

ICANN

Moderator: Maryam Bakoshi
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5:16 pm CT

Barbara Wanner : I'll just begin quickly. Okay great, that's great. As many of you know the community prepared recommendations to improve ICANN transparency as part of Workstream 2. My colleague Michael served as the rapporteur for that subgroup and I was the lead drafter on the section aimed at improving the whistleblower protections. The report explores areas where ICANN can improve transparency in its governance recognizing that this is a key ingredient to promoting accountability.

Basically the report is divided into five parts -- an introductory discussion of global transparency standards and the benefits of such standards in terms related to generating public trust, a section focused on improving ICANN's documentary information disclosure policy or DIDP. We also explored ICANN interactions with governance and how to improve transparency around that. We included a treatment of transparency of board deliberations and our final section as I mentioned aimed at improving the transparency of ICANN's anonymous hotline or the whistleblower protections as we've referred to them.

We proposed many targeted recommendations under each of these sections. I won't elaborate on them now but I commend this report to you. It naturally it's on the ICANN Web site. Today's discussion will focus on recommendations that were included under the section aimed at improving the DIDP which urges expanding transparency at ICANN legal and we are delighted that Samantha could join us today to participate in this discussion.

We will focus the majority of this session on that topic if time allows. We will then have a brief discussion really aimed at sort of educating and informing about the value, the potential to the community and value of other initiatives ICANN has underway related to data transparency. Michael is planning across community session at ICANN 61 that will delve into this topic so he'll sort of provided preview of what of some of the things he'll address there. So at this point I'll just turn over the discussion to Michael who did the yeoman's work as the raptor for transparency and leader discussion relating to transparency at ICANN legal. Thank you.

Michael Karanicolas: Hi. Thanks very much for that introduction and welcome to Samantha and thanks so much for joining us. Maybe we can move along to the third slide really just to jump right into it. So just to reiterate briefly we're at the tail and are wrapping up the Workstream 2 transparency process. As part of that just two – the significance of the recommendations that come through this are that according to – the recommendations that come out of this are going to be very strongly going to have a lot of momentum going forward.

Noncompliance with them by the board or rejection of the recommendations a challenging thing it would require I think a 2/3 in order to not follow the recommendations. So these are very strong proposals that have a lot of weight behind them. And as Barbara mentioned they touch a few different issues including 21 recommendations on improving the DIDP and recommendations

on interactions with governments, transparency of board deliberations and whistleblower protection.

And on the whole the recommendations that are coming out of this subgroup are very, very strong. And I say that not just as the rapporteur for this but as someone who builds and designs these transparency system as my day job. If I didn't believe that these recommendations represented the very best practice in terms of access to information systems I wouldn't be standing behind them. So they are very, very strong.

The one exception there and the one area that we were not able to develop a strong path forward was unfortunately related to transparency at ICANN legal. So we can move to the next slide. So just to give a bit of a background on how we got to where we are our initial recommendation the first draft was to say that the DIDP exception for attorney-client privilege so without dropping too much is just too I guess slow it down a bit the DIDP contains a list of exceptions to disclosure.

You file an access to information request, a DIDP request with ICANN there is a list of categories for which they can refuse disclosure. And one of them is for attorney-client privilege. And as an avenue towards enhancing transparency at ICANN legal we were seeking ways to limit the scope of how attorney-client privilege is applied. So our initial recommendation which was submitted for comment was to say that the DIDP exception for attorney-client privilege should be narrowed so that information should only be withheld if it's disclosure would be harmful to an ongoing or contemplated lawsuit and negotiation and explicitly mandate the disclosure of broader policymaking advice received from lawyers.

So that was our initial draft of it. We put that out for consultation. We received feedback from ICANN as an organization saying that, that would quote create a directive on ICANN internal operations and practices that could impact resourcing and operations. So following up with that I had several conversations with Sam and one with John Jeffries and that led to several tweaks to it. My impression from those conversations was that ICANN legal had a aversion to a sort of proactive or presumptive waiver. That was what I left those meetings thinking was that they wanted to make sure that it was a properly contextual determination.

And so it was redrafted to say and unfortunately the next proposed language isn't in this slide but I just put it into the chat. The proposed redrafted language was where material subject to a DIDP request could potentially be withheld under attorney-client privilege. ICANN legal should review the material to determine whether it's disclosure might be harmful and should only invoke this privilege if the disclosure would be harmful to an ongoing or contemplated lawsuit or negotiation of similar process or where it's disclosure would reveal material provided in confidence by a third party or would otherwise be subject to exceptions contained in the DIDP. So again sorry there's not a slide for that but that is in the chat now.

ICANN legal responded with their own suggestion for redrafted language. Could we get the next slide? And that is their suggestion was to switch the recommendations so that it said where material subject to a DIDP request could potentially be withheld under attorney-client privilege, ICANN should review the material to determine whether there are any parts of information are appropriate for release including the potential scope of waving attorney-client privilege.

We did not decide to go forward with that. I think we were concerned the working group was a bit concerned that it was not substantial and that it would really provide anything concrete really beyond just considering an entirely discretionary decision on whether to release information or not. And so we ended up because within the working group we were unable to achieve consensus because those in the work – there were some in the working group that didn't feel comfortable going forward with any recommendation limiting attorney-client privilege that did not have buy-in from ICANN legal. Where we ended up was the revised recommendation but that ICANN should consider future processes to expand transparency to ICANN legal including through clarification of how attorney-client privilege is invoked.

So could we go to the next slide please? We – the working group so I - we presented that recommendation and I think it was Abu Dhabi. But essentially we presented that recommendation and got a very strong response by some people in the audience that were unhappy that there were not going to be more concrete steps forward in terms of recommendations to enhance transparency at ICANN legal. So partly as a result of that response a minority statement started to circulate that was authored by Robin Gross and Malcolm Hutty I think which you should have all been emailed as well that basically mentioned that they felt strongly that there was a need for clarifying the scope of attorney-client privilege and that they wanted to see a specific consultation process taken forward on that issue as well as a few discussions around attorney-client privilege as its invoked around IRP processes.

So I'm not going to read out the memo, the minority statement because it's a full-page but that's the basic area that it touches on. And hopefully you should have been emailed it. So with that kind of introduction to where we stand at the moment in terms of the recommendations, in terms of the minority statement that's going around I was hoping to foster a discussion and basically

solicit thoughts from the people that are here on what your thoughts are on this, what are your thoughts on the one where we stand at the moment and what are your thoughts are on the proposed avenues forward, proposed solutions and where do you want us to go from here?

I think that, you know, maybe in contrast to some of the disagreements that we've had in previous sessions I think this is an area where the Commercial Stakeholders Group and the Noncommercial Stakeholders Group are in fairly strong agreement or I could be wrong but that's the impression that I've got. So I wanted to reach out and try and get feedback from the community and hopefully facilitate a conversation with a representative of ICANN legal to see what we want and where we want this to go next. Do you want to maybe just say a few words or we could just open it up if you prefer?

Samantha Eisner: Okay. You know, I think I'd like to hear some of the conversation first and then...

Michael Karanicolas: Please.

Samantha Eisner: ...we'll react.

Michael Karanicolas: So then with that being said why don't we open it up? Steve?

Steve DelBianco: Thanks Michael, Steve DelBianco with the BC. The BC when we commented on the CCWG on transparency it was April 2017 right? And so at the time I don't really recall the minority report being in the April 2017 comment opportunity agreed?

Michael Karanicolas: We had responses back from ICANN as an organization but not from the board I don't think.

Steve DelBianco: So the BC didn't comment on this particular one and so I can't say officially that we are on board with the minority report. But I can tell you that theoretically and unprincipled the BC supports the idea that you've articulated which is that we want the maximum possible disclosure as well as explanations and rationale for the lack of disclosure if it comes from legal. And then we add to that the BC's profound appreciation for the fact that this Workstream 2 is our last shot at enhancing through the transition leverage, enhancing ICANN accountability and transparency and if it has a very high bar for which the board could potentially reject a recommendation. And knowing all that it was great to have ICANN legal in the room. Sam and her team were part of the entire transition process in Workstream 1.

But all of the opinions and views of ICANN legal were taken on board but they're not necessarily part of the team that had to achieve consensus because legal and the org are not part of the chartering organizations for CCWG. And the views matter a lot and they certainly will matter in the board's acceptance. But it was our view what we're curious about why it ended up as a minority report as opposed to in your consensus report where you might well have duly noted that ICANN legal has some concerns with it. But to have it fall out of your report I believe was a miss that we can correct at this point. So from the BC standpoint I think we do see eye to eye with the Noncommercial Stakeholders Group on this. Thank you.

Michael Karanicolas: I'm not sure if I should respond to that directly or should we just see if there are other comments. So in terms of the minority statement itself and actually incorporating that into the report I would have no objection to that. The minority statement essentially it starts with an endorsement of Recommendation 15 but then saying they would like to see it go further. The reason why Recommendation 15 is phrased the way it is at the moment is

because again there were splits within the working group. And partly it was a time consideration that essentially the final conversations that ICANN legal where we were finally hatching this out were very close to the deadline for getting this into the final report but also that there were people within the working group that were uncomfortable with going forward with a recommendation that was – the didn't have explicit buy-in from ICANN legal.

So that being said like I don't have I myself wouldn't have any objection to not to - to incorporating that into the final – into the actual report but it would depend on the proper process for doing that and how the Workstream – and where we stand on them and whether that's still possible. Do we have – does anybody else have thoughts they want to share on that or did you want to...

Samantha Eisner: Sure. For anyone I haven't met in the room I'm Sam Eisner. I'm Deputy General Counsel with ICANN and as Steve noted I was one of the main ICANN representatives working alongside the CCWG during the transition process. Some of you who are also seen me or my colleagues who might come and talk to other PDP groups and so I want to make sure that there's kind of a base level of understanding of how some of the ways ICANN legal sees itself working not just with ICANN org but with ICANN community.

So when we - when I'm here today right I'm part of ICANN org. I'm not - ICANN legal isn't necessarily distinct from ICANN org. We're a part of it. We're a part of the fabric of the organization. One of the things that we do is we assist the different parts of the organization such as your policy support, people in the room our colleagues and we'll come and, you know, talk to people where we're in a sense we play dual roles.

We have our internal work and then we have the times that we come and talk to you when you can ask us questions, we'll give you opinions. And I think

that, that was some of the tension we had around the initial phrasing of the Recommendation 15 because there is a lot of advice that we already give on the record right?

We come, we talk, we give you our inputs, we give you our thoughts. And there is a - an area of things that we do carve out because ICANN is, it's an entity right? We're incorporated. We don't have privileges and immunities that follow government entities for the state, local national. And there's a business and there's a role for legal representatives within the organization to have a role to protect the business from risk and to have the ability to advise our colleagues inside on things that we - initiatives that we might be undertaking, work that's going on.

We have a role with the board in providing inputs and advice so that the board is fully informed as it's taking its decisions. It's part of their key fiduciary duty to take informed decisions. And sometimes those decisions require specific advice from legal sometimes they don't. I, you know, I encourage you to talk to some of the representatives that the GNSO has appointed to the board to get their sense of how legal interacts with the board and how that goes.

I think when people join the board they're actually surprised at how different it looks than what they expect. I think there's been a lot of mythology around the years and some might have been evolving. It might have been true at some point but it's not really true today but that legal is in control the board room right, we're a part of the conversations. The secretary is also the General Counsel but the board is a very active vibrant group and they seek inputs when they feel that they need it and they also come and talk to the community get other input.

So with that, you know, I think Steve you said something that was really important which was the community has an interest in maximum disclosure. And when things are not able to be disclosed to getting information as to why. And on that point I think we can all agree I think we understand that part of transparency means that even when we can't give the information for whatever reason right, we have all of the defined conditions for disclosure in the DIDP as it might be modified as they come out of the transparency report that there really is a need to give information about why it's not being given be it based on attorney client privilege or other reasons. I think that's a fair thing to say about transparency.

And so, you know, it's an interesting dilemma because there are many places where you come to a private organization and someone says, "You need to identify how you're going to proactively waive your privilege." And it puts the lawyers in a place of in some ways, you know, from our view we tow the line of malpractice if we waive without understanding what we're waiving. And so there is - right, while we agree that there is an obligation, you know, as we presented information back to and responded to Michael in our conversations with him in his role as rapporteur but, you know, we would be happy to have a specific requirement for legal to commit that it will intensively look at so we already do. This is one of those things that maybe it makes sense to put into writing that we will review intensively whether or not a claim of attorney-client privilege is appropriate for the release of any information.

In terms of the minority report that – I see and that there's a suggestion that instead of making a proactive waiver around the DIDP process that may be instead there should be a more proactive waiver around the IRP process. And I'm not sure what the difference is between the two. A waiver's a waiver right? As soon as information goes out it's done. That's how attorney-client

privilege works. If you've waived the privilege you've waived it and it doesn't matter which purpose you've waived it for. It's still waived.

And so there all those legitimate needs that any company might have for withholding information based on attorney client privilege applies no matter what process people are using to come to that entity for information be it through the DIDP, through IRP through IRP, through litigation, through arbitration, through any of those it's the same tact. And so while we understand as a community is asking us to think more critically about how attorney-client privilege is applied and that's something that we think is important, it doesn't match up with giving a proactive waiver when you're not sure what the scope of that waiver is. So that's really where we stand on it.

Michael Karanicolas: I'm just looking around to see if there's anyone that wants to jump in before I say something myself. Okay.

Samantha Eisner: (Unintelligible).

Michael Karanicolas: Sure.

Samantha Eisner: Sorry thanks. Michael I had one question. In terms of the minority report has that been published anywhere?

Michael Karanicolas: That was sent to (Bernard) and (Bernard) circulated it. I'm not sure where he circulated. Have you not – did you...

Samantha Eisner: I wasn't really familiar with the document but I surely read it when it was circulated in advance of this session.

Steve DelBianco: Michael we don't find it on your wiki for the transparency group.

Michael Karanicolas: I'm not sure what's up actual process for that is. But – so just to take this forward I mean there's – we had a lot of back and forth about the idea of this proactive waiver. And I think that where the conversation led was the hope that there could be even if it wasn't a firm waiver the very least a set of factors feeding into the decision-making process to say we will consider X and Y and Z. And if we determine that this or that then we will disclose the information. I think that where the conversation was going was that I was hoping for something to take it beyond a broad statement that if legal so deems information will be released. And that's not what we've seen so far. So anything more concrete I think would be helpful to getting a degree of certainty any degree of reliability because as someone who set up a lot of these systems if you don't have some concrete criteria there, if it's kept vague and airy then it's essentially meaningless. You need something to pin it down otherwise there's – the criteria itself isn't really of any utility.

Samantha Eisner: Thanks Michael. So I guess I don't fundamentally agree with the sense that a commitment the ICANN would undertake particularly a commitment baked into the DIDP to think critically about how the attorney-client privileges applied in any situation is meaningless. The DIDP if there is a determination that ICANN has violated the or if the claimant believes that ICANN has violated the Articles of Incorporation or bylaws in how it complies with the DIDP that is now a specific right to elevate to the further accountability mechanism there is some teeth behind it right?

It's the - we have no interest from the ICANN side as a whole from the ICANN org in putting a commitment in that we don't intend to live up to. We understand we're in a different place right? We're – we are moving with the community to the place where you asked us for more accountability, you've asked us for more transparency. We're there. We're not sure how else to start

demonstrating that to you other than by continuing to walk with you and showing with it. You know, one of the things that we asked and I'll ask the question again during our conversations is do you have examples from private nongovernmental organizations about the types of qualifications or areas where privileged waivers have been carved? If you have those we'd really like to look at those and see how we can apply.

Barbara Warner: Excuse me, I just wanted to - this is Barbara for the record. I just wanted to let everybody know that I sent the minority statement to participants in the intercessional so you should get it shortly. And I copied Samantha.

Michael Karanicolas: So in terms of examples of private non-governmental organizations the reason why that's phrased the way it is is because it's very difficult to find an analogous case to ICANN. ICANN is not like Coca-Cola. ICANN is not like Amnesty International. ICANN is not like Meals-on-Wheels. There are very few comparators that are an appropriate sort of frame of reference to compare to ICANN. Meals-on-Wheels doesn't have the same kind of duty to transparency as is ICANN does. Meals-on-Wheels doesn't play the same kind of role that ICANN does. So in looking for comparators generally we were - we looked for examples of how this has been limited. What we found was - the best example that we were able to find wasn't the public sector. So state laws in a lot of different jurisdictions restrict the scope of attorney-client privilege to communications concerning a pending investigation claim or action which the court determines would severely impair the ability of the public office or agency to process the claim.

Now that's on the stateside but that also in the jurisdiction where it's enforced which is Florida, Maine, Arkansas, Oklahoma and North Dakota that applies to lawyers working on for example public universities, nonprofits. So it is

organizations that are somewhat analogous to ICANN and I think it closer parallel to someone like Amnesty International.

And similarly in most European countries in-house counsel doesn't that level of privilege at all. In-house counsel are generally treated as being indistinguishable from regular employees in terms of the privilege that they enjoy. So those are the examples that we were able to find but again let's see if there's any comments from the floor or if anybody wants to chime in so there's not just a back and forth between the two of us.

Renata Aquino Ribeiro: Thank you. Renata I'm going to use another volunteer head which is Mozilla Foundation where I participated twice in both in Mozilla (festival) and now in the Open Leadership Program. And I am often confused I would put it like this not only there is – there are roadblocks to information in ICANN but there's also what I call bad (immobiling). So sometimes you may even have the information but it's so buried and hidden away, it's so hard to find that you need a serious detective to find the items for instance such as budget and so on. So I guess what I want to discuss right now is that not only we need a better ways to assess information but more communications.

Like Mozilla for instance recently sued SEC of net neutrality. So the briefing of the lawsuit all the procedures the Mozilla counsel where everything was published and we never see this in ICANN's procedures. So I - so there's I guess there's two phases there, asking for the information being granted to it and how it's organized and how it's displayed. So I would like to know if this is something that's on ICANN's mind as related to transparency. Thank you.

Samantha Eisner: Thanks Renata. So it – that's raised and actually to something that's currently ongoing in ICANN. First of all ICANN maintains a litigation page. ICANN also maintains an IRP page, a reconsideration page and a DIDP page where

you can go and you can access the filings made by ICANN and other parties. We maintain the records on the ICANN Web site and they are hard to find. But if you look on the ICANN Web site for example you type litigation if you search that it will bring you to a page that will list out ICANN's litigation. You can click on them, you can go see what ICANN said, what other parties have said whether we won the suit or not right? It's up there, same with IRP findings, same with reconsideration process. It actually is available.

But the issue about how difficult it is to surface information has been a really long-standing issue within ICANN. And so right now one of the things that I know that there will be a cross community session scheduled in Puerto Rico. One of the topics of that will be see Information Transparency Initiative or the ITI. The first thing that we're doing, actually my team is going through this right now we're going through an audit of all of our content and we are going through and we've identified a taxonomy for them. We're labeling it so that the search capabilities which we existed in on ICANN.org which we all know are, you know, not so good it will never be worse than that and it's going to be a lot better. And one of the things that we're doing is trying to actually organize the information first before we come to the point of what's it going to look like for the end-user. But that is a really important next step that we're going through.

So we're going to be talking about new ways to sort this information, to make it easier to find to organize the information once you surface it. So that is all things are going on. And so I appreciate the transparency issue that happened. It - there's a very small part of it that is draft for the Recommendation 15.

I mean there's a bigger issue of how do you access information within ICANN? How do you find the information you need? How can you come and

request information, get pointed to the right information, relevant information? And we're trying to solve that.

Renata Aquino Ribeiro: Follow-up, quickly?

Michael Karanicolas: Sure.

Renata Aquino Ribeiro: Renata, so a suggestion. Can we have for example ICANN legal work if ICANN comes to keep adding other materials like where the URLs, how do you find it and so on? It's really about I don't know creating standards to communicating information. Just a thought and any other thoughts you would have for moving forward in improving this?

Michael Karanicolas: Sure. That's a little bit tangential for that sort of question of volumes of information and so fairly but certainly findability and accessibility of information are core to transparency and going to be dealt with in the ICANN 61 session. Are there any other comments on the - Farzi?

Farzaneh Badii: Sorry, I just have a general comment. So hi, Farzaneh speaking. So I just want to make a general comment. I'm not very familiar with the details of ICANN legal approach to transparency of ICANN. But I think to have a more accountable and transparent ICANN legal we need to move away from this risk-averse approach that we always, you know, we cannot be transparent because of the client's privilege and attorney client privilege and all sorts of things like that. So I believe that I don't think the community could come up with solutions for transparency or if I may suggest we are – I don't think we should be the only ones who should be looking at ways to enhance transparency of ICANN legal but I think ICANN legal also should proactively look at itself and kind of get rid of the risk averse approach and be eligible during - being more transparent.

Samantha Eisner: You know, I think one of our - particularly in the US - and I know Michael talked about how in Europe there might be different standards for how in-house counsel worked with the organizations and the expectations of it that they have. Within the US there's a different standard. And it is part of our job. But that doesn't mean that we can't do things differently right?

So, you know, we've talked about like for board briefing materials there could be some things that are withheld for various reasons including privilege that it makes sense for us to have a review cycle to see if the need for that withholding of information stays true a certain amount of time down the road right, because it might not always be the case that if I claim privilege over something that I need to claim privilege for today that I still need to maintain that privilege three months, three years down the road. And so there are ways that within ICANN we are willing to work with a community and come up with solutions like that. It's not just a one-way street of the community having to come up with these ideas.

Paul McGrady: Paul McGrady, oh that's loud. I don't want to re-create any wheel so I'll just read what the IPC had to say about this and it's comment because I don't think that it was necessarily picked up. So we said the CWG should re-examine Recommendation 15 which states that they DIDP exception for attorney-client privilege should be narrowed so that information will only be withheld if it's disclosure would be harmful to an ongoing our contemplative lawsuit or negotiation and explicitly mandates the disclosure of a broader public policy of IPC for lawyers. This approach to attorney-client privilege seems overly simplistic while legal advice directly related to policymaking which may not be the right term since in the instances policy is made in GNSO working groups and the like and not by ICANN organization should broadly speaking be disclosed where possible, there may be legitimate reasons

for maintaining the privilege rather than waiving it. Recommendation 15 fails to take this new account.

There may also be legal advice that's not related to a lawsuit or a negotiation where waiver of the privilege to raise legitimate concerns. Recommendation 15 fails to take this into account as well. The CCWG should explore ways to balance legitimate reasons to maintain attorney-client privilege and the public interest in disclosure. So for what it's worth that's what the IPC thought back in April.

Michael Karanicolas: Yes so we did of course take that into consideration. We factored in all of the different – all of the feedback that we got, some of which was explicitly supportive of the recommendation as previously said, some which is more skeptical. For me I think the bottom line is that if the previous iteration of Recommendation 15 didn't draw the line in the right spot then that's fair enough. Let's find a new place for where the line should be drawn. Let's find a new avenue for how this should be done.

But I think that the line has to be drawn because if you leave it at a – in a circumstance where disclosures and privilege are applied on an entire – on an entirely discretionary basis then you're not going to be providing proper accountability. Any time an organization is giving information out on a discretionary basis they'll have the ability to manicure the information to curate what comes out to present a narrative that they want to present. The point of access to information is it provides unfiltered and unvarnished data about what's actually going on. It doesn't give the information holder the opportunity to push it through a particular lens or to push a particular narrative that they want to express. And I'm not claiming that that's what's being done. What I'm saying is that it lends itself to that kind of behavior. And the only way that you know that it's not being done is if there's a firm rule that the

organization commits to. And if the previous phrasing of that doesn't properly protect the legitimate needs of the organization the let's find a new formula but let's find a formula. That's all that I'm trying to say.

Paul McGrady: Paul McGrady here again, sorry to jump the queue if there's a queue. I didn't participate on this particular working group because there were just too many. But we're talking about one side of the public interest coin which is having access to information. The other side of the public interest coin is of course that there are public policy benefits in having attorney-client privilege or else the society would've done away with it right? Does this working group take advice outside of itself on that issue about the importance of attorney-client privilege and the role it plays in life? And if not, you know, I'm talking about third party. I'm not talking opinions of the working group people but third-party advice on that. And if not is that something that you guys could do because I think that may help you draw the line someplace where it needs to be drawn?

Michael Karanicolas: We didn't take – we didn't take specific third-party advice. Again we got – we had conversations with ICANN legal. Again I have a law degree. There were several people with law degrees on the working group. I think I understand the importance of attorney-client privilege and I 100% respect the need for it. So it like I'm not sure that necessarily it would've been helpful just to solicit specific advice on that point. I'm open to other thoughts. But in terms of like the value of it I think that that was very clearly understood in the working group.

Barbara Wanner : Thank you. This has been a very important and valuable discussion and we really appreciate Samantha's willingness to candidly engage with us on this. And we were especially pleased over here to - for your willingness to work with the community on this issue. I think with that in mind it's very important

that we get the minority views incorporated in that transparency sub group before it goes out to the community for another review. And we look forward to as Michael said finding a formula that works well. Thank you.

Michael Karanicolas: So if – so well let’s – so we have about 15 minutes left. What are some thoughts around the room in terms of avenues forward? It’s just that we try to incorporate the sentiment of the minority position which is slightly more concrete around having a new consultative process around shaping attorney private client privilege and include some discussion about the IRPs. I can – yes sorry go ahead.

Steve DelBianco: Hey Michael, Steve DelBianco. The process in Workstream 2 is that each of the nine sub group reports are at various stages of approval including your first draft. We have a couple of plenary calls coming up in the next several days. The plenary of the CCWG is the place to surface team driven revisions to what it previously approved. And then you make an assessment about whether that requires a whole other round of private public comment or bundle all nine together for the final consensus approval of the community. So mechanics-wise your team, Workstream 2 team probably needs to very quickly consult with ICANN staff and the chairs to figure out the very next plenary at which you could raise it understanding that as you draw that line, as you raise that line you may cross some line where another round of public comment on that would be necessary. And it would be better to avoid that right for all parties involved.

But I do underscore what Barbara Warner said is that I have no doubt that Sam and legal are willing to engage the community. Sam always has engaged the community. And yet if that engagement comes at the mandate of a recommendation approved by the board through consensus of all the chartering organizations it will have a greater urgency about working with the

community in a way that satisfies the community's concern. So it only serves our interest and our last shot to achieve a slightly higher bar by moving that line.

Michael Karanicolas: So that sounds to me like a good avenue forward but I see another hand. Go ahead.

Paul McGrady: Yes this is Paul McGrady again. Sorry, I either say nothing in these sessions or I hog the microphone. This is a hog, I apologize.

I would like to see this republished. I mean if we're - and we've got a minority report in here that's never been put out for public comment I think that's worthy of a public comment. It also might be nice since we're into building models now or pieces depending on who's talking right to build a couple of different model so that people could comment on what that might look like. But you've got a bunch of high level principles here but you don't have any real meat on these bones.

And so that might be worth doing. So again I don't participate on this particular team so maybe you guys have already done all that work. But maybe you could give us if you're not going to publish it at least maybe, you know, disclose a little bit about how you got to where you are. Thanks.

Michael Karanicolas: Sure. We certainly believe in transparency. But in terms of the – well in terms of – I mean the minority statement was drafted by Robin and Malcolm Hutter. And so that's sort of been circulated. I think that the best thing to do is just to go back to the next CCWG plenary as has been suggested and to inquire about avenues forward. I think the fact that the minority statement is not – it's not looking to impose a particular standard. All it's essentially looking to do is to give a little bit stronger impetus to starting a new process

might maybe speak to it (sailor) but I'll talk to the – I'll raise at the next CCWG accountability meeting and see what comes back from that.

And so that leaves us with about ten minutes if people want to discuss avenues towards greater transparency in terms of open data, open information at ICANN's avenues to improve its data disclosure. Did you want to engage a little bit on that because you just mention that this is something that...

Samantha Eisner: If you think that'd be helpful to I'm happy to. I know certain parts. I don't know a lot about the open data initiative, the ODI but I know more about the ITID, Information Transparency Initiative so...

Kiran Malancharuvil: Hi, Kiran Malancharuvil from the IPC. I am – and if you – and to the extent you could answer this it'd be really helpful. If not now worries. In a session at the Abu Dhabi meeting held on the 30th of October CTO, David Conrad indicated that pursuant to the open data initiative statistics on DNS abuse will be published in the very near future subject to clearance from ICANN's legal team. Please continue to inform us of the location date and if none is fixed please provide information about what stage the legal team has reached in this analysis and whether there's anything the community do can - that to assist or use in the process. So when are we going to get this (unintelligible) is a simpler way to do that, give us our data.

Samantha Eisner: So little transparency into ICANN legal, I don't work on that one. So we have our group is divided into the different departments that we support. And so when I said I'm not really familiar with the ODI – I - because I don't do a lot of draft supports, the CTO's office is driving it and I also don't do in that same regard, I don't do a lot of direct support to the CTO's office that has the abuse statistics. So that's something I really just don't know. But I'm sure we can take that back to David and see what his plans are for...

Kiran Malancharuvil: Okay, yes.

Samantha Eisner: ...releasing data.

Kiran Malancharuvil: Yes if you take it back that'd be great. And I think there's a intersessional delegation email address that maybe you could answer it to the whole group if anybody's speaks that anyone else is interested or you can just give it to me and I'll forward it.

Samantha Eisner: Yes I think I can – the best thing to do would actually be to forward the question to David Conrad because I'm not to really empowered to answer that one.

Kiran Malancharuvil: Sure, okay great. Thank you.

Michael Karanicolas: Steve?

Steve DelBianco: Thank you Michael. Sam the question to David with the request to open data could also include a query about whether the fiscal '19 proposed budget that came out just the other day includes sufficient funds for him to implement the ODI according to the ways discussed it with the community. So I've done the – I've looked into the budget and there's a line item for office of CTO as you know but the word ODI or open data initiative isn't in the entire budget. It's probably at a level of detail inside of this department. So the question we'd love to know is since you're already reaching out to your colleague David is to help us understand the FY '19 budget proposal and whether it has sufficient funds for him to do the ODI as promised during 2017.

Samantha Eisner: And so that everyone in the room knows the session that happened in Puerto Rico is actually a joint session on ITI and ODI to both explain the differences between the program but that's also a great places to ask some of the more specific (unintelligible) question.

Steve DelBianco: Thank you Sam. As a follow-up if David were able to give us an answer beforehand we'll be so much more well-equipped to ask the right question when we arrive at San Juan rather than ask it then.

Michael Karanicolas: Please. Yes Raoul?

Raoul Plommer: Yes also like since you're going to David now could you also like ask a little list of things that what exactly are being opened like what kind of data, what's the quality of the data?

Samantha Eisner: So I'm actually going to deferred these questions to the policy support team to be the liaison between David and the NCPH on this because it - I think that's a more appropriate allocation of resources. So forward any questions to David's team on that one.

Michael Karanicolas: Yes please?

Jimson Olufuye: Okay this is Jimson Olufuye, BC. Just to add it to the menu list you are compiling to be good to get some additional information about the document management system that the (CO) talked about, maybe also connectivity transparency. Yes document management about - I think it was talking about \$8 million project or something.

Michael Karanicolas: Yes I think he was asking about the budget for the document management system.

Samantha Eisner: Oh I'm sorry. Sorry yes.

Michael Karanicolas: But this is really something because so the session in Puerto Rico, one of the reasons why I wanted to have a bit of an open transparency discussion is to lead into that session and to see what areas people are interested in being in engaging with and in being addressed. So this is really great. If anybody else has questions or thoughts about ICANN's Web site, the information ICANN puts out there, your experiences in finding information please do share that now even if it's not necessarily going to be part of this current query. And even if you can't answer it on the spot we can incorporate that into our discussions going forward. (Unintelligible) please yes?

David Olive: This is David Olive. I'm the Policy Advisor to legal. And I'd just like to say we'll take those questions. We'll look at the transcript to make sure that David Conrad and the team preparing that cross community session in Puerto Rico would have that or any other additional questions that we can give to them. And if they can provide something in advance as prep that would be very helpful for making that session informative and in all that it deals with the - a content management system as well as the data management system which is part of the initiative and also the ODI which is linked to that. ODI basically is the data and the CMS DMS is the way to present and access that data and those distinctions we made obviously in the meeting.

Michael Karanicolas: So we have a few minutes left. Does anyone else want to share thoughts or questions about experiences with information or open data or experience at ICANN's Web site or information that's gone out or what they'd like to see going forward or discussed going forward? Yes please?

Jimson Olufuye: Yes it be interesting – Jimson speaking. It'd be interesting to know more about the extent of our privacy law on the level of transparency we can attain, you know, privacy law and the extent of transparency that it can bring to bear.

Michael Karanicolas: I think generally challenges around the exceptions within the DIDP and that includes privacy, attorney-client privilege -- with all the exceptions that's there the challenge is in redacting that from the material delivered through the open data initiative, through proactive (unintelligible) on the Web site are probably very interesting questions to engage with as well. So privacy guess but the other exceptions too. Any other thoughts before we hand over to the next session?

All right and not seeing anything thanks very much to Sam for joining us and we'll move on to the next session which I think is going to be chaired by Rafik and Jimson.

END