

FINISHED FILE

ICANN  
JURISDICTION SUBGROUP MEETING  
TUESDAY, MAY 23, 2017  
13:00 UTC

Services provided by:

Caption First, Inc.  
P.O. Box 3066  
Monument, CO 80132  
800-825-5234  
www.captionfirst.com

\*\*\*

This text is being provided in a realtime format. Communication Access Realtime Translation (CART) or captioning are provided in order to facilitate communication accessibility and may not be a totally verbatim record of the proceedings.

\*\*\*

>> GREG SHATAN: Good morning, good afternoon, good evening. Welcome to the CCWG Accountability Work Stream 2 Jurisdiction Subgroup call on May 23, 2017.

We will begin with a review of the agenda. After a minute of administration, we will turn to the follow-up question for ICANN legal, which response was received yesterday. We'll take a look at that. And then review the action items from our last call. Then introduce, briefly discuss the strawman document that I circulated yesterday, trying to get back to the question of clarifying the mandate of this subgroup. Then on to analysis of or evaluation of one of the questionnaire responses and a more general overview of that project, and same for the review of ICANN's litigation. Although we don't have a case to review this week. Finally, AOB.

So what else? Are there any questions on the agenda before we move on?

Seeing none, we can move on to administration. First I want to call for any changes to Statements of Interest.

I don't see any of those. The audio-only participants, is there anybody who is only on the phone bridge? We have Becky

Burr on the phone bridge.

>> BECKY BURR: Sorry. I am here. I have nothing to amend.

>> GREG SHATAN: Thank you. And we have one phone number ending in 6367. Who is that? Is that Becky?

>> BECKY BURR: That's me.

>> GREG SHATAN: Okay. We have identified our phone number participant as well.

Now we can move on to the follow-up question for ICANN legal. If staff could put that up in the Adobe Connect room, that would be great.

And here we have the responsibilities from ICANN Legal. Their response starts at the bottom of the page in the larger text for easier reading. And if you scroll down, you can scroll and see the answer is relatively brief. Questions we asked were what are ICANN's reasons and considerations in not specifying the applicable law of contract? How did ICANN take this into consideration when drafting this? How does ICANN take this into consideration when interpreting contracts where there is no law against which the contract can be interpreted? And any other information they can share.

And as noted in ICANN's previous response, these contracts have historically been silent on applicable law. These contracts are not solely matters of ICANN drafting, nor do they represent only ICANN's input on contracts. The registrar and contracts involve direct negotiation and community inputs.

So I don't want to read it verbatim, but simply saying it has worked out in practice, and there (Inaudible) problems because of the lack of it. And generally, just dealt with contracts on the plain language of the (Inaudible). So issues I guess won't imply covenants that are read into contract as a matter of applicable law has not normally been raised. It's probably good to look at the last paragraph verbatim, however. As to why the contracts have evolved in this manner, it has essentially been a compromise that allows the choice of a law issue to be handled on an issue-specific basis that takes into account the specific conduct being reviewed, the needs of the parties, and ICANN's global coordination function. So as is so much in ICANN decision-making, there is a compromise at the heart of the matter. Any questions or comments from anyone on the response from ICANN legal?

I am hearing none. The response speaks for itself. And we can move on and go back to our agenda, please.

Now we can review the decisions and action items from our last call. There were no decisions taken on the last call. As per action items, there was a call for Working Group members to

sign up for the remaining 15 ICANN litigation cases to summarize those. Unfortunately, nobody signed up for any of the remaining 15 litigation cases in the last week. As far as I can tell. And I have been keeping a weekly tally.

Next the question was asked we should consider whether questionnaire respondents should be offered an opportunity to respond to the Subgroup's analysis of the question response, either by email or attending a call. There hadn't been any discussion of that on the list, so that is -- Greg, can you hear me, Greg?

>> GREG SHATAN: Yes, Kavouss. Please go ahead.

>> KAVOUSS ARASTEH: Yeah, sorry. So with respect to this, we suggest that yes, we should provide opportunity to those who have responded to look into the analysis and so on, so forth. I have discussed informally with some people, and they really welcome that opportunity because if not, they don't have confidence in the people they make (?) but they would like to know if they have been totally understood as reflected or they might have some misunderstanding or so on. So if you could provide that possibility, it would be welcome by the author of those replies.

Thank you.

>> GREG SHATAN: Thank you, Kavouss. We will discuss that when we get to item 7.1 of the agenda, and we'll see what opinions others have on that point.

David, if your hand was up for that point, if you could reserve that until we get to that point in the agenda. Then we can decide how we want to handle that point.

If there's nothing further on this, on the review of the decisions, we'll get to the actual substance in a moment or in a few minutes. Let's turn to the mandate of the Jurisdiction Subgroup, the strawman document that I put up or circulated yesterday.

We now have the mandate document up here. I discussed in our work plan, revised work plan that was adopted three or four meetings ago, we do need to return to deciding whatever you want to call it, the scope parameter mandate assignment of this subgroup, since our initial discussions on that did not resolve the question or did not resolve the lack of clarity there was on the point.

I felt that the best way to do this was -- a way that I would like to suggest to the group is that we go back to primary sources, that being the charter of the Working Group and the final proposal of Work Stream 1 and the Transition Bylaw, which are really the three primary sources from which one can glean the mandate of this group.

So in gleaning the mandate, I have tried to pull together the primary sources in this document. The italics are my drafting, and I think that we have a -- everything else is primary text.

In deciding to return to this, it's clear, example, as we started to discuss the questionnaires, that there are perhaps two schools of thought on the scope of the group and that both our review of the questionnaires and our preparation of deliverables and recommendations to be considered by this group depend on having a single understanding of the mandate of the group.

So given that this was only circulated yesterday, I don't expect there to be discussion on it. If we, in fact, have an understanding of a mandate, that's great. But I think that we need to make sure that we are all on the same page in this regard.

I see two comments. Jorge says. I feel we have to live with the ambiguities of Annex 12 and not spend too much time on this.

David McAuley says: I believe I agree with Jorge. I re-read my email on what essentially your mandate was, scope and gap analysis, from last September and still believe as I did then. That mail is in an archive, and then citation for the link. I also want to thank Greg for pulling this all together.

And then Jorge, if you look at David's email and agree with it, then maybe we have a proposed position. So maybe if we look at that, we can bring that in as well. But let's see whether we can move forward on this. So again, I don't think we need to spend too much time, but if anybody has any verbal comments to make, please raise your hand or just if you are on the phone bridge, let me know that you would like to be in the queue.

I am not seeing any hands. So why don't we -- yes, please go ahead.

>> BECKY BURR: Sorry, it's Becky. I would like to be in the queue.

>> GREG SHATAN: Becky, you are the queue. Please go ahead.

>> BECKY BURR: I thought that your paper was extremely helpful, Greg, and I think that, although, of course, one can read ambiguities into it, it's pretty clear that the focus -- it's pretty clear to me that the focus of this group is intended to be contracts and dispute resolution focused, and that is consistent with the fact that, over the past two years, we spent, you know, close to \$30 million figuring out accountability mechanisms that would work under California law, and you know, a decision to locate in another jurisdiction -- although we are located in many, many jurisdictions already --

you know, unless we are identifying significant deficiencies with the California jurisdiction and prepared to spend another \$30 million or so, the doing the work that we did essentially over the past two years, the focus on dispute resolution and contract interpretation seems sensible and prudent to me in terms of ICANN resources.

>> GREG SHATAN: Thank you, Becky.

Anybody else? I have an observation to make, but I don't want to speak before other members of the group.

I would say I'll just speak, then, Greg Shatan, of course. Having spent some hours pulling this together, as I did it, I had a few observations. One, that -- and this may seem self-evident, but this is a subgroup of the Accountability Group, and the mandate of the Accountability Group is to enhance or maintain ICANN's accountability to the multistakeholder community. So every topic that is dealt with by any subgroup has to -- is really bounded by the question of accountability, and if it's nothing in the topic about accountability, that pretty much identifies it as out of scope. This is an accountability group, and if we are not talking about an accountability question, then we've lost our way.

Second, I would agree with Becky as I went through this, that pretty clearly the mandate of this group is to deal with dispute resolution and contract provisions and issues of applicable law and how the potential law that can be applied to those under certain circumstances affects ICANN's accountability. Again, going back to accountability, the questions of applicable law and dispute resolution can't be broader than the questions of accountability.

So question of whether there are -- there are obviously many, many topics that can be grouped under the heading of ICANN and Jurisdiction. Since this is an accountability group, not all of those topics fall into this subgroup, and that is where we really seem to have had disagreement earlier. And rather than try to go live with ambiguity -- because that will just end us -- would result in an ambiguous result to this work group's or subgroup's work -- we need to at least have enough clarity to make sure that we keep on within the lines or on the track of this group. So that's my concern or the reason I felt we needed to return to this.

If everyone had agreed early on or disagreed with David or agreed with David or a concept or enough had that had a consensus, then we would be in a different place. Frankly, I think we would be in a different place in our work overall.

In any case, those are my observations, and I have a queue, so I will go to the queue. First, Thiago Jardim.

>> THIAGO JARDIM: Thank you, Greg. This is Thiago Jardim for the record.

I think we must be careful not to limit too much the scope of the subgroup based on the remarks just made by Becky, with which I am roughly in agreement.

I think, however, that as you correctly pointed out, Greg, the scope of the Subgroup is somewhat limited by the fact that it belongs to the CCWG on Accountability. But the difficulty I am seeing here is that the term "accountability" itself is open to disagreement. If we look back at the meaning of accountability as mentioned in the multistakeholder statement, it seems to me that it is susceptible to different interpretations, one of which I think is of the -- belongs to the area that governments are interested in more particularly, and that is that ICANN, the accountability mechanisms that apply to ICANN, relate not only to the questions involving choice of jurisdiction, choice of law, laws that are applicable to ICANN, but also the ability of ICANN to sue in certain jurisdictions, but also its ability to sue in certain domestic courts.

Having said that, I would like to call your attention to the message in Annex 12 that was mentioned in the chat by David McAuley. Annex 12, if I am not mistaken, comes from the final proposal in relation to the transitions, recommendations, I think, set forth by the CCWG Accountability. And in one of these passages from Annex 12, it is expressly mentioned that one of the main concerns that should guide the workings of Subgroup on Jurisdiction is that ICANN's physical presence is in the United States. And I think this is not just a coincidence that the reference to ICANN being a California-based corporation is present in this passage. And I think I might be voicing the concerns of some governments here. I think that it is very important to take into account as one of the main areas of concern for the Subgroup on Jurisdiction that the accountability of ICANN must be assessed as well in relation to its susceptibility of being sued in certain jurisdictions, and the fact that it's based in California has an impact on this susceptibility of being sued.

Thank you.

>> GREG SHATAN: Thiago, since we now have the mandate document and one of the points here was to pull the primary sources together, can you point to the passage that you are referring to so that we can understand which passage it is exactly and how you are applying it?

>> THIAGO JARDIM: If we refer back to the paper you prepared, Greg, look at page 4, top of page 4, it is mentioned, and I quote, "The Jurisdiction section of Annex 12 sets out the

mandate of Jurisdiction Subgroup in the greatest detail."

And then the first citation from the primary source mentions jurisdiction directly influences the way ICANN's accountability processes are structured and operationalized. And ICANN corporation, under California law, grants the corporation certain rights and implies existence of certain accountability mechanisms.

And then if I am to refer to the reference I made before in relation to accountability, I think it was mentioned in the CCWG charter problem statement, and I am not sure whether this appears in the (?) if it's there, but if you look at the charter itself, the CCWG charter, in the section Problem Statement, and then you are going to see a reference to the definition of accountability according to the multistakeholder statement in which accountability is defined as the existence of mechanisms for independent checks and balances as well as for review and redress. But I understand there are a variety of primary sources that cover somewhat similar topics, and I will be happy to hear what your views are on this issue. Thank you.

>> GREG SHATAN: Thanks, Thiago. I would say that the mention of ICANN being located in the United States is a statement of fact and not an invitation to debate. So the that -- I was concerned that that was the -- what you were pointing to. Because I don't see that as a basis for opening the question. It's a fact that would have -- that is just setting the stage and not setting the mandate. But I understand you may disagree with that. But -- and ultimately that's something we need to resolve because that is a rather big difference in the understanding of what the group has to deal with.

And I'll turn to -- so on the other hand, I think that is a discussion that, you know, the group has to have, and you know, as I read through all of this and tried to parse it out, tried to see what the conclusions I, you know, come to with an open mind, since I have no -- I don't care one way or the other what the topic of this group is; we just have to have a consistent understanding of this.

>> Greg?

>> GREG SHATAN: Yes, Becky.

>> BECKY BURR: Can I get in the queue?

>> GREG SHATAN: Yes, I've got David, Thiago, and then Becky. David, please go ahead.

>> Thanks, Greg. It's David McAuley for the record. I just want to mention, since Becky is on the phone, that I agree with Becky's statement earlier. And I want to note in the email I mentioned that I wrote last September, I tried to resolve the

ambiguities, but I basically came out to the same thinking that Becky did about we are really looking at dispute resolution primarily.

I would like to comment to something that Thiago said, and that is I think that we, as a group, have agreed that ICANN can be sued in California as well as the countries in which it has hub offices, engagement offices, offices in general, which would be places like Belgium, Kenya, Uruguay, Singapore, wherever they might be. And I think it's an open question as to whether ICANN can be sued elsewhere in the world if it targets activity towards a certain area. I think that's an open question. But I thought that we agreed that. Now, I don't think it could be sued successfully in any of those places for corporate governance questions, like whether there was a proper quorum present at a Board of Directors meeting, but for operational questions, most importantly for things like contract interpretation and contract terms and breaches of contract, I think it can at least be sued in those places where it has offices. So that's my two cents' worth.

Thanks, Greg.

>> GREG SHATAN: Thank you, David. Good point, and I will just point out that our litigation review has turned up a couple of cases where ICANN has challenged the jurisdiction, at least the substantive jurisdiction of the court. Not, of course, in California or any of the hub or engagement locations.

So I guess I will turn to Thiago. Thiago, I would also ask if your concern is that ICANN needs to be able to be sued in more places or if there's a different concern that you have?

>> THIAGO JARDIM: Thank you, Greg. This is Thiago Jardim.

If I may answer, try to answer straight away directly your question, my concern is not that ICANN can be sued -- should be able to be sued in different jurisdictions. I think my main concern -- and I think this is a problem that should be dealt with by the group -- is that because of the factors that you mentioned, it is a fact, indeed, that ICANN is a corporation based in the United States. But because of that, which is a reality, there are certain consequences for the accountability mechanisms to which ICANN is subject. One of these consequences is that it is susceptible of being sued in the United States in relation to certain functions it performs. One of these functions -- and please correct me if I am mistaken -- is in the management of the domain name system; right? Which I think you have discussed in the past the case of Iran, the Iran case, in which a plaintiff tried to seize and obtain rights over the domain name, country code top level domain .ir, and this was possible precisely because ICANN, as you mentioned, is based in

the United States. So there are consequences resulting from these very facts. And I think it is within the mandate, Greg, according to the material that you put together and circulated in this paper, it is the mandate of the group to analyze these specific consequences.

If I am allowed to refer back to the paper that you circulated, at page 5, again, I see that there is a -- page 5, right below the heading number 4, material specific interest to the subgroup, you are going to see there is a list of inventory of existing ICANN mechanisms. These mechanisms, as you can see, they are -- some of them are due to the fact that it is incorporated in the United States.

So the place of incorporation of ICANN has a consequence for the existence of this one specific accountability mechanism. It is within the mandate of the group to examine what these consequences are and how this very fact impacts upon the ability of ICANN to perform its functions.

I am not sure, I might have missed one or two points, but I will come back later. Thank you.

>> GREG SHATAN: Thank you, Thiago. Thank you for pointing out that, in fact, ICANN's location is an accountability mechanism in itself and that we should consider that.

I think in terms of the larger points, we can take this to the list and discuss it next week when more are prepared to discuss this.

Jorge says we are only a minute 40 of the movie. I would like to think we are more at a minute 90. The comedy was probably only 110 minutes.

I will turn to Becky.

>> BECKY BURR: Sorry, getting off mute.

I just wanted to clarify in case it wasn't clear that I agree with Thiago that dispute resolution encompasses both, you know, disputes about contracts and other kinds of disputes and also encompasses both where ICANN has the ability to sue and where ICANN can be sued.

>> GREG SHATAN: Thank you, Becky. I think that's consistent with the list of multiple layers of jurisdiction, which separately cites the ability to sue and be sued about contract and the ability to sue and be sued for action or inaction of staff and review or redress of board action or inaction. So I think that is consistent. I guess the question is where does that path lead us, and how far does that path lead us?

But in any case, we are at 9:37. Thiago, if you have a brief comment, please go ahead, then we need to turn to the remainder of the agenda.

>> THIAGO JARDIM: I apologize, Greg. It's going to be very brief. I am sorry.

So I am in agreement with what Becky has just said. And if I may point to another primary source that you put together, if you look at page 4 of the address paper, and then there is this list which was put together by the CCWG, and it is called multiple layers of jurisdiction; right? You are well familiar with that. And if you look at number 2, jurisdiction of places of physical presence, there is no doubt that this is a matter that is within the remit of the Subgroup on Jurisdiction.

What I would like to point, then I'll give over the microphone, is jurisdiction affects physical presence. The fact that ICANN is incorporated in the United States has an impact that cannot be put at the same level as the fact that ICANN has other types of physical presence in different countries. And the main impact is the following: It has been interpreted by U.S. judges that the place where, for example, domain names are located are within the United States because the headquarters of ICANN is within the United States. So this very particularity of physical presence of ICANN has an impact in the performance of ICANN of one or perhaps its main function.

Thank you.

>> GREG SHATAN: Thank you, Thiago.

Two brief observations, and then we'll move on. But I am sure we will be coming back to this.

First, the multiple layers of jurisdiction within the statement of fact include in our mandate the ability to make decisions about each of those things.

Second, if you could just provide maybe some case citations for the point that you just made because I believe my understanding is that those cases were in rem jurisdiction, if you will, jurisdiction over domain names as a thing, have not been based on ICANN's location in the U.S. but rather the location of the registry, specifically, I think, the .com registry in the United States. So if we could straighten that out on the list, that would be great.

Thiago, is that a new hand?

>> THIAGO JARDIM: That's an old hand, about if you want, I can answer your question or we can leave it for later, as you wish.

>> GREG SHATAN: If you could put it in the Chat so that we could move on because I do want to try to keep -- get to the questionnaire point of our discussion.

So let us turn now to the questionnaire issue and come back to the point that -- what I would like to do is actually before we go to 7.1, since Christopher Wilkinson did prepare to review

the response of the Just Net Coalition, I would like to ask Christopher if he is prepared to talk us through this response.

Christopher?

>> CHRISTOPHER WILKINSON: Hi. Good afternoon, good morning, good evening. Apologies for arriving late. Local transport problem.

I didn't (audio cut out) many of you to agree with what I have to say now, but I have been with this process for 20 years. I confess, I think, more in decades than in years. The present arrangement I think is not sustainable in the medium to long term, and I ask that we start to consider alternatives.

The main reason for the shift in my point of view in the recent months has been the rapid degradation, deterioration globally in the consensus of, yes, it's a nationalization and globalization that, for practical purposes, many of us on this call participate in. This is under threat. I don't wish to point to any specific action or potential action that could precipitate worse outcomes. But above all, the Internet, as the global communication system, and ICANN, which is, at least as far as I am concerned, the primary reason we are here and that I agreed with Ira and Becky in 1998 that this was the way forward. The global nature of the Internet -- (Beep) -- is the leading example. And unfortunately, in several countries -- (Beep) -- it's the leading victim of potential threats.

>> GREG SHATAN: Christopher, I apologize.

(Overlapping speakers)

>> CHRISTOPHER WILKINSON: Is likely to lead to reactions worldwide under foreseeable and unforeseeable circumstances that would be unfortunate for ICANN and very bad for the Internet. So I ask you to take this into consideration.

I am not going to go through Just Net Coalition's paper in detail. Some of the ideas are manifestly not going to fly. Baxter Milton, who has already queried my position I am not advocating explicitly the Swiss legal system under which the Red Cross and others operate, but it is exactly what the Just Net Coalition prefers.

There has to be some movement, and if our American colleagues think it's practical and tactical to entrench yourselves in the status quo, I feel in the coming decade, we will be dealing with far worse problems than we have to deal with now.

Greg, I think this is not the kind of analysis that you expected on the call. I am not a lawyer. I am more conscious of the technical and political aspects of the situation in which we are at present.

Thank you for hearing me.

>> GREG SHATAN: Thank you, Christopher. I had expected an evaluation and analysis of the Just Net Coalition's comments, whether it was legal or technical. Really, I have to say I was not expecting personal views at this point. I am a little unhappy with that. In any case, it is what it is, but I think this is a perfect example of why the mandate of this subgroup needs to be clarified, which has nothing to do with whether certain questions are valid or invalid to be considered in some group at some time, but what this group is doing at this time needs to be clear.

David McAuley, your hand is up. Please go ahead.

>> DAVID McAULEY: Thanks, Greg. Just a brief response to Christopher.

And I am speaking to the email now, where Christopher said during the past six months the actions of the U.S. Administration and U.S. courts are no longer perceived as predictable and benign.

With respect to the Administration, that's politically and emotionally charged, and I am not going to comment on that right now unless for some reason we get into that, but I would like to speak up in my personal capacity for U.S. courts, which I think are and have been functioning properly, appropriately, within scope, and continue in that role.

Thanks very much, Greg.

>> BERNARD TURCOTTE: Greg, we are not hearing you if you are speaking.

>> GREG SHATAN: Thanks, sorry, I was stuck on mute.

So thank you, David and Christopher, for your remarks. Is there anyone else who has comments on the Just Net Coalition's questionnaire response?

Seeing none, we can return to the agenda. Just briefly, we can review the sign-up sheet, but we don't need to put it up in the screen, in the interest of time. You all have the link to it. On next week's call, Tatiana Tropina will be bringing us the -- two responses, Russian Federation and the Internet Governance Project, and Eric Shah rye hover will bring us the response of Iran.

We have in the queue, so to speak, Jorge's response on behalf of the .Swiss domain registry, which will be presented by Parminder, and the response of Liu Yue, presented by Vidushi. Also, we need to see if they need to get this individual treatment and look at those this had essentially one-word responses and deal with those as well.

Before we leave the questionnaire topic, we do need to return to 7.1 and discuss whether respondents should be offered an opportunity to respond, either by email or as a guest on a

call, to respond to analysis of their comments. And we heard Kavouss's point of view on that, and I believe David McAuley has a point of view as well and followed by Christopher. David, please go ahead.

>> DAVID McAULEY: Thanks, Greg. It's David McAuley again.

This is something I wrestled with when I did the review from Rita Forisi, and I came down on the side of saying I couldn't send what I was writing to her because it's really for the group to decide, not for me. And I was very happy during that call when Finn said he would forward the response, and he said that in Chat, and nobody objected. I thought that was completely appropriate.

What I would request is that we give people a chance to comment but that we do it on the phone. Emails never end. They just go on forever. And my request would be that we make an arrangement for people to come on the call or they could nominate someone to speak for them if they wish. But that would be my suggestion.

Thank you, Greg.

>> GREG SHATAN: Thank you, David.

Christopher? Christopher, we are not hearing you.

>> CHRISTOPHER WILKINSON: I hope you can continue to hear me because the connection here is extremely weak opinion the mic is on, it's not muted. Not muted. Can you hear me?

>> GREG SHATAN: We hear you now. Yes, we hear you now, Christopher.

>> CHRISTOPHER WILKINSON: I will respond in the Chat. You can hear me now?

I agree with David that the reviews, the submissions, the responses should be given an opportunity to interact with the subgroup, whether by email or telephone or -- that's up to the Chair and the secretariat to decide.

David's example is very clear in this respect. I happen to know enough about geographical indications, having spent a great deal of time in France and Spain. David's position analysis would not prima facie be widely supported over here. Hundreds of thousands of companies depend far more on their geographical indications than they depend on any trademark. So I think everybody should be given the opportunity to respond, and including Just Net Coalition, who may not agree with my comments on their paper.

Thank you.

>> GREG SHATAN: Thank you, Christopher.

Thiago, please go ahead.

>> THIAGO JARDIM: Thank you, Greg. This is just to express

my agreement with the positions expressed by Christopher and David. And perhaps it might also be a good idea for those who are coming to respond to their analysis to prepare in advance if they have the time and the will a sort of paper that could be circulated before their intervention in a call.

Thank you.

>> GREG SHATAN: Yes, please go ahead.

>> KAVOUSS ARASTEH: Excuse me. I don't know whether it's time or not, but still I want to concern what I said before. The people have said the authors should be given the opportunity to write to the meeting, to listen to the analysis that has been made, and to make clarification and comments. This is very important. We should not have unilateral judgment by one of us with respect to any analysis, no matter how mutual and no matter how precise we are. We still should give the opportunity to give people, whether it is Internet Coalition or whether it is anybody to have this opportunity to listen and to comment and perhaps they should be invited preferably to the meeting or to do anything on the Chat or on the telephone or to something, but not to have this unilateral analysis and unilateral judgment of what they have said. Just Net Coalition has made a lot of efforts and a lot of good arguments that merit to be reply properly and to be discussed with them.

Thank you.

>> GREG SHATAN: Thank you, Kavouss.

I believe those are old hands from Christopher and Thiago, but if they are not, please let me know.

A couple of observations. I am a little concerned about the idea of giving two bites at the apple, but I think if we have not understood properly the position of the questionnaire response should be offered an opportunity to clarify their point. I don't think preparation of further papers is a good idea personally. It seems like we then are engaging in a colloquy with that particular respondent. And I think we need to consider two important points. One, that the purpose of the questionnaire was to get facts that could be used in our work, and that's what we spent quite a lot of time discussing that topic. And to the extent that opinions are expressed, hypotheticals not based on fact, need to consider whether they are in scope and how to deal with them but not let them use -- not use those questionnaires to somehow define the mandate of the group. That would be upside down.

Of course, there's always the time for public comment, but certainly if we -- and the last point I would make is I think we need to have an evaluation that is really the group's evaluation, not a single member's understanding of that. And I

would suggest that it's the work of this group to debate any, you know, particular different opinions of how a particular response should be handled or what our evaluation of it is. So in other words, David was very able in preparing his viewpoint, and while that is largely what's gone back to Rita Forsi of Italy to respond to, that's not the group's evaluation. Some of us may agree, some of us may disagree with it, but it's not the group's evaluation. So we do need, in the end, to have an understanding by the group of what the -- of how we will build a questionnaire because we need to deal with it, with the answers or not in our deliverable in some fashion. So I am a little concerned with the idea of a colloquy between a questionnaire respondent and a single member of the group and their view on what that questionnaire response indicated.

>> Greg?

>> GREG SHATAN: Generally, I would like to see us get a response from the questionnaire respondent, but those are my thoughts on perhaps how to define that.

Kavouss, please go ahead.

>> KAVOUSS ARASTEH: Yes, excuse me again. Why are you afraid that people have the opportunity to listen to the analysis that has been made with respect to their reply? This is not a point of clarification. It is a point to see whether their reply has been properly analyzed and so on and so forth. What is to prevent us to give them this opportunity? Why you are against that? Why you insist that no, it is not possible to do that and that only the limited number of this group or experts are interested? Why not the author of the document be given this opportunity? What is preventing us to do that? It is more transparent and more open. So I suggest that please kindly, if possible, allow this sort of intervention/interaction between the people who have analyzed that and so on and so forth because I see those number of the people, usually two or three -- I don't want to name -- they are always against this and they want to finish the business saying okay, that is the analysis. But we cannot go to the judgment unilaterally. Once again, no matter how neutral, how knowledgeable they are. Still, they may not reflect the views of the author of the document.

So I request you kindly to allow this sort of interaction between the author and the people who have analyzed the document. So really, this is important, very important. Thank you.

>> GREG SHATAN: Thank you, Kavouss. I realize you are only on audio, about if you were looking at the caption stream, you will see that the last sentence of my response before you was

generally I would like to see us get a response from the questionnaire respondent, but these are my thoughts on perhaps how to define that. So perhaps you misunderstood what I said. So I am not trying to prevent or afraid of that. I am just looking at how to define that and also suggesting that we, as a group, need to consider how to evaluate these responses and not rely on just a single member's evaluation. That's all I was saying.

But in any case, this is up to the group to decide, and we've now reached the top of the hour. So we can move this to the list, but I think the -- I haven't heard any objections to having any interaction with the questionnaire respondents. Just some thoughts on how to manage that, whether it's only on the call, call and email, have them prepare an additional paper, have an exchange of papers, et cetera, et cetera, and then some concern about making sure that we understand and respect the mandate of the Subgroup in dealing with all of this.

So we can move this to the list to discuss. I see Avri Doria agreeing with it. Maybe, I think, the clarification on a call might be useful. I would suggest that that is the way to go forward is to invite the respondents to come to a call to discuss. Is there any objection to that as the mode of operation?

Of course, not everyone will accept that invitation, but we can extend it. I think that would be fair and appropriate. If there are no objections, we can go forward with that, and we can make a general invitation to those respondents, and perhaps we can invite them to be on the call immediately following that where the group discusses their response so we can have some continuity.

We've reached the top of the hour. Very briefly, we did not have any litigation cases prepared for this week, so we can -- we don't need to spend ten minutes on item 8. But I do note that we have 15 cases left to review, and none of them were picked up in the last week, so I implore all of those on the call to pick up a case among those remaining. If everyone on this call -- there are 16 participants -- if everyone picked up a case, we would be done, recognizing that some on the case have picked up a case or multiple cases. It would still be nice if we could finish this. Otherwise, we will have to consider other avenues, and as today's call has indicated, there are important facts to be taken from a number of those cases, and it is part of our work to do that. So I'll make that invitation on the list as well so that we can get those participants.

Since we are past the top of the hour, I will ask if there's any AOB, but if it's not critical, to deal with it on

the list.

If there's no AOB, I will just note briefly we have four meetings between now and Johannesburg. They are in the list. The next meeting is a week from today, 30th of May, at 19:00 UTC. And I look forward to that call. I think this has been a lively call, and I think we should really try to move from here to the list with the topics under discussion so that we don't lose the thread of them and lose the ability to try to come to some resolution on those particular topics.

So I thank you all for your participation, and this call is now adjourned. You can stop the recording. Thank you, and good-bye.

(End of call, 14:06 UTC)

\*\*\*

This text is being provided in a realtime format. Communication Access Realtime Translation (CART) or captioning are provided in order to facilitate communication accessibility and may not be a totally verbatim record of the proceedings.

\*\*\*