

Adobe Connect Chat for CCWG Accountability F2F at ICANN59 -

Afternoon Session – 25 June 2017

Brenda Brewer: (13:16) Welcome to the afternoon session of CCWG Accountability Face to Face Meeting at ICANN59!

Brenda Brewer: (13:23) Hello, my name is Brenda and I will be monitoring this chat room. In this role, I am the voice for the remote participants, ensuring that they are heard equally with those who are “in-room” participants.

Brenda Brewer: (13:24) When submitting a question that you want me to read out loud on the microphone in this session, please provide your name and affiliation if you are representing one, start your sentence with <QUESTION> and end it with <QUESTION>. When submitting a comment that you want me to read out loud on the microphone, once again provide your name and affiliation if you have one then start your sentence with a <COMMENT> and end it with <COMMENT>. Text outside these quotes will be considered as part of “chat” and will not be read out loud on the mic.

Brenda Brewer: (13:25) Any questions or comments provided outside of the session time will not be read aloud. All chat sessions are being archived and follow the ICANN Expected Standards of Behavior: https://urldefense.proofpoint.com/v2/url?u=https-3A_www.icann.org_resources_pages_expected-2Dstandards-2D2016-2D06-2D28-2Den&d=DwIFaQ&c=FmY1u3PJP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=kbiQDH54980u4nTPfwdloDLY6-6F24x0ArAvhdeDvvc&m=d8CLqwAx3JD2kYSzP0chy73h_Qg_3WI69IMN3eFzssl&s=MQ3xbZQL7nwL61k4EZ-oEKZoEwW9LVHj6KPj-44KCl4&e=

Phil Marano (Mayer Brown): (13:48) Can anyone post a link to the Ombudsman report and recommendations?

Jim Prendergast: (13:48) Question - Could someone remind me when was this review undertaken - trying to understand if it considered the formation of the Complaints Officer and the interplay between the Ombuds and Complaints officer. Thx

Steve DelBianco [GNSO-CSG]: (13:49) This external review was completed this month, Jun-2017

Steve DelBianco [GNSO-CSG]: (13:51) the report does describe the complaints officer, on page 13

Andreea Brambilla: (13:54) Can I clarify, are the recommendations on the slides directly from the consultants, or are these recommendations from the subgroup based on review by consultants?

Jordan Carter (.nz): (13:55) they are from the consultants, Andreea

Andreea Brambilla: (13:55) Thanks, Jordan.

Steve DelBianco [GNSO-CSG]: (13:58) Here is the External Review document https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_display_WEIA_Ombudsman-3Fpreview-

[3D_59643286_66083618_2017-5F0619-2520-2520ICANN59-2520Ombuds-2520Review-2520Report-2520.pdf&d=DwIFaQ&c=FmY1u3Pj6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=kbiQDH54980u4nTPfwdloDLY6-6F24x0ArAvhdeDvvc&m=K6cB9uLcyDrc827QWn-INH7H1D5FyFRHkpyoFeM3zuM&s=QPm4DLzXBnsIBEdMq--xB8Jg9B4kwtNN3BEVSbfN89g&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_display_WEIA_Ombudsman&d=DwIFaQ&c=FmY1u3Pj6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=kbiQDH54980u4nTPfwdloDLY6-6F24x0ArAvhdeDvvc&m=K6cB9uLcyDrc827QWn-INH7H1D5FyFRHkpyoFeM3zuM&s=QPm4DLzXBnsIBEdMq--xB8Jg9B4kwtNN3BEVSbfN89g&e=)

Bernard Turcotte Staff Support: (13:59) thanks Steve

Jordan Carter (.nz): (13:59) where was that in the navigation Steve?

Steve DelBianco [GNSO-CSG]: (14:01) Found it on the wiki page for Ombuds sub team, at [https://urldefense.proofpoint.com/v2/url?u=https-](https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_display_WEIA_Ombudsman&d=DwIFaQ&c=FmY1u3Pj6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=kbiQDH54980u4nTPfwdloDLY6-6F24x0ArAvhdeDvvc&m=K6cB9uLcyDrc827QWn-INH7H1D5FyFRHkpyoFeM3zuM&s=OzAtZAirYK8Nwuf0HUZR3AoWliga-QzgwMxIT37tOeA&e=)

[3A_community.icann.org_display_WEIA_Ombudsman&d=DwIFaQ&c=FmY1u3Pj6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=kbiQDH54980u4nTPfwdloDLY6-6F24x0ArAvhdeDvvc&m=K6cB9uLcyDrc827QWn-INH7H1D5FyFRHkpyoFeM3zuM&s=OzAtZAirYK8Nwuf0HUZR3AoWliga-QzgwMxIT37tOeA&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_display_WEIA_Ombudsman&d=DwIFaQ&c=FmY1u3Pj6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=kbiQDH54980u4nTPfwdloDLY6-6F24x0ArAvhdeDvvc&m=K6cB9uLcyDrc827QWn-INH7H1D5FyFRHkpyoFeM3zuM&s=OzAtZAirYK8Nwuf0HUZR3AoWliga-QzgwMxIT37tOeA&e=)

Jordan Carter (.nz): (14:02) thanks

Herb Waye Ombuds: (14:06) FYI I am in the room sitting in the back.

Cheryl Langdon-Orr (CLO): (14:06) agree with you Avri

Edward Morris: (14:07) As do I.

Jordan Carter (.nz): (14:15) All - we will keep rolling through the agenda items, so if we finish this Staff Accountability item early, we will move straight into Jurisdiction.

Jordan Carter (.nz): (14:17) Staff Accountability documents available here: [https://urldefense.proofpoint.com/v2/url?u=https-](https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_display_WEIA_Staff-2BAccountability&d=DwIFaQ&c=FmY1u3Pj6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=kbiQDH54980u4nTPfwdloDLY6-6F24x0ArAvhdeDvvc&m=K6cB9uLcyDrc827QWn-INH7H1D5FyFRHkpyoFeM3zuM&s=smgIJIT4c0gqLYmmkzqwM9Kd50V02odrwJLxxAvcAY4&e=)

[3A_community.icann.org_display_WEIA_Staff-2BAccountability&d=DwIFaQ&c=FmY1u3Pj6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=kbiQDH54980u4nTPfwdloDLY6-6F24x0ArAvhdeDvvc&m=K6cB9uLcyDrc827QWn-INH7H1D5FyFRHkpyoFeM3zuM&s=smgIJIT4c0gqLYmmkzqwM9Kd50V02odrwJLxxAvcAY4&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_display_WEIA_Staff-2BAccountability&d=DwIFaQ&c=FmY1u3Pj6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=kbiQDH54980u4nTPfwdloDLY6-6F24x0ArAvhdeDvvc&m=K6cB9uLcyDrc827QWn-INH7H1D5FyFRHkpyoFeM3zuM&s=smgIJIT4c0gqLYmmkzqwM9Kd50V02odrwJLxxAvcAY4&e=)

Kavouss Arasteh 2: (14:21) From the very beginning I argued that Staff Accountability is a matter should remain within the remit, mandate and responsibility of ICANN

Kavouss Arasteh 2: (14:24) There is a need which is fundamental and that is there should not be micromanagement and all responsibilities to supervise actions or inactions of the staff should be remained as exclusive responsibility of the ICANN CEO and, if necessary the Board. One should not create degree of unnecessary intervention in those responsibility.

Kavouss Arasteh 2: (14:25) I would be grateful if similar course of action are being practiced in other organisation much much bigger than ICANN

Jordan Carter (.nz): (14:26) Kavouss, I am interested if you see any of the specific recommendations in the report go against what you have suggested here - to my mind the group has kept within that constraint. It hasn't proposed to break the staff reporting relationship through to the CEO, but has focused on suggesting improvements to the processes within ICANN that keep the responsibility for performance and accountability with the managers who need to have it

Kavouss Arasteh 2: (14:26) THIS procedure break the very principle of hierarchy

Farzaneh Badii: (14:27) Hi everyone

Cheryl Langdon-Orr (CLO): (14:29) hi Farzi

Edward Morris: (14:29) Hi Farzi. Nice to see you here.

Kavouss Arasteh 2: (14:30) We were informed that the issue of staff accountability was properly recognized and would have been better managed internally without a need to such activities within the CCWG

Kavouss Arasteh 2: (14:42) The proposed course of actions not only may not improve the current status of staff accountability but on the contrary may result in disorder, destabilizing the current rules and relation and create managements inside managementd

Finn Petersen, GAC - DK: (14:44) we should avoid creating an other panel

Seun Ojedeji: (14:47) +1 to that Finn. I actually have no idea how volunteers can be reliably used for such a role (re:empowered community member). Irrespective thanks to the group for their work.

Christopher Wilkinson (CW): (14:58) <COMMENT> Having worked for many years with several large international orgganisation, both as staff and as a manager, I tend to support the reservations and questions expressed by Kavrouss and George <COMMENT>

Kavouss Arasteh 2: (15:00) I hope all comments made be briefly reflected in the summary record of this session

Seun Ojedeji: (15:16) I think there is a 4th group that wants the issues heard before we even look at the solutions.

Sivasubramanian M: (15:16) Could there be a fourth ? A gradual solution that could arise from the California Court itslef?

Sivasubramanian M: (15:19) Do we require an alternate jurisdiction or an unlimited jurisdiction? Located in California, some other US State or in another country, or, could the location itself be defined as on the Internet? Rather than advocate a multi-lateral environment, could we apolitically determine an expansive jurisdiction?

Jorge Cancio (GAC Switzerland): (15:21) +1 Seun - that was my understanding, first to look at issues and then to remedies. That is what we were doing with the cases and the questionnaire - the (re-)discussion on potential remedies was IMHO not needed now

Seun Ojedeji: (15:23) Can the Co-Chairs please stop this defense of their decision unless they intend to maintain it?

Seun Ojedeji: (15:23) Lets move on with way forward instead

Greg Shatan: (15:24) Jorge, that is in our workplan, which also contemplates that we would revisit the breadth of our work around this time.'

Farzaneh Badii: (15:24) no they should indeed defend their decision and the process so that we stop having this discussion and get to work

matthew shears: (15:24) + 1 Farzi

Greg Shatan: (15:25) Seun, I think many people have expected an explanation and clarification from the Co-Chairs.

Sivasubramanian M: (15:25) What if we ennumerate the range of DNS issues that may require adjudication, define the unique complexities arising out of the global and trans-border nature of DNS and approach the California Courts for a solution, perhpas with a plea to form a DNS Tribunal, some what multit-jurisdictional like a Circuit Court, slowly progressing into a global DNS tribunal?

Farzaneh Badii: (15:26) Siva we are still in the process of analyzing issues. we get to solutions later

Olga Cavalli - GAC Argentina: (15:26) want to rise hand but it dissappeared from the screen!!!

Bernard Turcotte Staff Support: (15:28) @Olga - saw that - will ask co-chairs to put you in the queue after David M

Olga Cavalli - GAC Argentina: (15:28) solved

Sivasubramanian M: (15:28) Farzaneh, I was replying to the three options summarised at the session opening.

Seun Ojedeji: (15:31) @Farzaneh i really do not want to keep dwelling on process on this matter but IMO i don't think the Co-Chairs should CONCLUDE on an issue as this without getting to the plenary. In anycase, i think based on the clarification, it will be good that they update their decision and be clear on the way forward to the sub-group.

Keith Drazek: (15:34) Relocating ICANN and/or total immunity will NEVER achieve consensus and is, in fact, the view of a very small minority. Either or both would completely undermine or eliminate the Work Stream 1 accountability mechanisms we spent \$30M to establish. Kudos to Thomas for engaging as he did so we can move forward in a timely and financially responsible manner.

Farzaneh Badii: (15:36) +1 Keith

Farzaneh Badii: (15:36) I think gratitudes should be shorter

Farzaneh Badii: (15:37) We spent hours and went around a circle on this issue. Thomas did not run into anything. we had to come to a conclusion

Farzaneh Badii: (15:39) even now we are prolonging discussions.

Seun Ojedeji: (15:40) @Farzaneh as someone who was following the group (but i agree with significantly low participation) do you know where the issues were documented and their respective solution/decision about them?

Keith Drazek: (15:41) I'm a bit confused about the concept of "partial immunity," particularly with regard to the reference to OFAC (mentioned in the introduction). As I understand it, there is an exception process for OFAC restrictions where entities can apply for a license. Why is the CCWG focusing on this when such a process already exists?

Farzaneh Badii: (15:41) the issues were being discussed then we got distracted. the issues are in the questionnaire responses and the cases we were analyzing

Seun Ojedeji: (15:42) So yes i agree with you that we've been going around in around circles of solutions when we have not even formerly heard and considered the issues

Sivasubramanian M: (15:42) When ICANN was created in 1998, it was created with a clear idea of transition to a global multi-stakeholder body. With a similar intention, if, the California Court, on its own, establishes a DNS Tribunal to start with, to progress to an Internet Court of Law and Appeals?

Farzaneh Badii: (15:42) we discussed some of the issues Seun.

Greg Shatan: (15:42) The issues are also in the other documents we worked on, and some were discussed as we worked on these documents.

Sivasubramanian M: (15:42) and then transition the jurisdiction to the Internet?

Parminder: (15:43) I am not ready to put any potential off the table at this stage - and that includes incorporation of ICANN part.... bec we are following a process as per sub group's decision and in that process the time to make such determination has simply not come. I dont see the basis having been developed to knock that big issue off the table by a chair decision. For instance, we cannot at the same time being reviewing questionnaire responses, and perhaps asking respondents to further clarify, and declaring that "incorporation issue" is already off the

table. Second, I am very keen to get on with the immunity – including its partial/ tailored versions, and I think this is one of the most important discussions to do.

Greg Shatan: (15:44) Siva, for several reasons too long for this chat, that is not realistic.

Parminder: (15:45) As Tijani says, our mandate asks us to look at all layers of jurisdiction, and we cannot refuse to do so - this includes the incorporation layer

Sivasubramanian M: (15:47) The Tribunal could be constituted with US Laws, but with special powers to simplify judicial processes, selectively focus on such sections of Law as may be impertinent to global DNS issues, and over the years gradually deliberate on the incursion of new provisions as may be required for the DNS.

Parminder: (15:47) NO, i never said ICANN shd be made to India. I object to chairs statement.

Parminder: (15:47) Such summary characterisation are not right for the chair to make.

Seun Ojedeji: (15:47) ICANN could move to India sounds to me as a joke then and not necessarily a serious statement. Ofcourse there were lots of pun intended statements

Sivasubramanian M: (15:47) It could start as a bench of US Judges, but even at inception, if the Tribunal is constituted with the inclusion of one or two Judges from elsewhere, it would please the Eye. This Court could allow Lawyers admitted to Bar in different locations, evolve a Judicial process that is swift as needed for the DNS, and manage hearings in such a manner as to make the Judicial process far less expensive for non-US parties. This tribunal could initially have its primary court rooms within the US, but global in judicature. As it evolves, it could have Court rooms in more than one continent and with multiple benches of Judges from across geographies, not necessarily with an excessive emphasis on geographical representation. This would a decade or two, and at that point of time, just as the Department of Commerce transitioned its oversight of IANA functions to the global multistakeholder body, the California Courts could transfer jurisdiction to the Internet Circuit Court of Law and Appeals,

Raphael Beauregard-Lacroix: (15:48) I do agree with Tijani - I feel that some trust has been lost with the "intervention" Maybe it was done according to procedures, but it did have unintended effects

Seun Ojedeji: (15:49) But that happened Greg because we did not assure the group that it was going to be discussed at a specific time.

Farzaneh Badii: (15:49) totally. don't serve ice cream yet!

Niels ten Oever: (15:49) https://urldefense.proofpoint.com/v2/url?u=https-3A_twitter.com_nielstenoever_status_878973344560939011&d=DwIFaQ&c=FmY1u3Pjp6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=kbiQDH54980u4nTPfwdloDLY6-6F24x0ArAvhdeDvvc&m=K6cB9uLcyDrc827QWn-INH7H1D5FyFRHkpyoFeM3zuM&s=jX0Bx_jDs7qNHyMa7dQqVHpc6azXuwgtLaWBxu8IzCw&e=

Farzaneh Badii: (15:50) thank you Niels

matthew shears: (15:50) If we can agree to put aside the issues of location, incorporation and organizational immunity then we can have a much more productive discussion around a more focussed and limited set of remaining issues that may or may not need addressing.

Kavouss Arasteh 2: (15:52) Avid, you repeatedly associate Jurisdiction to the dispute resolution.

Kavouss Arasteh 2: (15:52) Pls note that that is not work

Farzaneh Badii: (15:53) I don't think we should talk about partial immunity now but it should be open to discussion. we should talk about issues now.

Erich Schweighofer: (15:54) A lot of work has been done on immunities, also on international organisations. It is an effort but can be done.

Seun Ojedeji: (15:54) @Farzi it seem we are in agreement but talking past one another. Irrespective I agree with that last statement of yours

Cheryl Langdon-Orr (CLO): (15:54) I tend to agree with you here David

Steve DelBianco: (15:54) If "partial immunity" means relief from sanctions, then I am in agreement with David

Farzaneh Badii: (15:56) that's ok. solutions tailored to issues. whatever you want to call them. but we have to first talk about the issues.

Seun Ojedeji: (15:58) I don't even think the term/name we call it matters at the moment. What i think is required is look at the issues, noted the possible solutions to them (including jurisdiction change or immunity) then we decide on which one to apply by putting into consideration other circumstances around us

Kavouss Arasteh 2: (15:59) Thomas, Pls kindly note that we agree ,for the time being not to pursue the relocation ,under the clear conditions that we find a workable solution for impact of jurisdiction being located in California such as OFAC and any other problem that may be identified

matthew shears: (15:59) agree Farzi but lets take the things we agreed in WS1 off the table so our task is more focussed and productive

Jan Scholte: (16:00) Good suggestion, Olga. For example, look into how the Forest Stewardship Council handles these issues.

Olga Cavalli - GAC Argentina: (16:00) @Jan thanks, there might be others so it could be worth to review them

Kavouss Arasteh 2: (16:01) Thomas , pls ensure that you have taken my conditions into account in the proceeding of this meeting

Farzaneh Badii: (16:01) But why should we now discuss international law? We still haven't discussed the issues yet. idscussing International law is a total distraction now.

Raphael Beauregard-Lacroix: (16:02) Indeed, like ice cream...

Jorge Cancio (GAC Switzerland): (16:03) 1) issues 2) remedies that garner community consensus - as simple as that...

Farzaneh Badii: (16:03) yes Jorge but we shouldn't open discussions that we agreed on in WS1 mainly the place of incorporation of ICANN

Seun Ojedeji: (16:04) +1 Jorge and yes its as simple as that

Keith Drazek: (16:04) I agree with Farzaneh and Jorge. It's time to focus on the issues related to dispute resolution and jurisdiction, and then consider remedies.

matthew shears: (16:05) @ Jorge - I think we have tried to get there but have been pulled off that track by having things agreed in WS1 reopened.

Seun Ojedeji: (16:05) @Farzi, if solution to issue a is changing the place of jurisdiction then we should ask for other solutions, if there are none then we flag it as something we cannot resolve as a group and move on

Jorge Cancio (GAC Switzerland): (16:05) @Farzaneh: agree, that is anyway sth that would go under remedies - and its clear that it would not garner community consensus

Kavouss Arasteh 2: (16:08) Benedicto+1

Parminder: (16:08) i think i am able to inout

Parminder: (16:08) input

Parminder: (16:09) there is no mike thing on my screen

Parminder: (16:09) pl go on, id come back later

Olivier MJ Crépin-Leblond: (16:09) IS the room voice enabled? It doesn't look like it

Farzaneh Badii: (16:09) Parminder, can you get a dial out ?

Brenda Brewer: (16:09) Parminder, you may call in to the audio bridge using the phone numbers on the calendar invite.

Parminder: (16:09) I need time to type. so pl go ahead without me

Brenda Brewer: (16:09) Do you prefer a dial out?

Parminder: (16:09) yes

Parminder: (16:10) 91 9845949445 if it is possible

Parminder: (16:10) First, I disagree with any attempt to even put the "incorporation of ICANN" issue off table, bec we are following a process as per sub group's decision and in that process the time to make such determination has simply not come. I dont see the basis having been developed to knock that big issue off the table by a chair decision. For instance, we cannot at the same time be reviewing questionnaire responses, and perhaps asking respondents to further clarify, and declaring that "incorporation issue" is already off the table. Second, I am very keen to get on with the immunity – including its partial/ tailored versions, and I think this is one of the most important discussions to do.

avri doria: (16:10) lets giv him a chance to get the dial out

Jordan Carter (.nz): (16:11) ten mins break

Farzaneh Badii: (16:11) I don't have coffee at home :(get me ice cream

Brenda Brewer: (16:11) Operator will dial you now

Leon Sanchez: (16:11) @Parminder we will ask staff to dial out to you

Leon Sanchez: (16:11) can you please provide them with a number to call?

Leon Sanchez: (16:11) we will break for 10 minutes and try to get to you in the mean time

Brenda Brewer: (16:14) Parminder, we are on a break for 10 minutes. can we please do a quick audio check with you. Your line is open, Please speak as a test.

Parminder: (16:15) yes, i am on dial in nd it is live, will wath the screen as you reassemble i can come in . thanks .

Brenda Brewer: (16:15) OK. thank you!

Brenda Brewer: (16:19) Be right back from Coffee Break. Thank you!

Farzaneh Badii: (16:27) yes we can hear you

Farzaneh Badii: (16:27) did you get ice cream during coffee break?

Greg Shatan: (16:27) Chocolate mousse, but no ice cream. We didn't earn it yet.

Jordan Carter (.nz): (16:27) sadly not Farzaneh, tho there is some delicious chocolate mousse somewhere in the room

Cheryl Langdon-Orr (CLO): (16:27) sadly no

Lori Schulman: (16:29) I am in possession of chocolate mousse. it's good.

Farzaneh Badii: (16:30) hmm chocolate mousse is actually not that bad. it can compete with ice cream

Farzaneh Badii: (16:31) so we will move forward. I can see the light :)

Steve DelBianco: (16:32) By "partial immunity" are we talking about specific relief from sanctions that affect ICANN's ability to do contracts and for people to attend meetings?

Lori Schulman: (16:32) we are here to help Farzaneh

Lori Schulman: (16:32) Support Steve's question. I was thinking immunity from what?

Lori Schulman: (16:33) there are many types of immunity

Greg Shatan: (16:33) Any remedy needs to be narrowly targeted at a specific issue,

Lori Schulman: (16:34) Yes, "immunity" as "immunity" without understanding of specific issue is too broad

Greg Shatan: (16:34) @Lori, yes, immunity from what, granted by whom.

Greg Shatan: (16:34) Solving what issue.

Seun Ojedeji: (16:36) Its not clear if the Co-Chairs are upholding their decisions or not. Will be good to hear clarification on that.

Sebastien (ALAC): (16:36) no discussion on hte paper about the process for finalizing...?

Farzaneh Badii: (16:36) we first understand the issues then talk about what "partial immunity" is and if we can use it to solve issues

Farzaneh Badii: (16:36) Bye everyone

Cheryl Langdon-Orr (CLO): (16:36) bye 🙋🙋🙋

Brenda Brewer: (16:37) Thank you for your participation today.

Seun Ojedeji: (16:37) Bye and look forward to the summary of this meeting