

FINISHED FILE

ICANN
JURISDICTION SUBGROUP MEETING
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>> GREG SHATAN: Good afternoon, good morning, good evening. This is Greg Shatan, and this is a call of the Jurisdiction Subgroup of CCWG accountability Work Stream 2, meeting # 33, May 30, 2017, 19:00 UTC.

I will begin with the welcome, which you just have heard. Then to the review of agenda, and that is happening now.

The first item will be the usual administration, followed by a review of decisions and action items from the last call, which both relate to item 5.1, so we'll have a discussion of that item at that point.

Then we have several questionnaire responses to review, so that will take place during the bulk of the call, middle of the call. And then a review of ICANN's litigation items that have been recently submitted to the list. Following that, any AOB. If anybody has any AOB now, please let me know. Otherwise, we will move on to the administration portion of the call.

Seeing nothing, we will move on to administration. I'll ask if there are any changes to statements of interest.

>> KAVOUSS ARASTEH: Greg, this is Kavouss. I have a question, if you can kindly reply.

>> GREG SHATAN: Excuse me?

>> KAVOUSS ARASTEH: This is Kavouss Arasteh. I have a question,

please.

>> GREG SHATAN: Yes. Let's just get through the administration here, and then I'll take the question.

There don't seem to be any changes to --

>> KAVOUSS ARASTEH: No, no, no, you talked about AOB. I have one question of AOB to raise it just quickly, and then you can -- yes, I have one question, yeah.

>> GREG SHATAN: Okay. We moved beyond that, but we don't need to be sticklers, so please go ahead. Go ahead, Kavouss.

>> KAVOUSS ARASTEH: Yes, my question is that we are about end of May and closing in on June. My question is that do we -- this group, I mean -- have any meeting during the CCWG or during the ICANN? Just a question. I am not suggesting anything, just want to know whether we have anything there, whether we meet there or whether we have some plan for to meet there in that before or after the ICANN, before the CCWG or after. Just a question that may be considered for further reply, not now, maybe next week.

>> GREG SHATAN: Thank you, Kavouss. That's a good question. We don't have anything planned yet, but I think it would be a good idea to try to do that. I don't know exactly what the schedule will be for the CCWG meeting day on day zero, whether there will be any breakout time at that time or any other time that might suggest itself as a time for us to meet. If not, then I would like to look for some time during the schedule where we could find some time to meet and we can perhaps do a Doodle poll, take that offline. I will also have to discuss that with staff, and you know, generally speaking, see how we can plan that. Or whether we can plan that.

David McAuley, I see you have your hand up.

>> DAVID MCAULEY: Greg, thanks. David McAuley here for the record. I just want to note for attendees that I have two policy interns sitting with me now, Jonathan Peyster and Garrett Hinck, who are going to be barristers with us this summer. Thank you.

>> GREG SHATAN: Great. Welcome, Jonathan and Garrett. The more policy people in the world the better, I guess. It keeps people from saying bad things about lawyers, at least. So we can move on to administration. There were no changes to SOIs. Do we have any audio-only participants? Anyone not in the Adobe Connect? It appears the answer is no. Phil Corwin noted he was 3200, but it appears he turned into Phil Corwin, I believe, or is he not in there? We have Phil Corwin in some form. There he is, yes.

So that brings us to item 4.

Who has joined, please?

We do now have --

>> Sorry, it was the (Inaudible). I am sorry.

>> GREG SHATAN: I have your name there and a telephone ending in 3791. Who is 3791. Now it disappeared. Must be something in the wiring here. Okay.

Let's move on to item 4. On the last call, we had a discussion about whether to invite questionnaire respondents to respond in some fashion to the group's evaluation analysis discussion of their response. And there was a kind of a loose result, the idea of inviting them to attend one call, either the call on which the group initially discussed the response or on the following call or a following call, with the idea of the group might prefer to discuss the response amongst itself rather than engage in an immediate colloquy with the submitter.

There were since some discussions on the list, and therefore, I felt it was -- not that many people participated, so I want to confirm what the direction of the group is. A couple of different options that have been discussed. The first two I have already mentioned, which are to have them on the same call or on the following call, where their questionnaire is discussed. Another option is to have an email response from them after sending them the evaluation, of course, recognizing that the evaluations that we have are at least to some extent evaluations and analysis by one person, and not necessarily endorsed by the subgroup. And we haven't engaged in these kind of drafting exercise to take any of these evaluations and turn them into group documents.

And the last possibility would be for us to submit questions to the person submitting the response.

So I hope I haven't confused the options too much. Two are to have them on the call. One is to have them respond to the email via evaluation, and the last is to have them respond via questions that we have. I think the final option is none at all. They can respond by a public comment, along with everybody else.

So I see hands. So as a general question, if there's support to invite people to meetings at all, that will help. And if there isn't, that will also help make the decision. At least in general.

Kavouss, please go ahead.

>> KAVOUSS ARASTEH: Yes, Greg, between 16 and 26 of May, there was a meeting of the ITU Council in which one of the topics was international Internet-related public policy issues, and on that occasion, I discussed with some of the people attending that maybe two people were interested to attend a call or the call in which their responses were presented or analyzed. And they most welcomed that, and they said that they would be happy to do that. They were more in favor of attending the call, although some of them or one of them are a member of the group that could easily attend the meeting, they are the ones that suggest if there is this opportunity in which it is welcome that they attend and listen to the analysis that has been made in regard with the analysis that was done by one of our team members. And if there is a need to either provide a further clarification or any comment with analysis, I will do that.

I would suggest if possible, colleagues, that you consider to provide that opportunity to those people. Thank you.

>> GREG SHATAN: Thank you, Kavouss. That is, indeed, one of the options we are considering, but it is, of course, the group's option of which one we pick.

Tatiana Tropina, please go ahead.

>> TATIANA TROPINA: Thank you. Tatiana Tropina. I think as one of the evaluators, this would depend on whether we are taking the accounts into concern or whether we reject them. In all cases, they have to be invited. But I believe for example, my case, I do think in those responses, serious concerns are brought up. And I think that in any case, there is a need to send an email, for example, to the Russian Ministry of telecommunications, had in the second case, we have someone on the call. Your concerns to be discussed in the future, considerations of this subgroup, and we are inviting you to participate in the call. When your concerns would be discussed on a particular call, we will inform you particularly if you don't want to join the group.

So I believe that instead of sending them the response -- because I also believe that the response should be kind of confirmed by the group anyway. My evaluation should be confirmed by the group. Are you really considering these concerns or not?

And then if you are, yes, let's send the email. Like we are going to discuss. Please join us. And of course, if we need clarifications. But I believe they will all depend on the result of evaluation itself.

Thank you.

>> GREG SHATAN: Thanks, Tatiana. So it seems like we should include our evaluation and then consider how to handle interfacing with the evaluator or with the respondent. That would seem to be the summary of your view.

David McAuley.

>> DAVID MCAULEY: Thanks, Greg. It's David McAuley here.

I just wanted to -- I appreciate what Kavouss and Tatiana said. I don't agree. I basically just wanted to reiterate that what I said in the email list last Thursday, that it seems to me that the questionnaire was an opportunity to speak, and I think that we should only give someone a chance to come in and make a statement in the group if we seriously mangle what they had put in their comments. And I think we in this subgroup are intending to read these responses ourselves, and so maybe we could police that. But I think someone should have a chance to speak within the group if we seriously get wrong what they submitted, but otherwise not. And I certainly am not a fan of email in any case because they just go on and on without end. So largely a reiteration of what I put on the list last Thursday.

Thank you.

>> GREG SHATAN: Thank you, David.

So I think that is another option, which is -- I guess I would ask you, David, how would we know if we seriously mangle what they had put in their comment?

>> DAVID McAULEY: Thanks, Greg. I am assuming that we will be reading these ourselves. For instance, I did a review of the comment by Rita Forsi, who was a GAC representative from Italy. And while I intended -- while I tried to capture it or capture the spirit of the comment, I think that there are others within this group that can catch me out if I failed in that respect.

Also, I think it's important, I have no problem with sending a reminder to folks that submitted answers that they can follow the discussions of our group on the archives or the public postings. So they might do it themselves.

Thank you.

>> GREG SHATAN: Thank you, David.

Kavouss?

>> KAVOUSS ARASTEH: Yes, I want to complement what David mentioned. We invite those people to attend the call, but keep silent until we have the analysis be presented. Then we ask them do you think that what we analyzed and presented to the group reflects what you sent to us? In that sense, they could say yes, we have no additional comments, or they may say that they have not been properly understood, and this is a clarification. So it is not a direct dialogue in the group, and then it is just to provide them to listen actively to the analysis, and should they have any problem or comment -- not problem, in fact -- they could comment. In that sense, we don't want to engage in the discussion and dialogue. It's just let them clear the issue. Tatiana provided the clarification from the Ministry of Mass Communication of the Russian Federation. She presented to us. And you, as the Chair, asked that do you believe that audio comment has been properly reflected here or not? If they say yes, no problem. No discussion. If they say no, we provide them an opportunity to further explain and remove any doubt. This is necessary to maintain the openness of the ICANN.

We are not doing anything in the absence of the people. We should be open, provide information to the people to communicate with us, and share everything with them. So in some sense, I don't agree with David. This is very specific, no, no, we don't allow them. We are the master of everything. We are authorized to do whatever we believe is correct, and we don't allow -- no. That sounds too secret. If they believe that we have not properly analyzed or properly understood their comment, we need intervention. Thank you.

>> GREG SHATAN: Thank you, Kavouss. I would note a logistical issue, at least, which is that we've already discussed two responses, and we are set to discuss, really, three more or the -- a continued discussion of the Just Net Coalition, and then two more plus the group

of very short responses, and this was our original plan.

I am going to suggest an option -- I'd like to see who might agree with this -- Which is a variation on what I've heard. Which is to have this group discussion the evaluation, and then to provide the recording and the caption transcript or captions to the respondent and see if they would like to respond by attending the following call. Or a following call. That way we can deal with the questionnaires as we already have, and it may give the opportunity, especially for those who may not follow the discussion, maybe for language reasons or other reasons, since we did have submissions in foreign languages -- foreign to me, at least -- that would give them the chance to read and respond without having to follow all of our back-and-forth.

So that would be my suggestion, and I think that kind of combines a couple of different thoughts here. Then we would allocate time as we got responses from them as to whether they want to come, and we might even put an additional 30 minutes on a call to accommodate that, and we continue to move forward.

So why don't I take some green ticks, if you agree with this approach; that is the approach of sending the respondents the transcript and recording of the portion of the meeting where their meeting was discussed or where their response was discussed, and then having them attend a following meeting should they choose.

I see several green ticks. I'll take red Xs for those who disagree. Or object. I see two objections. I would say the ticks have it. Let me count the ticks. Keep them up, please. One, two, three, four -- well, we have one, two, three, four, four ticks and now we have one red X.

I am not sure if people --

>> BERNARD TURCOTTE: Greg, I was counting them, and it was 6 to 3 on my last count.

>> GREG SHATAN: Okay. That seems to be the maximum number here. So why don't you -- let's follow that plan. So let's follow that plan, and take down your knots and crosses. That would be your checks and crosses. And now we can move into the actual questionnaire response.

Why don't we begin by continuing our discussion of the -- well, I don't think we really need to take a look at the sign-up sheet. Let's move past that let's start by going back to the Just Net Coalition response. I took a liberty of preparing a summary of that response since the initial submission was more analysis and observations, and maybe we can put my summary up in the Adobe.

Tatiana, if you could clear your red X unless you are just feeling cross.

Okay. Well, this is not the one I wanted, but why don't we go to the Just Net summary that I prepared.

There we are. Okay. So as we noted on the last call, Just Net

Coalition responded only to questions 4a and b, and I wanted to offer more opportunity for discussion of their comment and also some chance to have a walk-through or evaluation summary of their comment, which was not really the subject of last week's review.

Basically, as I read 4a, it appeared the gist of JNC's response was that it's a problem that ICANN has to comply with U.S. law. And specifically, the application of U.S. jurisdictions results in a prioritization of the U.S. law and public interest, and similarly, application of any country's jurisdictions over ICANN results in a prioritization of that country's law and public interest; and that it interferes with ICANN's ability to pursue its mission.

JNC believes that U.S. has a high enforcement capacity -- that's their words -- to ensure that U.S. laws and powers -- executive, legislative, and judicial powers -- which apply to people and organizations are normally respected and that everyone acts within accordance with those laws. They believe there is a perception (Inaudible). That public law of the country or incorporation supersedes any contractual law based on their reading of a doctrine of public policy, which states that a court will now enforce either the laws of another state or a contract where that contract tends to promote breach of the law of the policy behind the law or tends to harm the country or its citizens. So moving from there, they believe this indicates this shows the supremacy of the U.S. policies and laws over ICANN's, including policies and processes.

They go to on to indicate cases where courts have already -- maybe that's a concept better understood in other countries, in the U.S. courts, U.S. courts basically have to take any suit that's properly pleaded and brought before it. Only the Supreme Court gets to choose its cases. The U.S. Supreme Court, that is. And generally speaking, if the parties don't object to jurisdictions, courts will rarely spontaneously have their own jurisdictional thought.

So they conclude that there's -- that in these cases ICANN never contested the application of California law, which, of course, it couldn't. There would be no basis for that. And that this provides clear proof that the entire range of public law of U.S. and jurisdiction of every relevant U.S. court fully apply to ICANN's action. And that U.S. law and courts limit ICANN's actions.

Lastly, in this section, they argue -- they object to this and state that ICANN's mission is supposed to be determined by global community processes and not by U.S. law and its interpretation by U.S. courts.

We will see if there are any -- let me just get through one more part of the summary here.

They say there is a contradiction hidden in plain sight, that ICANN's actions were found by U.S. courts not to violate U.S. law because ICANN has its lawyers and makes sure that it does comply with U.S. law. I believe this is also required by the bylaws.

JNC objects to the -- what they call the preconfiguring of ICANN's action to U.S. law, which they believe is as much of a problem as any subsequent action of a U.S. court forcing ICANN's hand.

So that is the general setup of their argument on 4a, then they go into some specific cases. So this is a good time to take a break from summarizing their submission and having some discussion by the group. I see Kavouss has his hand up. Kavouss, go ahead.

Kavouss, please go ahead. Don't hear you yet.

Kavouss may be having some audio problems. Would anyone else like to comment?

Here you are, Kavouss.

>> KAVOUSS ARASTEH: Yeah. Do you hear me now?

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

>> KAVOUSS ARASTEH: I seed don't consider that it is something that -- a position. This is just (Inaudible). I think your intervention is overrepresented. At any comment you represent or comment for several minutes, some of your comments are very useful, but I think you should limit yourself to summarize the situation, but not at every point you comment and you try to convince the people that whatever is said by one or two is right. Please kindly, if possible, limit your intervention to the time that you want to summarize the discussion and guide the group, but not at every point let us say speaking on every item and expressing your views. Otherwise, you should put yourself in the queue like David McAuley, maybe his group, and speak on your turn when you are in the queue, but not speaking at every point.

I am sorry, I am not criticizing you, but that is to say that it is more healthy and helpful that you kindly limit your intervention to summarizing the situation. If you have personal comments please put your name in the queue and come as a participant, but not as the chair.

Thank you.

>> GREG SHATAN: Thank you, Kavouss. I was just trying to clarify some of the factual points, but I take your point, and I'll just -- I'll make my comments, whatever they may be, separately from the summary section, summarizing their comment.

Christopher.

>> CHRISTOPHER WILKINSON: Thank you, Greg. This is Christopher Wilkinson. Good evening.

My fundamental points, which I believe that you are all familiar with already, since I actually believe this is a political issue, a political problem, rather than a legal problem, and with all respect to the other excellent work that our group is doing, I do not expect this subgroup to resolve the political problem.

Regarding Greg's paper, I see -- of course, Greg will clearly agree with me that I could personally, as a non-lawyer, could not personally have written such an erudite paper.

But what I was really interested in were the comments on page 4, particularly on Greg's analysis of the question of obtaining immunity, U.S. national immunity act. I don't actually agree with that as being a useful option, but that's just a personal opinion, and it would be very helpful, Greg, if you had filled in the column on the right-hand side with respect to that option proposed by the Just Net Coalition.

As I indicated in the chat, I would be quite happy to participate in a discussion on -- in this group with Just Net coalition and, of course, other responders. Thank you.

>> GREG SHATAN: Thank you, Christopher. I ran out of steam. I must admit it was about 3:00 in the morning when I got to that point in the paper, and my analytical juices had stopped flowing.

I will say -- I will take off my rapporteur hat, which I try to do rarely, but in this case, at least both to supply fact and a little bit of analysis. Which is that immunity runs counter to many of the accountability mechanisms that either already were in place or were put in place which depend on the ability of ICANN not to be immune to suit by private parties in court, including as a way of enforcing the IRP, but also as a way generally for parties that interact with ICANN to seek to hold it accountable. So that immunity to me seems to be opposite of accountability. Immunity to me means to be above the law.

Secondly, the nuts and bolts of immunity as suggested here are far more complex. To actually get immunity under the Act, one has to begin with an application to the Department of State, which is reviewed by the under -- an under secretary and Secretary of State Rex Tillerson. They would have to recommend immunity to the President of the United States, who would then decide whether or not to grant ICANN this immunity and under what circumstances. And then that would have to be approved by an act of Congress. This may have been easier for the International Fertilizer Development Corporation than I think it would be for ICANN in any administration.

I would also note that the IFBC is a peculiar type of organization and is only one of a class of quasi-public agricultural assistance corporations. There are about 20 of them, I believe, that have similar status. Not all of them started as a private entity. But basically, IFDC did, although it started out being proposed by Congress because the U.S. Tennessee Valley Authority was answering too many questions from foreign farmers and was being swamped, needed to form a different organization. And I note that while they are still technically a nonprofit, they consider themselves an international organization and hold themselves out as such and have a bunch of different type of organizations than we do.

So there are rather difficult -- I think the idea of immunity is difficult to align with accountability, which is, of course, the main thrust of this entire working group. And the mechanics are

difficult to align with anything that could be accomplished by this group or possibly by anybody, even if one were really to want to do it.

So that's, Christopher, my ten cents on immunity. So I will put back my rapporteur hat on.

Christopher, is that a new hand?

>> CHRISTOPHER WILKINSON: Yeah, that's a new hand, very quickly.

Thank you very much, Greg. I see that we fundamentally agree on this particular point. You will note in my much more succinct comments, I drew the link between immunity and the powers of the enhanced community and suggested that it wouldn't work.

You also provided, which I did not know before, the procedure for acquiring immunity in the United States law, and I think that is a definitive consideration. You may just need to explain in due course through Just Net Coalition why this is a very bad idea.

>> GREG SHATAN: Thank you, Christopher.

I note in the Chat Avri Doria notes immunity is not necessarily blanket immunity, and that is true. As a matter of fact, the Immunity Act may not even offer the type of immunity that Just Net would like, which is really immunity from state action by the United States. But in any case, that's beyond a casual discussion.

Thiago, please go ahead.

>> THIAGO JARDIM: Thank you, Greg. This is Thiago. I would just like to add a word on the immunity question. You mentioned that according to your own (?) immunity would be (?) to enhancing accountability. But the thing is accountability encompasses different aspects of ICANN's functions. I think Avri Doria is right in pointing to the fact that immunity is not a blanket, so it might apply to certain activities performed by ICANN but not to others. And another comment that I would like to make is the following: Take, for example, the existence of the -- of this mechanism within ICANN to resolve the domain name dispute policy. This mechanism appears to be opposed, in a way, to the ACPA, which is the (?) consumer Protection Act. What I mean by that is if ICANN -- if there is a dispute in relation to a domain name, this dispute might be solved by subjection to U.S. jurisdiction under the ACPA Act, or it could be solved through ICANN mechanisms. If immunity existed, for example, of course, it wouldn't be immunity for ICANN in this case. But this is just an example of a situation where immunity could, for example, prevent the United States in this particular instance from exercising jurisdiction over certain disputes that can find solutions through ICANN mechanisms.

Thank you.

>> GREG SHATAN: Thanks, Thiago. Of course, (Inaudible) they don't have anything to do with ICANN's jurisdiction.

In this case, let's close the queue on this noting Tatiana will not be on next week's call. I'd like to ask her to present her

evaluations now.

So please go ahead.

>> TATIANA TROPINA: Thank you very much, Greg, and I am really sorry for pressing for my presentation because I will nevertheless might join.

I have two responses to evaluate, and I will try to be brief because anyone who needs the details can either read my email or the summary or just check the responses because I think both of them are very interesting and both of them are very relevant.

So I will start with the one, but I think that in some points, the two responses are all relevant, so I will start with the response from the Ministry of Telecom and Mass Communications of the Russian Federation. Again, I want to say that the fact that I am giving this response has nothing to do that I am Russian national, and I am presenting my own individual views and only in my individual capacity.

So the Russia needs to reply to the question 1 and brought clarity on how (Inaudible) were affected by ICANN jurisdiction by bringing the case of sanctioned countries of the Office of foreign assets control, OFAC, of the U.S. Department of the Treasury. And the Russian refers to the case of the Crimea sections when, in accordance with the executive order, U.S. companies were prohibited from supplying services and goods in the republic of Crimea, which led to some consequences, and Russian Federation Ministry list these consequences. But in particular I think one of the cases that's especially relevant was the announcement from several U.S. register companies, for example, GoDaddy, the domain names of the registrants from the republic of Crimea will be removed from the registries .com, .net, .org, .info, and others. And the announcement referred to the trade restrictions which did not allow registrars to carry out business with any individuals or companies located in the republic of Crimea after these sanctions.

Russian Federation in this regard not only brought the case, but they also expressed a very strong belief that the Jurisdiction Subgroup shall not only analyze the instances (Inaudible) -- in the future.

There was no information provided on question 2 or question 3.

With regard to question 4a, the Ministry of Telecom of Russian Federation didn't provide any material but expressed opinions that since top-level domain registries enter into agreements with registrars individually, there will be always concern between ICANN's policies and different national law systems, and as one example, they brought the EU general data protection regulation which they think ICANN was not prepared to, and there are still many discussions., And also the Ministry brings several issues related to domain name system and infrastructure with regard to why shall be under the jurisdiction of the single state.

Replying to question 4b, with regard to alternative jurisdiction solutions, the Russian minister suggests several solutions. I believe we briefly discussed most of them already in this group, expressed our opinions already, so the first one is, of course, the governance of the domain name system by the international law and treaties, then separation of main ICANN's responsibilities or different jurisdictions, and then jurisdiction immunity under the U.S. law.

I recommend that every participant of this group read their response on their own or at least the summary of it and make their own conclusion; however, I strongly recommend that the issue of trade sanctions and countries under sanctions and OFAC has to be discussed in details and assessed by our group. Because this is a serious issue. It is a jurisdictional issue. It definitely influences the ability of individuals and companies to carry out any business related to domain names, and this issue comes up with more than one response, especially in the next response which I am reviewing, it will be analyzed in details.

I believe that we can take into consideration and discuss and reject or whatever any solutions proposed by Russian Federation because, apparently, the discussion is already ongoing, and it will be ongoing anyway if the issue of alternative jurisdiction law ever comes up seriously in this group of ICANN relocation of or like anyhow changing the jurisdiction -- the status quo.

But I also added in my response if I am not mistaken, immunities referred to in our previous discussion cannot be given in the way probably Russian Federation wants it by the U.S. Government.

So this is -- I end my evaluation here, and I can either move to -- sorry, I just noticed in the chat that I have to speak slower. I am sorry.

I would like to ask for your permission, unless there are some urgent comments that I can -- I see that Kavouss's hand is up -- that I can move to the next response because these responses are overlapping, but I will leave it to Greg and others to decide how to proceed. Thanks.

>> GREG SHATAN: If the intervention is brief, Kavouss, you can go ahead now. If it's going to be more lengthy or might involve the second response, then we could do it later after both responses are summarized.

How would you like to proceed, Kavouss?

>> KAVOUSS ARASTEH: Yes, thanks, Tatiana, thanks very much for the works you have done. I have two comments to what you say. The first one, in fact, is not a comment. It's from support of the issue of OFAC (Inaudible) response. One is from Eastern, the other is from if I am not mistaken from (Inaudible) and the third one from Russia. So it merits to be discussed.

I have a question for you to analyze, what do you interpret the main (Inaudible) will be removed from .net, .org is related to? Under what (?) iCANN or any other jurisdiction takes that action? Is it a political decision? I don't think that ICANN should go through political decision. I don't want to defer the issue of (Inaudible). But I don't think that removal would be subject to any political motivation. This is very dangerous because it has been done before to some other countries. This is a very important issue for jurisdictions, and this is discussed.

So the next question that Tatiana mentioned that she rejects a solution proposed by run shan federation. I don't think that either -- neither Tatiana nor any one of us should give a solution. We should continue this to see whether we are in a position to agree or implement that. But I don't think that we have any right to reject any solution. We don't have any right or authority to reject. Who we are, really, who we are that we will reject the proposal of a country which is by representative of a government? We should consider maybe is it relevant, irrelevant, accept, not accept, but not rejecting that. It's too strong, and I think that these decisions should not come from Tatiana. Tatiana should say that this is the solution, and you put the solution to the meeting and ask the meeting what does the meeting think about that solution. (Inaudible) you could say the solution is impractical, unimplementable, and I don't think that either myself or Tatiana or any one of these people has the right to say we reject. We should just put it to the discussions of the people.

Thank you. Sorry, Tatiana. You are a very kind person. I hope that you did not interpret my intervention differently. Just something --

>> GREG SHATAN: Thank you, Kavouss. We only have five minutes left, so if we turn to Tatiana's other recommendation, that would be helpful.

>> TATIANA TROPINA: This is Tatiana speaking again. Thank you very much, and I replied to Kavouss on the chat.

So I am moving to the response from the IGP, Internet governance project, and I will move straight to the answers.

So we regard to question 1, IGP raises two issues. First OFAC sanctions countries and issues. IGP raises issues with providing licenses to specially designated nations not being granted to -- these licenses not being granted or granted in a nontransparent manner or delayed or nonsustainable manner in the process for applying to such license, and the absence of ICANN commitment to transparency in response in regard to these issues in regard to sanctioned countries.

Then IGP brings very important issues which goes further than just U.S. and OFAC sanctions because some registers follow OFAC sanctions and regulations in the legal agreements with registrants,

even if they are not based in the U.S., and IGP makes an example, for example, of register based in Curacao or Turkey. So they have to be considered in connection to the risk with OFAC. I would say I think this group should consider this issue.

And the third issue they bring in this regard is the problem of high cost of money transfers between ICANN and countries which are under the sanctions.

So this is all with question 1. With regard to question 2, the court case brought by a group of victims in the U.S. courts. Again, the State of Iran and IGP shows how the domains .ir, .sy, and .kp could be affected by the ICANN current jurisdiction. I will leave it to everyone because I don't have time to include these details of litigations in my analysis, or maybe IGP can bring them up in the next call if there is any need. So I believe that this should be also taken into consideration.

With regard to question 3, IGP provided reference to a very interesting blog post which gives more information and more analysis on ICANN jurisdiction and sanctioned countries. And IGP also suggests some solutions with regard to OFAC, and I believe that if this group is to discuss OFAC, these solutions might be considered, like for example, a general OFAC waiver or contractually obliging registrants to investigate the possibility of receiving an OFAC license for providing services for sanctioned countries or prohibiting registers for a month or considering domain name without notice and so on.

And briefly for my analysis, I strongly believe that the response from IGP and as well as the solutions has to be explored and give special attention by this group, especially OFAC, but also the case of ir, cy, and kp, and the possible suggested solutions.

So I am not in a situation to recommend solutions to these particular issues, but I believe they ought to be discussed in the group because they were brought up at least in two responses.

Thank you. That's all from me.

>> GREG SHATAN: Thank you. Sorry, Tatiana, so close to the end of the call.

I see Thiago has his hand up.

>> THIAGO JARDIM: Thank you.

I understand Tatiana won't be able to show up for the next call, and you wrote in the chat that perhaps we shouldn't discuss the questionnaires the next time. I think that an alternative would be to make two different action items in next meeting in which we will be discussing specific questions raised by those questionnaires. We wouldn't be discussing the questionnaires themselves but issues raised by the questionnaires. So the absence of Tatiana I don't think would prohibit us from going through those suggestions.

The two items I think we should consider are, number one, the question raised by OFAC sanctions and the case of country top-level

domains being the case of recent actions in U.S. courts.

Thank you.

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

>> KAVOUSS ARASTEH: Hello?

>> GREG SHATAN: Yes, please go ahead, Kavouss. We hear you.

>> KAVOUSS ARASTEH: Yes, I think the issue of OFAC, as I mentioned in the chat, is to be clearly and seriously discussed. I am not suggesting one way or the other, but I think it merits to be discussed, impacts of that, you know, the discussions and any possible way to address the issue. This is very important.

Second, I think we should wait until Tatiana will come back to the call and discuss the two cases that she has analyzed.

And thirdly, I suggest that we request the respondent to those questionnaires to kindly advise or inform whether they want to participate in the call, either (?) or in the chat. These are the points I want to make in the last minutes of the call.

Thank you.

>> GREG SHATAN: Thank you, Kavouss. I think we should figure out the mechanics of the next call or really next two calls. It would be my suggestion to prepare for a call on the OFAC situation in two weeks' time so that we have both ample time to prepare and also that we will have some people back who won't be attending next week's call. I think there is definitely background information. I, for one, would like to perhaps hear from GoDaddy, their view on what happened with Crimea. So that we can get more general information on that. So I think we could have a more fruitful and well-rounded discussion in two weeks' time.

Next week we can go over the litigation cases we didn't get to this week and the very short responses as well, and also next week, we can pick up the discussion of the mandate, which we discussed briefly on last week's call, and there's been some chat on the list over the course of this week, but not a great deal.

So what I would like to do is have a specific invitation not long after this call to discuss mandate next week. To discuss OFAC in two weeks' time.

Unless there's anybody opposed to that, that's how we will set that up.

We are now three minutes past time. Thank you, Raphael. I understand you won't be on next week's call, so we won't discuss your cases next week, but we will certainly have cases to discuss.

With that, it brings us to any other business, but I think we've covered the other business at the beginning, actually. Note that our next meeting is the 8th of June at 13:00, followed by the 15th of June at 05:00. And hopefully we will make a great deal of progress, both at those calls and on the list, remembering we have 167 hours each week when we are not on the call and only 1 hour a week when we are. So this call is now adjourned, and I thank you

for the call. Please stop the recording, and I look forward to talking to you later.

Bye.

(End of call, 20:04 UTC.)

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