
UNIDENTIFIED FEMALE: Recordings have started.

MATHIEU WEILL: Thank you very much. Anyone else on audio only at this point?

Okay, so are there any updates to Statements of Interests in the group?

Okay. Just a quick word of introduction. First of all on behalf of everyone in the group, members and participants wish a speedy and efficient recovery to Kavouss who has just mentioned that he's had an unfortunate accident and will probably have trouble [using] the chat during this call.

Kavouss, I don't know if it's a good sign or whether it's a sign of your dedication of being on this call despite your condition, but we really wish you with all our hearts a speedy recovery. I think we wouldn't be here at this point without your contribution, so we would definitely not like to hear that it would prevent you from attending our next meetings for instance. Get well soon.

Now turning to the agenda for the meeting today, we have a couple of administration points that should be pretty fast and quick because we have some interesting substantial first and second readings on our plates today. And so we'll try to get on with this as quickly as possible because there's a lot of discussions we need to have. We're making good progress and I'm confident that by the end of this call we'll be even one step closer to going out for public comment on several of our items.

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

Maybe to start with the administration items, on the next slide we have the public consultation underway for the IRP Rules of Procedures. A reminder that the deadline has been extended to January the 25th. Some public debate has started and we have three commenters so far. We encourage everyone to liaise with their respective groups to encourage participation in this public consultation.

Second item is an update on the travel funding. That would probably be best handled by Bernie or someone from staff if you can.

We lost Bernie? No, Bernie's back. While we get Bernie or someone from staff back on to give us a quick update on the travel funding, a reminder that our [inaudible] [Copenhagen] – okay, I'll talk to you in a moment, Bernie, thanks – a reminder that our face-to-face is on the Friday, March the 10th. If you haven't managed to get your visa at this point, please do so as soon as possible. This is a usual reminder, but it's always unfortunate that people cannot attend because of visa issues. That may happen, but if it's because we've been too late that's very unfortunate.

Bernie, onto you for the update on travel funding and administration.

BERNIE TURCOTTE:

Thank you. As you will remember for ICANN 58 Copenhagen we had two phases. The first phase completed before the break. The second phase concluded Sunday midnight UTC last week. We had one more application from Ed Morris. The co-Chairs reviewed it and approved it. We forwarded that to ICANN Travel and that is all underway.

A slight addition to the agenda – the PCST has published the financial results for Work Stream 2 for November which includes the advanced estimates for Hyderabad travel, and everything seems to be good. It should be in your e-mail box.

Thank you very much. That’s my report for the moment.

MATHIEU WEILL:

Thank you very much, Bernie. I see a hand raised by Kavouss.

KAVOUSS ARASTEH:

Good evening or good day everybody. I discussed [inaudible] kindly help me because I don’t want to be too [inaudible] the first for me for CCWG and after that I [move] another one. Although I take all the responsibility to pay for the rest of the meeting, but I would like that ICANN make every effort that I stay in the same hotel that I would be for CCWG. In particular, I may have problems with the [handling of that now] to be operated tomorrow so I don’t have to have such a movement. Maybe ICANN help me kindly to have one single hotel for the entire period. [One], I pay the rest of the meeting myself. Thank you.

MATHIEU WEILL:

Thank you, Kavouss. And as usual, ICANN staff will be able to [assist you]. [Inaudible] is committed to every request and I suggest you liaise with them on that.

Bernie, anything else on this update?

BERNIE TURCOTTE: No sir.

MATHIEU WEILL: Excellent. So we're moving to the Legal Committee update and I see León Sanchez's call dropped.

LEÓN SANCHEZ: I'm back.

MATHIEU WEILL: You're back, so over to you, León, for the Legal Committee update.

LEÓN SANCHEZ: Thank you very much, Mathieu. The Legal Committee has no pending requests. All the questions that have been submitted for assessment and assignment to the Legal Committee have been duly replied or answered by the incumbent people that need to provide answers to all the questions.

I would like to recommend that the different subgroups take advantage of the legal advice already gotten from the other subgroups. For example, I see that there's a discussion going on in the Jurisdiction Subgroup that could very much use the definition on applicable law that was provided to the Human Rights Group. I think that that would be an excellent use of the legal advice that has been provided to other subgroups.

So I would definitely encourage the different subgroups to take a look at the advice that we have received already in other subgroups to see which of those answers might already fill in some of the concerns or some of the definitions that you might be looking for in your own subgroups.

That would be, of course, my recommendation. I see that Kavouss's hand is up. So Kavouss, could you please take the floor.

KAVOUSS ARASTEH:

First of all, [inaudible] León. You [inaudible] the issue of the applicable law and I would like to bring to the attention of [inaudible] for all the [inaudible] for example. I have no problem with applicable law in the Human Rights. But the [term] we have applicable law also in the subgroup dealing with jurisdiction I propose to you all [inaudible] a small footnote to address the issue and I kindly ask you to raise it when the [report of this] come up. It is a simple reminder. Thank you.

LEÓN SANCHEZ:

Thank you very much, Kavouss. You're somewhat very muffled to me, so I'm not sure if I got the idea well. Are you suggesting that the Human Rights Group definition is dependent on the Jurisdiction Subgroup's definition?

KAVOUSS ARASTEH:

Yes, I was going to raise it [inaudible]. I propose a footnote adding an [inaudible] above the applicable law and the text of the footnote that [has been used] [inaudible] would be [inaudible] based on the results of

activities of subgroup on the Jurisdiction, the term applicable law may require to be reviewed and, if necessary, revised. [Inaudible] like that. I don't want to change anything. I discussed what we have agreed in the [first reading]. I don't want to come back but just a simple thing we might require we need to review and if necessary, revise that because these two are connected. We cannot have two groups who are dealing with the same topic that are in contradiction with each other. It may require or may not at all. It is just a [principle] and nothing else. Thank you.

LEÓN SANCHEZ:

Thank you very much, Kavouss. That is precisely why I suggest that the different subgroups look at what legal advice we have received already. And I think that this definition that has been provided to the Human Rights Group in regard to applicable law could very well suit the needs of the Jurisdiction Group. Thank you very much, Kavouss.

I will now turn back to my co-Chair Thomas for the next agenda item. Thomas?

THOMAS RICKERT:

Thanks very much, León. The next agenda item would be the first reading on the Guidelines report. But as you will have noticed, we don't yet have Lori on the call. Staff is trying to call out to Lori, which is why I suggest we move to the HR discussion first and then go back once Lori has joined, and if Lori is not with us then I can take over the job of briefly introducing the report.

LORI SCHULMAN: Hi, I'm here. I'm sorry. My apologies.

THOMAS RICKERT: No worries, Lori. Welcome.

LORI SCHULMAN: Thank you. I had a meeting that ran extraordinarily late. I actually missed the RPM call, too. If you don't mind reshuffling just because I literally just got on the phone. I would appreciate that courtesy if that's okay. Just put me the next thing rather than right now.

THOMAS RICKERT: Okay. Let's just do that. I would suggest that we do HR now and then we go back to the Guidelines report. Thanks very much, Lori, and welcome to the call. I guess the next topic is for León to Chair. So back over to you, León, please.

LEÓN SANCHEZ: Thank you very much, Thomas. The report on the Human Rights is in for a second reading so I would like to hand over the floor to Niels who is the rapporteur for the Human Rights Working Group. So Niels, could you please walk us through this second draft of your work and, of course, show us the way to [discovery]. Niels, you have the floor.

NIELS TEN OEVER: Thank you very much, co-Chairs, and happy new year to all. Greetings from St. Petersburg. I would like to do a second reading now of the Framework of Interpretation which we shared with you on December 4, and the link I have just shared with you to the Plenary list.

I understood from the co-Chairs that it might not be necessary to completely read out the whole text because that might take up a bit much of our sparse time here, so I will paste the link to the pdf again here in the comments. I see it's on screen as well. I'd be very happy to hear comments on the document and maybe we'll go through it part by part. Maybe we could start with the first part – namely the Framework of Interpretation comment within the scope of mission.

Does anyone have a comment on that part? If not – and I don't see any hands – then I would like to move to the next part which is the comment on the “within the scope of other core values.”

LEÓN SANCHEZ: Niels, may I interrupt you? I see Kavouss's hand is up.

NIELS TEN OEVER: Kavouss, please come in.

KAVOUSS ARASTEH: I am a one hand person now. My second hand doesn't work. Whenever you have a reference to applicable law, I want to re-explain what I sent to the co-Chairs [three] days ago and to you and [inaudible] again and to you and what Tatiana did not get from my first intervention. But please

allow me when you reach that point that I make my statement that I made it before. I thank you very much.

NIELS TEN OEVER:

Excellent. I will do so, which is further down. So let me again invite people who have comments on the “within the scope of other core values” part.

I see no hands. Then the part on respecting – no hands or comments.

The part on internationally recognized Human Rights.

And then we get to the part of “required by applicable law.” So Kavouss, please come in.

KAVOUSS ARASTEH:

[Inaudible] we have the focus applicable law in the Human Rights Subgroup and we have agreed to that and I don’t want to come back to that from that aspect. However, in the subgroup dealing with Jurisdiction, we also have reference to applicable law and venues.

There are two areas we have applicable law. One is Human Rights, the other is Jurisdiction. What I suggest is the following. You introduce an asterisk on the applicable law in your record and add the following footnote the text of which was sent to you before, but I could read it from my mind is the following: “Based on the conclusions and/or activities of the subgroup on Jurisdiction, the definition of applicable law may require to be reviewed and if necessary, to be revised.”

This is just a placeholder. I don't want to comment on your report. I fully agree with that. You have spent considerable amount of time and I have already congratulated you. I don't want to disqualify that congratulations. But please kindly consider that CCWG has two groups. One is your group, the other is [Greg's] group please to have reference to applicable law. And we have to link them, and for the time being we don't know the result of the [Greg's] group. That is why I put this placeholder.

I do not propose any change and I did not propose anything on the [Greg's] because we have not yet reached there. But it is just put in placeholder. I hope that is clear for everybody and I hope this time Tatiana has already got what I have proposed. Thank you.

NIELS TEN OEVER:

Thank you very much, Kavouss. I would like to refer to the CCWG co-Chairs on this on how potential conflicts between subgroups could be handled. I think that's a bit outside of my mandate so I look towards Thomas and León for advice on this.

LEÓN SANCHEZ:

Thank you very much, Niels. If I may suggest, as I previously stated, we should look at the definition of applicable law that has been provided to the Human Rights group, and if that definition suits the needs which should suit the needs of the Jurisdiction Subgroup, of course, the same definition can be used for both groups.

What I would try to avoid is to link the work of the two subgroups and subordinate any progress to a definition that has already been provided by our legal advisors. So what I would suggest is that we, of course, keep an eye on the evolution of the discussions in the Jurisdiction Group but we leave the report in Human Rights as is as we have been provided a legal advice on what the definition of applicable law is.

So instead of subordinating the Human Rights' definition to that of the Jurisdiction Group, I would suggest we do it the other way around. Let's pull the definition to the Jurisdiction Group and try to work with that definition in the Jurisdiction Group.

NIELS TEN OEVER: That sounds very reasonable to me as well. I see Milton is next in the queue. Milton, please come in.

MILTON MUELLER: Hello. Can you hear me okay?

NIELS TEN OEVER: We can hear you very well.

MILTON MUELLER: Great. I'm just reading the internationally recognized Human Rights and applicable law portions, and my understanding of this is that essentially ICANN has no obligation under this framework to respect any particular internationally recognized Human Right unless it is required by

applicable law, which means essentially domestic national law in any given state. Is that correct or am I misinterpreting it?

NIELS TEN OEVER: I would like to ask some people of the Drafting Team from the Human Rights Subteam to respond to that. Greg? Tatiana?

TATIANA TROPINA: Can you hear me well?

NIELS TEN OEVER: We can hear you very well. Welcome Tatiana.

TATIANA TROPINA: Thank you very much. As it has already been pointed from the chat, Human Rights are not [among] obligations for commitment [out there] among core values which doesn't really create obligations for ICANN. It has to be balanced. So to understand the meaning of applicable law – let's call it obligations of ICANN – we have to look at the definition of applicable law together with our reference and explanation for core values and how it is reflected by the Bylaws. For me it's not binary. It's not like if there is no obligation in the applicable law, ICANN has no Human Rights obligations. It's core values, so what actually this means at least for me – and I believe we discussed this in the group – is that in the policy making process – and this is our main aim for this Framework of Interpretation – ICANN has to take into account Human Rights as one

of the core values and do a balancing test with other values and then also look at applicable law. This is my understanding. Thanks.

NIELS TEN OEVER: Thank you very much, Tatiana. Milton, does that answer your question?

Milton, might it be that you are on mute? I do not hear Milton.

MILTON MUELLER: Can you hear me?

NIELS TEN OEVER: We hear you now, Milton. That's a relief. Please come in.

MILTON MUELLER: Okay. People are very concerned about whether this creates obligations that go beyond the limits of ICANN's mission, but what if respecting a Human Right is within ICANN's mission. Is ICANN bound by that obligation to respect the right and can it be challenged, for example, in an IRP if it does not respect a Human Right that is within its mission?

Just as an example, we have within our mission a very clear statement that "ICANN shall not engage in content regulation." If ICANN does something that challenges that, that borders on or does content regulation, can this Human Rights core value be used as part of the arguments for stopping it from doing that or is it just purely a mission interpretation?

NIELS TEN OEVER: I would like to invite someone from the Drafting Team again to respond to that, or someone else from the subgroup.

GREG SHATAN: I can jump in and try. I think first, the mission and core values are two different things. Mission – ICANN must follow each of the elements of the mission. With core value, [it needs] to be balanced against each other and each need to be followed to the greatest extent possible, but the balancing act may mean that some are followed more closely than others at a given time and then in a different time the balance will be different on a case by case basis.

How that relates to any area of the mission and accepting purely for the point of the argument that content regulation and Human Rights are opposed to each other in some fashion, if ICANN were to engage in something that violated Human Rights – which in this case does mean something that violates applicable law that applies to ICANN – then frankly whether or not that’s a core value ICANN can’t violate applicable law.

If it doesn’t violate applicable law, then frankly, it’s not within the scope of the Human Rights Bylaw, although ICANN can always take other Human Rights standards and guidelines into account as it wishes. Thanks.

NIELS TEN OEVER:

Thank you very much, Greg, for that elaborate response. I think Tatiana and Greg made it really clear. I think there is a very clear limitational expansion of ICANN's Bylaws. There is a very clear guiding principle of the core values. I hope that this is explained now, Milton.

I'd like to go next into the queue because we're quickly burning through our time. I see the next one in the queue is Kavouss. Kavouss, please come in.

KAVOUSS ARASTEH:

Yes. I would agree to your comments. I have two different points. One point is the suggestion of León, and the suggestion of David to the question that I raised. I am happy with both of them, and I don't want to waste the time of the meeting and so on so forth. So if the proposal of David is accepted, the solution proposed by León is also taken. I have no problem with the reference to applicable law. But once again, two subgroups work should be clear and consistent.

On the second point in reply to Milton, I think Greg has very eloquently explained the situation. There is a difference between the mission and the core values. One is almost mandatory. The other is dependent on situation. There is a balance to be made between the two and it should be raised in the Work Stream 1 and we spent a lot of time so I think that this is [accepted] in the reply given by Greg, meaning I don't have any difficulty and any problem. I hope Milton would accept this solution or this explanation. Thank you.

NIELS TEN OEVER: Thank you very much, Kavouss. That's very clear. I think we also accept the guidance by León, and I see León is later in the queue. I think he will be pleased with that.

I see Greg is next in the queue. Greg, please come in. That might be an old hand, so León, please come in.

LEÓN SANCHEZ: Thank you very much, Niels. Just to continue on my suggestion which I heard has been accepted. I would recommend that we continue the second reading and that we go to public comment and gather feedback on this issue that has been acknowledged that is still an open item. Could we please follow up and continue with the discussion?

NIELS TEN OEVER: Yes. Thank you very much, León. Let's now continue to the last two parts. Let's continue to comments on "the core value does not create and shall not be interpreted to create any obligation on ICANN outside its mission or beyond obligations found in applicable law."

I see no comments on that except for a hand for León, but I think that's an old hand.

LEÓN SANCHEZ: It is an old hand.

NIELS TEN OEVER: So I'll go to the last part. "This core value does not obligate ICANN to enforce its Human Rights obligations or the Human Rights obligations of other parties against other parties."

I see Brett's hand is up. Brett, please come in.

BRETT SCHAEFER: This is a question related to the previous point about applicable law. I'm sorry if this has been resolved earlier. I haven't been attending all of the calls lately.

My question is, how do you resolve a situation where in applicable law may be in conflict on the subject matter at hand? ICANN is present in multiple countries and it is also dealing with individuals and companies who deal with it that are from multiple countries with multiple laws. How is that going to be resolved going forward?

I'm not trying to say that this needs to be resolved in this document, but I am curious to know if that has been discussed in the group and if so, what was the conclusion there? Thank you.

NIELS TEN OEVER: Thank you very much, Brett. This was indeed discussed. I think it was even referred to in the part "as required by applicable law." But I'll ask people from our subgroup to respond to that because, of course, I'm not one [inaudible].

LEÓN SANCHEZ: Niels, may I please jump in?

NIELS TEN OEVER: Yes, please.

LEÓN SANCHEZ: Thank you, Niels. I think that this is something that has been discussed in the group but I would definitely encourage Brett to take this question offline since we are running really, really, late on the call and I think that this has been, as I said, widely discussed in the subgroups. Would you mind, Brett, if we took this offline and continue with the discussion on the second reading?

BRETT SCHAEFER: I'm happy to, León. If somebody has that information readily available, I would appreciate it being forwarded to me and I'll leave the question there. Thanks.

LEÓN SANCHEZ: Thank you very much, Brett. Let's continue to move on in the second reading for the document, Niels, you're back.

NIELS TEN OEVER: That concludes the second reading for me.

LEÓN SANCHEZ:

Okay. So we have been reading and I would now like to call for any objections to have this document published for public comment.

Okay, seeing none objections, I would kindly ask staff to prepare this document for being published for public comment, and of course, notify the group when that has been done.

Our next agenda item is also related to the Human Rights Group. There have been some questions sent to the general mailing list in regards to the scope issue. I think that there are five options that have been posed to the group to discuss. In a nutshell, the discussion is that the Annexes of our report that [complete the] Annex 6 and 12 approach the drafting of a Framework of Interpretation in two different ways. The subgroup is asking for guidance on whether we should consider that the Framework of Interpretation and, of course, the intent of both Annexes 6 and 12 has been met by the work that they have done so far or whether they should be looking a little bit deeper into each of the bullets that are stated in Annex 6.

So they posed some questions to the list and I think that this is something that we as co-Chairs would like to consider and come back to the Plenary, of course, with a suggestion on how to precede in regard to the scope of the Human Rights Subgroup work.

I see Kavouss's hand is up. I'm not sure if that's a new hand or an old hand, Kavouss. So if that is a new hand please do take the floor.

KAVOUSS ARASTEH: New hand. Yes, I totally agree with you that the group could be engaged in the preliminary discussion. If they resolve the problem, so far so good. If there's a different view and they need advice on the CCWG Plenary, [inaudible] bring it back to the [late] or the subsequent meetings at a later stage. Thank you.

LEÓN SANCHEZ: Thank you very much, Kavouss.

Are there any objections for us as co-Chairs to consider these questions that have been posed to the list and come back to the group with a suggestion?

Okay, Niels. Would you be okay with us proceeding in the way you suggested?

NIELS TEN OEVER: Yes. I'm greatly looking forward to any advice from the co-Chairs but also keeping in mind that we only have a couple of working weeks before Copenhagen. It would be great to get that input from the co-Chairs sooner than later so we can really ensure that we have all our work out at least the first part before Copenhagen.

LEÓN SANCHEZ: Excellent, Niels. We will come back to you as soon as possible. We will discuss this amongst the co-Chairs and come back to you in as short as possible.

I would like to now turn to my co-Chair Mathieu for the next agenda item which is the Jurisdiction Subgroup. So Mathieu.

MATHIEU WEILL:

May I suggest we go to Lori first and catch up with our agenda for Guidelines for Good Faith? So I'm handing over to Thomas. I'm not trying to escape anything here.

THOMAS RICKERT:

Thanks very much, Mathieu and León, and let's now move to Lori to give us a brief overview of the report which by itself is only six pages long but not too long.

Lori, I would suggest that you just show us through the structure of the report very briefly and then I will take back over and manage the queue should there be any questions or comments from the group. Ideally, we would conclude this first reading in the affirmative so that we can schedule the second reading for a subsequent call. Just for the sake of those who are just on the audio line and not in the Adobe room, there has been some comment in the chat section where Alan and I think it was Robin voiced their understanding that this was just [be for] the information of the Plenary and not a first reading, but in fact, the first reading has been announced with the agenda that has been circulated by Bernie prior to this call. So my suggestion would be that if there are any remaining concerns – which hopefully there won't be – that we resolve those between the first and the second reading in case the document is good to go for the rest of the Plenary. So, Lori, without

further ado, I'd like to hand it over to you to show us through this report from the Guidelines Subteam.

LORI SCHULMAN:

Thank you so much. This is short and sweet. We tried to keep this as straightforward as possible, because the actual underlying issue could in fact be quite complicated. But we felt for the ease of understanding throughout the community and for creating guidelines that makes sense, that we would conduct our analysis and recommendations as we have. I would like to clarify some of the thinking up front based on questions and comments that I've received after our briefing in Hyderabad.

First of all, I would like to reiterate what this indemnity is really about. This is not about indemnifying or protecting Board members from actions that may result from their behavior. It's quite the opposite: it is about protecting members of the community who may bring Board removal actions forward. However, in order for this protection to trigger, to be valid, it has to be done in what is called good faith.

What does good faith mean? Good faith could mean anything that we deem good faith, but there could also be standards in American law that require a certain minimal level of behavior to qualify as good faith.

So, on the part of good faith could be what anything the community decides. That's where we [inaudible] down and propose the guidelines as you will see on page three.

However, just to make sure that we do not run afoul of any minimum standard that may be required under U.S. California law, we do have ICANN Legal reviewing the proposed guidelines as well in case there is some red flag that we haven't seen, so that we can fix this early and before we do the final draft. I'm hoping to hear from ICANN Legal soon. They have acknowledged receipt and that they are reviewing the document.

Secondly, I'd like to explain the challenge we had with drafting. Although this document is brief, it is thoroughly considered, because we had to resolve two tensions.

The first one is how do we encourage good conduct from the community and not discourage participation in the process? If we set up very strict guidelines with a lot of process, it might discourage people from coming forward. But at the same time, we want people to behave in a certain way, to be truthful in their allegations, to be professional, and even if they're not allegations, if this is the, "We can remove you for any reasons and we're done" kind of reason, how does that work? So, that is a problem from a [drafting] perspective.

Secondly, being mindful and very open to the comments that we did receive in Hyderabad, we certainly don't want to create cause for removal of a Board member by creating expectations of Board members when in fact the community has flat out said we can remove Board members for any reason.

So, these two tensions were what we discussed mostly on our calls, and I do believe that we resolved to a level that would be acceptable to the

community. I'm also very interested in hearing feedback on our standalone recommendations.

So, we have our proposed guidelines, which was our task. However, in discussing our task, we realized that there were two other areas where it may be really helpful to have some process and some guidance for the community. And those come in the form of these standalone recommendations. And I am very interested – particularly on this initial read – of hearing whether you think that would be appropriate in a report, whether you think we should leave that for another time, or perhaps we pose these as questions rather than recommendations.

And I'm happy now to open up the – oh, and again, I did report in Hyderabad, but to remind you that we're really looking for umbrella guidelines that are minimalist and very easy to follow. And I'm certainly open to answer any questions, but I also want to give a big thank you to Alan Greenberg and Cheryl Langdon-Orr who originally helped and contributed so much to the discussions, as well as Bernie. They really helped get us far along in the process. Thank you.

THOMAS RICKERT:

Thanks very much, Lori. Before we open it up for substantive comments from the report, let me just briefly respond to a comment that has been made in the chat. I think it was Alan who said that he has an issue with staff overruling what the subteam has decided, i.e. that this document should only be for informative purposes of the Plenary.

This is not correct insofar as the agenda for the meeting has been discussed during a prep call with all the rapporteurs yesterday, and the

agenda has certainly been sent out technically by Bernie, but it has been authorized and signed off by the co-Chairs.

So, if there's anyone to blame for this having been tagged a first reading, then it's no one else than the co-Chairs. So, let me just make this perfectly clear. Should there be any difficulties with the document, I think those difficulties should be voiced in the substantive discussion that we're now going to have on this document.

So, let me please open up the queue for this discussion. We will discuss a little bit later during this call how we best organize our work towards our face-to-face meeting and beyond. And it was our collaborative thinking that this document should be put out for public comment as soon as possible, so let's just see how we can best achieve this hopefully common goal, and let's open it up for comments from you. So, are there any comments on this document?

LORI SCHULMAN:

I have a question actually about what you just said. I'm looking in the chat, and I don't understand what the conflict is. I apologize. Is this about our report specifically, or generally about the –

THOMAS RICKERT:

Lori, this is actually about this very report.

LORI SCHULMAN:

Okay.

THOMAS RICKERT: Alan has made the point that the subteam did not submit this paper to the co-Chairs or to the Plenary for first reading but just for information purposes.

LORI SCHULMAN: Yes, that is true. That's true, and then I was advised that we would like the first reading. So I guess that goes to the blame the subteams rule, I'm sorry.

THOMAS RICKERT: So the blame – if any – is already with the co-Chairs, so there's no need to pass it on in circles. But let's see, Alan has raised his hand.

ALAN GREENBERG: Thank you. I'm not particularly interested in putting blame on anyone. The document as is presented here has some minor changes. I don't know exactly what the changes are from the last one the subgroup reviewed.

It's probably pretty good, but since we didn't have a chance and since Lori was on a very tight schedule and didn't have a chance to revise it and pass it by us, we decided that this would be for information only. We would do a first reading at the next meeting, and the second reading probably in Copenhagen. That's certainly what was discussed in the working group. That's it.

THOMAS RICKERT: Thanks very much, Alan. Sorry, hadn't you finished?

ALAN GREENBERG: I am finished.

THOMAS RICKERT: Okay, thank you. This might be a little bit of a stretch for everyone, but procedurally, there is no such thing as a zero-point [type] reading or a zero reading or whatever we might call it.

We do have the issue that we are behind schedule with the finalization of several work pieces that the CCWG was meant to produce by mid-year, and therefore we need to try to be as efficient with the upcoming meetings as we possibly can.

So while this is certainly in no way meant to truncate the group's wishes to chime in on the document, my proposal would be that we keep this as first reading – unless there's violent opposition – and Alan, you've mentioned that the document is probably in very good shape and that there are only minor changes. Can't we agree that minor changes that might need to be done to the document are done between this meeting and the next meeting so that we can have the second reading soon to be able to put the document out for public comment prior to Copenhagen and not only do the first reading or the second reading in Copenhagen? Because that would definitely push the public comment period beyond Copenhagen, which in terms of work planning would be unfortunate.

There's a queue forming, so let's hear Kavouss first and then move back to Alan.

KAVOUSS ARASTEH: Yes, I don't think it helps whether we blame [inaudible] or the co-Chair. From the discussion I understand that the [inaudible] as something which we have discussed and we don't call them first reading and we continue the discussion. Thank you.

THOMAS RICKERT: Kavouss, can you please repeat the last sentence for me with your conclusion? Because I had a hard time understanding you from an audio point of view. The line was not very good. Okay, so obviously, Kavouss did not hear my question. Let's move to Alan now. Alan, please.

ALAN GREENBERG: In the chat, the Chair of the subgroup has said she doesn't consider this ready until we get legal opinion. You said that it's okay if we make minor changes between the first and second reading. Whether they'll be minor or not will depend on how we look at it.

Sure, we can call this a first reading and the rewrite it completely from scratch for the second reading if you wish. I doubt if that's going to happen, but that is within our rights since the subgroup has not seen this version that you're asking to pass first reading in this group. Thank you. I will not comment again.

THOMAS RICKERT: Thanks very much, Alan. And Kavouss, you've asked me to repeat my question. My question for you was to repeat the last sentence of your intervention because the audio quality was very poor for me.

KAVOUSS ARASTEH: Yes. My last intervention was that we take it as a helpful discussion and we don't take it as a first reading. Thank you.

THOMAS RICKERT: Thanks very much, Kavouss. That's very helpful. We're discussing procedure issues quite a bit. I have not seen any comment on the substance of the paper so far. Does the group have any views on the paper itself? I don't see any hands, so no comments on the substance of the document.

Okay, now, I think we should move on with our agenda. Since Lori has withdrawn the document basically from eligibility for first reading, that leaves no room for us to proceed with it, so we will declare this attempt of a first reading as failed, basically.

Nonetheless, we would be interested in hearing your views on the document, and as far as the legal review is concerned, let me just remind everyone that in Work Stream 1, there were multiple occasions where this group did readings of documents and we got our work products legally assessed afterwards.

So basically, our group needs to form a view on what its requirements, what its wishes are in terms of policymaking or other areas, and then there is a legal check. So, the fact that legal review has not yet been

done or not yet been completed would not necessarily keep this group away from conducting a first reading.

But with that, I think we can move on. There don't seem to be any substantive comments on this document, so we can now move back to Mathieu for the next agenda item.

MATHIEU WEILL:

Thank you, Thomas. We're coming to our item on Jurisdiction. The topic at hand is a follow-up from our previous meeting where – it was last year, but – we had a first discussion on draft questionnaire which has been refined by the subgroup since then, and the question that's being raised to the Plenary today is based on the feedback that we're going to be receiving from Greg Shatan, the rapporteur, whether we can proceed with issuing this questionnaire publicly.

So, Greg, over to you for a quick introduction. I don't think we're going to read the questions, but maybe just initiated if there's any concern with us proceeding on this conversation. So Greg, give an introduction.

GREG SHATAN:

Sure, thank you. Over the last several weeks, we have been working on and refining this questionnaire, which has been before the Plenary once before. This version has some changes from the prior version, and I also circulated a redline version, but just the essential concept here was to get some outside inputs for the – can you still hear me? Hello?

UNIDENTIFIED MALE: Yes, I can hear you, Greg.

GREG SHATAN: Okay, thank you. Something just sounded odd on the phone there. So, the essential concept of the questionnaire is to get some outside inputs from beyond the information, knowledge of those in the working group that will provide and input and additional source of knowledge and information for the working group.

It doesn't absolve the working group of needing to do its own work. It's merely an additional feature of our work. I think the SO/AC Accountability Group also did a questionnaire. I don't know if any of the other subgroups have done this sort of additional kind of fact finding.

In any case, the changes from the last time are that the preamble has been shortened, and initially, more specific references to the subgroup's [mandate] or work assignments were taken out and are now just referenced to the Bylaw and the accountability final report. The specific sections are of the final [inaudible] are footnoted. The hope was to make the preamble shorter and a bit easier to get through, and still allow people to dig deeper into what is meant by Jurisdiction and the mandate of the group.

The first question did not change too much from the last time around. There was discussion both in this group and in the subgroup of the fact that DNS can mean different things to different people, and maybe inaccurately to some of those people. But in any case, we changed DNS to domain name-related services in question one.

Question two did not change at all, and neither did question three. Question four is actually a new version. There was a prior question four that was mentioned the first time around, but it did not gain consensus support in the subgroup. Essentially, it was divergence with regard to whether or not it should be included, so we have been working on question four, and after considerable work, finally came to consensus on the version of question four you see before you.

And that really kind of takes us – that's at least a high-level view, so I'll open the floor. I don't know if Lori's hand is a new hand.

MATHIEU WEILL: I'll take the moderation, Greg. No worries.

ALAN GREENBERG: Okay.

MATHIEU WEILL: So it's a new hand. So, Lori. No, it's not, so Kavouss is first in line.

KAVOUSS ARASTEH: Yes. I apologize to Michael if the quality of the sound is not good. Do you hear me please now?

UNIDENTIFIED MALE: [inaudible]

UNIDENTIFIED MALE: You sound better than before.

KAVOUSS ARASTEH: I would like to make a statement with regard to the work that Greg has done. We have had 18 meetings. About six or seven of that – or maybe eight – was around this questionnaire. We went back and forth, accusations, allegation, attack, [inaudible] but I think it is a friendly issue between the families. I don't take it serious.

This thing with Chair, Co-Chair, this is the best that we could get. It is not perfect, it is far from perfect, but that is that. If you try to open the discussion, you need another seven or eight hours, and it is outside the patience of this group.

Still, [can we put] something today that irrespective of questions, nothing prevents the respondent to raise any issue in relation with the substance of the questions, but not the wording of the question? Moreover, we are not writing the constitution nor any charter.

It is questions, and it is what we could do at this time. It is a delicate balance. Everybody may be equally unhappy, let us take it. I propose to the co-Chairs to kindly ask the people if they could agree with this very delicate issue or balance that we have.

If you open that, we come back to the issue whether we need to have question four or not, and that is quite dangerous and counterproductive. Whether [inaudible] co-Chair you listen to me or not, that is the 20 years that I have seen – many years – it is impossible to get anything better than this.

And I don't want to go to the definition of consensus, what is the rough consensus, what is the soft consensus and what is the full consensus. That is what we have, and that is that, and I suggest take it and go ahead. Thank you.

MATHIEU WEILL:

Thank you very much, Kavouss, and as usual, your experience in that is invaluable to us co-Chairs. I will turn to Christopher in a minute, but indeed, I think the idea here is to test whether there is any objection to us moving forward. And when I say objection, it's basically we all know that we come from places where we would have some enhancements to proceed, but it's probably the best compromise. So, the test that we're asking is really the die in the ditch test that we've used several times.

So, the question is not whether there's a small improvement that could be made, because it's been worked and worked again at, but rather if anyone has a very strong feeling against issuing this questionnaire. And while you prepare your green ticks and so on for that, [inaudible] Christopher.

CHRISTOPHER WILKINSON:

Hi, good evening. Thank you, Mathieu. This is not to object. I wish to express my strong support for Kavouss's advice. I have personally participated in much of the discussion that the group has conducted. I know very well what the issues are, and I shall not entertain this meeting with [inaudible].

I think Kavouss has put it very well indeed. Personally, I helped with the drafting with Milton, and I think I'm responsible for the addition of one word to this text which has survived throughout the debate. But I recommend that the co-Chairs accept this text and we move on.

MATHIEU WEILL:

Thank you very much, Christopher. So, is there anyone in this call objecting to moving on with the questionnaire? So, if it's the case, you can either raise your hand or mark the red cross in the AC room. I am seeing none, so I think we will be in a position where we have now agreed that we will publish the questionnaire.

And I'd like to congratulate Greg Shatan for his persistence, his determination and keeping an open mind all through the pretty tricky discussions that took place in the last I think seven meetings around this questionnaire.

And our thanks and appreciation as well to everyone who offered compromise in the last stretch around, and that enabled us to reach this point of compromise on one of our key topics for Work Stream 2 where we are expected to demonstrate the benefits of the multistakeholder model.

So, thanks everyone. And this is just the first step, obviously. We are aware of the important task that is ahead of us, which will be then to process the answers with the same spirit of compromise and open mind. So, thank you very much. This is an important step, and we move on to León for the transparency item.

LEÓN SANCHEZ:

Thank you very much, Mathieu. We are going to have the second reading on the Transparency Group's document. For that, I would like to call either Chris or Michael to walk us through the small changes that have been made to the document since its first reading. And I would, of course, appreciate if either Michael or Chris could walk us through these changes. I think Michael was going to lead on this, so Michael, you have the floor.

MICHAEL KARANICOLAS:

Thanks very much for that. We discussed this draft I think at a meeting either in November or December, and the changes since that point have been relatively minor. So, just to flag a few issues that people might want to take note of.

One is that it was discussed at the subgroup level that it would be good to get feedback from ICANN staff, which we expect to get sort of throughout this process, particularly around exceptions to security and stability, and whether the [reversions] of the exceptions have been properly structured, whether any interests are missing.

We do have references in there now saying that we are open to discussion on this with staff and look forward to any feedback, which we expect to happen sort of throughout the process of taking this forward throughout the comment period.

There were also some discussions about how staff might react towards mentions of resources that might be required or that the revised

recommendations might need in addition to prioritization. So, I'm sure that we're going to get feedback on that, but just to address that explicitly, we've included a specific reference saying that we look forward to discussing things further.

There was then a bit of a discussion at the subgroup level on the role of the Ombudsman. We currently recommend that the Ombudsman engage in reasonable monitoring and evaluation measures over the DIDP system. That includes how many requests are received quarterly, timelines for response, that sort of thing. Reasonable requirements to track how the system is working generally.

We also have a role for the Ombudsman whereby DIDP requests that the staff wants to dismiss because they are frivolous and vexatious. That's an exception that currently exists within the DIDP that allows for the dismissal of vexatious requests or frivolous requests. We've kept that in, but we recommended that the Ombudsman have to consent to dismissal on those grounds, which is in line with what you see in some national systems where they'll require an information commissioner to [contend] to those kinds of dismissals.

We've included some staff recommendations on open contracting. There was a lot of discussion about this at the subgroup. We ended up including a recommendation that all contract above \$5000 should be automatically disclosed going forward, and that going forward, NDAs should be limited, should only be signed on contracts where information touches on a listed exception. Although that wouldn't apply retroactively. That's a recommendation going forward.

We included some recommendations on the Board removing material. Currently, the Board can just remove material from the published minutes of their meetings based on a vote. We wanted to restrict that to material which would fall foul upon one of the exceptions listed in the DIDP, basically to have rules around what information can be withheld by the Board, and to have decisions by the Board to withhold that information time tested.

So, rather than the Board in their published minutes saying, “This information just won't be published,” it would say, “This won't be published for six months,” or a year, or a month or whatever is necessary.

More broadly – and again, these haven't really changed, but it's probably useful to just go over some of the recommendations more generally – we include clearer procedures for responding to DIDP requests. That includes centralizing the process and providing reasonable assistance to requestors. We [inaudible] some proposed revisions to the exceptions to sort of narrow them and ground them in [real harms.] We include procedures to contact third parties where information that they've provided is under request to consult them, their opinions about whether or not it should be given out. And we recommend reviews of the DIDP every five years.

That covers the DIDP sections and the sections on Transparency and Board deliberations. And again, I guess you guys have the documents in front of you, so hopefully you can check out the recommendations yourselves. Hopefully, some of you already have.

Chris, did you want to comment briefly on the measures on transparency of interactions with governments?

CHRIS WILSON:

Sure. [inaudible] recommendations pursuant to the CCWG's report was coming out with some transparency regarding ICANN's interactions with governments on – you'll see the recommendation itself is on page 21 and 22 of the report, and basically, in essence this new sort of proactive disclosure requirement is meant to encompass engagement between ICANN and governments outside of the – well, outside of two things.

Outside of what [constitutes] federal lobbying within the United States, and also outside of sort of the formal government-ICANN interactions that take place during ICANN meetings, ICANN policy development processes, etc.

It's not meant to encompass those types of interactions. These are sort of additional ex parte discussions that may occur in any way, shape or form outside of the traditional lobbying context and certainly outside the traditional interactions that occur within the ICANN community.

So, as you'll see in the recommendations, we recommend that certain disclosures occur at least yearly, but no more than quarterly. And the community can sort of determine what's best in that regard, but certainly at least once a year.

And again, you'll see a bulleted list of things that we think are worthy of disclosure. Really, that's the context. I think I more importantly wanted to clarify that this doesn't intend to encompass government

interactions, engagements, etc. with ICANN that occur within the ICANN policy processes, discussions, etc. this is ex parte outside of that. Hopefully, that clarifies some things for folks.

MICHAEL KARANICOLAS: Thanks so much for that. And just to briefly mention that there's also a whistleblower protection section, which hasn't substantially changed really since Hyderabad, and it mostly just mirrors the recommendations that NAVEX made in their own assessment which we felt were pretty good.

With that being said, I would like to open it up and look forward to any commentary that people have on the document or its recommendations.

LEÓN SANCHEZ: Thank you very much, Michael and Chris. I would like to congratulate the work of course, the group for this excellent work that was carried.

I see that Chris Wilkinson has his hand up. So Chris, you have the floor.

CHRISTOPHER WILKINSON: Yes, thank you very much. I think this is an excellent report with addressing an important issue. In an earlier exchange with the subgroup, I made some points which I feel may not have been fully understood, and I would just like to [inaudible] two or three of them.

The first is – and I admit to having been a civil servant for more than 30 years – that the document does not really recognize the costs, to ICANN and to the community, of implementing the detail which has been proposed.

I think in a few points, the detail goes too far. And above all, I would not want to put the ICANN staff in a position where they felt that their obligations for transparency – in one point going as far as having to write the minutes of every private discussion that they have or person to person discussion that they have. This goes too far, and it's not implementable. And you don't want to paralyze an organization through transparency requirements which take too much time. This is not a qualification of the overall obligation of the institution per se to be transparent vis-à-vis the community. But a degree of proportionality is desirable, and above all, whatever you do it will not work if you do not have trust. So I would recommend that the report be reviewed from the point of view of the cost of implementations.

Regarding public procurement, open procurement, I agree and have advocated – and in some respects there's a paragraph on page nine which could have been borrowed from one of my earlier submissions – but again, the report goes slightly too far. In addition to the desirability of open, competitive, procurement – which I believe actually already exists – the report implies that the bids of each tenderer should become available under Transparency to all the competing bidders. I don't think that's realistic. And I very much doubt legally or practically the ICANN staff would feel that they could go that far. This is the third paragraph on page nine.

And finally, I'm grateful that the authors have recognized that the interactions between the members of the GAC and the Board and members of the staff of ICANN are not assimilated to lobbying, but in the actual text we still have the word "beyond the formalized GAC interactions." I really think that the word "formalized" must be deleted. Most of the interactions between GAC members and ICANN are not formal. We have tried for 20 years with some success finally to encourage GAC members to participate fully in the multistakeholder machinery of ICANN's governance, and it would be a pity if each time a staff member or a Board member talked to a GAC member over coffee or otherwise informally that they felt that this interchange was subject to Transparency rules and somebody somewhere would be writing a minutes about it. That's not reasonable.

So please at the bottom of page 21, please delete the word "formalized." Otherwise, I'm in full agreement. Thank you.

LEÓN SANCHEZ:

Thank you very much, Chris. I think that these comments are very valuable, of course, and they would be excellent in the public comment because I think that as we have previously done, the second reading is just a thumbs up or a thumbs down in order to publish the document for public comment. So I wouldn't like to, of course, go through [words meaning] on the fly for the document and I don't think that would be the best use of everyone's time. So I would suggest that if we don't have any objections to publish this for public comment, we should definitely go forward and publish it for public comment.

But first I would like to hand over the floor to Sebastien and then Kavouss. So Sebastien, you have the floor.

SEBASTIEN BACHOLLET: Thank you very much, León. Can you hear me okay?

LEÓN SANCHEZ: Yes, we can.

SEBASTIEN BACHOLLET: Thank you very much. I know that we are in this reading and I must apologize [at] subgroup on the ICANN Ombuds Office we are not really concentrated on the publication from other subgroup as we were talking and working on the publication of the Request for Proposal for the outside review of the ICANN Ombuds Office. Nevertheless, when we met yesterday, we discussed the points where in the Transparency document there are link with the Ombuds and if we were not mistaken, there were two – one in the subteam one about improving the DIDP, and the second it's about the subteam for about whistleblower protection.

We discussed the first issue about what could be the role of the Ombuds, and it's create some difficulties and I am not sure that I will summarize in the right way, but from my understanding of the discussion yesterday, it seems that if the Ombuds it's already in charge of studying one issue link with this DIDP. It will be in a difficult position to be in the same time the one to consider if it's really abusive of [X] issues.

Therefore, we will have to work between the two subgroup in more detail about this specific issue. We wanted to have this discussion in two weeks when it's our next call. I understand that you have the wish to have this published for comments. I am not as a rapporteur, if I may, oppose to that, but you have to understand that a link between the subgroup need to be handled and I don't know which way, but it seems that we don't have the right timing or schedule to do the work in the two subgroup on that issue and it must be a more broader issue about how to deal with items where to be dealt by two or more subgroup.

That's the current situation. Thank you very much for your understanding.

LEÓN SANCHEZ:

Thank you very much, Sebastien. Next on the queue I have Kavouss.

KAVOUSS ARASTEH:

Yes. Unfortunately, I was not able to join this group, but on the last proposal to delete the word "formalize" I would request Michael to if possible [and] very shortly to indicate how and why did "formalized" get into the text. I tend to almost agree with both people in proposing the deletion of that but I would like to hear before I joined formally to these two why "formalized" was there. Thank you.

LEÓN SANCHEZ:

Thank you very much, Kavouss. Michael, you're next in the queue. Would you like to maybe any kind of reactions to what we've just heard from the different commenters?

MICHAEL KARANICOLAS: Yes. Thanks so much for those comments. I responded already on the comments about the idea of open contracting and publishing competing bids and [say] that that is routinely done in a lot of jurisdictions.

Regarding, more broadly, the inputs that we received from Chris – we did get your e-mail and we actually discussed that at the subgroup meeting that took place I think either a day or two days later. And we specifically did discuss the resource issue. However, I think we might have misunderstood it because we discussed the resource issue with regard to resources to process and respond to requests and not specifically with regard to the duty of the document. That is an excellent point.

In terms of our specific recommendation, the specific recommendation on the duty of the document says not that every time two ICANN employees have a coffee together that they have to make a note of it and write a bit down into minutes. That's absolutely not what it says. The specific wording is, "The DIDP should include a duty to document whereby ICANN staff are required to create and maintain full and accurate records in an accessible form so as to be able to be used for subsequent reference containing adequate and proper documentation of the office or authorities, organization, functions, policies, decisions, and decision-making processes, procedures and essential transactions."

That's not necessarily... I think that's a lower standard than what you're suggesting, and we also did take that language from regulations that are in place in different jurisdictions around the world. That's what it's

based on. So from that perspective, we do consider it to be workable. I'm happy to discuss that issue further, but we want to maintain a situation where there is a proper paper trail underlying decision, not necessarily that every time two people have a chat that they need to be writing everything down.

Regarding the language of the word "formalized," I have to pass that over to Chris because that's an area that he drafted.

CHRIS WILSON:

Sure. Including "formalized" was I guess twofold – one, formalized interactions between the GAC and ICANN for the most part, as best as I can tell in my experience within ICANN, are publicly disclosed. We've got the communiqué, we've got perhaps letters between the Board and the GAC, etc. So including making that, asking for additional disclosure seemed to be redundant. Those types of interactions were already disclosed. I think – and there's some discussion currently in the chat right now as to what extent the breadth of disclosure should be with regard to ICANN's interactions with governments – not whether they should be disclosed but to what extent the breadth of that disclosure should be.

I think the approach taken here is trying to strike that balance, as Christopher mentioned, between disclosing things that are otherwise public, if you will, and not get too much into the minutia in documenting every last coffee or casual hall conversation that may occur, but looking at broader strokes and certainly focusing particular attention with ICANN's interactions with governments outside of policy

discussions within ICANN [but] outside of PDP Working Groups, for example, or other “formalized” work processed that occur within ICANN.

So the term “formalized” was meant to deal with... not sweep in discussions that may occur between governments and ICANN on matters that are public policy matters within ICANN that are transparent discussions that occur all the time. Obviously, I don’t think it’s reasonable to have to disclose every last casual conversation, like I said, in the hallway at an ICANN meeting, for example. But I think the broader focus here – I don’t want to get wrapped around that axle – I think the broader focus in disclosure here is really about interactions with governments, etc. that occur outside of that context and are not disclosed, for example, within the Federal lobbying disclosure.

I think the broader disclosure focus is on those types of interactions, not focusing on the day-to-day discussions that occur between SOs, ACs, and the GAC and ICANN, etc. As to whether we should delete “formalized,” I think that’s certainly something we can talk more about. I think it’s worthy of further discussion. But hopefully that provides maybe a little more clarity or perhaps it muddles it more, I don’t know. But as to why that word is used, it’s an attempt to cabin to some extent the disclosure.

I know time is running short. I’m happy to talk about this offline as well for folks that want to do so, and certainly public comment period we’ll talk about this as well. But that hopefully provides a little more insight. Thanks.

LEÓN SANCHEZ: Thank you very much, Chris and Michael. I see that Chris's hand is up but I would first like to suggest a way forward. We could, of course, have a look I think at each of the items that [has been discussed that open in the scope on the mailing list, so we'll take this offline. And while we do this, I would suggest that both subgroups – I mean the Transparency and the Ombudsman Group – hold a joint meeting to iron out the details that seem to be outstanding. My question now would be whether this would prevent us for publishing this document for public comment.

My impression is that we can go forward with publishing for public comment, but I would like to hear if there are any objections to publishing this document for public comment.

Okay, [inaudible] hand's up.

CHRISTOPHER WILKINSON: I have some points.

LEÓN SANCHEZ: Yes, Chris. You can please take the floor and may I ask you to be extremely brief and that we are running out of time.

CHRISTOPHER WILKINSON: Okay. Thank you, León. I just want to come back on a couple of points. I made these points weeks ago in a memorandum to the subgroup so I

think that is already on the record. I think the discussion today should influence the document before it goes to public consultation. Otherwise, what are we doing here?

Regarding the word “formalized,” I notice in the chat that there seems to me to be support for deleting the word “formalized” for the reasons that have been said.

Regarding Michael’s explanations – I’m sorry. This document does go into the minutia. And I would strongly recommend that the people who would have to implement it – notably the ICANN staff – should provide the subgroup with their comments before public consultation. Otherwise, there are elements here which unfriendly and unkind souls might regard as ridiculous.

I don’t regard them as ridiculous, but they go too far. This is not implementable as it stands and if it goes forward, the bureaucracy of the ICANN would be spending far too much time on the minutia, whereas you risk missing the point on the substantive issues of transparency. I rest my case. Thank you.

LEÓN SANCHEZ:

Thank you very much, Chris, for these comments. I am closing the queue with David McAuley, and I would please kindly ask Kavouss that him and David to be really brief.

Okay, Kavouss, you have lowered your hand, and next on the queue I have Sebastien.

Okay, Sebastien’s hand is down now.

SEBASTIEN BACHOLLET: Thank you. It's not down, it's just because you give me the floor that I put it down. Sorry.

Just to say, my only trouble not just for this document [itself] we deal with issue who are in connection of two subgroup. The current question about the Ombuds is one of them, and I feel that if we as a Plenary we can't put some ideas and changes as it's our duties and it's good to comment then there the comments could be aligned with what we say or in opposition. But it's like we are not doing our full job.

I understand that we are constrained with time, but I'm not sure that we can't spend one more week in finalizing that, it will be better I think. But that is the call of the co-Chairs. Thank you.

LEÓN SANCHEZ: Thank you very much, Sebastien. Next on the queue I have David McAuley.

DAVID MCAULEY: Thank you, León. Your comment, León, about Ombudsman and Transparency having a joint meeting is what's prompting my comment. What that comment is, is I think we have another task for the Plenary CCWG at some point and that is to correlate the various subgroups. I'm worried that some are wading into the work of other groups, and I've mentioned it in the Transparency Group with respect to Human Rights. Our rapporteurs have done an incredible job with long, detailed, work,

and hats off to them for that. And this is a long, legal brief with case sites and footnotes – the Transparency document.

Like any long document, there may be unintended consequences and I just think we need to rationalize this. For instance, when in Transparency we cite Human Rights documents and laws, etc. etc. etc., at the end the Plenary may want to have some kind of an overriding document to all of our work, all the subgroups, saying, “Human Rights is dealt with in the Human Rights Group” irrespective of other references, etc. etc. I’m just noting we may have another task in front of us. Thank you very much.

LEÓN SANCHEZ:

Thank you very much, David. It appears to me that we are not ready to publish this document for public comment, of course, from what I’m hearing. So I would suggest that we continue the discussion of the open item offline, find a way to have a collaborative approach between the Ombuds Group and the Transparency Group on the issues that might have been overlap, and of course, try to not mix pears and apples, as David suggest but just try to be collaborative amongst each other’s subgroups.

I think this would be the conclusion. We are not going to publish this for public comment yet. We’re not ready. We’ll continue the discussion on the open items offline between the subgroups that might have overlapping issues.

Our next agenda item is for my co-Chair Thomas. So I would go back to Thomas for the next agenda item. Thomas?

THOMAS RICKERT:

Thanks very much, León. This next agenda item is about our planning. We need to discuss as a group and for transparency we've done some prep work on this with the rapporteurs during the preparation call. But we actually need to take a look at what is feasible and what we can deliver by when.

You might recall that we have two buckets of subteams that were looking at one group that wants to be a little bit quicker, which is the second track, and one track that will take a little bit longer which is the first track. And you can actually see this on the slide in front of you in the remote participation room. We need to take a look at what is feasible and we need to remind ourselves that we have budgeted both resources as well as money for the duration of this project which was planned to be completed by ICANN59.

The question is, is this feasible? And I think we should all think very hard about how we can make this work as much as we can because we do not have any guarantee that there will be additional funds beyond ICANN59 – funds meaning support in terms of staff, support in terms of travel support, support in terms of meeting support, in terms of telecommunication facilities, and legal advice as well. So we really need to make up our minds whether we want to issue basically a warning to the community that we need to go into overtime, that we need to issue a warning and a request for additional funds to the ICANN Board and to the chartering organizations, according to our budget rules, all of which has implications. We do not know what the outcome of these

deliberations will be. We have quite something to lose in terms of credibility with the community if we don't deliver as originally planned.

So we started the exercise of going to the individual subteams with rapporteurs yesterday. And from what's apparent from today's deliberations is that we will have delays with the delivery and publication of some of the papers, and my suggestion would be that as time permits during this call we will try to go through the individual subteams and come up with an overview of where we are and then make a determination as to what the consequences of that will be in the next couple of days.

I see Kavouss's hand is raised. Kavouss, please.

KAVOUSS ARASTEH:

Yes. Thomas, I gave a view from the viewpoint that beyond ICANN59 there may not be any financial support. That is number one in order to see what is not feasible. It is not only the feasibility. It is the degree of [possibility] and tolerance that the people indicate, and if somebody raise a question and everybody tried to [attack to] that and there would be counterpart of their statement that is [replied] to which is to [reduce] this sort of the confrontation and go to the more positive [inaudible] discussion then we make it [feasible]. Thank you.

THOMAS RICKERT:

Thanks very much, Kavouss. I guess you're touching upon a very important point, and that is that we also need to think about our individual positions in this process. Mathieu has rightfully made

reference to the “die in the ditch” test as we called it in Work Stream 1. So this is not about finding the ideal solution or advocating for the ideal solution that each of us might be looking for, but we need to get back to the spirit of compromise and trying to find workable solutions that everyone can live with and that everyone might potentially suffer from equally.

I see Alan’s hand is up. Let’s hear Alan and then hopefully move through the individual topics to see where we stand. Alan.

ALAN GREENBERG:

Thank you very much. I strongly support what you just said. We do have to get back to the concept of compromise. But with respect to budgets and when we complete, we did the budget for this working group and as one of the Chairs of the chartering organizations I had to personally agree that yes, we were taking a stab at what we were going to do and doing it in best faith. It’s quite clear that some of our work groups, maybe all of them, underestimated the amount of work it would take. That may simply be a bit of fallout.

As much as I believe we want to and probably can finish by Johannesburg, we really have to take the time within the overall CCWG of looking at the final package we’re talking about and making sure that as an overall package, it does make sense and that we’re not opening ourselves up to some unintended consequences, perhaps of the type we were talking about in the last discussion [on Transparency].

Yes, we want to try to do it on time. Yes, we're going to do our damnedest to make that target. But we also have a quality issue that we have to make sure does not get in the way of time. Thank you.

THOMAS RICKERT:

And I think Alan, that what we tried to do from the very beginning of this whole exercise. Certainly there is time pressure. There are limitations of resources. We should try to do what's possible. We should not make quality suffer from constraints of whatever nature. But at the same time, this Work Stream 2 work that we're currently conducting is sort of a test phase of a new concept of community interaction with the Board and staff. So we've been given our own resources. We've been given budget responsibility for what we're doing. Also, we've sort of made a promise to the global community that we would come up with responses to the important Work Stream 2 items soon. So we can't be seen to be putting this on the back burner, and also we must prove that we are efficient because otherwise, people might say, "Okay, this new working model does not work and so let's move back to and give the community less responsibility than in this model phase."

I see my dear fellow co-Chair Mathieu has raised his hand. So please, Mathieu, over to you.

MATHIEU WEILL:

Thanks, Thomas. Sorry I was a little bit [inaudible] mute.

Just a couple of additions from my point of view on where we stand. Basically we started Work Stream 2 in Helsinki in July. We are about

seven months into the process, and from what I'm perceiving, I see by the end of Copenhagen our plan we have shifted by two ICANN meetings – our initial plan, I mean. And so we will be in a position to report that in nine months' time our target delivery time has shifted by nine months.

I think we also need to really look at what we're doing from the point of view of the topic of our work group, which is Accountability and be clear with the chartering organizations about the fact that this shift is really significant, that we have no guarantee if we ask for an extra six months of funding that it's [got] to be closed by six months, and if our group says, "We'll take whatever time it takes," then it needs to be clear because it's a matter for the chartering organizations. I know it's a matter for a number of volunteers as well who have organizations that support them and will not be supporting them forever participating in the group.

I think it's something if we are serious about Accountability that we need to look very carefully about and obviously there is nothing that should prevail over the quality of our recommendations, over the absence of unintended consequences, but we need to also look at our own processes and the way we are organizing work and the resources we're putting in, and if we think we're not going to make it or not going to make it on everything, then I'd rather inform the chartering organizations early rather than late and we don't want to be the group that is perpetually asking for extra resources because it would really be putting the multistakeholder model that we've tried to embody in many ways in a corner if we did that.

I would be in favor, and I suggest the start of a discussion, of being very realistic about our timing, and if it means we say it's delayed by a year or a year and a half, then we say it and we discuss with the chartering organizations. But let's have this discussion in the next meeting at least before Copenhagen. Thank you.

THOMAS RICKERT:

Thanks very much, Mathieu. I think you summed it up quite nicely. We need to be realistic. We have pushed back our initial timeline already quite significantly and we can't do that or take that approach many more times.

In summary, there are a lot of explanations why we are late, and I'm not saying – I think my co-Chairs will agree with me – that there's no suggestion that this group has been lazy or that there are no good reasons for the delays that we've been facing. But the next revision of the time plan should actually be it and it should be reliable, not to say accountable, to the community and the organization as well.

We've done a lot of comments now on this. We only have five minutes left. So due to longer discussions on earlier topics as well, I think it is not possible for us to go through all the subteams now and discuss how much more time we need, which is why we would like to ask the individual rapporteurs of subteams to provide us co-Chairs with revised time plans for their delivery.

Our hope is that we can get four documents out for public comment before the upcoming ICANN meeting. Please do remember that there's no before or after the ICANN meeting solution only, so we can push

things out for public comment in iteration so that some public comment periods will run while we are together at ICANN58.

Let's try to act as quickly with this as possible. Let's try to get some more energy to get things completed so that we can give the community the opportunity to chime in on these very important topics as soon as possible. And let's also try to get back more to the spirit of collaboration and consensus and not try to squeeze the last bits that we want for ourselves out of this process because that will actually make it fail.

I see that Kavouss's hand is up. Then actually Kavouss's intervention is going to be the last intervention from the floor today before we adjourn the meeting. Kavouss, please.

KAVOUSS ARASTEH:

Yes. We should not forget the fact that the more time that [we use] to the people, the more discussion, the more debate, the more dispute and so on so forth. This is my experience that we have been able in other organizations to do the same thing in shorter time. I don't want to say just close the door, but we don't want to open it for an unlimited time and so on so forth.

Therefore, maybe it is early to talk about that if you think that not to provide more rules for more unnecessary and counterproductive debate. Thank you.

THOMAS RICKERT:

Thanks very much, Kavouss.

With that, we should end this agenda item, and I don't want to move to AOB before having gone on the record with kudos and applause to all of those that have brought this work as far as we are. Certainly we haven't been as quick as we would have loved to, but this is not to take away from the excellent work that has been done so far in many, many, areas of our work. Kudos to all of you, and let me just ask whether there's any AOB that you want to bring up, bearing in mind that we only have roughly 100 seconds left on this call.

There doesn't seem to be any AOB, which is good because that actually allows us to end this call on time. I just hope that staff has taken note of the action item for rapporteurs to come up with revised time plans.

With that, I'd like to close this meeting. Thanks, everyone. Keep up the good work and talk to you soon.

This meeting is closed. Bye-bye.

[END OF TRANSCRIPTION]