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CCWG ACCOUNTABILITY WORK STREAM 2  
Wednesday, July 26, 2017- 19:00 to 20:00

CCWG-Accountability Work Stream 2

Jurisdiction Subgroup

Meeting 39

July 26, 2017

19:00 UTC

Final Transcript

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>> GREG SHATAN: Okay, it's three minutes after the hour, so why don't we begin the recording and begin the call, please.

[This meeting is now being recorded]

>> GREG SHATAN: Good morning, good afternoon, and good evening. Welcome to CCWG-Accountability Work Stream 2, jurisdiction sup group meeting number 39, July 26, 2017, at 19:00 UTC. I'm Greg Shatan, Rapporteur for the subgroup.

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We have in front of us the agenda and so I welcome you all. That brings us to item two, which is a review of the agenda. Any suggestions now for AOB will be entertained, but discussed at AOB and we will also take suggestions for AOB at AOB time. After the administration minutes, we'll move on briefly review the decisions and action items from our last call. Then go over the subgroup timeline and our plan to produce document and finish our work with the time line of the CCWG. After that -- and on item 5 I'll ask Bernie to go over the overall timeline as I believe he did at ICANN 59 in Johannesburg. Number 6, we'll go over the list of proposed issues which has grown incrementally since the last call, but not significantly. And we'll begin substantive discussion of at least the first item or two on that list, however not yet a discussion of the items relating to sanctions and OFAC since I think we'll want to have both fair warning and possibly a special guest or two on the call for that. Following that, we'll see where we stand on our review of ICANN's litigations. And then do the same for the questionnaire response review. And then come to AOB. And I'll ask now if there's anything anybody would like to put into AOB at this point.

Milton, I see your hand is up. Go ahead please.

>> Yes, I don't have anything to add to AOB, I'm just confused about the agenda. So you repeated here under "decisions and action items" requesting ICANN legal to present on OFAC. Is there any contemplated time or meeting which you are asking them to do this or is that going to be negotiated once you get them?

>> GREG SHATAN: Thanks, Milton. I would say generally speaking as soon as possible, but we

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don't have a particular meeting identified yet as working for all. As soon as we do, we'll get that out to the group.

So hearing no -- I see now Bernie has his hand up. Please go ahead.

>> BERNARD TURCOTTE: Yeah, in response to Milton, I've spoken with ICANN legal, provided -- yesterday -- provided them with the dates of our meetings, expressed the need to have that discussion sooner rather than later, and we are waiting for a date and I'm hoping to get that late this week or early next week. Thank you.

>> GREG SHATAN: Thank you for that, Bernie.

I think that brings us to the end of our agenda review, which brings us back to item 3 of our agenda. First I will call for any changes in statements of interest. I see no hands, so I'll assume everyone has stayed put for the last week.

Kavouss, I see your hand is up.

>> GREG SHATAN: Fearing Kavouss, perhaps his hand is up as an additional reminder that he seems to be waiting to be called. At the same time, I see a note from Brenda that Kavouss has been called twice and there was no answer. So I would suggest that perhaps Brenda and Kavouss get together and confirm the phone number at which the dial out is being placed. Hopefully we can solve that problem in relatively short order.

In the meantime, I see David McAuley has his hand up. David, please go ahead.

>> DAVID MCAULEY: Thanks, Greg, David McAuley here for the record. This can be quite brief, it's going back to the previous subject. When we go back to ICANN legal, whether it's you or

Bernie, I suggestion that we add in OFAC that they comment on the governing law on registry and Registrar issues. It's listed on the issues list that there is none called out, I have a comment when we get there, but I think it would be good to ask ICANN if they would comment on the background of that. Thanks, Greg.

>> GREG SHATAN: That will be part of what we're -- definitely part of what we're asking ICANN to comment on. You know, both the general and the specific with regard to OFAC.

We were at item 3.2 in the agenda. I'm going to ask if there are any audio-only participants, please speak up if you are. I don't hear anybody or any participants. I don't see any phone number only participants who need to identify themselves.

Kavouss, are you with us on audio yet?

>> BRENDA BREWER: This is Brenda. Just to report that Kavouss [audio echoing] --.

>> GREG SHATAN: The echo was my fault.

>> BRENDA BREWER: Oh, thank you, Greg. So I have called out to Kavouss. I'm actually calling again for the third time. So Kavouss, if you can hear this conference, please know that we are calling you. If you want to e-mail me a phone number other than the normal one, I'll be happy to dial it. Thank you.

>> GREG SHATAN: We'll hope for the best on getting Kavouss dialed in. I will express my customary amusement that the organization that is intended to help develop policy and deal with the technology of the most advanced communications system in the history of mankind still has trouble with the phones, but that is what it is.

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So going down our agenda, the decisions from last week, the first one was to begin formal discussion of the issues list on the next call, which is this call, so we'll do that. Next, as previously hinted at, we have requested ICANN legal, we would request and have now requested ICANN legal to present on OFAC and the fact that there is -- and also on the unrelated to OFAC that there is no choose of jurisdiction in the registry or Registrar contracts. That is there's no choice of applicable law in the registry or Registrar contracts. So we hope to hear back from them. As noted in the chat, this is a follow-up to some written materials on the second point, but we do want to discuss it further.

The next action item, send an e-mail to the questionnaire respondents to invite them to either respond to our analysis or come back on the call to do so. I now have all of the materials I need to send those e-mails out, but due to the press of professional commitments, I was not able to get that done today, but will do it this evening.

And somehow we have the same action item listed in 4.1.2 as we have in 4.2.2.

4.3.1, the renewed request for the participants to include the issues they have or that they have identified on behalf of others, such as in a questionnaire analysis or litigation analysis for the list of proposed issues, prior to this call. As noted before, this is not a deadline to get issues on. There will be one, but not yet.

Thiago, I see your hand is up. Please go ahead.

>> THIAGO JARDIM: Hello, this is Thiago speaking. Thank you, Greg. A quick question, I want to ask you what exactly are we going to ask ICANN legal in relation to OFAC sanctions. Thank you. I

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may have missed that, you could have explained it already, but could you remind me?

>> GREG SHATAN: Thank you, Thiago. We have not yet developed a list of questions. I think we were going to ask them to speak generally with regard to OFAC sanctions just to give us more information on OFAC sanctions since everyone in the group is not fully informed on what they are and how they work. So we hope it would be -- that would be from the ICANN point of view.

[Audio echoing]

[The host has left the meeting and will rejoin soon]

>> GREG SHATAN: So this would -- and then, also, we talked about ICANN's view on OFAC and any of the specific issue that is we've raised, such as the language in the RAA regarding the OFAC sanctions and I expect that we will be talking to them about possible -- about general licenses under OFAC, which is a form of waiver. So we hope to have them on the call. Obviously, it would be better if we identify some specific questions for them to answer so they have the right people and the right information, but I also would expect that we would have live Q&A for that.

Thiago, is that [indiscernible]?

>> THIAGO JARDIM: Just a comment quickly. I think during the last call I suggested that we should perhaps ask as well external and independent legal opinion. And if I recall correctly, I think the group was in agreement with that. I don't know whether this is something the group would consider undertaking perhaps in addition to hearing what the views are from ICANN legal, perhaps we could also hear the views from external experts.

>> GREG SHATAN: Why don't we revisit that question after we hear from ICANN and we'll have

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to look at the possibility of doing that?

Anything further on this item before we move on? Great. I'll see once again in Kavouss is with us yet.

>> KAVOUSS ARASTEH: Yes [audio echoing]. Do you hear me?

>> Very well, Kavouss.

>> KAVOUSS ARASTEH: Hello? Yeah, thank you very much. Good evening, good morning, good afternoon, good everything to everybody. I'm sorry, I lost which point you were discussing because I think somebody is rushing saying that we have only two minutes for this. If we have a question and we are not clear, I don't think we should talk about two minutes or two hours. We should really be clear what we are discussing. Are we discussing OFAC or are we discussing something else? I'm sorry to raise this because I was not connected. Yeah. Hello?

>> GREG SHATAN: Thank you, Kavouss. We were discussing the invitation to ICANN legal to come talk to us about OFAC from the viewpoint of ICANN, ICANN legal and hopefully also get somewhat of an overview. We are not having a discussion of OFAC in this group now.

>> KAVOUSS ARASTEH: Okay.

>> GREG SHATAN: We will have ICANN legal here and then which will do something.

>> KAVOUSS ARASTEH: Yeah, we would like a clear presentation of ICANN, how ICANN can implement or has used or applied this OFAC. We would like to be very clear whether it is an instruction from a particular Government or particular law or that it is understanding of some people in the ICANN think that in their view, this is what they have to do. This is something that

the community is not very clear. I'm not suggesting anything opposing or defending anything, I just want to know that how ICANN have views up to now of OFAC that prevented to have any action with respect to this law or any application in the name of OFAC does not allow them. What provisions of OFAC, referring to the [indiscernible] and what is the reaction from the U.S. Government, I'm sorry to name the Government, U.S. Government or NTIA, to ICANN with respect to the application of OFAC. We need a description, not a presentation by verbal. We need to have a written document to see that when the U.S. Government or NTIA instructed or advised or informed ICANN that ICANN must do this and must not do that. We would like to know all the history and records how this appeared. Because as I mentioned. OFAC was created in 1948 for something else totally. They used it for something else. They used it for [indiscernible]. And I want to know what the was the description or advice from NTIA with respect to that and how ICANN can have acted without any comment to NTIA saying, yes, you are right, or whether ICANN said something. And we would like to have the history of the situation in a written document available to everybody to see what was the situation. It is totally unclear. Thank you.

>> GREG SHATAN: Thank you, Kavouss. Thank you for that suggestion. I think what we should do is have ICANN come speak to us and then we'll see if the group still thinks -- or if the group thinks a written response document is necessary. And if so, we'll ask for it at this time. I would just say generally, you know, we'll hold -- we'll try to form an e-mail list of questions on OFAC so we can have an organized session with ICANN when the time comes.

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So I think that now brings us to the subgroup timeline, item 5. And I will turn the microphone over to Bernie and also ask that Bernie put up the timeline slide, which you all should have received in the last hour or so and should bring back memories of ICANN 59.

Bernie, please go ahead.

>> BERNARD TURCOTTE: Thank you, Greg. I'll wait for the upload to complete here. Thank you, Brenda.

This is not new material. It's been presented at least at two Plenaries and was presented again at ICANN 59 as Greg has noted. What this -- to go over it, again, is basically the two possibilities. Either one public comment or two public comments which are the two big horizontal lines on top versus the various dates that we have. Overall, you will see that the closing date, as we announced in Johannesburg, is the end of June, 2018. I mean, that is the reality. And as such, right now, for this group I think it's basically impossible to contemplate that we will be able to have two public consultations on any type of recommendations we make. So that would take us on a single public consultation timeline. And so that means that we would be on the top line. If we look at that, that means that we are looking at starting a public consultation sometime in November.

Now what I am pointing out here is that, as we all know, we've gone through the timelines many number of times in the past, the group completes a document, it doesn't automatically go up for a public consultation. It has to go to the Plenary for a first and second reading and then staff has to prep the documents and all the supporting stuff around it and then it gets published.

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So what we're talking about is to have that kind -- to meet those kinds of deadlines that we would need to have some sort of recommendations in the late October timeframe. So I'm just pointing this out because I'm unsure if that's going to go on or we can meet those kinds of deadlines. But if we want to, you know, we can decide to structure our work for then.

I will note in closing that if we get to ICANN 60 in Abergavenny and we do not have any kind of recommendations or are even close to any kind of recommendations, I believe that the Co-Chairs are going to ask the questions of the Plenary, if it's worth continuing to work, given that we will not be able to produce recommendations in time to have a full public comment and then integrate those into the final report for work stream 2, which basically we've all agreed and it's been discussed presented, we have to close at the end of June, 2018. And the implications of closing June, 2018 are here in this slide.

So just trying to be clear with the group about some of the realities of our timeline and producing some recommendations for public consultations, which is required before we can think about integrating anything into the work stream 2 final report.

Thank you. I'll be glad to take any questions if there are any.

>> GREG SHATAN: Thank you, Bernie. I'll see if there are any comments from any members of the group before I make any comments of my own. Avri, please go ahead.

>> AVRI DORIA: Hi, Avri speaking. Quick question, so the implication is that if we don't have a final -- I mean, a document of recommendations for something by November, we'll basically take concern for that accountability issue off the table?

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>> BERNARD TURCOTTE: That's for the Plenary to decide, Avri. What I'm saying is that that discussion will have to be had at that point.

>> GREG SHATAN: Thanks, Bernie. Thank you for the question, Avri.

From my point of view, this is doable. We've put in an awful lot of work up to this point. It is a bit all over the place in a bunch of different documents. The intention is to try to use the list that we're going to next in order to get that more concentrated. I will, you know, redouble my own efforts to try to get more things on to that list. I think we'll need to come up with a clear plan and revise the timeline in our work plan. And we need to get focused on particular issues and particular recommendations for those issues. And I really not accept anything other than success, personally, but that's just me. So hopefully we will all pull together. We've had our high points and low points, but hopefully we will have -- we can make a push to bring our work together and get it done. I will by the next call come up with a timeline for us that fits with the timeline that Bernie has gone over.

Let's go back to the agenda -- oh, David McAuley, your hand is up, please go ahead.

>> DAVID MCAULEY: Thank you, Greg. David McAuley speaking. Just a quick note, I encourage you to come back to the list, but I think our focus should be on narrowing the issues and the agenda for this call may provide a way forward. It's possible that this group can come up with recommendations for ICANN on how to handle OFAC inquiries or whatever you call them. It's possible that we could come up with a recommendation for ICANN on governing law clauses and registry and Registrars. So it's important for ICANN to come and speak to us quickly, I think. And

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if we narrow our focus, hopefully we will do well. Thank you very much.

>> GREG SHATAN: Thank you, David. I agree.

Kavouss, your hand is up, please go ahead.

>> KAVOUSS ARASTEH: Hello. May I speak please, Greg?

>> GREG SHATAN: Go ahead, Kavouss.

>> KAVOUSS ARASTEH: Yes. My question is in reaction to what David said, what type of recommendation we could give to ICANN with respect to the OFAC. I think before that we have to know how OFAC came to ICANN. Was it informed by the NTIA to ICANN that, yes, you have to implement this political arrangement with respect to the [indiscernible]? Or ICANN just pick it up itself from the low or whatever there is in that country. And whether ICANN described to the country that the difficulties that may happen and maybe non-relevance of OFAC that may relate to something else. I would like to know the history of that.

>> GREG SHATAN: I see your suggestion is in the chat and we will get ICANN to tell us kind of their --

>> KAVOUSS ARASTEH: But a complete report. Yes. Thank you.

>> GREG SHATAN: Thank you, Kavouss.

Let's go back to the agenda. And actually, the next thing on the agenda is to discuss the list of proposed issues, so maybe rather than going to the agenda, we can go to the list of proposed issues. You have scroll control. This is not the best PDF I have ever created. It seems to have cut off all but the first line of each document. I don't know if people can go to the Google Doc.

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Apologies for this formatting issue. It's rather frustrating.

So going to the Google Doc list of proposed issues so we can read more than the first line, I'd like to see if we could have some discussion of basically the first two items together, or each one of them individually. The governing law for registry agreements. We are talking here about primarily GTLB registries, but we could also deal with CCs. And then governing laws or lack thereof for the Registrar Accreditation Agreement. And more specifically there is no choice of jurisdiction for which country's law governs the contract, nor are there any venue choices, so it's an open line. So there are reasons that this is an issue, they are stated in the document.

The governing law is important in interpreting a contract and not stating a governing law gives too much discretion to a Court to determine the governing law of a contract. And, three, it creates the possibility that different Courts will apply different governing laws to the same essentially base agreement and interpret the same contract differently as a result. So I would like to see if there are any agreements/disagreements, additional reasons that this is an issue. You know, so your reply, please. I see I have hands from David and Kavouss. I'm sorry, I can't see what order they are in because I'm on tablet that doesn't prioritize them.

David, I'll go to you first.

>> DAVID MCAULEY: Thanks, Greg, but Kavouss was first.

>> GREG SHATAN: I'll turn to Kavouss first.

>> KAVOUSS ARASTEH: Thank you. Thank you, Greg. I had a question to you as a Rapporteur of this group. Who decides that a CCTLD is a property attachment to the particular country or is

not a property attachment? Who decides that? Is it the Court who decides that? Or is it the ICANN community who decides that? Or ICANN organization or ICANN Board? ICANN Board decides that? On what authority ICANN Board can decide that it is a property attachment? Because I have listened to the GNSO with respect to the two County code argue in pages and pages that the code is not property of any Government or any country. How in one hand we say that it is not on the other hand, someone, either ICANN or someone else, could say in one case it is attachment, in other case it is not attachment. There has been cases that issue was discussed. I think we should reply to this answer because this is very important. I'm not suggesting anything.

>> GREG SHATAN: Kavouss, we're not discussing that issue yet. That is -- that will fall under item 8, row 8 of our list. We're still on 1 and 2. So if I could ask you to hold that question for the meeting where we discuss that point, that will help us make progress on the point.

>> KAVOUSS ARASTEH: Okay, but please -- yeah.

>> GREG SHATAN: Yeah.

>> KAVOUSS ARASTEH: Please [audio echoing] thank you. Thank you.

>> GREG SHATAN: Yes. So we'll hold that issue. Let's go back to David McAuley, please.

>> DAVID MCAULEY: Thanks, Greg. David McAuley here for the record. Just a brief comment on the substance of this issue, on the issues list, that is that the Registrar Accreditation Agreement and the registry agreement, base registry agreement, don't have governing law called out. And I had mixed feelings when I read this because to me jurisdiction, which is what we're concerned

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with, is dealing with the capacity of Courts to hear issues and governing law is actually an application of that. And so this, I read, the fact that there was no governing law called out in these contracts, I viewed as being expansive. An expansive recognition of various jurisdiction around the world. However, I realize annex 12 lays out [indiscernible] governing laws for contracts within registries and Registrars, so it is within our scope for sure.

So what my comment would be, I believe we should come up with a recommendation to ICANN as to what they should insert for governing law, it need not be U.S., it might be where the Registrar or registry is. But we need to hear from ICANN first. I see it as an open issue. And that's my comment. Thank you.

>> GREG SHATAN: That's a good point and I think it raises a larger point about the list of proposed issues. There are two columns to the right, support for this as accepted issues or opposition to this as an accepted issue. There's also the description of a proposed issue. Without getting too tied up in formalities, it would be good to note in one place, perhaps in the description of proposed issue, to put in a sentence, on the other hand, there are advantages to having no choose of law listed or there could be or there allegedly are. I think ICANN itself on the answer to this question put forward the proposition there were good reasons not to have choice of jurisdiction in the contracts. So we should tease out the pros and cons in connection with the issues. Now this is only the proposed list and the point of this discussion at this time is first and foremost is to decide whether we are accepting this as an issue or rejecting it as an issue and saying it's not for this group to decide because it's not in our remit, or indeed it's not

an issue at all and somebody just misunderstood or whatever it is, it's somebody's view, but not the group's view, that this is an issue. So we don't want to get ahead of ourselves too much in deep discussion of the issues, but rather we want to first separate the weak with regard to proposed issues. We don't want to waste time talking about things that are not in fact going to be considered issues within the remit of this group, by this group.

Milton, your hand is up. Please go ahead.

>> Yes. I have a simple question about the spreadsheet. Under governing law for registry agreements, we have a column, "reasons within our remit" and "reasons outside of our remit" on the second column. And I read the "reasons outside of our remit" and it seems they are all reasons they are within our remit. I would ask is that just a mistake? Did somebody put that in the wrong column? Or do I not understand that argument at all?

>> GREG SHATAN: Milton, good question. And more particularly, I think a good catch. I think this was, in fact, intended to be in the column on supporting it as an issue related to or within our remit. I think this was written by Raphael Beauregard-Lacroix. I can send him a note and see, but it seems to be misplaced. So I will move that over in that regard.

Jeff Neuman, I think you were next.

>> Yeah, thanks. Sorry, this is Jeff. Sorry for the noise in the background. I just wanted to point out that, kind of along the lines as David was saying, there used to be a choice of law provision in the ICANN agreement. This is prior to this latest round and probably prior to 2006 when agreements were starting to get renewed. [Indiscernible] used to have in its agreement that

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jurisdiction and -- jurisdiction, venue and choice of law all were in Los Angeles in the United States. It was a conscious decision to not include that choice of law provision going forward because of what David had said, to give it a more expansive view that there could be jurisdiction in other places and to recognize that there are potentially -- to recognize more of an International nature. So I'm not sure -- I guess what I'm trying to say is it was a purposeful decision to not include a choice of law when it used to be included.

>> GREG SHATAN: Thanks, Jeff. That's very helpful. And I hope David McAuley heard that, too, he was in and out of Adobe.

Kavouss, your hand is up. Please go ahead.

>> KAVOUSS ARASTEH: Yes, thank you. I think a lot of good questions were raised at this meeting. I suggest yourself or someone or secretariat go through the transcription and pick up these questions and make a list of them and we have to reply to them because I see contradictory statements and replies. Someone says there was no law, no reference to any agreement or any applications of the law, and someone says there was something. I don't know, there are so many things that are not clear. So I would like to know if in the original agreement there was not such a reference what we can do in future. And if there has been something because nothing applies, we have to pick it up, if it has been applied by some people in some time, but not by other people the other time, we have also to correct that. So I suggest that someone should go through all these good questions raised by everybody and make a list of the questions and answers and prepare for that in the subsequent meeting. Thank you very much.

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>> GREG SHATAN: Thank you, Kavouss. We'll make sure to do that. Just to clarify, what Jeff was saying was that in the past, the deep past, when Jeff Neuman was just a young [indiscernible] at ICANN, the contracts did have choice of law. And then it was removed. So presumably nobody -- and no entities are currently signed up to remit where choice of laws, at least no RAAs have choice of law, that was a historical note from Jeff Neuman from way back in 2001.

But any other comments? Let me ask this question, is there anybody who believes that item 1 or 2, the lack of governing law in registry agreements, is either -- is not an issue that we should deal with in our report and perhaps make recommendations about it? Or believes that it is not within the remit of this group? Without getting into a long discussion of what our remit is or isn't, you know, the question is whether we should, in essence, have our port be silent or indicate this was raised as a proposed issue, but voted down, if we decide to do that. Or is there general agreement that this is at least issues we would deal with without prejudging any recommendations we might make?

Please, if somebody could tell me what order the hands are in, I would appreciate that.

>> Jeff is first. David second. And then Milton.

>> GREG SHATAN: We will use the honor system. And we'll start with Jeff and then David and then Milton and anybody else who is in the hand list.

Jeff, go ahead, please.

>> Yeah, thanks. I'm not going to comment as to whether it's in our remit. But I haven't seen that this is actually been an issue, so I'm not sure it needs a solution. I'm not sure it's a problem.

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Unless somebody can point me to where it has actually been a problem, then I'm not convinced it's something we need to tackle.

>> GREG SHATAN: Thank you, Jeff. I think, you know, maybe we make no recommendation, it probably still needs to be discussed since it's kind of been put in our remit, in a sense. But I think it's a very good point to see if there are any -- have been any actual problems that have been raised as a result of this. We've theorized about problems and that's not unhelpful, but it's much more helpful if we can point to an issue.

Let's go to the next hand. David.

>> DAVID MCAULEY: Greg, thanks, David McAuley here. I think definitionally this is not a matter of jurisdiction, but it is in our remit because of annex 12 and, thus, I think the insights that we will get from ICANN legal will be very helpful to us and if Bernie can get us that link, if they have already spoken to it, that would be very, very helpful as well. Thanks.

>> GREG SHATAN: Thanks, David. Milton, please go ahead.

>> Yes, I think that it is an issue, but I'm not convinced yet that it's a problem. And following Jeff's reasoning here that if, indeed, it was deliberately -- there was a choice of law and it was deliberately removed from the contract with the, apparently, consent of most registries, we need some evidence that this is actually a problem. Not saying it isn't. And I'm also taking into account the fact that most of the registries speaking here are American-based registries, so we would ideally like to hear from non-U.S.-based registries as to whether they think this is a problem. And if they do, I agree with David that it's within our remit to flag this, which, again,

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does not necessarily mean that I support it as an accepted issue that we need to address, but I think it's something that we need more information about. Thanks.

>> GREG SHATAN: Thank you, Milton.

Thiago, you're next. Please go ahead.

>> THIAGO JARDIM: Thank you. This is Thiago. I would align myself with the comment made by Milton. And I would also say that perhaps we should leave consideration of that particular issue for later [indiscernible] in consideration for other issues, more pressing issues should be addressed first and among the most pressing issues we need to identify OFAC sanctions as well and [indiscernible] over [indiscernible]. Thank you.

>> GREG SHATAN: Thank you, Thiago.

I think at this point we're trying to just decide if things are going to be on the issues list. It seems like there's general support for this to be on the issues list, even if we decide we don't identify a problem and, thereby, make no recommendations, we're not going to knock it out of discussion by the group. So we will come back to that.

In terms of prioritizing things, I'll take that under advisement. Of course, given our discussion of our timeline, in a sense there is no later. But on the other hand, if we don't have enough time to deal with certain issues, we do need to be prioritizing the issues we deal with over the issues we don't.

Kavouss, I see your hand is up. Please go ahead.

>> KAVOUSS ARASTEH: Yes, Greg. I think the discussion tonight was very, very useful. We need

to continue to improve or complete the issues, the table, and also we need to take on board the question raised and to see whether any of these questions could add something to the table. I think this is a good discussion. In fact, we should have had this discussion one year ago, but not now. Nevertheless, it should be continued. I think now we are discussing the subject really. Not before. Thank you.

>> GREG SHATAN: So, I think we can put these two issues to the side, at least, you know, move them to the accepted issues list, subject to -- without prejudging that we will make recommendations or decide it's an issue that in the end creates problems that need to be solved.

Any further comments on these points, the governing law in registry/Registrar agreements?

So we'll try to do as much work as this, on the list, as possible.

The next issues coming up are all the OFAC issues. However, it is five minutes before the hour and I, as I said before, I think we should have kind of fair warning, so I do think that subject to getting ICANN on the call, we will discuss OFAC on next week's call. And hopefully we'll have ICANN there, but we could also discuss it without ICANN. I think it would be more fruitful to have some of the ICANN background first.

So with the five minutes that we have left, we have a couple of items, but I see Milton has his hand up. Milton, please go ahead.

>> Yeah, I just wanted to probably completely out of order, but give you some advice, Greg, on making these meetings flow a bit more quickly. I think what happens frequently is that before

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we actually get to the substance of a meeting, you have three, four agenda items which end up consuming half of the call and which are fundamentally administrative matters. It's not clear we need to even do, much less spend a lot of time on, but then people get sort of diverted into discussing some of these trivial or administrative things and then we really make very little progress on what we had hoped the meeting would be about. So is it possible to invert the agenda and we basically agree on the agenda and we put this substantive stuff first and some of the more administrative things that could be done perhaps on e-mail?

>> GREG SHATAN: A good note. I think we could essentially treat what is item 4 on this agenda, the decision and action items, which is think is kind of the rabbit hole more than anything else, and just either, you know, basically approve it or note it and move along on it or clear it beforehand by e-mail as well and then just note that it's been dealt with by e-mail. But I agree, both with the fact that it is administrative and it seems to create openings for diversion and try to move to kind of the top item as quickly as possible. I will take that as a helpful note. I love constructive criticism.

So we'll try that on the next call to get as quickly as possible to the main event and not have a bunch of administrative tear up our time.

With regard to the ICANN litigation, we've had one more volunteer to review a litigation, so we have six cases that still are unclaimed. I would really appreciate if folks could claim those last six cases. We have a number of case that is are still out for analysis. Obviously, I would appreciate those analyzing them to wrap that up.

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On the questionnaire responses, we have three questionnaire responses for which we don't have reviews in yet. Two of those were claimed, but quite some time ago. So I'm going to contact those who claimed them and basically give them a last clear chance or a chance to throw it back into the pond, so to speak, and others can pick it up. We also have one which inadvertently was left off of the sign-up sheet. The comment of the EEU submitted by Christina Monti. If there's anybody on this call who would like to volunteer to analyze the EU submission and report to the group on it, that would be most appreciated. Any volunteers?

Kavouss, I see your hand is up.

>> KAVOUSS ARASTEH: Yes. Not volunteering for that, but I want to recommend that before you taking any discussion or considering discussions of OFAC, we need to receive that comprehensive document on the history of OFAC, how it came to ICANN, how it was implemented, what was the situation, what was back and forth between ICANN and NTIA. And that must be available 24 hours before the meeting in written before or else it's difficult to discuss OFAC.

And secondly, those distinguished colleagues that are not concerned about OFAC, they should allow other people to explain their difficulties. We are part of the same group and the same family and we should really allow the people to explain the difficulties. Once, again, we need full, comprehensive description of OFAC.

>> GREG SHATAN: Thank you for comment. I don't think we're going to ask OFAC to prepare a written statement or history first. We're going to have them come to us and discuss it orally and

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we'll decide if we need some form of a written statement, if ICANN is willing to do that. I think it could end up being a big time commitment to go over that as carefully as any kind of document would need to be done, so I'm concerned about that. So let's go ahead and listen to what ICANN has to say about the history of ICANN and OFAC and decide what more we need after listening to that.

We are at the time of AOB, we are also at 4:01, so if anybody has any incredibly pressing AOB, please say so. Otherwise, we will try to get as much work done and I will ask everyone to try to get their issues, their proposed issues on the list, please. It doesn't mean they are issues, but it does mean we're going to talk about them. If they're not on the issues list, proposed issues list, we can't talk about them because we don't know what they are. And please, if you have any outstanding work product for the group, please submit it. That would be much appreciated.

I see a note that we need to try to start on time. We can try to start at 3:00 promptly and not lose those minutes as people assemble. I'll take the Leon Sanchez approach. I'm happy to do that and I'll warn people that we are not going to straggle in as well.

And, Jeff, just to answer your question, we are talking about choice of law and venue provision in agreement with regard to the [indiscernible]. So that's that.

So let us -- thank you all for the suggestions on how to make these meeting productive and our hour as productive as possible.

>> KAVOUSS ARASTEH: Greg?

>> GREG SHATAN: Yes.



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>> KAVOUSS ARASTEH: Before you end, please, please, please, can you hear me?

>> BERNARD TURCOTTE: We can hear you Kavouss.

>> We can hear you, Kavouss.

>> KAVOUSS ARASTEH: Yes, I did not say we ask OFAC, I said we ask ICANN to provide us a comprehensive report on the history of OFAC, asking ICANN, but not OFAC. I'm sorry if you misunderstood me. Thank you.

>> GREG SHATAN: No, no, I understood you correctly. We're not asking ICANN for a written report. We'll ask them to give us their views and their history on, hopefully on the next call.

>> KAVOUSS ARASTEH: Why have you not asked ICANN for the report? Why? Why?

>> GREG SHATAN: [Indiscernible] so we only do --

>> KAVOUSS ARASTEH: What is the problem? [Audio echoing]. Please.

>> GREG SHATAN: Kavouss, that is not a request of the group. I don't see any other support for that.

[Audio echoing]

>> KAVOUSS ARASTEH: What is your problem, dear Greg, to resisting that? What is the problem that ICANN can provide that information?

>> GREG SHATAN: I think it would probably take them weeks in review and --

>> [Overlapping conversation]

>> KAVOUSS ARASTEH: Okay, thank you.

>> GREG SHATAN: Thank you, all. It's five after. We'll stop the recording and adjourn this call.

Thank you all. Bye.

>> Thank you.

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