RECORDED VOICE: This meeting is now being recorded.

GREG SHATAN: Hello, everyone. Good morning, good afternoon, good evening, and welcome to the Jurisdiction Subgroup call of CCWG Accountability Work Stream 2, meeting number twenty-seven, April 18, 1900 UTC. That takes us to the second item of our agenda, which is the review of the agenda. After a [inaudible] on administration, we'll review the decisions and Action Items from the last call and see where we've moved. Then we'll have an update on the questionnaire, which closed yesterday, but we still have some responses straggling in. Then, we'll review the two ICANN Litigation summaries that were distributed a couple of weeks ago now, while we did not have time on our last call to go to them. Then we'll see what follow-up we have on questions to ICANN Legal, which we received responses to and walked through last week. And finally, we'll take a look back at the Work Plan and schedule also discussed last week and subsequently in the Plenary. And then some time for AOB, if we have time – and if we have AOB. Any questions, comments on the agenda?

Seeing none, I'll take us to our third item on the agenda. I'll see if there are any changes to Statements of Interest.

Seeing none, it seems everyone has stayed put since the last week's call. It doesn't look like we have any audio – any phone-number-only participants. Do we have anybody who is only on the audio bridge?

Nobody has responded; it seems like everybody is in AC. I see that David McAuley is waiting for his phone to charge a bit before he can connect by phone, and I see that we now have a phone-number-only participant. Who is the phone number ending in 5316?

PHILIP CORWIN: Hey, Greg, this is Phil Corwin. That's – I'm on the phone; I'm also in the chatroom.

GREG SHATAN: Okay. So you're 5316 as well as [inaudible]?

PHILIP CORWIN: That's correct. That's correct.

GREG SHATAN: Okay. Don't plus-one yourself, but thank you for letting us know.

That takes us through the administration and into review of decisions and Action Items. No specific decisions were taken in last week's call. There were three Action Items. One was to review the Work Plan presentation for the Plenary. Based on the comments received in last week's call, I did do that and revised the Work Plan presentation. And that revision was sent to the Plenary last week and discussed at the Plenary. The Questionnaire Review Team has the Action Item to review the latest submissions. I hope that the individual members of the QRT have done that. The QRT as a whole hasn't conferred yet on the

submissions, or they haven't conferred yet much, but an email has been sent out now – yesterday – to the QRT to get the group focused on a method for reviewing or evaluating the questionnaire responses, and also to start discussing them, as well. So, hopefully, that group will respond to that email and start the ball rolling quickly. Last was for me to post the list to encourage discussion of the latest case analysis. Those are the Employ Media and Name.Space cases down in our agenda. I did do that; there hasn't been any discussion of those cases on the mailing list. In any event, they have been on the list close to two weeks, so I hope that we'll have the presenters for both of those today – and I do see them in our Adobe Connect Room, so we will be able to talk further on those – in any case, on this call. Any questions about item four?

Seeing none, I will move on to item five, which is the questionnaire – or really, the questionnaire responses. We had indicated that the questionnaire closed April 17, which was yesterday – I believe at 23:59 UTC. Responses are still coming in; a couple came in today, and I've heard from at least one other person who is preparing to send in a response. We'll need to discuss at what point we really cut off our responses, but I don't think there's a need, personally, for a narrow, technical interpretation of the deadline, so I'm inclined, as seems to be generally them method with ICANN public comments, to suggest that we continue to accept comments at least for the next couple of days – meaning today, tomorrow. Of course, once we've really gotten into review in earnest and started to work with the responses, we have – that's really the point at which our methodology [inaudible] prejudiced and the idea of deadlines becomes a joke. So, I think we do want to

honor the deadline without being harsh about it. And, you know, the QRT can have some ideas about that. But are there any objections to that general treatment? Anybody who thinks we should cut off at 23:59 UTC yesterday and reject any later submissions?

Bernie Turcotte notes "uncommon to accept after this week." I think that is a good statement. It is now Tuesday, so I think certainly [inaudible] that the hard deadline should be, let's say, Friday, to account for the inevitable "too much to do, too little time," but not taking in stray responses for a long period of time.

Kavouss, I see your hand is up.

KAVOUSS ARASTEH: Hello, do you hear me, please?

GREG SHATAN: Yes, Kavouss. I hear you.

KAVOUSS ARASTEH: Yes, I agree with you that a deadline is a deadline, but I think that the [inaudible] could decide that if by this time – now, before the start of the meeting, [inaudible], anything has been received, perhaps we could discuss if we want to [inaudible] this avenue or not. To discuss [inaudible] 1900 hours, that might be due to some [inaudible] or other thing like time, distance, [inaudible], email server problems, or anything that [inaudible] at least have everybody agree that – I don't have anything [inaudible]; I don't [inaudible] that at all, but if there is

anything [inaudible] tonight at 1900 hours, we will decide – if everybody agrees with me – if not, it [inaudible] don't [inaudible].

GREG SHATAN: Thank you, Kavouss. Well, without making this too complex, it seems – I don't know if we have anybody who supports a cutoff of yesterday at exactly the time it was technically done. It seems like there is a fair amount of support in the chat for end-of-week, which I would take to be Friday, not Sunday. And so – and then, there is a suggestion which I believe [inaudible] made, which is essentially that the time of this meeting, simply, should be the deadline. So, I would think – given what I'm seeing in the chat – I would suggest that, unless there is opposition, we should say that we will accept late applications – late responses – through Friday. Is there any objection to that proposal?

I see a check mark. I don't see any objections, so why don't we take that as our hard deadline? I note a question about translation – there are actually two responses so far that are not in English: one in Russian, one in French. I will look to Staff to ask if we can have those translated by ICANN. And I think it's better to have mutual translators, even if we have French speakers and Russian speakers in our group. Bernie notes "already working on translations." Very good. My French is bad enough to understand most of what was said there. I have no Russian. There's also some Spanish. Okay, so we will hope to see those very shortly, as well. No, it'll be good to have an ETA on the translations; obviously, don't expect that – we don't have an ETA yet, but when we do, it'll be good to have one.

As you can see, we received about ten or so responses, and they're listed out here. Looks like it's nine in this list; we may have gotten one or two more after this agenda was circulated. Those you can see – Michael Graham was an individual; from the European Commission, Cristina Monti; from Iran, Mohammed Reza Mousavi; from the .swiss registry, from Jorge Cancio; from Russia, from Yulia Elanskaya; Singapore, QUEH Ser Pheng; from Internet Governance Project, which Farzaneh Badii sent in; Venezuela, from Jesus Herrera; Italy, from Rita Forsi; and I think we have one from China, and also one other that came in after this. So, we will really be looking to our Questionnaire Review Team to gear up quickly and start reviewing and discussing these, in terms of how to kind of try to bring it back to the group and discuss both each response, to the extent that there is something more than a simple "no," and also the other aspect of the aggregate – how we look at the overall what we are seeing.

Let's see – Kavouss noting the reason for proposed extension is due to four days of [inaudible] holidays. As we had – last week was Passover, moving into the Easter [inaudible] and also Easter week, of course, and even Monday, for some people. It really extended the holiday, so I think it's only fair to extend the time through Friday, since our deadline fell across a couple of holidays. So, are there any questions or comments at this point on the questionnaire, the responses, reviewing and evaluating, knowing that we do not yet have a proposed method from our sub-subgroup, which has been [inaudible]? But I'll open the floor to any comments or thoughts people have on the questionnaire situation.

And I note Avri noting it's not just holidays; it's the massive number of open comments. I was on an intellectual property constituency call this

morning; we counted up ten open comments right now, and that may not even be counting everything that we're asked to weigh in on. So, it's a typical fire hose issue. Any comments on the questionnaires? Jorge Cancio notes in the chat, "I just note apparently, we have little feedback from registries or registrars, or their constituencies. I suppose in some sense, we're all constituencies of a registrar, and indirectly, the registry; but clearly, mostly it's – there does seem to be a number of Jurisdiction representatives [inaudible] countries – .swiss, which is a registry. But I don't have to tell Jorge that, since he submitted the comment. And he – I think we had a couple earlier on from a couple of registries and registrars, but we'll have to look at that. Obviously, we did not have a massive number overall of responses - I think somewhere in the range of twenty-five or fewer. I do think we did a good job of publicizing this, and hoped that it would be individually publicized in any communities where they were, but – as well as the usual methods. In any case, if there are no other comments on the questionnaires at the moment, we will essentially look to our Questionnaire Response Team, and expect it on next week's call, which is an 0500-hour call, that we will have discussion of the questionnaire led by members of the Questionnaire Response Team. That's 0500 UTC. For ICANN, I only use my UTC watch.

If there's nothing further on the questionnaires, then we'll move on to item six – the review of ICANN Litigation. Just before we do that, Brenda's noting in the chat that the responses to the questionnaires are posted on our community wiki. Bernie sent to the list responses received within the last day or so, and I think early on, when they came in, sent the early responses to the list; but obviously, going to the wiki

where they're all collected is probably easier than mining your inbox for them. So, if there is nothing further on that, we'll move on to the review of ICANN Litigation. And if we could put up the Name.Space summary, and I'll turn the mic over to David McAuley, whose phone is, hopefully, charged enough by now for him to be able to do so. David?

DAVID MCAULEY: Thanks, Greg. David McAuley here. I think it's charged up, and off we go. So, I can step us through the Name.Space litigation, which is very interesting litigation, but frankly, the bottom line on jurisdiction will be pretty negligible, in my opinion. Name.Space is a United States corporation incorporated in the state of Delaware, but operating out of New York City. And it brought a lawsuit in California against ICANN in the U.S. Federal District Court in Los Angeles. I did two prior cases that we sat through, both of them dealing with the .connectafrica, and they were two separate cases –one at the district court, and one at the appellate court; that's why there were two of them.

In this particular file, ICANN places both the district Court links and the appellate links in one link. That's why this appears as one name, but it's both the trial court level and the appeals court level. And it started in the U.S. Federal District Court in Los Angeles. And basically, Name.Space brought claims against ICANN that were based on federal laws – things like conspiracy, anti-trust conspiracy, monopoly, trademark claims. But because they were in federal court, they were allowed, under diversity jurisdiction, to bring in some state claims, like violation of California's business laws, interference with contract, which is [inaudible], unfair competition, and the like. And the [inaudible] of

their complaint was, Name.Space runs some 400 Top-Level Domains on their network. They run it on their network, and they have servers around the world, I believe. And in 2000, they applied to get some of these onto the domain – to the DNS – that ICANN coordinates. And they were unsuccessful. And they believed, coming out of that 2000 round of gTLDs, they believed that they had a call on the next round to have their names placed in the DNS, or at least realistically considered. In the 2000 round, they applied for over 100 TLDs under one application fee, which was U.S. $50,000. And under that $50,000 fee, they were able to apply for over 100 – as I said, over 100 TLDs. And so, in the 2012 time period, where the applications were $185,000 per name, that was a challenge for Name.Space. And by the way, Name.Space runs some TLDs that have the same name as some new TLDs, like .info – well, not that one – but .blog and [inaudible] – those kind of things. But anyway, they come up to 2012, see what's shaking in the new TLD round then, and in October of 2012, they filed a case in district court, basically bringing the claims that I was mentioning, saying that ICANN is maintaining the DNS in an anti-competitive manner, and against them. They said that the $185,000 fee per name was sort of directed at them, or at least included a direction against them. And they sought a preliminary injunction to bar ICANN from doing this. The district court basically dismissed the case and said that Name.Space simply didn't describe a case – that its allegation was really a bunch of conclusions, and the trademark claims were found to be premature. And so, in that respect, the court found that there wasn't a controversy yet. The appeals court agreed with the lower court – that Name.Space failed to allege at the time they brought the case that ICANN had failed to delegate or intended to delegate any name that they had. The 9th

Circuit Court affirmed the dismissal on that basis. Jurisdiction was never really made an issue, at least, not that I could find. I don't think it had that much impact on what we do, but I did note in the summary, as you'll see at the bottom, that, where the issue of monopoly was brought up by Name.Space, the court said that whatever monopoly power ICANN possesses was given to it by the United States Department of Commerce, and not as a result of global acquisition of monopoly power. The court concluded that no amendment would cure that deficiency in a monopolization claim, and as we understand, that circumstance no longer applies; the Department of Commerce is no longer involved. So, by and large, it's a very interesting case; these are interesting links, but – and the Name.Space names don't resolve to DNS – but it's not something I see of a major impact under jurisdictional consideration. And I think I'll leave it at that, Greg. Thank you.

GREG SHATAN: Thank you, David. I see a hand up from Milton Mueller.

MILTON MUELLER: Yes. Just a bit of a supplement to what David just said, which is all fundamentally correct – but I did want to emphasize something about the antitrust implications of this. So, many of you may not know that the original Name.Space lawsuit that David referenced was the original reason why the U.S. government controlled changes to the root zone file. That is to say, [inaudible] corporate predecessor, which [inaudible] called Network Solutions, Inc. - NSI. Rather ironic that they call Name.Space NSI in this – maybe that's kind of a dig; I don't know – but

the point was, in order to – really, back in 1998, or '96, when that lawsuit was initially filed, what is now [inaudible] was in a very difficult position, because they were, in fact, in control of the root – entry into the root – and as a private actor – a private, commercial actor – they were, in effect, the gatekeeper for their own competitors. So that's why the U.S. government asserted control over the root, was to eliminate the antitrust issue and to put [inaudible] in charge of deciding what new names would go into the root as part of the creation of ICANN. So, now that we have again removed the U.S. government from that, but ICANN is not a private, commercial actor, it would still be possible for ICANN to be sued for some kind of monopolization or antitrust claim if, in fact, it could be shown that they would be colluding with, or restricting the market in an unnecessary way. But in fact, that's a feature, not a bug; I think we all discussed this when ICANN was created – that we did want it to be subject to antitrust law. And so, there might be minor differences in the definition of monopoly power under U.S. jurisdiction, than under some other country's jurisdiction, but ultimately, we do have some kind of anti-monopoly protection from this, and don't think that the fact that it's U.S. jurisdiction makes any significant difference.

GREG SHATAN: Thank you, Milton. Very useful. Phil Corwin; go ahead, please.

PHILIP CORWIN: Yeah, I just had a question –

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

GREG SHATAN: I've got Phil [inaudible].

PHILIP CORWIN: This is Phil Corwin. Can you hear me? Hello?

GREG SHATAN: Yes, I hear you, Phil.

PHILIP CORWIN: Okay. Yeah, I just had a question for David. It calls for speculation, but since he read the case – if this case was brought today, post-transition, where the U.S. no longer had any relationship of control with ICANN, and ICANN couldn't claim any immunity from antitrust under the state actor doctrine, does he think it would've been dismissed, or might the court have let it go forward on the merits?

DAVID MCAULEY: Greg, it's David McAuley. Phil, thanks for the question. As you point out, I'm just one participant, so anything I say would be my own personal view, and not necessarily all that deeply technical. But I will say this, if that condition exists, then I think ICANN's defense, or its defense of pleadings, would be entirely different. And so, I think it's hard to say. I suspect it would have been a little easier for NSI – Name.Space, Inc. – to make the monopolization claim. They may have

had a better chance; but whether they would succeed, I think, would depend, in large part, on what ICANN's approach was, and – gee, I'm reluctant to say, one way – but I think the case would've been closer, but I don't think necessarily Name.Space would've gotten any farther.

PHILIP CORWIN: Yeah, thanks, David. And just to clarify, I wasn't asking whether you thought they would've won on the merits in the end; it was more to whether it would've been dismissed at the beginning, or whether the court would've been more willing to let it go forward – and I think you're saying maybe, but you're not sure.

DAVID MCAULEY: I think they had a better chance of getting past dismissal, but I think ICANN also would have presented a much different defensive strategy. So, I think they would have had a better chance; what the court would've done, I just can't say.

PHILIP CORWIN: Okay. Thank you.

DAVID MCAULEY: Thanks.

GREG SHATAN: This is Greg Shatan. First, I'll weigh in on the question in front of us, which – the question of ICANN's relationship to the U.S. antitrust laws is

probably beyond our discussion, or it could be a specific issue under our discussion. But as I understand it, the decision of the court here did not rely on a state actor doctrine, and did not rely on the idea that ICANN had antitrust immunity, per se, and did not treat ICANN as a state actor, but rather, said that ICANN, basically, as a contractor with the U.S. government, had received the ability to act in this monopoly fashion because of its contract with the Department of Commerce, or because it was given that power by the Department of Commerce, and that they viewed it as the requirement of willful acquisition of monopoly power, and the [inaudible] factor for making a finding of [inaudible] violation. I think that, given ICANN's power to act as it does, arguably may have been given to it by the Department of Commerce then – or maybe not – and, yeah, certainly a different set of circumstances now. [inaudible] ICANN never had an antitrust immunity [inaudible] viewed here as the recipient of a contractual ability from the U.S. government. That's also certainly not the case. So, the facts are – you have to have change, so it's a little difficult to say. As a general matter – and, obviously, all generalities are wrong, including this one; they're wrong to some extent – world antitrust definitions and monopolizations are not terribly different across most of many jurisdictions. I had the lovely task the first fifteen years of my practice to [inaudible] a lot of antitrust law, including international competition law, so it may have changed since then, but I don't know.

So, in any case, that's enough about that case. Probably far too much. Erich asked, "Does this mean that ICANN is subject to control of monopolization and to abuse of a dominant market position?" Well, first, there's the question of whether they have a dominant market

position; and second, there's the question of abuse. I think that, if the court had felt there was more abuse in this case, they might have had a slightly different position. But in any case, having a dominant market position is not, in itself, a violation of antitrust laws. [inaudible] really is only the abuse that becomes the issue. Acquiring a dominant position can be a problem, as well, but that's different. Depends on how you acquire it.

In any case, why don't we move off of this case and on to the next, and we will turn the mic over to Raphael Beauregard-Lacroix.

RAPHAEL BEAUREGARD-LACROIX: Yes. Thank you, Greg. Hello, everyone. So, [inaudible] was contrary to the previous case. It's a case which is interesting – not so much in the [], but which has interesting [inaudible] regarding jurisdiction, so. The claimant in this case was Employ Media, Inc. [inaudible] ICANN [inaudible] corporation in California, [inaudible]. This case was an arbitration case, so in that sense, the rules of arbitration were the [inaudible] rules, where the arbitration [inaudible] in Los Angeles, California. And then, the choice of law, which is the interesting part of the case, [inaudible] in the contract – and as I'll explain later it turns out to be [inaudible] of the registry agreement, which is something that I learned while [inaudible] this case.

So, just quickly on the facts. Basically, ICANN alleged that Employ Media had violated the registry agreement provisions and was trying to enlarge the possible registrars, or the registrants [inaudible] and – yeah. So, that's really the first the [inaudible] that's the first thing, I think. But

the interesting thing is, since there was no choice of law in the first document or in the first statement provided by the claimant, the lawyer for the claimant [inaudible] he reviewed the case relying on the fact that the law that would apply to the contract was basically the [inaudible] contract law or California contract law. So, in that case, the lawyer [inaudible] that both these laws are rather similar, so he made his arguments based on the fact that his arguments were valid under both Ohio and California law, which – I mean, it's maybe fine; I don't really know, to be honest. But I think that if we [inaudible] this case to maybe other registries that might be outside of the U.S., it could prove to be quite a different result, because arguing a case [inaudible] under both, let's say, any European [inaudible] and California law would be quite a challenge. And so, in that sense, I thought this case was [inaudible]. And I think that the ICANN – ICANN Legal, in their responses [inaudible] read last week, they actually stated – I will read it out; I have it on my screen, here – so, they said that "history [inaudible] registry and registrar accreditation agreement [inaudible] choice of laws [inaudible] applied in arbitration or litigation. This allows the parties to an arbitration or litigation to argue pursuant to the [inaudible] of [inaudible] rules, court procedures, and rules, and laws [inaudible] issue. Arbitrators and courts are well-suited to make those types of designations." I find it kind of surprising in the sense that I think that [inaudible] is not [inaudible]. [inaudible] first thing you do, but then you want to make sure you do, and to willingly not choose a law by saying, "Well, [inaudible], but [inaudible] anyway." I find it a bit strange, and it just decreases the legal certainty for everyone, ICANN included, and [inaudible] registry, eventually. So, I think that, in this case, no wonder there's a [inaudible] undeterminate choice of law. So, I don't see – I

don't understand why ICANN would want that – maybe someone else from the group has something to [inaudible]. [inaudible].

GREG SHATAN: Thank you, Raphael. I see two questions in the chat, and perhaps you could answer them. The first question, from Milton Mueller: "What was the settlement?"

RAPHAEL BEAUREGARD: The settlement – yes, I forgot to mention that they actually settled the case – the settlement was basically – I mean, that they would – I think they came to an agreement regarding who would be able to [inaudible] in that sense. I mean, I didn't really focus on the [inaudible]. If you want, I could actually come back to the case and provide a better description; I don't [inaudible] thinking about something else, about the settlement, or if there was a question [inaudible]. [inaudible] ICANN or [inaudible] – yeah. I mean, that's a thing I will need to check [inaudible] I didn't spend much time on that issue, and [inaudible] what could be [inaudible] signed up to [inaudible] law. That's a good question. I don't know; as I read out from ICANN's response, really, I don't really know. They say that just arbitrators [inaudible] would be a good reason what you want [inaudible]. You don't want it to be [inaudible] arbitrators. And especially in an arbitration like this, arbitrators can choose any laws that exist – most likely to be [inaudible] either [inaudible], so California law or some other law where the registry is situated, but I mean - [inaudible] that registry can be anywhere in the world, it's simply better for ICANN not to have to choose the country.

GREG SHATAN: Thank you, Raphael. I think maybe we can make an Action Item to ask ICANN directly what its reasoning is for not specifying the applicable law. They may, I think, have touched on this in their responses to our questions, but I don't believe they answered directly. I have, at some point in the past, heard some reasoning on it, but it would not be wise for me to repeat something I half-remember that's not my logic, so let's ask the question. I will say that I do agree that it's somewhat odd; I'm sure there are good reasons for it. Sometimes, the choice of law – the substance of law that governs the agreement – really governs how the agreement is read. Terms have certain meanings under certain laws, and they may have different meanings under different laws. And to a greater or lesser extent, there are often things like implied [inaudible]and implied [inaudible substantive law of a given jurisdiction that, essentially, are read into the contract by inference from having that choice of law. And sometimes, you have those explicitly taken out of the contract. You'll often see contracts that say that "any implied warranty of fair dealing, or fitness for purpose, or merchantability, is hereby excluded from this contract." Other times, you'll see reference to other [inaudible] – the standard contract for certain types of computer software that a lot of people explicitly exclude from their contract because it's difficult. So, I think it is a question we should ask. In terms of who will ask ICANN, if somebody else wants to draft the question, I'm happy to ask it; otherwise, I'll draft the question and ask them; fairly – hopefully – straightforward question. I see Kavouss' hand is up. Go ahead, Kavouss.

KAVOUSS ARASTEH: [inaudible] clarification. [inaudible] the relevance to the Working Group [inaudible]. The second paragraph [inaudible] we can assume that [inaudible] there must be a good reason for not having the choice of law. [inaudible] what are those good reasons? Such as what? [inaudible] somebody forgot or [inaudible] would prefer not to [inaudible], and what are those [inaudible]? Thank you.

GREG SHATAN: Thank you, Kavouss. I think, in this particular case, I know I've heard that ICANN has a reasoning for not having included it. I don't know if any of the registry or registrar representatives on this call might have a better recollection of that, since they're more involved in the contracting with ICANN than I am. But I think we'll wait to hear what ICANN's reasoning is. That's why we'll need to ask them what their reasoning is, because it would be hazardous for us to speculate. If we get it right, it'll be by luck, and if we get it wrong, it'll just be idle speculation. So, let's try to ask that question reasonably quickly, try to get an answer back, hopefully – maybe even by next week, since it's a single question.

Any other questions for Raphael or in general, questions or remarks about the Employ Media case? This one is a little unusual, in that it's an arbitration; most of the cases we're looking at are litigation. Raphael, I'll ask one question, which is, did you see anything unusual in this case because it was an arbitration that distinguished it from the other cases that we've been looking at?

RAPHAEL BEAUREGARD: Not really. I mean, in this – to the extent that it's a – most registry agreements are subject to arbitration, I think that there's probably not so many [inaudible] cases, maybe because [inaudible] registry that [inaudible] ICANN [inaudible] before they can start [inaudible]. In this case [inaudible] arbitration [inaudible] probably that it never goes to full-blown litigation. Maybe the fact that it's an arbitration [inaudible] parties to settle or not settle, I don't know. [inaudible] we would need to have, actually, [inaudible] input from ICANN Legal with regards to settlement [inaudible] be willing to share information on that or not. There was – I mean, the fact that they [inaudible] breach of contract [inaudible] I'm sure happens very often [inaudible]. There doesn't seem to be anything that would stand out because of arbitration.

GREG SHATAN: Thank you, Raphael. Kavouss, is that a new hand?

KAVOUSS ARASTEH: Yes. Yes, it's a follow-up question. When I raised this question, you replied, perhaps, if I am not mistaken, that it was better not to have any choice of law [inaudible] ICANN. But it [inaudible] the first part of the sentence, in that not putting the [inaudible] of law [inaudible] and undeniably represent a jurisdiction [inaudible]. So, is that something that we could conclude, that it would be better to have a choice of law? [inaudible] to have. So, these two parts are, more or less, not very coherent. Thank you.

GREG SHATAN: Thanks. What I was trying to say is that it's typically better to have a choice of law in a contract, but that there may be reasons under particular circumstances why one would choose not to have a stated choice of law, and we'll need to find out what ICANN's reasons were for doing that. We'll see what ICANN says.

In any case, let us move back to the agenda. And thank you, Raphael, for your summary and for talking with us about it. And thank you, David. Kavouss, is it okay if we move on from this point? I assume that you will tell me if otherwise.

Let's just follow up now on the questions to ICANN Legal. We did discuss them – or really, walked through them again. While we did not have Sam Eisner with us our call, Sam was on the Plenary call and answered some questions from – as I recall, it was Sam; someone from ICANN Legal was on the call and discussed their responses. So, I encourage those who were not on the Plenary call to read the transcript or listen to the recording and see some of that discussion. Thank you, Bernie; it was Sam. We did discuss some frustration or feeling that there could be follow-up questions, or perhaps asking questions that we might want to ask through third parties [inaudible] mutual counsel, and not ICANN counsel. So, if there is anything like that that anybody wants to bring up on this call, please go ahead.

Seeing no one – oh, I see Jorge is typing. If there is anybody who is interested in any follow-up, other than the questions we had on today's call, which I'll take care of – please say so now, or say so on the list. Certainly, we should – unless we're completely satisfied, feel like we have complete responses, I think we should continue to take a look at

the questions asked there. I think they were very helpful. So, let's see what comes up as Jorge says, other questions may pop up, but if we don't have anything immediate, we'll look to the questions to ICANN Legal as we go back to our document, which is our plan. Because we have about ten minutes left, I'll just turn now – is there anything further on item seven before we move along?

Seeing nothing, we'll move to item eight – draft Work Plan and schedule. This was reviewed as a discussion draft, essentially, on last week's call, and then, as noted was revised in response to comments on last week's subgroup call and then reviewed on the Plenary call. I encourage any comments on the plan. I think it does need to be fleshed out a little bit, in terms of the timing going forward. I feel reasonably good about what it says about our immediate next steps; however, it's our plan, not my plan, so I would like comments, questions, agreements, disagreements, edits, as well. And I can put it up as a Google Doc, which I'll do after this call, so that it will be available generally and for comments, as well. Any comments on the Work Plan and schedule?

Not seeing any. But I will note the importantly, the Work Plan as well as indicating what we're doing moving forward, has our general approach, which we've just discussed – that's need to be more focused in following, which is to identify issues before exploring potential remedies. If we don't have an issue, then we don't need to discuss a remedy. So, we need to have a problem that we're trying to solve first, before discussing a potential solution. And then, just because somebody suggests that something is an issue, that doesn't make it an issue; it will need to be agreed by the group that it is, in fact, an issue.

And so, we will – that's our overall approach, and I'll be a little bit more diligent in enforcing that approach to keep us from going off on tangents that are remedy-related, but not – where there has been no decided issue that has triggered that discussion of a potential remedy.

You all have scroll control on this, so just – section two is really just a review of where we stand, or where we stood at [inaudible]. And obviously, we've discussed how we've moved on. Open issues – we need to go back to the scope of our subgroup, as – without being able to define the scope and defining the mission, we can't define exactly what it is we're doing, so that will be something which we'll come back to in short order.

Section four covers our plan for the future. Just at the very highest level, we're reviewing and evaluating the questionnaire responses, as we've discussed; reviewing and evaluating responses from ICANN Legal, which we've pretty much done, subject to any follow-ups; continuing a review of ICANN's Litigation. We have a number of cases that have been unclaimed, and I encourage folks to claim a few, even if you haven't done them before. And there are a few cases that have been claimed but not finished, and I plead guilty on that case, but I am not alone. So, I encourage all those who have claimed cases to get them done; we really do need to finish this. It would be very good to finish by the end of the month, at least with our having a review and summary of each case; and then, if we want to aggregate and try to draw any larger lessons from these cases, but it would be really premature to do that without having all the cases summarized. So, again, I encourage that. As noted, we'll be revising the issue of scope. As it says in D, E, we'll be reaffirming our vows to follow the general approach, and we really need

to think about what our deliverable is. But we do have several draft deliverables. And in looking at our scope and mission, we do need to go back and look at various issues – or potential issues that have been raised and [inaudible] not fully dealt with in our conversations, so we can make sure that we've covered issues that people have with – so, hopefully, we can then be working toward a deliverable.

Two months from now, approximately, plus a week, is ICANN 59. It would be nice to think that we could have a discussion draft of a deliverable for that meeting. I'm looking to have it put out for public comment not long after that. That may be ambitious, but if we really try to work through this Work Plan, we will either – we'll get there, or at least identify the reasons why we can't, and continue to try to work toward conclusions, deliverables, recommendations, etcetera. So – it's important that we do that, clearly. I, for one, want this group to produce a result – a deliverable – whatever it may be. The point of this is certainly not to drive around in circles until we run out of gas. Any questions on our Work Plan and approach, etcetera?

Kavouss, please go ahead.

KAVOUSS ARASTEH: Yes, I don't want to comment on any of these very, very [inaudible] and comprehensive [inaudible]. But does this Work Plan – that is, the plan of the work – at least get us somewhere, really will get us somewhere? It is so much [inaudible] sophisticated, and extended, that it may be difficult to have any result. So, [inaudible] just asking the author. You are the author of this very substantial [inaudible] – thank you very much

– I have no particular [inaudible] on any of that, but my suggestion – not suggestion. My question is just whether [inaudible] we will achieve our objective. Thank you.

GREG SHATAN: Thank you, Kavouss. I certainly believe that we can achieve our objective, and will achieve our objective following this Work Plan. But as I said, it's our Work Plan; it won't really work if it's only my Work Plan. And so, I appreciate any comments. I'd say, at the very highest level, the Work Plan is actually quite simple. It's to take the inputs – the jurisdiction summaries,the questionnaire responses, the ICANN Legal responses, issues raised by members of the subgroup, and making sure we understand what our scope is – apply all of those inputs to the deliverables with the idea of refining the deliverables and coming up with recommendations. That's the overview, and I really look forward to doing it very much. So, I think it is now 3:59 pm, and if there is no further comment on this, I'll see if there is any AOB.

Seeing no AOB, seeing the end of our agenda in the Adobe Connect Room, I'll just move on to our next item, which is to note that our next meeting is the 25th of April at 0500 UTC, a time that is much beloved by some and much unloved by others, but that is life. So, that is very early on Tuesday morning for some, and very late on Monday evening for others, and is then the Tuesday workday for yet still others. Finally, I'll just remind people that there have been calendar reminders sent out kind of in bunches for our upcoming calls. For instance, the one for today was sent out March 22. It has not been the practice of the CCWG to send out formal reminders for each subgroup call. If people think we

need to ask Staff to do that, let's discuss that. I hope that we can try to each keep our own calendar based on what is sent out to us by MSFI Secretariat, so that we can, hopefully, keep our calendars that way. But if people need recommendations – reminders – let's discuss that. I know it's sometimes hard to keep track of everything. And I believe that on our Wiki, the upcoming meetings may be listed, as well. So, that's by way of saying, if you need more reminders, please say so; otherwise, the only reminder we'll have for next week is now, that the next meeting is April 25th at 0500. And I look forward to seeing you on there, and to some fruitful discussion on our list. After all, these calls are an hour, and in between, we have 167 hours. Let's try to use a few of those and move our work forward that way. Thank you very much, and hearing nothing further, I will say that this call is adjourned. Thank you, all.

MULTIPLE VOICES: [CROSSTALK] Thank you. Thanks.

GREG SHATAN: You may stop the recording. Goodbye, and have a good evening or day.

[END OF TRANSCRIPTION]