
GREG SHATAN:

Hello. Welcome to the Jurisdiction subgroup call on April 11, 2017, 13:00 UTC. [Let me give you the] brief review of the agenda. As you can see, we will begin with the usual administration, the review of any decisions and action items from the last call, the review of our working method, and then the questions to ICANN Legal which we received our responses to yesterday. Hopefully, people had a chance to look at those.

I'm hopeful that we will have Samantha Eisner or someone from ICANN Legal on to discuss this, although I realize that [too late] that we scheduled this call on the first day of Passover and Samantha is like me, she shouldn't be on this call. But since I am chairing, I decided I would be on the call anyway, and hopefully I will not be smote down for that.

After that, an update on the questionnaire. Five minutes. We have three responses, one of which will take more time when we can. This time, people need to take more time to review it. We also need to get our evaluation team underway.

Then, update on the analysis of cases. Probably given the length of this call we'll not have time to actually discuss those, but we should acknowledge they have been done, and we'll do them next week. Any Other Business.

Any comments on the agenda, any concerns? Anything that can't wait for AOB to be identified as AOB?

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Seeing nothing, we'll move on to the administration, and I'll ask if anybody has changes to their Statements of Interest. Seeing none, I'll ask if we have anybody who is only on audio. It appears we don't have anybody who is audio only, so we're all in Adobe chat.

Someone has just joined, and that person is on the phone.

BECKY BURR:

Hi, it's Becky. Sorry, I'm just not on Adobe yet.

GREG SHATAN:

No problem. We just asked for phone number participants and there you are. Not usually a request that's honored in that way. In any case, now we have identified Becky Burr as the phone number participant, and we will move on. Review of decisions and action items from the last call.

There were no decisions to review. We did however have a discussion of working methods and the status of the subgroup. I prepared and circulated – somewhat belatedly, but again, the Jewish holiday actually started last night at sundown, and since we were hosting, that really meant it started about 24 hours earlier to have 14 people over for dinner. So I did not quite have the time I would have liked to finish this up, but it's been circulated.

That is the next item on the list, so let us put that up on the screen. Because I'm not sure if people have had a chance to review this, we'll walk through it briefly. Really try to be fact-based in this document and not get into thorny issues that need to be discussed since this is a work

plan, and not a discussion in itself of our scope. We'll be talking about this again on the Plenary tomorrow. People want to know where our group is at, and this document tells us.

First, a general approach that we have discussed a number of times before, which is that we will look for issues that are caused by ICANN's jurisdictional setup, and only when we identify an issue and the group agrees that what has been identified is in fact an issue, and it is an issue that falls within the remit of the subgroup, we will go on to look at proposed remedy.

And then when we look at – you should not be jumping around and look at remedies until an issue has been identified that requires discussion of that remedy. Otherwise, we're talking about remedies that might not ever have an issue that triggers them or potentially triggers them, and that's a waste of time.

This is perhaps something we need to do a little more assiduously, and we need to consider how the remedy would resolve the issue or if it wouldn't, and also any effects and consequences of the remedy. And most importantly, since we are in the CCWG on enhancing ICANN accountability, we need to consider how the potential remedy would enhance ICANN's accountability, from proving ICANN's accountability over the issue that has been identified. Also, whether it would have a negative effect or no effect on ICANN's accountability.

So far, we have worked on the multiple layers of jurisdiction documents which turned into somewhat of a discussion of the scope of the subgroup's work, and that was documented, still is documenting in

process. We chose to move from there to the influence of ICANN's existing jurisdiction and to [inaudible] a scope of that question that was potentially one that all could agree was in scope for the group was the influence of ICANN's existing jurisdiction relation to resolution of disputes, i.e. governing law and venue on the actual operation of ICANN's policies and accountability measures. This document has had considerable time, but again, remains a work in process.

Then, we discussed whether we could ever advise on place of incorporation. We identified that as a remedy and put it to the side. And we looked at a hypothetical, which also remains a document in process.

At this point, we switched somewhat to looking for outside inputs, and drafted a questionnaire which ultimately has been put out for responses which will end April 17th, less than a week from today, and also developed questions for ICANN Legal which were sent out, and the response was received yesterday.

We're involved in a review of the litigations that ICANN's involved in so we can learn from them. Nobody other than perhaps Tom [Jeffrey] knows everything about all of these cases, and even then probably has other things to do than remember them completely, so we do need to learn from them, initial role, inform them what they had influenced our work.

We stopped active deliberation on the influence and hypothetical document until we got our inputs from the questionnaire, legal questions and the litigation reviews, all of which are rolled into one.

Several open issues in our work. We need to define our scope better, questions answered, work to be done. The advice, “First define your mission” is one that we need to revisit. So clarifying the mandate and clarifying the gap analysis, which is part of our Annex 12 work, clarifying our deliverables and our timeline and target.

Just the last bit of this document, which is the timeline, you can kind of scroll quickly past the first page or so of which talks about what we’ve done so far and got ourselves up to April here on the last page, which looks to us completing the questionnaire and legal work as we have, reviewing and evaluating them, and continuing the review of ICANN’s litigation.

Perhaps we can finish the review of ICANN’s litigation by the end of this month. That would hopefully bring us all three major inputs closing or close to closing by the end of this month, which would allow us to move actively back to the current document that we’re working on.

We need to think about whether these are our deliverables. We need to revisit [inaudible] issue so that we do have an understanding, because some people think we’re doing too little, some people think we’re doing too much, and we really need to have an understanding of what the parameters are of our work, even if not everybody agrees with that.

So hopefully, we would have a draft for ICANN 59 in Johannesburg that could be discussed on a discussion basis in Johannesburg. And then after that, revise that and submit it to the Plenary by the end of the month close to Johannesburg, and then go to a public comment period in July, and perhaps actually have it revised deliverable by August.

That may be a bit ambitious with regard to either pre-Johannesburg, but I think we should have something for Johannesburg or post-Johannesburg depending upon resolving issues of scope. But that is a hopeful and optimistic review. Are there any comments on this revised work plan and [inaudible]? Mathieu, please go ahead.

MATHIEU WEILL: Thank you, Greg. I hope you can hear me alright.

GREG SHATAN: Absolutely.

MATHIEU WEILL: I'm speaking as a participant in this subgroup and definitely not as a co-Chair. I think I'm in very strong support of the [inaudible] you highlighted in the document, and I think it's important to have it documented and explained at the Plenary level.

There are also a number of things in this document that demonstrate the work that we've been doing was not only intense, but it's also producing valuable findings. Obviously, still left for discussions about what the recommendations can be, but I see that's a good thing.

I have two specific comments. One is a suggestion for an addition in the document, because if the document doesn't really relate on much of the work has taken place on the list. It was often going in all directions at the same time. I think it would be valuable to recognize the extent of this discussion that took place, and at some points, there were lists of

issues or specific issues that were touched upon, and I think one task we should probably have at some point is find out those types of issues that were discussed, even if we can conclude or at least relate that at this point there was no consensus that it was an issue, but I think that would be a recognition of the work that's been taking place in addition to what you are currently describing.

And in terms of when we finally release the report, it would also provide transparency about what has been also discussed and maybe did not reach the consensus level.

So, some form of summary of the key [inaudible] or extracts from some of the discussions that you placed I think would be valuable to store somewhere as a deliverable from our group, even if it is clearly labeled as, "This is non-consensus." That's my first suggestion.

The second is looking in the future. I wonder – and that was inspired by a comment – David, and I know he's right after me in the list. David in his capacity as rapporteur for the IOT Working Group, I wonder if we should really maintain a weekly meeting frequency, or if we should give more time between the meetings so that people will spend more time actually doing the heavy lifting of reading documents, editing them and so on. So, I [wonder if] we would not achieve more by meeting less frequently. And that's more of an open question for the group at this point. Those are my comments on the document, Greg.

GREG SHATAN: Thank you, Mathieu. Both of those are very good points. Let's return to the scheduling point for the end of the call, if we can, just for a first discussion. David McAuley.

DAVID MCAULEY: Thank you, Greg. I do agree with what Mathieu just said as far as I'm hoping in the IOT group we can sort of pivot to more work on-list, but Mathieu stated it well. The comment I want to make about this draft is specifically with respect to April 2017 where you say, "Subgroup revisits scope issue."

I think that's fine. I think many in this group will recognize that I'm one of those who believe we should be doing less. But in any event, if that is in fact going to be teed up as a discussion on – I would encourage you to do two things. One is to tee that up at least a week in advance, underscore what that discussion is so people can come to the meeting and we can have a chance to sort of finely discuss and decide this.

And two, to encourage people to review what's been said already and understand this is not an invitation to rehash issues that have already been hashed – if that's a word – but that it would be good to talk about this generally with a view towards making decisions in this respects. That's my two cents worth. Thanks, Greg.

GREG SHATAN: Thank you, David. Very good thoughts. From a fellow rapporteur, it shows your thoughts are working well in that regard. Steve DelBianco.

STEVE DELBIANCO:

Thank you, Greg. It's Steve DelBianco with the [VC]. Just an observer, so I'd like to make an observation and a question. I noticed in today's agenda, you're discussing the workplan prior to walking through ICANN Legal's responses. I read ICANN Legal's responses, and to my mind, it validated what 95% of you in this group have been saying for several months. So my question would be that if you had gone through the legal responses at the beginning of today's call, do you believe that should have modified the workplan given that it validated so much of what you said earlier? Do you believe that it doesn't really change the work plan given that they came back so solidly along the lines of what most of you have been saying? Thank you.

GREG SHATAN:

Thank you, Steve. My answer to that question is that I think it makes the workplan more realistic and less optimistic in terms of timing. So I'm hopefully that that will stand true looking forward to reviewing that. And I think it also validates the decision to wait for our inputs from here and the questionnaire and litigation before we go back to churning through the documents and hoping that we don't churn the documents much longer.

One quick observation is that I think there's a connection between the scope and the work on the list and the discussion about not having meetings every week, which is that in order to do that, we would need to be far more disciplined on the list.

That doesn't mean shutting down [speech] but it does mean staying on topic and recognizing that this is not a general discussion group on all

things jurisdiction. So if we're going to do work on the list, we would need to be more directed.

Calls do have the advantage of keeping our work ticking along, so it would actually be a very good thing if our list could be more disciplined. I almost wonder if we should set up a watercooler list as well for people to chat about things that aren't really part of our work.

In any case, I note Avri's comment in a [drollful] brown, and I wish you a [inaudible], Avri. "It's wonderful that rapporteurs want people to work more on the list, but will wishing make it so?"

Any to her comments on this schedule? And thank you for the helpful comments. Are there any objections to this work plan and schedule, understanding it will be modified somewhat in regard to the suggestions made so far? But we would bring this to the Plenary, circulate it very shortly, today, in advance of the Plenary.

So, are there any objections to this document? I see no objections, so we'll consider this at least as a discussion draft not objected to, and we can move it along, which we'll also do for this call. So let's go to the next item, which is the response from ICANN Legal, as Steve DelBianco mentioned.

I hope we can put that up. Thank you, Vanda. Now, I don't know if we have anyone from ICANN Legal on the call. If there is someone from ICANN Legal and they could hand up or note that's they're here on the chat, that would be helpful.

It appears from a lack of response that we do not have a member of ICANN Legal on the call this week. Let us still take a few minutes to review the answer from ICANN legal. Clearly, it's several pages long and we don't want to walk through it in great detail, but a high-level review I think is in order.

Our first question was whether ICANN is subject to the countries where it has physical presence. The answer was that there are many places where ICANN could appropriately be subject to suit, and ICANN has submitted to [jurisdiction of court] in some of the above jurisdictions.

Notably, no jurisdiction where ICANN has been provided with immunity from the courts or from litigation, and as a result, there's possibility litigation could be initiated against ICANN and maintained in any of the above referenced location, or any other location.

It notes that whether a specific court is an appropriate place to retain a suit is a question that's based on the facts and circumstances of each case, the conduct, the ties to the jurisdiction and the propriety – or confidence, as it's put in legal terms – of a court to hear any individual case.

Those are discussed questions that the court decides typically, so no bright line where ICANN can or cannot be sued, and not limited just to where ICANN has a hub or engagement office.

Also note, ICANN has never agreed to waive its ability to bring any and all appropriate defenses to litigation, including a defense of lack of jurisdiction, as we saw in the pool.com case which settled before there was any decision as to whether jurisdiction was proper in that case.

So, that's the first question. Second was the question of whether litigation could be maintained elsewhere besides places of physical presence. So, U.S. states and jurisdictions other than California and D.C. where ICANN does have a physical presence.

Countries of jurisdictions other than the present jurisdictions where ICANN has employees who are residing and working and remotely, so there is some ICANN activity going on in a way.

France is given as an example. We have staff who are permanently located in France and working remotely. In countries where ICANN has no physical presence on an ongoing basis but has held an ICANN meeting or GDD summit, which are significant multi-stakeholder operations.

Also, those where contracted parties are incorporated, headquartered and located. And lastly, the none of the above category, the answer here refers to the prior answer. Note that ICANN can be subject to jurisdiction in multiple places appropriately, and that in each case, although the court can hear the case, needs to be reviewed in light of the claims how the client's [claims] are tied to the jurisdiction, ICANN's ties to that jurisdiction, etc. Standard jurisdictional analysis.

ICANN cannot presume to know what any court would do if faced with these claims. ICANN would assert any and all appropriate defenses, as noted including jurisdiction challenges, and there is no bright line rule as to whether any litigation cannot or can be successfully maintained against ICANN in any location. That's by virtue of contacts or a lack of contacts.

[inaudible] know that in this question, which are the physical presence of the contact. [inaudible] these two questions, one and two are related, as noted. Before we move on, are there any questions about these or other remarks about these? Noting Steve's remark that this has been consistent with much of what has been discussed by many of us. Anybody find any of this remarkable or skeptic or anything like that at this point?

Seeing none, I'll move on to question three. If there was a judgment against ICANN, would the impact on ICANN differ based on the category of jurisdiction above? The type of physical presence, basically. Would ICANN be able to avoid the effects of a judgment in any jurisdiction? E.g., by ending its physical presence in that jurisdiction.

The answer is that there is a wealth of [inaudible] prudence on the ability to enforce judgments in jurisdictions other than those where the judgment was initially rendered. If an appropriate judgment cannot be appropriately perfected against ICANN in the appropriate jurisdiction, it'll be difficult for ICANN to avoid the effects of that judgment.

It is worth noting that litigation in the U.S. tends to look at the state of the parties at the time of the initiation of the suit, not where they are during the time of enforcement. For example, ICANN could not avoid having a judgment entered against it if appropriate for conduct brought in a suit in 2015 just by ending its presence in the jurisdiction in 2017.

The question can also be viewed more broadly about the impact [within] business in a particular place. ICANN's business is currently

based on significant contacts and maintenance of business ties within the U.S.

If ICANN were to move its headquarters outside of the U.S., there are still likely a significant number of contacts that ICANN [may continue] such that ICANN would still be subject to following the laws required to do business or conduct business in the U.S., including observed U.S.-imposed sanctions.

Any questions on this answer, comments or the like? Seeing none, let me just check the chat here. None in the chat as well.

Question four: how would concepts of general jurisdiction versus specific jurisdiction apply to any of the above questions?

Concept of general jurisdiction where ICANN is generally held to suit based on its overall contacts with a jurisdiction, and specific jurisdiction where ICANN is held to suit based on actions, targeted or [tied] to a specific area are essential to the answers above. They're part of the facts and circumstances that any court must consider when identifying if a court has jurisdiction over the parties to the litigation.

Any questions on this point? I understand that some of this may be legalese to some extent, but I think it's fairly clear. It's a facts and circumstances answer, essentially.

Seeing no comments on this one, move on to the next. How do issues of proper venue or the lack thereof impact the answers to the above questions?

As with question four we just read, the issue of venue, whether the court is the appropriate legal forum for the dispute is also essential to any court's decision to proceed with a suit that has been filed before it. Any comments on this? Seeing none, I'll move on.

Question six, how would questions one and two be answered for PTI rather than ICANN? As with ICANN, PTI has not been granted immunity in any country, territory or court. The ability to maintain suit against PTI will depend on the facts and circumstances. Notably, PTI does not maintain offices or has any employees located outside of the United States.

Any comments on this? I would just note that since it's a facts and circumstances analysis, clearly, the facts and circumstances are somewhat different for PTI than for ICANN, as noted in the last sentence.

Question seven, we note that the Articles of Incorporation state – among other things – that ICANN shall promote the global public interest and the operational stability of the internet, and operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions and applicable local law, and that ICANN also commits to operate for the benefit of the [inaudible].

That's also in the Bylaws. We [finally] understand that in many places, jurisdiction is premised on physical presence in some manner, but we wonder whether in the digital age, the concept of "targeting" or some other legal theory can be used as a basis for litigation jurisdiction. In

other words, we wonder whether a party based where ICANN has no office could successfully maintain a lawsuit against ICANN in a local court based on the argument that ICANN targeted them improperly for some action, or some other legal theory.

Answer is that ICANN cannot provide a potential roadmap for litigants or provide admissions in response to these questions that might make it easier for a litigant to bring ICANN into court. The ability of a litigant to state a valid cause of action under law and achieve a judgment is dependent upon many things: the law the litigant is relying on, cause of action, the actions of ICANN.

The litigant [inaudible] support the cause of action, the propriety of jurisdiction and the evidence presented to support the claim for jurisdiction and for the underlying claim of the case. ICANN cannot presume what a court would do in this type of ethical situation or presume the outcome of any litigation actually filed against it.

Any comments on this question? I see a comment of Becky Burr in the chat: "It is clearly correct to say that many – if not most – countries will provide jurisdiction in a case where ICANN has purposely availed itself of the jurisdiction."

Steve DelBianco asks, "Couldn't a litigant just review prior cases to determine where or how ICANN responds to claim of jurisdiction?" Certainly could, and we are doing that ourselves. Not as a litigant, of course.

Hoping for some wisdom. I see Becky has her hand up. Becky, go ahead.

BECKY BURR:

Yes. I'm finding these answers a little frustrating, because obviously, it makes sense that ICANN does not want to provide a roadmap for litigants. And of course, it is also true – as we noted – that the first thing that anybody in a court case does is argue that there's no jurisdiction.

None of those things are determinative about whether or not jurisdiction would properly lie in a local court, would grant a petitioner the right to bring ICANN to court in a place where ICANN has purposely availed itself, targeted, reached out.

That's kind of common. So I just want to say I would be careful about looking. I am sure and I have seen it, but ICANN – like all defendants in litigation – first of all argues that there's no jurisdiction.

That said, that's not determinative of what must happen. That is just a statement of what ICANN has done in the past, and it also does not distinguish it from any other defendants that I've ever seen.

So, I think that the sort of basic legal concepts of jurisdiction would lie here, no matter what ICANN argued. The question would be, were there sufficient contacts with that jurisdiction for a court in that jurisdiction to say that it had jurisdiction over ICANN.

And that's something that you can't determine separate from the facts of a particular case.

GREG SHATAN: Thank you, Becky. Those are very helpful observations, both on the questions and on the answers as well. David McAuley.

DAVID MCAULEY: Thanks, Greg. I just want to say I agree with what Becky just said entirely, and I think it's not surprising that ICANN would not yield any ground on potential defenses, it wouldn't put forward a roadmap for future litigants.

I think that's all fine. I think these questions are relevant to what this group wants to do, and I think our thought process was is before we go to either Sidley or to some kind of law professor who specializes in this, we would ask ICANN Legal for their view.

And I think ICANN Legal should be thanked for giving us responses. I think they're not surprising, but I think they're interesting in some respects. So we could then consider there are trends that take place in things like jurisdiction, so maybe we would consider getting other advice. I don't know, but I personally thank ICANN Legal, I agree with what Becky said, and I think the ground is now prepared if we want to do anything further. Thanks very much.

GREG SHATAN: Thank you, David, and Becky as well, and Paul in the chat. And I agree. The answers are a little limited, but predictable. ICANN as a potential litigant answers the questions as more perhaps would in that case.

We'll need to consider as a group how we might get additional advice to answer any of these questions and decide based on what our work is

how much we will do and where the answers might best come from, whether it's a law professor or a jurisdictional specialist, a litigator in practice or the like, and which questions we actually need further answers on. Especially considering we're spending money, we need to make sure we're spending it wisely.

Let's move on to basically the last question. That would be choice of law and venues in ICANN's contract. We also want to understand how ICANN handles choice of law and venue in its contract. For each type of ICANN contract we want ICANN to indicate whether the contract specifies the choice of law or of the venue.

In other words, what law governs and where the case could take place. Where either is specified, please indicate the jurisdiction or venue specified and the reasons for these choices. Where not specified, please explain why.

Based on CCWG Accountability's report, setting up the WS2 topic, ICANN notes that focuses on registry and registrar contracts. Registry Agreements in RAA are based on model templates, each of which was developed stakeholders subject to public comment.

In registry Agreements – particularly the base agreement developed in the New gTLD Program – venue has two possibilities: arbitration and litigation in Los Angeles County, California, U.S.A., and arbitration and/or litigation in Geneva, Switzerland.

Only intergovernmental organizations, government entities or registry operators facing other special circumstances may select Geneva for venue.

Agreement on Geneva as an alternative venue was reached in developments of the [AGB] selected by the availability of alternative text of section 5.2 of the base agreement.

As other venues have not been considered to the ICANN process, ICANN has not entered into any Registry Agreement with a venue other than Los Angeles or Geneva.

Approximately ten registry operators that are not IGOs or government entities that have identified Geneva as their venue. Model RAA requires venue for arbitration and litigation to take place in L.A., and ICANN does not have any registrar accreditation agreements [inaudible] on this issue.

Historically, these agreements have been silent on the choice of law to be applied in arbitration or litigation. This allowed the parties to argue pursuant to the relevant rules and procedures what law is appropriate to govern the specific conduct, and arbitrators in courts are well suited to making those types of determinations.

ICANN also has other contracts of court to service to its mission. For example, IANA Stewardship process, there's now a contract with the RIRs for the performance of IANA numbering functions, IETF for performance of IANA critical parameters functions, and PTI for the performance of the naming function, each of which had appropriate public consultation with their development.

For the SLA for the RIRs, venue selected is Geneva, Switzerland or other location agreed by the parties, governing law is California state and federal law.

For the MoU concerning protocol parameters work with the IETF, there is no discussion of arbitration, litigation or choice of law. The MoU and supplemental agreement maintain other escalation and termination rights.

For the PTI numbering services agreement, governing law is the state of California, U.S.A., excluding conflict of law rules, venue in a court within California.

Such a remediation process is required to follow the laws with California and to be conducted in California unless agreed mutually.

There are no third-party beneficiaries for these agreements, so the agreements don't provide rights to people or entities that are not parties to the agreement claim breach of contract or other causes of action solely because of the existence of the contract.

The venue and choice of law clauses to [inaudible] among the contracted party, and not generally where ICANN or the contracted party has agreed to be subject to suit.

Any modification reached through the relevant base agreement modification procedure, ICANN has a number of other contracts, leases, [inaudible] contracts, vendor agreements, professional service agreements, ICANN follows procurement guidelines for these engagements, and where appropriate includes clauses relating to choice of law and venue for these operations-based agreements, ICANN and the contractor negotiate the most appropriate selection of each, at times even identifying that in relation to a single contract, different laws

might govern the conduct of different parties and each negotiation is fact specific.

Any questions on this response? Paul McGrady, I see your hand is up. Paul, we can't hear you yet.

PAUL MCGRADY:

Sorry about that. Yes, I had a problem, my phone locked itself out while on mute. Apologies to all. I do want to go back and just have something in the record in relationship to the claims that here are no third party beneficiaries.

That may have been a better or more easy thing to argue before the new gTLD round, but now there do appear to be rights to trigger complaints. I think there was a complaint recently against .feedback.

The only way that that complaint could have moved forward was as if feedback were tied to respond to those claims by third parties, so clearly, there's a contractual aspect between ICANN and at least registries – at least the .feedback registry, should be more narrow – that allows some mechanism to move forward.

So, I think a blanket comment that here are no third-party beneficiaries probably needs to be looked at a little bit deeper. I don't think it's necessarily ICANN Legal. We would ask to look at that any more deeply, because I think that is a legal position that they are taking, but I think it should be distinguished from the facts on the ground which are very different now than they were the last round. Thanks.

GREG SHATAN:

Thank you, Paul. Perhaps it's more accurate to say that there's no express recital of anyone who identified as an express third party beneficiary in these agreement, rather than that there are no third-party beneficiaries per se.

And then I think we need to ask ourselves whether this is relevant to our analysis of the questions before this subgroup, as interesting and relevant as it is to larger issues of dealing with ICANN. Mathieu?

MATHIEU WEILL:

Thank you, Greg. Just to reiterate what I put in the chat. First, this is really interesting and goes to the heart of the dispute layer of the jurisdiction issue, so I think it's really helpful that we have this answer from ICANN legal.

I would suggest one follow-up about those ten registries who are not government or IGOs who selected the Geneva alternative for the venue for dispute resolution, because it would be interesting to know whether anyone asking for this has been granted this ability or whether there had been any requests denied, and if there have been any denials, what were the criteria that were used by ICANN Legal? Because I think that's an interesting aspect to investigate further on.

The second thing is, there's an obvious discrepancy between registries and registrars that appears in the new contract, since registrars only have the choice of Los Angeles, California. So, I think that would be a question for our group moving forward, whether we see some enhancement – or not – that should be considered to provide an

alternative for the Registrar Accreditation Agreement as well on the model for instance of the registry one. Thank you.

GREG SHATAN:

Thank you, Mathieu. Those are very good observations and follow-ups for us to consider. And I thank you for that. If there are no further questions on this document, we'll go back to the agenda. We have eight minutes left by my clock.

Next item on the list is the questionnaires responses received. We received three responses. To note briefly, a response from Shin Takamura and questionnaire answers the first two questions about whether ICANN has affected the business privacy or ability to use domain name-related services or any dispute resolution process.

The answer is, "I do not recognize such cases as those in the question." Answers questions three and four as, "No." And second, an answer from Carlos Vera, and that answer answers no to all questions.

The third answer is a lengthy answer from the Just Net Coalition, touching on a variety of our responses and other issues. Given the time here, it would not be possible for me to summarize the answers in that response. We'll discuss that further, hopefully on the list as suggested by Mathieu, as well as in the call and in the – primarily thinking the subgroup for questionnaires before I bring it back to the list and the full group.

So, we'll see what shows up between now and the 17th and be reporting further on this. We can move on to item eight, update on the analysis of cases.

We have received two further analyses. The Name.Space Inc. versus ICANN case summarized by David McAuley, and the Employ Media LLC versus ICANN case summarized by Raphael Beauregard-LaCroix.

I thank both of them for these, and again, hopefully we will be able to review these on the next call and on the list as well, hoping we make ample and focused use of our list.

That brings us to all other business. Do we have Any Other Business or any other comments on what we've heard so far in this call that perhaps people didn't think of at the very time when it was being discussed? We have four minutes for any last thoughts or other business items people would like to bring up at this time.

Seeing none, note that we will discuss Name.Space and the Employ Media on the next call. I will put some finishing touches on the discussion draft of our revised work plan, submit that for discussion in the Plenary.

Other than that, we'll continue working all of us, hopefully, on responding, on analyzing the cases and on reviewing the questionnaires, and encourage everyone to read carefully the responses from ICANN Legal so we can work with those in the future.

I want to thank all of you for being on this call, especially those of you for whom this is a major religious holiday and have chosen to be here nonetheless. And also want to thank you all for your questions.

I wish you all [inaudible] and good Pesach. And for those who between now and our next call will be celebrating Easter, happy Easter. We are now adjourned until April [18th]. We may end the recording and adjourn this call. Thank you, and have a good day. Bye.

[END OF TRANSCRIPTION]