
RECORDED VOICE: This meeting is now being recorded.

GREG SHATAN:: Good morning, good afternoon, good evening and welcome to the Jurisdiction Subgroup Meeting number 20, February 9th, 2017 at 1300 UTC. First I'll begin by asking whether there is any on audio only?

All right, doesn't appear to be anyone and I'll ask if there are any updates to statements of interest? That appears to be none as well. So let's proceed into the agenda. First, the questionnaire as you'd have seen in our email list has been translated into the ICANN languages, and as far as I can tell, it will be posted today and publicized, and we all should publicize it as well by passing on the announcements and whatever else we have to do to get it known. So I'd like to see if there are any questions about the questionnaire or comments about the questionnaire before we move on to the next item in the agenda.

[AUDIO BREAK] I'm seeing no questions. But before we move on to the next item, I will note that we will need to develop a method for dealing with the incoming responses, and we'll consult with staff and determine what the best method is for doing so. [Inaudible] in the chat, you need to leave at the bottom of the hour and noted for the record.

I see no other comments on the questionnaire, we'll move on to the next item which is the question for ICANN legal. So if I could ask staff to put up the version in the screen. I think the redline, marked up version. Obviously, you can see the changes from what was previously done.

So I just ended the question somewhat for form, if you will. Not substance and that's what's reflected here in the window here and I'd like to see if there are any comments or concerns about this question as it's drafted. If there aren't, it would be my intention to send this onto the cultures for the legal committee. I see a hand up. Parminder, please go ahead.

PARMINDER SINGH: [AUDIO BREAK] Hello, hello, Greg. Hello, everyone. Can you hear me, Greg?

GREG SHATAN: Yes, I can hear you.

PARMINDER SINGH: Okay, thank you. I did make an email comment which I will repeat here. There are two things which I would like to be on.

One is that I think there are three kinds of, you know, litigations and impact of those litigations which are different for an office of incorporation and for basis of political presence. Lots of the places where there is not even any physical presence. And I wonder whether the question can be split in a manner which asks for separate advice or comment over these three kinds.

Secondly, the question simply seems to ask whether a case can be maintained in these jurisdictions which is important to know, but I think it is a very limited inquiry because in most cases nowadays, the cases

are maintainable in the sense that even if there is some impact for a particular operation in a country generally, the courts are able to take up a case. So while this is an important thing to answer, more important is to get an advice on if there is an adverse judgment against any policy or operational action.

What kind of things ICANN would necessarily have to do or not do. What are the options for ICANN? I think that is very important part which also is different for different kinds and to repeat, maintainability of cases nowadays for ICANN which have some impact over every country for me generally, is yes for almost all. Thank you.

GREG SHATAN:

[AUDIO BREAK] Thank you, Parminder. I have a hand up from Kavouss, please go ahead.

[AUDIO BREAK] Kavouss, we don't hear you yet.

KAVOUSS ARASTEH:

Yes, I am waiting for the instructions to following up. Yes, I have a question. I do not clearly understand the purpose of this litigation questions. Are we going by this to exclude any other things? Because the issue was quite clear, if the case is [inaudible]. So what is the purpose of this question? I have some things in mind to restrict or to limit [inaudible] things or there might be other places that are not included here, so I am not sure the purpose of this. I don't know who have that business, I don't know who have [inaudible] and I don't know

the purpose of that. So I am not quite sure about the necessity of this which would not add anything to what will you report. Thank you.

GREG SHATAN:

Thank you, Kavouss. The purpose of the question was to ascertain where ICANN could be sued and where that suit would not be dismissed for lack of jurisdiction over ICANN. So we basically have four categories of jurisdiction which I think, if you put the four together cover the entire world.

So the first category are those where ICANN has sub offices or engagement offices and we assume that ICANN is subjective suit and that suit can be maintained in each of those places which are listed out individually. And then in question two, we list three different types of countries other than those first places where ICANN employees work from home, but are essentially working remotely fulltime or most-of-the-time basis so ICANN have while no permanent offices establishment, it does have essentially work being done there permanently. Then there are countries where ICANN has no ongoing physical presence but has had a formal meeting so that there hasn't been any immediate although, temporary residence. And third, countries where ICANN has none of the above criteria. So that would be everybody else or rest of the world other than those that fall into the three categories above.

So one of the questions that we do need the answer to. Parminder has proposed his view of that answer may be where ICANN can't be sued and not dismissed. Either dismissed for lack of sense of personal

jurisdiction and Parminder attached that we can set to do the impacts of a judgment as well. So that's the point of the question. I don't know to whose effect. If you have anything further on that. Please, go ahead if you do.

KAVOUSS ARASTEH:

Yes, but my question for [inaudible]. Suppose that the ICANN rejects the contract with the registrar in a particular country in respect of particular gTLD and there's some particular disruption of a given government. That particular registrar should only take [inaudible] is a complaint or [inaudible] difficulty to another court. So my question is that. You know that the purpose of gTLD that ICANN has registered to have the contract with the registrar for those gTLDs under the sanction of a particular government for -- to people arrangements. So what that registrar should do? It can take the case to the court of California or it could submit the case to another court. So that is the situation and I don't know whether the answer [inaudible], whether that issue is serious, is valid. Whether still ICANN could reject or prevent getting into the contract with the registrar in the nation with access to those gTLDs. But where this case can be submitted? Thank you.

GREG SHATAN:

Thank you, Kavouss. I think that is a case or a situation that is not the subject of this question. This question is really only asking about ICANN's personal jurisdiction in a court where ICANN has agreed to a choice of venue with another party to contract. Typically, that would be enforceable and the parties have agreed that the case can be on

brought in the venues where that is specified in the -- in the contract.
So for that all parties --

KAVOUSS ARASTEH: Okay.

GREG SHATAN: It doesn't matter whether ICANN stand be sued in Turkey. They've agreed to sue ICANN in California or in Geneva.

KAVOUSS ARASTEH: Okay. Can we take the case that I mentioned in some subsequent meetings because that is an important issue? The question is whether that [inaudible] would still exist after a transition.. If it still exists, what that registrar could do? Maybe not subject to this, but is subject to the jurisdiction. Is it possible for ICANN to take that in account in subsequent meetings? Thank you.

GREG SHATAN: We can add that question on that point of the validity of the choice of venue. Confirm that it is still -- still has to abide by the choice of law provision. And I see a couple of comments in -- question that I think is covered in the question or I'm just not sure exactly where it's covered exactly. In any case, I see a question from Jorge in the chat which is: Does ICANN in the question cover PTI?

We can certainly harbor that. Ask that question as well. PTI, my two cents is that PTI is an affiliated corporation with ICANN but not a subsidiary and at that point, you're probably getting to a piercing the corporate veil question which I think would fail. PTI does not have offices elsewhere and therefore, we would know to ask where PTI can be sued. I think that's a separate but related question and we could ask that as well. Hopefully, that responds to Jorge's question with regard to that but then again, we might as well ask ICANN rather than just taking one person's off the cuff response. Paul McGrady.

PAUL MCGRADY:

Thanks, Paul McGrady here.

So I've been looking at this. I think it's a couple of things. One, we may need to say countries or provinces/states within countries [inaudible] countries. I don't think that if I were ICANN legal and I were asked that you know, which countries are you subject to suit in -- you know, you have a head office in California and one in Washington, DC or are you subject to suit in the United States. That's a very imprecise question because they may very well take the position that they're not subject to personal jurisdiction in Iowa, right.

And so you know, we may not get a -- the main act of the answer back that we are expecting because we asked a clumsy question so I think I would make that distinction. I would also offer to them the ability to make a distinction between general jurisdiction and specific jurisdiction for example, you know maybe they're subject to jurisdiction in

Hyderabad for things that came out of that meeting, but they may very well take the position that having one meeting in Hyderabad doesn't submit them to general personal jurisdiction in India forever -- for everything, right. And so I think that we should offer them the ability to distinguish between general personal jurisdiction and specific jurisdiction.

And again, even if they have an employee, they have an employee in Iowa to take my prior example. They may take the position that they have you know, they may be subject to a specific jurisdiction for those people that are employed but not general jurisdiction, but not having enough fingerprints in Iowa to be sued and filed up for anything. Now people may disagree with that since you know, they are engaged with contractual parties who have sold domain name to everybody pretty much everywhere.

But I think that if I were ICANN legal I might you know, work to fill those distinctions in and not just sign onto a document that gets you a seat anywhere. So for what that's worth I think we should you know, makes these -- make these questions a bit more precise. Thank you.

GREG SHATAN:

Thank you, Paul. That's a good point. And we may as well anticipate what ICANN legal might come back to us with in terms of our fine questions and try to be as clarifying as possible. So we have a hand again from Parminder. Parminder, Parminder, please go ahead.

PARMINDER SINGH:

Thank you, Greg. Two points. One is about Kavouss's specific example of a possible case and Greg, I'm not sure that the way this question as I read it only refers to those cases which are the voice of law or of private law as I would say because it simply says, the accountability jurisdictions so I would like to understand in which jurisdictions ICANN may be subject to litigation as a defendant. That's all. It could be a defendant or a contract law case. It could be a defendant or an agreement of a registrant who thinks we have been wronged. It could be for a public law whereby somebody says there is an intellectual property violation or some other law. It just says wherever ICANN could be subject to litigation as a defendant and not just for private law. So I think cases like Kavouss's presence are included or should be clearly included in this but a great question as I see they are included.

Secondly, I agree with Paul that general jurisdictions and specific jurisdictions are different kind of issues. I think therefore, we should present not by the names of countries but very clearly the extent of "fingerprints" to quote Paul, in the office of incorporation is one kind of presence. Other physical presence is second kind of presence and non-presence whereby there could [inaudible] impact is a third kind and we should list out three kinds and ask the ICANN legal for their opinion. Thank you.

GREG SHATAN:

Thank you, Parminder. I'm sorry, I still don't see where Kavouss's question is answered here because we're not asking that's where they could be sued but where the suit could be maintained and the suit in say, Turkey where the choice of venue provision says that they can only

be sued in California would unless contract was dishonored would be -- would be dismissed so they could not maintain suit in that jurisdiction because of the choice of venue provision in the contract. David McAuley, you're head of that. Please go ahead.

DAVID MCAULEY:

Thanks. Excuse me. Thank you, Greg. David McAuley for the transcript. I'd like us to make two points. First of all, on the point that you were just speaking to and Parminder was speaking to about jurisdiction is suspended. I agree with Parminder and I think the question covers it and I think in the example that you just used Greg, there was a suit brought in Turkey, but the venue, the contractual venue preference was for California. I think the suit that would be brought in Turkey would be a valid suit and that the Turkish court could validly, jurisdictionally address the question and make a decision based on venue that says this case needs to be transferred, dismissed and transferred to California but it wouldn't be for lack of jurisdiction at least not in my opinion.

And I believe, here is where I part ways with Parminder and Paul. I normally agree with as Paul says, but I just screened this case. I think that we should not get specific, more granular -- I'm sorry for this voice problem. We should not get more granular I think that what it risks a diversion and I sort of go back to first principles. I am one who has frequently said we should really just focus on the jurisdiction for dispute resolution and the hypotheticals and I think this is, this is illustrating one of the potential dangers of a hypothetical that it gets us wrapped around the axle in more and more granularity and I just think that would be a mistake. I think the question is posed if we do pursue this

hypothetical and as edited very well by you Greg, I think it asks a legitimate question that I know a lawyer can answer and I don't think we need to go farther. That's my, that's my view. Thanks very much.

GREG SHATAN:

Thank you, David. So I think and thank you I think for bringing up as I noted in the chat, the distinction between lack of personal jurisdiction and lack of venue or not a proper forum due to the contract so I agree that the suit could be maintained in terms of ICANN personal jurisdiction assuming that's what comes back and that the court could then determine whether the contract was enforceable with regard to the venue provision and then make that determination which some conceivably could be a yes or no. I'm not sure why they would decide no but as long as the venue limitation in the contract was enforceable, the case would then be dismissed for lack of venue, but not for lack of personal jurisdiction. So it is a, to my mind it's a different question and maybe it's a different – rather than a different case, if you will within these types of jurisdiction.

Parminder, I'm not sure if that's an old hand?

It does appear you know him, so I'll ask Kavouss to go ahead.

KAVOUSS ARASTEH:

Yes, I can. Guys, I'm sorry I have to leave, but my question is [inaudible] that jurisdiction question? And I don't think that with Parminder's eyesight is demanded as a group whether it's in this question that we have this, that Parminder [inaudible] it is there I can believe, I can feel it,

or whether it is asked. But it is a jurisdiction and I have to have some answer to that at a later stage. So I request [inaudible] to consider that and [inaudible] a practical question that people are facing these days. Thank you.

GREG SHATAN:

Thank you. Kavouss, we will take the question under advisement and I'll circulate another draft of this answer that we can then -- that we can take a look at so I've noted the several suggestions here and some concerns about the question as well. I'll try to turn something back to the list as quickly as possible and we can resolve and make sure that we don't get wrapped around the axle.

So that we don't get wrapped around the axle on this call, I'd like to move on to the next agenda item which hypothetical number ones.

Here we have the hypothetical which we had some responses to on the list although, it's sort of petered out after the first couple of responses and you know, this is a very key part of our work and I'm hoping that everyone who has signed up to participate in this call in this sub group will participate in working on this hypothetical and the response to it. So with the hypothetical in front of us, first I'd like to see if there are any comments?

We may as well use the subparts of this. So the first question is what is the influence of governing law and venue on the actual operation of policies. We see the strawman answers that I put in originally and then one new bullet point. ICANN will have the right to appeal the case and [inaudible] reverse the lower court decision that's based on a decision

of our suggestion on the list from Philip Corwin and then the remainder of that page and onto the next is from Parminder and Parminder has retained that, so Parminder, please go ahead.

PARMINDER SINGH:

Thanks, Greg. The critical part of the hypothetical is a court fined ICANN actions or inactions violating the law and issues in order requiring ICANN to change its actions and then we have to kind of argue what happens. And here's a hypothetical directly splits into three parts because what ICANN will have to do is very different vis-à-vis whether it is issued by the jurisdiction of incorporation or the order is issued by the jurisdiction where it has the physical presence or if it is issued by a jurisdiction where there is either.

So I think there is no point having answers which go back and forth between three very different sets of necessary action which ICANN would have to do following this kind of hypothetical and therefore, I think we should split the answers into three streams and follow the requirements which ICANN will have to take up or do following this kind of an order.

Or secondly quickly, I think we need not go too much into, you know the positive influence if you find for ICANN because yes, those things are good but we are looking at problem areas and the problem area is an adverse action and the problem areas was when there is a jurisdiction of incorporation and we need to focus on those things. If they don't exist, yes good. But if they exist then what should be done?

GREG SHATAN:

Thank you, Parminder. I think you are assuming the answers to the ICANN legal will come out in a particular way. I'm not sure I agree with that assumption or with the idea that you know, it will be a limited jurisdiction. For instance, in [inaudible] or an engagement country. But there's obviously question we put forward to ICANN legal and would love to hear their answer and we will obviously get that question quickly. I'll turn to David McAuley.

DAVID MCAULEY:

Thanks, Greg. David McAuley again for the transcript. And I'm raising my hand just to add a comment as you just requested. I have not been active on the list this past week so I apologize for that but I would just like to know my concurrence with the point you made last, I think it was Tuesday or so but -- and that is that we may be missing an overarching presumption I think was the word you used. I would use the word context and um, I guess restating my concern with a hypothetical.

One of the concerns I have with hypothetical is we're sort of appearing into the future and guessing what might happen trying to forecast and I think that courts could conceivably go off the rails in the United States and any other country in the world and I think it's just difficult to forecast. The one thing that the US jurisdiction has going for it is 19 years of experience which have been satisfactory. Maybe not perfect, but it seems to me as satisfactory and so I wonder about delving further into hypotheticals and to your point, about the overarching presumption. If that's the correct word that might be missed.

I [inaudible] back to an annex 12 whether it's encouragement for us as work stream, too work on jurisdiction for dispute resolution and recognize that we're work stream, too. We're not a body that can create immunities, we're not a body that can create treaties. We have a limited role. There are appropriate questions for other forums, I just think our form has a focus that we may be missing and that's my comment. Thank you.

GREG SHATAN:

Thank you, David. Before I [inaudible] Paul McGrady, I would say that I hope that our review of ICANN's actual litigation's which is underway by a small group. We could always use more people. Will you know, reveal that to us whether that has been satisfactory. As [inaudible – 00:33:23] noticed, it's early to come to that conclusion but I think that once we summarize the cases and see if there are any thing, any unsatisfactory or bizarre result that will -- you know, can kind of answer that question.

We may also want to have ICANN legal not at this time whether there are any cases they think that interfered with ICANN improper and I also think that we have a very good track record in court. So when we say the answer is yes that everything will be quite satisfactory and I think we do need to work in the kind of the overarching presumption. And I think that even if our mandate is not as narrow as only looking at this suit resolution. The fact that we've been asked to focus on litigation to my mind, it indicates an overarching assumption that ICANN will be subject to litigation and subject to laws, broadly speaking and not immune from them. That's something that can be delved into further.

But I think the idea that we would decide that ICANN can't be sued or can only be sued under very limited circumstances to be counterintuitive to me. But enough from me, I'll go to Paul McGrady.

PAUL MCGRADY:

Thanks. Paul McGrady for the record. I won't be as eloquent as David was and I will -- because I think he sort of hit the umbrella issue here. I'll just address the last set of bullet points if I can.

First of all, they presuppose something that may or may not be or they presuppose that ICANN as a willful governance body. Yet to see any treated that as fact. Yet to see any legislation from any country to that effect. ICANN is, like it or not, a California not-for-profit and so I don't know what that means and these bullet points presuppose that. So I think that we need to unmake those kinds of presuppositions from these bullet points if they're going to be meaningful.

And secondly, just a comment on these last few bullet points which is they're wild. I'm not sure how to describe them! If you know words like mockery. A huge presupposition that there is a clear dichotomy between the United States and its citizens versus non-US countries and its citizens in terms of legal and social norms which of course, is simply nonsense.

So if we are going to go down this jurisdiction hypothetical number one path, we want to include something along the lines of whatever this last set of bullet points is meant to do. We really need to take out a red pen and try to figure out how to make it fit with the rest. This is a multiple

choice question. This would be, I would select this one because it's the one that doesn't fit the others. Thanks.

GREG SHATAN:

Thank you, Paul. And that's a good place for you to remark that this document is now a Google Docs. In addition, it's been distributed in Word form and PDF. Nobody owns a particular answer or bullet point. If they stay in this document, they need to be the consensus response of this subgroup.

So Paul, the red pen is in your hands. The Google Docs link is in your email box and I encourage you and everybody to have at it on both with regard to the bullet points that you were referring to and with regard to additions or changes to any of the other answers as well. Nothing would please me more than to see an active and multi-stakeholder work going forward on this hypothetical. So I look forward to seeing the results with your red pen, Paul. So please go ahead.

PAUL MCGRADY:

Okay, Greg. This is Paul. Just because I was called out in your response. You know, we all do try to get into as many Google Docs as possible but with everything that's going on, there's been hundreds and hundreds of Google Docs. And I'm not sure that I want to be part of the re-authoring of this particular bullet point because I'm not sure what it adds. Essentially, if the bullet point itself presupposes that you know, ICANN is somehow above the courts and above the law and I don't think I'm terribly interested in undermining the notion that the juridical branch of various governments may apply to ICANN.

So I understand that you know, the Google Docs belong to everybody but the purpose of these phone calls, I think is to express whether or not there is consensus that whoever is drafting what got it right or even close enough to be right. I don't think that the purpose of the call is just to remind us all that there are Google Docs. So I'm sympathetic but at the same time, I'm not sure whether I want my fingerprints on this particular bullet. I think courts matter and in fact, in these days I think they matter more than ever. Thank you.

GREG SHATAN:

Paul, thank you. Very good points. You know the Google Docs remark was meant only as a footnote. Although, keep in mind that we do spend an hour on these calls and 157 hours are not on these calls. So we do need to do work in the list and on the document whether it be comments or otherwise. But I think your overall point is very well taken which is that we need these calls as best we can for dialogue regarding whether these are consensus or coming in from you know, a singular view that is not held by more than one or a few members of the subgroup.

So I think that I'd be very interested to hear whether from others on whether this is a question that or rather a response that should stay in or come out or be radically changed or turned on its head to endorse rather than dispute the idea of litigation in international courts. If that's what we do need to get to the bottom of whether this is a valid way to look at this influence from the point of view of this subgroup as a whole. Clearly it's a valid way in the view of at least one participant, but

whether anybody else shares that view or shares your view is absolutely critical for us to determine.

Right now it's sitting there because a person has suggested it and other than my one note on the side and I left it as is, because that's a rapporteur -- I try not to take the first pen to everything. First I would need to do some exercise judgment and viewpoint, I would rather other people do that first, but in the end, we all need to exercise our collective judgment and viewpoint as to whether this answer makes sense as well as any of the other ones. Start to be a bit long winded. Paul obviously said everything I just said and said it shorter and better. So Phil, please go ahead.

PHILIP CORWIN:

Yes, Greg. Thank you. Phil for the record. [inaudible] having coordinated this with Paul, I want to comment on the same sections at the bottom of page one on to page two and my view is that all of this should be struck for vastly overstating ICANN's role. ICANN is simply the technical coordinator of certain indicates and internet. Technical parameters that the policy areas regarding the internet that ICANN has no say about are much, much vaster than those in which ICANN has any direct control but more than that and aside from the bunch of assertions that I believe don't stand up to scrutiny that they -- as we've been discussing. ICANN can probably be sued not just in the US but in any number of countries and that suit be sustained. So we're not just trying to have the potential impact of US law, but of many other nations and laws and ICANN and simply these bullet points seem to assume that ICANN being susceptible to court jurisdiction and admonition and

having to change its course when it's done something that's either in violation of its own bylaws and mission statement or otherwise unlawful.

The crux of this is that ICANN being subject to court jurisdiction and court orders is in violation of human rights. It's an attack on the entire structure of ICANN as a nonprofit, private corporation rather than an internet governmental organization which was a central goal of the transition. And when you read to the end, it says changing of policies or implementation of policies about ICANN as applied to the whole and on the basis of laws of one country which could be as we've discussed. Any number of countries depending on where the litigation is brought violates the human right to democratic governance. This is all saying that ICANN being the court subject to court jurisdiction anywhere and it's not just the US. ICANN could up and move to Switzerland tomorrow and these bullet points would read any -- wouldn't read any differently because they're an attack upon ICANN being subject to judicial restraint.

So my edited suggestion is to strike it all. I think it makes -- vastly overstates ICANN's role and makes a number of assertions that are arguably incorrect and its end point is that ICANN being subject to judicial sanction is a violation of human rights which is -- I don't think this working group should associate it with itself with such an assertion. Thank you.

I've probably stirred some hang ups with those statements but I'm not going to be silent when I see language that's just so over the top.

GREG SHATAN: Thank you, Phil. Now you've done exactly what we need to do which is to engage in rigorous discussion and debate. So have Phil and Paul, I think both judgments to be struck tension in its entirety. So I'll turn to Parminder.

PARMINDER SINGH: Thank you, Greg.

First of all, I would for record state that yes, my entire arrangement with ICANN and this group comes because I think ICANN is a global governance body. I think a lot of people here in this are entirely out of that relationship or that status of ICANN. There are GAC members here and they are not interested. I feel like I am not interested to be advising a US nonprofit. That's none of our concern. If ICANN is a US nonprofit that's an anomaly not a global governing status. Between the two we should see what is the primary thing and what is a thing about which we may want to continue not want to continue but cannot be seen as a primary status of ICANN. To repeat, ICANN is a global governing body or a body with a global government function and that and sadly, underpins our arrangement here as a global community on this issue.

Secondly, I agree with Philip and with another speaker that yes, law is very important to apply on anything and courts are the ones which can decide on the application of law. But I have been making a point repeatedly that the law should be democratic. Any law does not work. [inaudible] law does not work. US would not want to be [inaudible] law. So the law which is applied has to be democratically arrived at and the US law is arrived at by the US citizens' participation and not the rest of

the world and therefore, is an anomaly to be put on a body with global governance function and that's the whole logic and idea for me of the jurisdiction question.

You can go beyond this and talk about what can be done or not be done but this premise, I would like to defend is important and lastly, about your comments Greg that the hypothetical does not specify the jurisdiction in which ICANN has the use. So I did assume that we are talking about a major problem which is if it is used in US jurisdiction then whereby ICANN will have to. It has no option other than to change its policies and to – it has options where it has physical presence by withdrawing that particular office and locating it in the neighboring country. If there is option where it does not have a physical presence.

So it is not true to say that ICANN is equally or even close to equally liable to be sued in any country which is what many people say here is not the fact. The fact is that only US can enforce ICANN's hand and that is a real problem. If no other country can enforce ICANN's hand other than possibly having ICANN move out is our job is gladly due to the next country. So the fact that the US jurisdiction is the important one and the problem is that US laws are not globally democratic.

So these are the points I have made in light of the discussion [inaudible].

GREG SHATAN:

Thank you, Parminder. I think you stated a whole lot of assumptions and opinions as if they were facts. Unfortunately, we don't have more time on the call. First, I'm concerned you're speaking for people on the call other than yourself and I would like to see if there are any GAC

members on this call who agree with Parminder's contention about their position. So if I could call out the GAC numbers on the call to put a check mark on if they agree that GAC members have no interest in advising a US nonprofit corporation. And I believe that was the contention about the GAC so please do put up a green check if you agree with that statement.

UNKNOWN SPEAKER: Greg, could you repeat the question we're being asked to apply on?

GREG SHATAN: We're asking GAC members only whether they have no interest in advising a US nonprofit corporation. That was the -- Parminder, if you want to state the question yourself, you did say that. You said those exact words but please, if you want to try to restate it go ahead.

PARMINDER SINGH: Greg, you are already anticipating that what I will do is try to restate what clearly I have not said but that's not a fact. I'm an authority on what I said and that's also in this audio which I would like you to hear after he are done.

My primary contention was that ICANN primarily is a body with a global government function and only secondarily, in US nonprofit. Our association with this process comes from its role as a global governance body not as an US nonprofit because just as a UN nonprofit, you have no interest to be advising them and I'm very sure and this was about GAC that GAC is present because we are dealing with a body with a

global government function and not just an US nonprofit. Why would GAC consider itself to advise a US nonprofit? This can be checked as per your audio and I object to the repertoire. I'm making a very practical point but this is not what I said and misrepresenting point. Thank you, Greg.

GREG SHATAN:

Thanks. I don't think that was a part of the point I was trying to restate that that what you said as you have restated it. I'll ask if there are any GAC members who wish to respond or who wish to agree with Parminder's characterization of their position as he just restated it. So if you have any remarks, please put up a hand and if you agree, out up a red -- a green check and if you don't support the statement, you will be able to see a red x as well and see whether that makes sense and whether you -- if you could respond that would be great. If there's a reason why you feel you can't respond. You know, be helpful to know as well.

Phil says he did not hear the statement. I would suggest then that once we get the transcript back that we will put that on the list and ask for comment.

Parminder, I don't believe I'm creating a controversy where one does not exist. You asserted that other people on this call had a particular view and I wanted to ask them to speak for themselves with regard to that view. That's all I was trying to do.

So in any case, going back to the point itself, I would like to see if there are other comments on this call on this last bullet point here under A,

advancing the notion that ICANN should not be subject to the courts of any country or to the laws of any nation and also, it would be helpful to know the basis of any of these statements here. And they are assertions and without doing any research, I don't see any here that I understand the basis of such as the assertion that there's a violation of human rights.

Also, as far as I know there is no law that has been cited democratically by the entire global population. So I think we're talking beyond hypothetical to almost alternative universes. So in any case, any further comments on this would be most helpful so we can decide where one might be with this point.

I see Jorge has a more nuanced point which would be good to have. The key is whether accountability works and works equally for all and jurisdictional aspects should not tip the scale unequally for the global community or for any particular part of that.

Yes, Parminder, I know you've cited the source, but again, the question says there are basis for that reading of those sources. That's the question.

It's now 8:59. So I would encourage everyone to comment in some fashion on this hypothetical and not just on this bullet point. There's a lot more here, and this is to my mind an essential part of our working method, is to look at these hypothetical and actual cases and to comment on the influences that are there.

So if there are concerns about this as a working method, I understand the concerns about hypotheticals and especially hypotheticals that are

you know, vague in terms of the variables. But I do encourage folks to comment on this and if your comments are in the Google Doc, that's great. And if they're not, if they're just in an email with a statement of position, I'll do my best as rapporteur to reflect those in the Google Doc.

So we've now reached the top of the hour. So I will unfortunately have to adjourn and ask that we stop the recording, and I'll say goodbye to all till next time.

UNKNOWN SPEAKER: Thank you, Greg!

[END OF TRANSCRIPTION]