THOMAS RICKERT:	Hello, everyone. This is Thomas Rickert speaking. Can we get the recording started, please?

UNKNOWN 1:	Recordings have started.

THOMAS RICKERT:	Thanks very much. Hello, everyone. This is Thomas Rickert speaking, the GNSO-appointed Co-Chair to the CCWG, and I would like to welcome all of you to this tenth Plenary call of the CCWG in Work Stream 2. As usual, I'd like to ask whether there are any updates to Statements of Interest.
	I don't see any hands. And as usual, Staff is more than happy to help you updating your Statements of Interest, or even to help you prepare one, should you have not filed one so far. Let me also take this opportunity that it is important for you to file a Statement of Interest, particularly in this very group, dealing with accountability. You may know that it's no issue whatsoever to have an interest, but there should be transparency in terms of what your interests are.
	Let's now do the roll call, and we would like to take the roll call from the remote participation room. So, can I ask whether there are any participants who are only on audio and not in the AC Room? And we will move to Farzaneh afterwards, because she does have an update to her Statement of Interest. But let's complete the roll call first. So, is there anyone on the audio bridge only?

GREG SHATAN: This is Greg Shatan. I'm on audio for the moment.

MARKUS KUMMER: Hi, Markus Kummer here on the audio.

THOMAS RICKERT: Okay. So, we have Greg Shatan, Markus Kummer –

SEUN OJEDEJI: Seun Ojedeji on audio, as well.

THOMAS RICKERT: There was some crosstalk. Who was that? Was it Seun?

SEUN OJEDEJI: Seun Ojedeji. Yes.

THOMAS RICKERT: Okay. Welcome, Seun. And –

MARKUS KUMMER: Not sure you got me, Thomas. Markus here on audio, as well.

THOMAS RICKERT: Yes. Thanks very much, Markus. We will add you to the list. And Barrack Otieno is also on the phone. And thanks, Kavouss, for

reminding me that I should speak slowly. I hope that this is slowly enough so that I can be sufficiently understood. Farzaneh, the floor is yours to speak to your update to your Statement of Interest.

FARZANEH BADII: Hi. Thanks, Thomas. I just wanted to say that I have changed affiliation and I have finished my Ph.D. at Hamburg University, and I have joined the Internet Governance Project at Georgia Tech, and I'm going to start in January the position, so I have not yet changed affiliation on the SOI, but I will do that as soon as possible. Thank you.

THOMAS RICKERT: Thanks very much, Farzaneh, and let me join those congratulating you in the chat, going on record to congratulate you on this. That's great news. Anyone else?

Okay. So, that leaves me with reminding everyone to abide by the expected standards of behavior, as recently updated and published by ICANN. So, with that, we can move to the next Agenda Item, and that Agenda Item is going to be chaired by my colleague, Mathieu.

MATHIEU WEILL: Thank you very much, Thomas. This is Mathieu Weill speaking, the ccNSO-appointed Co-Chair. This second Agenda Item – and probably we should go through the slides so you can see the relevant items – yes, let's stay on the timeline for a first reminder that we are counting, I think, nine weeks before the ICANN Copenhagen meeting documents can be submitted. And that's essentially, but especially important for

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the two subgroups which are on the Track 2, also named the "fast track" – Staff Accountability and the Good Faith Conduct Guidelines. Because if we want the public comments to be closed in time for our review in Copenhagen, we need to issue this comment on January 18. So, this is a reminder that we are working on, actually, a quite narrow schedule, and I'm noting Avri's point in the chat that it's doubtful that Staff Accountability is going to make that schedule. I fully understand that, given that we haven't received everything back. So this is just a key [inaudible] we need to have in mind, obviously, not putting any pressure or anything on anyone to deliver, but it's the kind of [inaudible] we need to have in mind when working our way through the various steps in the subgroups.

The next reminder is on the next slide, that we have a public consultation ongoing regarding the – yes, let's move to the next slide – the ongoing concentration is regarding the IRP supplementary rules. Let's have the next slide, please.

At this point, there are four comments from three participants, and the closing date is on January 10. So this is a reminder that we [inaudible] with your respective groups and encourage everyone to weigh in if there's anything in the supplementary rules that needs to be supported. Support can be expressed, or commented on. Obviously, this is the point of public comments.

Next item on our list is – it was a follow-up from Hyderabad, where we had agreed that a letter regarding the Accountability and Transparency Review Team Number 3 would be sent to the SO/AC Chairs. This letter has been forwarded to the leaders of each of the Supporting

Organizations and Advisory Committees. The recommendation was to have an ATRT Stream with a narrow scope. It's now in the hands of the leaders of the SO/ACs to discuss with the Board how to organize this in the future, so that's a completed action, and a discussion that may take place in your respective groups in the coming weeks or months, hopefully.

So, that's for the [inaudible] item but one, which is probably the most important, so on the next slide is a reminder of the application process we've agreed to for the funding to attend ICANN 58. I have received notice from Bernie that there was a small issue with this process. Bernie, could you maybe update the group directly?

BERNARD TURCOTTE: Yes, thank you. Hi. There was a miscommunication between ICANN Travel and ourselves, relative to the timing. And they're expecting some – there are recommendations this week, which obviously, we can't do. As such, given the applications have all but stopped, I would propose that we leave the applications open until the proposed time, but that we do a first batch as of Monday. The reason for that is that there are quite a few applications that are for partial funding, and if we don't provide the OK for those, we will be slowing down the process for everyone else's – for those people's travel funding to Copenhagen. Thank you.

MATHIEU WEILL: Thank you, Bernie. So, I see Alan's hand is up. Alan? A question, maybe?

ALAN GREENBERG: Thank you. I think what you just said – what Bernie just said – is, the ones who requested the partial funding – that is, a single day – you will do the work earlier. Can we have a specific date when you will have the answers? Some of us have critical issues that have to be addressed. Thank you.

MATHIEU WEILL: Thank you, Alan. My understanding was early next week. Yes, Bernie. Go ahead.

BERNARD TURCOTTE: Yeah. Exactly what I was going to say. Thank you.

ALAN GREENBERG: You're not willing to commit to more than "early next week," though?

BERNARD TURCOTTE: No, because obviously, we haven't started anything. So, is there a more specific deadline that would make a difference between Tuesday next week and Wednesday next week, Alan?

ALAN GREENBERG: I don't know. It just makes life difficult for some people who are trying to make other arrangements at the same time. Thank you.

MATHIEU WEILL:	I fully understand that, and as Bernie said, there was a misunderstanding at [inaudible] and that's why we're sort of rearranging our plans, because we know there are dependencies on your side. So, we're well aware that the shorter the turnaround on the response time on the requests, the better, so we'll do our best on that. Kavouss?
KAVOUSS ARASTEH:	Yes. Two small questions, after a good day to you all. Good day to everyone. [inaudible] from 11 to 17. That is through the one-day [inaudible] CCWG, or that excludes that? This is question one. Question two: I applied for the full time, but I was told that no; this time, rules had been changed, and only maybe one day or maybe two nights and one day, that's all. So I just want to be sure that this time, no one asks for a full period of seven or eight days; only one day and two nights [inaudible]. I want to be sure to not have any discrimination between the people, because my first application was commented that "Please change that to one day, or two nights," and so on, so forth, and I did that. But I don't want to be at a disadvantage with respect to the others. This is the question I want to be sure. First, it's whether it is included in this 11-17 or excluded; and second, it's one day or two nights is the maximum for everyone, without any exceptions. Thank you.
MATHIEU WEILL:	Thank you, Kavouss. Bernie, what is the exact date for our meeting? Isn't it on the 10th? On the day before the regular meeting?

BERNARD TURCOTTE: We've applied for the standard day before it starts, which is the 10ᵗʰ of March. And the rules, as you're aware, we've advised everyone exactly the same way, that we will be funding a maximum of one airfare and two days as the maximum.

MATHIEU WEILL: Thank you, Bernie. So, despite what's on the slide, the Accountability meeting is on the 10ᵗʰ, and the criteria will be the same for everyone with the same process. And we've been clear from the start when we discussed the budget cost-control mechanisms that it's mostly focused on funding for the day of the meeting – of course, with a couple of nights around it, except under exceptional circumstances. So, that's going to be our approach for that. Any other questions?

I see a few comments in the chat regarding the comparison with Hyderabad. I think what happened in Hyderabad was that there was a decision later on in the process, once we had all the requests, we extended a number of the fundings, but that was not – and that was because we had a very limited number of requests. Am I correct, Bernie?

BERNARD TURCOTTE: We were just starting off on our process, and essentially, yes, that is correct. Thank you.

MATHIEU WEILL: Good. Avri, please.

AVRI DORIA: Okay, quick question. So, people still have until the 8th to figure out whether they're going to be able to go even with this assistance, but it's kind of like a first-come-first-serve? That even though the application window is open until the 8th of January, you're going to be deciding on the applications as they come in in a first-come-first-serve sort of process, or did I misunderstand?

MATHIEU WEILL: Good question, Avri. I think, given the number of requests we've received so far, which is significantly below our maximum number, we think we're not precluding too much about the ability of those who would not be in a position to apply until January the 8th. So it's still possible to wait until January the 8th to submit, and we don't think it's going to create any inefficiencies. It's a sort of a [inaudible] treatment, which is obviously not optimal, but as we said, we have had a miscommunication at the start. So we are sort of managing the least of two evils here. So, if we had too many requests in this first batch, we would have to say, "Oh, look. [inaudible]." We're not sure. Because we're still giving everyone until January 8th.

I see Avri saying that she thinks she understands now. That's as good as it can get. Thank you very much for your understanding. It's a small change in the process, but hopefully it's going to work out alright.

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So, we now move to the next Agenda Item, with an update from the Legal Committee, and I'm turning to Leon.

LEON SANCHEZ: Thank you very much, Mathieu. This is Leon Sanchez. If we could please turn to the slide on the Legal Committee. We have reviewed the requests, and the only outstanding requests that we had until yesterday were the questions from the Human Rights Subgroup, which we received a reply from ICANN Legal yesterday at night on my side of the world, which would be somewhere around very early UTC today. And these replies have been forwarded, both to the Legal Committee for review, and the incumbent subgroup in parallel, so we are able to assess the replies from ICANN Legal and determine whether those are appropriate and if there should be any need for external advice on these issues. Other than that, there are no outstanding requests. We had a question on the process for requests from the IRP IOT, and we do have a – we did have a discussion of this in [inaudible] with the Chairs and the Rapporteurs from the different subgroups. And the question [inaudible] on whether the legal requests coming from the IRP IOT should need to follow the same process as those questions being raised by other subgroups – by this, I mean going to the Legal Committee – or, it seems there is a specific bylaw that enables the IRP IOT to request legal advice directly, should this fall out of the Legal Committee's Rapporteur's scope. There were questions that David McAuley sent to Sam Eisner, and I would like to hand over the floor to David so he can walk us through this conversation. David?

DAVID MCAULEY: Leon, thank you. David McAuley here, and I will note that I recently took over as the Rapporteur for the IRP Implementation Oversight Team when Becky Burr formally became a member of the Board. We had our first instance of seeking outside legal advice in the past couple of weeks to clarify or ascertain the legal implications of an issue that we were discussing among ourselves. It's ancillary to the pending rules, but it is an important question for the group as we move forward. I wrote to the Co-Chairs of the CCWG and Accountability just to confirm my understanding that the IRP IOT team could move forward with legal questions separately from sending them to the Legal Group. And I was coming from the position that the bylaws, with respect to the IRP process – that's Bylaw 4.3. Actually, it specifically says in 4.3niv – small "iv," that's n-four. Sorry, n-one – "ni" – that "upon request" – this is what the verbage is – that "upon request, the IRP Implementation Oversight Team shall have assistance of counsel and other appropriate experts." And so, it was on that basis that I was posing that question, or request for clarification. And in the prep call, we decided that I would forward the question to Sam and have a discussion with Sam about this. I'm in contact with Sam separately on IRP matters, periodically. And in her reply to me, Sam noted that there's nothing that requires the IOT work to be treated like Work Stream 2 as far as accrual of legal expenses go. And so, it's in that vein that we can go directly for legal help, but the process that we're going to follow is, I will keep Sam in the loop as we do this, from time to time. Because the PSCT – and I forgot this acronym, but I think it's the Project Cost Steering Team, or something like that; it's the group that's looking at legal expenses – actually does report on the budget spent for Implementation Oversight Team work. So that's my understanding is, from now on, we will go directly to

outside counsel in conjunction with keeping Sam in the loop. And of course, I'll keep the CCWG Co-Chairs in the loop, as well. So, that, Leon, is my understanding right now. Thank you.

LEON SANCHEZ: Thank you very much, Dave, for this. Yes, that is my understanding, too. And the reason for this is that as you stated, while PSCT is reporting on the expenses of the IRP IOT, it does not directly impact the Work Stream 2 budget, as far as I understand; and therefore, the IRP IOT would be able to directly access legal advisers, as you have described. I see a couple of hands up. I see Avri's hand up, and then I have Malcolm Hutty. Avri, you have the floor.

Okay. I think that was an old hand. So then, we'll go to Malcolm. Malcolm, you have the floor.

MALCOLM HUTTY: Thank you. I've got no interest in which budget this comes out of, but I would like to check clarification that this change of procedure or that this different procedure doesn't impact the which advice – whose advice it is that we're seeking. The IOT is responsible to the CCWG, and the IOT needs the independent advice on what it's proposing because it needs to understand what it is proposing. So I just wanted to check that saying that this would be dealt with through an alternative route doesn't mean that we're going to lose the benefit of Holly and Rosemary's advice, and instead be reliant on ICANN's in-house and external counsel. Because obviously, it's extremely – I mean, apart from anything else, all the reasons apply as to why we wanted external

council to the IOT actually apply even stronger, because ICANN is particularly conflicted in this matter. So, can you please confirm that this will be passing this directly to Holly and Rosemary, and not through ICANN Legal and out to [inaudible]? Thank you.

LEON SANCHEZ: Thank you, Malcolm. I can confirm you, that as per the conversation and the discussions that we've held, the IRP IOT will not lose the benefit of Holly and Rosemary advising directly to the IRP Team, and you will continue to have direct access to this kind of external legal advice. Does that answer your question?

MALCOLM HUTTY: That does, and very satisfactorily; thank you.

LEON SANCHEZ: Thank you, Malcolm. Okay, so seeing no other comments on this issue, we have of course the Wiki where we keep track of the requests – the link is on the slide – and since we have received the Human Rights replies just a few hours ago, I would kindly ask the Staff to update the Wiki correspondingly, and to check that we have received the replies on the human rights questions by ICANN Legal.

So, seeing no comments or questions to the report on the Legal Committee, I would now turn to my Co-Chair, Thomas, for our next Agenda Item. Thomas?

THOMAS RICKERT: Sorry, Leon, it took me a while to unmute. Let's now move to the next Agenda Item, and that's a series of updates on subteams. But before we go to subteams, let's first hear a little update on the IGF. That's currently going to be delivered by Steve DelBianco. So, Steve, the floor is yours. I suggest that after your [inaudible], we will open it up for colleagues in this group to ask questions.

STEVE DELBIANCO: Thank you, Thomas. It's Steve DelBianco, with the Business Constituency. There are many on this call who were present at the Internet Governance Forum in Guadalajara last week, and I'm sure they'd agree that it was a uniquely pleasant place to have a meeting. I've already recommended to the ICANN Board and to Nick Tomasso that they consider Guadalajara. Perfect climate, fantastic food, and not so expensive, so it was a great meeting.

I'll say just a few things with respect to the work of this group and how it was referenced at the IGF. There were four sessions on the calendar explicitly about or sponsored by ICANN, including one about a "post-transition ICANN." There were several other sessions that included discussions about ICANN, and I would summarize the outputs in three ways.

First, the work of the CCWG and CWG were discussed and admired as examples of the multi-stakeholder process working well. For those of us that endured the two-year process, it may not have been as obvious to us, but more for the breadth of participation and the remarkable nature of what we accomplished, I can tell you that many at the IGF, civil

societies and governments that didn't participate at ICANN, were very much in admiration and would cite that process within ICANN as the multi-stakeholder model at work.

The second is that, in particular, some governments were grateful and, frankly, amazed that the U.S. government actually allowed the IANA contract to expire at the end of September. There were many who thought that wouldn't have happened, and as someone who works in Washington, I can tell you there were moments I wasn't sure it would happen, either.

The third was interest in participating on aspects of ICANN, but being fearful about how to enter the process, since our acronym soup can be daunting. I took an opportunity at a couple of panels to invite participation in some of the Work Stream 2 projects that align with the themes that the IGF works on. In particular, those were SO/AC accountability – in fact, there was a [inaudible] coalition on accountability of all the stakeholder groups. There was a session on human rights – a whole theme on human rights at IGF – so I encouraged participation in the Human Rights Work Stream 2. Jurisdiction and Diversity. And I explained that Work Stream 2 has a somewhat limited timeframe – it may extend another several months to a year – but I also explained that these groups were open to all, they're relatively bite-sized parts of the ICANN policy world. And I said that they're vitally important and carry with them a greater obligation for the ICANN Board and Management to implement consensus recommendations that emerge from the Work Stream 2 tracks, more so than the recommendations of an ordinary Review Team and other kind of processes.

So, the Work Stream 2 is very important and very relevant to the work of the IGF, and I think there's a chance we'll see a few extra participants in SO/AC Accountability, HR, Jurisdiction, and Diversity. So, Thomas, that's all I had. I'm sure that there are others who were present that may want to add more. Thank you.

THOMAS RICKERT: Thanks very much, Steve. That's excellent news for those who haven't been there to witness the discussions on-site. For those who want to add to that or comment, or support Steve's views or challenge them that they got a different impression, please make sure that you make yourself heard. And while you're considering to speak, let me thank Avri also for explaining our work and promoting our work and participation in the fora that she was in in civil society, so I guess this is excellent, and it's good that you and others in our group go out as ambassadors and try to advocate for participation in this important piece of work. It's not only important, it's not only interesting, but we're having so much fun, aren't we? During all day and night times that we [inaudible] our discussions.

STEVE DELBIANCO: True enough.

THOMAS RICKERT: So, it looks like Steve, this is considered by everyone as a fair representation of what happened in Guadalajara, so let me thank you for giving this quick update. And again, I guess this positive feedback

again is something that all of you should be very proud of, because the accomplishment of this group is outstanding and unprecedented. So, thanks again, and let's now move to the next topic on our agenda. I think that's going to be chaired by Mathieu.

MATHIEU WEILL: That's correct, Thomas. This is Mathieu Weill speaking. A short update from the Ombuds Office Subgroup, and you will remember in Hyderabad we had discussed about the upcoming external review for the Ombuds function, or office, and Sebastien is going to report about the progress since then, quite briefly. Obviously, it's for your information, but I think it's valuable for everyone to know. Sebastien?

SEBASTIEN BACHOLLET: Thank you, Mathieu. I will try to be as brief as possible. Yes, the external review of the ICANN Ombuds Office is now underway. We have discussed with input from ICANN Legal about a possibility for the Ombudsman and its predecessor to be participants during this group, even if we are handling the review, and if they are willing, they can, and we are very happy with this answer. Specific budget was allocated, an outside expert will be chosen and then will be able to review the ICANN Office Ombuds, and of course bring his or her expertise to the Drafting Team, to a report of the Drafting Team. We are currently working on the planning. It's not very easy to add to our current planning a full review with time for comments, public commentary; therefore, I don't know if we will be able to meet the deadline even for the second possibility [inaudible] for the South African meeting, but we will try.

And we are also reviewing what will be the role of the ICANN Office Ombuds Drafting Team in the process, and we are currently slating a small team to be more agile with calls for proposal or requests for proposal for the external review. Next slide, please.

We are also thinking about what we need to delay after receiving the external review report, and what we can enter in parallel. I think that it's important that we keep all the links with the other Drafting Teams to be sure that we answer when they need. I saw a lot of, or some, comments about what the Ombuds can do for the Transparency Team, and we will work on that quickly. We also participate to the SO/AC Accountability to see how the Ombuds can be included in the work of this subteam. Thank you very much. I am ready to answer any questions, if you have any.

MATHIEU WEILL: Thank you, Sebastien. It's important to have this in mind. Any questions for Sebastien or for the Ombuds Group?

I see none, and this was meant to be a short update. Maybe we can move to the next update, thanking Sebastien again for conciseness and efficiency. The next item is SO/AC Accountability, and I think it's back to Thomas.

THOMAS RICKERT: That is correct, and let me immediately hand over to the SO/AC Accountability Rapporteur, to give us a quick update on where they are.

STEVE DELBIANCO: Hearing – this is Steve DelBianco; my Co-Rapporteurs are Farzaneh Badii and Cheryl Langdon-Orr, for SO/AC Accountability – and we've made some serious progress. We have three tracks in our actual deliverables. The first track is the one that is waiting on the receipt of the responses to the questionnaires that we circulated to all of the SO/ACs – Stakeholder Groups and Constituencies – and we've received several. But there are several still outstanding. We're a bit past the requested deadline, and we would respectfully ask that if any on this call are aware of groups that are working on their responses, to just send the Co-Chairs an email, giving us some expectation of when you might be able to deliver. So, our first track will be to review and assess those, and we may even come back to SO/ACs with further questions, as we dive into the document references they provide.

Tracks 2 and 3, we actually have preliminary conclusions. I won't get into the details on this call. But we'll have a second reading on our preliminary conclusions on Tracks 2 and 3 on our group call tomorrow. I think that is a fair summary of where we are right now, and I think that that's an accurate reflection of our progress at 40%. I think that's all I have on that, Thomas. Thank you.

THOMAS RICKERT: Thanks very much, Steve, and I see that Kavouss's hand is up, so Kavouss, please take the floor.

KAVOUSS ARASTEH: Thanks for the report. The deadline for replies, if I'm not mistaken, was one month from the release of the questions. So if one this month has

expired, I would be most appreciative if someone said how many replies from [inaudible] have been received, and whether the deadline will be closed at some time. And the next important question, how they are going to review the replies and analyze the replies. [inaudible] for information of the entire CCWG, I know. Can we discuss that at the level of the group [inaudible] good that the CCWG knows that how this reply would be analyzed and how it will be used. Thank you.

THOMAS RICKERT: Thanks very much, Kavouss. I guess these are excellent points. So, Steve, I guess the questions are clear: one, how do we make sure to get responses from all groups, and two, how is the feedback being analyzed?

STEVE DELBIANCO: Thank you. Steve Delbianco here. There are more than just the SO/AC groups, because remember that constituency and stakeholder groups, in particular within GNSO, have individual charters and individual accountability processes. So we're going to get more, and those are going to be coming in, as well. So, Kavouss, we will catalog on tomorrow's call who is still outstanding and do active outreach to request them to complete it as soon as possible. There are only a few that are outstanding.

The second thing you asked about was what methodology will our subgroup use to analyze the responses, and Kavouss, as you know, that's something that our subgroup will define. We have an entire subteam, Subteam Number 1, that was allocated to that task, so we'll

discuss that on tomorrow's telephone call for the SO/AC Accountability Group. Thank you.

THOMAS RICKERT: Thanks very much, Steve. I don't see any further hands raised, and that leaves me with the pleasure to thank you and your Co-Rapporteurs for the work so far, and I'd like to hand over to Leon for the next subteam.

LEON SANCHEZ: Thank you very much, Thomas. This is Leon Sanchez again. We have a shorter update and some questions for the Plenary by the Diversity Group, and for that, I would like to hand over the floor to Rafik. Rafik, you have the floor.

RAFIK DAMMAK: Hello? Can you hear me?

LEON SANCHEZ: Yes, we can hear you, Rafik.

RAFIK DAMMAK: Okay, thanks. So it's really a short update [inaudible]. We are working with the subgroup with the Strawman to elicit input from subgroup members, and trying to clarify about elements of diversity. So we are continuing to work with that document, and trying to finalize in the coming weeks. In terms of the questions, I don't have a question to provide yet, but one idea we had is to work or draft a questionnaire that

we would like to share with the SO/ACs to share with them the elements of diversity they consider important and to get their feedback on that matter. On the other hand, one topic that we were discussing within the subgroup that's about the data collection regarding diversity. We are trying to identify who to contact and where to get this information. So those are the areas that we are focusing on for now, and so hopefully we'll make some progress by next week.

LEON SANCHEZ: Thank you very much, Rafik, and [inaudible] the Diversity Group took a little bit longer than other subgroups to take off, but I think that you have done very good progress and I thank you, as well, for your work. I'd now like to turn back to my Co-Chair Mathieu for the Jurisdiction Subgroup. Mathieu?

MATHIEU WEILL: Thank you very much, Leon. Matheiu Weill speaking. This Jurisdiction Subgroup – there's been lot of work in this sub-group, so it's not only an update, but also a first consideration of a list of questions. But I will turn to Greg or Vinay – probably Greg Shatan – for an introduction and the questions you want to raise with the Plenary, Greg.

GREG SHATAN: Thank you, Mathieu. Greg Shatan, for the record. You see before you, and also in your email earlier today or late yesterday, depending upon where you are, questions that have been composed within the Jurisdiction Subgroup for consideration to send out or to post and

publicize on an ICANN website – questions that, in order to aid the analysis of the Jurisdiction Subgroup of its remit. The initial idea that was floated just after Hyderabad was that we were light on knowledge of actual experiences of community members and others who have dealt with issues where ICANN's jurisdiction has come into play, and we're trying to move from the hypothetical to the actual and get some what one might call anecdotal evidence of past or current situations that those who have been involved could share with the subgroup.

Over the course of time, another question was introduced, which asks more broadly for, essentially, one might call fact-based opinions, with regard to ICANN jurisdictional questions. And the group has been discussing how to – whether there's in any or all of these questions [inaudible] some of the questions. Following the precedent left by the Accountability Subgroup, we are seeking the approval of the Plenary for the questions below – [inaudible] consideration of the Plenary of these questions below, as well as the Preamble. Since this is an approval-related concept, it does require a reading, so I will read. First, the Preamble, and we'll be seeking comment from the Plenary on everything here. I'll note that the Preamble has been generally supported by members of the subgroup without any objection noted. We did take a poll with regard to the questions to get the temperature of the room, so to speak, which we'll discuss shortly. We did not take a poll on the Preamble, which was discussed on the last couple of calls but had not had any significant objection, or really any objection, noted.

So, the proposed Preamble is:

"The newly adopted ICANN bylaws create several Work Stream 2 accountability subgroups. One of them, the subgroup on Jurisdiction, is posing the questions below for community input into the subgroup's deliberations.

As directed by Bylaw Article 27, Section 27.1(b)(vi) and to the extent set forth in the CCWG-Accountability Final Report, the Jurisdiction subgroup is addressing jurisdiction-related questions, including how choice of jurisdiction and applicable laws for dispute settlement impact ICANN's accountability.

As further background, the CCWG Accountability tasked this subgroup with addressing questions focused on jurisdiction of contract and dispute settlements (Final Report, paragraph 06).

Specifically, it asked the sub-group to engage in:

Addressing jurisdiction-related questions, namely: 'Can ICANN's accountability be enhanced depending on the laws applicable to its actions?' The CCWG-Accountability anticipates focusing on the question of applicable law for contract and dispute settlements [Final Report, paragraph 234].

The sub-group's remit is more particularly described in Final Report, Annex 12, paragraphs 25 through 31.

To help the sub-group in these endeavors, we are asking you to consider and respond to the following specific questions. In this regard, the subgroup is asking for concrete factual submissions – positive, negative, or neutral – that will help ensure that the sub-group's deliberations are

informed, [inaudible], and address real issues. The sub-group is interested in all types of jurisdiction-related factual experiences; not just those involving actual disputes in court cases."

I'll pause here and see if there are any questions, comments, concerns, or other interventions regarding the Preamble.

MATHIEU WEILL: That's good. Thank you very much, Greg. I think it's important that everyone understands the intent behind these questions. It's clearly laid out in this Preamble; but if there is any question on this or comment – I'm seeing none so far. I'm seeing one from Kavouss. Kavouss?

KAVOUSS ARASTEH: Thanks, Greg. While in my latest reply I do not have any major problem to release these questions [inaudible] for gathering information, I have serious doubt on how to use the answers [inaudible] whether or not those answering would be representative of the global multi-stakeholder community, or does it only be representative of very limited society from two countries? This is not multi-stakeholder community [inaudible]? In view of this, replies received must be cautiously considered. If they are not representative of the global multi-stakeholders, they will not be used to [inaudible]. So it is very important, and I see that the participation in the group is very limited with some people. There are people, I think, in very [inaudible] there are no others [inaudible] to answer whether it is a valid answer or not. Thank you.

MATHIEU WEILL: Thank you, Kavouss, for outlining the importance of engagement when trying to reach out to –

SEUN OJEDEJI: Hello, this is Seun [CROSSTALK].

MATHIEU WEILL: Sure, Seun. I'll go to you after that. I think it's – what I take away from your comment, Kavouss, is that we need to make sure that the responses we received are taken into consideration with great care about not pretending representativeness if there's none. But I think that's the issue with many public comments and calls for input, so we'll probably have some experience on that. Seun, you're next.

SEUN OJEDEJI: Hello?

MATHIEU WEILL: Yes, I can hear you.

SEUN OJEDEJI: Okay. Thank you. This is Seun, for the record. Just a question to Greg. I just wanted to get clarification. Can you confirm if, indeed, based on what you've read as the goal of the group, whether the question about the jurisdiction [inaudible] organization is incorporated is open for

discussion within your subgroup? [inaudible] because I've had quite a lot of [inaudible], and I'd like to get the schedule from you. Thank you.

MATHIEU WEILL:

Thank you, Seun. Maybe that's a hint that we should move to the various questions, Greg?

GREG SHATAN:

I think so. Let me just briefly respond to Seun with the answer that was given in the Plenary meeting in Hyderabad. It was well [inaudible] – at least, I think it was. I've seen it reported out by the Center for Internet and – one of the Indian-based centers, I can't remember who. It may have been GOT [inaudible] a good summary of the meeting, which accurately summarized the concept. We can turn to that later, and I would, just briefly responding to Kavouss, note that out of our members, about 2/3 are non-U.S., which is, I take it, the implied concern – and that generally, on our call, we run a slight majority non-U.S. in terms of participation. So while nothing is perfect, I think that in ICANN's sphere, that's not bad. And certainly, as Megan Richards notes, outreach is important; but I would say that in terms of representativeness, since we are looking for anecdotal evidence, fact-based experience, evidence that will come from – if there are more experiences from people in a certain region, then we will probably have more reports from that region. But in any case, we're looking for individual answers, so I think trying to map this in any kind of way, I think, is perhaps not an approach that really benefits us greatly. Thank

you, Vidushi – Center for Internet and Society was the name of that. I saw it recently on the Internet.

Returning to the proposed questions. Number one: "Has your business, your privacy, or your ability to use or purchase DNS-related services been affected by ICANN's jurisdiction in any way? If the answer is yes, please describe specific cases, situations, or incidents, including the date, the parties involved, and links to any relevant documents. Please note that 'affected' may refer to positive and/or negative effect." There's a footnote to ICANN's jurisdiction, and this footnote carries to each of the questions: "For these questions, 'ICANN's jurisdiction' refers to a) ICANN being subject to U.S. and California law as a result of its incorporation and location in California, b) ICANN being subject to the laws of any other country as a result of its location within or contacts with that country; or C) any 'choice of law' or venue provisions in agreements with ICANN." I'll pause there for comments.

MATHIEU WEILL: Greg, I would suggest that we display the full set of questions, because the intent here in a Plenary is not necessarily to go line by line, but to have the broader view and make sure our group is in agreement with the general direction we're taking. So maybe [CROSSTALK]. Seun, is that something that needs clarification right now?   Because I was suggesting that Greg go through all the questions, and then we'll get back to the comments. Is that okay?

SEUN OJEDEJI: Mm-hmm.

MATHIEU WEILL: Okay. So, Greg, are you okay with this?

GREG SHATAN: Yes, I agree, and I'll proceed; and then we can deal with comments and comments in the chat, as well [inaudible] as well.

Number two: "Has ICANN's jurisdiction affected any dispute resolution process or litigation related to domain names you have been involved in? if the answer is yes, please describe specific cases, situations, or incidents, including the date, the parties involved, and links to any relevant documents. Please note that 'affect' can refer to positive and/or negative effects."

Question three: "Do you have copies of and/or links to any verifiable reports of experiences of other parties that would be responsive to the questions above? If the answer is yes, please provide these copies and/or links."

Question four: "What are the advantages or disadvantages, if any, relating to ICANN's jurisdiction, particularly with regard to the actual operation of ICANN's policy and accountability mechanisms? Please support your response with appropriate examples, references to specific laws, case studies, other studies, and analysis. In particular, please indicate if there are current or past instances that highlight such advantages or problems. In terms of likely future risk, please mention specific ways in which U.S. or California law safeguard or interfere with, or may be used to safeguard or interfere with ICANN's ability to carry

out its policy throughout the world. For any disadvantage identified, please identify alternatives, including other jurisdictions, if any, where that problem would not occur. For each such jurisdiction or other alternative, please specify whether and how it would support the outcomes of CCWG Accountability Work Stream 1. Identify the risks of those jurisdictions or other alternatives and discuss the risks associated with changing from the current situation."

That concludes the questions.

MATHIEU WEILL: Thank you very much, Greg. There was a question in the chat by Chris Disspain which I think we should take first, because I think it might be an overarching one, which is, "Could you clarify who we are intending to ask these questions to? What's the target group?"

GREG SHATAN: The target group is generally the broadest possible. The intent would be to post these on a webpage that would be publically accessible, and then to publicize this through usual ICANN channels for publicizing such things, although it's not a formal public comment, therefore may or may not be appropriate to post on the public comment page. But I'll note that ICANN has about seven or eight different ways in which it asks for comment on different things, only one of which appears on the public comment page. So the idea would be to do, hopefully, some reasonable outreach, understanding that we're under some time pressure, but we're asked for outreach. So we're looking for basically anyone who – we're looking for fact-based scenarios, hopefully we reach in particular

those who've had actual interaction either with ICANN or with third parties where ICANN's jurisdiction has come into play.

MATHIEU WEILL: Okay, so I think Chris Disspain's comment is that we should then make [inaudible] clearer, because there might be some misunderstanding about it. I think it's a good comment we should take on board before the second reading on this.

Seun, you requested to be in the line, and then I moved to the queue in the AC Room. Seun?

SEUN OJEDEJI: Yeah, this is Seun for the record. I'd like to re-pose my question, which I think [inaudible]. I wasn't asking about diversity within the group. I was specifically asking about whether ICANN's change of jurisdiction is one of the [inaudible] from the subgroup that [inaudible]. Is it [inaudible] be a subgroup? Actually, there's no response that I require. Thank you.

MATHIEU WEILL: Greg, could you respond by yes or no?

GREG SHATAN: It's not quite a yes or no. The answer is potentially yes. The methodology of the group is to identify issues and then to identify potential remedies. We're still early in the issue identification stage of our work. If any issue is identified for which a change of jurisdiction –

by which I assume one [inaudible] changing the physical location and incorporation of ICANN, since jurisdiction has a number of different meanings here – if there is an issue for which that remedy would be possibly considered, then at that point we would look at that remedy, and we would look at as questions for notes the issues that would be raised in such change and the negatives of any such change, as well as any positives. So the concept – on the other hand if we did not identify any issue for which that was a needed remedy, then it would not be discussed, just as any other remedy that was not suggested by any issue would also not be discussed.

MATHIEU WEILL: Thank you.

SEUN OJEDEJI: Thank you.

MATHIEU WEILL: Next question?

SEUN OJEDEJI: If I may follow up?

MATHIEU WEILL: Seun, we have quite a long line, so –

SEUN OJEDEJI: Okay. Just a quick one. I hope I'm going to do it [inaudible] to the list [inaudible], and I hope Greg would be able to respond.

MATHIEU WEILL: Okay. Thanks very much for your understanding. Kavouss, you have a question on the first question?

KAVOUSS ARASTEH: Yes. The first question. I don't think that even though the whole world these days is turning around business and businessmen, I don't think that we should put "your business and your privacy." We should simply say, "Has your ability to use or purchase DNS…?" Delete "business" and "privacy," because there are many other things and we should not be selectively particular in talking about business.   We are not businessmen. There are others, but we are not businessmen all. Thank you. I am not in favor of putting "business" and "your privacy," just "Has your ability to use or purchase DNS…?" [inaudible] and sufficiently reply. Thank you.

MATHIEU WEILL: Thank you. I think that can probably be dealt with. Maybe I would mix it with Jeff Neuman's comment in the chat, who was asking what "a DNS-related service" was referring to, and maybe Greg, if you want to comment about how to tack on those two comments, questions, at the same time, it's something the group can try and work on.

GREG SHATAN: Sure. Let me address both of those briefly. First, since the phrasing of this is an "or"-based list, these are alternatives. So, essentially, we're asking three questions. To pick them apart, it would be "Has your business been affected by ICANN's jurisdiction in any way?" "Has your privacy been affected by ICANN's jurisdiction in any way?" "Has your ability to use or purchase DNS-related services been affected by ICANN's jurisdiction in any way?" In my personal view, I think all three questions are relevant. If there are additional questions, perhaps – or that could be added to that list – that would make sense. But I think deleting questions, perhaps, and not asking about business, I think, would be unfortunate, especially since many disputes do involve business. But for non-business disputes – although really, question two asks about disputes – but if there are, in essence if it's a non-commercial analogue to the first item, we could add them.

With regard to DNS, I think DNS here is being used in its colloquial sense, and not meaning DNS services such as manage DNS, and just broadly referring to the Domain Name System in all of its possible facets. If there is a better phrasing, certainly to consider that, it could be "domain name-related services," rather than "DNS-related services." And certainly, in essence, the more you get to people who actually do understand ICANN and the DNS, the more they would actually misunderstand the phrasing "DNS-related services," and therefore, we might confuse those who otherwise would be able to answer with the most clarity. So I think that's a fair criticism of that terminology. Thank you.

MATHIEU WEILL:	Thank you very much, Greg. Last question, David, and then we'll conclude, because we have also key topics to discuss later. David?
DAVID MCAULEY:	Mathieu, thank you. It's David McAuley. When you say "question," actually, I was going to make a comment on this that's consistent with what I've said in the Jurisdiction Group, so if this is not the time for comment, then I'd better not weigh in.
MATHIEU WEILL:	No, no. Comments are welcome, as well.
DAVID MCAULEY:	Okay. Thank you, Mathieu. I just will repeat something I've said in the Jurisdiction Group. it's not a criticism; I think our Co-Chairs have handled this matter, putting this together exceptionally well, and the participation within the group has all been fair. I just think it's a mistaken effort, and the reason I think that principally, is that I believe in Work Stream 2, our focus should be – excuse me – as paragraph 234 said, it should be focusing on a question of applicable law for contracts and dispute settlements. The questions, especially question four, I believe, will solicit – will create a lot of feedback that is opinion-based. It's an unscientific survey, and I think it's going to be a major distraction dealing with it, then. And so, as a backdrop on the Jurisdiction mailing list, there's been talk about ICANN getting immunity; perhaps there could be a treaty to address all this. I think these are legitimate

questions. I just don't think the Work Stream 2 is the appropriate forum for them. Thank you.

MATHIEU WEILL: Thank you, David. In fairness, I think that would be the right time to quote the comment we've received from Jorge Cancio, who was not able to attend this meeting, who is sort of playing with this same type of argument but coming to a different conclusion from, obviously, different input. So I think that's going to be in our second reading, a key aspect of our discussion – whether or not to go out, and whether or not that's going to help the group actually focus on real cases, which is, I think, an interesting way forward. But until then, at least we have some refinements to give to the questions and have a second discussion. So thank you very much, David, for laying out your view on that. It's been quite [inaudible] in the group, so it's – the Plenary is aware of this. Greg, would you like to add anything?

GREG SHATAN: Yes, although not directly to that point, though I could speak on that at length. Rather, I'd like to ask the Staff to put up the second document, which is the poll that was conducted, and also to correct an incorrect statement in the chat. The questions are not being presented to the CCWG Plenary as a package; they are being presented for individual consideration and approval, and editing, by the CCWG. So if we look at the poll, we'll see that in consideration of these questions, not all received equal support. So here, we can see that the first three questions did all receive the same level of support, although not from

exactly the same people, but that's not really important. In each case, of the thirty-one who responded, twenty-nine supported the questions as phrased, at least to put forward to the CCWG Plenary – not to second-guess the CCWG Plenary's decision – so we have the same support for questions 1, 2, and 3. So if we scroll down to the second page, you can see the last two questions. On question 4, we have something close to a split, with seventeen answering the poll responding that they supported putting this question forward, and fourteen that did not support putting the question forward. So that raises the question of, "What is the necessary level of support to put something forward, even to the Plenary?" So we're putting these forward, but it's important to note the level of support and of non-support from within the group with regard to these questions. I'll leave it to others to determine what the level of support is, but generally, my understanding has been that the decision has been based on the rough consensus model, and my personal view of how to determine rough levels of consensus would put this really at "divergent," but noting that there is a slight majority, seventeen to fourteen. One could also call that "significant support, but strong opposition" – whatever that next level is. It just needs to be duly noted that there was a significant difference of active opinion on whether this question 4 should be put forward.

Lastly, a question was asked, "If question 4 is not approved, I support sending out a questionnaire containing only questions 1 to 3." We did not ask the opposite question, which is, "If question 4 is approved, I do not support sending out a questionnaire, period." So of those we did ask who answered this – and there were a couple of non-answers for

this one; four, to be exact – nineteen supported sending out the questionnaire without question 4, and eight did not support sending out the questionnaire without question 4. So, that's a background to the questions being put forward and to the level of support for each of the questions in the [inaudible].

MATHIEU WEILL: Okay, thanks, Greg. I think that's important to report, as well. And I don't think we can go any further today. As a Plenary, we've heard the various options and how the subgroup has been [inaudible] on some of these options. So, for me, the first line of action for the sub-group, which is to refine, taking into account the comments we've heard on the questions, themselves. And then, I'd suggest that we come back to the Plenary for a second discussion about how to proceed, and this can be expanded on the full list, as well as in the subgroup. In the meantime, we'll have a few weeks for that, considering the end-of-year break, for which our activity will be lower. Kavouss, I'm sorry, but I'm conscious of time, and there are two other key discussions we're not going to conclude today in the first reading. So, with your permission, I'd like to move to the next Agenda Item – thank you for your understanding – to the human rights discussion, and that's going to be chaired by Leon. Leon?

LEON SANCHEZ: Thank you very much, Mathieu. This is Leon Sanchez, and on the human rights we have had amazing progress, I think. We are now – we will now go through the first reading of the Human Rights Report, and

for that, I would like to hand over the floor to Greg and Tatiana, and I think that Greg will begin and Tatiana will continue with this first reading. So, Greg, could you please take the floor?

GREG SHATAN: Sure, thank you very much. What we are now looking at is a first reading of the Human Rights Subgroup's Framework of Interpretation, which I am now – if we could put that up in the chat, that would be helpful. Do we have it available?

Looks like perhaps we don't have it available, so with apologies, let me get it in front of me. I was so absorbed in the previous topic that I did not have the document in front of me at home.

LEON SANCHEZ: Greg, we're managing with Staff to see whether we can have the document on-screen. Please bear with us for a moment.

GREG SHATAN: Just want to make sure that I will read the appropriate document. As you can imagine, we had quite a number of drafts before the final; I want to make sure that we have the right one in front of all of us. Maybe we should turn to transparency and come back to this [inaudible]. Oh, Tatiana is sending it to me – being several hours ahead of me, having had at least one cup of coffee more than myself.

Okay, I now have it here in front of me, so I will begin. We begin with a Prelude:

"With ICANN's most recent bylaw change, a Human Rights Core Value was added to ICANN's bylaws. In order for this bylaw to come into effect, a Framework of Interpretation should be 'approved for submission to the Board by the CCWG-Accountability as a consensus recommendation in Work Stream 2.' " Actually, what I will do is skip the Prelude, in the interest of time. We can come back to that, but I think what's important is to begin the discussion of the actual framework, itself. So, let me do that and go to page 2 of this document.

What we've done here is to basically take apart the bylaw into its phrases and provide interpretation for each phrase. The first of those is "within the scope of its Mission."

So: "Within the scope of its Mission. The Framework of Interpretation. "ICANN's Mission is set forth in Section 1.1 of the ICANN Bylaws (see Annex 1)" – where the appropriate section is set forth.

"The Mission establishes the boundaries of ICANN's Core Value to respect human rights. Due to the broad scope of human rights, attention to this limitation is necessary to ensure that ICANN will not step outside of its defined scope and mission. In this regard, any interpretation of the application of the Human Rights Core Value – provided in the Framework of Interpretation – must be checked against ICANN's Mission to ensure compliance with the general limitations provided in this part of the bylaw." I'll pause there. I think we can actually go on to this very next one, and then I'll pause.

"Within the scope of other Core Values. It is important to stress that the Human Rights Bylaw is a Core Value and not a Commitment. *'The*

commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities' (Bylaws, section 1.2(c)).'

In contrast, Core Values are not necessarily intended to apply consistently and comprehensively to ICANN's activities. Rather, the Core Values are subject to the following interpretative rules in the Bylaws:

'The specific way in which Core Values are applied, individually and collectively, to any given situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible. Accordingly, in any situation where one Core Value must be balanced with another, potentially competing Core Value, the result of the balancing must serve a policy developed through the bottom-up multistakeholder process, or otherwise best serve ICANN's mission' (Bylaws, section 1.2c).

The Human Rights bylaw needs to be balanced against other Core Values in the case where not all Core Values can be fully adhered to simultaneously. Furthermore, this interpretive rule recognizes that there must be flexibility in applying the Core Values based on 'many factors' that occur in 'any given situation.' This is also made clear in the Core Values section of the Bylaws, which states that the Core Values are intended to 'guide' ICANN in its 'decisions and actions.'

The Bylaws also prominently stress that Core Values have to be 'respected' ('ICANN will act in a manner that complies with and reflects

ICANN's Commitments and respects ICANN's Core Values' as stipulated in Bylaws Section 1.2).

Finally, there is no standing hierarchy in the treatment of the different Core Values; they are guiding elements that need, as appropriate, to be taken into account. The balance must be determined on a case by case basis, on the basis of proportionality, without automatically favoring any particular Core Value. The results of a balancing-test must not cause ICANN to violate any Commitment, as Commitments are binding.

The other Core Values are set forth in Annex Two of this document." I'll pause here, and Tatiana will pick up if there are no comments, or if you want it to go through.

LEON SANCHEZ: Thank you very much, Greg. I think that the reading has been quite clear. I'm not sure if anyone has any comments on what has been read so far. And if there are no comments, then I would turn to Tatiana to continue reading the document.

TATIANA TROPINA: Thank you very much, Leon. Tatiana Tropina is speaking, for the record; and thanks so much, Greg, for kicking this off. So, I will move to the next subject of interpretation, which is the dominion of respecting. We decided to put it like this. I will start reading the interpretation:

"ICANN will respect human rights as required by applicable law (see below on applicable law). In order to do so, ICANN should avoid violating human rights and take human rights into account in developing

its policies as well as in its decision-making processes." That's all for respecting.

The next part of the bylaw is internationally recognized human rights. Our interpretation is as follows:

"There are a range of international human rights declarations and covenants that could be relevant to ICANN's Human Rights Core Value. However, none of these instruments has a direct application to ICANN, because they only create obligations for States. By committing to one or more of these international instruments, nation-states are expected to embed human rights in their national legislation.

The reference to 'internationally recognized human rights' in the bylaw should not be read in isolation; rather, it must be considered together with, and limited by, the reference 'as required by applicable law.' As a consequence, under the Human Rights Core Value, international human rights instruments are not directly applicable to ICANN beyond what is provided for in applicable law. Rather, only those human rights that are 'required by applicable law' will be relevant to ICANN.

Furthermore, depending on the jurisdiction in which ICANN operates, the law applicable to its operations may vary and thus the human rights applicable to ICANN's operations will vary as well.

Nevertheless, ICANN understands that internationally recognized human rights, including those expressed in the Universal Declaration of Human Rights, can guide its decisions and actions."

EN

Thank you very much. We can see if there are any comments, and then I can [inaudible] Greg for one part, for the part of applicable law. Thanks.

LEON SANCHEZ: Thank you very much, Tatiana.   So, are there any comments or questions on what has been read so far?

Seeing none, I will turn back to Greg. Greg?

GREG SHATAN: Thank you. For the final, or next part: "as required by applicable law."

" 'Applicable law' refers to the body of law that binds ICANN at any given time, in any given circumstance, and in any relevant jurisdiction. It consists of statutes, rules, regulations, etcetera, as well as judiciary opinions, where appropriate" – perhaps if you could mute if you are not talking, if you are coughing – "It is a dynamic concept inasmuch as laws, regulations, etcetera change over time.

Applicable law can have disparate impacts on ICANN around the globe: for example, if ICANN employs personnel in different jurisdictions, then it must observe the appropriate labor laws in those various locales. Applicable law is thus a large body of law that eludes our ability to catalogue, but it is ascertainable in the context of a specific question or issue.

This limitation requires an analysis to determine whether any human right that is proposed as a guide or limitation to ICANN's activities or

policy is 'required by applicable law.' If it is, then abiding by the Core Value should include a violation of that Human Right. If the human right is not required by applicable law, then it does not raise issues under the Core Value. However, ICANN may still give this human right consideration, even though it is under no guidance to do so, pursuant to the Core Values." I'll pause here, turn back to Tatiana for the final two parts.

TATIANA TROPINA: Thank you very much, Greg. So, two final sentences; two final interpretations. The first one is: "This 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." Our interpretation is as follows: "This sentence restates the basic concept that the Human Rights Core Value cannot create or be used to create any obligations that go beyond the limits of ICANN's Mission or applicable law."

The last part is: "This Core Value does not obligate ICANN to enforce its human rights obligations or the human rights obligations of other parties, against other parties." We interpret it as follows: "This part of the bylaw draws the clear line between 'respect' for human rights as a Core Value and any attempt to extend the Bylaw into requiring ICANN to enforce the human rights obligations of ICANN or any other party against other parties."

And then, we have also Annex 1, which cites ICANN Bylaws with regard to ICANN's mission, and I think we have Annex 2, which cites ICANN Bylaws with respect to other Core Values. Thanks.

LEON SANCHEZ: Thank you very much, Tatiana, and thanks to all who have worked so hard to get to this point on the Framework of Interpretation for the Human Rights Bylaw. If there are no comments at this point on what has been read, then – I see David McAuley's hand is up. David?

DAVID MCAULEY: Leon, thank you. It's David McAuley. I have just a clarification. Greg, as you were reading under "as required by applicable law," I think you may have dropped a word. So just in case I heard it wrong – if I'm correct, I'd just like to read that sentence again. I think you may have dropped the word "avoiding," and so this is those two sentences where is says – and I'm quoting now – "This limitation requires an analysis to determine whether any human right that it proposed as a guide or a limitation to ICANN activities or policies is 'required by applicable law.' If it is, then abiding by the Core Values should include avoiding a violation of that human right." It's possible, Greg, that you dropped the word "avoiding." I'm not sure. Thank you.

LEON SANCHEZ: Greg?

GREG SHATAN:	Thank you, David. That would be an unfortunate word to leave out. Like leaving out the word "not" in a sentence. Thank you.
LEON SANCHEZ:	Thanks, Greg. So, I believe that we have gone through these documents on the first reading, and if there are no objections at this point, I would like to conclude that the first reading of the document has been successful – and I see Kavouss's hand is up. Kavouss?
KAVOUSS ARASTEH:	Yes. [inaudible] difficulty. Sometimes it happens that because of no major modifications, we could also approve [inaudible] the second reading. Thank you.
LEON SANCHEZ:	Thank you, Kavouss. Your sound is a little bit muffled to me.
KAVOUSS ARASTEH:	Can I repeat? I said that if there is no major modification, perhaps we could proceed with the second reading and approval. [inaudible]. Thank you.
LEON SANCHEZ:	Okay. Thank you very much, Kavouss. That is a very nice suggestion, although we have been clear throughout the whole process that no decision is made in a single call, and therefore, I would advise that we respect our procedure, as we have done throughout the whole process

of the CCWG. And while I acknowledge that there are no objections and no major modifications to this document, that we hold the second reading on our next Plenary call, to speak to what we have been doing all along on the work of the CCWG. But thank you very much for this suggestion, Kavouss.

So, having no other comments, I would now turn back to my Co-Chair, Thomas, for Transparency.

THOMAS RICKERT: Thanks very much, Leon. We're now going to move to what's hopefully going to be another successful first reading.   So, let's discuss transparency.   You will remember that, during our meeting in Hyderabad, we had Michael and his colleagues discuss the first – Michael and Chris, in particular were at the top table to present the first version of the Transparency Report, which got a lot of positive feedback. However, there were a couple of points that the group asked to be revised, and two days back, Michael sent an updated version of the report to the list, and I've asked him to show the group through the structure of the report, and maybe just highlight those points that were changed. Certainly, with the document being twenty-three pages long, it is not possible to go through this document line-by-line, but even though I trust that everyone has taken a look through the document, I guess the discussion would benefit from a little introduction from Michael. So, without any further ado, I would like to hand over to Michael. Please.

MICHAEL KARANICOLAS: Hi, can you all hear me?

THOMAS RICKERT: Yes, you can be heard alright.

MICHAEL KARANICOLAS: Wonderful. So, thanks very much for that introduction. Just to recap, we had a first sort of overview – we had an initial discussion of the first draft of this a little while back, before Hyderabad, and then a very good substantive discussion in Hyderabad on the recommendations as they were, at that point. We got a lot of feedback, both in that session and on the sidelines of it from people, a lot of very useful stuff, which is great that so many people engaged in on that. So, as a result, we revised a few of the sections and are now presenting this revised version.

Just to draw your attention to some of the major changes that have been done. First off the bat, the whistleblower protection sections and the section on interactions with governments are substantially the same as they were first presented. We did change the format of the document slightly, mostly in response to there were some concerns raised about Mission treatment, about the focus of this report expanding beyond what it was originally mandated to look at. And so, in response to that, we decided to shift the categories around a little bit in order to stick more closely to the Mission as originally conceived. So instead of a broader section on proactive disclosure, there are now more focused sections on interactions with governments and on transparency of Board deliberations.

The section on interactions with governments, as I mentioned, is the same. The section on transparency of Board deliberations is all new. So I could start by drawing your attention to that, since that's obviously a major substantive addition. We got a lot of feedback about that as part of the conversation in terms of in Hyderabad, but not – including some substantive areas that wanted to be looked at – and so, we tried to process that into concrete recommendations, as well as a discussion on how transparency should be understood in terms of the Board deliberations. Essentially looking at the structure, the main recommendation concerned the ability of Board members to exclude information from the recorded and published minutes without any sort of process or oversight, or even a need to ground it to a legitimate [inaudible]. It's almost a discretionary decision. So, there's a recommendation in there that says that the DIDP – sorry, that "where material is removed from the minutes of Board meetings, it should only be removed where it would be subject to a DIDP exception." So basically, we want to make sure that decisions to remove information from Board minutes are grounded to those exceptions in the DIDP, which should be a comprehensive list of reasons for non-disclosure. First of all, we want to find something substantive to describe those decisions in, and second of all, we wanted to make sure that the decision to remove minutes from the Board meetings could be subject to an IRP appeal.

I also mentioned – sorry, right. There is another recommendation, which is that where material is removed from the minutes of Board meetings, the default should be to allow for its release after a particular period of time. This is something that you see in most progressive

access-to-information systems, is that rather than just blanketly saying that "This material is not available," you build in an exception to say that, "Alright, it would be harmful to particular interests of the organization to release it now, but we're going to include a provision that says this is going to be released in a year, in five years, in ten years, whenever the harm from that disclosure will have dissipated." So maybe it's a question of delaying the release of information as vastly preferable to refusing the release of information.

The final recommendation on transparency of Board deliberations is to clarify the DIDP exception for deliberative processes, which is to say that they shouldn't apply to factual information, technical reports, or reports on the performance or effectiveness of a particular body or strategy, as well as any guidelines or reasons for a decision which has already been taken, or where the material has already been disclosed to a third party. And that's basically drawn from the way that access-to-information interpretations or parallel exceptions are interpreted in jurisdictions that have strong rules on this stuff, like India and the U.S.

There is a fair amount of background discussion that in the section itself, which I'm not going to read out but I would advise you guys to check out and engage with, particularly because there's a lot of interesting discussion there justifying why that position is appropriate.

In terms of the changes to the DIDP recommendations, again, it is a twenty-two-page report, but if you want to find the meat of what has changed or what we're really saying, the recommendations are only two or three pages, so I think fairly easy to engage with. There's a procedural edition, namely – basically, just in order to make the system

work more effectively, we include a mention of the need to centralize processing of responses to access-to-information requests that came directly out of the discussion in Hyderabad, where people expressed some confusion about how the processes are being handled, and so it would be good for ICANN to have either one Staff member or a team of Staff members whose defined role is to respond to DIDP requests, as opposed to handling them on an ad hoc basis, and that that information should be released publicly, so that people have an understanding of what they're going to be dealing with.

We recommended – sorry, just one second – an additional recommendation is also for to turn towards severability rather than refusal. What that means is that basically, where a particular document is requested, and there are a couple of sentences within that document that make it fall foul of the exceptions to disclosure, rather than refusing disclosure, the default position should be to black out those sentences, redact those sentences, and release the rest of the document. And this is again, within better practice jurisdictions around the world, and I assume wouldn't be particularly controversial.

Again, stemming from the discussions in Hyderabad, we included some discussion of open contracting, and the language on that and the recommendations is currently to say that ICANN should consider adopting open contracting, whereby all contracts over $5,000 are automatically disclosed, and non-disclosure contracts are limited in their application to the limited exceptions founded in the DIDP. Now, that's something that would not apply retroactively, because once non-disclosure agreements have been signed I think it's fair to expect ICANN to adhere to them. But that basically trying to push towards open

contracting, and it was mentioned in the list that this might interact with some of the other processes around procurement that are currently ongoing, so we're open to those discussions. This is less of a hard-and-fast – the language on this recommendation is a little bit looser for that reason, because it does interact with those other processes.

There is also an exception for narrowing the scope of attorney-client privilege, as interpreted by ICANN. That's something that came up – it will come up a lot in commentary and feedback that we've got back, which is concern about the overclassification and a lack of understanding about the role of ICANN Legal. But I actually raised this in ICANN Legal's session in Hyderabad, and they mentioned that they would be open to it, so I included a recommendation that says, "The DIDP exception for attorney-client privilege should be narrowed, so information will only be withheld if its disclosure would be harmful to an ongoing or contemplated lawsuit or negotiation and explicit enclosure of policymaking advice received from the lawyers." Now, again, this is in line with what some states have been moving towards; we'll see whether ICANN finds that acceptable. It is worth noting that attorney-client privilege is always waived at the discretion of the client, in this case, the client being ICANN. ICANN has the discretion to release any information subject to attorney-client privilege. It's just a question of whether they would be okay with narrowing it. But I wanted to include that, just because it had been raised previously, and to see what the reaction would be, and hopefully it will be amenable to it, because it's something that a lot of people have raised concerns about.

Finally, I think that those are the main changes that have been made. Nothing else is jumping out at me. I will also mention that we got a little bit of feedback on the list yesterday from Christopher Wilkinson, who mentioned a couple of issues. I don't think he's on the call today, but certainly, we've received those issues and are processing them. He was that one who raised about the procurement policy. I can clarify, though, now, that when I talk about ICANN in terms of the scope of the policy, at least my under – we haven't really had a broad conversation about who exactly this applies to and where ICANN begins and ends. My personal understanding of it had been that we were only looking at Staff and the Board, but that's certainly a conversation that needs to be had. I – again – personally don't see this necessarily applying all the way out to the Empowered Community, because again, it raises questions in my mind about where does this end, then? For me, as a Rapporteur, does this mean that my personal computer, which I've been doing this work on, is subject to these requests? That seems a bit of a stretch, because I'm not really Staff; but I'd be open to discussion on that. Finally, he mentioned a question about the cost of implementation, which I'm not necessarily sure that's our position as a Working Group to start discussing budget. I don't think that the recommendations that we're making here are particularly expensive or costly to implement, but ultimately, that's something that I think would be beyond our skill set and mandate to be looking at. But again, open to discussion on that.

So, that's [inaudible] on the changes that have been made. I'm trying to be as brief as possible. I think it would be really helpful to open it up to

some discussion now and to see what people's thoughts are on the updated draft.

THOMAS RICKERT: Thanks very much, Michael, and that exactly is the idea. There is a queue forming, and just before we delve into the questions and answers, we have published on the agenda that this is the first reading of the report. As you know, we're usually doing two readings, and I think that the quality of the document is such that allows for a first reading, despite the questions that Christopher Wilkinson has asked on the list, and maybe more questions that more people from this group will ask. So, in terms of process, my suggestion would be that, unless something really severe, let's say, turns up, that begs the revision of the entire document, which I don't anticipate, we should maybe proceed with the first reading, work on the questions that were posed and that are going to be posed between today and the second reading. We're going to have a second, potentially slightly revised version of the text document that can then be put out in the second reading. So, that's just in terms of process and how we envisage to conduct this. Let's now move to Kavouss, who is the first in line.

KAVOUSS ARASTEH: Yes, thanks. I have just one clarification to seek, relating to removing materials or text from the Board minutes, or minutes of the Board. I need this clarification that usually, the minutes, when they are transcripted, would be subject to review by the Board [inaudible] what they have said they [inaudible] agree with that. Are you talking before

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approval by the Board removing something, or after approval of the Board? However, the Board is free to remove anything when they approve the final draft. So we should give this clarity to this possibility, then, because sometimes [inaudible] say something, when you read it, you see that it may not be correct, and you have to correct that, so this [inaudible] clarification. Thank you.

THOMAS RICKERT: Thanks very much, Kavouss. Greg is next.

GREG SHATAN: Thanks. Greg Shatan, for the record. As much as I'm an advocate for transparency, I am concerned about the idea and possible unintended consequences of a prospective waiver of attorney-client privilege, at least in certain circumstances. I'm not even sure whether the waiver can be done quite so neatly. I think that this may require further investigation. Essentially, what's being proposed is, rather than a case-by-case decision to waive under all but certain circumstances, it seems to be phrased – and I may have heard this incorrectly – as a blanket prospective waiver in certain circumstances that are narrower than those that are afforded under the applicable laws and regulations. Thank you.

THOMAS RICKERT: Thanks very much, Greg. Just for those who might wonder why I did not move straight back to Michael, let's collect the comments and I guess that your comments as well as the questions on list will need to be

taken into account by Michael, Chris, and the whole team, subsequently potentially leading to an updated version of the document. So let's move to David now.

DAVID MCAULEY: Thomas, thank you. It's David McAuley, for the transcript. And you just got to the point that I was going to ask. If I'm not mistaken from Michael, this draft has not yet been discussed by the Transparency Subgroup – at least, I don't believe it has – and to be frank, I haven't read it yet. I thought I was prepared to read it before our meeting on Friday, but I haven't read it yet. And so, I was just concerned with us at the Plenary level going through a first reading when the Subgroup has not yet – if I'm correct – has not yet addressed this draft. A good example of something we could raise is this question that you, Michael, and Steve DelBianco have noted in chat, that is about whether an IRP is an appropriate level of challenging a redaction issue. It's a process question. I may be mistaken, but I don't believe that the subteam has addressed this draft.

THOMAS RICKERT: Thanks very much, David. I think that the subteam certainly needs to take a look at the document and comment on it. Though I have to confess, I thought that this version of the document had been looked at by the subteam, so let's try to get more comment on this. I had started this conversation by saying that I think we can proceed to the first reading and do necessary revisions between the first and the second reading. Now that you put this point out, David, let's hear views

whether we can stick to that idea in terms of process, or whether you as a group wish to defer the first reading until such time when the subteam has been able to fully digest and review.

So, I don't see any hands up interestingly. Is there anyone who wants to speak to this point?

CHERYL LANGDON-ORR: Thomas, Cheryl here.

THOMAS RICKERT: Cheryl, please.

CHERYL LANGDON-ORR: I did put in chat – and for some reason the Adobe's gone flaky and my raised hand isn't being raised – I think it's far too soon for it to be a first reading here. Yes, it is a fulsome and well-structured document, but pre-Hyderabad, we had, as a subteam, not gone through the minutiae and the details that we needed to, and with these additional changes post-Hyderabad – which are good and probably will be easy to discuss and make minor adjustments, if need be – but it has to go to the subgroup. Otherwise, I don't believe it could come to the Plenary as a first reading just yet. Soon, but not yet.

THOMAS RICKERT: Thanks very much, Cheryl. I see Chris's hand is up. Chris, I'm not sure how you and Michael want to split this, but a couple of comments and

concerns have been voiced in this discussion by Kavouss and Greg, so in your intervention you might also wish to respond to those. Please, Chris.

CHRISTOPHER WILSON: Thanks, Thomas. I'll speak simply to the process questions, and I'll let Michael speak to those other questions that were raised. Just real quick, I agree that the subgroup hasn't had a lot of time to pore over the revised draft. Michael circulated it to the subgroup on Friday. Obviously, some of us on the subgroup, myself included, were at the IGF or were en route from IGF that day, and obviously here we are, it's Wednesday, only a few days beyond that. The expectation was not to cut out the subgroup from the discussion of this revised draft. I think that for timing reasons, we had the Plenary scheduled today, we have the subgroup called scheduled for tomorrow, I believe, and expect – if not tomorrow, then Friday, this week – and then we'll have further discussion. I think, Thomas, your point that followed that, obviously, unless there was a major substantive concern, that it may make sense to proceed with the first reading, but obviously they're not beholden to that if we are going to meet again [inaudible] that's fine. But I just wanted to make sure that folks were aware that we were not trying to cut out the subgroup in any way, shape, or form; it's just that the timing jived this way. So we'll look forward to further subgroup consideration via the list and also on our call this week. I just wanted to make sure that folks were aware of that. That's it for me. Thank you.

THOMAS RICKERT: Thanks very much, Chris, and you mentioned the right word now – "timing" – and since we only have two minutes left on this call, I would suggest that we do not call this for the first reading, but that we actually do two things. One is that the subteam discusses this paper during its upcoming call, that we hopefully get a consolidated version from the subteam on the next Plenary. And secondly, we will invite colleagues of the CCWG Plenary to take a look at this very document and raise their questions and concerns and comments on the list so that you and your team can hopefully take those into account when preparing an update to this document. And that would specifically include the questions, or responses, or comments on the questions raised by Christopher Wilkinson, Kavouss, whose question remains unanswered for today. But you'll get back to that in writing and also the point made by Greg on the client-attorney privilege. So, with that, I would like to thank you for preparing this document. We will bring it up during the next Plenary call again. And now, I'd like to hand over to Mathieu for the remaining part of the agenda. Thank you.

MATHIEU WEILL: Thank you, Thomas. This is going to be simple and short. Are there any other business? Kavouss.

KAVOUSS ARASTEH: Yes. In fact, this is not other business, here. As you have mentioned during the chat, [inaudible] many people [inaudible] Co-Chairs [inaudible] both of you or three of you, expresses our sincere appreciation to you for the tremendous amount of work you have done,

for the hard work [inaudible] for patience, and for democracy, listening to everybody, and [inaudible] other Co-Chairs to be as kind as [inaudible]. We never got [inaudible] totally [inaudible] Co-Chair and [inaudible] to have [inaudible]. This was very, very difficult, so perhaps you may express your thanks to be formally recorded in this session. Thank you.

MATHIEU WEILL: Thank you very much, Kavouss. And indeed, I think this appreciation for Niels as the Rapporteur as well as the Drafting Team has been put on the record already in the notes, and that's well-deserved. And indeed, it's only a start, since the work is also continuing on other aspects, so I'm looking forward to the next steps.

So, having no other business, and since we've reached the top of the hour, it's going to be time to close this meeting. We've had very substantive discussion. It demonstrates that several subgroups – actually, almost all the subgroups – are making great progress, and I'm looking forward to the first meetings we will have in 2017. It will be very interesting, and I'm looking forward to continuing this effort with all of you. And for all of you who are taking a break for the end of year, enjoy the break, come back refreshed, and we are going to have exciting new adventures in 2017. Thank you, everyone, and the meeting is now adjourned. We may stop the recording. Thank you.

[END OF TRANSCRIPTION]