distorted. Could I request you to dial in over the phone line or I can [inaudible].

GREG SHATAN: Why don't we move onto the next in the meantime?

JEAN-JACQUES SUBRENAT: This is Jean-Jacques, can you hear me?

GREG SHATAN: Yes.

JEAN-JACQUES SUBRENAT: Okay. Thanks. Thank you, Greg. I'd like to make a remark or two about jurisdiction. The first remark is that what I have to say is not directly on the effects on the use of the DNS, but on indirect effects. I would like to mention two examples, the first was when serving on the Board of ICANN, I was regularly shocked to receive from the staff of ICANN forms to fill in for the tax returns of ICANN and which put me in a special category for the fiscal status by calling me a vendor. And, of course, I resented this because being a volunteer working on the ICANN Board, I didn't consider myself a vendor at all. So what I'm pointing out is that at a very low level of importance the formulation in some of the U.S. jurisdiction forms and papers, documents, is not suitable for people from outside the U.S.

My second remark is about the possibility for ICANN to hire people at its headquarters and in general to call for services from outside the U.S. where they're both legal and fiscal effects as you just mentioned, the word "effect" meaning either positive or negative. And that is why when the Board adopted the Improving Institutional Confidence document in 2009, you will notice that that document called for the setting up of

alternative jurisdictions. So not in replacement of California law, but additional jurisdiction, I had suggested Geneva precisely because that was one way of cutting back the inconveniences of having only U.S. jurisdiction. Thanks.

GREG SHATAN: Thank you Jean-Jacques. Do you have any suggested edits to the questions? Obviously, I don't expect you necessarily to edit it on the fly but if you have any thought now or if you could add thoughts on this point and see if you can add this again, sticking to the experiences type of issue with that regard.

Thank you, Jean-Jacques, I see your comments in the chat. Vinay, can you manage the queue.

PARMINDER JEET SINGH: I'm on the phone now, may I speak now? Parminder here.

GREG SHATAN: Absolutely.

PARMINDER JEET SINGH: Hello.

GREG SHATAN: Audio is very good, Parminder.

PARMINDER JEET SINGH: I wanted the Chair to clarify what they think about the other question which had been proposed by some members. And as I wait clarification to say a few things, since I have the speaking right now. I understand that these were the questions which were put up by a drafting group and they had some ideas on [inaudible] they put these questions. But after they were put through the group, people had original ideas, maybe even the motivations they're somewhat different. But then we have to include what everybody thinks. Somebody having had the idea first does not make it necessarily the one which we'll let only go forward. Therefore, if experience was the focus of some people and other people can get other facts about which there is knowledge out there and not also as relevant then we have to use both sets. Unless there is some very good reasons which are given for not using or asking for the second kind of fact which I have not heard about. I only hear that this was what we were trying to do, which I understand, at least partially. But that does not necessarily mean that that's all what we will do.

Secondly, experience is very individualized thing which is not individualized. Okay. I'm hearing myself so—

GREG SHATAN: Parminder, maybe it would be better if rather than asking a series of questions, you allow a question to be answered.

PARMINDER JEET SINGH: Greg, will you please allow me to speak because I'm speaking for the first time?

GREG SHATAN: But you asked a question, so my suggestion was that if you ask a question that could be answered first rather than—

PARMINDER JEET SINGH: I said I would come to that, but let me speak because I want to finish the clarification of the point.

GREG SHATAN: Okay. Go ahead.

PARMINDER JEET SINGH: May I? Thanks so much. So experience is one way, you can look at quality or a jurisdiction. But the way DNS system affects the public is not the way some people look at it. It is affecting all people, even those people who do not use the internet. And those facts are brought back to all of these spaces in a different manner. We are not looking only at the DNS Industry. And if it was industry issue I, for example, would not be here spending my time on this. It is a public interest issue. The DNS system affects the public.

As Farzaneh was saying, for example, [assentation] country. Every person may be impacted. You simply do not have the system to reach those people. You questionnaire will go to a few people who already engaged with ICANN and could think in some kind of input. But it does not reach every experience. So I think there is difference of way people look at this question and it would be good if they include everybody

preferences or way of looking at things and expand things rather than keep them narrow. Thank you, if it took too long.

GREG SHATAN: Thank you, Parminder. I guess the first question or to try to answer your first question, were you on the prior call that we had of the group? The one last week?

PARMINDER JEET SINGH: No. The records will show I was not. I'm not able to be on calls at 2:00 in the night in India because I get up at 5:00 in the morning. So I not able to be on those calls.

GREG SHATAN: Did you review the transcript or the recording?

PARMINDER JEET SINGH: Yes, Greg, I did review the transcript. Thank you.

GREG SHATAN: Okay. Just want to make sure we're on the same page. In the prior call we had a general discussion that we were lacking in actual experiences being brought to the table and how people have interacted with ICANN and how those interactions have been affected by what we've been calling ICANN's jurisdiction very loosely. So that was essentially the mandate that was given to the Drafting Team was to look for specific experiences and that's what they came back with. So I think that's why

the questions are what they are. It's not just a decision that was made by the two [drafters].

So I guess the question is whether we want to... first, I would like to actually get these questions done. But the second question is whether we want to turn this particular questionnaire into a broader document or a poll of some sort looking for other actual experiences as some have suggested beyond these questions are phrased.

Secondly, whether you want to expand beyond facts and just look for any kind of input. Whether the facts or opinions or hypotheticals or basically to ask the community or whoever receives the questionnaire to kind of chime in on the work of the working group in a sense.

So that's the question. What we were looking for originally were actual experiences given that we may have a number of people in the group who have had actual experiences, but we haven't heard much from them and we'd like to know more. And I for one don't have any personal answers to these questions. So we would look to those who had these experiences to add to them. The question is whether we want to go beyond what was decided last week as a request for experiences and to have some sort of a broader type of questionnaire.

That is a question we should try to answer. There were a number of comments both pro and con on the list, but I think a lot of people... There were just mostly not responses so I think there were more cons than pros. But that's not to say that we've come to any kind of decision on that. So that I think is where we're at. So Vinay, if you could go back to the queue.

VINAY KESARI: I think Pedro's hand up.

PEDRO DA SILVA: Yes. Hello, can you hear me? Hello, can you hear me? Okay. Good. Thank you very much. And thank you for the co-rapporteurs to be a part of putting together these questions. As I indicated in an e-mail this morning, I think these questions do not take into account the question that has been submitted by Parminder and that received the report for at least more two or three other participants of this group. I think it's important that we ask for past experiences, past facts. And I think it would be bringing also valuable input to this group if we ask for receive the risks and threats and perhaps as well for expectation of benefits if you want to have a less biased question. Well, if they are well [fundamented], if, let's say, responded to those questions, actually, can make reference to actual laws or any kind of conditions that they give to represent a reason for the risks that they perceive of the benefits they perceive, I think also will be giving valuable input for our group.

So I think I would add an additional question here along the lines that Parminder has suggested, perhaps with a more, let's say, balanced view also including reference to expectation of benefits. Thank you.

VINAY KESARI: We have David McAuley next.

DAVID MCAULEY:

Thank you. Thank you, Vinay. I would just like to add my voice among those who believe, as Milton did online, that we should make this a little bit narrower and ask for firsthand experiences only. I like Greg's formulation of actual and verifiable.

And with respect to Pedro's comment and Parminder's, I tend to agree with Parminder that this series of questions is not going to make its way out to the larger global community. I just practically can't imagine that happening, whatever efforts are made.

And in my thinking, that's actually a good thing because I think we need to remember that what we're involved in here is Work Stream 2 which has been given instructions from Work Stream 1 in Annex 12. And what we're engaged in right now is focusing on the settlement of dispute jurisdiction. And I think we need to keep that in mind.

And therefore, I say respectfully to both Parminder and Pedro with respect to the question of perceived risks, I personally would not ask that question, but if it was going to be asked, I think it would have to be perceived risk to dispute resolution jurisdiction. Thank you very much, Greg. And Vinay, thank you.

GREG SHATAN:

Thank you. I guess just a brief comment before we go back to the queue which is that kind of the second part of the discussion is how we're going to put this out, both the mechanics and who might receive it. So we'll kind of take the comment on where this might go and reserve that for the second part of the discussion.

Vinay, why don't we go back to the queue?

VINAY KESARI: So we have Kavouss next.

KAVOUSS ARASTEH: Hello. Can I talk? Greg, can I talk?

VINAY KESARI: Yes, [inaudible].

KAVOUSS ARASTEH: I have no difficulty with the question [inaudible]. But still, I believe it is narrow. Couldn't we make it more general? I have no qualms with the first part of business. Do we need to talk about privacy at this stage? I think your business is more general and then we could, if we want to talk about privacy and [inaudible] including the privacy to use or [inaudible] included, the privacy or the ability to use it [inaudible].

[Inaudible] which would be general, but still, let's take a set and do we not have any support of [inaudible] verifiable and some of those in actual because all of them are subjective. I don't know who can verify that. We have this discussion of IoT and we believe all of those are verifiable, some of it is difficult so I don't want to [inaudible] that one. But I agree with the [inaudible] put it in more general [inaudible] and replace [inaudible] the description on [inaudible]'s impact. Impact will be positive or will be negative. Thank you.

GREG SHATAN:

Thank you, Kavouss. I think, just to respond briefly on the verifiability concept, I can see that that both has positives and negatives. I think that what we might want to consider is that if someone provides a first-person response that happened to them, we can consider taking that at face value without verification. But if somebody's providing an answer to Question 3, if they have reports of experiences of other parties, there we would want to look at what they were providing to us and see if we could verify that so that we avoid the "friend of a friend" problem in that regard.

So I think the next hand is Avri if I'm not mistaken.

AVRI DORIA:

Yes, thank you. Okay, the echo is off. So I want to speak in favor of the broader questionnaire, the one that tries to look at various kinds of facts. Yes, there are facts about the past and those have been important to collect. There are also facts about the existing legal structure that we live in that are pertinent to our discussion.

And I think that getting just half the picture will be very problematic in that when you have half a picture, you sometimes start to believe that it is the whole picture and I very much worry that we get ourselves bound on just predicting based on history and not based on, you know, the thing that I understand lawyers are always doing, which is giving us a view of the threats, tracks, and problems that lie ahead based upon existing law and regulations.

So I think having the broader questionnaire, it doesn't matter if it's divided into two parts – one is questionnaire about the past and one is questionnaire about why you're a threat and such – it is an important thing to do at this point, not as something that we do as an after-thought later.

I think saying that this is not going to get wide distribution is sort of defeatist at the very beginning. If we want it to have wider distribution, we can get it.

We also know that there are many people within our community, a lot of them academic, some of them activists, who have written articles over time discussing some of these legal issues that may be waiting for us right around the corner. So I believe we can get a factual accounting of some of the potential problems and threats and I believe that it really is critical that we solicit that commentary as well. Thanks.

GREG SHATAN:

Thank you, Avri. I guess, I think we need to decide whether we want to and how we would want to broaden the mandate of the questionnaire beyond what we decided on the prior call.

One thing I picked up on, you said this is as lawyers do, so I guess two questions or thoughts back to you is whether we don't have enough people in this group to come up with hypotheticals or to identify legal, kind of actual laws and their potential effects.

And secondly, if what we're asking for are identification of laws, whether we might be better served putting that out to a legal expert rather than the general community on that question.

AVRI DORIA:

If I can answer, first of all, I did say "as lawyers often do" but I didn't mean as only lawyers ever do. I was just using an example. Academics do it too. I think, yes, we do have lawyers in the group, but we don't have many of those academics who I've seen writing articles on these issues in the group, some of the people whose lives go somewhat beyond ICANN, though they do pay attention to ICANN. And I don't think it's just lawyers that see these issues. That was just one example.

Finally, with respect to going to the paid legal advice, while that may be a point at some point, I think we really need to take the broader look on the issue and that goes beyond the one legal firm that we are paying and we're also trying not to spend that kind of money at the moment, so I'm not sure I see that as a really good solution because to ask them to do an extended study of those issues when we could get that very much from people who have been writing articles on it for years, is possibly a waste of money. Maybe not a waste, but it's an expenditure that I'm not sure we're going to be ready to make.

The other thing I'd like to point out is we keep saying things were decided at the last meeting and I thought that because of the existence of recordings, because not everyone could make every meeting in these rotations, that decisions really always took two meetings to really come down to, that making a meeting with just one group, making a decision

with just one group of people wasn't really our normal practice. It really required making a preliminary decision, discussing it on the list and then coming back to say, "Yeah, we have consensus," or "No, we don't have consensus." I think if you look at this decision this time on the narrow questionnaire, it would be impossible to say you had consensus. You may have strong support among the silent majority, but you certainly don't have consensus. Thank you.

GREG SHATAN:

Thank you, Avri. I guess a couple of responses – I think those are good points – one is, we can continue to discuss the nature of the questionnaire and whether to move beyond to a broader questionnaire and I guess for that, as well, we'd need to move to a second call on that point.

But one thought I have is whether we would, perhaps, split this into two. In other words, to go to two questionnaires so that the first one doesn't slope down getting the second one out or we can continue to discuss the broader questionnaire and try to get that, try to come up with a final answer on what this one questionnaire will look like.

Also, you touched on something with I mentioned briefly, which is whether we should have, essentially, a reading list or documents being submitted. As you say, there are other people writing things and we don't. Some groups have done kind of a reading list or review of the literature of some sort and so, that's, perhaps, another way to bring in responses on top of asking for the general identification of laws and their effects from everybody.

So, I think Kavouss is next.

KAVOUSS ARASTEH: I think [inaudible] Question 1 – hello? – is that we are all [inaudible] someone else. Can I talk?

GREG SHATAN: Go ahead.

KAVOUSS ARASTEH: [Inaudible] Hello?

GREG SHATAN: Yes. Go ahead, please.

VINAY KESARI: Kavouss, you're up.

KAVOUSS ARASTEH: [Inaudible] question one. Let us take it for the time being with the view that it must be a little bit etiquette, releasing the part and this, any relevant documents because it is in the [inaudible], replacing effect by impact or [influence]. And then, try to see whether the [inaudible] is more general than too specific and go to the Question 1 in the next ten to 12 minutes, at least to see whether we can have some [inaudible] on that. Otherwise, it will stop with the first question. So thank you. Take

that into account for the time being and go to the Question 2 to see whether there are some comments on that as well. Thank you.

GREG SHATAN:

Thank you, Kavouss. I've been assuming that Parminder's hand is an old hand, so just confirming that.

I see David McAuley says in the chat, "I think we should stick to the remit found in Annex 12." I think we have to stick to the remit found in Annex 12. In essence, that's the boundary of our work. So I think that is not open for debate, although, what exactly Annex 12 says is, in some cases, a little ambiguous.

If we could get any other thoughts, pro or con, to adding a question that is not based on actual experiences, but just on knowledge of laws and their potential risks. And again, I think we'd have to define that within the remit found in Annex 12. So it would be helpful to have any other inputs because right now, I don't think we have enough to go on either way here with regard to whether we have this questionnaire or these questions looking for actual experiences or make this broader.

Kavouss?

KAVOUSS ARASTEH:

If you agree [we] go to Question 2 and I have the same comment. Question is the thing or limited again to [inaudible]. The thing is the author of this question is a [DNS person], all of this talk of DNS. It should be more broader. If you broaden the question, not [inaudible] DNS, I have no difficulty with Question 2. So we could have some discussion

and now, [inaudible]. Let us not [inaudible] to wrap his question, that [inaudible] and I support with this question [inaudible] should be added for consideration in the future meeting. Thank you.

GREG SHATAN:

Thank you, Kavouss. I think the focus on DNS is because the remit of ICANN is the management of DNS and names policy. But if you have some suggested other edits, that would be helpful.

So in terms of pros and cons, I see we have kind of one pro and one con. Maybe we can take the temperature of the room here with some checks and crosses.

So for those who would want to add an additional question to this asking for identification of laws that are affecting ICANN's, or I would have to think about how to phrase this because maybe Aubrey, you could suggest a question because I think what you're proposing as a question is different than what Parminder proposed. So we can also debate separately what Parminder's question is and whether we want to add to that.

So why don't we get some checks in the column for those who would want to limit it to the questions in front of us, appropriately edited but looking for actual experiences that people have or entities have had, as opposed, and so, please provide a check if you want to limit it to that.

And then if you want to add a third question, please add a cross.

It looks like most people have no opinion, which is unfortunate. Avri, you said I confused it. So what do you think the third? Yes, the check is

for the narrow, the questions in front of us asking for actual fact experiences. And then the broader one is something asking for some sort of a broader question, which we would need to draft in the group. I think Parminder suggested one formulation, which I commented on in the list. And I think Avri's formulation was a bit different, so if you could put up crosses if you want to move, add or have another question that is looking for other facts, as Avri has put it.

Judging from what we have in the column, we have basically a split in those who have weighed in. I think what we would need is a formulation of the third question, which is likely [inaudible] variations on what different [inaudible] have discussed as that third question.

And also, if you could take down your checks and crosses, please. We can develop the list on the broader question, but I think we'll need, and then discuss the pros and cons of asking that broader question as well as the formulation of the broader question on the list.

I guess the subsidiary question is whether we want to wait to develop that second question or try to move, or that third or fourth question, or move forward with this questionnaire at this point. Given that we're at four minutes before the hour, it's probably not time to make a decision on that.

But I see Kavouss's hand is up.

KAVOUSS ARASTEH:

Look, I think we made some progress, Greg. Those people like Avri or any other who are interested and [inaudible] very positively and spoke

for the broader may join the group and amend the question in order to meet the requirement of colleagues and put this amendment for the second review. So I think that is the only way because you have sufficient feedback now. Thank you.

GREG SHATAN:

Thank you, Kavouss. I think we do have feedback on the questions in front of us. What we don't have is a question to look at with regard to the second or we kind of made these other suggested questions. So given that we're two minutes before, I think we should look to develop that other question on the list and then both discuss that question and the views on whether to put that in to this questionnaire.

So I think you could just start afresh. I will start a fresh question or if anybody wants to go ahead and start afresh. Let me actually go back to the list and review – I think it's probably the best thing to do – and find the questions that have been put up and start a new thread. And we can get comments on that and see if we can come up with a question, at least, a formulation that we can debate whether it should be added to this questionnaire. Thanks.

Any final remarks by anybody?

And, you know, Parminder I see your note. We'll look at your question. That'll be in the thread. I think that we Avri was talking about is a somewhat different question, so Avri, maybe I could ask you when that thread comes up, look at Parminder's question and indicate whether it kind of matches what you're thinking or if you have a different formulation, add that to that and I will get that thread up.

UNIDENTIFIED MALE: Greg, I don't know if you can hear us but I think we lost you. Vinay, are you on the call?

All right, everyone, we seem to be having technical issues. We are at the end of our time. I believe Greg has said he will restart the thread on the questions on the list and that it will take it from there.

Time is up. I'd like to thank everyone for participating and we'll talk with you on the next call. Let's remember there is a plenary call on Wednesday, this week. Thank you and have a good day.

Greg, are you there? I don't believe he is and we are starting to lose people. We are past the top of the hour. As a default, I will consider this [inaudible]. Have a good day.

[END OF TRANSCRIPTION]