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GREG SHATAN: Hi, this is Greg Shatan, and welcome to jurisdiction subgroup meeting for the CCWG accountability work stream two. This is meeting number 19, and in spite of what it says there, it's January 30th, 2017. Apologies for the typo. At least I know what day it is now, even if I didn't when I typed in the agenda.

First, we would like to see if there is anybody who is on audio only.

Hearing none, I see we have one phone number in the participant's list, and that is identified as Barbara Wanner. So we're good there. Any changes to SOI's?

Everyone's [inaudible] in terms of their interest. So, why don't we move into the first agenda item? We talked about timing of the questionnaire on the last two calls, and essentially it kind of came to a somewhat different conclusion on the last call than the preliminary conclusion on the first call. And there were concerns raised by those who were not on the second call, that perhaps their interest and views were not adequately taken into account, especially in terms of desire to get comments or rather, input, experiences from outside the usual ICANN circle.

So, on the last call, the conclusion was that we would have the questionnaire released around February 8th or 9th, and then closed that period on March 24th, which is about a week or so after the end of the

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ICANN 58. And on the previous call, we were looking at dates somewhat later than that, but the March 24th date was chosen was the thought that we could extend it an additional two weeks, if that appeared to be warranted.

Concern that was expressed on the list, was that there be a desire, particularly for members of the GAC to discuss the questionnaire and then bring it back to their stakeholders afterwards, and GAC tends to do more of its work at the ICANN meetings, and therefore, a date that begins in February 9th, doesn't necessarily achieve a goal of broad dissemination, if the cut-off date comes soon after the ICANN meeting.

So, my tentative thinking, is to basically tack the two week potential extension on, and make it an actual extension, so to take it from the 24th of March, two weeks out, which would make it the 7th of April. That way, and I think we would want to make the point that it's non-extendable, at that point, because it would have been opened for a long time.

I think we would also want to make the point that regardless of the closing date, we would like people to respond as soon as possible, and we would consider inputs as they're received. We'll consider them all equally, but we can begin to consider them during the comment period. I'm hopeful that might meet the concerns of everybody. I know that some of those who raised the issue on that call, or after the last call, are not on this call either, but nonetheless, I don't want that to be a hindrance to having their viewpoints considered.

So, I will take a queue and any thoughts on those [inaudible].

Any thoughts? Loved them? Hate them? Don't care? I'm taking primarily don't care as the answer, and since some people do care, I'd like to take that into account. Sometimes I am tempted to run this by the Socratic method and just call on people, as in, tell us what we're thinking about, but that would be, that's a different model for a different place and time.

In any case, I see, not don't care but seems okay. So, reasonably enough okay, no reason to speak, but nobody is in any other direction. Bernie, your hand is up.

BERNIE TURCOTTE:

Since we don't have our friendly GAC representatives here, I feel that it's my duty that I'm certain Kavouss would remind that he has, and have been supported by some of his GAC colleagues, or 30 days after ICANN 58. So, I just wanted to make sure that, given that he's not here, maybe for health reasons or whatever, that this got mentioned.

GREG SHATAN:

Thank you Bernie for reminding us of that. That is true. A full 30 days afterwards would take us out all the way, essentially, to let's see if my math is right here.

Basically April 17th as opposed to April 7th. April 7th is still roughly three weeks after, 21 days after the end of the period. Some other GAC members were initially suggesting two. So it's keen to me that three weeks is perhaps something that, well, it's not exactly what anybody has asked for, it's what, it seems reasonable.

On the other hand, if there is anybody who thinks we should go to the full, all the way to April 17th rather than April 7th, which would completely satisfy [inaudible] request, so it will result in quite a long time, be interested to know. Does anybody object to having it open all the way until April 17th?

It's non-extendable, encouraging people [inaudible] early in the proceeding, nonetheless. Avri.

AVRI DORIA:

I put my hand down when you changed the question. I was going to argue for the full April 17th. It's better to give the time than to argue about how much time we're going to give.

GREG SHATAN:

Thank you Avri. I guess we were thinking along the same lines as I changed the question. So, I think that, in spite of... Certain desires to keep things moving, I think we will have plenty of work without the outside inputs, and I'm hopeful that we will get outside inputs earlier in the period.

And we need to write a little, I need to write, and I'll circulate quickly around, you know, a quick two or three sentence kind of procedural introduction, as opposed to the preamble, that will just indicate this, and that would be translated along with everything else.

So, I wanted to get that hashed out. So, I think in the interest of giving full-time on this, and taking interest fully into account, I think we should extend to April 17th, non-extendable. And the encouragement to go

earlier. I see a question in the chat, where will the questionnaire be posted?

The questionnaire will be posted, or rather the introduction to the questionnaire, will be posted on the public comment page for ICANN, where all of the usual public comments show up. And then, you know, that will link to a page, while it would not look like [inaudible] a public comment page, it would still, you know, be accessible from the public comment, overall listing.

And then, you know, that further can be publicized anyway that any particular organization wants to, and it would appear in various blasts that ICANN puts out, you know, the daily ICANN round-up and things like that.

So, that's that. Anything else on the questionnaire?

A quick work plan note from Matthieu. Mid-April is two months away from Johannesburg. Might be difficult to be in a position to have a first reading by then. Well, I think that what we need to do is to do our work around the outside input. We don't know how many we'll get, how useful we'll get. And, you know, continue to move forward.

You know, putting those strictly as an additional input.

Any other thoughts on that?

[CROSSTALK] microphone is...

I think there is, yeah. We need to look at the effect on the timeline. I think we'll need to manage the rest of our work so that we are, you

know, moving along even as other things go forward, because you know, we miss Johannesburg, we're kind of all the way to Abu Dhabi, and that is, takes us way off our hoped for plan, that you know, obviously, is not a deadline, but we should keep ourselves [inaudible].

Any further comments on this point before we move to the hypothetical?

Seeing none, can we put the hypothetical up on the screen? I think the PDF of the PowerPoint is probably the most effective version to post.

BERNIE TURCOTTE: Greg, before we start the next point?

GREG SHATAN: Yes, Bernie.

BERNIE TURCOTTE: Just for clarity in the notes. So, we're settled. It's closing on April 17th, and there will be no extensions, and there have been no objections to this. Is that where we're at?

GREG SHATAN: That is correct.

BERNIE TURCOTTE: Okay. It will be recorded as such, thank you.

GREG SHATAN:

So, this hypothetical is basically drawn from the first item in our influence of existing jurisdiction document in section C, where we're supposed to be raising issues that, or influences, that come from ICANN's governing law, choice of law or venue.

And that, I think, is in a sense, the heart of our work, but we have not spent as much time on it as I would have liked, or any of us would have liked. So, if we could just go to a second slide please.

There we are.

So, I circulated this on Friday, I hoped that some might comment on it in advance, but did not, but that's, of course, we had a weekend in between. So this is, I'll just read the hypothetical out, it's not very long. A plaintiff initiates litigation, challenging ICANN's actions or inaction, involving actual operation of its policy, like delegation of a gTLD and/or acceptance of certain terms of registry operation, on the basis that plaintiff or a class including plaintiff, would be injured and that ICANN's actions or inactions are in violation of law.

The court finds that ICANN's actions or inaction violates the law, and issues an order requiring ICANN to change its actions. So, the question is, now what are the influences of ICANN's existing jurisdiction for governing law and venue. The actual operation of ICANN's policies, ICANN's accountability mechanisms, and on the resolution of the dispute.

If there are no influences, or the influences are not negative, you know, then essentially we don't have a jurisdictional problem arising from this. There is no need for any, to consider any changes or remedies of any sort. And if we do have issues, or gaps, or negative influences, or however you want to look at it, then we may have to consider whether, in fact, there might need to be any way to resolve those, or remedy those issues.

So, in order to just get the conversation started, I prepared some strawman answers. These are not final answers. These are not even necessarily my answers. They should not limit discussion, but instead, should start discussion. To a greater extent, these are, or to a great extent, these are listed from the influence of existing jurisdiction document.

So, if we could go to the next slide, hopefully you can keep this hypothetical in mind. And so, here are some potential answers to the question of what is the influence of governing law and venue on the actual operation of ICANN's policy.

I don't know if anybody thinks these are right, wrong, should be phrased differently, has any new ones other than these, for this particular point, the operation of policies. I would love some feedback on these. We've had some time to consider them now, I think they're, as I say, from the document.

[Inaudible]. David McAuley.

DAVID MCAULEY:

Greg, hi. David McAuley for the transcript. And I'm trying to come up with them. I guess one of the difficulties I'm encountering, is that in the hypothetical the plaintiff initiates litigation, etc. It's not specified what went wrong. Was it some esoteric action that only applies to this gTLD? Or is it, does it have to do with an expert panel decision that was arguably [inaudible]?

So, I think that may be, I've been thinking about this ever since I read it, and hard time coming up with an answer. I do think that you're right, in the strawman, that it could be a positive influence, you know. I think that it might be nice to indicate that there could be appeals and what that might do to the process. But I'm just, I guess I'm struggling because there are so many, there are so many potential details to litigation, and a lot of which will make it very, very esoteric and unique in fact to the parties at issue, that there may not be a message back to ICANN and blew this one particular bad situation.

I don't know if this helps. That's part of the struggling I'm having. Thank you.

GREG SHATAN:

Thanks David. I think that's a helpful comment, that essentially the hypothetical is too vague or lacks sufficient fact to go in too many different directions. We might not need to try and pin it down, or come up with, you know, one specific hypothetical, as opposed to the idea that somebody sued ICANN for some reason.

That has to do with some exercises, some policy or exercise of its inaction that was dictated by policy or perhaps was not properly

dictated by policy. That's a very broad generalization. [Inaudible] perhaps the discussion doesn't need a hypothetical, maybe it's more general.

I think, and you'll see that we do have some bullet points here, that it is possible for something as generic as this, to talk generically about what the influences might be. In some cases, the influences might be positive or negative depending upon the actual facts, both what the complaint was, and whether it's something esoteric, or something, you know, a clear violation of law, and also on what the court did.

If the court, in this hypothetical, we do have the court ruling against ICANN. So, Avri asks, does the nationality of the plaintiff feed in any complexity. I think it may in terms of, when we get to the number of, to see which is the resolution of disputes.

Other than that, I'm not sure that the nationality of the plaintiff makes a difference in the scenario, but obviously willing to, we should have other viewpoints on that.

Okay, this says, I would think the plaintiff's nationality is not that important, rather the court is. Obviously, it was a genuine question, not leading [inaudible], definitely I take it as such. I think one might say that a national of a, if the plaintiff is a national of another country, it's conceivable they might have difficulty commencing litigation, or they might feel that they shouldn't need to do it in a court where ICANN can be sued.

But that, of course, is just the way things generally run, and of course, ICANN potentially can be litigated against in courts other than those of

California, given its presence in a number of places around the world. So, I think that it's not so much of an issue of the nationality so much as it is an issue of, generally whether one wants to be found in a court, other than one's own home court, so to speak.

So typically the defendant has to be filed in the court that you have available to it, plaintiffs, of course, can be very creative in trying to hail a defendant into a court of the plaintiff's choice. But that's kind of getting into subtleties. I tried at the next level. This is, the plaintiff at least assumes a US court, and a plaintiff of unknown origin suing ICANN in the US courts.

So, why don't we take a stroll through these suggested influences that came out of the influences document, so much of which were attributed to me, [inaudible] would like to add to the list if we can. First, the influence of this, in this type of hypothetical, would be a positive influence, as ICANN would be aware that any actions that violate such policies can be challenged.

Any comments on that point? Valid, invalid? Misses the point, is good. I think it's good. [Inaudible] one voice and a neutral voice. Secondly, moving on then, if the court finds for ICANN it's a positive influence, as this will increase confidence that ICANN is properly carrying out its policies, and its policies do not violate the law.

So that, in essence is, that is accountability of a sort. I mean, any, to my mind, any litigation is an essence in exercise in accountability, in this case, ICANN has been held accountable, been found to be acting appropriately under the law.

Any thoughts on that? I'm assuming these are all in the general neighborhood of good thoughts, otherwise people will be saying something. If that's an unfair assumption, please say something. Third, if the court finds for the plaintiff, this could also have a positive influence, certainly if the policy and actions of ICANN violated the law.

This shows that ICANN can be found held accountable in a court. That is an appropriate form of accountability, and if anybody is concerned that ICANN gets the hometown treatment in a US court, in a California court, that a finding for the plaintiff would potentially dispel that. So that's also a positive influence.

On the other hand, if the courts find for the plaintiff, it could also have a negative influence, if ICANN's policies or actions were within ICANN's mission, and in the public interest, and were nevertheless ruled in violation of the law. So, here we have a feeling by the, at least ICANN, or even ICANN in the community that the actions were kosher, so to speak, and yet the court ruled against them. Avri.

AVRI DORIA:

Yeah. On your third bullet, I see the point you're making, but I think the thing to say there is that this becomes a test for ICANN, at that point, in terms of how it deals with that. You know, does it just find some quick remedy, or does it fix policy...? So in other words, I think you want to indicate on that third one, and perhaps that is contained in the meaning of good, but that basically, that this does create a test for ICANN in terms of its reactions, something like that. Thanks.

GREG SHATAN:

I think that's a good point. Definitely. The court's decision is not, generally speaking, self-executing. ICANN would need to follow it, appeal it, disregard it, how it decided to follow it, all of those are potentially kind of a test for how ICANN deals with being held into account, in a court of law.

I think. Continuing, back to the fourth bullet, where we have something that seems to be, or we think is within ICANN's mission in the public interest, but has been found to be a violation of law, of the two sub-bullets here, if the case was correctly decided, in other words, if it, in fact, violated US law or the governing law that was applied, which might not be the US law.

So, in fact, ICANN is violating a law in spite its doing something within its mission, as a public interest, and that's entirely possible. This could also have a positive effect because ICANN would need to improve the policies so that it did not violate the law while still meeting its goals, so that is a positive accountability effect, and a positive effect on ICANN's policy.

Of course, if the case was wrongly decided, and that's a judgment, obviously, this could have a negative effect in that it could undermine credibility in the law, or in the venue, and would also conceivably, force ICANN to change policies that were, in fact, legal.

And Mathieu asked, who is judging incorrectly or wrongly decided? That's highly subjective. Clearly, the court thinks they got it right, and if ICANN thinks if they didn't, they would have the ability to appeal in

almost all cases. So, and appeals are not at all uncommon, or disfavored in the US court system.

So, I think it may be the case, you know, it needs to be appealed. It's like if there is a question that there is something that looks terribly wrong to everybody in the community, and somehow it just seems like something went awry in the court, hopefully that will be appealed, if that's the case.

In that case, it's in a long view of the way, [inaudible] 1434 [inaudible]. I think we should... I mean, Avri makes a good point, when you mark all the points in the hypothetical where there should be some action by the Board or ICANN, or the empowered community, and that, in a sense, is a question, it's not just what the court does. That's the question.

So, any other comments on the effect in this hypothetical of governing law and venue on the actual operations of ICANN's policy?

I'll take it that... So, I've got a couple of good comments here from folks, and let's move on to the second, to the next slide. As we're moving to the next slide, let's see, [inaudible] writes in my humble opinion, the key consideration is that ICANN is headquartered in a jurisdiction with a clear commitment to the rule of law, and if any party of standing can initiate litigation, regardless of their home jurisdiction.

Avri replies, it's sometimes easier said than done. My screen, at least, is not moving to the next slide. Could we move to the next slide that has B on it. There we are.

Other than kind of what was noted in the previous slide, it also kind of goes to accountability. This was the only thing that was said in the document as to accountability effect. That would have a positive influence on ICANN's accountability, as it is shown that the plaintiff was able to challenge ICANN's actions and seek to hold this accountable.

You know, it should be noted that the enforceability, which we spoke a lot about in the work stream one, in essence, [inaudible] with this hypothetical. We don't know who the plaintiff is. The plaintiff could be the empowered community in this particular hypothetical, but it doesn't have to be.

But generally speaking, the fact that ICANN is now, can be met in court by both the empowered community, or by any other legal entity, is a positive influence on ICANN's accountability. And the ability of ICANN to sue and be sued in court is noted as one of the existing accountability measures at the very beginning of work stream one, when they [inaudible] one of them, among those that are noted as, the headquarters location in California, the ability to have, [inaudible] mitigated.

So let's... Any further thoughts on accountability mechanisms?

Hearing none, we can move to the next slide, which is a little more complicated. In this case, we're really talking, I felt it was important to split between governing law, in other words, what law, what substantive law has been chosen for the case to be litigated under. You know, it could be US law, that's true of the vast majority of cases in the US courts, but there are times when the laws of other jurisdictions are

chosen, either in a contract, whether it was a choice of law provision, or through choice of law rules as sometimes [inaudible] conflicts of law rules that exist in a jurisdiction.

And in the influence of a jurisdiction document, there is a fairly lengthy appendix that shows how conflicts of law are typically resolved, when there is an issue about which law would be applied.

That's actually covering the law side of things. The governing law, in my mind, clearly influences the case the prism through whichever the view of whether it's legal or illegal, or violates the law or not, is used. So, a different, as between any two jurisdictions, decisions could be different, although the laws of various countries, various places, are, tend to be more similar than not, but that, of course, has 1,000 footnotes, or 1,000 exceptions to it.

So, under a different law, ICANN's policies are actions could be viewed differently. This could conceivably be different versions of proof. For instance, typical civil court action has a preponderance of the evidence burden. But there are higher burdens in certain kinds of cases and in criminal cases, it's beyond a reasonable doubt, which is the highest and most difficult burden to [inaudible].

There could be different standards of review of ICANN's actions, whether it's a clear error, or [inaudible] review. How... What difference it would give to ICANN's judgment. It would also, of course, depend on what kind of paperwork. There would be different remedies, different causes of actions. It might be available or unavailable in different jurisdictions, and even different rules on who pays.

US specifically, everyone pays their own expenses, whereas there are many jurisdictions where the loser pays. So that's not necessarily the question of governing, while as much it might be one of venue. Mathieu.

MATHIEU WEILL:

Thanks Greg. Mathieu Weill speaking. I'm reading this part as sort of pleading for consistency and predictability, and certainly that's one of the aspects that we need to look at. However, I'm a bit uncomfortable with the, sort of the underlying impression, which is that if there were other jurisdiction with different standards of review, different committees, they would not be as good as the US one.

And I think we should correct this, because I see the fact that potentially, dispute can be settled in different [inaudible] in different jurisdictions, as actually bringing ICANN closer to be accountable to the global type of rules, and I'm not in a position, or I don't think we are, to say that the way it's dealt with in the US [inaudible] and in the US jurisdiction, is any better or any worse than anywhere else.

So, if ICANN can be challenged in another jurisdiction, maybe it's for the better, for the best, in terms of accountability as well. So, I don't know exactly yet how to maybe adjust this, but I think we should be careful not to, good predictability about everything else, because in terms of accountability, it's not necessarily good. Thank you.

GREG SHATAN:

Thank you Mathieu. I think you're probably looking at the third bullet on the page, the first sentence, because I think everything else is fairly neutral, so I think that's the one statement where I think you're seizing on, and I think rightly so. Assuming US jurisdiction, to the extent that ICANN's policies and actions are generally consistent with US law, this will attempt to make the outcome more predictable.

The thinking is if ICANN is seeking to adhere to US law, and it's, and the governing law is US law, then ICANN is more likely to be found to be not in violation of it, then if the same actions are viewed through a law that has different standards. Now, it's entirely possible, given conflicts of the law, that if ICANN were sued in, say, a French court, that conflict of laws rules in French jurisprudence would also dictate the application of US law, if ICANN is taking action in US jurisdiction.

So, it's kind of a... It's not necessarily about the venue, but about the governing law, which is why this is [inaudible]. You know, so, I think the question of how many governing laws ICANN is actually accountable under or two, kind of gets back to that question of applicable law.

What laws are applicable to ICANN's actions? And where can it be found accountable? And, you know, I'm not sure if that's exactly how we fit that into our work, and I think ICANN, to an extent, potentially subject to a number of jurisdictions substantive laws, but that's an analysis that's way beyond the, off the cuff analysis.

And of course, there are laws that are in conflict with each other in some cases. You might not want ICANN and to have to abide by the law of country X is vastly different than say, US and European law

harmonized together. So, that's an outlier to that kind of general legal system that you might find, perhaps in many countries that are harmonized together under a common rules of outliers to everything, perhaps.

So I think we need to consider that. But that's, I think, kind of a next level issue. And maybe this gets back to something that Jean-Jacques Subrenat was discussing earlier in our arch of meetings, which is what he called additional jurisdiction. And you may need to get back to that. Of course, we can't change the laws of the world, or how they view the applicability of the governing law, other than the extent that those can be consented to.

So, to some extent, we have to take the law, or the laws of the world, as we find them. So, on this page, I think we've actually covered the points here. And I agree, we need to make no assumptions that US law, or US governing law, applied, wherever it is applied, is somehow the highest possible standard.

Why don't we go to the next page? Now, we're over to venue, in other words, what court are you in? Which could be a state court, a federal court in the United States, California, not California, court of a different country, and potentially different levels of court in those countries as well.

So, a different venue could choose to apply different governing law, based on what it's conflict of laws rules are. If it costs less or more than the US jurisdiction that is in the hypothetical, different burdens of proof, different remedies rules on who pays, different approaches to

transparency in terms of whether the court room is open, whether opinions are published, how quickly, etc.

Different approaches to appeals. Different evidence standards. Predictability could be higher or more, less than US predictability, to be quicker or slower than US courts, and also to take place in a different language other than that used in US courts, which is English. These are influences. They're not meant to be positive or negative.

I think I've avoided that on this page, in terms of a presumption that matches called out. These could influence the outcome of the case, the type of redress, remedies that is, and the financial burden. So, my nutshell view of what happens in the US court here, and again, it's only a bit of the beginning of the discussion.

Don't take it as gospel, anyway. Assuming a US court, US conflict of laws, rules would apply, the proceedings would be relatively costly is my view of our litigation system, versus many other countries, but that's not absolute.

Damages and equitable relief, you know, talking actions to be changed, would be both available. Each party would bear their own costs, except under exceptional circumstances. Hearing and pleadings would be public. The case would be appealable. The preponderance of evidence would apply, if it's a typical civil case. The outcome would be relatively predictable.

Some might argue, I was once told as a junior litigator before I stopped doing such things, so much, that there is always a 10% chance the judge is crazy. So, you can't ever say that there is 100% of a case be decided

the right way. So, moving relatively slowly, although there are rocket docket and other ways of moving things forward more quickly.

In any case, they take place in English, translations may be available in some places. Some might say the case is more likely to settle, since the vast majority of cases in US courts actually tend to settle, rather than getting heard all the way through to an opinion, but I'm not sure if that's more or less likely than other jurisdictions.

Any other thoughts on the effect of venue in this generic hypothetical [inaudible]?

Let's switch to the next and last piece of this, just one other factor. In a common law jurisdiction, such as the US, UK, most of the Commonwealth, former Commonwealth countries, the outcome of the case would serve as precedent in future cases, would essentially be added to the law, if you will, assuming the court accepts the case in the US, in court and not in arbitration, which has no presidential value.

And this would also involve... Not just cases involving ICANN, but cases involving entirely different parties. That's the end of kind of the thinking here. That's how the thinking of how it would influence the resolution of disputes.

Of course, everything that came before could also be seen in some ways, a discussion of how the resolutions of disputes would be influenced by the governing law on the [inaudible]. Quickly take a look at the next slide.

What can... This kind of goes to what David said, this is a very generic hypothetical. At least one phrase used in it, acceptance in certain terms of registry operation is big in and of itself. We don't know who the plaintiff is. We don't know exactly what law, what harm, what governing law is actually being applied, etc.

So, the answers to these questions could influence the specific outcome of the case, but whether it's, it comes to a different conclusions about what the influences of jurisdiction of, you know, governing law and venue are, maybe answering that is enough.

We wouldn't come to different conclusions. David.

DAVID MCAULEY:

Greg, thanks. David McAuley for the transcript. On this list, I think it might help us going forward, if we added some discrimination here. And what I would suggest, maybe this would help us a little bit, is that we segment questions in two ways. One is issues that relate to corporate governance, such as a violation of the bylaws, you know, where the Board approves something by a 51% vote, but if you went and read the bylaws, you would see that they would have had to have a 66% vote.

Those kinds of questions, corporate governance questions. And then the other category would be everything else. I recognize that people can argue that if ICANN breaches a contract, it's thereby violating its bylaws. I think that's sort of an ancillary immaterial argument in that case, it would really be a breach of contract claim.

And so, maybe that would help us, where we sort of understand the US law, California law specifically, would have a greater impact on corporate governance questions, because that's where ICANN is incorporated. And whereas for other questions on operations and things like that, it could be the US, it could be where there is an engagement office, a hub office, in arguably elsewhere. Maybe that would help. Thank you.

BERNIE TURCOTTE:

Greg, if you're speaking we're not hearing you.

GREG SHATAN:

Thanks Bernie. Forgot about the mute. And thank you David, that's very helpful. I think we should, that's a good question to ask, that there are certainly there are different types of cause actions, or actions by ICANN that would be viewed significantly different. We can add that to the list here.

So, I think, to some extent, this is a template for how we can look at other hypotheticals, and would like to find some other hypotheticals. The other hypotheticals in C, to my mind at least, that is the section E, influences of jurisdiction. Actually don't go to the issue of the influence of governing law and venue, in the settlement of dispute.

They don't actually relate to settlements or disputes. That doesn't mean they're irrelevant to our work at all, but it does mean that relevance to that document, and to that exploration, which is our actual focus.

I used the term alternative facts with a little bit of knowledge of current events, so to speak, but in this case, these are, since it's a hypothetical, all of the facts are alternative.

As opposed to reality where only one set of facts are fact. So, let's put this aside. Just briefly go back to the agenda, with the four minutes we have left. And just to touch briefly on the fact that we do now have a fairly decent sized small group, looking at the ICANN's actual litigation, present and past litigation, in trying to summarize them, showing them exceptional leadership.

Mathieu Weill was the first in the small group to submit his summary. And also helps us as the kind of guinea pig to try and improve the summary sheets, which I will do. And [inaudible] discussion that's being had among the small group about how to improve some of the answers, and to make the questions more clear, as to what the answers are.

So, if anybody wants to be a part of the small group, and isn't yet, there is still time. Mathieu, is that a new hand?

MATHIEU WEILL:

Yes, that's a new hand, Greg. Just asking, will wait for your direction in terms of any updates to the standard form, so it will lead to a discussion, a very useful discussion with Paul and [inaudible]. And would be easy to suggest once you update this, if that's agreed. Thanks.

GREG SHATAN:

Yesterday, I was out protesting and marching in Battery Park in Lower Manhattan, so I was not part of the, I was not in front of my computer.

I was too tired from protesting, so I will feedback to that. In terms of what else is on the list of our agenda here, of course, the influences of ICANN [inaudible] jurisdiction document is one people should be looking at, but I think that we need to look at existing, at other hypotheticals that go to this question of ICANN's existing jurisdiction for disputes, the governing law, and choice of law, and venue, and how those are influenced.

I'll put another call out. Kavouss, in December, collected a series of questions that have been posted to the list. I will look back at Kavouss's list, and see if any of those can be turned into hypotheticals that are germane to this category of issue.

So, we'll do that, but obviously, the more hypos we have, the better, especially until we get actual experiences rolling from our questionnaire. Last, under AOB, I'll just note that David McAuley did draft an initial request to ICANN Legal, which needs review, not only because it's out for review, I'm not saying it needs review, but it's out for review.

And I'll need to take a closer look at that, and make sure everybody else does, and we'll do that, and then any other thoughts about what information you might need from ICANN Legal, would be of help. So yes, the deadline for public comments is 17th of April, non-extendable, answer early. Don't wait for the deadline.

Kind of like filing your taxes. I think it's actually the same day as the taxes, perhaps, it's the 18th or the 17th [inaudible]... Anyway, so we will get the questionnaire transferred, now that we know how the

introductory paragraph should, or what it should take into account, we'll get the questionnaire started and out there.

We do not yet have a schedule for a next meeting of February, but we'll go over the February calendar and schedule something, trying to stick to our rotation as much as possible. But we did have two 13:00s in a row, so at some point, we may end up with two 19:00s in a row, or [inaudible] being a row [inaudible] ICANN meetings, or whatever.

I will be at the non-contracted parties [inaudible] intersessional the week of the 13th. So I have to think about how to handle that. So, I'll be in [inaudible], Avri will be there too, maybe a couple of others [inaudible] not on this call.

So with that, I thank you all. Ask you to think about this hypothetical, ask you to think about other hypotheticals, maybe ways, but if you made some changes to this hypothetical, you might have some different ideas about influences of jurisdiction. This is what we're trying to figure out, whether there are, in fact, influences and what they are, and what we need to do about it.

And so, I will draft that [inaudible]. I thank you all, and look forward to our meeting next week. And this meeting is now adjourned. Bye all.

[END OF TRANSCRIPTION]