

**CCWG-Accountability Work Stream 2
Jurisdiction Meeting #47
18 September 2017 @ 19:00 UTC**

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. 9-18-17 ICANN accountability work stream 2 jurisdiction subgroup.

Captioner standing by.

>> Cheryl, can I just test my microphone?

>> We can hear you, but it's faint.

>> Okay. If any of my other meetings finish I will switch. But right now I need to be in 3 meetings.

>> You are a model for all of us, Cheryl. Thank you.

>> Hi, this is Greg. We'll be getting started in just a minute. Hi. This is Greg again. Let's get the meeting under way, please.

>> This meeting is now being recorded.

>> Good morning, good afternoon, good evening and welcome to CCWG accountability work stream 2 jurisdiction subgroup meeting number 47 on September 18, 2017, 19:00UTC. We will begin with a review of the agenda. There seems to be background noise. If that could be resolved. I think somebody has their mic open. After reviewing the agenda we'll go through our administrative minute and then go directly to the issues. First, we will go to and perhaps complete our discussion of the OFAC recommendation. Next, we'll move on to the next steps of proposed issues relating to choice of law in registry and registrar agreements. That is GTLD registries.

Then, time permitting we will review the revised proposed issues list which hasn't been further revised since last week. And we'll also briefly review the schedule and time line. Please let me know if my sound is good, bad, indifferent. I see some issues. I've changed the volume. I don't know if that's any better. If it's not I will get on a different implement.

>> [Indiscernible]

>> Now I've turned the mic up a bit. I see now, too low, too loud. I feel like Cinderella, maybe it's not Cinderella. Anyway, Little Red Riding Hood.

>> That's good.

>> Gold Goldielocks. I've forgotten my fairy tales. In any case we will move on to AOB, after review of schedule and time line which I don't want to skip over because we have a short time line and need to

figure out how to use it best and after that we'll adjourn to our next meeting and we have a long gap between this meeting and next since we are on Monday of this week and Wednesday of next week.

So, let us deal with administration. First let me see if there are any changes to statements of interest. I see no hands for us changing statement of interest. Everyone has stayed put for at least the last week. Let us see if we have any audio only participants. I hear no audio only participants. And I see no phone number only participants. I think we've satisfied our administrative minute. Let us move into the issues and proposed issues section and put up the latest version of the OFAC recommendation.

Thank you, staff. I see that scrolling is available if need be. So, this version of the document reflects a number of changes. Most were made by me reflecting the discussion that we had last week. Without reading everything verbatim we can walk through the changes that were made. First, in the person subject to compliance obligations, crossed out what was an interpretation created either by me or various texts of who is subject to OFAC compliance. I've replaced that with a statement from the OFAC website. Figuring that would be a more -- a good third party source or maybe first party source to rely on rather than attempting to resummarize it privately.

So, is there any objections to anything as I read through? Please put up your hand, of course. So that we can see if there are any issues. Hopefully we will have few if any but we will always have a few. So, next change, there's some minor changes here too. I took some links and put them into the footnotes instead of having linked text. But I think I've dealt with Paul's comment on the person subject compliance obligation. So that takes us off the first page and down to issues presented. On the term generally, it's suggested changing it to U.S. sanctions on countries. General was too vague -- I'm paraphrasing at this point. I don't know if there are any thoughts on that. We can certainly come up with a more -- something slightly better as a heading for this. The actual recommendations we're making here. I see from Milton, okay to me to use U.S. sanctions. Any objections? I'm seeing no objections so we'll go ahead and make a change in that vein. Might move that language just a teeny bit. Then, the next change is one suggested by Kavouss. First there are a couple changes I made which the issues presented had gotten disaligned with the actual list of issues as they were discussed. So I put in approval GTLD registries because that is what's discussed in the fourth section. Then general licenses is discussed in the sixth section. And I crossed out one heading that did not have an actual discussion or heading attached to it. Kavouss I see your hand is up. Please go ahead.

[silence]

>> I'm not hearing you yet, Kavouss.

>> Hello?

>> Yes, I hear you now.

>> Hello? Do you hear me?

>> Yes Kavouss, now I can hear you.

>> Yes, I said please kindly make sure the page that you're explaining is fixed and not moved by the Secretariat and give it which part of the text you are referring. It's difficult for us to read that. At least for me, but not for the others, maybe. Which page you are and which part of it, please, thank you.

>> We're on the bottom of page 2 and referring to the bullet points under issues presented.

>> Yes, okay. I have a question. Why the bullet the cancellation by has been deleted? Is it covered elsewhere? Why is it deleted? The document I sent you I re-introduced that. I may be wrong. Maybe you have introduced it but please kindly advise why it has been deleted. I was not able to properly comment in previous meetings from first of September till 10 of September I was in a country that was very badly connected to internet. So I could not participate effectively. I was listening. So could you kindly say why the bullet relating to cancellation has been deleted? I think that's a useful part, unless you have covered it elsewhere. Thank you.

>> Thank you Kavouss. The reason it was deleted is that there was no text and no heading in the document itself discussing that. I see that you sent in a paragraph which is now at the end of the document under the heading general licenses. It's a single paragraph. And, it's possible that you intended part of this paragraph to cover this issue. But, it doesn't seem to be the case. So, cancellation of domain and registrations owned by rej star OFAC is covered by applicability of OFAC and non-U.S. registrars to the extent it's been covered at all. But, as far as I can see at this point we have no text covering that topic. You should have the document available to you to download in PDF or Word form or through Word into some other word processing software. So hopefully you can get a good look at it.

The next bullet was suggested by Kavouss. Getting accreditation from ICANN for new registrars based in countries subject to OFAC. We don't have any discussion of that. So there's no text attached to that. We could add a discussion of that at some point and perhaps applicability of OFAC and non-U.S. registrars but I don't think that's the case. So if we have some text here, maybe it should be part of general licenses or something to discuss encouraging -- encouraging the ICANN to make it easier for new registrars in countries of OFAC sanctions to apply and be accepted. Kavouss I see your hand is up, again.

>> Yes. With respect to the working strategy that you said CSED is no part, I suggest this is a case, maybe some part of the document indirectly referring to that. We don't need to have one to one relation. So I suggest you maintain the bullet you have deleted and you kindly include the bullet that I have suggested. Because, in some part of the document there are reference to that. Maybe in an indirect manner or direct manner but not exactly underneath of that. So I suggest that not to delete either of the two. Thank you.

>> Thank you, Kavouss. Otherwise the rest of these bullet points just correspond directly to the detailed discussions underneath. So I don't think it would be appropriate to include just a straight bullet point without any discussions and without any recommendation. So, perhaps if you want to suggest some text on this particular topic or some place for the subject to be covered, we can consider it. But, I just don't see how it would work otherwise since there's no recommendation. So there's really nothing -- we're not saying anything about this in the document. Any thoughts from anybody else on this point? Milton, I see your hand, please go ahead.

>> Yes, can you hear me okay?

>> I hear you loud and clear.

>> I think the issue of whether the registration canceled is discussed but you're right it doesn't correspond to a header. So I think that we are not eliminating the point that Kavouss is concerned

about. We are simply not recognizing it as a header within the document. So I would propose that we move on.

[echo]

>> Thank you, Milton. Sorry about the echo there. I'm switching to telephone. I missed what you said. I don't believe we have any text that covers cancellation. We do have some text under the applicability of OFAC to non-U.S. or application of OFAC restrictions by non-U.S. registrars does touch on that. But, we don't have any discussion of it actually occurring. So... .

>> Okay well then in that case we probably should add a paragraph and a bullet point which simply says that, you know, people are going to cancel domain names because of OFAC sanctions they need to give their customers warning. And those kind of things. I think it's a consumer protection issue.

>> Well, I think if we're talking about how registrars -- the recommendations we're making to registrars, this I think would not only cover non-U.S. registrars but U.S. registrars as well and probably more to the point for U.S. registrars who are in fact subject to OFAC. But, I frankly don't know what the right process is, if it's in their registrar agreement. Somebody wants to suggest some text we can look at it. I am, of course concerned that we need to get this into final shape and put it in the final report. So I'm just concerned about the risk of having a report. But I do want to see if we can see quickly some suggested text that would discuss this that could then be approved on the list, we can try to move forward. So I'll look for an off line suggestion on this point. And at this point we'll kind of look at this as being in flux, these last two bullet points, the crossed out one and the suggested added one are both in flux because there is no text that is tied to them. So I think that moves us on to page 3. Kavouss is your hand up again? Please, go ahead.

>> Yes, I said for the time being please kindly maintain that if you want to add the note, we call it in some non-ICANN note that for the time being there is no text but the issue is that, no text. Maybe we find the text at a later stage [Indiscernible]. So maintain that with a note or add a note for the time being there is no corresponding text for these two topics. Thank you.

>> Thank you Kavouss. I think I'm not clear that we have any issue here so with that we'll maintain these here for some period of time. But if there's not an issue and agreement that's an issue that we need to raise, the headings need to go away. These cannot be like the chasseur cat leaving their smile behind when the body is not there. So we will keep these for the moment. But they are -- without supporting an agreed text they won't stay. Next changes are in the recommendation, starting at the very bottom of page 3. As noted there was the word not in the second to last line which was distorting the meaning of the sentence. The other changes at the top of page 4 are just for clarity purposes.

We all -- I crossed out these two bullet points and headings that were sitting here because there was again -- the discussion of this at least in part is elsewhere. And we'll get to it shortly. Next changes are in the recommendation toward the bottom of page 4. While this is -- looks substantially re-written I think I've tried to capture here both the best efforts that we've agreed should be added to this and also to harmonize the language of this recommendation with the recommendation for registrars. So, if there's any issues with the language here, please, put your hand up. Most of the added language here is already in the non-U.S. registrars recommendation. Could the rapporteur briefly develop the drafting history of footnote 5? Footnote 5 has been in this document since the first draft I believe. And without

any comments on this. So, that's the drafting history. And it reflects earlier discussion that is we've had about the fact that there are other sanctions, regimes besides OFAC but we have not been concentrating on them and so far they have not been raised as actual current issues. I hope that helps. Next, is the discussion of the application OFAC limitations by non-U.S. registrars. Milton, your hand is up. Please, go ahead.

>> Yes, I just wondered, I don't recall coming to consensus, it's true I missed a couple calls but isn't this about well understood criteria? I'm not sure why that's needed. If, you know, the U.S. government is in a position to deny a license and the sanctions are meant to be expressions of U.S. policy, basically you're asking ICANN to develop its own sanctions regime or what?

>> No. No.

>> Did anybody give an example of what they have in mind as to when it would be inappropriate to seek a license?

>> I think the idea here was to ask for greater transparency for ICANN and that in the event they were ever to deny a license to a party or deny the effort to get a license to a party, that they would explain it and that it would be based on criteria that hopefully would be understood in advance by those applying. Now it may be that a particular case could come up for reasons that weren't imagined in those criteria. So, the idea was to increase predictability. And that so far the fact as I understand it is ICANN -- every time there's been a reason to get a specific license that ICANN has sought one and received it. But they reserve the right not to do so. We've substantially narrowed that right so it's no longer at their discretion. So the idea of this language in both places it occurs is to provide transparency and predictability in the event ICANN elects not to seek a license with a potential applicant or registrar who otherwise would seem to be viable. Now they can also say you're on the list. Of course, that's not up to ICANN to say or not. But the idea here was to try to provide something. The language here doesn't have to be well understood criteria. We can certainly try to play around with it but I think the idea is to avoid surprise and create a line of communication for applicants.

>> I would like to respond. So I certainly would favor a transparency and I wouldn't want ICANN to make arbitrary decisions. But, I think we are opening a door to all kinds of undesirable outcomes if we say the community and ICANN will need to develop criteria for not applying. Now you're suddenly putting ICANN and its community in the business of developing a sanction regime or for the business sanctions U.S. sanction regime. Other than a party being on the SDN I see no reason why ICANN shouldn't apply for a license. Particularly if we're asking as we are later on for a general license which would sort of eliminate the whole issue. So I would propose to strike all this language after registrar comma, unless ICANN blah blah blah. I just don't think that's needed. I don't think it's productive.

>> Thank you, Milton. I see some of your concerns. I'm still concerned that if ICANN still has some -- has capacity not to apply if it decides to do so. Now it's at its discretion. I think we arrived with ICANN could make a decision but it would have to be a reasoned decision not to do so. And that they should express those reasons. Now maybe we don't need a preexisting list of criteria and maybe we get into hot water in trying to imagine the criteria that would be needed. But, I think maybe we can separate these into two topics. One is or maybe even 3. One is, if ICANN decides not to go forward, do they have to give the reasons? And what would those reasons be based on? And would we know? Would those reasons be available as some sort of prestated list of criteria? Now I can't imagine either Milton why

they would do so but that's not -- we can't exclude the possibility. David, I see your hand is up. Please, go ahead.

>> Thanks, Greg. It's David for the record and I just wanted to say on this issue when I read through this I took that language to mean that the well developed or whatever it is criteria would be done between ICANN, the community sort of as a gating thing. Just with respect to applicant viability. For instance, it's been a while since I read the applicant guidebook but there are I believe financial qualifications for somebody to be an applicant. I think the point is that ICANN shouldn't have to apply for everybody that simply walks by and says they would like a license. But, I do agree that Milton has a point about not creating a sanctions regime that gives ICANN discretion. But there has to be some way to call out people that are just testing the waters or being curious and gets to viable serious applicants and hopefully the language could reflect that. Thank you.

>> Thank you, David. I think that puts a slightly different gloss on the issue. And now we're talking about criteria that have nothing to do with OFAC and just if you will, the standard criteria for reviewing registry applications and registrar potential registrars seeking to be accredited. So -- but I think the language here says that they need to make their efforts to -- best efforts to secure an OFAC license if the other party is otherwise qualified to be a registrar. So we've kind of already taken care of that issue of unqualified applicants. Generally, unqualified applicants. So, the issue I think really focuses on whether ICANN has any discretion not to apply for an OFAC license if a registrar or registry applicant is otherwise well qualified. And Milton's view is that ICANN should have no discretion moving from the current situation where they have absolute discretion and no transparency. So, then that really is enough of the issue. And I know Milton's opinion on it. I don't know anyone else's. I see some agreement from Thiago and Jorge maybe on that point of your capacity to refuse an otherwise well qualified applicant. I see a hand from Phil. Please go ahead.

>> Thanks, Greg. I have an opinion on this which is somewhat different from Milton's. I do believe that in the vast majority, 99 percent of instances ICANN should apply for the license for an otherwise qualified applicant. But -- and, I recognize it in the document any discretion to not do so would be based on yet undeveloped well understood criteria which the community would have great input. I do believe that ICANN -- there is a possibility, I think it's extremely low that ICANN might receive an application from a technically and financially qualified applicant which for some other reason is so odious, has a bad reputation around the world that they might tend to associate ICANN with that reputation. And that's a very small amount of discretion should be permitted for that instance that it should have some very slim amount of wiggle room for those cases. I'm talking about an applicant that might have a history of taking credit for terrorist attacks or being involved in ethnic cleansing activities somewhere. Something of that level. I don't know that's creating a separate sanctions regime but there are organizations in the world that just maybe they'll create embarrassment might submit an application and in that very rare instance ICANN should have some out of not having to in a sense vouch for that organization with government officials. I hope that's not too controversial but I think it's reasonable to not create a 100 percent rule where ICANN never has any discretion to refuse to go forward. And of course, if it did so, I believe in this document that it would have to probably disclose and explain to the community why it was not doing so. Thank you.

>> Thank you, Phil. I guess just a follow up in your hypothetical there, you're assuming that the individual or entity applying is not already on an SDN list or other sanctions list so that it would at least be facially appropriate to apply. Because if they're on the list then there's no point in applying.

>> Well, yeah, yeah. Of course they would already have to be on the list. We're talking about organizations that are barred under the OFAC list to let them enter into transaction, ICANN would have to ask for the license so it can engage in otherwise prohibited transactions.

>> I guess there's two major scenarios. One is it's someone from a country that's under sanctions but they themselves or their company is not on any especially designated list. That seems to be the situation where we would be applying for a license. Then there's a separate section where that actual company is already on the especially designated nationals list. It's individually sanctioned. And I don't know -- I've been assuming that ICANN would not need to apply under those circumstances. But, maybe that's a false assumption. So, I would be curious to know whether people thought that. But it seemed to me that maybe the only criteria that ICANN should apply if somebody otherwise is qualified is that the entity applying is not -- is not a sanctioned entity. A specifically named SDN. Farzaneh I see your hand is up. Please, go ahead.

>> Thank you, Greg. Farzaneh speaking. I just wanted to say the only criteria should be that ICANN does not have [Indiscernible] legally seek a license for the SD N's, especially designated nationals. And I think in other circumstances it should apply for a license because we also have eligibility criteria for the [Indiscernible] applicants anyway and the concern we are having about ICANN's reputation should be dealt with at that stage. So, this is what -- if we have the criteria for ICANN to decide based on whether or not [Indiscernible] just takes us back to the first point which ICANN says ICANN is not obligated to seek a license because I think criteria will be very arbitrary. Thank you.

>> Thank you Farzaneh. So what I'm taking away from all this is first that it essentially goes without saying that ICANN could not and therefore should not apply for a license for a especially -- a transaction with a especially designated national. And we don't seen say that's a criteria, maybe it's a photo note. For a well qualified applicant who is not a sanctioned individual or company that ICANN has no discretion. And should apply. Because they're a well qualified applicant and they're not a sanctioned applicant and therefore ICANN should make the application period, end of story. So I think originally this had been drafted to give wiggle room and also to create a very interesting project of creating criteria. And then how to apply them. Instead, we would have a simpler regime. The qualifications unrelated to OFAC issues or OFAC itself would be weighed as they are with any applicant and I can if that applicant is not an SDN and is a national of a sanctioned country as a covered person, as ICANN would apply and use best efforts to secure the license. So that I think is where we're at. I understand there may be a one in a million chance but it seems to me if that party is odious, first there's a good chance they're on the list so more of a 1 in 10 million chance and there's a good chance any of the other qualifications might well be triggered. As opposed to ICANN just electing to take a party that otherwise if they were not an OFAC covered person would just be given the franchise, so to speak. So, sorry we're taking more time on this but I want to get that straight. Are there any objections on the call to what Milton is calling anti-wiggle room approach? I see no hands. So I will take it that approach is the approach we should take in both cases and I will revise this accordingly and get it out to the list as quickly as possible. So we can keep this up. I think we can make it more clear that an SDN is basically a stop light for this purpose. To note what Phil and earlier Farzaneh said. So I think that takes us through

the recommendation at the bottom of page 4. And then into the discussion on page 5, here I went and checked -- we had two registrars rather than two that were sited to us and we were shown their registrant agreements both of which cited OFAC sanctions and yet one was in Curasou license one in Turkey. In the process of revising the document I went back and checked to make sure all the links were correct and when I got to the Dislokin registrant agreement they had revised it significantly and removed any mention of OFAC restrictions. Also taken out the reference to Mumbi time. So maybe they've been monitoring our work or maybe it's just a coincidence but in either case they removed their OFAC restrictions language. So I have edited this what I think is suitably to account for the one registrar Elipso that still has that language and I checked and it's still there. But to try to write this up a little better. So... I think that -- if there are no objections hopefully we can keep the language that is here. As indicated before we can keep this document open for a short period of time but this has been up for several weeks now. So, would like to not keep it open for a long period of time.

Time check, we're at 15 minutes before the hour and haven't gotten through our first and substantive item. Like to see if it's possible to stay on for another 30 minutes. See if there are any objections to that. And Milton I see your hand is up. Please, go ahead.

>> Yes, this is Milton for the record. On the registrar's who have these -- what do you call them? Copy/pasted terms referring to OFAC. There's a lot of legal room nation in here and I understand you're having careful and lawyerly Greg in your drafting here but I think we're just making this too complicated. Essentially all we want to happen here is for ICANN to make it clear without getting "legal advice," that registrars do not have to follow OFAC sanctions solely on the basis of their contract with ICANN. I would be happy if this entire recommendation were like that sentence. I think that's all we really need to say. We don't need to talk about the absence of data, approve any examples. If some foreign registrar has stuff in their contract that says they're going to apply OFAC sanctions, even if that's never been used it's kind of a problem and it indicates confusion. So we just want ICANN to clarify that. And I really don't think we need all the room nation.

>> Thanks, Milton. I see a growing list. Unfortunately I'm on tablet so I don't know between Kavouss and Thomas who had their hand up first. So we'll go with --

>> Kavouss was.

>> Kavouss, please go ahead.

>> Yes, thank you very much for the extension of the time. May I request not to go beyond 15 minutes. There's a window here in this part of the world, so it will be difficult. We have been working from the early morning and now it is midnight [Indiscernible] no problem. Thank you. But not 30 minutes, please. If it's agreeable to you.

>> Thank you, Kavouss. Let's see how far we can get in 15 minutes. I certainly would prefer to end earlier but I also want to end with completion of at least something. Thomas, please go ahead.

>> Thanks very much, Greg and hello everyone. I just wanted to propose to you that during the discussions if there are any issues that this group can quickly close on then you might consider to take those to the plenary for guidance. You know this might help expedite the deliberations in this group. If we don't need it, fine. But if we see we get stuck that might be an option to help us move on.

>> Thank you, Thomas. I think that's a good idea if we are kind of stuck. But I think we've resolved at least the wiggle room issue in a way that will change the document. But I think cleaner. Make it a cleaner recommendation in many ways. So, now we have the issue here of what exactly to say about these -- the general case of registrars that maybe or could refuse an ICANN -- refuse an applicant for a domain named solely on the basis that they believe that their contract with ICANN requires -- causes them to be covered by OFAC which then causes them to be required to do so. I guess the question is whether -- whether we want to go any further than that case. Because, there are cases -- it's not clear what case Elispo and Enfloatenis involved in. But we could make this a much simpler recommendation if we limit it to registrars who are mistakenly thinking that based solely on their ICANN contract that they must apply OFAC to all -- to their applicants. Or ridge straits. I think beyond that it gets into rumination about why they do it or if they have a valid reason because they have U.S. contacts or something like that. So, I would be in favor of the narrower, cleaner recommendation. I think it's -- it will be easier to deal with and we can still make the point that OFAC application needs to be individually considered by each registrar. I see Farzaneh says narrow and clean is nice. Bernie I see your hand is up. Please, go ahead.

>> Thank you. Just a process thought here. This is probably one of the most complex recommendations work stream 2 has seen and will probably see. It's also based on a lot of legal precepts which is a little bit different than many of the other things we do. I'm just trying to keep in mind that basically there are 3 plenary meetings left before the cut off date for getting something done. There is the one on September 28th, there is the one on October 11 -- sorry, October 18th then October 27th. During the complexity of this recommendation, this group may want to think about getting this recommendation wrapped up so that it could be submitted to the September 27th plenary for comments. Because, my understanding is that, you know, we've been working on this for weeks. There's a lot of very qualified people on this call who understand OFAC and that's not necessarily going to be the case in the plenary. So just a thought for you anyways. Thank you.

>> Thanks Bernie. Just to clarify you're talking about the OFAC recommendation as a whole, not just this one subrecommendation. Although this is probably the most complex subrecommendation in this recommendation. So, I do think -- yes. So I do think this is something we can get out more quickly. It's now the 18th, the 27th is in 9 days. We do have one more meeting before the 27th if I'm not mistaken or maybe not. Maybe we're actually meeting after on the 27th. That won't do. But I think it's --

>> Greg.

>> Sorry.

>> I think it needs to be delivered one week ahead of time. Which is why I'm talking about 21, which is Wednesday.

>> Okay so by Wednesday. Okay. Very good. I think it seems like we have as Jorge says in the chat a lot of common ground on this recommendation or this subrecommendation. So I think we can simplify the subrecommendation and go to the clear case of essentially mistaken application of OFAC on the basis that a registrar accreditation agreement with ICANN would cause a non-U.S. registrar to have to apply OFAC. And we can avoid -- we can make it much clearer and simpler and have an effective, if we do that. So does anybody object to that kind of narrowing and crystallizing of this recommendation? Thomas, I see your hand is up. That may be an old hand for Thomas.

>> Sorry, old hand. I was on mute. Sorry, old hand.

>> I assume from your earlier remarks you would support a narrower, cleaner, effective, easy to understand, apply and get done recommendation?

>> Correct.

>> And avoid all this legal -- on the one hand, on the other hand here. Okay. I think that gets us through this one. And that gets us up to the point of general licenses. Putting aside some of the language here obviously is going to change quite a bit in this case. And what I want to do is put this back on the list this evening. I have some paying clients that need my attention after this call for a couple of hours but I will turn this around this evening before I go to bed and put it back out on the list and I'll do that simultaneously as a Google doc, a Word doc and PDF so no matter what format you require you will have the same access that everyone else does to the document. And I will try to keep the Word and PDF provisions circulating reasonably often if the document further changes in the Google doc. With the goal that we could get this to the plenary next week and have it there by Wednesday. Is there any objection to that scenario? Obviously, this can still be discussed at the plenary. It is not the end of the road for issues. But, on this point -- but it gets us going. Kavouss, I see your hand is up.

>> Yes. On page 5 the portion that has [Indiscernible] I think it is necessary because you mentioned that we don't have yet any supporting data. I suggest we put a sentence that further investigation is required in order [Indiscernible]. If you don't have something because the case has not been raised formally but it's related to [Indiscernible] investigation, that would help bring support. So [Indiscernible] needed or required to connect either cases which proves non-U.S. based registrar are [Indiscernible] sanctions. We need to engage in some sort of survey. Thank you.

>> Thank you, Kavouss. I think that the way this recommendation is going to be rewritten, we're not going to need to discuss the lack of anecdotal evidence or data because we're going to be focusing just on the issue of application of OFAC as a mistake due to non-U.S. registrars believing that their contract with ICANN requires them to comply with OFAC and to apply the sanctions. So, I don't think we're going to need this language. But let's see how this develops as I rewrite it this evening. I think we probably would be better off without creating more work later on because that makes it harder to actually put the recommendation into effect. As anybody participating in the Human Rights subgroup knows. If you ask for something to be done as an intermediate step it can slow down the adoption of the actual recommendation.

>> If we want to change the text I have no problem. But the idea is until the time that [Indiscernible] few months I think that will help to put in the document such survey would help. Perhaps by the time of the recommendation approve the final [Indiscernible] public comments we would have some evidence of that. So I don't see any difficulty to maintain that. If you want change [Indiscernible] no difficulty. You about the essence of the text needs to be maintained. Thank you.

>> Thank you Kavouss. I think we've had well over a year in which to take in evidence and haven't seen any. We've also conducted an investigation through questionnaire. But in any case... Does anybody else support having this language here? Assuming the recommendation itself gets slimmed down to the clear case of mistake based on the ICANN contract creating OFAC compliance obligations? I don't see any other support for this.

[speaking at the same time]

>> Any opposition? Who opposes to that. You may ask this question.

>> I see some people asking what language is referred to. It's the language suggested by Kavouss on page 5 that further investigation is needed to collect sample cases which proves non-U.S. registrars are applying OFAC restriction.

>> Do you see, [Indiscernible] do this survey? Why?

>> Farzaneh I see your hand is up.

>> Yes, Farzaneh speaking. I said this last week and commented as well. These two examples that we have found is actually -- I have found it by just doing this research. I think our problem will be solved without doing any further research but by just [Indiscernible] like the sentence that you were going to put. Because of the contract between them and the registrar, they do not have -- the registrars do not have to apply -- do not have to follow OFAC license. That solves our problem. I don't know why we need to do a further survey. If you want you can give us funding and I can grant a survey. But I don't think this will right now raise a big issue or solve any problem that we have. Thank you.

>> Thank you for that. Any other comments on this point? As David says Farzaneh makes a good point. A clarification is not dependent on a survey. At worst it could be redundant. So I would like to see if there's any support for this language. I see there is opposition. I think at this point it doesn't make sense for this language to be here.

>> I don't see opposition to that.

>> I've seen opposition from Farzaneh and Milton and David McAuley.

>> David and Farzaneh are opposing to this?

>> Yes, I see opposition. Let's move on. I think we've taken this point. If you want to take it up again at the plenary, you can.

>> I plan to do so.

>> I understand your position. Thank you. Let us move into page --

[speaking at the same time]

>> I understand that's your position. I'll put a note there's one applicant who has this view or one participant. Thank you. Okay, let us look here in the middle of page 6 as discussed the language is -- we wanted our recommendation to be somewhat stronger since we're encouraging ICANN to develop -- to look into getting one or more general licenses. So we've made -- I've made some changes here to make it clearer and somewhat stronger and Kavouss suggested some additional changes which are showing up in the alternate color. Changing May, May and would. I would support the two changes of may. Would, I can support all those changes for the purpose of getting the document through. Is there any comment on this paragraph as rewritten, the paragraph above the recommendation? Okay. Seeing none, then let's take a look at the recommendation itself. Which the last draft was missing a recommendation although it had all the introductory language. So this boils it down to 3 sentences, which I will read. ICANN should take steps to pursue one or more OFAC general licenses with the U.S. Department of

treasury in connection with DNS related transactions. Initially ICANN should make it a priority to study the cost/benefit time line and specifics including likelihood of success of seeking and securing one or more general licenses for DNS related transactions. ICANN should then pursue one or more OFAC general licenses unless the results of the study demonstrate that it would be inappropriate for ICANN to pursue these licenses. Any comments on this text? Milton I see your hand is up.

>> Yes, thank you, Greg. Milton Mueller again. I'm not comfortable with the last sentence. I'm a little bit concerned that we might -- put ourselves in a situation where ICANN is second guessing the decision of the treasury department. And, they have an incentive to decide not to try to do this simply because it doesn't want to exert the efforts. So, I would prefer that we just end with the first sentence in that paragraph. I know that may not be the majority position but I think that's my position again. We make what our recommendation is. If in fact ICANN turns out that it's not going to get a general license because treasury doesn't want to give it or treasury sits on the application for 10 years and doesn't do anything, that's too bad. But, we made our recommendation and ICANN hopefully made a good faith effort to pursue that recommendation or implement it. Whereas the sort of study process, I guess -- I don't know what we're getting there. I don't feel comfortable with that language. Thank you.

>> Thank you Milton. I see a hand from Kavouss.

>> Yes, I think the last paragraph that you mentioned unless the results of the study seems to be appropriate, I have questions what is the criteria to identify or determine or categorize the study being inappropriate? So the full paragraph [Indiscernible] to describe the situation. You could not put this in the ICANN study but [Indiscernible] inappropriate. But what are the criteria that decide that the study is not appropriate. That is why I added this paragraph. What criteria should we use or consider to be used to determine or categorize that [Indiscernible] ICANN to get the license are inappropriate. It's just questioning and I think it's good [Indiscernible] not simply saying, okay, you have done a study and the result is inappropriate. So it's not the proper course of action. Also if you want to have the possibility of judgment to say a study is or is not appropriate we should have criteria and that is why we put in the first outline of this. Then says ICANN must pursue the application for a general license [Indiscernible] and should advertise and communicate with [Indiscernible] agreement and not to copy and paste the agreement. So they are together. Then further explain the situations after that. So all [Indiscernible] because they are saying it's difficult. You would not do that and if you do that you have to check with if the study is giving the proper results or not. It's something vague and really in a more negative manner. You should put it positively. Either change the sentence sense or put it the way it is that we allowed the study but it could say study is appropriate or inappropriate criteria and [Indiscernible]. Thank you.

>> Thank you, Kavouss. Farzaneh I see your hand is up.

>> Great. Just one comment. I think we discussed this last week if my memory allows me. I actually made a comment that if ICANN should seek a general OFAC license, we don't want it to be just a recommendation then the board says no we should not seek a general license. So we wanted to make the Lance stronger to make it kind of like a responsibility of ICANN to actually look into getting the OFAC general license. And in a way not to [Indiscernible]. That was my comment. Then I think the language that we've come up with kind of says that we should -- ICANN should prioritize it, looking into getting a general OFAC license. So I'm okay with making the sentence more compact and the recommendation more compact but we should consider some measures for making sure that ICANN actually looks into getting, you know, OFAC license.

>> Okay. Thank you, Farzaneh. I edited this language while reading the transcript of last week's call. And it seems to me the issue comes down to this. Whether a recommendation, which is really -- when a recommendation is adopted by ICANN it becomes a requirement. Whether our recommendation should require ICANN to actually seek a general -- one or more general licenses or whether they should take steps. Which may or may not result in actually seeking the license. There were concerns by some members, some participants that it could be a costly and time consuming process and that we would essentially be requiring ICANN to take however hundreds of thousands or millions of dollars of its budget and time line and devote it to this. Or whether we should give ICANN some discretion and maybe the criteria are based on cost/benefit analysis and not anything else that would allow ICANN to make a decision to apply or not based on the results of its study.

And, I think it would be impossible for this group to develop criteria for ICANN to do so. At least certainly not between now and the time that this recommendation would be finalized and sent out for public comment. So, but it seems to me the gating issue is whether we're going to say that ICANN must apply for a one or more general licenses or -- and leave implementation only up to ICANN or whether we're going to recommend that ICANN investigate seeking a license and then making a determination whether or not it should do so. I see Thiago and Milton are of the view that ICANN should be required to apply. So, I would like to hear -- I can hear from them. I would also like to hear from anybody else on the call as to whether this should be a flat recommendation that ICANN essentially must apply or a recommendation that ICANN undertakes a study then depending upon the results will or will not apply. Again, I'm not seeing the order of the hands. I apologize. Bernie who is at the top of the pile.

>> Kavouss, followed by Milton then Thiago.

>> Kavouss, if that's a new hand, please go ahead.

>> No. I'll give it to those people who raised before me because they have not talked. I have talked before.

>> Okay, Milton, go ahead.

>> I also defer to Thiago. He hasn't spoken. I'll go next.

>> Okay, Thiago, a fresh voice, please go ahead.

>> Hello everyone, this is Thiago speaking. I was going to say in relation to the concern you raised, Greg, once we recommend ICANN shall seek to obtain a general license and then ICANN will undertake steps to try to obtain a general license. Once it does so it will be the recommendation that the subgroup comes up with eventually. It is unable to obtain that general license, this is something that cannot be blamed -- the blame cannot be put on ICANN because again it will be a decision by U.S. authorities. So I don't think that we should be concerned with ICANN spending lots of money to try to obtain in the end a positive answer from the U.S. authorities. What is important that we recommend that ICANN seek a general license and reports back to the community what it has undertaken in that direction. Then we can follow what necessary steps should be taken in response to that. Thank you.

>>> Thank you Thiago. I see several comments in chat as well that ICANN should be required to apply. Obviously they can't be required to succeed because it's not their decision. But they can't -- but they will be required -- Corwin says if we have not done the cost benefit for general licenses we should not be

requiring ICANN to apply for one or more. I see a hand up from Sam. Sam, please go ahead. And I'll take Milton. Sam, we're not hearing you yet.

>> Sorry, I was -- there was a mute in my system. This is Sam from ICANN legal. And, as I said on the last call, I raised some questions about having a recommendation that was listed in terms of ICANN must go seek a license as opposed to ICANN should do studies, et cetera the way that Greg has more aligned with how Greg has phrased the document here. One of my goals and again we haven't taken this back to ICANN. This isn't an ICANN position. But as I'm participating in this group, I have a goal of helping you guys reach recommendations that the board -- from the staff side we would recommend that the board take on. And so, as Phil pointed out in the chat, not having the costing analysis, not having kind of a bigger strategy around if and understanding impacts whether it goes to our lobbying, expenses, whether it puts our 501C3 status at list because of lobbying expenses, et cetera, we wouldn't be in a position from the staff side to recommend that any recommendation that says you must do this is appropriate. But, having a recommendation that says you must look at it, you must report back, we need to have further conversations about whether or not it makes sense after you've done that work, that's something that makes more sense than having a recommendation that says you must go do it if that recommendation is not feasible. So I would like to see whatever recommendation this group comes up with worded in a way that from the work side we would be comfortable recommending to the word they approve it. If you can keep that in mind as you draft your recommendation. Thank you.

>> Thank you, Sam. Milton, please go ahead.

>> Yes, I think that we have to begin by understanding how a general license is really -- assuming we have it, once we get it, it is a big relief and a big convenience and cost reducer for everybody involved. We would know what services are no longer -- are automatically licensed by OFAC and that would save everybody time and money. So we have to keep that in mind. I think everybody agrees the general license would be a good thing. So all we're debating is do we tell ICANN to go seek a general license or do we tell ICANN to study it? And it's clear that ICANN staff members are concerned about the potential costs and risks of applying for one. So, I think Phillip recommended interesting language here that says let's recommend they do it but they report back to the community on whether they've identified any serious obstacles or down sides to for doing so. So they can look at the process and what it would cost them and what it would risk. But they still have the recommendation to do it. But I think we have to have that to satisfy both sides. So maybe we could use that wording.

>> Thanks, Milton. I agree with that. I guess the negative or the unstated next sentence is what if they do find serious obstacles. Do we leave it at that and leave it unstated that, well, in that case they wouldn't proceed? Or they would find ways to try to resolve those obstacles? Clearly if they don't find any serious down sides the implication is they must go ahead and do it. But the question is what if they do find serious obstacles? Any thoughts, Milton or anybody else? Milton says we can have the community review and make a decision. I don't see any hands up at the moment. Yes, Kavouss, I don't see your hand.

>> I don't know whether you are dealing with the entire paragraph I put at the end because there's good examples over there. So after that they say this is the criteria to say appropriate, inappropriate. Then we go forward and talk about explaining the situation. I'm saying ICANN [Indiscernible] what ICANN should do and saying [Indiscernible] this situation and it's crucial and should not be undermined then there are several reports in the media that U.S. based and non-U.S. based have asked to transfer

out [Indiscernible] because they are subject to U.S. sanctions. So we need to -- this paragraph, give examples of [Indiscernible]. I suggest we maintain the essence of this paragraph. [Indiscernible] and we have this practical example here. So we would like to maintain this paragraph. At the end of the recommendation.

>> Thank you, Kavouss. I think part of this is not a recommendation at all. The second half at least doesn't strike me as being a recommendation. And I see in reference of several reports in the media but I don't recall any of those being introduced to the group by anyone. So I don't believe we can cite to them. Of course if they exist and can be brought to the group we can consider what to do with them but I don't know that's relevant to the general license. I think we're here recommending that they pursue a general license, that they pursue, you know, to capture Phil's concept. That we would pursue steps unless there were substantial down sides it would be clear that ICANN should sue the license. I don't think there's anything to communicate to registries and registrars while the general license is being examined and possibly applied for. So I don't understand the second sentence. Since one should not revise the registrant agreement unless there is actually a general license in place which will be a significant occurrence. So I don't know -- we can certainly recommend if ICANN receives a general license it publicizes this appropriately within the ICANN community. But I almost feel like it goes without saying.

>> [Indiscernible] element that you think are easier to refrain from this paragraph that I have sent you. Please retain. [Indiscernible] for the time being until the second reading of the plenary and there might be some further information. So this group is quite limited from 20 people. Some of them are not maybe interested in this. [Indiscernible] interested but may not have access to this information but the idea is there, the problem is there. So elements that are categorized as good or useful [Indiscernible] element that you need further evidence [Indiscernible] continue to keep them until the time that the draft reading of the CCWG [Indiscernible] I think this is practical information but no doubt you need more element, more evidence. And that may come. Without having [Indiscernible] sometimes prefer that. [Indiscernible] same issue that Milton and Farzaneh opposes, I would like also to take [Indiscernible] need to be opposed [Indiscernible]

>> Thank you, Kavouss.

[speaking at the same time]

We've been at this for 47 meetings and we don't have this evidence. I would say OFAC more than almost any other thing that we have discussed has taken our time. So I don't think there's been a lack of focus on this. Nor should there have been a lack of focus. But I don't think we've fallen short in terms of the amount of time and effort we've put into dealing with this so I'm concerned about keeping things open now on the idea that something is going to happen down the road when we've had, you know, a years' worth of opportunities for it to happen. Nonetheless we can find some way to reference this in the report to the plenary. We certainly should reference even if it's fairly evident that ICANN should publicize a general license if it gets one. And of course general license will in fact be a regulation. So it will be on the public record in a way that specific licenses are not. So I understand we've run out of time and we have to wrap this up. Are there any other comments? I think Kavouss a sense of what you would like to see.

>> Please maintain maybe a part of that to see what we can do. Okay, thank you.

>> Thank you, Kavouss. I understand that. Any other comments? I think we need to wrap this up. I would encourage -- as I said I will work on this this evening as soon as my clients get service. And then, I'll email around that this is happening. I encourage everyone to look at that because this needs to go to the plenary at the 23:59UTC on Wednesday. So let's try to get this shaped up. And also let's begin looking at what Raphael provided as the beginnings of a recommendation on the choice of laws provisions. And we'll try to get that shaped up and then we can discuss on the list kind of next steps and time line to make the best use of our remaining time so that all the work that we have put in will come to fruition in our report in the best way possible under the circumstances. In any case it's now 4:27 p.m. Seeing no further hands and no other business, I will call this meeting adjourned. And give you back negative 27 minutes of your lives. Please stop the recording and thank you and good