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CCWG-WS2 OMBUDSMAN SUBGROUP MEETING

Monday, September 18, 2017 - 5:00 to 6:00

>> Hello Sebastien speaking. I don't have I don't know what's happened but I don't have the list of participants. I don't know if

>> Hi this is Bernie. We have 6 participants including yourself. So good to go. We have yourself, Asha, Cheryl, Chris, Herb and Leanna. I suggest that we start recording.

>> This meeting is now being recorded.

>> Thank you very much. Then as Sebastien is speaking, rapporteur on work stream 2 ICANN ombuds subgroup. Thank you very much for joining today. It's our [Indiscernible] meeting and our least participants will be taken from the participant [Indiscernible] as I have trouble with responding. If someone raises I will need some help. And I would like to be sure that there's nobody participating just on the phone. Okay. Not hearing anyone, we will imagine they are all listed in Adobe Connect. Thank you.

>> This is Bernie. Is your chat okay?

>> The chat seems to be okay. So [Indiscernible] started to open it at 3:00 a.m.

>> Okay great. If your participants are still not good I'll post any raised hands in the chat and you can monitor that.

>> Thank you very much. Sorry for that. Okay. Now the agenda for today. We have done the roll call. I will go very quickly to the participation and I don't have an update but you all received it by ICANN staff [Indiscernible] of the work stream 2, sorry and the main discussion

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will be the last draft report that we would like to send to the plenary if this subgroup agrees today on that. And discuss about the next meetings and any other business. And just to go quickly to the participation, I have updated how many meetings each of us was a participant and observer and the board already [Indiscernible] up to now. As you can see we are very small group of I will say real participants. But welcome to all today and let's go to the document and switch what we have on the screen. And as I really don't want to be [Indiscernible] but I will give a short introduction and maybe if you can help me with what's next we need to do. And this document it's really you received it just after the last call. [Indiscernible] because it was very quickly done. And we have made the changes we discussed doing during the discussion and I guess that's the only we have one comment left and that's maybe something we need to discuss today. I don't suggest that we go through again everything, but if you think that we need to do it then I can differ to your suggestion. But by now you may be good help knowing the main changes and what we need to do for next, I will say half an hour or 40 minutes.

>> Would you like me to run through some of the changes that we looked at last time?

>> Yes. I guess it would be it will be good that we not go through all the recommendations but the changes we made. Yes, please.

>> All right. First one I had from the decisions of the last meeting was edit recommendation 4 to allow for existential beyond 120 days for very exceptional circumstances. So, everyone will remember that by the time we finished recommendation 4 there was this request. Trying to write this up, we tried to

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>> Sorry, Bernie. This is Asha. Can you speak closer to the microphone because you sound very far away? Can you help me out with that, please?

>> I'll see if I can increase my mic. I'm actually wearing a head set so I'm not sure I can get closer. Better?

>> Yes, Cheryl is also having difficulty hearing you from what I read in the chat.

>> All right. I have my microphone at 100 percent now. Is that any better Asha?

>> Now it's saturated. Can you turn it down a bit?

>> Sure. How's that?

>> Yes, that's better. Thank you.

>> All right. Thank you. Sorry about that. So, as I was saying, in writing I had to include a bit more text than simply tossing in the possibility of being able to go beyond 120 days, the text is in red in front of you and I'll read that part. Should the responding party not be able to meet 120 days limit due to exceptional circumstances, that party can apply to the IOO to seek an additional extension prior to the expiration of the original 90 days delay. So basically, if anyone thinks they're not going to be able to implement within 120 days, they should go back to the Ombudsman office to ask for an additional extension. The application should be in writing stating the nature of the exception and the expected time required to respond. The IOO will respond to such requests within a week. So, basically, it's just not an open ended that you just say, oops, sorry we can't meet and we're just not going to have to justify this to anyone so we felt that having to put in a request and asking for the permission and advising

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at the same time the IOO seemed to make sense. So, I guess that's the change that's on the floor to meet that requirement. Are there any comments or questions? Not seeing any, I'll take it that would seem to meet the requirement and that was brought up at the last meeting. The next change was edit recommendation 5 with respect to timeliness. So, basically after relistenning to it we thought it was just best to simply remove the timeliness constraint and that's what we proposed. Again, be happy to take questions or comment. All right. Moving on. Edit recommendation 7 with respect to diversity. And, when I started playing with this one, of course some of my contacts over in the diversity side had a few comments for us to consider also. And so, what seemed to be the best thing after re looking at the original intent of what we were trying to do was to we felt it was best to try to explain what we were doing. So, we've left it as it is from the original recommendation and added the following text as you can see on your screen. We've bracketed after the recommendation 7 the primary objective of this recommendation is to ensure that the community has choices as to whom in the IOO they can bring their complaints to and feel more comfortable doing so. That's how we've tried to package this thing so that it explains what we're trying to get to in this recommendation 7. Are there any comments or questions on that in our attempt to meet the requirement? Again, not seeing any, that's it. Then of course there's the ICANN ombuds panel where we had a few comments. We're not seeing those on the screen. But if we move the cursor a little bit right there was an email about the independence of right here. We'll seek information from ICANN legal that the IOO must be under the board. So, the officially framed question has been sent to ICANN legal. There is a board retreat I believe, I've spoken with ICANN legal. They understand it's not a big request to make but in the past it's been very clear that anybody in ICANN which can influence the way things happen in ICANN is the

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responsibility of the board. So, I would expect the answer we would get back from ICANN legal would be along those lines. For those reasons. So, that's that one that's pending from legal. So right now, I don't think we're going to do anything with that and I will pursue it again this week.

Next one is in the comments you'll remember in what I sent for the text I basically copied [Indiscernible] suggestions regarding the ombuds employment contract to strengthen independence. So that was discussed and the fact that we weren't sure how to proceed with that one and I guess that's probably part of the topic for discussion this evening. The final point before we get to that one was of course the panel there was also a discussion of maybe we wanted an ethics committee. I think after looking at the clarifications from our external consultants regarding an ethics committee, didn't really match up for what we were trying to do with the advisory panel. So, we basically left it as is in just awaiting the confirmation from ICANN legal regarding the ultimate responsibility. So, I believe that's the point that is up for consideration this evening is recommendation number 9 regarding how to strengthen the independence of the ombuds office. Does that meet your expectation?

>> Yes, thank you very much. It's a little bit sad for our group that [Indiscernible] those changes are not on the call today but so be it. We have to do with that. And I would like to ask any of the participants if they have some comments, if they want to make some changes or suggestions about the current document and the intention is to send this document without the comments to the plenary except if some of you strongly disagree with that. Yes, Cheryl you made the comment by writing and I guess we take them into account. If we didn't do it, just add or tell us what is missing and just confirm your points of views. Any other comments, questions, suggestions? Because I don't want to take you just to hear me and

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[Indiscernible] and there's nothing added. And I will suggest to go I'll wait for Chris who is typing something and then if no other comments I will suggest okay, Chris you want to reply to the comments. It's maybe a good time to do it even if she's not here. She will listen to the recording and maybe if you wish you can do by writing or you can now. It's really up to you, Chris. We can hear you if you wish.

>> Okay. I think I'm online.

>> Can you please speak up, Chris? Sorry, Chris, can you please speak up, please?

>> Thank you, yes, I'll just move closer to my microphone.

>> Much better, thank you.

>> Yep. The first aspect is this issue of uncertainty of contract and perhaps it's a certain personal [Indiscernible] I was put on virtually year by year contracts as was my predecessor and it was unsatisfactory when you have to divide your time to a job like this without having some certainty [Indiscernible]. There's been considerable debate about these issues within Ombudsman circles and Herb may be aware of this [Indiscernible] to protect the independence of the office. And different organizations have rights of renewal but it's not uncommon for them to be one term and one term only. So, whatever the community wants in terms of renewal. But that's not atypical. But the point she makes in addition to that is the one about not messing with the board or the community and I think with respect to her because she's not present, just not workable. I found it incredibly useful to circulate among the board and the community and one of the things that Herb and I did fairly successfully was to operate a two-person system where one of us would stay in the office and the other one

would work the floors and we got a lot of work by doing that because people knew who we were and got confidence as individuals and it would be silly to be out there as some remote trigger. I don't think that works. It's a small enough community so that unless you have some personal knowledge of what the ombuds is like, it's unlikely that you'll have quite the same faith in going to the office as if you actually met them in person. One of the other things she specifies is talking about the issue of the lack of power. It's fundamental to the nature of an ombuds office that we don't have any power. All we can ever do is recommend. That's the nature of an ombuds office. It's unusual to have an ombuds office with power to tell people to do things. And it's one of the successful features of the office because we work by mediating, shuttle diplomacies and it doesn't go further. It's the ability to recommend that makes it in many ways full but without any actual power. That's what I just wanted to say. Thanks.

>> Thank you very much, Chris. I see Cheryl agrees with that with a green check and do we have any other comments? If not, I suggest that we start the discussion here. Really thanks Chris for your inputs. I guess it's useful first in experience but it's also useful to have that we have this discussion. And may I suggest that we go back to the PowerPoint and my suggestion is that we send within the next 2 days, I will come back to that, if I am not this is Cheryl here. I don't know whether you can hear me.

>> Yes, we can hear you Cheryl. Go ahead if you wish. I am sorry I didn't see your hand raised. Go ahead, please. Now I can't hear you anymore. I can't. Sorry. Cheryl, it was good for a few seconds and then now you are better. Go ahead, please, Cheryl.

>> Are you able to hear me now?

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>> Yes.

>> Yes, Cheryl, go ahead. Sebastien speaking. If you can hear me we can hear you or it's going up and down maybe, that's why you have trouble and we are sorry for that. I guess you wanted to suggest something about the document. And we can hear some background noise. I guess it's your dogs and maybe if you speak we can hear you.

>> Okay I'll try

>> Yeah, but it's going up and down. Yes, definitely. Cheryl

>> Seems to be lagging badly. That's all.

>> Okay, sorry for that but it's very difficult to listen to be able to hear you. Okay, if by chance you can type something I will read it and I hope it's not [Indiscernible] with what I will suggest I was suggesting. But, okay, the idea will be as we are finalizing the discussion of this first draft to send it to the plenary and the plenary will meet on the 27th of September and the deadline to send the document is in two daytimes and I guess we have the time to finalize with now the document and to send it to the plenary. It will allow some first reading at the 27 of September discussion. And taking into account we will in taking into account the feedback from this first reading, we will have meetings after that and we have two slots to give a second reading and it will be really [Indiscernible] the comments and I will work and also our cochair will decide but we can do it either on the phone on the meeting of the 18 of October or if not during the face to face meeting in Abu Dhabi. Taking that into account I suggest we don't need the 25th of September meeting and we can cancel it and we can reconvene as a group to take into account if there are any feedback and need to work given



by the first reading of the plenary. For the moment, we have sorry too many things [Indiscernible] the second, nine and 16 of October depending on what will come out from the first reading of the plenary. Is that agree with you? I suggest that we go [Indiscernible] it's a big mistake. I was thinking about Abu Dhabi of course. No. No. The meeting of the 25th will be canceled. It is not organized, will not be convened and next meeting if we need it will be the second of October. And I hope that it will be feasible for all of you even if it's a bad time for our friends from the Pacific. I just wanted to go back to this slide about revised time line. We will just have one public comment and it will be started after the second reading and if we agree with that we are fitting with the schedule and I'm good to do that and I think it's okay. And what else? I guess there are no other comments, just any other business? If you have and if not, I would like very much to thank you for participating to this meeting today. We will see what will be the feedback from the plenary and we will come back to you with the feedback and talk to you soon, all, and after 30 minutes of the meeting I would like to adjourn the meeting and thanks again. Bye bye all.