

CCWG ACCOUNTABILITY FACE-TO-FACE MEETING.

JOHANNESBURG, SOUTH AFRICA 25 JUNE, 2017

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>> Just in case there's anyone waiting on line for us to start, we will start this meeting in a few minutes.

>> LEON SANCHEZ: Good morning. Can everyone take your seats? And we're about to begin. Okay. So, good morning, everyone. And can we have the recording started if it isn't already on?

So, welcome everyone to Johannesburg to our face-to-face meeting, the CCWG Accountability, it's been quite a ride in some of the subgroups since our last meeting in Copenhagen and I think we're going to have a good meeting today. We have some important issues to speak about of course, and some deliberations from some of the subgroups as well.

And I'd like to begin by reminding you to please state your name when you speak. This is very useful for transcript purposes but also for the people that are connecting with us remotely so please do remember to state your name before speaking. Please speak at a moderate pace so that the interpreters are able to follow if we have an interpretation. I don't think we have an interpretation to date, but, yes. And also may I remind you of the expected standards of behavior. I think that everyone is familiar with those already and if you don't, if you are new to the standards of behavior, please feel free to ask staff for references on the standards of behavioral.

So we also have as I said a packed agenda for today. We'll be going through the WS2 Extension. We're going to receive an update on status and budget. We're going to receive an update from IRP, and we're going to break for 15 minutes and when we come back we will go through an update on public consultation, we're going to have lunch and of course staff will be able to guide us to where lunch will be taking place. Then we're going to have a presentation by the ombudsman subgroup, I mean the external review recommendations. And after that we're going to review the staff accountability recommendations, the first reading on that document, then we're going to break again. Then we're going to speak about the star issue of the day which is jurisdiction. And I hope that we have a thorough and constructive discussion on jurisdiction. We have been

following the discussion on the list. We are aware of the different issues that have been raised and we will address all of the issues and the questions that have been raised in the mailing list. After that we're going to do a quick wrap up and then we'll go for beers. So let's do this fast so we can get to the beers as fast as we can.

Okay so I would like to turn now to Bernie, am I forgetting anything? Okay.

The roll call will be as usual, those who are on the Adobe Connect room and if there's anyone on the line that is not on the Adobe Connect room please state your name now so we can add you to the roll. Let's continue to use the Adobe Connect room for those present in the room because it's easier to handle it that way. We get into problems with, we have to handle the queue within the, please look into the Adobe room because that will help us better handle the queue when someone raises their hand.

>> KAVOUSS ARASTEH: Good morning to you and to everybody. If I properly heard you are talking of the extension, am I right? We would like to know what is the reason of the extension. Why the work not done in the time that was expected? It was a matter of lack of supervision, a matter of inappropriate course of action taken when following the matters, and at least we should know the reasons, written form by the co-chair getting information from the reporter providing reasons

for extension.

And by the way, as I mentioned in some other meeting every individual has special local arrangements and sometimes in particular when they are speaking on Adobe Connect they may speak in view of some other people loudly and it should not be interpreted that that person speaks loudly as being interpreted as shouting. I was very much disappointed by some of the colleagues mentioning that, and I explained that several times. Not all the lines have the same quality. Sometimes remotely speaking is difficult, and when you don't hear very well, we thought we are not heard also well. So that is the situation. And this is something that I don't expect to be repeated. So we need to have clear indication by the culture paper giving the reasons for extension time.

>> LEON SANCHEZ: Thank you very much. We will speak about extension and the reasons why this is happening, and of course, I also remind you to update your statement of interest if you haven't done so, and we as usual have a timer and we are willing to use it, but it's best if we don't use it. So try to keep your interventions short. We have a two-minute timer if it's needed. So next I would like to give the floor to Bernie for some administration details so Bernie.

>> BERNARD TURCOTTE: Thank you, Leon. Good morning, everyone. Okay. Very quickly, we've gone through the agenda. That's clear. Probably the big news of the

day is extension budget was approved yesterday by the board so that's a done thing. We'll be going over that and to answer Kavouss' question.

Can I have the next slide so we can talk through the action items from the last meeting?

All right here we go. So, it was about a month ago that we met the last time since our last scheduled meeting was cancelled. So it's from 24 May the decisions at that point were the modified reporting schedule which was approved, and the approval process for Work Stream 2 was approved for a first reading. Following that we did ask people to confirm the second reading via email which was done. And the approval of the second reading and therefore the final approval of the Work Stream 2 approval recommendations document has been completed.

Under the action items we had staff to draft the letter of appreciation for Matthew [indiscernible] that was done and circulated I believe, and to present approval process for Stream 2 recommendations document for second reading at next plenary, I think that we just covered that we asked for approval via the email this and this was completed.

So that completes the action items if you will.

The last note is the master calendar is now open for July and August scheduling of subgroup meetings. No

one has really scheduled anything for July and August and now that we have the confirmation that the Work Stream 2 budget for Fiscal Year 18 has been approved, we'll be glad to take reservations for those time slots. It's the same procedure as always. It's the same location for the calendar. It's the same time slots. So if you have the time and the inclination to request some slots be reserved for your subgroup, please do so. That's it for me. Back to you, Leon.

>> LEON SANCHEZ: Thank you very much, Bernie. This is Leon Sanchez. I just want to convey a message from Matthew Bale. He received the letter from the group. He was very happy to receive it, and he liked it a lot and he asked us to say thank you to the group on his behalf. So the message is now delivered and now we are also having a brand new co-chair on his first face to face meeting which is Jordan Carter and I would like to welcome him. We all know Jordan quite well with his role as reporter/repertoire (?) with many subgroups and we would like to welcome him now. I would like to turn to Thomas for the next agenda item.

>> THOMAS RICKERT: Thanks very much and welcome to you in the room and those joining us remotely. I know it will be challenging for the remote people following, it's good to have you there. Before we move to the WS2 Extension discussion.

Let me just add a little bit of color to what Leon was saying with respect to the letter that was sent to

Matthew.

I'm not sure all of you had an opportunity to read it but we did something that was sort of characteristic to this group because we tried to do something special for a dear hearted special co-chair. You will all remember that he used to say every good project starts with a spreadsheet. So in the last paragraph of the letter we said your motto is every good project starts with a spreadsheet therefore our farewell gift is a spreadsheet. That's something he particularly liked and appreciated.

Now, back to substance for today we've heard already from Bernie that the WS2 budget has been approved and that is an ideal opportunity for me to thank Becky Nash to join us today and say a few words in a couple of seconds. I want to seize the opportunity to respond to Kavouss' question which I think is particularly important to put on record for those who are not in the room because I guess everyone here knows a little bit about why we are going into overtime, but the rest of the community should also be appraised of why we are still working on this and I guess that the onset to us taking more time than originally anticipated is multi-fold. One is that the sub teams started slower than we expected so I guess that part of that is exhaustion and fatigue after we had done this [indiscernible] to finish our Work Stream 1 work, so it was only a few weeks if not months for some groups

until they were set up and started substantive work.

I guess the second point is that on some of the sub team's aspects under consideration the discussions turned out to be more complex than originally anticipated so the groups needed a little bit longer to give themselves an agenda work plan and start substantive work and then with this delay in place we did a calculation with public common periods and the approval process and counted backwards as to what a reasonable time frame we would need would be and that is basically the time frame that we've discussed with the CCWG plenary on a couple of occasion during plenary meetings and if all works well we're going to be done with this one extension and I should also say that we should try to make sure and I'm sure that we will get back to this topic in the course of our discussions maybe today even that we will actually be ready by then because what we don't get done by then is uncertain, it is uncertain whether we're going to get another extension whether we're going to get additional funds, additional staff support and all that so we should make sure that we deliver on time because I think it's highly likely that the charting organizations will say well you had your time, you didn't make enough out of it therefore we're going to stop the CCWG Accountability effort here and all new projects should be started through the periodic reviews that we have in you on bylaws so if we want to control changes this is more or less a year that we have at our fingertips in

order to get that done.

And with that I would like to hand over to Bernie and Becky to give us a little bit more information about the budget situation which we're thankfully accepted and I should say in terms of charting organizations the only outstanding, the only missing charting organization to grant approval for the extension is the CCNSO but from what we understand from discussions this should be more or less only a formality. So Bernie over to you.

>> BERNARD TURCOTTE: Thank you, Thomas. We're not, the big news has been given. I think the co-chairs have answered the question. We're fortunate enough to have Becky Nash from ICANN Finance here and at this point she will walk through in summary fashion the budget that has been allocated for this extension. Thank you. Becky.

>> BECKY NASH: Thank you, Bernie, and thank you to the co-chairs. My name is Becky Nash and I'm from ICANN Finance and I'm part of what we call the PCST, Project Cost Support Team and we will talk through a summary of the Work Stream 2 FY18 budget which is being loaded at this time on the Adobe.

Okay. So as Bernie and the co-chairs have indicated, yesterday the FY18 extension to Work Stream 2 was approved by the ICANN Board and we do have displayed in Adobe a summary of the budget. I'm not sure if it is

displayed, if we can make it a little bit smaller for all the columns to be shown. That would be great.

So while the figures are being resized on the screen, just in summary, the budget was prepared by the PCST team at the direction of the co-chairs. The PCST team received information from the co-chairs on all of the activities and timing of activities that were expected to occur and be extended into FY18, and we then developed a bottoms up detailed budget by activity and by cost type. So based on the screen the total amount of the FY18 budget for Work Stream 2 as you can see at the bottom right-hand corner is rounded to 3.1 million U.S. dollars, just staying in that total column on the right-hand side we can see that the total costs for the Cross Community Working Group is 650,000, and the total costs supporting the endeavor from ICANN staff support is 2.4 million. Again, these activities were all based on a bottoms up detail by activity, and if I could just direct you to the top portion where we have the total costs for the CCWG support, going across the columns on the top you can see that we have the travels and meeting support which is the cost to support the face to face meetings that take place such as this one here at Johannesburg. Additional costs driven by the CCWG are legal services, those would be costs related to any kind of advice or document review that would be required.

Then there are other professional services related to

the support for all of the reports and report writing and the final deliverables to be delivered.

And that is based on the accountability Work Stream 2 is the larger portion of the budget. We do see we have work related still to IRP Phase 2 that has been carried over into FY18 as well.

Then looking at the middle section we call it ICANN Support all of the activities related to supporting the CCWG activities and there we have staff support, travels and meetings. Going across the columns, the next column is the language services support which is very important for this endeavor. Again, we do have legal services should there be need to review documents. And finally, the other professional services are related to supporting either consultancy or communications and the finalization of the deliverables and all of the reports and that gives a break down then of the two main components for the budget which would be split into the CCWG portion and the ICANN Support portion.

And at the very bottom of the schedule we have the sum of the two which gives you the total amounts by cost category for all of the activities expected for this extension and again arriving at the total annualized budget of 3.1 million, which as we announced has already been approved for the FY18 budget and that's all that I have for an overview. Bernie did you want to say anything more?

>> BERNARD TURCOTTE: Thank you. I see Xavier's hand up.

>> XAVIER: Thank you just a quick comment to add to this amount of 3.1 million has within proposed to be funded from the reserve fund of ICANN not from its ongoing operations and this is something that was originally planned as you will remember for the FY17 budget but the funding of that amount for FY18 is also suggested to be from the reserve fund.

>> BERNARD TURCOTTE: Thank you, Xavier. Just in closing on this, we the PCSD will continue applying the same oversight mechanisms to this, generating the reports and monitoring this. There is no change there. It's just an extension and I think part of the renewal or the extension here is a recognition that there was some serious oversight of our budget and that we handled our money well and that we were serious with this and therefore that part of the experiment work out well and we will continue with it.

Now, we're talking about a one year extension. It doesn't mean as we did with the previous point, doesn't mean we have to use all the time or all the money. If we can get done earlier, please let's work on it and I think we're well on the way to do that with a number of projects. We'll be glad to take questions if there are any.

>> THOMAS RICKERT: And again if you want to make

yourself heard please use the Adobe Connect functionality to raise your hand. So Bernie and Becky looks like you've done a great job. Looks like we should take away three messages for the coming week: one is we've done a good job managing our finances. This is the first community-driven effort ever given its own budget so I think this test drive of a new form of collaboration has been successful so far. I'm extremely thankful to Xavier and his team and this might be a precedent for other initiatives to come and I think that's great to see this new collaboration between ICANN the organization and the community. I'm getting asked this question over and over how can it work that you don't need extra money if you are working for longer and in summary the response is yes we understand from our own budget therefore we're just spreading what we asked for originally to this additional year and we're not asking for additional money for the, we are on budget and the third thing, and I am happy to repeat myself here, let's make sure we get the job done in a maximum of the additional 12 months so we don't have to go back to chairing organizations and ask for more money. That might be an encouragement. Thanks so much Bernie and Becky and Xavier for joining us today on this important subject and I will hand over to Jordan to chair the next agenda item.

>> JORDAN CARTER: Thanks, Thomas. The next topic is an update on the IRP implementation oversight team from

David, and my job difficult as it is in my first intervention as co-chair is to hand over to David. It's all yours.

>> DAVID McAULEY: Thank you, Jordan. Good morning. My name is David McAuley I'm the lead of the Implementation Oversight Team. Becky Burr was our lead until she stepped on to the ICANN Board, did much of the foundational work for the IRP team for which I am grateful and is allowing us to make further progress.

Let me just mention that what my presentation will be about today is really a status of reminder if you will of what the IRP does and does not do and then give an update as to the progress we're making on certain pillars that are the constituent parts of the new IRP which is an important accountability mechanism that we did in the transition. The IRP, is found in Bylaw Section 4.3. It's quite an extensive section but in that section you get all of the IRP process. It's a good section to bookmark if you will. The new IRP process came into effect with the new bylaws October 1 of last year so that new standard, is in effect as we speak.

So in the further, in the rest of my comments what I intend to do is talk about the purpose of the IRP, it's really a review, talk about the three main pillars that I think are the main part of the IRP process and do a few miscellaneous notes at the end. The purpose of the IRP you can read, it's all in Section 4.3a of the

bylaws but importantly it is the top most internal accountability mechanism for ensuring that ICANN does not exceed its mission and does comply with its articles and bylaws. It will let the community including the power community bring claims individuals registrants can bring claims to enforce compliance with the articles and bylaws. The IRP goes beyond that to ensure contract compliance with IANA, provides a contract for customers to make complaints and involved in all of the IRP is the element or the idea of precedent, setting a precedent going forward so it will be a precedent based arbitration body if you will. Next slide, please.

The, one other important idea that I would like to mention from this slide is this will lead to binding final resolutions, binding in a sense that ICANN will be bound to comply with the results of the IRP or enforcement measures could be taken. The IRP process as I said is the senior most internal ICANN vehicle for resolving disputes and it is meant to be a valid robust alternative to civil litigation which as we all know can be extraordinarily expensive. The IRP process can be expensive but the hope and intent is that it not be as expensive as civil litigation. Next slide, please.

What I refer to as the main pillars of the new IRP are three. One is the new standard of review. That's done and that's dusted. It's in place as of the effective date of the new bylaws.

Two is the standing panel which I will talk about in just a minute.

And three is the updated supplementary rules of procedure. So the first bit on the slide is in place and the next two pillars are in the process of being developed. Next slide please.

The new standard is important because it addresses certain kinds of cases that can be brought, cases that claims that ICANN and ICANN is defined as being the board or individual directors and officers or staff of the corporation. The standard is did they act or fail to act in a manner that exceeded the bylaws and the articles and that includes exceeding the soap of their mission, it includes challenges to the results of process specific expert panels. These are the panels that came into effect in the new GTLD program. We know them as string similarity panels, legal objections, commune objection panels. Those kinds of panels are now appealable to the IRP. The position of the panel isn't fully reviewable -- whether ICANN's action in response to one of these panel decisions violated the bylaws or articles so that will be the standard of the appeal from the appeals from the lower panels. Next slide please.

The bylaws specifically mention that ICANN's response to request for documentary disclosure, if a claimant believes that ICANN's response violated the articles and bylaws they specifically have the right to bring

that kind of case to IRP. Empowered community can bring cases and then the IRP can also review claims that ICANN did not enforce its contract you'll rights with respect to the naming functions contract and PTI service complaints can be brought to the IRP.

Specifically excluded from the scope of IRP are empowered community challenges to the outcome of a policy development process if the supporting organization that was engaged in building that PDP does not consent to the IRP. Also excluded CCTLD delegations can't be reviewed at IRP, numbering resources and protocol issues likewise cannot be, slow down, I'm sorry I'm trying to keep this within 15 minutes. My apologies.

One other part that I wanted to stress in this scope nature of review is that, the standard is expressly stated as being objective de novo standard. The results of decisions of expert panels, those kinds of appeals there will not be any presumption that the panel below was correct. Every appeal that goes to IRP will be an appeal de novo, an objective analysis of whatever ICANN did on its own or in response to a panel decision or PDP process whether its decision did or did not violate the articles or bylaws.

The next element or pillar of the new IRP process is the standing panel. There will be under the bylaws a standing panel of at least seven members to draw from. What I mean to draw from, any one case will be heard

before three panel members.

One member will be chosen by the claimant, one will be chosen by ICANN and those two will choose the third member. There will be a body of standing panel members, at least seven, there's no cap on the number, from which these will be drawn. There will be a secretariat to support this. There's current the internal center for dispute resolution. That will continue unless a new organization is found. Another important part of putting together a standing panel is the expression of interest. That is a solicitation by ICANN to the world to people that are potential panelist to come and apply to ICANN to be a member of the standing panel.

The expression of interest element is something that the bylaws give to ICANN to do. It's ICANN's this is ICANN's role to put this together. The IRP Implementation Oversight Team has volunteered to assist in this respect. We have assisted so far, we've helped in the drafting of the expression of interest document and ICANN legal and ICANN policy are currently working on this to get it issued. Hopefully this will be issued soon and I will speak about it in conjunction with another part of the IRP in just a few moments.

There's another role and this is one that will be played under the bylaws by ICANN in conjunction with the SO's and the ACs and that role is to look at the applications that come in from people that would like

to be panelists, to vet them, go through them, organize them and figure out which ones should be at the top of the pile for interviewing and further consideration.

This is something that I spoke about in Copenhagen. It's something that the SOs and the ACs need to be aware of and comfortable with. Again the IOT has volunteered to help in this respect but the bylaws do give the responsibility here to ICANN and the SO and the ACs to everybody in the room a member of the SO or AC I encourage you to mention this, to become familiar with this part of the bylaws, chat with me or other members of the IOT to become familiar with it and to help this process along to help ICANN legal and policy which is now in the process of forming some kind of training or assistance to help SOs and ACs to fulfill this function.

This in conjunction with the vetting process that I spoke of, the expression of interest that I spoke about just a minute ago is really critical to getting this process underway and off the ground. Once these two things are done and this expression document is issued hopefully in short order, then there will be receipt of applications from potential panelists. Nominations of people to serve on the panel is the sole function of SOs and ACs. There will be review of the confirmations by the board but the board cannot unreasonably hold its confirmation. It's the role of the SO and AC and they'll need assistance. ICANN legal and policy are

currently working on ways to help organize that. I know the process is moving forward. I encourage you members of SOs and ACs when you are interacting with members from ICANN legal or policy let them know you are aware of this. Very interested in this, this is a very important process of getting the new IRP process up and off the ground.

This is some details about what the panel will do. They will have five year terms. They cannot be recalled except for specific serious issues. There are provisions that panelists must be independent of ICANN and independent of SOs and ACs. I've mentioned the three members will hear cases.

Appeals will be possible of IRP decision to the full standing panel and there's a target in mind for IRP panelists to issue decisions within six months. I will say something else about this in just a few moments. Next slide, please.

The rules of procedure are the third constituent part so there's the new standard, the standing panel and the rules are the third important thing to get this IRP up and running. And our implementation team is right now working on the rules and it's taken some time but they are complex. There's been a lot of discussion around them and we're really hitting our stride and doing well I think. The first draft of the updated rules was put out for public comment. We got a lot of good public comments and we're working our way through it.

I simply note there are four issues among others that have Garnered the greater amount of our work so far and those are the time within which a claimant must file a claim at IRP or else lose it. Malcolm Hutty is handling that part of the discussion for us, is leading it I should say.

Retroactivity of the new standard and of the rules themselves are being discussed. They were brought up in public comments.

Joinder of interested parties has been brought up for instance, I mentioned the expert panels below. Well a claimant bringing a case relative to an expert panel below will in most cases be the loser and so the winner of the case below may be an interested party at the IRP. I would think that they would be so we're working on ways they could or could not be joined depending on the nature of the case and challenges to consensus policies. Those are the ones that have most recently gotten the greater part of our attention. Next slide, please.

Some miscellaneous notes about the IRP. I mentioned there was a target of six months from the time of a claim to a decision. While there is a cooperative engagement process under the IRP Bylaw Section 4.3e the cooperative engagement process is something the parties are encouraged to do. It's non-mandatory but it is a formalized way to say look, try and negotiate a settlement of the this dispute.

There is a cost if you don't participate. For instance, if someone does not participate in the CEP, and loses a case they may find themselves responsible for ICANN's legal fees so that's an important bylaw to look at.

Another miscellaneous point this is somewhat like CEP but a little different, once the parties are engaged in CEP there will be conciliation efforts to try and narrow the issues. If someone brings 3 or 4 points we'll try to whittle it down to one or two points.

With respect to the CEP that I mentioned just a moment ago, that can clearly have an effect on the target of six months to completion. Ed Morris is leading a subgroup on CEP and we are going to try and work together to see what we can do to remain mindful of the targeted six months but to also recognize in our IRP rules the fact that CEP will be taking place. That's all I can say about it right now but the two groups need to mesh, coordinate and make sure these two are addressed soundly with both thoughts in mind.

I have a bullet on this page that says the IRP IOT status needs to be addressed. We will probably make the comments on this in our report, and that is we, the IOT began life as part of the CCWG for Accountability very happily but now we are a recognized part, we are recognized as an independent entity by Bylaw 4.3. It looks like this team will continue as rules are developed in the future.

This will be an ongoing process. And so we will look to make comments about how the team should be handled, staffed, should it be dormant at times, those kinds of things.

And the final miscellaneous point I put on the slides there is a bylaw provision that encourages ICANN to come up with some financial way to help people make IRP claims who are otherwise financially sort of unable to do so. Just as you see it there ICANN shall seek. It's not the most mandatory of things but there's a way to encourage ICANN to make this a mechanism that's open to all and the financial wherewithal would not be a barrier.

By and large that's where we are. We are making progress, we are hitting our strides on the rules, we will probably go out for a second public comment. We've not decided, we've not made final decisions on the rules but we're getting very close, we're going through the second reading. So we're doing well. I want to thank members of the IOT team and I want to thank Bernie and his staff that are helping us immensely and members of the CCWG, we have everything we need to do to press on and do good work and I hope we do and I'm happy to take questions.

>> THOMAS RICKERT: (possibly Jordan speaking?)  
Thanks. I will refer to a question in the chat channel which was whether we can get an update on the status of the IRP standard of interest document and communication

and the question is when will it be issued. I think it's a reasonable thing for us to ask ICANN to provide a formal update on, David.

>> DAVID McAULEY: I don't think there's anyone here from ICANN Legal or Policy staff that can comment but it is important that this get done. I know it's in trained in the background and my help is that it can be expedited that's why I encourage people participating in SO and AC to become aware, socialize it within your groups, mention it when you have contact with ICANN policy and legal but other than that I can't say when this will happen other than our hope is that it will happen as soon as possible and we are encouraging good efforts along these lines. Thank you.

>> JORDAN CARTER: Thanks David. And I will turn to Fiona.

>> FIONA ASONGA: Thank you very much. Quick one on the independent review panel selection. If we are talking about wanting a group that will be independent, I'm just wondering will we be able to achieve that independence if the AC and SOs have to do the nomination because I remember when we began this conversation we had considered having an open process where anybody in the world who meets a certain qualification can apply and they don't have to go through the AC and SOs because of the need for them to be independent of the AC and SOs that may come to them for arbitration or issues getting resolved so how do we

plan to achieve the independence if we go through the ACs and the SOs?

>> DAVID McAULEY: Thank you. Fair question. There are other bits that I haven't mentioned. One of the things that will be required of panelists is the knowledge of DNS. They have to be familiar with what goes on here in the ICANN community and within the ICANN work and so one of the consequences of Work Stream 1 was trying to balance this and one of the balancing ways of achieving independence is to give one organization like the group of SOs and ACs the power to nominate and to give ICANN the power to confirm, both of those have a stake in the game obviously so the notion of independence does come up. It's a legitimate concern but I would say that because it's within the ICANN community, because the panelists have to be steeped to a certain degree with knowledge of the DNS and with the knowledge that the bylaws themselves speak to certain parts of independence and 4.3n and I think 4.3q that I think there's a sufficient way to achieve an objective standing panel. So your concern is well stated. It's not unreasonable at all, and we'll see. But if there were going to be a different method it would require a change to the bylaws because this is now baked in and it was discussed as I recall in Work Stream 1. It's not the easiest thing to solve but this was the approach that was taken and thought best. Thank you.

>> JORDAN CARTER: Thanks. To keep us to time in the session we'll close the queue after Jorge. And if you have other questions I am sure David will take them email. Olga you are next.

>> OLGA: Thank you, David. Very clear explanation and you said that nominations to serve on the panel are the sole option of the SO and ACs. How much time will the SO and ACs have to make the selection of the applications and if you could give us an idea of when this would happen in the future? Thank you.

>> DAVID MCAULEY: Thank you, Olga. Good questions. There is no time limit for SOs and ACs to do it. In order for the new IRP to be fully staffed and functional this is an important constituent part and that's why I refer to it as one of the pillars, the standing panel. So I would encourage SOs and ACs to do their best to organize within and among themselves to become conversant with this and when they discuss with ICANN Legal and policy to let it be known that this is something that you are looking for and looking to and again recall that the IOT is willing to assist in this respect. We don't have a bylaw or role in this but we are now becoming well versed in the new IRP and so we will have some skills that we could probably add to this if there is a request along those lines. And so there is no time limit but there is probably I would think, an interest within the ICANN community to move this forward as quickly as reasonably possible. And so

hopefully that will address your question as best I can. Thank you.

>> JORDAN CARTER: Thanks David. Niels ten Oever.

>> NIELS TEN OEVER: Thank you very much for the important updates we get every time. You mentioned that there could be specific conditions under which the ICANN legal fees need to be covered by one of the parties in the IRP process. Could you perhaps tell us a bit more about that, when that would be the case?

>> DAVID MCAULEY: Yes Niels, thank you for the question. I was making that statement in the context of the cooperative engagement process under 4.3e so what happens is when a claimant brings a claim against ICANN under IRP there is a bylaw saying look, there's a cooperative engagement process that exists and you should participate in this ICANN and claimant. If the claimant does participate in the cooperative engagement process two things could happen. One is the case could be solved without having to go to the panel or two it's not solved but there was a good faith effort to try and solve it and it may help the parts in some respect. If it's determined that a party did not participate in the CEP, and they lose the case ultimately, there is a provision and I will try and find it and put a note in the chat which bylaw it is that they would potentially be responsible for ICANN's legal fees.

>> JORDAN CARTER: Thanks, David. Jorge.

>> JORGE: Thank you. Just briefly I saw that you are working on the public comments that were made to the supplemental procedure rules and I just wanted to put for the record that for some of us who made comments it is very important that you take the suggestions we made on language interpretation and translation as seriously as this is very important element for making this IRP accountability mechanism available for the larger ICANN and global community. So just to say that. Thank you very much.

>> DAVID MCAULEY: Thank you, Jorge. I have read your comments several times about languages and translations and I agree that's an important part of it. When I mentioned the other four things I didn't mean to give sleight to any other comment that had been made. These are things that we've been recently focusing on and have had to work hard on but no the translations is an important part of it. We haven't decided on that yet but I have read your comment.

>> JORDAN CARTER: And I will just ask David to respond to your question if it's same as in the chat. Kavouss asks about the criteria for those eligible for the -- I think for appointment to the standing panel, is that who would be eligible Kavouss?

>> DAVID MCAULEY: I think that's that's what you mean Kavouss.

>> KAVOUSS ARASTEH: Yes. I hope that you have

explained that and in the letters sent to the SO/AC, what are the criteria that the people eligible for consideration at the level of SO/AC before making their selection while I have the floor for some SO/AC this is important, they have sufficient time and in particular the speaker [indiscernible] I know while they are in session they are more active than while they are not in session. Thank you.

>> DAVID McAULEY: Thank you, Kavouss. It's a good comment. There are requirements, there are standards for people to be members of the standing panel that Kavouss is getting to and some of the bylaws, I will put the bylaws in chat shortly when I get back, following this. But things like being an internationally trained lawyer, deep experience, arbitration skills, things along that nature. There are also diversity requirements in selecting the standing panel and these will be made clear in the expression of interest and they'll be made clear to the SOs and the ACs as they execute, as they discharge their duty in nominating panelists but the panelists, it's a fairly, the bylaw is looking for fairly experienced international arbitration skilled kinds of people familiar with commercial disputes and alternative dispute resolution.

>> JORDAN CARTER: Great. Thanks everyone. We've run out of time for this item. The queue has been closed for some time. I'm going to ask if you have further

questions please raise them on the email list or speak with David on the coffee break coming up. David would you mind staying at the table for the CEP item which is right now if that's okay since there are interlinkages and I will hand over to Leon Sanchez and welcome Ed Morris to the top table for that.

>> LEON SANCHEZ: Thank you very much, Jordan. This is Leon Sanchez again and I would like to welcome Ed Morris to the table as he will provide us with an update on the CEP subgroup and for that I would like to turn now to you Ed, please.

>> ED MORRIS: Good morning, everybody. Do we have the slides? Thank you. I would like to first thank one of my team members [inaudible] who while I slept last night made these slides, so we have a very dedicated member in Washington, D.C. First I want to thank you for being here this morning and the purpose of our group coming to the plenary today is a bit different than David's.

We need your help. We're a small group, a feisty group but a very small group. We're on a track for one public comment. We have to get this right so we're going to be turning to you for advice in terms of how we proceed in our group. We came to the plenary four months ago and asked you what do you want the CEP to be, you told us a form of structured negotiation. We don't want it where it is now where the parties go into the room with ICANN Legal with the parties there, no

transparency but also not a formal mediation, we want something in between. So in our small group that's what we've been working on but we've been doing it also with more of an overview of the problem of the current CEP and I'm going to put Cheryl on the spot. Cheryl has pointed out in our group that the problem with the CEP and how it works today is the same problem with a lot of the accountability mechanisms. There's a lack of trust involved, lack of trust with the community and ICANN, between legal and staff, between the community and legal and between the community and staff. And we're not going to solve all of those problems with the CEP but if we do it right I think we might be able to make some progress through a well defined set of rules to try and bring trust back into the process.

Okay a few of you may not know what the cooperative engagement process is. David did a nice job at trying to explain at least a little bit of it.

The CEP is not an independent ADR. It's part of the IRP. It's designed to feed into the IRP and we can't forget that and some of the discussions we had early on in the group folks wanted to turn this into an arbitration before an arbitration. That's not what the purpose is. Under the bylaw very specific the CEP is designed to narrow the matters of the dispute of the IRP or to resolve the dispute. We'll talk about what we've been discussing about this but it's important to remember those are the two goals.

Actually can we go to the next slide? I actually talk about the financial incentive as David mentioned earlier. If you don't participate in the CEP you can get stuck under certain conditions with ICANN's legal fees so there's economic incentive to participate in the CEP, pretty much everybody does because of the economic incentive.

The major difference in the bylaws between the new CEP under the bylaws that came into effect on October 1 and the old CEP is the possibility for provision of a mediator. That wasn't there before. It's there now but we now need to figure out how to use a mediator within our group.

The task for the subgroup is pretty simple. In the bylaws the community is charged with developing a set of CEP rules. That's our job. Next please.

Okay. So as we set out to do this we got our small group together and we started talking about the CEP. One of the problems was in the initial group conversations and calls we had five, six, seven people I was the only one who had ever been in a CEP so it was almost leading the blind, folks who had heard about it but didn't know what it was.

Allen suggested you guys need some hard data, find some hard data. We couldn't because the CEP is completely opaque and non-transparent. There are no public transcripts, there are no recordings. We didn't know

what was going on in the current CEP so we decided to issue a call to the members of this community to the SO/ACs and asked for folks who had been to CEP to talk to us. We asked to talk to ICANN staff and board members. So between March 10 and June 1 we conducted 11 interviews, fairly in depth. Some of you in the room participated in this process. Thank you very much for your time. We found the interviews to be very valuable. It forms the basis of where we're going today and hopefully this discussion.

We guaranteed anonymity to everyone involved because quite frankly if you are a community member involved with actions in legal you are not going to be that frank and that was clear from the start. So I can't tell you where this came from but there's one misconception I want to clear up. In Copenhagen there was a member of the CCWG who was misinformed about the cooperation of ICANN Legal and said at one session said they were not cooperating. I want to dispel that myth. Sam and John obviously are very busy but they have been very cooperative. We've spoken to them about this. Everything we've asked for it's taken some time but we've gotten all of the information we need so I wanted to clear up that misconception and miscommunication. ICANN Legal has been very helpful.

These are the issues that we're bringing to the plenary today and I'm going to talk about each one before opening the floor so you can lead the conversation to

the areas you feel most relevant.

We've been discussing the purpose of the CEP, a change to structure to have a sub version of the CEP in certain matters. We've spoken about the third party mediator, time lines and I'm glad David is here because that's something our groups need to work together on. Transparency and discovery rules.

Okay. So as I said in the bylaws there are two purposes. We want to narrow the areas of dispute for potential IRP or we want to resolve it. Something has come up during our interviews that I thought was interesting. First of all as David mentioned the IRP may be less expensive than formal legal action but it's pretty expensive. We've gotten ranges of half a million to well over a million dollars for past IRPs. That's going to change in the new structure but we've also lowered the cost of enter to IRP. Some people we spoke to said we don't know what's going to happen in future IRPs. We need the CEP to act as a gatekeeper. That's not in the bylaws. Resolving disputes potentially are in the bylaws so one of the questions we come before you today with is to what extent when we fashion the CEP rules should we focus more on trying to resolve the dispute than at narrowing the issues? Because our understanding from the people we've spoken to is right now narrowing the issues and defining the issues for the IRP so given the lower cost of entry to the IRP the expense to the organization should we be

focusing more on using the IRP to settle disputes?

Okay. An interesting idea came out of one of our interviews that we then posed to other interviewees and that's the following. You go into a CEP, it's ICANN Legal versus a claimant who has never been there before. That's creating an adversarial situation. As best we can tell again the numbers are not available best we can tell we're not getting a lot of resolutions in the CEP. So one idea we want to check in to see how you feel about it is creating in certain instances a sub version of the CEP where you have the neutral third party, you bring in the claimant not the claimant's attorneys and you bring in the staff members in ICANN who are involved in the issue at dispute so for example say the dispute involves GDP. You try and keep the lawyers out and try to avoid IRP in that fashion. We're calling that the small claims version of the CEP for lack of a better term, as a way of attempting to change dynamics to bring agreement so we're going to ask you to comment on that.

Okay. As David mentioned you are forming a standing committee. In the bylaws itself it says that the neutral third party in a CEP should be a member of that standing committee that won't be involved in the future IRP obviously.

Some of our interview subjects have questioned this. The idea is that structured negotiation, I should mention where the term came from. I want to thank Greg

for bringing this term to my attention. There's a movement in the United States for structured negotiation it came up with the disability movement where you have advocates for the disabled, you have corporations and the corporations largely want to cooperate with the disabled folks but when they get into the adversarial situation of implying laws things weren't working out so they brought in the third party mediator and the conversations are designed for two parties to say hey we don't want to go further in the legal process. We would really prefer the expense and time of an IRP and try to create a mind set that we're trying to work together. So it has been broached to us the last person you want in the room is a formal mediator. That there are folks out there that engage in structured negotiation that perhaps we should be bringing them in. It's a different skill set. The problem is we would have to amend the bylaws and anyways something none of us want to do at this point but it's something we should discuss.

Time lines. As David mentioned you look at his group and you have spent a lot of time speaking about time lines, statutes, God be with you. It's been an interesting conversation. Well having considered much the CEP let me tell you where the CEP has been in time lines, we have public record since 2014 was 22 days. The longest CEP was 1,150 days. The average is I believe 261 days. So as you are starting to create the time lines for IRP, if you don't build in the CEP you

are going to have some problems. Folks are going to have to choose between filing for IRP or actually in foregoing the potential financial benefit our CEP and potentially risks missing the deadline for IRP so I'm sure we can craft a solution there, toll the IRP requirement I don't know but we're going to have to work on that.

The other question I have for time line which is not on the slides, speaking to the interview subjects about deadlines. There are many members of the community who said we don't want formal hard deadlines because the principle purpose of the CEP was it slowed everything down, gave a chance for things to settle, for emotions to die down, to be able to reach a settlement. On the other hand folks said the nice folks in ICANN Legal all they did was try to delay and stall. We need strict deadlines. We have no consensus within our subgroup, we would really like to hear from you how we should structure the deadlines internally of the CEP and David and I in our groups can work together on doing external deadlines.

Okay. The current having been through CEP one of the things that struck me was you go into a call or go into a room. I don't know if nip is recording the conversation, I know the one we were in we didn't but there's no recording, there's no transcript until a few years ago, there was not even notification to the community the CEP existed. They're third party

implications and we're waiting for David's group to finish on third party involvement before we figure out their role in the CEP so we've got to feed into your process. I presume we'll duplicate that. I could be wrong but transparency is an issue. We've had folks say open the doors to a CEP. The response from others is that would defeat the purpose. The purpose is to go in and frankly speak about the issue. If an agreement is reached that agreement we presume needs to be made public but there's no requirement. So we have issues regarding transparency. Notification. One wonderful interview subject told us she was halfway through the CEP and didn't even know she was in a CEP so they get a call, they're in, they theoretically have started the CEP and this individual did not know that he or she was actually in a CEP and they were halfway through a one year process so we do need to work on transparency at a minimal level. Right now what ICANN does is publish a list saying the two parties in a general topic of dispute. I would say most of us would need to be more. I would say how much more and one other item we would like you to weigh in on if we could have the next slide. There should be one before there. If not, it's discovery.

We've had some members basically from the community stating the following. The CEP is nothing more than a device, the CEP was established by ICANN Legal to gain advantage in IRP that they use this not to reach agreement or narrow issues but for discovery so they

understand what the claimant is going to argue in the IRP. We've had members of the community also who said that ICANN provides no information.

They have been in a CEP yet they have to go through DIDP to get information relevant to the CEP. We have this concept about what should we do about discovery? Most agree that the best part of the CEP is that it's really informal. They don't want a lot of formality yet there's also this lurking issue that feeds into Cheryl's trust question of if ICANN is perceived as doing nothing more than using the CEP for discovery purposes, if the claimants believe they have to give information to ICANN but are not receiving it it probably calls for some light touch rules of discovery to bring trust back into the equation or maybe not.

And so could we go to the slide that listed all five of the issues which was at the beginning? We're now going to open it up for discussion. We need your help folks. We struggled at times to meet the five by five. We've been able to do it thanks to the amazing effort of Bernie to help recruit people to our group and I want to thank Bernie and I want to thank the members of the community who participated in the interviews but now we're looking at this session as an opportunity for all of you to weigh in to give us guidance and instruction as to how we should proceed because we're getting to the point where we are going to have to draft the rules or draft the principles of the rules.

>> LEON SANCHEZ: Thank you very much. This is Leon Sanchez and I see that Kavouss has asked a question on the chat and it is relation to small claims. He's asking if you could elaborate more on the concept of small claims, Ed.

>> ED MORRIS: I would be glad to and I would tell you my personal opinion. I have conflicting views about that. As a lawyer I don't like having my clients going into a room without me because they tend to say things they shouldn't. At the same point, if we're going to, at the moment because of the expense of the IRP the only issues going before an IRP are major issues, they're bringing sophisticated parties. Some of the concerns that have been expressed by the interviewees since we've lowered the cost barrier at least at the outset, that we may be expanding the types of issues that are brought before the IRP and these may be issues that involve staff community problems, relations, that could best be solved not by having John and Amy in the room with the counsel of the other side or in some ways as a lawyer even worse the other party going into the room without counsel against ICANN's legal team.

It might be best Kavouss in certain instances which we'll spell out that you just brought in the ICANN staff member who has or the department that's created the rule or issue at dispute along with the complainant and the neutral third party and see if they can work it out among themselves in the CEP without ICANN Legal and

without their own legal counsel as a means of using the CEP to settle the dispute the thought being that lawyers tend to be lawyers, tend to make things very legalistic and at times that argues against a settlement. Comments?

>> LEON SANCHEZ: Thank you very much for this explanation. I have two people, Sebastian.

>> SEBASTIEN BACHOLLET: Thank you very much. I have, thank you very much for this report and interesting, I think when you look to the topic there are some issues we're dealing with two of our subgroups and it may be important to raise it now. Maybe you can close your microphone because it's making some noise. Thank you. And then of course for transparency in DIDPs and I know that it's also a topic between transparency subgroup and ombudsman subgroup and when you talk about third party we may re-discuss that after I make the presentation about where we are with the ombudsman group because it could be useful to see if your group is thinking that the ombudsman office can do something in this party or not, and, which skill they will have to do if they do it or if it's outside where it is. And it's, I guess to help the group and the so-called chair that this will be very important point to cross check what is going on in the values subgroup in specific topics like this one. Thank you.

>> LEON SANCHEZ: Thank you very much, Sebastian.

>> ED MORRIS: Leon can I make a quick comment? One thing I want to keep in mind when we talk about the neutral third party of who it may be, in the bylaws it is required that the party comes from the standing panel. If we want to change that we really do have to have an amendment to the bylaws so I want to make sure it's not something we do lightly because it's a lot more involved process than creating the rules from scratch but I take your comments and we'll talk and try to work together with not only David's group but yours as well. Thank you.

>> LEON SANCHEZ: I have David, Malcolm, Alan and after that I'm closing the queue and going back to questions from Kavouss.

>> DAVID MCAULEY: Thank you. I look forward to chatting with you about what you just said. I just wanted to make a comment about the concept of small claims treatment and it's really just a nomenclature thing right now because we'll have to discuss that but the nomenclature bit the word small claims I would hope that we would not use early on because it tends to connote I think, the idea of money damages and the IRP process as you know really is aimed at getting a decision from a panel did ICANN or did ICANN not violate the articles or bylaws and assume figure there was a judgment that they did then it would be over to ICANN to remedy that somehow and remediate whatever that action was. But the IRP is not a place for money

damages kind of claims and so that's why I would personally urge not using the term small claims because it may connote something else.

>> ED MORRIS: Point taken. I will give the new term to Greg. He's good at those things.

>> LEON SANCHEZ: Next on the queue I have Malcolm Hutty.

>> MALCOLM HUTTY: Thank you. Good morning everyone. And Ed, thank you for that presentation. When you were discussing the purposes and functions of the CEP at an earlier point in the presentation you talked about a function it has in terms of clarifying the issues for people that might be or will be going into the IRP process and I can certainly see considerable value in the parties sitting down in a mediated environment where they can thrash out the things they're not in dispute about where they don't realize that yet and set those things aside so the only things that will need to be litigated in the IRP is the minimum set of things they absolutely have to be in dispute about and we can actually clear up those things on which there might be confusion when it doesn't need to be brought into the IRP process. That's a valuable thing but it seems to me that's likely something in which somebody might want their lawyer involved certainly distinct from the second thing you involved which is the idea of the party and a staff member getting together and if they get together and talk about it the whole thing might

get cleared up in a mutually amicable way to everyone's satisfaction. It seems like a valuable thing for the CEP to do but it's very different from the first thing and the kind of environment that is likely to make one work well in my mind is likely to be very different thing to the other one working well. The first one I think does need the benefit of lawyers or the possibility of the benefit of lawyers, otherwise exactly what you said about the problems happen when an unrepresented party goes into the room with a highly sophisticated opponent.

On the other hand having lawyers I take your point that having lawyers in the room in the second example may actually undermine that. It may be just better, and you can certainly imagine that there may be circumstances where a person, an entity that has a problem with what ICANN has done has not understood what ICANN has done, maybe because it understands the thing that has happened but not the other surrounding context. We have a lot of processes which are very specific about its nomenclature for example where if you got very upset about something ICANN did under one heading and you were completely unaware that under another heading there was something that would have dealt with your problem and that's the kind of scenario in which amicable discussion would really help but I would caution you not to conflate those two types of processes in terms of my way that you approach that in terms of implementation. I don't know how you would

separate them but certainly if you were to say that lawyers shouldn't be there or something like that to be able to make sure that it's possible to go into different strands and maybe have both maybe one after the other sequentially or all sorts of things but to understand that they are different functions and that they will need to be treated differently.

>> ED MORRIS: May I briefly comment? What we realized early on in the interviews is that the bylaws are asking us to do two different things and in some ways when you are trying to structure issues for IRP which is what the focus has been today, folks go into the CEP not really trying to resolve the problem. I think the idea of a two-step process for example if we were to go to the structure that we will not call small claims until Greg comes up with our term perhaps but then we run into deadline problems.

If you heard those numbers we're already talking about 80 percent of a year for the average CEP and we don't want the CEP running into an IRP for these processes to last many years and so we have to balance that but I take your comments, I agree with them and I think that's something the group's been struggling with. we have these two goals. How do we get both of them into this small process. Thank you Malcolm.

>> LEON SANCHEZ: Thank you very much Ed. Next on the queue I have Alan Greenberg.

>> ALAN GREENBERG: I have two short points, although it's conceivable the outcome any of these processes have monetary involvement that we shouldn't be flagging it as that's the target so I agree with what David said.

The other one is Ed in your presentation at one point you said to do that would require a bylaw change and no one wants to do that. We made a vast number of changes in our bylaws hundreds of pages there's no possible way we got it all right. I think we need to have a mind set that says as we discover things that need changing, we got the function wrong or we got the wording wrong, we need to keep notebooks and every few months let's make the changes that have to be made and accept that it's part of the normal course. Otherwise we're going to be living with stupid mistakes for fear of correcting them or admitting we didn't get it perfect and there's no possible way we got to perfect. We already know one, you know, the what were the AOC reviews where the wording on the documents did not give anyone any flexibility on the timing and that's what we put in the bylaws. The reality was the board had the ability to talk to the NTIA and change the timing and we lost that in transition and we need to be aware of the fact that we didn't do it perfectly and let's correct it as we go along. Thank you.

>> ED MORRIS: Thank you. I should have stated that we did discuss this in the small group at our last meeting

and no one within the small group felt that we wanted to go through a bylaws change so that was my misstatement but I'm going to bring your point back to the group, see what they say now.

>> ALAN GREENBERG: I'm not talking about the specifics in that case. Maybe that was a good judgment. It's just the overall thought processes of let's shy away from bylaw changes with all possible chance. Thank you.

>> LEON SANCHEZ: Thanks Alan. And thanks, Ed. We have more questions by Kavouss. First is wouldn't there be a risk if the same people be given two tasks? And also one more question is what is the kind of input that you are asking from the CCWGF and on what context if you may elaborate. So Alan.

>> ED MORRIS: Let me take the second question first and then ask Kavouss to explain the first question. What we're asking for today is exactly what we're getting. Alan's question for example we'll take that back to the group and say are we sure we're not willing to go down the bylaw path? Some of the other comments from Malcolm the idea that you may want to have a two step process if you go down to the alternate version of the CEP. That's what we're looking for. We're a very small group. What I'm really hesitant to do is say all right the few of us involved in this process we're going to make these decisions for the wider community. That's not right. We need your input because we are a

small group and we're getting it today. Some of these comments have been very helpful so that's what I mean for input. We're looking for guidance.

David's group was here to say this is what we're doing. I'm here to say this is what we're talking about, anything you want to let us know? Because there's a lot more of you, a lot more experience in the room, we've gone out and done the interviews, board members, staff members, just the general community certainly has an interest in what we do. Could you help me with the first question Kavouss.

>> KAVOUSS ARASTEH: [inaudible]

>> LEON SANCHEZ: I see one more question and this is who would be picking the one member of the panel who would serve as neutral party.

>> ED MORRIS: Under the bylaws the neutral party would come from the IRP Standing Panel and it would be a party that ones you are involved in the CEP you would not be eligible to serve on the panel for the IRP. The specific way for how the individual would be chosen it's something David and I will have to work on together.

>> LEON SANCHEZ: Thanks Ed. So are there any more questions to Ed on the CEP update and the CEP work group? Okay. So seeing none, we have a scheduled break at 10:15 so that means we are seven minutes ahead

so let's break.

>> ED MORRIS: One concluded comment if I could. If you can go to the last slide whoever is in the slide deck. Very, very last slide.

As I said, we're a small group. I know a lot of you have subgroups that are finishing and the last thing you might want to do is join another subgroup. We could use your help. We're going to try to start having weekly Wednesday. Next two meetings are July 19<sup>th</sup> at 1900. July 19 at 1300. Don't feel there's a big learning curve that you have. You don't.

Secondly if you say I don't want to get involved that much but I have this point. CEPreview@gmail.com. Sends us your thoughts and comments and we'll get it to the group.

>> LEON SANCHEZ: Thank you very much Ed and David for being with us at the front table and now it's time for us to break and we'll be reconvening at 10:30 as scheduled so let's get to the break.

[ **BREAK** ]-----

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>> Reminder, everyone. This is the two-minute warning. Thank you.

>> THOMAS RICKERT: Can you please be seated? We're going to reconvene very shortly. Thank you.

>> Ladies and gentlemen if we could ask you to get your seats please, we'll be starting momentarily.

>> THOMAS RICKERT: So can we get the recording restarted, please? So the recording has been restarted so I'd like to welcome all of you back to the next part of our CCWG face to face in Johannesburg, I hope the remote participants also got some coffee to get some energy to follow the next part of the debate and what we're now going to heard is a report from the ACSO subteam. I would like to welcome Cheryl, Steve and Michael. Cheryl over to you. Cheryl, please.

>> CHERYL LANGDON-ORR: Thank you, Thomas. Thank you everybody for coming back from your coffee break so promptly for what we think is a very important discussion and that's what we want today's update from our work group to be. We want it to be a discussion so

we'll be going through a couple slides and we'll be stopping at most of these slides posing some questions in a number of them and hoping that you will be finished with your banking and email updating and interact with us so we can gather your views.

Just to be very clear, what we want to do here is look at what came to us as a result of our questionnaire going out to the ACSO leadership, our report was then generated, modified with our meeting in Copenhagen and Steve will speak a little more to that in a minute and then our report was written and that went out to public comment. Those public comments have come in and it's the analysis of that, that we want to introduce to you today and to discuss with you because we kind of thought we knew where we were heading on a few things until we asked the public. Damn democracy. Okay.

If we could have the next slide please. I'm delighted to report we had a total of 10 responses received in our public comment period. These of the ICANN Board, security and advisory committee, four in from CNSO, ISP, noncommercial stakeholder group and registered stakeholder group, [indiscernible] and two individuals and we want to put on the record our thanks to all of those and our intention as you will see when we get to the end of today's presentation to show you all that all of your comments have been duly read, recorded and discussed and will be responded to. So we are taking all of your input seriously. We're also going to take

today's input seriously as well.

I think by this stage I'll be ready to have a drink of water and Steve will bring you some background.

>> STEVE DelBIANCO: Thank you, Cheryl. I wanted to quickly note that Stephanie DeShano put into the Adobe chat is that Chuck Gomes is retiring and this may be his last ICANN meeting but that retirement is something that Stephanie was kind enough to put together a card, it's on the back right table and there's a pen there to sign. Try to come up with a fond memory or funny memory of the past decade and a half with Chuck if you can.

So the slide that you are looking at sort of summarizes the three tracks that we had and those tracks were laid out in the bylaws. If we go to the next slide it speaks to what we actually came up with on the track recommendations and so for the purposes of clarification I wanted to remind you when we met in March in Copenhagen as a plenary Cheryl and I and Farzaneh Badii presented recommendations which were shaped in Copenhagen by the plenary. We clarified we're looking -- not outside of ICANN. For best practices we had quite a debate about what we would recommend on best practices so instead of SO and AC should consider we said they should recommend to the extent they're applicable. We made the suggestion that the ATRT reviews would be -- best practices had been implemented. These are ways to address the CCWG's

concern that we were not requiring changes to implement the 25 best practices and yet there was a consensus within the CCWG to make it somewhat more urgent, more important to consider.

And the reason is ATRT was a natural suggestion is that the ATRT is expressly specifically mentioned in Work Stream 2's bylaws recommendation 10 and 12 from the report we did in February of 2016. That report said we were supposed to look at whether ATRT was an appropriate review. You will see not reason think it's a good idea to burden the ATRT with looking at every one of the AC and SOs. There was a look at an optional roundtable which and he merged from you at the Copenhagen meeting as opposed to the sub team who was not recommending a roundtable. We had best practices with regard to meeting notes and minutes and diversity of outreach and I wanted to note when we did the call for public comment on that draft we included an explanation that a minority of CCWG members prefer that the optional accountability roundtable discussion be expanded to include a mutual accountability and we don't have to go back through that debate today but the sub team did not embrace the notion that ALAC was accountable to GNSO or GAC was accountable to CCNSO. That is why we had dropped the word mutual from that concept and say that if there were an accountability roundtable it would have been an optional process.

We have quickly 6, 7, 8 slides are just to explore some

of the qualified support on Track 1. Track 1 is the 25 best practices. If you look in Adobe you will see that I have pasted in a hyperlink to our report and a hyperlink to the actual public comment page should you wish to follow along there. But with respect to the ATRT we definitely heard. On track 1 the first was that we definitely got support on the notion of SO and ACs are accountable to the groups and individuals that they are created in ICANN Bylaws to serve. So they weren't accountable to each other or a broader public interest but to the group they were created to serve so the qualifications on the ATRT, next slide please.

Thank you. The responses diverge but were certainly more negative about the idea of asking the accountability and transparency review teams which occur no less frequently than every five years to take on the additional step of examining the extent to which the best practices had been implemented in each of the AC and SOs and subgroups. So the board in particular was saying that they would not support that and suggested that it be done in the organizational reviews.

Now, the organizational reviews is something our sub team was keenly aware of, it's in Section 4.4 of the bylaws and we discussed it as a potential place to do but we were following the bylaws charter for Work Stream 2 and the bylaws charter said look at the ATRT, didn't say look at organizational reviews but with the

consent of this group I have a feeling our subteam will embrace the idea of letting those organizational reviews which occur no less frequently than once every five years. It's a real adventure to go through one. They occur for all SOs and ACs except for the GAC, it is not subject to the five year outside external review and with respect to GNSO which has so many subgroups it is a single review that takes a varying level of depth into the underlying subgroups.

There's a Track 1 recommendation on reporting that we wanted to note for all of you. This was something our sub team had suggested as another way to emphasize the importance of SO and AC adopting some of these best practices. Every year they could produce an annual report indicating the extent to which they've improved transparency. I would say the responses were less supportive about that and the concerns focused on the time in the SO/AC subgroups, volunteer fatigue and a suggestion we would like to meld with the previous slide is that perhaps the organizational reviews only one every five years not every year, the organizational review could look to which the extent to which there was improvements in in particular were the 25 best practices implemented?

The final item on track 1 on meeting transparency our sub team did our best to square the circle on this so that SO/ACs when they meet have open meetings unless there are reasons to close them and that the minutes

and actions be transparent to the public. We tried to avoid having conflicting recommendations on that but I think we need to go back with a sharper pencil and make distinctions between public meetings that occur such as this versus Adobe hosted staff hosted telephone and dialing calls where members only are invited with some support from ICANN staff so I think we'll try to sharpen that pencil and get it right. Agreed?

So track 2 this was the recommendation regarding an optional accountability roundtable. So I will quickly summarize, it's on Page 9 of our recommendation. Here's what we said. This arose out of discussion that happened with this group. We said that ICANN meeting planning staff would take the following steps prior to each annual general meeting so this once a year. They would ask the chairs of SOs and ACs via email whether they wish to hold accountability roundtable to discuss [indiscernible] of the meeting if the majority agree ICANN staff can schedule a 90 minute public session at the next annual general meeting it would be open to all SO and AC subgroup chairs and the ICANN Board chair would designate a moderator and that was seen as a compromise as opposed to saying completely no on a Mutual Accountability Roundtable versus implement it, this was an idea of making it an option at the exercise of the community that we all represent and serve.

There was actually a split on this. There were three supported, two qualified, one concerned, two against

it, there was even one comment that came in that said let's go firm for Mutual Accountability Roundtable. Now, we will have to examine that but I have to say that the chairs, are leaning towards a discussion that would perhaps revert to the original proposal that we not recommend a mutual roundtable. I'm happy to take comments on that when we wrap the slides up.

The next slide is on Track 3 which was the bylaws charter to our sub team to say should the IRP the independent review process which includes the CEP you all discussed earlier should that be available to take action again to challenge an SO, an AC or subgroup. The conclusion of our sub team was no it was not a good fit. We actually had plenty of support for that general recommendation that we don't want the IRP to be turned into an internal challenge mechanism. Now, the board agreed in its comment that the IRP was not a good fit for SO/AC challenge but why didn't we consider other means but in the report on Page 11 we said there are easier ways to challenge an action or inaction such as ombudsman complaint. Now, the external review of the ombudsman office will be discussed this afternoon after lunch. It's full of specific recommendations and to the extent that Work Stream 2 project embraces any of those recommendations, I think our sub team will lean heavily on that and continue to suggest that if ACSO isn't following its own charter or bylaws, if not allowing a decision or implementing best practices the ombudsman hopefully will be the right path for them to

take and not an IRP.

Next slide which is our last slide talks about the next steps. Next slide please? What are our next steps? With respect to this, the subteam will get together and come up with a modified report. We'll then turn to you to look at the modified final report, we'll discuss it on a call or two through a couple of readings and hopefully will quickly determine whether the extent of the changes are significant enough that we would have a second public consultation. If changes are not as significant we would forward the final recommendations to each of you through your chartering organizations for approval so we are going to set up a series of three or perhaps four meetings over the next several weeks and try to get a subteam report back to the plenary by then and before we take the queue I want to make a final comment with respect to the review from the ICANN Board the the board acknowledged our subteam and CCWG's strong focus on the subgroups with respect to the best practices but the board lamented that we had a lesser focus on accountability of the collectivity SO/ACs when they come together in this new mechanism called the empowered community. The board specifically believes that the empowered community decisional participants those are your representatives on the AC should be accountable to the community as a whole and not just to the SO and AC itself. The three of us do not agree with the board's perspective on that and believe that our perspective was ratified by the --

bylaws created them to serve. But we will welcome the board for any specific recommendations on how does one hold the five decisional participants in the empowered community, how does one formally hold them accountable to the broader notion of public interest when we're relying on those SOs and ACs to actually define the public interest through the way in which the empowered community approves a bylaws change or considers a correct live IRP so we don't actually see a way to proceed on that and we'll stick probably with our baseline -- that the supporting organization, ALAC has its charter and each of us need to be accountable to the groups we had to serve. So any other comments Cheryl?

>> CHERYL LANGDON-ORR: No other comments from me other than the fact that [indiscernible] in the queue and I think if we roll back to Slide 4 now particularly because it links to some extent because it's about best practices, actually might be Slide 5 and what Steve was just saying about the board's input. A queue will form and if we can take them in some semblance of order. So right now let's talk about the concept of the best practices but not in general. This one as you can see we seem to have from public comments support of our established and agreed way forward. So with your permission, let's move to the next slide and look at where we had divergent principles. Look at where we had public comments that were not in keeping with what we as a plenary and as a subgroup had come up with so

if we move to the next slide now which will be talking about the ATRT and while you are getting yourselves organized I've got three people in the queue which may be to do with the general public interest and cross accountability story that was just raised.

So first of all Alan followed by Kavouss then Sebastian.

>> That I understand you do not want comments on the other issues such as accountability form or the board's comments right now.

>> CHERYL LANGDON-ORR: You can do the boards comments.

>> I will talk about the first one on best practices and it's something that I'm a member of the group, I would strongly recommend on reconsideration that we not call them best practices. The term best practice is a standard word which says these are deemed to be the superior or correct ways of doing things if you look up definitions of it and we have a long laundry list of best practices some of which do not apply at all to some of the ACs or SOs and I wouldn't want them reviewed by some later group as saying you have not not followed a best practice established as being the right way to do things so I just think the wording needs to be something else. I'm not disagreeing with the rest of the principle.

On the accountability of the empowered community

members, I am really mystified by the board comment, because we explicitly say in the bylaws and for the ALAC we explicitly say in our rules of procedure the empowered community representative, the person on the administration must only follow direct instructions from my, that AC or SO. How they can then be accountable to other parts of the community is a complete mystery to me. Thank you.

>> CHERYL LANGDON-ORR: Thanks Alan and I think that sums up why the co-repertoires will [indiscernible]

>> STEVE DelBIANCO: Just changing the name may not solve the concern you raised which five to 10 years there's an organizational review of GNSO, they hire an outside consultant. Whether we call them best practices or something else we have to find a term, stick to what we recommend which was to the extent, remember we said whether we call them best practices or not, these best practices are offered to each SO/AC subgroup for implementation to the extent these practices are applicable and an improvement over present practices.

That charter has to survive so that the consultant they hire understands that whether they're called best practices or not. Alan you had a follow-up?

>> I'm just suggesting we not pick a term whose formal definition is not at odds with the definition you just read.

>> KAVOUSS ARASTEH: Thank you. First I refer to a need to replace best practice by something else. I don't think that we can find something that [indiscernible] that put the best practice in two inverted [indiscernible] that being its meaning is known but I don't think we can find anything, go another round of [indiscernible] consensus so leave it as it is. Someone at this meeting sitting here, sometimes [indiscernible] don't make the [indiscernible] of good and you want to do that or at least propose to do that.

With respect to the question of whether we should go to another public comment, I don't recommend it as an efficient way, because the scope of the comments as you have described authorize you to modify the recommendation and send the recommendation to appropriate channels to the charter organization, not to go to the public comments because you may receive another public comment and you have to go this chain again so let's just be a little bit more efficient.

With respect to the comment of the board, I'm sorry I was not in the room when you mentioned that if it is possible quickly mention what was the board comment about this issue? If not talk about it outside the meeting.

>> CHERYL LANGDON-ORR: [indiscernible] take it outside of the meeting but we'll be happy to do so Kavouss. Next in line, I believe it was Sebastian.

>> SEBASTIEN BACHOLLET: Thank you very much, Cheryl. Yes indeed, I would like to emphasize proposal about getting rid of best practices. I have always struggled in my [indiscernible] life to again [indiscernible] because good practice somewhere is maybe not a good practice somewhere else. And when we talk about best, it must be the one everybody needs to follow. And for example if we talk about election process, I'm not talking within ICANN but within the world where is the best practices? Which one we need to follow everywhere and I would like to suggest that we change best practices by good practices.

That means that it's a good practice for one group, it may be interesting to look for other groups and become a good practice. But best, it's the only one we can follow and that's not the case within the organization.

Second point I wanted to raise, it's about the board comments. I think we need, I understand the point of view of the [indiscernible] but before putting that out of the way, I think we need to think about, I know what Alan said about he will be the representative of at large and the voice of at large, but when they convene as a group it's also important to take into account the whole community. How we can do that, I have no solution here. But before we said that it's a bad idea I think we need to have some sort of, collectively thought about that.

And my third point, I understand that people don't want

to give too much additional work to the ATRT but one important point for the ATRT today, it's to look to the overall organization or to have a systemic view of ICANN and maybe it could be the good place not to review each SO and AC good practices but how that's fit between the group together and to give to SO/AC additional review one part of the job, it's, is it doing well within this each SO and AC but taking the cross situation about [indiscernible] could be done at the ATRT level.

>> CHERYL LANGDON-ORR: Thank you Sebastian. Certainly we will be discussing this more. We would certainly enjoy having more input from this group on each of these issues when we have our meetings so we'll make sure that our agenda is advertised so if you wish to join one of our discussion meetings from the work group when particular topics are on that will be another opportunity for you too.

>> JAN: Jan Scholte, maybe I slept through or dreamed something but I believe we discussed this the last time and I believe we underlined that good practices, if there's good practice is better than best practice we might want to go forward with that.

On the review of SO/AC accountability should it be done ATRT, should it be done in annual reports or in the five year organizational reviews, I guess the decision reflects what kind of priority you want to put to this issue, how much emphasis you want to give to it. If

it's not going to be ATRT and it's not going to be annual review and it will be the five year organizational review only, then maybe you want, it is going to have the kind of priority that you want, you want to attach language about that it's going to be a thorough and systematic comprehensive review of the 25 good or best practices or whatever. Anyway if it becomes a footnote comment by the time we come to organizational reviews maybe it ends up being one of the 50 things and it gets just a paragraph and then what started as let's make sure we look at SO/AC accountability it's not in ATRT, not an annual report, it's only a footnote in an organizational review then I'm not sure you get much organizational learning out of a process like that. I don't have very strong views on the Mutual Accountability Roundtable, I just noticed it looks like there were five comments supportive and two against and that doesn't sound like an overwhelming voice against proposal so maybe you decide to take it away but it doesn't sound like the comments you got back wasn't telling you to remove it.

>> CHERYL LANGDON-ORR: We'll look at the split in greater details. Go ahead Steve.

>> STEVE DelBIANCO: In the chat in response to something that Jan mentioned again with respect to reviewing the extent to which good and best practices have been implemented, the ATRT is no less frequently than every five years Jan just like the -- I wanted to

clarify that and I placed it into the chat the section from the ICANN bylaws which hasn't changed Section 4.4. It indicates the goal of the reviews is undertaken pursuant to criterion standards the board directs. So when they direct the review of GNSO, the board is able to the organizational effectiveness committee, to specify criteria for the review which I believe is part of the way they solicit the independent expert to do the review but they only look at a couple of things. At whether the organization SO or AC has a continuing purpose in ICANN; two, if it has a continuing purpose is there any change in structure or operations that was desirable to improve its effectiveness. Where the word effectiveness is left to interpretation of the consultants I'm afraid. And three whether the AC or SO is accountable to its constituency stakeholders, organizations and other stakeholders to that's the breadth of it right now. I don't know that that has to be changed in the bylaws to accommodate what Jan is mentioning. As part of the criteria it would expand the consideration of implementation of best or good practices. It could be done as part of the criteria that the board gives to the consultants. It may not need to be a change to the bylaw Section 4.4.

>> CHERYL LANGDON-ORR: Avri, go ahead please.

>> AVRI DORIA: Thank you. I wanted to make two quick comments, one on the nature of best practice. Everybody knows it's a euphemism for some definition of

best and I guess I'm not at all concerned that we call it best practice, bestest practices or Fred's practices. So you know, but, on the cumulative effect I think and perhaps I'm misunderstanding the board or the board is misunderstanding how this multi-stakeholder process is working is that with each of the stakeholders coming in doing what it is their community wants then working together to come up with a cumulative effect, they are actually concerning themselves with the overall community. No one person, no one representative can say we're here to represent the whole community. That would be nonsense. But when they sit together, each of them arguing what their group sent them there to argue, the net effect should be what is cumulative. So perhaps if we can find some language that actually says that that is how that is served and not by each one being there for all. Thanks.

>> STEVE DelBIANCO: Thank you for that comment. I think you've given us a way forward in revising our report in a way that addresses the board's concern and unless the board comes up with a new mechanism that would suddenly make the five participants accountable to some greater good we would be able to address it by saying it's structurally inherent in the five. Think about it. We have the CCNSO, GNSO, governments, GAC, numbering organization and the at large. Those are the current five participants in the empowered community. I think that touches all of the bases of anyone in the

planet who has an interest in unique names and identifiers so I don't understand how you can bring something else into the mix thank you.

>> CHERYL LANGDON-ORR: Alan.

>> ALAN GREENBERG: A follow-up to that subject. When each of the AC and SO makes a decision on acting as part of the empowered community and not so much on things like ratifying the bylaw we have on the table today but on the more onerous actions of removing people, rejecting budgets, I think they're each going to do it with a pretty heavy weight on their shoulders as to the impact of what if it's successful and how is this going to structure and impact the overall ICANN community going forward. Yes each of us have our own axes to grind but I think there will be a heavy weight and consideration given by the groups of the impact on the community and each decision presumably may in fact probably will take that into account but you can't put the onus on the representative who is bound to action on the instructions of their ACSO so I think the community has to think about ICANN overall not only its own little perhaps petty issues but that's where it sits with those major parts of the community.

And lastly on Kavouss' comment of a footnote defining best practice. In my naive youth I would on regular occasion in a document saying we're using this at the beginning as a definition we're using this term to mean and then give a nonstandard definition. It never

works. People ignore it completely and go ahead and presume you are using the standard one so I would strongly suggest we not do that.

>> STEVE DelBIANCO: Thank you Alan. I will note that the subteam's recommendations that this group ratified and published didn't include the best practices in the bylaws and didn't say where they would live and the notion was that it needed to be referenced some place whether it was in the ATRT, organizational reviews perhaps in the standard operating procedures, there needed to be some link to it so those best practices, good practices are available for people to examine them so while they might be referenced in the bylaws there may not be an imperative they have to be implemented yet we still need to provide an organizational link to that document.

>> CHERYL LANGDON-ORR: Just looking at time I think we might move to the Track 2. Another couple of slides along. This is where we see what we believe is at least considerable divergence. The split was 3 in support, 2 qualified support that's absolute middle of the road stuff. One concern and two clearly against. What we had put in our report based on the modifications you asked us to make in Copenhagen so what we're looking to you for now is feedback on this result from public comment.

Lacking at least in our view, strong support for any mutual aspect of a form of accountability process even

though we had it very much optional and we thought in a relatively low key that's still urgent enough to meet your views from our last face to face meeting, we want to know from you, do we go back to our work group's original recommendation which was against, without even attempting to recommend an optional exercise.

So I've already got a queue on that of Alan, Malcolm and Julie so back to you Alan okay let's go straight to Malcolm.

>> MALCOLM HUTTY: When I spoke in Copenhagen commending you on your original proposal and urging you not to change it so do I get to say I told you so? Maybe to be slightly more constructive it's this concept of mutual accountability they really struggle with. I think that it undermines the accountability of the SO/AC to their own constituents. If there's still really a wish in this room and I guess based on the process that you reported it seems to be this room that wants it rather than anyone else but if there's still a desire for something like this maybe it should be we need to change the name. Instead of calling it Mutual Accountability Roundtable which triggers all of that concern that we're being accountable to each other rather than the people we were put here to represent have it as an information sharing, you know case study example dialogue an intercommunity dialogue, you know some of that nature that does not imply the people attending it on behalf of SO/AC are in some way

responsible to the people at the meeting they're going to rather than the people that sent them there.

>> CHERYL LANGDON-ORR: Thank you Malcolm.

>> STEVE DelBIANCO: Thank you for reminding us you want us to stick to our recommendation but I want to clarify what we put out after discussing this with all of you is what I just posted into the chat. We did not call it mutual accountability, it was accountability roundtable. The word mutual was noted on the public comment page as a minority and I believe only one comment spoke to the mutual aspect of accountability. The comments, other than that the rest of the comments were about the generic accountability roundtable and as I have posted it doesn't speak to the mutual it's a sharing of best practices which was a part of the way Willy Curry described it in 2015. But having said that it already is described the way you were suggesting we describe it and under that description not mutual but just an accountability discussion under that it did not receive what we call substantial support which would lead us to potentially come back to where you would have wanted us to be when we met in Copenhagen.

>> CHERYL LANGDON-ORR: Now it's Julie's term.

>> JULIE HAMMER: Thank you. I was going to raise my hand in Copenhagen to speak about it when time pressures concluded the discussion and I really think that that discussion was truncated and those of us who

didn't agree with the suggestion of going back to that recommendation didn't have the opportunity to express that so I'm not really surprised at all that this has been pushed back in the public comment and I support what Malcolm has said, and to add the perspective on where we would like to see this suggestion go, we don't support even the concept of the accountability roundtable as this major public forum. We suggest that that could lead to a lot of posturing which isn't necessarily the most productive way to exchange views. But what the SSAC has suggested is that this topic would best be covered in one of the regular chairs meeting where they schedule discussion about what they're doing within SO and AC and share their views and practices that are working best for their particular groups so I would just like to add that perspective. Thank you.

>> CHERYL LANGDON-ORR: Thanks Julie. Jordan.

>> JORDAN CARTER: This is definitely not a comment wearing a co-chair hat but I was one of the people who [inaudible] the last time we discussed it so I figured it would be fair to make another oral intervention.

I think what this concept got to in my mind was similar in some ways to the board comment on the broader picture here is that if we fragment all of our accountability decisions and discussions into the narrow silos of the SO/AC and if we say the only accountability those groups have is back to the

specific communities they have been organized around so CCNSO is an example around the CCTLDs, what we don't want to see long run is ICANN being able to have an ICANN-wide conversation about the organization being unable to raise concerns people might have about specific operations within those SO/ACs so if the view in the room is that will lead to grand standing and the kind of stuff Julie was just describing it probably isn't a helpful innovation but at the moment the two collectives that might be able to do that is the SO/AC leadership and the ICANN Board so all of those people have roles that put them in some conflict in reviewing their own practice on one hand and the other hand they're the leadership of the community and they have a job to do that should be about considering and being able to gently raise concerns and share good practice where they see it so I'm certainly not someone who wants to die in the ditch about a certain recommendation but I want to come back to the memory as well as the linear community back to the accountability we have -- policy organization to the global internet community that goes beyond the narrow silos and SO/AC and we need to make sure that question, that topic is taken account of formally or informally in the various communities we have within the institution. that's all I wanted to say.

>> STEVE DelBIANCO: Thank you, Jordan. One of the things you helped us design over the last three years was the escalation process that the empowered community

goes through whether deciding whether to exercise one of the powers that the empowered community and I believe it was you Jordan who wanted to be sure we had a space to talk and it was at the Los Angeles meeting it was where we designed this meeting where it would take one or two participants to provoke a community-wide conversation about whether to move to the next stage of escalation of having of a call and discussion of whether to exercise a particular power so I believe that commune-wide conversation which may start from the perspective of a CCNSO or TNSO but inevitably those conversations have to be with each other and it is intended through those conference calls and face to faces that that would be done in a context of whether to exercise and how to exercise a community power. That is completely distinct from a notion of whether once a year leaders get together and discuss how's that all going with respect to accountability. So I would submit to you we have delivered the community wide conversation. It's part of the escalation process we've designed and approved for the exercise of the empowered community.

>> CHERYL LANGDON-ORR: Thanks Steve, just to remind you all our brief to [indiscernible] was to look at who watches the watches and I think that's what at least the co-repertoires had done their best to, I'm going to make one last call to anybody on this topic after Kavouss.

>> KAVOUSS ARASTEH: Thank you. I was personally not in favor of this mutual accountability at the beginning. But when I saw that the issue going toward to make it optional I was changed my mind, I was criticized by one of the co-repertoires why I changed my mind which is not appropriate. I am free. I called into the prevailing situation to come back to the issue. However I suggest that first of all we separate publicly or non-publicly from the issue of the optional, we do it step by step, do it optional and then do it publicly. If it goes well you decide to do it mandatory and then publicly or not publicly.

The problem is that CCWG at the very beginning we were just discussing theory. We don't know the practice, how it goes. Let us do it first to see whether with optional works. If it works then do it publicly and then if it still goes to the mandatory. Thank you.

>> CHERYL LANGDON-ORR: Thank you Kavouss and [indiscernible] your comments will be noted and taken into account in our deliberations. Of course you're part of our work group so when we discuss these public comments you will no doubt be able to make your preference for retaining it as opposed to what we are suggesting about not retaining an optional but we've also seen from ISAC that they've suggested another form they would suggest.

Kavouss I want to make very clear for the record if at any point you have felt that any of the co-repertoires

have any way personally criticized you or been unfair or critical in suggesting that you don't have a right as everyone does to relook at things and indeed change their mind because what we're doing is building consensus and having a discussion, we could do 180 turns several times through these processes, I'm going to take it on behalf of all three of us to apologize for that if that's how you've interpreted anything that was said.

But it was certainly as far as I'm concerned, not the intent to offer any criticism or insult at any point to any of our commenters and indeed our hard working work group members such as yourself. So with that on the record, hopefully responding to your point let's close off on that particular topic and in the last couple of moments look to Track 3. Next slide please. I will toss that to you.

>> STEVE DelBIANCO: Steve thank you, Cheryl. Track 3 is the use of the IRP. I believe a recommendation was pretty well supported. Do not implement the IRP to challenge SO/AC. I think we are going to need to expand the discussion of whether the ombudsman office would be able to handle this and at this point we don't know enough about what the ombudsman Work Stream 2 will do given the external review recommendations that just came in a week or two ago so I look forward to that discussion after lunch. Is there anyone who wants to add anything on our Track 3 recommendations at this

point? Seeing none I think we're done.

>> CHERYL LANGDON-ORR: Jan go ahead.

>> It's just a general comment overall so maybe I should hold off. Are you okay for that? No, it's just I'm going back to Frankfurt and the meeting where this first watch the watchers come up and this whole inspiration for the accountability and reflection was the notion that the stewardship transition the community, multi-stakeholder community as the empowered community was going to get more power and that therefore was it right that those who have more power also have more accountability so we now have the more power in the various transition arrangements. I guess what one would want to do now is look at the discussion on the SO/AC Accountability and say does it match up? Do the increases of accountability match up to the increased power that the SO/AC have? That's for you to decide in a way but if it were to be that one emerges with a list of 25 best practices, good practices, whatever they're called which I suspect once these discussions are finished and one this Cross Community Working Group is disbanded will not get regular reading attention, if there's going to be an ombudsman option to take complaints and there's going to be a five yearly organizational review which will look at these issues but in an undefined and unspecified way on the whole. I just ask you the question do you think that collectively is enough to match up with the increased

power that the community has again remembering here that you are asking to regulate yourselves in this and nobody is usually running to say I want to be made more accountable. It's usually outside parties who do that. You are making these arrangements for yourselves without any outside pressure at the moment.

>> CHERYL LANGDON-ORR: Thank you, Jan. We've taken that on board and this may not be the last attempt at review of such things as well. We're simply finishing our work in a timely manner we hope or with that Steve do you have anything to add or should I throw it back to the co-chairs? Thank you. We're done.

>> THOMAS RICKERT: I think we can end this part of the agenda and move to transparency which is going to be [indiscernible]

>> LEON SANCHEZ: Thank you. We have our colleague so please do take the floor.

>> MICHAEL KARANICOLAS: Thank you. I see that I have been granted the coveted time slot right before lunch and I do understand the weighty responsibility that that entails to make sure that we finish on time. I will also say though that I've spoken with our hosts and have agreed until we reach consensus on the issues under discussion nobody eats. So with that said, on that note a quick update on the status of the transparency group to start.

You may notice that I'm flying solo up here and that's because my co-repertoire Chris Wilson is stepping away from ICANN, has stepped away from ICANN so I'm now the only repertoire of the subgroup and I want to mention Chris was taking the lead on transparency for interactions with governments and he,.

>> LEON SANCHEZ: Sorry. I didn't introduce you by name. This is Michael Karanicolas speaking.

>> MICHAEL KARANICOLAS: Yes. So he drafted some responses before he left to the feedback that we got in terms of the consultation. But we haven't done more than that in terms of taking that section forward. If there is anyone who is interested in taking the lead on that section that would be very welcome. Otherwise I will be taking that on myself, but any assistance would be very much appreciated if anybody has a particular interest in transparency and interactions with governments and wants to join us for the home stretch.

The main thing we'll be talking about today is the DIDP section which has attracted the most energetic debate. There's been a revised draft of the report circulated and that includes some minor changes to the document to accommodate what we see as the noncontroversial inputs. Basically mostly just clarification and slight linguistic Tweets to clarify certain issues and I will also mention since last meeting I followed up with Samantha Isner at ICANN Legal who has been -- around the duty to document which she was very positive about,

so there is a back and forth going on, on that front which should also help to hash out some of these issues.

With that being said there are two main issues that I was hoping to open up for discussion here today that have proven particularly controversial so I think I was hoping to use this opportunity in order to try to push forward and clarify some of the contrasting positions and to find out what the plenary thinks and the first of these is transparency at ICANN Legal and how we should treat attorney client privilege in the DIDP.

The current recommendation is to say that the DIDP exception for attorney client privilege should be narrowed so that only information, information will only be withheld if disclosure would be harmful to ongoing or contemplated lawsuit or negotiation and mandate the broader policy making device. So this would replace the current class -- related to litigation, negotiations, et cetera.

That's the recommendation as it currently stands and there were some concerns raised within the consultation including by ICANN but also by other stakeholder groups that were concerned that this would impair the efficacy of ICANN Legal to do their job and that this would potentially be harmful to ICANN Legal's broader ability to act as legal representation.

So we've sent around a little bit of background

research that I asked for related to this. You will see there that limitations if some of you have taken a look at it, limitations on attorney client privilege are fairly common across the public sector because otherwise it's a fairly easy way to avoid transparency rules if you don't have those kinds of limitations. We've seen governments that are subject to transparency rules try to avoid that by bringing a lawyer into the room so we're trying to avoid that in the recommendations by narrowing that but at the same time there were concerns raised.

And I will also mention that attorney client privilege is always waived at the discretion of the client mainly ICANN here so we're free to set our own policies about this.

But the main question that I was hoping to discuss here is what people's thoughts are on transparency and ICANN Legal how that should be taken forward. The specific ask that I got from Samantha was a little more specificity on what does the community want to see in terms of enhancing transparency, are there specific categories or types of information that we want to see put out there, do we see a need for more transparency or not? Do we like the current recommendation, want to push it to a different standard and with as much specificity as possible. If anybody has information about what we would like to see made more available that would be very much appreciated.

The second area I was hoping to open up for discussion involves the exception for commercial information. In terms of commercial speech the recommendation in the current report says that the exceptions for trade secrets and commercial and financial information not publicly disclosed by ICANN and for confidential business information and or internal policies and procedures should be replaced with an exception for material whose disclosure would materially harm ICANN's financial or business interests or the commercial interests of its stakeholders who have those interests.

Now, we had some energetic debates about this within the working group and also in the consultation. There were strong objections raised by a few different stakeholders, by a few different submissions. Since this shift in the language of the exception would place decisions around disclose you are in the hands of ICANN regardless of any NDA or assurance to the parties made, obviously there are legitimate commercial interests which need to be represented and parties which engage with ICANN need the assurance that that information will be properly safeguarded. At the same time if we structure a system where ICANN can just choose to classify information where it wants that's a fairly easy loophole to the DIDP policy.

So we've discussed different avenues forward. One potential solution would be to clarify the rules around how NDAs are used and to sort of restrict when they're

in place going forward so they would only be signed where there's commercially sensitive information where that information needs to be withheld and that if NDAs were only applied in narrow and limited circumstances then that would limit concerns around providing a clear carve out for NDAs. And that relates a little bit to the discussion about open contracting that was mentioned that's also part of the recommendations and that we're also hoping to talk about whereby clear rules around contracting could help to advance, help to clear out concerns around the commercial speech exception.

So again we heard that people want more transparency built into these processes, we heard support for open contracting and support for greater transparency but we also heard significant concerns particularly around the need to respect NDAs and concerns around weakening and placing into ICANN's hands. With that said I was hoping to open it up to discussion on those two issues, one is attitudes towards attorney client privilege and enhancing transparency and the second is approaching to commercial speech, the exception for commercial information rather not commercial speech, and how that should be understood as well as how that interacts with open contracting and nondisclosure agreements so having teed up those areas for discussion I would like to open it up and hopefully get some feedback on what people think.

>> LEON SANCHEZ: Thank you for this update , Mike. The floor is open for comments. The floor is seeking for your thoughts and comments on these two issues. I see there's a hand up that is David and Kavouss has posted a question on the chat. So I will go with David and then I will read Kavouss' question then I will go to Greg.

>> DAVID MCAULEY: Thank you Leon and thank you Michael. I'm sure this won't come as a surprise to you that in the subgroup I have been one of those who has been on the other side on both of those issues attorney client privilege and nondisclosure agreements so my comment is first a question and the second is so that the plenary hears it just the concerns I have.

The question is and then I will go ahead and state my concerns and you can answer the question but the question is it's my understanding that even though we have received some comments from ICANN is that there are additional comments being worked on by ICANN Legal and that we're expecting the delivery of additional comments. And I think some of my concerns may melt away if in fact ICANN Legal doesn't have those concerns.

So I, I'm operating under the assumption that there's more information coming our way from ICANN and pending that, I think that's important stuff we'll have to take into account.

The concerns I have on attorney client privilege are strictly that it's a widely recognized privilege and clients, organization says need to be able to speak freely with their counsel and get counsel. And if we somehow diminish that then we may be reaping unintended consequences where people create work arounds and that is simply not discussing issues and somehow freezing or limiting the way they operate and I think it could be harmful. I think that attorney client privilege is widely recognized and should be observed and the second concern I had was with respect to non-disclosure agreements.

I believe nondisclosure agreements proprietarily entered into would be observed and to disclose commercially valuable information would have to be made by the person that owns that commercially valuable information and not necessarily by ICANN. I think if there's an exception where something may be disclosed ICANN should not be in the position of making a decision for someone whose information it has been given confidential handling for.

So those are the concerns. I may change the concern depending on what ICANN says, doubt I will on nondisclosure agreements but I think they're important principles we need to maintain.

>> LEON SANCHEZ: Thank you. Michael.

>> MICHAEL KARANICOLAS: Quickly to respond to what you

are talking about on what we're waiting for. Essentially I had a conversation with Samantha Isner and we agreed there was some additional information that I would provide to her and there was some information that we would get back from ICANN Legal so in the aftermath of that I sent around a little more background information -- she was generally positive towards it but just wanted more clarification.

Then the second one was about clarifying what information do people want from ICANN Legal and that's one of the things I was hoping to discuss here. In terms of what we're waiting for from them mostly it's around attorney client privilege and they said that they would look more and provide a little more detail about their different practice areas about the duality of the role between the policy making and the litigation negotiation function which was at the core of the recommendation as it is currently phrased to try to hash out with a little more specificity how we can provide more transparency into the former in terms of that policy making function and provide the proper safeguards to the latter in terms of litigation and negotiations so we are waiting for more information and I see this as kind of a back and forth that's happening in terms of ICANN Legal with regard to the attorney client privilege question and to the [indiscernible] document question.

>> LEON SANCHEZ: I want to ask Kavouss has your

question been answered by Mike? I know you have another question on the chat and it reads Leon please ask Michael what he expects from us in determining what document to be available. These should have been advised by the group and not coming to us to start. So that's what Kavouss has mentioned. Do you want to answer to that Mike?

>> MICHAEL KARANICOLAS: Sure the DADP is essentially about drawing the line through the organization and saying here's what is available for disclosure and here's what is subject to classification generally.

This is the broad mission of the subgroup is to examine where this line should be and provide recommendations on what should be available and what shouldn't. Now if you look at the recommendations we've arrived at thus far there's been a lot of clarification suggested as to how that line should be drawn and where the, how the current exceptions should be tweaked to respect that. Currently the discussion that we're having now is not as much about a wide ranging sort of broad discussion about where the totality of the line should be drawn if that makes sense, and more about two specific exceptions or three specific exceptions within the current policy for attorney client privilege and with regards to third party commercial information.

So we're hoping to foster debate just on those issues at the moment and understanding how confidentiality should work with respect to those.

>> LEON SANCHEZ: Thanks Mike. Next on the queue I have Greg Shatan.

>> GREG SHATAN: First I wanted to point out that the IPC submitted comments which were expressed in significant concerns on the issues that you raised here, not going to rehash those but I do personally, not speaking for the IPC, agree with the concerns that David raised, although you know hoping for more disclosure but you know just blowing up attorney client privilege you know is a dangerous thing but agree that the opacity of ICANN Legal is something that we need to change institutionally as well. Obviously it's a sensitive issue and needs to be dealt with and I agree with characterizing it as a continuing conversation.

Specifically on the point of open contracting, it was the IPC's position that Recommendation 16 should not be adopted and that first off it really goes beyond the scope of the DIDP to make this recommendation and beyond the scope of the transparency efforts for which the subgroup was chartered. Now, open contracting is a specific concept as I understand it, a movement that really applies to government contracting and the idea of giving citizens insight into government contracting practices and that it involves a number of practices and procedures throughout the contracting process that some may and some may not be appropriate for ICANN, some may be appropriate with amendments but the idea of adopting open contracting per se is a bad idea and it

really needs to be considered separately and carefully and not boot strapped to recommendations on the DIDP.

ICANN's contracting practices could certainly use some examination but the idea of just trying to fit the shoe of open contracting over the foot of ICANN contracting seems like a bad fit to me and we'll just end up with bunions and blisters.

So, as a general matter I personally and IPC generally you know encouraged ICANN to consider ways to contract in a way that allows for maximum disclosability during a DIDP but ICANN, open contracting isn't the way to get there and finally open contracting requires that your counter [indiscernible] agree to open contracting so that's really I think inappropriate to limit ICANN's contracting parties only to those who would agree to open contracting procedures.

So, that's you know I just wanted to raise substantial concerns I have with open contracting which is not, does not mean that we can't have more openness in contracting but that open contracting with a capital O and a capital C just does not fit. Thanks.

>> LEON SANCHEZ: Thanks Greg. Any reactions? Mike?

>> MICHAEL KARANICOLAS: Yeah sure. So just in terms of the idea of, I guess I would dispute the characterization that we're looking to blow up attorney client privilege. I probably wouldn't characterize it

that way myself. I think we're looking to clarify and limit its applicability. This has been done widely across the public sector in a lot of jurisdictions. The chilling effect isn't seen, government lawyers are able to operate. But I also want to mention that this has been raised a couple of times in terms of well this is something done by governments but it's only done by governments. That's not specifically true in terms of open contracting. You can look at international financial institutions like the World Bank but more generally I want to say that in terms of creating a policy disclosure like this the vast majority of places this is done is in governments. It's you know as part of this conversation we've heard quite a bit that ICANN is a California corporation but if we're applying the same standards of transparency that we would apply to Air B&B or Facebook we're -- expanding of transparency and in order to do that the standards we have to look for, the only places where these effective transparencies are taking place apart from a, like UN bodies generally they come from governments because that's where you have decades of experience in doing this kind of stuff. I understand ICANN is not a government but if you want a robust transparency system governments are the places to find those standards.

And just in terms of the whether or not we should be discussing open contracting, this is something that was raised by first in Hyderabad by participants who want to take up this stuff and offer and supported by

feedback we've gotten. I don't agree this is beyond the current scope of the subgroup specifically because the NDAs themselves, the point of the DIDP is to draw the line between what should and what shouldn't be disclosed and if you have these NDAs that are essentially a carve out saying this stuff is want subject to disclosure then there has to be discussion of when they're used otherwise it could potentially subvert the entire functionality of the DIDP so I would be in favor of addressing this issue of discussing it. I'm not sure about the distinction between capital O capital C Open Contracting and opening up contracting which we've heard about, I would be interested in hearing more about how you would propose if you have ideas about opening up contracting without the capital O and C that you mentioned and I would also be very interested because again you mentioned you don't want to blow up attorney client privilege. Okay. I agree with you there.

But if you have a problem with, but you've also mentioned about creating more openness around ICANN Legal which I think is specifically what we're looking for today is suggestions, how can we if the current recommendation is problematic what steps should we take in order to provide more openness? What would you like to see on that front?

>> GREG SHATAN: I'll respond briefly but I'll have to give more thought in terms of some recommendations.

But I will say that with regard to open contracting first I don't remember which participants brought it up in Hyderabad but I don't remember it being too many of them but I remember a number of people bringing up concerns with it. So you know it's a slender reed upon which we get to bring open contracting in here and open contracting as such you know is a series of recommendations and best practices which kind of come in a package. So that's why I want to get away from using that term because it implies that we're talking about that package.

Again so that's, that's just, it's want a good fit. We can talk in a granular fashion about ways to improve the ICANN contracting process to be more open and transparent but I think this is just the beginning of that conversation.

So I didn't expect you to agree that it was out of scope clearly not at this point. But I haven't been persuaded that it's in scope either so we'll have to disagree on that point.

So, but in order to be productive, I will see what I can think of in terms of ways to deal with respecting attorney client privilege and at the same time gaining greater transparency into ICANN, the legal advice that ICANN relies on and that the community is expected to rely on as well. Thanks.

>> LEON SANCHEZ: Thanks Greg. So next on the queue I

have Kavouss.

>> KAVOUSS ARASTEH: Thank you. Again, I listened carefully with the previous presentation. The questions that they wanted that we reflected or answered was quite clear but I'm not sure what is your specific question to this group? What do you expect from us? What do you need to have answered? You just opened your document, thank you very much but what are the questions you are seeking advice or views from the CCWG? In previous presentation we had that one for instance, if they modify the recommendation should there be public comment or not not but still with yours we don't know, what are your questions please? Thank you.

>> LEON SANCHEZ: Thanks Kavouss.

>> MICHAEL KARANICOLAS: In terms of the specific questions we're looking for, one of them is around attorney client privilege. So the question is should there be modification of attorney client privilege as it applies to ICANN Legal? And if so what modifications do we want to see? That's question number one.

And question number two would be should there be modification of the standards around third party commercial information? And for that as well, what do we want to see? So those are the two questions that I'm bringing towards the working group.

>> LEON SANCHEZ: Thanks Mike. So I see two more hands. Thomas and Phil Corwin so I will go to Thomas.

>> THOMAS RICKERT: Thanks Michael and thanks for your summary and presentation. I have a question for you and that is I've, I think ICANN Legal in the very early days of these discussions has said they might have difficulties finding lawyers to work with them if we did open contracting.

And if we've dumped un-technically speaking, open contracting on them, that might lead to higher fees for legal consultancy so I was wondering whether you had information on that.

And the second part of the question would be having heard concerns by Greg and others is the subgroup still aligned that they want to go for open contracting or would it potentially be valuable to inform the plenary to get somebody from ICANN Legal to talk about the day-to-day handling of cases so that we don't talk about what they're doing but that we're actually trying to understand better how their day-to-day operations work and to what extent open contracting would affect what they're doing in order to actually prevent ICANN from being destabilized.

>> LEON SANCHEZ: Thanks, Thomas.

>> MICHAEL KARANICOLAS: ICANN in their submission did mention it. I don't think they mentioned it

specifically in terms of open contracting. I don't think they specifically talked about obtaining lawyers around that but they mentioned that it would raise challenges to the contracting process which again is something that I have heard a lot of times before. From governments, before these policies are put in place, after they're put in place generally it works out all right but we did hear these concerns raised and there's more of a back and forth happening with ICANN Legal at the moment about what their concerns are and how more openness could be brought into the process in a way that doesn't, that helps to alleviate those concerns.

Again I'm not, in terms of the difference between the capital O and the capital C and opening up contracting, I think that what we're looking for is avenues forward which would provide more openness which will provide better transparency and accountability and which won't compromise ICANN's ability to secure contracts at a better cost as well as the ability to find people to work with them.

So I'm not sure that I would necessarily draw a specific connection between that issue and finding lawyers directly but that's probably one of them that's going to be among the issues that are there.

>> KAVOUSS ARASTEH: Very brief follow-up you are referring to ways you were discussing with ICANN to bring more transparency to the contracting process so

does that mean that you are pretty much aligned with Greg to drop the capital O and C or is the pure open contracting concept still in the mix. (not sure who was speaking).

>> MICHAEL KARANICOLAS: Greg and I agree on everything. We're going for drinks after this. I personally wouldn't, I'm going back to the recommendations now to see if there's, for the record it's not capitalized in the recommendations.

But like, I don't necessarily associate open contracting as being this very specific and precisely laid out cookie cutter solution.

So in that sense like, I would, in terms of, I agree that a specific solution needs to be found for ICANN which works for ICANN and wouldn't necessarily advocate for imposing the same solution in every different institution so from that perspective like I think we are in agreement in the sense that like I'm trying to bring openness to that, if that OC has a specific connotation or is problematic like that's not what I'm trying to advocate for but rather I'm looking for ways to provide more openness, ways to provide more openness so if you look at the specific language of the recommendation as it says now what that says is that all contracts above \$5,000 are automatically disclosed and nondisclosure clauses are limited to their application to the clauses in the DIDP. I'm not sure if the capital O and C thing is, if that's the specific

recommendation as it currently stands.

>> LEON SANCHEZ: Next I have Phillip Corwin.

>> PHIL CORWIN: Thanks. Speaking solely, this is not an issue I have been following closely and my thoughts are if all the terms above 5,000 are going to be disclosed publicly that would alleviate any personal concerns I might have. Beyond that I would say the need for transparency in my mind is more necessary for unique contracts that were not put out for public bid but sole sourced than for the standard contracted party contracts.

The registry contract renewals are all put out, they're either a standard contract or all put out for public comment on renewal. The registrars if they're signing a public contract or renewal not a big deal.

My personal concern would be more with the sole source provider contract for unique functions particularly if there hasn't been a public bidding process with the contractor selected on some combination of best bid and best ability to provide services.

So I don't know if that's helpful but I think we don't have to be revealing all confidential discussions leading to every contract but that there should be some heightened degree of transparency for the unique contracts. Thank you very much.

>> LEON SANCHEZ: Thanks Phil. Any reactions, Mike?

>> MICHAEL KARANICOLAS: No. That's a very valuable input. That kind of distinction is very interesting so thanks very much for that. I think that's a valuable way of differentiating between areas where more transparency might be needed.

>> LEON SANCHEZ: Kavouss is that an old hand? Okay. Perfect. So we have no more questions. We thank you all for your guidance and your insight and it's now time for our lunch break. We are ahead of time 30 minutes almost, and, well, we invite you to have lunch. I was just asked to remind everyone that lunch is served for members of the CCWG and participants, so, those people in the room that are not members or participants will have to go and look for lunch elsewhere. So, we'll reconvene at 1:30 as scheduled and let's enjoy lunch. Thanks.

**[ BREAK ]**-----

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>> Just a note everyone, if you are wondering we'll be starting at the time noted on the agenda, that is 1:30. So we have 90 minutes almost for lunch. Thank you.

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**[ LUNCH BREAK ]**