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ICANN
TRANSPARENCY SUBGROUP MEETING
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>> Hello?
>> Hello Michael.
>> Hi, everyone. I see we are still waiting on a couple of
people so maybe give it a minute for, particularly for my
co-rapporteur.
>> Well, technically we have a 5 at 5 rule, so we need five
participants at 5 minutes after the hour or we usually scrub the
call.
>> Okay.
>> It looks like we will be okay.
>> Wonderful!
>> Chris just joined.
>> MICHAEL KARANICOLAS: Should we get started? Is.
>> Let's do it.
>> MICHAEL KARANICOLAS: Great. So thanks to everyone for
joining us. (This meeting is now being recorded).
>> MICHAEL KARANICOLAS: Thanks everyone for joining us
this is Michael for the record, one of the co-rapporteurs of the
sub group. It's been a while since we have had a meeting. We
have gone through the public consultation process now and
received a lot of very useful feedback. I think we have had
some great responses actually to our initial recommendations,
our draft recommendations. A lot of very positive stuff, a lot
of endorsements, a lot of useful and constructive feedback,
inputs.

So with that said, unless there are any objections, I would like to jump right into the thematic discussions which is, we are going to look at each of the four sort of thematic heads in turn and discuss feedback that we received. And based on that we will discuss next steps forward. So seeing no objections, I would like to jump into the first thematic issue which is probably the one that attracted the most attention, the one that got the most comments back, and that is on the DIDP.

So hopefully most or some or all of you have had a chance to review submissions that we received or at least to review the helpful summaries that we got from staff of the different inputs that we got. We got a lot of positive statements. I want to in particular -- I don't think we need to go through in detail every time somebody mentioned I agree with this or I endorse this or this and that, but I do think it's useful to note that several of the ICANN staff responses that we got back mentioned that some of our recommendations or several of our recommendations are apparently already common practice in dealing with DIDP requests. They said we are recommending it and it's done routinely anyway.

And that to me is actually great to hear because that, I would see, as a very strong argument for including it in the policy. Because if it's being done anyway, then presumably it's not going to impact operations to formalize that or to just include that as part of the policy if it's already standard operating procedure. As far as I can see, the major issues that I saw on the DIDP, the major areas where we got objections or feedback that something needed to be changed, the two really big ones were on recommendation number 11 which deals with trade secrets and commercial information, and recommendation number 15 which deals with attorney client privilege.

So those are the two that in the responses back I saw a significant amount of push back and a significant amount of objections. So in terms of revising the recommendations, the primary focus as far as I'm concerned should be on those two. Now, I don't necessarily want to completely drop any mention of them, particularly because we got other inputs back saying they specifically supported that we addressed those, but I think based on the feedback that we got that those recommendations should be very substantially redrafted. And reworked to address the objections that we got in.

So I wanted to at this point throw open any, throw open the floor for any objections if anybody has any suggestions for different areas that we could take that in beyond what we got, well, just suggestions on how we should address those two recommendations specifically and to brain storm ideas if anybody has anything they want to throw out now or if anybody wants to

subsequently provide something in writing, that would be welcome as well. Is there anyone that wants to speak on those two specific objections, those two specific recommendations, number 11 and 15 based on the feedback I got, and I see Chris' hand is up.

>> CHRIS WILSON: Maybe if it's helpful for the record, I don't know how many people had a chance to look at the filings or frankly even the summary, so if everyone has, then they can, I guess, stop it, but could you go over quickly if possible just what the key problems were, I guess, or suggestions were from commenters about those two recs so we have, so those that are doing this day to day can get a sense of what the problem is?

>> MICHAEL KARANICOLAS: I will go into that first and we will push over to David Mcauley who has a hand up. There were several objections raised to the, to recommendation number 11 for trade secrets in commercial and financial information not publicly disclosed by ICANN. Those went in a few directions. I think it was the IPC said that trade secrets by definition had to be kept secret so if they were disclosed, that would create kind of a paradox because it's not a trade secret if it's not disclosed so you can't define a trade secret that way. There have been objections raised that people, that that exception is necessary for ICANN to maintain its commercial relationships.

>> Michael, can I interrupt you for a second?

>> MICHAEL KARANICOLAS: Yes, sure.

>> We have a new feature now. We have captioning. We have live captioning. However, this requires to slow the pace down just a bit so our captioning person can actually get things properly. I mean, they are excellent, they do a great job, but they do a much better job if you speak just a little bit slower because you are in the habit of speaking quite quickly.

>> MICHAEL KARANICOLAS: Of course. My apologies. I work a lot with translators at different events that I do, and this is a note that I have gotten a lot. So well taken. In terms of the commercial exception, we've heard a lot about objections that disclosing the information wouldn't be fair to the companies, would be harmful to the companies, it would impact on ICANN's ability to maintain its relationships and to carry out its operations. Similar to the stuff that was raised during our process, so I think that that needs to be, our approach to that exception needs to be rethought. ICANN raised an objection that our proposed rewording could potentially broaden the exception rather than narrowing it which is an interesting one I hadn't considered and with regard to attorney client privilege, generally the objections were, ICANN's objection was a little bit vague, I thought, and a little bit difficult to pin down.

There were mostly objections saying that, look, attorney

client privilege is a boilerplate protection, and so should be respected because it's such a common thing. And so I'm personally very receptive to both of those arguments, but I think it's useful to have a bit of a discussion to try to brainstorm ideas for how these can be rethought. So why don't we go over to David Mcauley for some alls.

>> Thanks, Michael advertise David Mcauley speaking for the record. Not so many ideas right now. I wanted to state that I degree with your assessment that that the two principle areas of focus would be the confidential information disclosure and the attorney client privilege. I agree with you also that the ICANN comment in this respect was a little bit opaque, and my hope is that ICANN staff will engage maybe in the next call or on the list with some ideas of their own in this respect.

And I just wanted to add, Michael, that while those are the two prime issues, I also think it would bear discussion at some point about ICANN's concern of the cost involved. And the way ICANN pit the cost issue is this could drive cost, that's something I had said in the past, but it wasn't all that clear, but they did say and, you know, meeting those costs could cause ICANN to fall off somewhere else such as in policy development.

That's actually a major statement that will be of interest to other SOs and ACs. So I think we need to sort of flesh that out and find out what on earth does that mean. So that's all I really wanted to say right now. With respect to ideas on the issues of attorney client privilege and document disclosure, my personal sense is that there should just be some protection at least for the non-disclosure agreements as I said in the past and on attorney client privilege I frankly think that we should ask ICANN to engage a bit more perhaps with a proposal in this area. Is there any wiggle room? Is there anywhere they can see their way to address what the group is asking and yet protect attorney client privilege somehow, because as I said and as you said, I think their comment was a little opaque in that area and a couple others. Thank you.

>> MICHAEL KARANICOLAS: Thanks very much for that. I was going to get to the areas of cost and a few other sort of minor things after we engaged on what I thought as the two maker ones -- major ones. I don't think that eleven and fifteen are the only ones that need to be revisited. We are getting there, but I wanted to deal with the major ones first. I think it's an excellent idea to go back for more engagement on the attorney client privilege one specifically and generally to ask for clarifications from ICANN so we can definitely do that.

In terms of the commercial one, maybe it would be useful if I just sort of batted around an idea that I have been mulling over that's I guess about half formed at the moment, which is I

think that one of the better ways to clarify that is to push more control or more of a say into the process over to the people who provided the or to the commercial stakeholders themselves who will be impacted by the disclosure. I think that that was something that was sort of tried to be hinted at in the recommendations as they currently are, but I don't think that that was properly fleshed out.

So I'm thinking about rephrasing it so that there is a clearer onus on the information holders or the third parties that are impacted by this to -- I'm still reluctant to call it consent to the disclosure, but to raise objections which would be almost determinant if I can put it that way. The phrasing I have in mind is as long as they raise a reasonable objection, it would be withheld or something like that.

In terms of rephrasing that and in terms of the solicitor client privilege one, I was -- I don't have a full revised policy in mind that I can sort of present or suggest at the moment, but I was planning on basically over the next couple of weeks giving it a think and trying to recraft that language and maybe we can agree that basically is the Working Group that will sort of walk away from this and give it a think for how these two exceptions could potentially be redrafted and maybe come to the next meeting hopefully with some concrete suggestions as well as reaching out to ICANN to try to clarify around recommendation 15, around the attorney client privilege. Does that sound like a good avenue forward for these two? David?

>> DAVID MCAULEY: Thanks Michael, I think that on the treatment of confidential information, there is going to be a gap and I think between you and I we may not be able to bridge it but let me react to what you just suggested. Thank you for it. It's a reasonable suggestion. The problem with it, I believe, will be that people who give under a non-disclosure agreement or under some protection like trade secret or otherwise that I can't agree to abide by, they are not going to want disclosure and they are not going to want to lose control of the issue. So if you have the standard being as long as they raise a reasonable objection, the determination of reasonable would be not in their hand it's would be in the hands of other, ombudsman, ICANN, the community, whoever it might be and that's going to be insufficient.

So it seems to me -- and ICANN has every incentive when they receive information under a non-disclosure or confidential clause, they have every incentive to keep this minimal and not to agree to sort of a frivolous claim of confidentiality because it hamstrings them too. So but when a party has trade secret information which by definition they value highly, they are not going to give control to somebody else to determine whether it's

going to be disclosed. They enter a contract with ICANN that says ICANN will treat it in confidence and that's the end of it for them and full stop. So I don't know how we are going to bridge that gap.

So I appreciate your suggestion, and I just wanted to voice -- I believe I can't speak for the registry stakeholder group obviously but I believe this would be some that would share that opinion in that group and maybe some other groups as well. Thank you.

>> MICHAEL KARANICOLAS: I see Bernard has his hand up as well.

>> BERNARD TURCOTTE: Thank you, Michael, just I practical point. We don't have any other meetings scheduled for the transparency group, so if you want to start scheduling these, scheduling one and two weeks out or such, please reach out to me and we can start looking at the schedule and making arrangements to reserve slots for the group. Thank you.

>> MICHAEL KARANICOLAS: All right. That is well taken. We will absolutely do that. Yes, just in regards to the commercial information, I just, I guess I want to see a solution that's not automatically walling things off. I want to see some sort of a process take place. And, you know, I think that we have heard other stakeholders supporting that. I know that there is -- I think that there are strong moneys on both sides. If you look at the responses we have gotten back, there were also strong opinions in favor of more disclosure of the commercial information.

So I do think that we need to maybe work together to try to find a reasonable compromise that defines a proper standard on this, and I think that the best thing to do is to maybe take this forward by email in the meantime and to try to come back to come out with solutions that hopefully address the concerns on both sides while improving the current policy. If I can just move on to the other minor issues, or the other issues that were raised, in addition to those two major substantial exceptions which I think need to be really closely revisited, I did note what ICANN wrote in about the cost concern, and I noted the specific recommendations that ICANN attached to their concerns about costs.

One of the ones that I was a little bit surprised at actually which I thought was going to be an exception was the binding time line of 30 days. ICANN responded and said that they have never taken more than 60 days -- 30 days extendible once by 30 days that they have never gone beyond the original 60 days of responding to a request. So that was great to hear because presumably that means it is a reasonable recommendation if they have been living with it since the dawn of the DIDP.

I noted that a few of the objections that ICANN raised were based on -- I don't want to say misunderstandings because it's -- if it's not understood, then it's a problem with the drafting. But areas where the drafting should have been clear. So I think that there is a few specific objections which can be in terms of cost and resources which can be addressed by simple little word Smithing changes to make it more reasonable or to remedy misconceptions about what's being suggested.

The major one I think needs to be revisited as well in terms of the costs is the discussion of the duty to document. That was one where they raised an objection on about the shape that that was going to take. They raised cost objections on that, and I think that that's also something that needs to be not necessarily dropped but maybe clarified quite a bit.

So in addition to recommendations 11 and 15, and in addition to the minor little tweaks that need to be done in terms of the specific clarifications, that's the one that I think needs to be redrafted. And I see David saying, he seems concerned with the format when the information is public. I saw that also, but they said in their response that they routinely do that. That was a little bit confusing to me. They seemed concerned with the formatting -- I'm sorry, David, can you -- gentlemen, thanks. Please go ahead.

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>> DAVID MCAULEY: I read ICANN's response about a week or whenever it came in and it's been a while, but as I recall, I thought they said somewhere, look, if some information is already public and someone comes and asks us, obviously paraphrasing, if someone is cans us if you give the information out in a different format, that doesn't seem to make sense. I thought that's what they were saying. But while I'm on the line, let me mention one other thing about this cost area. I would suggest that one thing we ought to do is go back to ICANN and ask for further comment in this area, looking at it not from the exemption or the provision, the DIDP provision side, but from the remedy side soar the other side where ICANN said, oh, by the way, this could have an aim pact on policy development.

I'd like -- I think it would be in our interest to have them speak more to that and to ask them what do you mean by that. Is there, you know, that's going to affect the community, and we just need to know what that means, and find out if it's a serious issue, and if it is, are there ways to work around it. Thank you.

>> MICHAEL KARANICOLAS: Yes, that's one of the objections that I meant should be tweaked because it's, their reading of it was not, I don't think the underlying intention of it. When they talk about formats, I think that the intent of that

recommendation was, that that should only apply to materials subject to a DIDP that is not already available. Not that if information is available in one format that ICANN should take it upon themselves to transfer it into a bunch of different formats. I would agree with ICANN that that's not something they should be doing. So that was one of the areas that I thought needs clarification, or that I thought needs just a small tweak to address, to address their concern.

I'm not sure, but can you clarify the second thing that you mentioned with regards to the costs? I thought that, you know, my intention was to go through their response, find the areas that they had raised an objection to in terms of costs and either, well, basically to move through it from there. I think that they were fairly specific on the recommendations that they provided, that they had objected to at the time. Can you clarify what you were -- David, do you think, can I ask you to clarify what you meant by that.

>> DAVID MCAULEY: Yes, on the cost issue in several respects, ICANN mentioned and I'm reading now from part of -- no, I'm sorry. I'm not reading. But in several respects they said this could have a cost impact, and it could cause, it could cut trade off in other areas including policy development. So I will try and find it and then raise my hand when I find it to read that language.

>> MICHAEL KARANICOLAS: Sure. The approach that I would suggest is basically to go with what they have on that, because I think they were fairly clear and to basically work through the specific objections that they had raised and to try to address the cost issues on a case by case basis and see where they have the problem, sorry, David,.

>> DAVID MCAULEY: I found do you, do you sense that there is an immense cost coming your way as a result of DIDP -- policy development and implementation is the sweet spot of what the community is concerned with, and when they mention that as a concern, we should find out what, find out more if it's possible.

>>

>> I don't think I can do that.

>> It's okay, we will take care of that. Thank you.

>> MICHAEL KARANICOLAS: Okay. Great. So I think that that's the maker points I wanted to discuss on, in terms of the DIDP just to reiterate, I think that we agree that recommendations 11 and 15 are going to be revisited and that we are going to have another meeting in a little bit trying to find better avenues for those areas. We need to make some small changes with regards to minor objections. I guess I should have had a specific list of those here, but I will bring that to the

next meeting, minor changes which I think can be resolved in response to objections fairly painlessly, and that we need to go through and specifically consider cost implications on several of them and specifically about duty to document, and that we will in advance of the next meeting as well reach out to ICANN staff for clarification on a few of their responses as well.

So those are, as I see it, the main action items for DIDP. Is that okay with everyone? Great. Sounds good. Moving onto board deliberation. I'm sorry that took so long but I think that's probably the biggest one that we needed to deal with. Moving onto board deliberations, there really weren't very many negative comments that we got back from that. It was actually quite positively received.

The only, I guess, quasi negative one was ICANN staff mentioned that with regard to grounding objections, grounding the times when material was excised from the minutes, with regard to grounding that in DIDP exceptions it would depend on the finalization of the DIDP exceptions which is a fair point, so that needs to be reconsidered, but broadly speaking, the objection, the feedback that we got on the board deliberations stuff was pretty much just positive in endorsements so that's great to see. I personally don't -- I from the feedback don't think that there is anything that really needs to be revisited based on that so unless there is anything that wants to raise a point on that, we will move on to interactions with Governments.

Great. So that is my co-rapporteur's time to take over now, so, Chris, I will hand it over to you.

>> CHRIS WILSON: Great, thanks Michael, this is Chris Wilson for the record. Looking at the comments that were filed with regard to our recommendation on transparency concerning ICANN's interactions with Governments, there was not a lot of, a lot of positive support for the recommendation, not a lot of, I guess, constructive criticism if you will other than a couple of comments from the NCSG and some questions that were posed by ICANN, ICANN org. So I can quickly go through that with folks and I'm happy to talk more about it.

With regard to NCSG comments, I think one constructive comment was that rather than asking for disclosure of all expenditures with regard to political activities that we set a, some sort of monetary threshold for reporting purposes. NCSG suggests \$20,000 be the minimum threshold to trigger reporting requirement. I'm open to maybe making that a little lower, but I do think that, I take the point that perhaps no threshold is not reasonable.

So this is something I guess we as a sub group can discuss further either now or on the call. I'm happy to perhaps make an initial suggestion now that the threshold be set at \$10,000,

something along those lines, and then we can certainly, you know, make a, suggest an edit to our rec and then put it out for further discussion on the list, but I think the NCSG's constructive criticism is well taken in this regard.

Are there any initial thoughts on implementing a financial dollar threshold for reporting? I don't see any hands raised right now. So why don't I go ahead and I will make a suggestion we lower, we make it 10,000 and then if folks on the list have further comments we can do that. Additionally the NCSG suggested that the sub group define the term, quote, education engagement which if folks can recall, this is the designation that ICANN's CFO uses or has used for form 990 and reporting purposes in terms of outside vendors that ICANN has utilized.

In particular, this category was created according to Xavier Covex. The CFO with regard to the eye Anna transition and outside vendors that ICANN has hired for the last years to assist in quote education and engagement on the IANA transition. In light of the fact that this sort of category was created specifically for the IANA transition and in light of the fact that the IANA transition is for all intents and purposes completed notwithstanding our important work in work stream 2, I don't know what value we can add by trying to define that or broaden that terminology.

I don't know if it's necessary, to be honest. I think if our -- our broader recommendation is adopted, I think that would encompass that type of activity. It's intended to encompass that type of activity certainly, so I don't know if we need to spend time on defining, defining the education engagement terminology that the CFO has utilized for labeling purposes for reporting. I think we best just not worry about that but that's my initial take. Does anyone have a thought on that or suggestions on that? I don't see any, Dave Mcauley.

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>> DAVID MCAULEY: I do remember on series of questions, ICANN had and I thought they were very practical and good pointing to, perhaps, over general terms we may have used but I don't remember if it was in the context of education, but there are questions along the lines of can we hand out leaflets can we make a speech in a room where Government people are present, can we do this, that or the other thing. If it affects education or I will state it as a general concern, maybe we need to be more particular in this area to, I mean, I thought ICANN raised some valid points that I think we should address somehow.

If I have jumped the gun and you were going to speak to this after this, then my apologies, but that was my comment, thanks.

>> CHRIS WILSON: Thanks David, this is Chris. Yes, indeed

I intend to get to ICANN's filing in a second. I first was going to tackle the NCSG's comments and then tack the ICANN's question. They do raise some questions about terminology, et cetera, and I will get to that. I think some of them are, all good questions to ask, I think they can be answered directly. And we can figure out how best to do that.

But as far as my initial point with regard to the NCSG, I don't think we need to get wrapped around the Axel of a particular term that the CFO has used in the past as far as particular form 990 reporting purposes. Again, we are creating a separate reporting requirement that would encompass some of that, what has been currently reported on form 990, but not, it's not entirely about that. So I think my initial take is that I don't think we need to take the NCSG up on its offer to define education engagement.

That's not to say we can't provide to David's point as I answer the ICANN questions, but not that we can't provide guidance if you will in our report and recommendations as to what exactly we are talking about. But I don't know if we have to provide a formalized definition of education engagement, but let me go ahead and turn to the ICANN comments on this particular topic and then open up for further discussion.

They had, I guess ICANN had seven or eight points or questions that they wanted to present to the sub group regarding this particular recommendation. One point they did want to make is that some of this, some of this information is now included in the board reports that are generated by the CEO's office in advance of every board workshop. And that is indeed true. I think that's been a nice improvement in the last year, year plus since Goran Marby has taken over as CEO of ICANN and some of the information is included in those reports I think would be pertinent to our reporting requirement. I think our reporting requirement would cover more than what's just included in those board reports.

And, I don't know, I don't think ICANN was suggesting that those are sufficient, but I think it's important to note that those board reports are only as good as the CEO who is currently occupying the office and there is no guarantee that the next CEO would be interested in doing such board reports. This is an initiative implemented by the current CEO, and so I think to the extent that that information is excluded in the board reports, it would be good to sort of formalize that reporting requirement so that it's not dependent upon a particular CEO who is in office.

They also raised the issue that this protects, perhaps these reporting requirements may impose extra costs on ICANN. Again, I totally respect the cost issue. I don't think,

however, in my experience that this whatever additional costs I think will be marginal, nominal, obvious I ICANN has a variety of different reporting requirements, lobby reporting requirements, et cetera. I don't think that there will be significant additional costs added to this.

I think that this reporting requirement will be complimentary to what they are already doing to some extent. So while there may be some additional costs incurred in terms of man power needed to collect information, et cetera, I just do not believe that this will be a substantial cost burden on ICANN, and I think certainly the benefits to the community and to ICANN itself outweigh whatever nominal costs may be incurred.

Getting to their questions, they raised the notion that the definition of political activity which we use in our recommendation includes an attention to influence or in form directly or indirectly and utilizes various methods of engagement including newspaper op Eds, letters, speeches, phone calls, whatever. ICANN points out that these do not align with the definitions of lobbying or engagement in political campaigning that are applicable to ICANN by virtue of U.S. laws and tax regulations.

I don't dispute that contention. I think that this definition is intended to be broader than the definitions used in U.S. lobbying law and tax law. I should say for sake of clarity and elucidation that this definition is not Brian brought out of thin air. I pull today from the foreign agents registration act here in the U.S. which entities need to use for other reporting requirements here in the U.S. for influence activities here in the U.S. So this is not, I'm not suggesting that far out per se or F.A.R. applies to ICANN, it doesn't, but I think for utilizing definitions that are currently in existence, I think this is helpful.

So I think that while it's true that these, this definition is broader, it doesn't map exactly to what is included in the lobbying disclosure act or U.S. tax law, I think that's exactly the purpose and point of this exercise is to include activity that goes above and beyond or outside of those narrow statutory definitions. So they made the point. I think it's valid, but I think it's perfectly why we have, why we are doing what we are doing in this regard. Dave McCally, I see your hand raised.

>> DAVID MCAULEY: Thanks, Chris. With respect to your last record about we want to be broader than the other definition of lobbying, and with respect to a comment you made recently about you suspect that this may not have a substantial cost impact, some of the board reporting, I tend to agree with you on the cost side. The problem is we don't know. So I'm just going to reiterate what I said in chat a moment ago, we do

need more engagement from ICANN in this respect. The one thing we do if we have a broader definition is we could perhaps inadvertently affect their willingness to do speeches, op Eds, letters to the editor, whatever it might be.

We have to be careful here, so I do think we have more, more engagement from ICANN because it's good for ICANN to be out there making these kinds of public statements and I don't want to chill that by an overly aggressive requirement, and I don't see how that could be the case, but I think we should give them a chance to flesh out what their concerns are in this respect. Thank you.

>> CHRIS WILSON: Thanks David. This is Chris again. Obviously I agree. We don't want the impact of this to chill ICANN's engagement. That's not the intent of the reporting requirement. It's simply to provide insight into those interactions that are important for ICANN and the community. I will also say this. We didn't make a specific recommendation as to how often this reporting requirement needs to occur. I think, you know, I think we suggested, you know, at least twice a year would be helpful. I don't think we need to, you know, necessarily go beyond that. So that may mitigate costs as well. We are not seeking monthly disclosures here.

I think, you know, once every six months in my opinion would be sufficient, but the sub group may have, we did make a specific recommendation on that. I think that's something that whether the CCWG itself or on the community as a whole could decide what is sufficient. But I think, you know, that would mitigate the cost factor, I think, would mitigate the burden, whatever, there is a burden imposed on ICANN, I think that would mitigate that.

Personally, I think these reporting requirements exist in a variety of context for a variety of entities. I have never seen it. Now, people not engaging because of them. They are meant to sort of, they are fashioned in such a way to not serve as a burden, certainly in the context of the U.S. engagement with Governments, you always have the First Amendment considerations there, and they certainly haven't been seen as an imposition or violation of that. But I think that we will continue to obviously get more feedback from ICANN on that, and perhaps they can even provided us input on what the cost is for them to comply with their current reporting requirements as far as lobbying disclosure goes, et cetera, and to what extent, you know, if there is a cost associated with putting together the board reports, for example. That would be helpful to know.

But I think that, again, like I said, I think this definition is not pulled out of thin air. It wasn't created, it's been in use at least in the United States for quite some

time now, and variety of entities comply with it. So I think, I think we are on pretty safe ground in that regard. But hopefully we will get more ICANN staff can engage more on that point. Moving right along, the second question they asked is how would this apply, this recommendation apply to an ICANN representative or supported community member if an ICANN representative or supported community member delivers a speech in a room where Governments might attend among others would intention be shown if the speaker knew Government representatives are in attendance even if there is a broad audience.

Two things, one, and it gets to another question they have asked later. This recommendation wouldn't apply to a supported community member. This recommendation only applies to ICANN, ICANN staff, personnel or agents of ICANN that may be contractors, et cetera, vendors, et cetera. I think supported community member, someone who is attending an ICANN meeting is and receiving funding from ICANN for elimination, I don't know anyone that reasonably considers that person to be an ICANN representative. Their representative of their particular community, they are happen to be getting some financial support from ICANN but I don't think that changes their standing in this regard, and certainly wouldn't be our intention, I think, to include a reporting requirement on folks that are not ICANN employees or vendors or contractors for ICANN.

So if we need to provide greater clarity in that regard, I think we can do that, some additional guidance, that would be good. I think to a specific question. ICANN, if an ICANN representative is delivering a speech affecting public policy in a room where Government, you know, Governments are going to attend, or you reasonably expect Government representatives to attend, I think that would qualify as being reportable.

I don't think there is a, I don't expect for think we need to have a sort of broad audience exception, if you will or widely attended audience exception to this reporting requirement. I think it, you know, while it may be a public statement, a public speech recorded, et cetera, that's great, but I think it's helpful to have it sort of put together in a centralized reporting mechanism so we all, you know, we all know what transpired. So my answer to the question would I believe that, you know, there is a reasonable expectation that a Government representative is in the room, that to me would be sufficient for reporting purposes. And my advice to ICANN would always be err on the side of caution like any other entity engaged in lobbying in the U.S. or elsewhere, the rule of thumb is err on the side of caution.

The third question is what if a pamphlet is designed for

broad dissemination and handed out to a Government representative? Again, I think if there is reasonable expectation that that pamphlet is going to be, again, on a, with regard to a political activity, a public policy matter and it's a reasonable expectation that a Government representative is going to get that and going to be informed or educated by that or influence the by that, I think, again, it should be covered in the reporting requirement.

Moving along to the fourth question they ask, what is the definition of a Government, is it anyone employed by a governmental entity, my initial answer is yes. If someone is employed by a Government, then that person is a representative of a Government. And this could be, you know, a direct employee of a Government or if there is a, again, if a Government has hired a third party contractor person consultant, et cetera, to be their representative in particular instance, then I think that would count too.

So I mean, I don't know if we need to have a, we as a sub group are even capable of coming up with a definition of what a Government is, but I think, you know, this is something that I think any reasonable person could come to an understanding on. And, again, if we need to provide clarity in the form of guidance, we can do that. And then a fifth question is who decides what is a matter of public policy. Again, a perfectly share question, but I think I, I think to some extent it's similar, my answer is similar to what I said about Governments. I think this is all based on good faith judgment in this case by the reporting entity and that would be ICANN as to what constitutes a matter of public policy. I think there is no -- I don't know how we could possibly define that, you know, accurately without missing something or perhaps being too broad, but I think it's, you know, you know it when you see it kind of thing, and if we want, we could provide perhaps a list of, you know, specific issues or areas that we see as qualifying as public policy matters providing, again, as a means of just providing some guidance, but wouldn't be an exhaustive list, of course, but would provide some insight for ICANN to guide them as they go through, as they come to determine what is and is not reportable.

But I think, again, my suggestion to ICANN would be that you would err on the side of caution in this regard, and not be too ultra limiting in what you are going to be reporting. It's always a good faith reasonable judgment call on any type of reporting requirement. Sixth question asked by ICANN, Governments come to ICANN in multiple capacities including a ccTLD operators or as individual contributors to policy processes. Would each of these touch points be a required area

of reporting? I think we answered this or at least we tried to answer this in our report and recommendation because I believe this issue came up during discussions, during some of the CCWG plenary phone calls., and we made it, I think we made it clear that this reporting requirement does not apply to ICANN and Government interactions that are directly related to PDP Working Groups and policy that's being undertaken within the ICANN community -- ICANN community, I think reporting of that activity would be redundant and unnecessary. The purpose of this reporting requirement, frankly, is to report and provide transparency and engagement that's outside of the traditional, if you will, day-to-day ICANN policy making processes, which are well documented and vetted.

So I think that the answer to this question is no, and I think we hopefully answered that in the report. We could make it even more clear, perhaps, if it was missed, but I think that's not an issue moving forward. Bernie, I see your hand is raised?

>> BERNARD TURCOTTE: Thank you, Chris. Ladies and gentlemen, we have about five minutes left and I have a hard stop at the top of the hour. We use the captioning to capture the discussion as it were. And I line up decisions from the group and action items so we can publish those. And given we have only got a few minutes left, I'm wondering if we could take one or two of those minutes just to run through what we think we have got down as an action item so those can be published correctly.

>> CHRIS WILSON: Yes, that's great, Bernie, thank you for doing that. Why don't I do this? There is not much more to discuss on interactions of Governments rather than ICANN asking about ICANN community funded stakeholders are included. Again, I think answered that question. The answer is no because they are not agents or employees of ICANN and we can provide, again, better clarity on that.

There was discussion about whistle blower. There was some comments made about the whistle blower section which I can get to on the email list. Nothing substantive based on what I could tell, a little more clarity sought here and there. A few different commenters felt the use of the term whistle blower or hot line was too colloquial and we should come up with a different name, but the whistle blower recommendations were supported by all and we can move forward there. So I think, and, Michael, we can talk more, but I think the suggestion would be we have another call on the sub group perhaps in a couple of weeks. I know Michael has a lot of work to do perhaps in reworking some of the DIDP recommendations.

I can provide written responses to the questions regarding

interactions with Governments. ICANN's questions. If we need to I can add additional section to the report and recommendations on support of providing official more better guidance on those questions. And I think, I think, Bernie, at one point will be perhaps put a formal response back to ICANN asking for additional feedback on some of the issues raised on the DIDP discussion, the issues regarding cost, you know, greater clarity from ICANN org on some of the points that they raised would be helpful. So that's, I kind of seize where we are going next and, you know, hopefully in two weeks' time we will have clarified and responded appropriately to the comments that were made by the community. Michael, did you have one more to add to that?

>> MICHAEL KARANICOLAS: No. That sounds perfect. I just put into the chat the action items that I see for DIDP and I think that we should schedule the next meeting for about two weeks out, and reach out to ICANN in the meantime.

>> CHRIS WILSON: Do others on the sub group have thoughts, questions, concerns about the path forward? Okay. Bernie, I see your hand raised?

>> BERNARD TURCOTTE: Sorry, old hand. But I will take advantage of it. So basically I have got three action items coming out of here, staff schedule the next meeting for about two weeks from now, and I will run some dates by you and you can select them accordingly. Michael will draft amendments to recommendations as per comments, I am not going to go into details and Michael to reach out to ICANN legal to clarify objections and cost concerns. Is that okay?

>> CHRIS WILSON: That sounds good to me. Michael, is that okay with you?

>> MICHAEL KARANICOLAS: Excellent. Thank you -- sounds good to me. All right. Thanks, everybody. I guess we are right on time.

>> CHRIS WILSON: Thanks, everybody. I look forward to working with you all on the list and on the next call. Thank you.

(Concluded at 3:00 PM CT).

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