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MAY 16, 2017  
12:00 A.M. CST

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>> YVETTE GUIGNEAUX: Hello this is Yvette. I am just checking sound. Kavouss, can you hear me? Are you able to use your mic? Is it operational? Hello Kavouss?

(Beep.)

(Beep.)

>> GREG SHATAN: Hi it is Greg Shatan. We'll be getting started in a minute or two.

Hi this is Greg Shatan. Why don't we get started. Can we get the recording started, please?

Good morning, good afternoon and good evening. Welcome to the CCWG-Accountability workstream 2 jurisdiction subgroup meeting, No. 31. It is in fact, 31. May 16, 2017 at the hour of 0500 UTC which are wonderful if you are in the Asia-Pacific Region. I'm in New York City.

Anyway, let us begin with a review of our agenda after the usual administrative minutes we will have a very brief follow-up on the question for ICANN legal status and an even briefer review of decision and action items from the last call and an in-depth discussion of the questionnaire. As you can see from the chat we will take item 6.2, review of the response of the

Ministry of Telecom mass communication of Russian Federation and put it over to next week, Tatiana Tropina who is preparing that response, can prepare a written evaluation in the general manner demonstrated by David McAuley. Tatiana has also graciously volunteered to take the one hour meeting unclaimed response that of Internet governance project which was prepared by Rosanna. After the questionnaire we will move on to the ICANN litigation. We have one presentation there by yours truly of the online design case and then AOB and next meeting which is not the 16th of May 0500. The agenda was done in a little bit of a hurry as I had a number of other critical items to take care of today and yesterday. Such is life. But we will confirm the accurate time. So that is our agenda. Any comments, changes or the like on the agenda before we actually move through it? Seeing none we will embark on our journey through the agenda. Moving to item No. 3, administration, are there any changes to statements of interest? Seeing none, I'll ask if there are any audio only participants. Kavouss, please go ahead. Kavouss we are not hearing you.

>> KAVOUSS ARASTEH: Hello?

>> GREG SHATAN: Yes, I hear you. Please go ahead.

>> KAVOUSS ARASTEH: Thank you very much. The last, I have to leave ten minutes before the end of the meeting. Thank you.

>> GREG SHATAN: Thank you Kavouss. We will note that. We may not make it all the way to the end of the time anyway. In any case we have no phone number participants. So that takes us through item 3 in to item 4. Following up on the follow-up question for ICANN legal I have no new reports on status. I don't know if anyone from staff has any further knowledge of where we stand on getting a response back from Sam or anyone else at ICANN legal. We have Yvette and Patrick Dodson but Bernie has been dogging this question this and he is not with us this week and neither with the response. So let's assume it is under way. Shall we get under way to the next item. Review of the decisions and action items from the last call. There were no formal decisions or action items. Obviously continuing with the questionnaire response work in the litigation review work is always an action item for the group until it is done. Let us move on then to the next item which is the questionnaire responses. And we will begin with David McAuley who will walk us through or discuss as -- the response provided by 4C GAC representative from Italy. David, why don't I turn the microphone over to you and I took your e-mail and put it in to a pdf which you are seeing in front of you. Take it away David.

>> DAVID MCAULEY: Thanks. David McAuley here for the record. As we started in to the responses for the questionnaire, I signed up for this one as Greg just described

it. And it is a response to the questionnaire as Ms. Forsey who is official with the Ministry of Economic development of Italy. She is a Director-General and she is the GAC representative to ICANN and she raises an important issue which is geo indications and as I mentioned it has been an issue that's boiling in the ICANN community. It has been under review by a number of groups and continues to be. It is a sensitive one and an important one and she gives it a fair treatment. She answers a couple of the questions that we pose but not all of them. And she basically makes the point that because -- that ICANN was directly involved as she says in the dot line issue and that issue is as I said concerns geographic indications and Ms. Forsi makes a connection that did not persuade me but it is what she argues is that the recognition of geo -- the nonrecognition rather of geographic indications as a principle of the United States and consequently is an important word, I underscore the word consequently, and consequently ICANN. Making the point because United States does not recognize as a matter of law geographic indications ICANN did as well and that leads over to ICANN treatment of geographic indications and by allowing for a Delegation of a new generic top level domain would put at risk geographic indications that are protected in Europe. And she goes on and says that I believe it was the GAC brought two reconsideration requests -- I'm sorry, the Government of Italy brought to reconsideration requests to ICANN complaining about the prospective Delegation of dot line without further protections in the Delegation (dot wine) both of them were rejected by ICANN and she says that's an indication of how this also -- has affected the jurisdictional concepts that we are discussing. And she concluded by saying that it is necessary that a third party study possible conflicts of law considering the Internet and to prevent these conflicts and solve them wherever they occur. In making the case I took in my analysis the view that the dot wine issue represents more of a policy discussion than a legal jurisdiction application. But I said that to be fair our question was asking about the effect of jurisdiction in any way. So I can understand the point. I simply felt that it was not impactful for our discussions here in this subgroup. And that's a conclusion that I came to. And then I personally argued. It is a short and to the point entry by Ms. Forsi. So I would encourage everyone on the team to take a look at it. But with respect to my personal view while it is an important issue I don't think it has much weight to move us in the jurisdictional discussion one way or the other. Thanks, Greg.

>> GREG SHATAN: Thank you, David. That's very helpful. I'd like to see if there are any comments from anyone. Kavouss,

please go ahead.

>> KAVOUSS ARASTEH: Yes. First of all thank you, David, for the investigation or the examination in this case. David, I as a member of the GAC was involved in this issue up to now. I think the GAC member of the USA mentioned several times that -- something outside the ICANN. And it has not been centered on the WCO. Maybe at a later stage changed. But that is the situation. And this issue is not only associated with Italy, many other European countries have been a part of that complaint. And saying there is no sufficient safeguard with respect to this issue and the other sites, do not believe that it is not 100% outside of the jurisdiction. It might have some link, some (inaudible) with the jurisdiction. ICANN was not added to the -- perhaps the situation was different. So thanks for your personal view. But that's only a personal view. My personal view is that had some link with the jurisdiction and it is a matter similar this might have happened in the future. So we need to carefully look at that one to see to what extent this sort of receipt has relations with the jurisdiction. Thank you.

>> GREG SHATAN: Thank you Kavouss. Any other comments on this? David, I see a question in the chat and perhaps you can answer it from Thiago Jardim. David can you please develop again on why you think it is a policy issue rather than a legal one.

>> DAVID MCAULEY: Thanks and let me respond to Kavouss for a second. I agree with Kavouss' summary and this is my personal opinion as I make that very clear. How do jurisdictional concepts affect you in any way. I could see the argument. I'm just not persuaded. With respect to Thiago's comment, thank you very much. With respect to geographic indications the application of U.S. jurisdiction in the U.S. assuming that Ms. Forsi is right and I think she is, there is a no legal principle in the U.S. that says geographic indications are protected in this respect. I don't think that translates to the fact that therefore because of that that is ICANN's position. I personally believe that this came about as a part of the policy development discussion process that led up to the applicant guide for new the GDL program generally and it is a personal opinion. I certainly understand that other people see this differently but in trying to get this issue on the table the issue is as Ms. Forsi states and I respect it, as a person in this group trying to lead this discussion or put it on the table, it is my opinion that -- that -- it is not a jurisdictional application that led to this result. It is a policy discussion result. And I don't see this particular incident the treatment of dot wine, the TLD as implicating any action that the jurisdiction subgroup should take. Thank you

for the comment. I'm trying to make it as clear. I guess I find it difficult but it is -- at the end it seems to me that this is not something that would move us one way or the other. Thank you.

>> GREG SHATAN: Thiago, why don't you go ahead even though I will my hand up. I will defer to.

>> Thank you. This is Thiago Jardim for the record. Can you hear me?

>> GREG SHATAN: Yes. Please go ahead.

>> Thank you. Please help me understand this better. So what you are saying is that ICANN could as of today change the approach it has in relation to geographical names even though let's assume that the United States Government or the according to U.S. rules, geographical names are not recognized. ICANN could adopt a way of dealing with the issue while U.S. jurisdiction would command a different treatment of an issue, is that correct? Thank you.

>> DAVID MCAULEY: This is David again for the record. I believe that would be true. At least that's my personal understanding. If ICANN as an organization as a result of the community's policy decided that Top-Level Domains could not include names that would put that directories can some geographical indications I don't know that the U.S. law would require a different result. I think ICANN would be free to do that. That's my understanding. Thank you.

>> GREG SHATAN: Thank you David. Just briefly this is in fact, as a policy issue being considered both in the rights protection mechanisms group and in the subsequent procedures Working Group. In other words, the next round or procedures of new gTLDs Working Group which is sponsoring multiple sessions relating to geographical indications and other geographic terms as the Johannesburg ICANN meeting upcoming. Just to clarify the state of U.S. law, to the best of my understanding, U.S. law recognizes geographical indications as a form of trademark and will protect them under trademark law to the extent that they meet trademark -- the requirements of trademark between as a certification mark or sometimes as a collective mark. The U.S. does not offer so-called sui generis protection for geographical indications as a separate form of intellectual property. I believe it is certainly the position of the United States Government that the U.S. treatment of geographical indications meets its requirements under GAC TRIPS and in fact, the international Treaty known as TRIPS does refer to geographical indications as a form of protected intellectual property and there was considerable back and forth when TRIPS was put in place, that the GIs were not appropriately protected under U.S. law and the U.S. taking the position that GIs were protected

under U.S. law as trademarks. I would note there are a number of jurisdictions where GIs are protected in GI law and action -- and still others where they may not be protected at all. In any case the I think the nub of the issue David, where you say that the de facto nonrecognition of GIs by U.S. and let's assume forsake of argument that is correct, and consequently ICANN, think the point that seems to be made there is that ICANN is somehow acting under U.S. law and is bound by U.S. law in some way or influenced by U.S. law with regard to how it treats GIs. Of course, ICANN is not bound by U.S. law in terms of how policy is set. And the issue, of course, with dot 1 and dot van which -- the equivalent types of geographical indications would have special protection depending upon who -- to whom the domain was top level domains were Delegated. Whether second level domains in dot one and dot van could be required by those **hor** did not have the appellation. Could I have acquired Champagne. That's where the question was and it was one of the most brutally -- intensely discussed issue. As to whether it falls within the **gambet** of this sub group, that goes back to the discussions of the scope of this subgroup. The question I would ask in any way this is a discussion of how it affected ICANN's accountability or its operation. I'll stop talking now. Kavouss go ahead please.

>> KAVOUSS ARASTEH: Yes. Thank you Greg for your very comprehensive complimentary comments. The issue is not associated with the accountability as such. The issue that can we draw a line between policy, trademark, jurisdictions are not connected to each other from one or other aspects. As you mentioned that **ix** ICANN have the policy today that make some rules for the use of the geographical indications in order to avoid such a thing and one party, those countries, Australia, Canada and United States and other -- U.S. courts would Act in one way. They would Act against the United States and goal -- associate this to the trademark but not to the -- not to formal cognition. In my view it has some link. It has some relations. Other people involved in this should comment on that. It is a number of European countries, all of them Spain, Switzerland and others they are involved in that. Portugal and others in that issue and only Italy has it. I am not taking any position because we are not involved at all. One could -- it has no relation to this the jurisdiction. It has some because it is a jurisdiction currently is governed at least from the political Point of View, from the point of United States. No. So that is an issue. So we could not draw such a line saying it is only policy, policy are connection. Calculation of trademark. So this will not take that. So we should look at that to see whether there are similar things and whether this

jurisdiction should have some leeway. Thank you.

>> GREG SHATAN: Thank you Kavouss. David please go ahead.

>> DAVID MCAULEY: Thanks Greg. It is David McAuley for the record. First of all to your question, Greg, the response from Ms. Forsi which I pasted in to the e-mail that I sent didn't really speak about accountability in terms of -- in those terms. The other thing I wanted to say is I was grateful for your intervention about trademark law which made me want to make it clear. I'm not an expert in international law or trademark law. I welcome your comments about what protections may or may not be available. So I encourage the group not to look to me in an expert in law in dealing with this. I'm giving you my personal opinion. Finally with respect to Thiago's hypothetical, I agree it is a hypothetical, Greg, but if the dot win case ever ended up in a U.S. court the outcome is not certain as being against the European interest. It is not a certainty because U.S. courts listen to amicus briefs and other points of view and they are capable of applying bodies of law other than their own. I don't think the issue is fully determined. I don't think we can say with 100% assurity what would happen in U.S. court if a case like that was brought. But I want to underscore the fact that I'm not an expert in international law, in geo indications or in trademark. I was very grateful for Greg's intervention. Thank you.

>> GREG SHATAN: Thank you, David. I think you may want to come back to this in the course of discussing one of the other open issues which we need to start turning to shortly which is the scope of and the specific assignment of this subgroup, jurisdiction as a broad concept can bring in all sorts of things but this group is not the group for all jurisdictional concepts to that. And I guess the question of what the dot wine or dot van case would have in fact, have been it is an interesting one. As I **jubd** stand it the question was whether who whoever was Delegated the TLD was -- demands were made that they should run it in a restricted manner regardless of what that registry plans were for running that TLD. Obviously there were TLDs that were the reg -- where the registry decided to run a secure or restricted or special purpose TLD such as dot bank where only -- they were banks to register. But I don't believe that the initially the registry intended to operate in that manner. So the question to my mind was whether ICANN could be forced, if you will, to in turn force the registry to operate a restricted TLD due to the existence of geographical indications that affected that particular Top-Level Domain. You have the same issue in the dot cheese, for instance, as well which could come up in the future. So I guess we open the question here is whether somehow the fact that ICANN has a lot of people located

in the United States somehow influenced how ICANN handled the matter. That's an interesting question. Actually Thiago, I see what Thiago says, U.S. courts with apply U.S. laws and only might rely on other countries' views for purpose of interpreting the U.S. laws. We had a discussion about that before you joined the group. That's not a correct statement of conflict of law. In fact, U.S. courts often applies the laws of other countries and so do other countries in fact. And there is a global concept implemented differently in different countries called conflict of laws where courts will decide based on well stated principles which jurisdictions laws will be applied. And indeed that is in our litigation summary one of the questions you asked whether there is a conflict of laws analysis in the particular case. So we can go back to that but one thing that is for sure clear in U.S. courts apply the laws of many different countries based on the fact and situations in those cases in any case.

That's enough for me. I'm talking too much, then the meeting is not as good as it can be if I talk less. Anybody else -- Thiago, please go ahead.

>> Thank you Greg. Yes, yes. I understand that you U.S. courts will apply other countries' laws and I apologize for not having followed the previous discussions. But if you allow me to make a brief comment in relation to the ability of U.S. courts to apply all the countries' laws. Isn't it correct to say that a U.S. judge will, for example, apply Brazilian law only to the extent that U.S. laws allow it, allow the U.S. judge to do so? Even in the way that American jurisdiction is applying the laws of a different country, can only do so that U.S. laws allow them to do so and to the extent that the U.S. judge is applying U.S. laws?

>> GREG SHATAN: That's in the quite correct. It is not a question of whether the U.S. laws allow him or her to do. It is a question of laws principles of the particular jurisdiction lead to the conclusion that the law of another jurisdiction such as Brazil could be applied in that particular case. From there on in the substantive law applies to -- come to a decision in the case are those of the other jurisdictions. For instance, I was involved in a case that involved items that were taken from Germany during the second world war, actually changed hands in Germany and New York federal court determined the German law covered the question of whether the transfer was a legal transfer or illegal transfer. And each of the parties had brought in a German law expert and the court in turn had a German law expert and the case was briefed under German law and the judge consulted his German law expert and between all of the experts and the judge the decision was rendered under German law. So in that case the only U.S. law that was applied was a



law of conflict of laws which by definition the law that has to be applied when you go -- when you go to your venue to seek a remedy, one of the questions that will be raised by the parties is which law applies. And that is decided under conflict of laws principles which while they are of course the law of the particular jurisdiction they are -- there are only a few different types of applications globally in most countries. So it is that the concepts are unique. In any case, we could veer off in to conflict of laws for quite some time but let's not.

Is there anything further on -- no, it is not the local jurisdiction's law. It is only the conflicts of laws analysis called for by local jurisdiction. The substance of law of the case would be the case -- would be the law of that -- decide if it is German or Brazilian law. And given the fact that different countries tend to apply conflicts of laws relatively similar, if that case was brought in Belgium or the Belgium Congo, apologies, it is -- or Japan, it is fairly likely that the law of Germany would have applied in the case I talked about. So we can certainly go in to how conflict of laws are dealt with in different countries but again I think that is a rabbit hole we don't need to go under. It will be interesting perhaps, something to talk about over a Kipariina. In any case any further comments on the foreseen response? Seeing none let's go back to the agenda and thank you David for that presentation and thank you all for the lively discussion. And apologies for speaking at greater length than I would like.

Okay. So as noted earlier we will have Tatiana Tropina speak next week so she can prepare a written analysis rather than an oral walk-through of the Russian Federation response.

And thank you Tatiana, and hopefully we will have one or two other presentations available by that time. Is there anybody on this call who can volunteer to do an evaluation who can say now that they will be ready in one week's time to present their case -- their evaluation of the response? Obviously Tatiana is a yes. Tatiana will present both cases that she has volunteered to do. And I see multiple attendees are typing. If we can bring up the signup sheet that's in the package. Tatiana is ready but not in writing. Kavouss, please go ahead.

>> KAVOUSS ARASTEH: Yes, Greg I have a simple question perhaps to make for next week or the week after. From those cases that are analyzed by colleagues before, have you identified anyone having connection with the jurisdiction or anyone has connection to jurisdiction at all? Today, you and David, that have nothing to do with the jurisdiction, it was maximum policy, so for those cases we have already analyzed, have you had a chance to look at them to see which one of them associated or collected or liased with the jurisdiction or have

the same case as of dot wine and dot van?

>> GREG SHATAN: I have not. I'll looking in to it. I will look at each case as it is presented by the evaluator. And consider them. In this particular case or this response I took on its own with an Open Mind as I do with each. Yvette I meant the other signup sheet, the one for the evaluation. Thank you. Okay. Here we have the list of responses. Perhaps next week depending upon time I will be ready to talk about those that are listed in pink here which are those that were basically the one word or ultrashort responses. We will look at those as a group. So we have green ones. Erich Shhweighofer will be ready in two weeks' to present your evaluation. Tatiana will probably take a good amount of what we would put to that. Erich says okay. We will put in the queue for two weeks from now. And then we have Christopher Wilkinson who is not on the call, who just signed up for is just net response which is a lengthy one and far as Anna done by the Internet governance project but she was the author. Tatiana Tropina is signed up for that one. That is **ko** covered and going down to the other green ones, we discuss the Russian Federation. Parminder has volunteered to evaluate and present the dot Swiss domain registry and finally Vaduchi Marta that of the Internet governance research center of Chinese academy. I believe that covers all that we did see. I do note there are five that are listed in yellow or orange. And those are ones that are border line and we need to decide if they will be analyzed, hopefully evaluation group will most of them are listed in the third column. Can perhaps come to some recognition. If not we'll essentially review them together. And see what we have to say about analyzing them. I don't want to get -- spend too much on the time they should be analyzed. They are fairly short and whatever analysis will be less than the ones that we discussed today. Kavouss is that a new hand?

>> KAVOUSS ARASTEH: Yes, a new one. This is a question that I raised last time. I did not receive complete answer. The cases that have question marks still under the study, seem they should be analyzed or not. But those who have no, pink or whatever color you call, does it mean those cases are because of one word reply or any other thing that you put no? And then I see on the right-hand column it is Greg that you decided to no or team check whether they should not be analyzed and I don't understand why it -- a case apart from being yes or no so simple, why it should not be analyzed. So this is just a clarification. I'm not objecting. Thank you.

>> GREG SHATAN: Thank you Kavouss. I think the suggested result which, of course, we can revisit if we want was that since these were all basically one word answers to the questions that a separate lengthy or separate substantial analysis would

not be necessary. However the answers will be duly taken in to account as part of our overall analysis of the questionnaire responses. And either the questionnaire evaluation response team or this subgroup will need to decide how we will evaluate this in the aggregate understanding this is by no means a representative survey. It doesn't -- there is no distribution here that is meant to represent any particular population. This is just those who happen to respond. So there is no great statistical overall analysis that can be made of the 20 responses here and come to some grand conclusion. That's at least in my personal opinion. But we will, of course, take each of these in to account. And in looking at those to be analyzed together for which I volunteered we will look at them and see if there is something to be said either individually or in the aggregate about these responses.

So that is I think -- that I think covers this point and covers the questionnaire. So why don't we move on to the next -- back to the agenda. And while we are doing that I see a follow-up comment from Thiago in the chat. Perhaps it would be a good idea to give Ms. Forsi the opportunity to comment on David's analysis to her questionnaire, if that's not already the case, in which case I apologize for raising the issue. Whatever analysis we come to is the understanding of the group. I guess the question is whether we invite respondent in to engage in a counter point of their responses. That's something for the group to consider. And I don't have a reaction to it other than some concern about time frame. But that's something we should consider. Why don't we make that kind of action item for next week to consider that point. So let us move on then to the review of ICANN litigation. Put the signup sheet back up briefly. For this we will take a look at our progress in this regard. There it was. In any case we have made some progress in terms of several more of the litigations being claimed. And that means that there are several more that are in the analysis phase. So we will say between last week and this week four more were claimed but that's still 16 claimed. -- 15 unclaimed. So we have crossed over the 50% threshold. That's not particularly wonderful given how long we have been doing this. We have had 11 that have been covered. Ten will be covered today and nine that are in the analysis phase. We may want to consider how to deal with these remaining 15 if we don't get volunteers to look at them. And I note that David McAuley has volunteered to do several and I thank David for his efforts and I note that Mathieu did three but he is no longer with the group. We can't count on him anymore unfortunately. So I will ask again anybody who can give it a shot please try to do an analysis. In any case let's move on to the case of the day which is image online

design case and Yvette you could put up the summary. I apologize for not sending this out until relatively recently. Perhaps we want to discuss it a little more next week. So let's begin. The image online design case involved a litigation in 2012 but the fact really bringing us back to 1996 when image online design began operating dot web as an alternate route TLD, not through the DNS. In the 2000 round they applied to make dot web a DNS TLD through ICANN but at that time no operator was chosen and they decided not to go forward as a potential DNS TLD at that time. And image online design went on operating dot web as an alternative route TLD until the new gTLD round that is just winding up started.

And they contended that their prior application in 2000 entitled them to be part of the consideration there without any further Act on their part which was not what the new gTLD rules called for. Basically said that any applicant from the 2000 round will be given a \$50,000 credit for their \$50,000 application fee from back in 2000. But would otherwise have to reapply. I believe that's the case. In fact, image online design did nothing to reapply and, of course, when a new application window closed they were not one of the applicants for dot web. So as you can see both the plaintiff and ICANN are Californik corporations and it took place in California. A number of additional documents which were incorporated by reference in to the application form which together formed a contract once assigned by book party and said it was not binding with regard to other items. There was no choice of law provision in any of those documents. So there was nothing stated in any of the court papers as to a law used to determine conflict of law issues but since you had a two California parties and a contract which was executed in the state of California there was not a conflict of law question. The substance of law governing the dispute was U.S. federal trademark law for the trademark matters in the case. And and California for the contract claims. And related interference claims. As you can see the case began in October 17, 2012 and ended February 7, 2013 and not very long. Breach of contracts were mentioned, breach of big faith in fair dealing, there was no such covenant in the case. In most U.S. jurisdictions and certainly in California there is aplooiied contract of fair dealing in every contract and they were attempting to enforce that implied covenant. And then they claimed free market service market infringement or rather IOD had received a registration for dot web from the USPTO but the goods and services were musts have and backpacks not registry services. They also claimed trademark and service mark infringement under 1125A which is basically the unfair competition for what's

called 43A by most people. And last they made two claims intentional interference claims. One per contractual relations and another for perspective economic advantage. So if we could move to the second page of the summary, most of what you see at the top part there I have already gone over. That's what the case was which is just to say more -- a little bit more, they claim that IOD claimed that it is dot web was contested or not allowed to go forward as a potential domain, that that would be a breach of the contract with ICANN. And also would constitute trademark infringement and also infringe on the common law trademark rights under 43A that they claim they had. And that allowing dot web to be offered to other parties would be intentional and interference with their online contracts with its registrants. And also with its future registrants that would be the perspective business advantage claim. So IOD asked for temporary restraining order and a preliminary injunction to prevent ICANN from going forward in the new gTLD program. In the papers there is no reference to the temporary restraining order actually being argued. And the case was dismissed because ICANN filed a motion to dismiss which was successful and that basically closed down the case before the preliminary injunction request was considered. So in addition to the preliminary injunction IOD asks for damages and asks for ICANN's profits resulting from their alleged infringement of the dot web part and counting on disgorgement amounts of which ICANN was unjustly enriched and they claimed this was willful infringement which would multiply all damages by three. Three times as much money. And they also asked for punitive damages and exemplary damages. Damages as punishment rather than compensation and damages to make an example out of ICANN and not just for compensation. And also for permanent injunction forever keeping ICANN from Delegating dot web to anybody but image online and finally asked for attorney's fees and fought. Fairly quickly ICANN filed a motion to dismiss the case. And the court dismissed the case on all of the claims made by IOD. Basically saying that there was no -- they failed to state a claim for breach of contract. And there was nothing in the contract to prevent ICANN from doing what it did. The statutory trademark claims were unripe which means there was no activity yet that occurred that would give rise to a claim. And they also indicated that there was no likely hood of confusion and IOD failed to prevent any argument at all on likely hood of confusion. There was no trademark right in dot web for registry service. It was essentially generic at that time. So basically IOD walked away empty handed from this case. So the relevance of the case to the jurisdiction subgroups mandate, I think it is notable that U.S. federal court did provide a Forum for IOD to seek to hold ICANN

accountable for it believed to be improper actions of ICANN. They did not succeed but that's part of what happens. It is notable that under U.S. law IOD was able to do this without the significant risk of cost shifting since the U.S. is not generally a loser pays jurisdiction. So that some extent encourages plaintiffs to seek to hold the defendants accountable or what they see as accountable. And basically if you look at the papers you can see that the standards by which matters were decided were -- seem to be fairly stated in the U.S. law which was helpful getting the case decided. The impact of the case on ICANN's operations basically protected ICANN from what I would see as -- at least what the court saw as interference as the operator in the dot web TLD. I did not answer the impact if case were decided for the other party. I will add that but basically if it had been, then dot web would essentially have been either available only to IOD or IOD would have been added in to the contention set for dot web. Probably more likely the latter. The court did not make any comments on any jurisdiction related matters and given that they dismissed the case for failure to state a claim they didn't say that the -- anything lacked merit. They said a couple of things lacked merit. They didn't find anything frivolous. They felt that as I said before the likelihood of confusion argument or the fact that there was no argument pretty much deemed the trademark infringement claim and the fact they found that the argument on the dot web was a trademark a common law trademark for registry services because IOD had been offering dot web as an alternative route TLD. They found that was not a -- may not agree and did not find that web to be a trademark or (inaudible) services in IOD's hand. If they had, they might have decided that IOD was, you know, as a trademark holder the only company that could run a dot web TLD. But the decision which think was correct under the circumstances did not come out that way.

In any case that is the case. I don't know if anybody has any questions about this in the time we have left. Nothing. I think one of the interesting things underlying this, of course, is the whole alternative route issue. Which I think just came up in last couple of weeks yet again, not so much a jurisdiction question but it is an interesting question about one Internet or many. So seeing nothing further on this matter which was fairly straightforward from a jurisdiction Point of View, and it being 2 a.m. I will see if there is any other business. I'll note just briefly that Finn Petersen has volunteered to send David's analysis on to Rita Forsi and since all of our work is open, it is available to be viewed by anyone. It is not a problem. Of course, we will have to consider as I said how we might deal with interventions from outside the group. That's a different

question from issue of the trades here. But let's not discuss that now because it is now 2:01 and for most of us it is high time we go to sleep or move on to whatever part of the day it is for you. So I will call this meeting adjourned and thank you all for your participation. And ask that the recording be stopped and I will see you next week at what time is it again for next week? I don't -- Yvette can you remind me? 1300 UTC. Thanks. Let's stop the recording and we will see you in one week plus a few hours. Good night and good-bye.

>> Thanks, Greg. Thanks everyone. Bye.

(Session concluded at 1:02 a.m. CST)

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