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>> GREG SHATAN: Hi this is Greg Shatan. We will be getting started in just a minute. Hi everyone.
It is three minutes after 3. So why don't we get started with the call.

>> This meeting is now being recorded.

>> GREG SHATAN: Welcome to the CCWG-Accountability workstream 2 jurisdiction subgroup meeting, No. 36 on June 20, 2017 at 1900 UTC. Let me remind everyone to mute when they are not speaking.

So let us review the agenda. First we will have our minute or two of administration followed by a couple of minutes of review of the decisions and action items from the last call. And then in to the body of the call where we will take a look for the first time at the list of proposed issues. Followed by reports on THE questionnaire response and also review of ICANN litigation. I see that we do have Raphael on the call. So we should be able to cover his -- the cases that he summarized. I don't know that we have David McAuley. I am here as well. We will be able to cover those three cases assuming that time permits. And then we will have AOB and adjournment. And the

next time we all see each other will be together to some extent will BE the Plenary in Johannesburg. So get us -- any comments on the agenda before we move on? Seeing none we will move back to going through the agenda.

First, changes to SOIs, does anybody have a change to their statement of interest? Ahh, no other changes to statements of interest. I have a change to my statement of interest. I have joined a new law firm. Hopefully you won't hear me say that again. I'm now a partner at the Bortstein Legal Group, a technology specialty law firm with locations in New York and London. So that is one change to an SOI that needs to be noted.

Do we have any audio only participants? It seems we do not. And I don't see any phone number only participants in the attendance list in Adobe. So we seem to be in good shape there.

So let's move on to item 4 in the agenda. And in case you weren't reading the list today as I noted in response to an e-mail from (inaudible), this -- this item here is not an invitation to discuss what we have discussed on the last two calls. The decision section is intended to report decisions from a prior call for purposes of continuity and information since the matter discussed there and the last sentence says this will be taken up at the CCWG Plenary face to face. Since this is now a matter before the Plenary and not a matter before this subgroup, I am not expecting that we will have a discussion on this particular point, but I will read out the summary of what was decided at the last call.

Thomas Rickert, speaking for the CCWG Co-Chairs, reminded the Subgroup of the method used in WS1 of narrowing alternatives at difficult junctions by focusing on the option that had the most traction. Applying this method, the Co-Chairs concluded that the Jurisdiction Subgroup will take "California jurisdiction", i.e., law, place of incorporation and headquarters location, as a baseline for all recommendations, and will work on solutions founded on this. The Subgroup will not pursue recommendations to change ICANN's jurisdiction of incorporation or headquarters location or seek immunity for ICANN, recognizing there is no possibility of consensus for an immunity-based concept or a change of place of incorporation. This does not eliminate any issues; the Subgroup can discuss all issues that might arise during deliberations. This will be taken up at the CCWG Plenary F2F at ICANN59.

Thiago, your hand is up, but do be brief since this is not intended to reopen this discussion which will take place at the Plenary.

>> THIAGO JARDIM: Thank you, Greg. I'm going to be brief. I do understand that the issue will be taken to the CCWG Plenary as you said. At that point I will make sure to state that these

prevail. If you allow me, that I would like to share one or two ideas for the record for clarity which I have some -- I might eventually carry them to the Plenary meeting. Last week during our online meeting supposed a decision was taken and it has become apparent and clear now after a number of e-mails, that a decision was not taken. Instead a decision was imposed on us as I understand. You can read on the agenda in front of you and I will use the wording of the decision. Cochairs from the CCWG concluded that the group will not pursue certain recommendations. Now the way the decision is -- sounds to me like a belated confession of guilt. I noticed that many people reacted to the announcement last week that the Subgroup had adopted a proposal by the CCWG cochair and many expressed that they would not support. And they would be interested in better discussing the proposal.

What was done with their views, what was done to my request that the cochair's proposal be subjected to the scrutiny of the Sun group in a transparent way. The other consent questions of lack of support of proposal was expressed in the main list, in particular was the admission now that the decision was imposed upon the Subgroup from above.

Now let me reproduce what others have been saying about this. Without a prior authorization from the CCWG Plenary, and I stress prior authorization without a prior authorization, the cochairs do not have the authority to interfere with the work of the Subgroup. This is one point. The second and very brief point is on substance of the cochair's proposal. And among other things it says that the Subgroup will not seek immunity for ICANN. There is a no consensus to change ICANN's place of incorporation. Otherwise as the argument goes because ICANN will not change the place of incorporation the Subgroup will not seek immunity.

I don't know where this idea came from. There is no correlation that the assumption that ICANN will remain incorporated in California and a conclusion that as a consequence all forms of immunity is off the table and that the immunity avenue is entirely out of the question and was not for the cochair to substitute his views for the view of the Subgroup. Thank you.

>> GREG SHATAN: Thiago, I will let Thomas Rickert who is on the call respond with regard to the issues you raised regarding the cochairs' decision. I will say that I disagree with your retelling of history. And I find it to be inconsistent with my recollections and with the facts that I have seen. I did at the end of the call last week seek opposition to the cochairs' proposal. We noted for and for opposition, although you left, I noted in opposition since your

views were clear before you left. Really the same four people plus one other and it is an associate one other, one of the four, who expressed views, maybe two others. So there is not a ground swell of disapproval of the cochairs' decision. Quite the opposite. And I believe that we stand on a firm footing with regard to the co -- the group's views on this. I do understand it's not unanimous and that's not required.

Just one last point, there is not, in fact, a statement that the immunity is taken off the table as a consequence of the discussion. Decision to take jurisdiction place and corporation off the table. It is a related decision in that the -- but it is not a consequence. So that is not really here. In any case I will turn to Thomas to respond hopefully briefly. Thank you.

>> THOMAS RICKERT: Thanks very much, Greg. Hello. This is Thomas Rickert speaking. I will not go in to detail, although Thiago's statement would require some research response. It is perfectly okay for Thiago to present the views of his government on the subject and that will certainly be conveyed. And it is on record now for everyone to read. But I will leave it to the group to go to the transcript of the last two meetings where I explained in detail how the cochairs came to the conclusion that we now see summarized in the Adobe room in front of us.

I'm sure that you will probably or we would need -- that one can argue whether Thiago's summary was an excellent reflection of what was said. I would suggest that we follow Greg's recommendation for today's meeting and not reopen the debate on this very topic.

As indicated on the list we do plan to explain this to the CCWG Plenary when we convene in Johannesburg and I think that neither would (cutting out) be in a position to change Thiago and others. It is not my intention to do so. And it would be a duplication of efforts if we went through it today and then in Johannesburg. But rest assured that we will explain what we did for the benefit of the whole CCWG.

And let me also refresh your memory whenever you took the decision as we did in this case opens the opportunity to file minority statements and the whole global community would have the opportunity to review what has been discussed and what views and positions were taken, and then inform the CCWG on how to deal with this in the final report. So I should pause here. Thanks, Greg, for letting me speak in this meeting again. And I will now let you turn your attention to the substantive work. Thank you.

>> GREG SHATAN: Thank you, Thomas. Thiago also has a hand up and we'll move on to the next point. Just a warning I am running this off a tablet which does not show the captioning

because that is an unsupported content in the tablet version and does not queue up hands. But such is life. Can't get the Adobe Connect installer passed the administrator privileges on my office computer, new office computer. Anyway, let's not go further on this because we could obviously discuss this forever as we have for two meetings and perhaps for ten months as well.

Let us move to the list of proposed issues. I don't know, I did not ask staff to download the list and put it up. But I checked it just before the meeting and it is blank. But that's not entirely surprising. I did not create this document until last Friday. And obviously Friday before the week before meeting is not my ideal time to start a cataloging project or any project. So I'm hopeful that we will be able to crowdsource this work to our group. Jorge asked the list and offers his apologies for not being on the call. Jorge asked if this is something that staff can do. I will consult with staff and see if all or any part of the job transporting or migrating issues, potential issues from the various documents that we had and discussions and the like to this master list can be helped by staff.

And maybe there will be some division of labor on that. So I invite each of you to go to the list. And if you have contributed to our work in any way, if you have raised any proposed issues or reviewed litigation or reviewed a questionnaire response, which proposed some issues, if you could add those to the list, just the first few columns at this point which is just the -- kind of a short title for the proposed issue, a description of the proposed issue that I expect to be fairly lengthy but since the document is empty, row is only one line high but I am sure that will change. Submitted by just a note of who was putting it in to this list and if it is -- it has a -- and then the date it is submitted. And the next is the source for proposed issue, but if you are submitting it based on a questionnaire response from say the Internet governance project you would put that there and add a link going back to their submission. Hopefully fairly simple, straightforward. And in retrospect as Shawn noted in the list it would have been nice if I had thought of doing this ten months ago when and we had kept catalogs as we moved along. But if I were perfect I would -- I don't know what I would be. But I probably wouldn't be here.

In any case, any questions or thoughts or comments on the list of proposed issues? I think it is fairly self-explanatory. I'm not seeing any hands. So we can move on.

And I'll move to the first -- well, we only have one this time, questionnaire response, response of Mohammad which was analyzed by Erich Schweighofer. Erich, if I can ask you to take

the microphone and discuss and summarize this response for us that would be very helpful.

>> ERICH SCHWEIGHOFER: It is quite a short response. It refers to question 1 and mentions that the essential services and domain name and (inaudible) because of sanctions in particular U.S. which and it claims that such conflicts are a fact to main related services. And ICANN should neutralize such conflicts. And concerning question 4A mentions that registrars of domain name registrants subject in Iran, and both American -- and American have stopped providing services. There is the last item mentions also the issues around Internet domains. There was a case before the District of Columbia and then also the court of appeals. And this court decided that this issue is not possible due to a reasoning that is part interest maybe, in that Mousavi doesn't present any documents. Maybe -- or can't read it. It is a statement and it seems to be quite true, that this is happening. My analysis it is a bit similar like the Russian cases, that there are sanction regimes by United States, by European Union and others. Offer financial action task force regime that is run under have the umbrella of OECD concerning money laundering and financing and the various countries implement these rules. And then ICANN should drag this kind of -- when it comes to international law ICANN should respect it and it means that sanction regimes should be followed, meaning that there will be some blocking on these rules. (Cutting out).

On this -- this sanction (cutting out) are not full of the own community. Only the particular state territories, how to act on this. And my view -- the Weinstein case belabors that because the fact that (cutting out). Particular party, alone and its particular real regime is not affecting this regime by implementing sanctions --

>> It is not jurisdiction or U.S. courts have no authority to determine, for example, a re-delegation of a country called Top Level Domain. But the case means and this is my understanding is that in that particular case U.S. judges decide to not exercise, not to -- decided not to decide in favor of plaintiff because they exercised a discretion. Attempted to protect the interest of third parties but at the same time the decision does not mean that the U.S. courts will act similarly. Will that -- seems decision on the contrary is a re-estimation of the possibility the circumstances are required in the future, a U.S. judge will be in a position to decide a Country Code Top Level Domain must be redelegated to another party, sort of expo creation? I suppose I wrote an e-mail on this subject before and I am re-expressing those views that are already stated there. Thank you.

>> GREG SHATAN: Thiago, as you are probably well aware we are not discussing that case. That case was analyzed on our call some weeks ago when we were discussing the Mousavi response. I don't think that Erich is prepared to discuss the case. I don't know that we have the person on the call who briefed that case for the group. I read the case awhile ago. My recollection of the holding the case is quite different from yours. I believe the finding was that the .ir was not an asset and thus attached. And what you call discretion we call a court opinion and that's what judges do.

So I don't think there is an exercise of discretion. It was an exercise of the judge's authority, that they exist to do. So I don't want us to get sidetracked on to a discussion of that case, especially since we are not -- that's not what was on the agenda. But in any case, that's my recollection. So I don't think trying to score points on that case is the point of the Mousavi discussion. If you have any comments on the Mousavi comment that would be great. I see your hand is up, Milton.

>> Milton: Yes. Hello. Can we -- can y'all hear me?

>> GREG SHATAN: Fairly well.

>> Milton: The Mousavi comments indicate that the Iranians still feel a bit nervous about the status of these ccTLDs, and I can't help but correct your statement, the court most emphatically did not decide it was not an asset. Indeed that it was a subject of the rather long law review article that (inaudible) and I published. They decided that it could very well be an asset, but that they were unwilling to interfere with the ICANN regime by redelegating.

And in terms of Thiago's concern about whether this was discretionary, it might be useful in terms of responding to Mousavi's concerns as to whether that decision has how much of a precedential value it has. It is not correct to say it was purely discretionary and some other court could come up with anything they liked. I think it does have some precedential value since it is an appeals court. And it is sitting a marker down in a fairly new area but maybe some of the true lawyers here should comment on that.

>> GREG SHATAN: Thank you. I might suggest that if we want to have an extended discussion on this case, and, you know, it is a case obviously that has in relation to the Internet Governance project comment questionnaire response as well as this one, that we should put that on the agenda so that people can be prepared to discuss the case. Obviously since you wrote on it it is etched in your brain. For the rest of us not so much. Thiago, briefly please. And I hope this is on the Mousavi comment.

>> THIAGO JARDIM: Thank you, Greg. I am referring to that

case. I am going to be referring to that case which was discussed in the past apparently. And I saw and I see in the document in front of us the reference of that particular case. As you can see there is mention of Weinstein it is versus the Islamic Republic of Iran. It is not that much different from the one currently under discussion. It concerns the consequences of both extensions. It concerns the possibility of U.S. judges on the basis of fact extensions, 14 re-delegations of Country Code Top Level Domains. I understand we will come back to these discussions in the future. But it seems to me that it is also (cutting out).

>> GREG SHATAN: I lost Thiago.

>> THIAGO JARDIM: It is a great time to -- (cutting out). I am not sure what was the last thing you heard me saying. But I remain to say it seems to me that this is still an appropriate time to raise such issues that are closely connected to the questionnaire under consideration. Thank you.

>> GREG SHATAN: Erich, why don't you go ahead, please.

>> ERICH SCHWEIGHOFER: Erich speaking. I didn't read all the details of this case, but my indication, my understanding was that courts are at least reluctant to third party interest and face Country Code Top Level Domain. The problem occurs in all courts worldwide. The United States is not the only country where most efforts and most proceedings go on. Therefore, we should reread the case again and see if this ruling may be useful to the other courts. Thank you.

>> GREG SHATAN: Thank you. I think that is a good point. We can come back to these points on another call as well as if someone is going to spin out a theory that somehow (inaudible) could be used or redelegate Top Level Domains which I find to be an unsupported theory, but we should not do it on this call because we have three litigations to review. And we are now at 35 after the hour.

I am not hearing Thiago. In any case, let's move along to item 7, and review of ICANN litigation. We have two litigations that Raphael summarized. So if we could put the first one up, Bord versus Banco de Chile. And I will turn the mic over to Raphael.

>> RAPHAEL BEAUREGARD-LACROIX: Thanks, Greg. So Raphael for the record. So let's start with the Bord versus Banco, the board has been presenting now are not so important. I think for -- as far as we are concerned now because they also involve the relation of ICANN with the Department of Commerce which is the relation that doesn't really exist any longer but for the sake of review that's not what we done. Bord versus Banco de Chile is the story of Eric Bord that registered the domain name Banco de Chile which became the Central Bank of Chile. They

filed a UDRP against Eric Bord and they brought the domain name back and Eric Bord wasn't very happy with it and tried to sue both the Department of Commerce and the actual Central Bank of Chile in the U.S. District Court of Virginia.

Now we go to the document, Eric Bord and the Central Bank of Chile and the Department of Commerce, Eric Bord is American and the Central Bank of Chile is Chilean. And the choice of law there was no contract in this case because the -- they -- basically Eric Bord was suing the Department of Commerce on U.S. and commerce law. It is interesting to know that in this case (cutting out) the Central Bank of Chile accepted the jurisdiction of the court.

I don't know what would happen if they refused. But they accepted and obviously in the case of the Department of Commerce because they are a government agency they were by default within the jurisdiction of the courts. That was not applicable in this case. The (inaudible) of law (inaudible). It is a case that happens over six months between 2001 and 2002. Now the only part relevant and is the part where Eric Bord is suing the Department of Commerce, the part between them and the Central Bank of Chile is not covered. It is not relevant for. He argues against the Department of Commerce there was a legal wrong pursuant to government agency action that there was an unlawful delegation to "authority to make policy". And this is something that people who have been longer than me with ICANN have a debate on this part and basically require there would be an arbitration procedure without proper authorization.

This whole idea about the fact that the Department of Commerce delegated policy authority without proper legislative authorization. And there was no preliminary release and what you want -- it was just an induction against the Delegation. Now he just -- the whole suit was basically thrown out. Didn't get anything out of it.

Now if we look at the relevance to our mandate, I mean given that the IANA transition is over my understanding is it is not really relevant for us anymore. Obviously had this court decided that the UDRP was an unlawful delegation of powers to ICANN it could put the whole ICANN business in to jeopardy and that didn't happen thankfully.

This was dismissed on the lack of understanding because of the basis of U.S. and administrative law. I used a three-prong test which I don't list in the statement because it is a bit convoluted and they report just on all accounts, yeah. So that's all for this case. So I don't know, Greg, if you want me to go over the next one or if you prefer that if there is any questions we take them now.

>> GREG SHATAN: Why don't we see now if there are any

questions on this case before we move on to the next one. I don't see any hands however. I don't have any questions myself. So why don't we move on to the second case.

>> RAPHAEL BEAUREGARD-LACROIX: All right. So for the record Raphael again. Schreiber, the idea that the agenda -- I see the agenda was listing Employ Media versus ICANN and that was a previous case. Schreiber versus Dunabin. It was not good for good reasons. It was bordering frivolous case. So basically Schreiber was a Canadian restaurant and had a Canadian trademark on its name. Figures out that there is someone in the UK who registered through the UK.com and decides to sue everyone involved. So I list all the defendants. Lorraine Dunabin, the woman who registered and the registry for .com and ICANN registrar involved for both cases and defendant A and B. CentralNic and Lorraine Dunabin are British companies or persons and all the rest are American and suing them as a pro se litigant. He is representing himself. So no lawyer. There is huge massive documents on that case. It is rather complex because the way that he derived the whole case is extremely convoluted.

But the way he makes his point makes it very hard to understand his point or like what kind of relief he wants and gets his point if he is not happy that someone registered (inaudible). Make a law case on its own. So choice of contracts, I mean not really know because it is not clear. There is possibly a lot of contracts involved but it is not really relevant in this case. Again not relevant and not (inaudible). We are talking about U.S. law. The case -- 2012 and then in 2015 basically when he files a notice of appeal is late and have a proper hearing of this case. And the fact that he was late and it didn't work out.

So cause of the facts, basically he is alleging that there is both Plenary and contributory trademark, infringement of this trademark which is (inaudible). But then the problem with this whole thing is that the trademark is in Canada and the main defendant is in the UK and is suing all these people. ICANN and the Department of Commerce and Verisign.

So I mean to put it short, this case was thrown out on lack of -- decline. With the reason I suppose and failure or lack of subject matter jurisdiction of the courts. Because basically it is on its way out. This would have convince the court to apply (inaudible) to protect trademarks. And there is no proper U.S. trademark if you satisfy a few criteria. For example, the trademark is very important in U.S. or these kind of things. You can still have your trademark protected in the U.S. even if it is not a proper U.S. trademark. It is really not the case that two companies were actually different.

So all these claims were business. I put a quote of the court there. The jurisdiction was contested. I put yes, and the subject matter was contested because the court threw out the whole case on lack of subject matter jurisdiction. And now the jurisdiction of the court was not contested in that sense. Relevance was main of the working group and this was not -- this was almost frivolous. I don't think that the guy himself had malicious intentions but he didn't know what he was doing. In fact, I mean it has no impact on ICANN.

Now the impact is the case has been decided the other way. It is hard to imagine that it would have been but a little bit for the Banco Chile case, if ICANN can become liable for this kind of trademark infringement on the part of private parties potentially that be would a major issue for ICANN. Now thankfully and I put here the safe harbor of the Landon Act. It cannot be held liable except in the case when it contributes itself to the infringement of trademark. Lack of the merits, yes, it did, threw the case out on this basis. So that's pretty much it for Schreiber versus Dunabin.

>> GREG SHATAN: Thank you, Raphael. Any questions or comments on the Schreiber case? It was certainly a unique case in the analysis of ICANN litigation.

I see no comments on this case. So we'll move on to the third case on our list which is one that I summarized with Commercial Connect versus ICANN and the International Center for Dispute Resolution. This was a case and one of a few that took place relating to the new gTLD round and the purported rights of applicants from the 2000 round whose applications were not accepted at that time.

So Commercial Connect had applied for the .shop TLD back in 2000. It was not approved or disapproved at that time. It was not delegated obviously. And they were told they could have -- it would be considered in the next round. In fact, they were given the opportunity to apply in the 2012 round for .shop and given a discount I believe. \$86,000 refund which required Commercial Connect to sign a release of claims against ICANN.

They applied as a community application but did not get community status. CC made a number of claims that ICANN retained unqualified evaluators who failed to apply objective criteria in the community application. They also -- they filed cases against every other .shop applicant I believe. And the -- they claimed that the applicant guidebook had false and misleading statements and they were induced by them to apply and reliance on those claims. And they were set forth in the complaint that oddly enough was never formally served on ICANN.

The case actually involves more than the fact, it involves some jurisdictional dueling, if you will, Commercial Connect

chose to bring the case in the state of Kentucky, in the federal court in the Western District of Kentucky because that's where the plaintiff is. And they argued this was a proper venue because a substantial part of the events can give rise to the claim happened there. And conducted business with ICANN and ICDR from Louisville, Kentucky. CC had filed a TRO which is also not served and also demanded preliminary permanent injunction basically to stop .shop from being delegated. Requested damages as well.

Their motion for an injunction was denied. And at some point in this proceeding their counsel withdrew because the CC was no longer listening to the advice of a lawyer. CC was given 30 days to find a new lawyer which they didn't. And the corporation cannot be represented pro se by a nonlawyer in federal court.

So ICANN requested the case be dismissed. Both because they never filed the papers on ICANN and because they had no lawyer representing them. And the court issued a show cause order why the case should not be dismissed and CC failed to respond to the order. Didn't have any lawyer either. ICANN made a special appearance, an appearance that preserved their argument that the court didn't have jurisdiction. And the same date the court dismissed the case and the dismissal was without prejudice meaning that the plaintiff could have refiled the case if they chose to do so. It has not chosen to do so.

There was a contested jurisdiction in this case which I describe at great length. Arguing that ICANN and ICDR were under the personal jurisdiction of the court in Kentucky based on minimum conduct and defective defendant's conduct. And ICANN opposed this jurisdiction noting it had no facilities assets in Kentucky. And they do not transact business in to Kentucky, that they have informational websites that can be viewed from Kentucky. And everywhere in the world unless they are blocked and none of them are hosted on servers in Kentucky. There is really nothing there ICANN would argue for jurisdiction to be based on.

So personal jurisdiction to exist in the diversity case there needs to be two factors to satisfy both the forms that Long Arm Statute and constitutional due process, that ICANN argued that there is no subsection of the Kentucky Long Arm Statute that applies to this particular situation. For instance, it does not transaction any business in Kentucky or engage in any other persistent course of conduct in Kentucky. And ICANN showed a number of cases that merely enter in to a contract with a Kentucky company does not support Long Arm jurisdiction over a nonresident, in particular no negotiations took place in Kentucky and there is no subject matter connection to Kentucky.

Websites don't offer any help either.

So also argued that didn't -- ICANN argued that the court's jurisdiction did not meet the constitutional due process that argued that ICANN had minimal -- minimum contact with Kentucky such that maintenance of the suit does not (inaudible) fair play of substantial justice. ICANN demonstrated that the court did not have general jurisdiction over ICANN which would require continuous contact with jurisdiction of Kentucky. And they did demonstrate that the court lacked jurisdiction over ICANN. And that would rise in activities in Kentucky that took place related to the cause of action in the complaint.

They found that ICANN avail themselves of privilege of acting in Kentucky. Nowhere did they take activities in the state which would be required. And nor were extra consequences that would make jurisdiction reasonable. So -- it is also -- should be noted that the court's decisions relied on failure to meet the preliminary injunction standard as well. And that was due largely to the releases that ICANN put in to the new gTLD applications.

And therefore found that there was not a likelihood of success on the merits on the part of CC either. So the relevance of the case to our group is that demonstrates that if a court can find that it does not have personal jurisdiction over ICANN or any operations in that state and doesn't otherwise staff the Long Arm Statute in due process clause. So I would say this case protected the operation of ICANN's policies. And also just demonstrates that ICANN can be seen some places and not others.

So that's enough on that case. Are there any questions or comments on the Commercial Connect case? I don't see any there. I don't believe we have David or we do have David. I don't know if you want to try to do economic solutions in two minutes or we should save that for post ICANN 59.

>> DAVID MCAULEY: Greg, I can give it a pretty quick run if you want.

>> GREG SHATAN: Go ahead.

>> DAVID MCAULEY: Okay. Thanks. David for the record. This case is called Economic Solutions versus ICANN. It is one of the very early cases on the ICANN litigation page. And as a consequence it is before they sort of organized how they are going to report these cases. There is only two documents statement by the then ICANN general counsel about certain things. And the court order denying a request for temporary restraining order. The nature of the case was unfair competition, trademark kind of case. Economic Solutions had been engaged by the government of Belize to commercialize the .bc, ccTLD and they were bringing suit to prevent ICANN from delegate .bis and .ebis prospectively. Not everything about the

case can be seen in those -- in the documents. But the issue of interest to our group I'm sort of truncating what I wrote, to our group is that there was a question of whether ICANN was subject to jurisdiction in a federal court in the United States in the Eastern District of Missouri where presumably ESI was located. And so the document of the then general counsel Louie Tuton made the case that ICANN was not subject to jurisdiction. ICANN had no assets there and didn't solicit business there, did not have a bank account in Missouri. No one had travelled to Missouri. No one had met personally with any of the plaintiffs representatives, et cetera, et cetera.

Well, those are sort of ancient facts. Today ICANN staff travels everywhere in the world and has contacts. So this is -- it is relevant -- its relevance is attenuated, but it is an interesting statement. And the court denied the request for a temporary restraining order by ESI. And they probably not made enough of a showing for jurisdiction. And one other thing of relevance they said this probably no showing of eminent harm because ICANN had mentioned that they didn't delegate TLDs. They made recommendations to the Department of Commerce and we know that condition no longer exists. I think it is attenuated but jurisdiction was contested. And if we want more I can go on another call but in the -- in a nutshell that's what happened in this case. Thanks, Greg. That's the end of my comments for now.

>> GREG SHATAN: Thank you, David. Very concise. Any questions for David? I see none. I would ask David if you think there is anything -- if there is anything in that case that rises to a level of proposed issue for us to consider that you added to the issues list, I am not sure that there is one. But --

>> DAVID MCAULEY: Greg, I don't think so. But let me think about it. I hadn't thought about it in terms in the context of the issues list. I will do that between now and the face-to-face meeting. But I think the answer will probably be no. Thanks.

>> GREG SHATAN: Thank you, David. It takes us to the top of the hour. Let me ask briefly if there is truly a pressing AOB? I don't see anyone with AOB. I have no AOB other than to note that we'll be getting back together again not in this Subgroup but in the CCWG Plenary in person and/or remotely at ICANN 59 Johannesburg. Thiago, is that a new hand?

>> THIAGO JARDIM: Yes, it is a new hand. If I may suggest some things -- (Off microphone). We have raised a couple of questions that are of interest to the (inaudible) raising those issues. I raised the concerns related to the possibility of U.S. judges forcing redelegation of Country Code Top Level

Domains. This emerged as we were discussing the questionnaire. You as Rapporteur can take note of those issues being raised and put that on the list and we may eventually come back to those questions.

>> GREG SHATAN: Thiago, if I can ask you to add that to the Google spreadsheet as a proposed issue that would be much appreciated. Thank you. In this case, I was -- I will wish you all safe travels to Johannesburg. Those who are not traveling I wish you not too terrible of a time zone for remote participation. And look forward to our next meeting, and this meeting is adjourned. Thank you very much.

>> Thank you.

>> Thank you. Bye.

(Call concluded at 3:02 p.m. CST)

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