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JURISDICTION SUBGROUP MEETING  
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>> GREG SHATAN This is Greg Shatan. It's just a few minutes after the hour. We might as well begin.

Welcome all --

>> OPERATOR: This meeting is now being recorded.

>> GREG SHATAN Welcome all to the CCWG Accountability Workstream 2 Jurisdiction Subgroup meeting number 35 on June 14, 2017, at 1300 UTC.

We have the agenda before us. We've covered item 1 already with the welcome.

And number two, review of the agenda, we have.

Number three, our usual administration items.

Number four, a review of the decision and the action item from the last call. We will be following up on the scope of this session from our last call.

And then we have two items of ICANN litigation to review. And one questionnaire response as well.

And AOB.

So is there any -- and, of course, a note that we have one meeting after this before ICANN59, which will be next Tuesday.

Are there any comments on the agenda?

Well, if there are no comments on the agenda, we will move into the administration.

First, does anybody have any changes to their statement of interest? David McCauley.  
Please go ahead.

>> DAVID MCCAULEY: Great. Thanks. David McCauley here. I simply wanted to introduce two interns who are working with me at Verisign this summer. They will be on the call separately. They were with me last week, so their names didn't show up in Adobe. But they're separately attending this week: Garrett Hink and Jonathan Feister.

Thanks, Greg

>> GREG SHATAN: Thank you, David. And welcome to the interns. I hope they find this a worthwhile exercise.

Any changes to the statements of interest? Seeing none. I see we have no phone number only participants. Is there anybody who is only on the audio bridge? Kavouss, your hand is up.

>> KAVOUSS ARASTEH: Yes, Greg. I hear you very poorly. When David spoke, the quality was good and the level of the voice was good. But then your speaking is too slow-- I mean, too low, sorry, too low and I hardly understand that. By the way, I am in a convention center in Canada. The line may not be good. And if I speak a little bit loudly, please do not interpret that in any way that I am shouting. Just I want to be clear.

Thank you.

>> GREG SHATAN: Okay. Thank you, Kavouss. I'm trying to speak right into my microphone. If the sound is still bad, let me know and I can make some adjustments. And your situation in the conference is noted as well.

So let's move into the review of decisions.

And maybe I'm too close to the mic.

Here is the review of decisions. We did not have any decisions on last week's call. We did have a few action items. First was the staff to prepare a form letter or an email for Rapporteur with regard to the decision to invite people through the -- let me know. Is it background noise that is the problem or is it that I'm too low? Please let me know.

>> It's just poor quality, Greg. Your sound is low. And it's very staticky for some reason.

>> GREG SHATAN: This must be a bad connection. Maybe I'll try dialing in, I guess. This is -- it's the same phone and the same connection that I have every week.

>> Well, right now if you're speaking up, it's not too bad. So let's try and keep up with this for now.

>> GREG SHATAN: Okay. Well, we will see what's happening.  
Okay.

Next there is the second action item was to circulate a new draft of questions to the subgroup based on input from the discussion, prior to the next meeting.

Well, I circulated the -- a rather large chart of all of the positions that were suggested on the prior call. It was essentially kind of raw data from the prior call. And then yesterday I circulated what I called the distillation of those positions, since a number of those positions were essentially redundant or overlapping. Just to clarify one thing about that, the distillation document, each entry in that one is meant to be read independently. I saw that when Parvinder was reviewing it, he felt that one entity was burdened by another. In fact, there are -- they're all independent. In fact, Thiago submitted a revision to one of the statements, and that obviously

related to the other statements in that manner.

In any event, if we could actually put up the distillation document, that would be helpful. Oh, that's very small. I guess when I sent it around the markup was not in the margin.

In any case, we had a note from Jorge Concio that he was unable to attend the meeting because he had a face-to-face IGF meeting that was in conflict with this, but asked that his position would be noted. His position is in the upper right-hand corner here. And so just to briefly run through his position, I'll read it out, essentially that we need to stick to the mandate given to the CCWG workstream 2 by the chartering orders of the organization. The decision whether something is in or out of scope should be based on that mandate, should be considered in light of the specific facts of the case, and should be decided *prima facie* by the CCWG plenary. The subgroup may reach ex-post, IE case-by-case, its own understanding vis-a-vis -- I lost the document in the Adobe Connect.

One second, please.

Okay.

The subgroup may reach ex-post, IE case-by-case, its own understanding vis-a-vis a given case where there would be a question of in or out of scope. I don't think we should lose time on developing ex-ante positions of the subgroup in general terms.

To distill that down further, let's say that Jorge is not in favor of deciding in either fashion, whether or not looking at the jurisdiction of ICANN as being in California, is in or out of scope or should or shouldn't be considered, but rather that that should be done on a case-by-case basis, depending on the question. So I would see that as essentially a version of what Jorge is saying.

So I have a hand up from Thomas Rickert, our esteemed co-chair. Thomas, please go ahead.

>> THOMAS RICKERT: Thanks very much, Greg. And hello everyone, again.

A few points. I think it was excellent of Greg to compile all the various formulations that members of the subteam proposed on last week's call. And it was good that he also honored Jorge's request to add his suggestion to the table.

Actually, if you look at the table there are a lot of options on it, which I think shows -- is excellent as a starting point for further debate on this. But given the fact that this group has discussed this issue for months now and some who are following this group are characterizing these discussions as moving in circles, I think we need something simpler to resolve the issue and be able to move on and complete the work.

And that is why the co-chairs, so that would be Leon, Jordan and myself, asked Greg for a phone call, which we had earlier this week, in order to suggest to him and we thankfully had no issue with our recommendation that we should actually apply in this very situation the working method that I outlined during last week's call, and which I'm going to read again from the transcript so that every one is aware of what was discussed last week.

I said: Let me just remind you of the way we operated in Workstream 1 when it came to very challenging junctions during the process. You might remember that we had different governance models, a supervisory board, and all sorts of different legal formats that we could use for ICANN. What we did at the time, when we had different options at our fingertips, we would test the waters with the group, and say: Which of the options that we have in front of us do get traction? And we would only pursue those options that got position traction. And ultimately we ended up with a concept that we enshrined in the Workstream 1 document.

It looks to me a little like we are at such a junction at this debate. There are obviously

participants in this Working Group who would like to explore further whether there should be immunity for ICANN, whether the legal format should be changed. There are others who would like to explore other places of incorporation. And there are still others who would like to maintain the status quo and test during the work whether all accountability features that the Accountability Working Group might be looking for, can be supported by the system.

What I suggest doing, and I guess pretty much in line with Greg's intention, is that we test the water in terms of what options get most traction. And what we see, and we've taken a look at what has been discussed over the last couple of months, is that we as co-chairs do see a result emerging whereby most traction in the subteams is given to a solution where we take Californian jurisdiction as a baseline for the recommendation, and that the subteam will not pursue recommendations to change ICANN's jurisdiction of incorporation or headquarters location or seek immunity for ICANN.

That is recognizing that there are no -- that there is no chance, if you look at the various options that we have, that there would be consensus for an immunity based concept or a change of place of incorporation.

And so I would establish in the minutes of this call that we focus on the solution that gets most traction. Recognizing that this does not eliminate, as I think Avri said during last week's call, that we can discuss all issues that might arise during the deliberations. But that we actually focus on the status quo being Californian law and place of incorporation. And California and work on solutions that are founded on this very recommendation.

And this will be presented to the plenary. And the plenary can then chime in. And for those who support an alternative recommendation, this is also something that we have used multiple times in the past. There is the option to add a minority statement to the CCWG Workstream 2 report for the jurisdiction section that some of you might have had different opinions on this very topic. And then ultimately the community gets the opportunity to chime in.

But I would really like us to focus on a solution based on what I've outlined before, so that the group can continue with its work plan and hopefully complete its work in time, as we have discussed. So that with the extension by one year, we actually get the whole report done.

So I would like to thank you for listening to me for such a long statement. Rest assured that we have carefully analyzed what has been discussed in this group. We have carefully balanced the various views, and taken a look at what might be the outcome of (inaudible) and this is the result that the co-chairs favored procedurally. And, as I said, this was not to bypass Greg, but this was in support with Greg, who is chairing this group so ably.

Thanks very much.

>> GREG SHATAN: Thank you, Thomas. I think that is a worthwhile and appropriate approach as you indicated that is the approach we have been taking throughout the CCWG.

So we have a queue. So rather than promising further, I'll hear from members of the group, starting with Thiago. Please go ahead.

>> THIAGO JARDIM: Hello, everyone. This is Thiago speaking. Thank you, Greg, and thank you, Thomas, for your observations.

I have to leave before the end of the hour, so I apologize in advance.

First, a couple of comments on the two documents you circulated in the mailing list, Greg, in which you attempted to put together different approaches to either the mandate or the work of the subgroup. I think at the end I'll get to Thomas' observations.

So I said it before and I'll say it again. I see a problem in the way your document presents the different approaches because, as I said, they treat different problems as if they were

the same, at the same level. There is a problem of issues that the group has to identify, and there is also the problem of the remedies that the group has to come up with, to -- so to mitigate issues previously identified by the group.

This is what I meant when I said that the document was conflating remedies with issues. And this is not just a procedural objection that I raised. There is also a problem of substance. For the procedural problems identified have an impact, I think, in our ability to discuss substance in this subgroup.

To me, it is quite obvious that our ability to determine which remedy is appropriate depends on our previous knowledge of what the issues are, what the problems are, what the disease is. Only knowing what issues need to be remedied can we decide whether or not one remedy is appropriate. Or to use Thomas' expression: Can we decide whether one remedy gets more traction than the other.

So this is a matter of logic, and it was particularly incorporated in our work plan, which I shared in the list. And apparently there was consensus supporting that work plan.

Now our mandate is also quite clear that we should discuss remedies, identify them and determine whether they would solve problems or not. We must do that before rejecting any possible remedy. If you allow me, let me walk you through the CCWG final report, which is a document of reference for our mandate. If you look at annex 12, page 7, in the relevant part titled "Jurisdiction," paragraph 29, and I'll quote it. "The CCWG accountability has acknowledged that jurisdiction is a multi-layered issue that has -- and has identified the following layers." One of these layers is, and I quote, "jurisdiction of incorporation and operations." Right?

Next in the detailed summary of our mandate there is paragraph 30, which says that the main issues along with place and jurisdiction of incorporation need to be investigated within Workstream 2 as long as they relate to the inference or have any impact on ICANN's ability to operate. This is the paragraph 30 of the jurisdictional statement in annex 12.

So we have to discuss the issues that relate to place of and position of incorporation.

After that, you will all see that there is also this paragraph 30, this sentence which says: "Consideration" -- point 1, if you will -- and I quote. "Consideration of jurisdiction in Workstream 2 includes identifying potential alternatives and benchmarking them." So obviously, as I said before, before we are in a position to identify potential alternatives, or even to reject any such alternatives, we have to discuss remedies.

Finally, if I can add a quick work before releasing the microphone, the document that you prepared, Greg titled "Distillation of positions which should consolidate the different approaches suggested thus far," to me this document is more problematic than the previous one. Because again it conflates remedies with issues. There is no longer separation under different headings of proposals that, for example, related to the definition of our mandate, and proposals, on the other hand, that relate to the way forward of our work.

In the previous document, if you recall, there was this heading one, which was titled I suppose "Focus of the mandate" or "What's the mandate of the group?" or "Limitations to the group's mandate." And item two, which related to the work of the subgroup.

My suggestion, that I shared with you with drafted changes in the main list, was particularly concerning the approach that the Working Group should follow rather than any -- having any implications as regards to our mandate.

Again, it is not necessary, my understanding to reject any remedies out hand to be able to consider the issues that would arise if we were to follow the approach that I suggested with those

changes.

I think it's quite clear that there is nothing preventing us at this point in time from discussing what is in play as far as jurisdiction is concerned, if we consider what the situation currently is. We don't have to speculate what the solutions will be. And it was the approach adopted by the group or that should have been adopted by the group if we were to follow the work plan that we adopted in the past.

Well, I think I have spoken quite enough. If I may end with a suggestion now. What I would propose, if I may, would be to focus on these contentious issues, on this very contentious issue, which is the place of incorporation and location of (inaudible), but from the point of view of identifying what are the problems, the problems that arise from these various situations, without any consideration about the remedies at this point. It's too early for that. We don't have enough materials for knowing what remedies would be the most appropriate.

And I would like to end with that. The approach that I suggested, that is displayed in the screen is obviously without prejudice to what comes after the identification of issues. And I think it is very much in line with what Jorge said in his proposal, that we should not adopt or develop any ex-ante position that would tie our hands in relation to our ability to fulfill the mandates, which include the identification of potential alternatives.

Thank you.

>> GREG SHATAN: Thank you, Thiago, I think you explained your position amply.

Just a couple quick responses, since we have a long line. First, in our work plan, item 4D calls for this very discussion of scope, so that -- so we are complying with our work plan in discussing this. So that is just to respond to the idea that we somehow veered off from our work plan.

And in terms of the distillation document, these are positions that have been suggested. I didn't want to prejudice the matter by trying to organize the main one fashion or another, because that would characterize the matter. So I was trying to remain as neutral as possible, so that people could consider the matter.

I have a question for you, Thiago. In a sense we have moved on from the distillation document to Thomas' intervention as kind of being the question before us. So I'd like to see, actually, if you have a comment on that directly, so that we don't kind of lose that as the point of our discussion.

>> THIAGO JARDIM: Am I allowed to answer your question now?

>> GREG SHATAN: Please, go ahead.

>> THIAGO JARDIM: Thank you. So my impression at this point, and I reserve my position for a later development, if you will, is that Thomas' suggestion, again, relates to remedies. It has an impact on remedies. I wouldn't say it's too early, but if it's too early, it's because the group has not done its work as it should be doing. But again I only entered this Working Group at a later stage, to say anything about this.

But Thomas' suggestion would, again, focus on remedies. So we would be, as I understood it, seeing what remedies, what solutions gets most traction: Whether this is immunity, whether this is a change of place of incorporation. And, again, have we finished our examination of the issues? We haven't even finished discussing the questions that need to be discussed and other issues that have arisen in the main list.

So that's why I think it's not the way forward to look at which solutions have traction until we have finished our track of identifying the problems.

Thank you.

>> GREG SHATAN Thank you. I guess that's more of a procedural objection. The substance of his statement was that some of those solutions that you mentioned would not ever get consensus in the group and that we should focus our scope to move beyond them.

But I don't want to let the rest of the queue stay on the vine any more. So I think the next hand is from David McCauley. David, please go ahead.

>> DAVID MCCAULEY: Great. Hi. David McCauley here.

I actually think Kavouss' hand was up before mine. And he is having a problem with hands, so I should defer to Kavouss before I speak.

>> KAVOUSS ARASTEH Go ahead, David. Go ahead. I'll be at the end of the queue. Go ahead, please, David.

>> DAVID MCCAULEY: Thank you, Kavouss. And David McCauley for the record here.

I would like to state my position as strongly in support of Thomas. And I put in a chat an email that I made on the subject, I've done this a couple times recently, in which I spoke to what I thought was a scope issue. But in addition to stating that I continue to believe as I did then, I think it's interesting to note that my email was back in September. We've discussed ICANN's headquarters location, even though I personally think it's out of scope, a number of times. It's been a discussion that has been in peaks and valleys of various intensity. But it's been a number of times it's been at the peak. And I actually think it's time to wrap the discussion up.

On the approaches that you mentioned, Greg I would support approach B. It's time it just say the status quo is ICANN's formation is in jurisdiction -- is in California, et cetera.

You mentioned important words, status quo, and I'll get to that in just a minute. But I did want to, with respect, disagree with Thiago's comments with respect to what our agreement is. In annex 12 there are important predicates stated in paragraphs 26, 27, and 28 that inform the later reading. And he's right. I believe that paragraph 30 is the operative paragraph. But that paragraph says that primarily the work is with respect to settlement of disputes within ICANN involving the choice of jurisdiction and applicable laws and not necessarily the location where ICANN is located.

Later, where Thiago identified or mentioned the "identifying the potential alternatives," that came under a heading that said "Consideration of jurisdiction in Workstream 2 will focus on settlement of dispute jurisdiction issues and include certain subbullets.

While I personally think headquarters location is out of scope, I think it's important to state why I think we should move on now. Frankly, it seems to me that for such an important matter, there should be a standard. And the standard I think is jurisdiction should not be changed. Headquarters, unless there is a material problem that simply can't be resolved, and there is an alternative available where that problem would not exist and no new problem of materiality would be shown. That involves an inspection, a review of laws, similar to what we did in Workstream 1 for any number of alternatives. I just think it not within our scope, our time, our budget, and I think the status quo gets the advantage in this. I think in order to change the status quo, the burden is on those who would say to do it.

Often, in this debate, sanctions, OFAC, has been put on the table. So I started looking on the Internet and within ten minutes I saw EU sanctions, I saw Swiss sanctions, I saw Australian sanctions. Sovereign nations reserve to themselves the right to impose sanctions. That is not going to change. And I think with respect to OFAC, it's the application of OFAC, not looking at the paper it's written on, but the experience with OFAC has been it's not been a material problem. It's not been the greatest thing in the world, but it's not been a material problem that

cannot be resolved

I think Workstream 2, this subgroup, we simply don't have the experience, we don't have the skills, the ability to deal with important questions, reasonable questions that have been raised about immunity and Treaty status. But those are for other forums, not for ours. Not for Workstream 2. At least that's my opinion.

And I again repeat what I think we have said a number of times in plenaries and the subgroup is if we're going to look at alternatives, let's go back to SIDDLEY, let's get the budget and start looking. I think that would be unwise. I think -- I just think that it's time to wrap this up.

So I would support your approach B. It's time to just say that status quo is what it is, and move on. I think a holistic reading of annex 12 is that our review should be with respect to gaps that might or might not exist with respect to enforcing the accountability measures that we just put in place for ICANN.

Thank you very much, Greg.

>> GREG SHATAN: Thank you, David.

I'll move to PARMINDER. I think, David, you amply explained that position. PARMINDER, please go ahead.

>> PARMINDER JEET SINGH: Thank you, Greg. And thank you, everyone.

I would start by saying what I put in the chat window about I find this as strange (inaudible) this group's work. I find it quite strange that (inaudible) the subgroup here --

>> Excuse me. PARMINDER, a number of us are having difficulty hearing you. So...

>> PARMINDER JEET SINGH: Okay.

>> GREG SHATAN: Speak up or try to adjust your mic in some fashion.

>> PARMINDER JEET SINGH: Is it better now? Can you hear me now?

>> GREG SHATAN: It's a little better. Still very low.

>> PARMINDER JEET SINGH: Okay. I'll try to speak but do point out if I'm not coming through.

I'm trying to follow the transcript, and find it seems that I'm inaudible. Okay. It's better now.

Yes. So I find it quite extraordinary that the Chairs of the CCWG and the Chair of the subgroup have come up with such a sweeping intervention, completing the dimension of our work, and I do not see much basis for that in the discussions which have happened in this group and also face-to-face in this group. So I'm unable to agree with that intervention.

It was the Chairs and the subgroup Chair who devised the formula that we would talk about the issues and then see how the issues can be sorted out.

I think that we have jumped to foreclose the possibility of some solution, which has not been argued how we jumped to that stage. And I think we would have to build a justification of how and why we are doing what we are doing now. I don't agree with it at all.

Very serious issues are being put up which creates problems for a lot of people in the world, whether it's CFAC or judgments from codes, which are projected in the future. And people are bothered about how things would be. And no one has given solutions to those large problems. And we have now said that whatever those problems are, we are not going to take up those given solutions which would be among the solutions possible in the basket. That is not understandable for me. I can't understand how some of you are not responding to the problems which are being stated. And if those are not the problems, then what are the problems that we are foreseeing in this group?

I completely almost in that sense. So we were talking about issues. I don't see why we have jumped to solutions. What happened from the fact that the responses did start talking about immunity. We talked about incorporation of ICANN. And it has somehow triggered a panicked reaction to stop the group from doing the work which it was supposed to do for the last one year. And a lot of people have put in a lot of effort to it.

So I just request the co-chairs to withdraw the line of action that they are proposing.

Meanwhile, what I heard was that incorporation and immunity would not be discussed. And we will go forward as if these possibilities do not exist.

I want to inquire how immunity at least was also included as a possibility which was not on the table, and how can the Chairs exercise this kind of right to decide that we would not talk about a certain possibility which has not even been discussed and a lot of people have described it as an immunity exists when the incorporation continues within the US. So this kind of extreme intervention is completely undemocratic, uncalled for, and should be withdrawn immediately.

And I would also like to know the status of the co-chairs' intervention at this stage in the group's work. What status does it have right now? And then we can decide as a group how we can follow up on the statement which I heard earlier made by Thomas.

A few other issues, for example, some observations by David, but I think I've been talking for some time. I'll come back later. And this is all for this segment.

Thank you, Greg.

>> GREG SHATAN: Thank you, Par minder. I'll move straight to Paul McGrady.

>> PAUL McGRADY: Thanks. Paul McGrady, for the record. So I kind of feel like we're back where we were before we had all the clarity of last week's call, unfortunately. Previous speakers on this call suggest that we discuss California information. We have, we have done that at great length and repeatedly. Whether or not it's actually in scope, we have discussed it for a long time. There simply is no consensus to change it from California.

I think we're getting confused. Not agreeing with the position doesn't mean that we haven't discussed the issue. It just means that there is not agreement on it. Even if we were to agree, that California is out and some other jurisdiction is in, to be thorough, we would have to review each substantive jurisdiction question through the lens of all 200 plus jurisdictions, and that is impractical. Other wise, we are just picking favorite jurisdictions of whoever happens to be on the call, which doesn't seem thorough to me. So as we can see, that is quite impractical and another reason why there is no consensus to change from California.

I'm concerned that this anti-California, all-or-nothing approach brings us close to dysfunction. If we can't agree on the question to ask the plenary, then at some point we have to come clean and just tell the plenary that we have not been able to get to any recommendations on jurisdiction, which I think would be a shame, because there are some substantive questions and improvements that could be made within the scope of California law which is currently the status quo.

And, lastly, on the issue of immunity, you know this is the Accountability CCWG. Immunity is the opposite of accountability. I don't feel we have done anybody harm by not considering adopting the opposite of what we are here to do. It would be like discussing how to improve staff opacity on the -- on a Working Group looking at whether or not staff should be open and transparent.

I don't think that there is an obligation to discuss the opposite of what we have been chartered to do. So I'll not waste too much sleep on that particular point.

I would like for us to just acknowledge the fact that we have talked about this and talked

about this and talked about it. Either we need to come to a conclusion as a group that we have talked about this enough and we can get on with the real work, which is not being done because we're still talking about this. Or we have to go to the plenary and tell them hey, we failed. You can give us direction on this California issue, lay it to rest or not. And then we can get back to work. Or you can just say thanks for trying and we can just hang up our skates.

Thanks.

>> GREG SHATAN Thank you, Paul. Well stated. I appreciate the statement of your views. And relatively short order.

Phil Corwin, please go ahead

>> PHIL CORWIN Thank you. Phil, for the record I'll be pretty brief. We will well more than a year into this exercise. Our assignment is to follow up on a decision of the Phase I CCWG which spent millions and millions of dollars creating an accountability framework that would be effective within the context of California nonprofit law. Most of us seem to believe that our job is to address further questions within that context. We have a small group within this subgroup who seem to be dissatisfied unless it comes up with a recommendation to move ICANN out of the United States and/or set it up as an International organization, which was the opposite of what the transition intended.

And at a certain point, endlessly intervening in our discussions to try to divert it back to an avenue for which there is clearly no consensus support within this subgroup, becomes dilatory and disruptive. I would hope that those who continue to do that would work with us to address the remaining issues, which are within the scope of this subgroup. We can spend years identifying this or that theoretical problem under US law and looking at dozens of alternative jurisdictions, which I am sure we will find other laws that would create other problems for an organization structured as ICANN is. I don't believe, personally, that is a fruitful pursuit.

And I'll stop there. I could go on longer. But, really, continually bringing this up is becoming dilatory, disruptive, and preventing us from getting our work done. And I don't know what the rules are in the CCWG within the context of an GNSO Working Group is an extreme recommendation. It's not one I'm recommending now. But at a point certain, when members of the GNSO Working Group continue to impede its ability to complete its mission, there are remedies for that.

I hope we don't get to that point. I don't know if such remedies are available in this Working Group. But it's clear that we're going to be wasting one more hour where we make absolutely no progress on the remaining issues before us, because we have a few members who simply will not accept that their desired outcome has no consensus support.

Thank you.

>> GREG SHATAN Thank you, Phil. I hope that this two-part call will end this discussion one way or the other.

So far we have only 11 minutes left. So I'll ask Kavouss to be brief, and Thiago to be brief, since this is his second intercession. Oh, I see Thiago has put his hand down. So we have Kavouss and then Thomas.

>> KAVOUSS ARASTEH Hello?

>> GREG SHATAN Kavouss, please go ahead. And the queue is closed after Thomas.

>> KAVOUSS ARASTEH Do you hear me well, please?

>> GREG SHATAN Yes, we hear you very well.

>> KAVOUSS ARASTEH Yes. I think in my view, the issue of jurisdiction is the heart of the whole process. If we fail to address this issue properly, the transition has not been

properly taken place. Why the issue of change of the place of ICANN came to the table? Why? Because of the impact of the jurisdiction by which ICANN Incorporation remains in California.

So rather than at this stage you discuss alternative places of incorporation, which I don't want to say no, don't discuss it. But instead of going to that directly, can you please or can we please exactly, properly, deeply discuss what is the impact of jurisdiction when ICANN can continue to be in California. If you address the impact, which is the worry, anxiety, difficulty of millions of people, but not this limited number of participants from one single country, and the millions of people's Internet that we are worried about the jurisdiction because of the impact of jurisdiction when ICANN is in California.

If you address that impact, and try to resolve the impact, or minimize it, or zero it down, perhaps, we may come to the position that looking into an alternative may take another several years, knowing that the whole transition was based on the California law. Right or wrong. But that is that.

That is what Sidley pushed us in April 2015. All of the mis based on that. So why not reconcentrate to see what are the impacts of that? And how impacts affect the people? OFAC is one of the many an example of the many and you have to also study that. OFAC when designed in 1948 was not for the domain name. It was for something else. For some other political situation prevailing at that time. Some of the people maybe don't remember, but some others do remember why it was created. But now it's put it automatically to apply it to the domain name. So this is an example of impact.

So I am not opposed to any alternative. But why not to first look at the situation and identify the impact of jurisdiction when ICANN continues to be in California. And then address subsidy of that OFAC and others. That may give us some time to really go to the heart of the problem rather than going back and forth. I don't think that the alternative change or alternative location is out of order or out of the table or off the table. It is there. But let us first talk about the impact. Is it possible that we do that? Thank you.

>> GREG SHATAN: Thank you, Kavouss. I think it's fairly clear that we have essentially two points of view here on the call. But I'll turn it to Thomas. Thomas, please go ahead.

>> THOMAS RICKERT: Thanks very much, Greg and thanks everyone for your contributions. I know that the direction that the co-chairs offered is not liked by everyone. And I don't expect it to be liked by everyone. But as co-chairs we have to ensure that we, number one, follow the working principles that we have applied; and, number two, that we try to navigate this group towards the consensus recommendations in a timely fashion. It's not an extraordinary decision as it was tagged previously during this call. It is a decision that has several precedents. And for those who have not been around in Workstream 1, you will find in the transcript and in the recordings of various meeting situations where the co-chairs had to make a determination on what recommendations should be further pursued and which recommendations should be dropped. If you don't do that at some point during the work, there will never be a result. And in this case the group has already looked at various scenarios' impact. And I'll not speak to that. Some of you have commented on that in the chat. And I think that the participants of the subteam are much better placed than me to elaborate on the details.

But I do hope that despite the fact that some of you might be disappointed with this procedure, decision, that you can accept the fact that we are following what we have done from the very beginning in the CCWG in order to navigate the process to successful conclusion.

And concerns that you have put on the record will be reported when we report back to the

plenary. So there is an opportunity for the plenary to comment on this. And they will also hear your concerns.

And, again, and let me make this abundantly clear, we had many, many junctions in our work where some were extremely unhappy with that proposal, and it might be procedural proposals, it might be substantive proposals, could not be further pursued because they didn't get sufficient support to make it to a consensus recommendation at the end of the day, where those folks were unhappy. And they took the opportunity, as foreseen in our charter, to add a minority statement to the final report. And there were opportunities where we put recommendations in our report where minority statements have been added to that, and where after the public comment period work was revisited. So it's not entirely ruled out that further discussions make us revisit certain topics. This has also happened in the past in the CCWG.

But based on the information that we have now based on the analysis of what has happened in this very Working Group, the procedural decision, as I outlined earlier, is the one that we're going to communicate to the plenary.

Thank you very much.

>> GREG SHATAN Thank you, Thomas. I think that -- what I'd like to do at this point is to take -- well, take a sense of consensus or a sense of the room here, after this essentially two-part call. I take Thomas's original statement back into the chat so you can see it. But the essence, of course, is, as Thomas put it, we are narrowing our alternatives here.

So I'd like to see green checks for those -- well, first, let's handle it this way. I'd like to see any objections to Thomas' statement. If you have an objection, please give us a red cross. If you object to proceeding in this manner, please give us a red cross. Alright. Right now I'm seeing one red cross.

Are there any objections -- any other objections to proceeding in the manner that Thomas suggested? Since I heard a couple of other objections, I just want to make sure that everyone's objections are being appropriately noted.

Kavouss, your hand is up. I don't know if there is an objection under that or not. I will assume not.

As Thomas noted, minority reports can be considered. I see a red X from Par mander, as well. So I see two objections. I see no other objections.

So I will take it in this -- that the decision from this meeting or pair of meetings, is that we proceed in the position suggested by Thomas and approved here by the subgroup to narrow our consideration as stated. So we will post that to the list. And then I expect this will be announced, as Thomas said, to the plenary at the next plenary session.

So with that, it's now 10:01 and we should adjourn. And I expect with our next meeting of this group that we will be going back to the issues and looking at the issues again, and I think hopefully with a fierce focus on identifying issues and finding recommendations to make.

So objections are noted. Okay. Thomas says just to be clear, this is not a vote, but we will report objections to the plenary. So I see an objection from Kavouss. So we have three objections to note.

In any case, thank you all for participating. Thai go has an objection as well, for four objections.

So I see people are dropping off as we have gone past the hour. So we will now end this call. The call is adjourned, you may stop the recording.

Goodbye, all.

(End of call, 10:03 AM CT)

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