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ABU DHABI - CCWG Accountability WS2 Face to Face Plenary Session @ ICANN60

Friday, October 27, 2017 - 08:30 to 17:30 GST

ICANN60 | Abu Dhabi, United Arab Emirates

JORDAN CARTER:           And I just want to hand over to Thomas to add a few remarks about the jurisdiction topic and what we're hoping to see in that session.

THOMAS RICKERT:        Good morning. Good afternoon. Good evening, everyone. On the jurisdiction debate, you see that we have allocated three subsessions if you wish in the agenda. And the purpose of this is linked to the Co Chair's statement that we issued a few days back, because there were requests by the plenary to allow for more time for the jurisdiction topic to be discussed. There were also requests for the second reading of the jurisdiction report to be postponed. We have done an extensive analysis of all the information and all the facts. We've done the backward accounting again from our completion date to today to see whether we can make more time for a substantive discussion. But, unfortunately, since we can't afford to jeopardize the finalization of our package of recommendations as such, we need to try to get the second reading for the jurisdiction report done

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today. However, we do acknowledge that there is a need there has been a need for discussing ICANN's jurisdiction since ICANN's very inception and since before its inception jurisdiction topics were discussed. So we do acknowledge that there is need for such debate and we recognize that there's going to be a high interest session later during this meeting where jurisdiction will also be tabled, but we want to be sure we give as much time as we need for those who want to make statements, for those who want their points to be heard on the record. Because our little project is going to end in the next couple of months, but we want to make sure that all the arguments that particularly those who think that there are views are not adequately reflected in the report, that those arguments are properly documented and archived, because there will surely be more jurisdiction relate SDS debates in the ICANN client and beyond so that further debates can use the documentation of this meeting as a source of information to inform their further deliberations on jurisdiction related topics.

So this is not only about the second reading of the report, but this goes further. So if you have points that you want to make, if you think that your issue that you have added to the list of issues that was accumulated by the jurisdiction sub team has not been discussed to the extent that you would have loved it to be

discussed, this is your opportunity to put that back on the table to put it on the record so it will be both in the recording, as well as in the transcript, and we will likely even go further and have a separate document where these points are going to be archived so that people have a nice piece of work that they can go to if they want to get informed about the state of play beyond what we could put in our report.

And as much as I'm sure that many of the participants of the jurisdiction sub team will have elaborated more on individual items and would have loved to get a more lengthy report out, there are limitations to every project and we need to come to closure at some time and I think that the jurisdiction topic is a good example of where we're facing certain limitations, but in other sub teams, the situation is comparable where not every topic has been could be discussed to the extent that some would have liked to see it.

So this is just to remind everyone that, go back to your main archives. Go back to your papers. And if there's something that you want to add, this is your opportunity to put that on the record to help inform future debates on injuries. So I think that's pretty much it for that point. Back over to you, Jordan.

JORDAN CARTER: Thanks, Thomas. A different way of saying something similar, I guess, is that this process isn't the be all and end all for a chance to settle any of the topics we're working on. Jurisdiction is an important example of it. The corporation the system will need to keep evolving and the information and ideas that are exchanged here can form part of that wherever they end up sitt[ng] in this particular process at this particular time.

So that's the run through of the agenda. And if you have items to raise in general business, please, if you feel able to give us a heads up, that would be welcome. And in terms of that run through agenda, I just saw your hand up. Do you have a comment or question about that?

[KAVOUSS ARASTEH:](#) Yes. As usual, good morning, good afternoon, good evening to everybody. First of all, is the hand raising process working? Because I raised hand, I don't know whether you have seen it or not, I raised hand electronically, but I raised it physically. So I think make sure that the hand being raised works. If it works, maybe 10 minutes ago.

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[JORDAN CARTER](#) I see a couple of hands now in the room, but I didn't see your hand before in the room.

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[KAVOUSS ARASTEH](#) Thank you very much. Now is okay. First of all, with respect to what you said would apply, not now. The only thing that I would like to add at the plenary, we had discussion about the substance and the substance has been prepared by some colleagues, (Indiscernible) who is advising us or advising me and I send that to you, I send it two times. Unfortunately, it was not shown to be sent. I asked to send it directly but this is on my behalf. I am sending to you. I hope you will receive it and you put it in the discussions this afternoon and I hope that is something that the principal of which was agreed before.

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[THOMAS RICKERT](#) Just a quick reply, thanks very much for bringing that up. We will make sure that the stress test will be sent to the plenary list if they haven't come through already. Since this is new to many of you in the room who haven't seen the stress test, we had some discussion at one of our previous meetings to make sure that the recommendations and the jurisdiction report are actually helping to improve ICANN's governance or actually to show what we were missing previously and what we now get if the recommendations

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are being implemented, and Mr. Stress test, Steve (Indiscernible), kindly prepared some language for this. So now we have three stress tests that can be used to test the jurisdiction report and its effectiveness, and we will walk through them as we come to the jurisdiction topic so that the plenary fully understands what these stress tests are about, what they test and how actually the results of those tests are. So thanks for bringing that up. We will bring that to the attention of the plenary and by this, we will fulfill one of the promises made earlier in the adding stress test to our findings. Thanks so much, Kavouss, and back to you.

**JORDAN CARTER:** Thanks. I see another question here. Sebastian, your hand is up?

**Deleted:** THOMAS RICKERT

**SÉBASTIEN BACHOLLET:** Yes, thank you. Yeah, I send a mail three days ago and maybe it's embedded already in the agenda. But I think that there are participants who are not so much familiar with what we are doing and then an overview of where we are with each and every subgroup could be very useful to have the full landscape, and if it stops on where it will be great. Thank you.

JORDAN CARTER: Thanks, Sebastian, that is in agenda item 3, administration. That's one of the things we're doing, is an update on where each of the three groups is at. Good call. And it's on the agenda.

Okay. If there are no more questions or comments about the agenda run through, we will move to item 3, which is administration. And I will hand over to Bernie (Indiscernible) to take us through that.

BERNARD TURCOTTE: Thank you, Jordan. And I won't ask if you can hear me, because obviously, I can hear my own echo. Good morning. Welcome to everyone. Sorry for the few technical problems when we got started. This is typical, the first time we have a meeting room set up at ICANN. So as we were getting going, just about everything crashed, and maybe just another note before we get underway, given we will probably have significant number of participants, we will be trying to keep to the times that have been set out in the agenda. So if we finish a little early on something, maybe take a break and allow everyone to stretch their legs so remote participants that wanted to join for something specific will not come in at that time and we have moved on from the topic. So for respect of the remote participants, we'll be sticking to the timing on the agenda that was presented by Jordan.

Any questions on that?

Okay. All right. Moving on. Up until since June, we have basically been running one plenary per month. That seems to have worked well. However, looking at the next few that have been scheduled, there were some issues and there were some that were missing. So we'll run through that just to make sure we're all clear.

The next plenary after the Abu Dhabi was scheduled for 29, November. Now, let's be clear; this meeting wraps up 3, November, and we never schedule any to work the week after an ICANN meeting because experience has known it's just not practical for anyone.

Also, November is U.S. Thanksgiving. It's not that we can't have meetings, but there will be a lot of staff that will be off for three days. So if you do the math, basically you end up with nine possible working days for work stream 2 between the end of this meeting and the time of the next plenary, and as such, we're proposing to cancel that meeting because I don't think we're going to get a lot done in those nine working days.

The meeting after that is 13, December. It's not at the end of the month, because again, experience has shown that at the end of the calendar year, it's difficult to get people to participate.



Depending on what is or not on the agenda, we may decide to cancel. If we decide to cancel, we will advise one week ahead of time. As you know, we do provide materials one week ahead of time if there's no material to provide and then we'll simply provide a cancellation notice for the 13, December call.

After that, we have the 31, January call, 19:00 UTC. And what we've done is that also experience has shown that it's good to have two meetings before we go to the next face to face meeting. So we've inserted a 14, February meeting to go through the initial preparations for the Puerto Rico ICANN 61 meeting, and then we have the February 28 meeting, which will be the last plenary before ICANN 61. So that's our new schedule out to ICANN 61. I don't know if there are any questions.

All right. Thank you very much. Next slide, please.

You will remember that we have noted that on Monday, 30, October, 10:30 to noon local time, 6:30 to 8:00 UTC, there is a high interest presentation on Workstream 2. We will be presenting our work to the community at large briefly, and the purpose of the session is really to answer questions from the community. So, basically, we will be there. We will give an overview of where we have been, what our plan is for completion, a status on all our

subgroup projects, and then we'll turn it over to moderated questions.

We will try to make sure that there is room for questions on each topic, and I will simply remind everyone that I have not received confirmation from all subgroup reporters that they will be present. We need one reporter from every subgroup to be in attendance at that meeting. So if you have not done so, please contact myself or accountability staff to say that you will be present; Monday, 30, October, right after the opening ceremony, 10:30 to 12:00. We need you there. Thank you.

Next slide, please.

Thomas, please.

THOMAS RICKERT:

Just one addition, in terms of format for the high interest session, we have had quite a discussion amongst the Co Chairs with staff of how we best go about with this. We only have 19 minutes to update, to give an update to the community about everything that we're doing, and we chose to have one presentation, one 15 minute presentation and one goal, which will be delivered by the Co Chairs to present the major findings of the sub teams. And this is not to bypass the reporters and their hard work and not give

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them face time via the community, but face time from one speaker to another. This is for you to understand that we did want to not give you sufficient air time if you wish, but we want to have you at the top table because we were we will hopefully get a lot of questions from the audience and these high interest sessions, at least the way we designed it, we want to get the audience and the community to participate and ask questions. And that's your opportunity as reporter to step in and respond to those questions. So you are going to be a very important part of this, but again, we apologize for not being able to give every one of you the room to present by him or herself.

BERNARD TURCOTTE: Good point, Thomas. And while we're wrapping up the format for this, also we've elected to take a maximum go on around Robin, if you will, for the topics. So we will take up to a maximum of three questions on one topic, and then after that, we'll cut off that topic until we either run out of questions or we've gone through all the other topics just to make sure that everyone gets a chance to talk about every topic.

So that's on the high interest session. Are there any questions?

Not seeing any, we'll move on. ICANN 61, as mentioned in the plenary slide, will be 9, March. We will be holding our unusual

face to face meeting the day prior to the ICANN meeting starting. So that is 9, March. I believe that's a Friday, if I remember well.

As most of you are probably aware, the funding for that trip from the CCWG accountability form has been sent out and just a reminder, it does close 19, November. Yes, it's very early. But that is the process. And we have to submit a final list to ICANN of the approved travelers by Workstream 2 by 27, November. By this point, I think everyone is familiar with the mechanics of this. If you are not, please feel free to contact staff and we'll update you. But just as a quick reminder, this is only open to Co Chairs, reporters and members, okay? If you're just a participant, we don't have an endless budget on this, and we will be going over where we are with the budget a little later. But this only applies to members, Co Chairs and reporters.

So any questions on that? All right. Moving on. Next slide, please.

Where are we and where are we going relative to the time line?

We are here; yes, ICANN 60. It seemed so far away, but finally, we're here. We've got reports from all the subgroups. I have to tell you, it is a real joy to say that we have managed to do this by this line when we drew up this slide, or I should say, Natalie Virganella drew up this slide, staff had a lot of questions if we would actually make it. And part of what Thomas was talking

about earlier relative to the mechanics of why we need to do things in a certain time, I think are clearly presented in this graphic.

We need to get everything done that needs to get done to have one public consultation. And you will remember a few plan years ago, we did confirm that for a set of recommendations to be included in the Workstream 2 Final Report, they must at least go through one public consultation. I'm looking at Kavouss because he helped us clarify that at one of the meetings thank you. If we're going to do that, that means staff are going to be very busy getting public consultations over the next week or two. We managed to get one done before hitting ICANN 60 and that is the diversity one, so thank you, Fiona. So we're all good and we're on track to get those done.

There is the standard six week public consultation period. Then we have to get all those inputs and we have to synthesize summaries of the results, and those groups that are doing public consultations then need a few weeks to go through them and see how they are going to answer that. And we need to get that closed down.

Now, in parallel with that, the bottom line, you will see is: We have to start building a Final Report. And so it's going to be a bit

of an art combining everything so that we get that Final Report done, and we will be presenting it the schedule is to present it in Puerto Rico at ICANN 61, so we can as agreed to earlier present the consolidated report of all our recommendations for public consultation. That was also a requirement and we're following up with that.

And as you can see, at the end of that, we're really tight. We're getting ourselves just a couple of weeks. But the notion was, and we'll go through that again, that the last public consultation, we're hoping there will be no comments on subgroup recommendations as is. They should have been done in the previous public consultations.

We are looking forward to comments on any accommodations that would have to be made once we're regrouping all the recommendations into one report. We've always known that there may be some collisions or some issues when we're plowing all of this together, because not all the groups were working perfectly hand in hand and we did not require this. We kept an eye on it. So far, it looks pretty good, but if any issues come up when we are putting this together, that's where they will be addressed, and that's where we are asking people to focus on in the public comment.

And that takes us to June, where we deliver our report and meet our timing requirements. I'll be glad to take questions on this slide if there are any at this point.

Canada.

**ANDREEA BRAMBILLA:** Thank you so much, Bernie. I wanted to clarify the timing of the report to the organizations. Will it be delivered the final public comment period or the end of the final time line in June?

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**BERNARD TURCOTTE:** Good question. The public comment is for everyone and the Final Report goes to the chartering organization. So if you will, there will be some tail end work after that once we get chartering organizational approval, then it can go to the ICANN board, but I don't know if you have a few comments on that, Thomas? No, I have covered it.

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Any other questions?

Seeing none, thank you. Steps and milestones to finalize recommendations. We've also published this slide a few times, which sort of gives the breakdown of dates and the work we have to do and is basically just another way of looking at the graphic

we had on the previous slide. So a bit more detail, you know. When you try and put everything on one slide, you have to keep it simple, as it were. And here, we're laying out the steps with the specific dates to actually get things done. I don't know if there are any questions on this slide.

Not seeing any, let's move on, please. As I mentioned earlier, some of you may remember, we presented this slide, I believe it was, at ICANN 58 in India where we developed this slide thank you, Patrick, who put this together and basically, as we were mentioning, there was a possibility of a public comment, so the first vertical slice, if you will, the subgroups going into that, you'll notice that not all subgroups go into a second public comment, and once we're done with the period for second public comments, which will be once this ICANN 60 meeting closes, we go into production of the Final Report where we align the recommendations of all the subgroups and we go into a final public comment, where hopefully, we'll get any last minute issues identified. We'll have a little bit of time to iron those out before we hit ICANN 62 and we have to deliver it to the chartering organizations and the board, which is completely on the right hand side of the slide you're seeing.

So, again, this is not any new information. It's just another way of looking at it. For those that are wondering, we always published



the slide deck. You'll find it on the Workstream 2 accountability Wiki. If you don't have access to it, please just ask staff and we'll be providing you with the link, and I believe they are at the end of the presentation anyway.

So, as noted, we are really looking forward to on this final public comment, only addressing adjustment issues between the various subgroup recommendations. We are hoping not to get major issues on the recommendations. Those should have been dealt with on the previous two public comments.

Do you have a question? No.

Okay. Steve.

[THOMAS RICKERT](#)>>

Just to read the question for Bernie, he doesn't have the Adobe in front of him, Steve, will public comments be addressed by the plenary or by each subgroup? And I'm assuming you mean public comments on that final, combined report, Steve.

[BERNARD TURCOTTE](#):

To be real honest, I think we're going to have to play that by ear. It depends on the comment. If they follow the for mat we're requesting and it's only about adjustment between the recommendations of the various subgroups, I believe that's something we will deal with as a plenary. Thomas.

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[THOMAS RICKERT](#)

Yeah, I guess we would like to see different buckets of comments coming in. There might be comments just commenting on things that are already covered, and those can be analyzed by the sub teams as we did for previous public comment periods. If it's comments with new ideas that only relate to the work of the sub team, I think we can acknowledge that and create an inventory of those comments to be considered by future review efforts, ATRT, for example, and the third bucket would be what this is really about, and that's inconsistencies and I think the inconsistencies can't be dealt with by an individual sub team, because it will not be in the mandate to resolve issues that relate to other sub teams' areas of concern. So we need to crystallize what is for the plenary, and the inconsistencies, I'm afraid, will need to be dealt with by this whole group. We can certainly do a call for participants or for volunteers for drafting team to prepare the information for the sub team, for the plenary to consider. But I guess that we will determine once we know about the overall volume of comments. So if it's just a handful of comments, there's no point in establishing for the team. But if we get a lot of comments, then we will do a call for volunteers to do some prep work and learning from the HR sub team discussions, we will make sure that the call

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for volunteers will be heard loud and clearly beyond this very group.

Kavouss, you had a question?

KAVOUSS ARASTEH: Yes, in fact, a comment. Perhaps we should not call them adjustment. Adjustment is too broad. I think that you said that inconsistency is the removal of consistencies or coherence of that, but adjustments may be a second comment that I have, at least for some (Indiscernible), the final comment on anything mostly is more efficient when they have physical meeting, may be difficult in correspondence to get approval for (Indiscernible) but if on the timing point of view, it is organized or that otherwise not in person, but that may be difficult by the correspondence to get for the whole broad of the work is the approval of some SOACs electronically. Thank you.

JORDAN CARTER: Thanks, Kavouss. Very good point. Let's make sure we don't use adjustments, but inconsistencies or removal of inconsistencies that can be removed by way of using adjustments, but I guess your point is well taken. And I should add that we have offered as we did for all the previous meetings through the lifetime of the

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CCWG that we are more than happy to come and see your groups or the groups that you're presenting throughout the week. So we have a few invitations to come and present. But if you have any last minute requests for us to come in and explain the mechanics of how we get this done, please do let us know and we will try to make time and accommodate.

[BERNARD TURCOTTE](#)>>

Thank you. And just to add on for Kavouss for the face to face meeting, that's what we are driving for, to have that report available for ICANN 62, hopefully a little bit ahead of time so the chartering organizations can have it, input it on their agenda to have a look at ICANN 62.

Any other questions? All right. Next slide, please.

This is our progress dashboard, as you can see. We are doing very well. Everyone is at the line where they should be as a minimum, and we've got a few that are actually a hundred percent all done, which is SOAC and human rights. Good faith conduct really is just a little shy of that. We're waiting to hear from the ASO, and we hope to have that information at this meeting. And, really, we've provided them just a recap slightly on that one, there were some concerns from the ASO with the recommendations. We sat down with them at ICANN 59. We agreed to produce some text for them

that would address their concerns. But they focus on this kind of thing at ICANN meetings. So we're hoping at this ICANN meeting, they will get back to us and we can actually move that to a hundred percent, because the adjustments are very minor and we don't even think it needs additional (Indiscernible).

**THOMAS RICKERT:** Just a brief addition to that, we met the ASO, and the issues that they have were not that much on substance, but they the terminology that we were using doesn't really match the working methods. So when we explained to them what we meant and what the idea behind all this is, they were in perfect alignment. And I think that's a fair statement to make.

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**BERNARD TURCOTTE:** Yeah.

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**THOMAS RICKERT:** They just need to get back to us formally how we smooth out the wrinkles on technology to make this work perfectly with their working methods. So I don't expect any substantive issues, but we just need formal confirmation that they are okay with this part of the work.

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**BERNARD TURCOTTE:** Thank you, Thomas. All right. This, I think, is fairly self explanatory. I don't know if there are any questions.

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Not seeing any, next slide, please.

All right. We were talking about giving an update of all the subgroups to as I said earlier, we just spoke about diversity, which went through its first and second reading. We're waiting for the ASO. Then it will come back to this plenary for a first and second reading for a final recommendations. There will be no requirement for a second public comment, and that one will be done and head into the final recommendations of Workstream 2.

Staff accountability; yes, and we managed to get that second reading at our last one. That's the next one in the pipe to go out for public comment and we'll be working on that this week.

Ombudsman; similarly, has been approved, second reading of the draft recommendations and is being prepared for public consultation as soon as possible.

Jurisdiction; I think we're all aware that we're going into a second reading at this meeting with the explanations that Thomas gave at the beginning of the meeting that we will be going allocating

a lot of time for people to present their views and have discussions on this.

SOAC accountability; all done, basically wrapped up, ready to go into the Final Report; similarly with human rights. Transparency is up today for a second reading, and oh, sorry, I mixed up diversity and good faith conduct. And diversity has been published for its public comment period, I have been told.

I see Patrick waving his hand, so that's up. If you want to have a look at that, please do so.

So that's our update. As I said earlier, we're we should all pat ourselves on the back. We actually met the deadline, and I think that's very impressive given the amount of work we had to work.

So any questions on this slide? Not seeing any, next slide, please.

We've included links in the electronic version of the presentation to all the current versions of the reports. I just have to click on the link when you get a copy of the presentation.

Next slide, please.

Budget, yes. We started the PCST at the end of Workstream 1. We've carried on with our we resubmitted a budget to get our extension for this Fiscal Year, as we were supposed to complete

our work in June, 2017. We said we could carry on for an extra year without actually spending more than was allocated for the original version of Workstream 2, and that is our current status. Basically, we are at 9 percent spend where of we should be. It doesn't mean we're going to go on a spending spree, but it does mean we have been managing the money wise Leann that I believe ICANN is pleased with its experiment of letting the community manage some of its finances and shows that it can be done responsibly. So I think that in itself is also indirectly a result of our accountability work, which will benefit everyone.

For those that don't know the details or are a little fuzzy on it, I have been overseeing the PTSC work, and basically, the deal is that we've split the money management for a given project between ICANN. Obviously, ICANN staff and some of the basic functions have to be overseen by ICANN.

The other things which give discretion to the working group are overseen by the working group. It also means that there is flexibility by the working group to allocate money between the buckets, which was not always the case in the past when we were working under ICANN. And we've experimented that. It works well, seems to work well for everyone, and maybe we'll be able to export some of that to other groups in the near future, since this experiment seems to have worked well.



Any questions?

[JORDAN CARTER](#); Just a comment. And thank you. And naturally, in particular, for the great work that's going on for the PTST and the work that's been coming through.

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[BERNARD TURCOTTE](#); Thank you, yes, Natalie and myself, and also a big hand to ICANN finance staff. Preparing these reports in this format, which was a completely new way of looking at things, was a challenge for them, as it is in any organization when you're creating a new way of handling authorizations and various things. It took us a few turns of the crank to get it done, but with no resistance and no ill will, it's just trying to understand it properly and to get it done so that it works for everyone. And that was the hard part, really. Once accountings always, once they have it down and everyone is happy, they can keep reproducing it every month and it works out well. And that's where we are at now. I think we're getting the information, we're reviewing it. By the time it gets to the Co Chairs for approval, sometimes there are knits. We get knits where we will ask a question; why is that there, and they will go digging and come back and go, "Oh, yeah, that shouldn't be there." So there are little things. So it's handy to be able to look

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at this and ask questions, and we actually get more realtime and better, quality information, because as a working group, we're responsible for our budget. We take that seriously. Co Chairs and staff look over information, your accountability staff, and we do ask the questions, which was much harder to do when everything is clumped together if you will. So it's been working very well. So I'll be glad to take any questions on this.

Seeing none, next.

I see Leon is sorry, Robin.

ROBIN

Thanks. I just had a question on some of the numbers there. There was like excuse me a 58,000 for other professional services. I was just wondering what that was?

[BERNARD TURCOTTE:](#)

We split things between staff and contractors. In my case, I'm a contractor. So we try to make things very clear, and that's where those differences occur. Does that answer your question?

All right. Thank you.

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>> (Indiscernible.)

[BERNARD TURCOTTE](#), No, translation is under telecom and language support. And that's where we get, also, the captioning service, which has been, I believe, a great success, and certainly a worthwhile investment. And again, that is one of the examples where when we decided to do this midstream, you'll remember, we had to reallocate some of the money to actually get this done and we had a great discussion about it and it worked out and we managed to get that done without too much fuss.

Any other questions?

All right. Next slide. And since I have Leon, do you want to do the legal committee update?

[LEON SANCHEZ](#), Thank you very much, Bernie. Yes, and my apologies for coming in late. But I'm here now.

And we submitted a question from the group to my legal, and I believe we have received the answer and it has been circulated to the wider list. So I won't be reading it out loud for the sake of time. But we are now up to date with requests from the

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committee, and that's pretty much all about legal committee update. Back to you.

**JORDAN CARTER:** And thank you, Bernie, for running us through that admin and beyond for the legal committee update.

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We're running a little bit early according to our timetable, but I don't think we will try and make you frustratingly wait. I see a hand up with Sebastian. Sebastian, can you go ahead?

**SÉBASTIEN BACHOLLET :** Yes, thank you. If we have one minute just to say about the legal advice we get about the ombudsman, as we received it after we submit to the group, I wanted to assure you that the answer can't jeopardize what we've done. It's aligned with properties we have made and it's all taken care of in the subgroup report. Thank you.

**JORDAN CARTER:** Thanks, Sebastian. I agree with that assessment and there were people nodding their heads around the room. So that is a good point to put on the record. Thanks for that.

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Okay.

[JORDAN CARTER:](#) Okay. Let's move to the next agenda item, update on IRP. Do you want to go into the presentation?

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[DAVID MCAULEY:](#) I'm ready to go.

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[JORDAN CARTER:](#) Good.

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DAVID MCAULEY: Thank you very much. My name is DAVID MCAULEY. I'm the leader of the IRP Oversight Implementation Team, whose job is to implement certain portions of the new IRP bylaw, and we are making progress.

So looking at slide 1, it's important that I emphasize I'm giving this presentation on behalf of the IOT team.

The IRP was created it's really the top level of internal ICANN accountability measures. The independent review process is really ICANN's internally arbitration process and a very formal process. And the current I am implement eastbound mentation of the IRP was adopted by a separate entity by the ICANN board as part of the transition. And I put down there that you can look at bylaw Section 4.3 and to see where the IRP oversight team was

created. And it's quite important I'll mention bylaw 4.3. For all of those who have an interest in where IRP is heading, what it now entails, that's the bylaw that you want to become conversant with.

Next slide, please.

Let's talk briefly about the purpose of the IRT. And its consistent with what it has been in the past with some significant changes. And so I'll read through some of these. I think they are important, and I think it's important to state them and to sort of underscore exactly where this is going.

The first thing, the IRP is the top most internal accountability mechanism to ensure that ICANN and staff, or ICANN and the organization, does not exceed its mission and does, in fact, comply with the articles and the bylaws. You will see all the way through bylaw 4.3 reference to articles and bylaws. That's really the touchstone of this accountability measure and that's the measuring stick by which ICANN board and staff will be judged. And so there are oftentimes questions about IRP; can this kind of a claim be heard? Can that kind of a claim be heard? And it always comes back to an analysis; is the action that's being spoken of, that there is a concern about, is that action something that amounts to a violation of the articles or bylaws? That's really

what IRP is about, a little differently than IRP request, things like ombudsman and things like that.

The second bullet says the empowered community itself, as well as individual complainants to enforce articles and bylaws. And that word enforce in that bullet is new. That's part of the new IRP implementation. In the past, the IRP panels have made recommendations to the ICANN board. Those were important. Those recommendations obviously were not taken lightly and the board considered them very seriously.

But now, when an IRP panel rules, comes out with a decision, there will be a mechanism by which the community, the claimant, can enforce the decision and can actually go to court if they need to to get that decision enforced.

The third bullet, the IRP is to address claims that this again is part of a new IRP, because the naming functions contract as in the form in which it currently is is new, in a sense, to ICANN. And so when the U.S. government at the IANA transition, it was decided there needs to be within the IRP this ability to enforce the naming functions contract, basically making that an articles bylaw level requirement.

Fourthly, the IRP is to provide a vehicle for the IANA customers to seek resolution of service complaints. These are specifically

culled out within the bylaw and these are within the jurisdiction now of the IRP panels.

Fifth; one of the purposes is to reduce disputes over time by creating precedent. And this is especially true with policy development and implementation. And you will see me come back to this point later when I talk about picking an IRP panel and how it's going to be important to recognize these panels when they are launched are going to create precedent and sort of map the way forward for the ICANN community, at least with respect to dispute resolution.

And finally on this slide, the IRP is to lead to binding and enforceable binding resolution on disputes. That ties into the presents did he know eventual nature of these proceedings, which I was talking about a moment ago. But this bullet underscores the point that these are enforceable, binding decisions. Next slide, please.

So we'll get here in this slide to a discussion about the standard for review that the IRP panels will be implementing. First, they will address claims that the ICANN failed acted or failed to act in a manner that violated the articles and bylaws, and this bullet clarifies that what ICANN means here is the board collectively,



staff collectively or individually did something that amounts to a violation of the articles or bylaws.

And it's done in the context of claims, and ICANN exceeded the scope of its mission, that ICANN took action resulting from a response to advice or input from an AC for an advisory committee or supporting organization where that action taken was claimed to be inconsistency with bylaws. This is a specifically new bullet that action taken by the board or staff resulting from decisions of process specific expert panels. These are the panels set up as part of the new GTLD program, things like similarity reviews, legal rights reviews, community objections, those kind of panels that were established, and there was no appeal from the decisions of those panels. The new bylaw corrects that in this case and makes these decisions reviewable under the IRP. And a little bit later when I talk about how our team is working on rules in some of the requests that we have been we have on working on the rules, I'll tie that in on which parties can join, because when you get to the expert panel, you will understand that if someone is making a claim, it would typically be the party unsuccessful at the expert panel, so in the rules making process, we'll get who can participate in those kind of claims.

Before I go to the next slide, any questions to this point, any comments? And by the way, there are a few of the members of

the IOT in the room, I may have missed some, but I see Kavouss, I know Robin is here animal come, and I encourage any of you, if you have comments that you want to make, please be sure and do so.

Next slide, please.

The IRP will be addressing claims that the articles or bylaws were violated when ICANN took response to a DDIP request that the claims basically is that that failure to respond to the DIPP request in a certain fax itself amounts to a violation of articles or bylaws. The DIPP is ICANN's documentary disclosure policy and this is the vehicle through which members of the community, members of the public can come to ICANN and say, "I would like information, documents you may have in your files about this decision," or "that decision," whatever, sort of a transparency definition ICANN has had instances in the past where they say, we can't respond to that, whatever the exception might be.

Now there is you will see from the work in the transparency group, there's a more clear list of what the exceptions are, and if the claimant feels the ICANN is invoking an inception properly or not handing over documentation properly and their failure to do that amounts to a violation of articles or bylaws, they will have

specifically called out in bylaw 4.3, they have the right to come to the IRP and make such a claim. That's new.

ICANN IRPs will be addressing claims of the empowered community. This is obviously important to the IANA transition and a major milestone of the IANA transition work. For those of you who became familiar with the XD of the ICANN articles, you know this is not an easy process, it won't be, for the ICANN community. There are certain gates they have to go through and their time lines are tight, but there is an opportunity to make a claim before IRP and ICANN cannot argue this is not a legal entity and they don't have standing, anything like that.

Also, the IRPs will be looking at claims of nonenforcement of contractual rights with respect to the naming functions contract and it will be able to address service complaints by customers of the PTI. Next slide, please.

This is an important slide. Because there are specific exclusions from the IRP, one, of course, is that the empowered community, which has a right to bring claims now, will not have a right to bring a claim challenging the result of a PDP unless the supporting organization or organizations that were part of developing that PDP go along with the powered community in bringing that claim.

Excuse me. Claims regard delegation and redelegation of CCTLDs are not within the purview of IRP, and many of you are probably aware that the CC NO is currently undertaking a PPDP addressing a dispute mechanism to address these types of claims.

Claims respecting internet numbering resources and claims respecting protocol parameters are also not within the remit of the IRP specifically.

Next slide, please.

Here we get to an important slide about how the what the IRP is, what it's made up, what constitutes the IRP. And it's going to be there's going to be a standing panel of IRP members, at least seven, could be more. There's no cap on the number, but there will be a standing panel, be like a standing court in a sense, although it's an arbitration panel and not a court. And this will be important. It's going to tie into the element of precedent that I was speaking about earlier. It's going to tie into some experience and how these things will reduce disputes over time.

For this standing panel of seven or more members, there will be a secretary, an administrative support function. And at present, ICANN's IRP is supported by the international center for dispute resolution. And that organization has rules for arbitration that apply to the IRP. You'll hear me talk a little bit later about our

work on rules, and really, what we're doing is drafting supplementary rules that are unique to ICANN's IRP and that supplement the ICDR, the international center for dispute resolution rules. And they actually, when they supplement those rules, they take primacy over those rules with respect to that particular issue or rule.

So there will be a secretary. It's an important function, especially as this is now going to be issuing decisions that create precedent.

The next thing you will see on this slide, there will be an expression of interest document put up for panelists to apply. We, the members of the oversight team came up with a draft ourselves and have worked with ICANN legal, given them the draft, it's ICANN's legal's primary responsibility to do this, and we have been working with them. The document is basically in shape. It hasn't been released yet strictly because of timing considerations, and I'll get to that in a moment when I talk about how panelists will be nominated. Be aware, and my hope is that as you participate in your in your supporting organizations and your advisory committees and your stakeholder groups and constituencies is that you will help broadcast this information, enlarge the understanding in the community of what's coming with respect to RFP. There are some preparatory steps coming which are important, one of which will be getting the expression

of interest document out, and having come back, applications for nomination to the standing panels, pretty important. You can tell that the first standing panel, that we'll be creating the first presidential decisions is going to have some outsized importance. The next thing is seeking and embedding applications for the standing panel. I put this down separately because investigate the applications of people who apply, that will be a function of ICANN and the supporting organizations and advisory committees.

But then leading to the final bullet on this slide, nominating the people after the vetting process, that's the job of supporting organizations and advising committees. ICANN stepped back out of that process. That's just for them. This is really important, and this is, too, something I hope you will broadcast within your groups to set the table so that people understand, this is coming along.

Now, in the IOT, we have been of the view that we should offer our services as consultants, whatever, to ICANN wherever we can help. And this is one area where we think we can help, in training, in giving notice, in trying to establish the framework of understanding that this is coming down the line.

In doing that, what we have had discussions with ICANN legal, specifically, and, in fact, Sam Eisner is a participant in our group, as Elizabeth Lee is. As a consequence of that, we are aware that ICANN legal and ICANN policy teams are working on this. And when I say working on this, it's putting together sort of the framework of which the SOs and SCs are going to be able to organize themselves to do this nomination. It's important. We're going to be getting nominations I'll speak of panels in a minute we're going to be getting nominations, jurists around the world, it's important that the vetting process be done right and that the nomination process be don't cogently.

Next slide, please. The makeup of the standing panel, if you could just I'm sorry, maybe go back one slide.

The makeup my mistake, one more slide. Go forward one slide. I incorrectly asked for the last one. The makeup will be the 7 panelists, at least. They will serve a term of five years and can't be recalled except for certain very serious difficulties, something like fraud or whatever. It's our job as members of the IOT to come up with a process for recalling members. And we will do that. In our scheme of things, that's going to be less important to us now than getting the rules done so that the new IRP will have a new set of rules. We don't even have a panelist now, so the concern

about recalling them, we think that can wait a little bit while we get the rules work done.

Panelists must be independent of eye can. This again is critical. The bylaws say this: And I think this is going to be very important, because you will see me say that in one of these slides, ICANN will have the role of training the panelists with respect to the DNS and the ICANN community.

Now, this is going to be quite important, because the panelists will be independent to ICANN, not connected to ICANN. And so we're going to be getting professional Arbitrators basically that they are going to come in and apply for this position, and since they are going to be creating precedent and be getting rather complex questions, it's important that they be up to speed with exactly what ICANN is about. And as I said, these are going to be the first decisions that have presents did he know eventual effect. They are going to have an out sized effect, in a sense. This is all important and it ties into the nominating process and how important it is that that be done right.

You will see on the slide that individual cases of IRP are going to be heard from three members of the standing panel. There will be appeals available to the full standing panel. It's our job to come up with rules for the appeals and we will do that.



There is a target in the bylaws of six months. That's the that's the target. It's not a hard and fast rule.

One of the things that we need to factor into this work is a new task we undertook since the last ICANN meeting and that is, we, the IOT, are working caught cooperative engagement process, which is a formal dispute settlement process that the parties should engage in discussions. We're working on that now. That will have some impact on the timeline these things are going to be done in so we need to make sure that's done coherently. Kavouss, do you have a question?

KAVOUSS ARASTEH:

Yes, I raised it before at the panel at the meeting. My question is, the part you said timeliness must be independent of SAOC. How do you interpret that, question one.

Question two (Indiscernible) mentioned that ICANN could train these and I don't understand how we could say that the panelists who talk about the issue to judge, they should be trained, there are people knowing nothing coming to ICANN and some people saying they are training them. So that is something that the first question, the independence of SAOC and ask for again the balance between the various let me be quite honest, we don't have one specific AO or one specific (Indiscernible) override or

dominate the panel, which may be the case. Sorry, that is a question of importance.

>> Thank you. (Reporter lost audio.)

>> We're back online.

[THOMAS RICKERT:](#) Thanks very much for that. And David, you can see that audio was lost after Question 2. So maybe you can try to run your presentation at that point.

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[DAVID McAULEY:](#) I'm sorry, Thomas, when was it lost?

Deleted: >>

DAVID McAULEY: If you look at the transcript. Let me just say that the role of training, education, bringing the panelist within the ICANN context will have an incredible amount of importance because of the Presidential nature of because what they are going to be doing. And I was also getting at the point that the SO and ACs are going to nominate the panelist. That's a pretty important role. ICANN will have the power to confirm them, but the bylaws do say

such confirmation not to be unreasonable withhold. So it's a good. [Indiscernible] I would think within the next months. We are getting to the point where the rules will be done. We are the expression of interest document is done and it's ready to be released. And ICANN legal and ICANN policy are putting together the elements of helping the SO and the ACs get it organized. And so it's my hope that this group, all of us, will help the SO and ACs understand the important work that is coming their way and the fact that they will need to become organized and the importance, Kavouss, as you were pointing out that each SO and AC understands the importance of what their role is going to be and nominate panelists so there's a balance. So this slide with these parts dealing with the standing [indiscernible] stuff and it's on the doorstep. I thought it would be happening by now, but it's coming very soon. At the CCWG meeting in Puerto Rico, I imagine we will be much farther down the road and I hope the SOs and ACs will be taking steps at that meeting to bring their work along the lines much farther down the path.

Next slide, please.

The rules of procedure, you have heard me talk about them, these are supplementary rules that will supplement the ICDR rules and when they supplement them they take precedence over them. These are rules that are unique to ICANN. We have in the IOT team

is by definition small. We started under Work Stream 1 and we were capped at 25 members. We're now we have now been adapted by the bylaws. We're still at 25 members. We added a 26th, Anna Loop from the CEP process and we added Becky Burr and Aubrey is among our group. This small team is working on these rules and moving them further. Becky Burr was in charge of the IOT team when it issued the first draft of the supplementary rules. They went out for public comment and we got very substantive comments back and that's what we are wrestling with right now, putting those into effect as consideration. And we are nearing the end of a long process. We have had a lot of discussions about the rules, we are done with what the public comments had to say about them.

I have indicated some of the rules on this slide that have had comments and I'll just note them here that timeliness for making a claim, there were a lot of comments about it, there are two facets to this, one is what is the initial time within which a claim has to be filed. And two is, what is the outside time within which a claim will be considered stale, if ever? We were asked to consider retroactive of both the new standard and the retroactivity of new rules to existing cases. Three, we have been asked to look at jointer of interested parties. You heard me talk about the IRP now being able to hear claims dealing with expert

panel decisions. This is a natural area where people are going to want to join as party, and yet they have to have some kind of a stake in the matter that's in the nature of what a Claimant would have. And so we're wrestle with these and we are going good progress. We are dealing with translation, discovery, evidence and things like that.

Next slide, please.

THOMAS RICKERT:

David, if we could just pause for a second. There's a question from Steve DeBianco in the chat. David, do you feel we should also be further along by now in the establishment of the IRP standing panel? And before you give the answer, I guess there's it's worth noting that this initiative that David is leading so ably is a remnant of Work Stream 1 and, therefore, the timelines we have established for Work Stream 2 do not apply to this initiative. A separate budget, separate timelines and don't go into the final report and don't be surprised if the progress of this work doesn't match what Bernie has presented earlier.

DAVID MCAULEY:

Thank you, Thomas. I think we will be giving the CCWG report with respect to what happened and we'll wrap is that up.

With respect to Steve's question, speaking personally, I thought things would be farther along. I'm not part of what ICANN legal and policy are doing. I know what they are doing is important. I know putting this organization together so it's effective is important and I do expect things to move pretty quickly, Steve. I am active in trying to seek that to be the way. And I've said, and I will continue to say that the work has to be thought through very well going forward because this is going to be an extremely important picking of judges, in a sense.

And I know, I am looking at the clock, so I want to wrap this up. If you can go to the next slide, please.

The IOT team has tasks to do once we finish with these supplementary rules. And when I say that, I should also say that we are considering our own future. The bylaws are not crisp in saying what happens to this entity that is created called the IOT, the implementation oversight team. We believe, I believe, we will probably come together with a recommendation that our other existence be suspended once we are finish with the post rules, but we will see what comes of that.

Anyway, we will be making recommendations regarding how the training or education or whatever it is happens with respect to the standing panel and throughout the process, we are developing

amongst ourselves a pretty good understanding of bylaw 43, it's even more complex when you look at it and more complex when it starts to sink in. So I think we will have recommendations on training.

We will review the cooperative engagement process. This was previously lead by Ed Morris and he and Anna Loop were [indiscernible] engaged in the cooperative progress. This progress to voluntary settle the thing coming up for IRP has experienced timelines from 60 90 days on a low end to 1200 days on the long end. And that's just mind boggling. And so this has an impact on the timeliness of bringing IRP claims. They are supposed to be wrapped up within six months. So we're going to try and come up with rules that encourage people to do this. There are financial penalties to a Claimant if they don't engage in CEP in good faith, potential penalties. And so we're going to try to come up with rules to encourage people to do this in good faith, but when they get to a certain date, to extent CEP would take a panel's approval. That's probably the way that will look. And, again, we're not done, so I can't promise that.

We will be working on standards and rules regarding appeals. Obviously that's going to be important.

We're going to be working on a process, the process by which panel members could be recalled or revoked recalled rather. We have to come up, the bylaws direct us to come up with a process to follow when ICANN fails to reply to a claim. There's a separate section of the bylaw that says when that happens, the panel can simply move forward if it wishes. So this one may not be that hard to crack.

And, also, we will come up with recommendations regarding periodic review of the IRP. The bylaws currently talk about a review of the IRP every five years in the context of ATRT as a matter of discretion. And Aubrey is doing good work on this. We are concerned about having it within the ATRT because they are busy and part of the concern is fueled by the fact that we think the review should be mandatory, not discretionary. Remember the ICANN community needs to keep control of the IRP in a sense. You just can't launch a panel that goes off into the elements without review from time to time. So we want to we're looking at that pretty closely.

If I'm not mistaken, that's the end of the slides and so I would ask if there are any questions or comments.

Yes?



JULIE HAMMER: Okay, thanks, Julie Hammer. David, thanks for the presentation and I just wanted to query the phrase that's been used and it's in the screen to use the word "recalling" in the context of the members of the standing panel. When I think of the word "recalling" it means bringing them back after they have gone away. And I think what you are actually talking about in this context is dismissing them, ceasing their term or something like that. I'm not sure whether I'm sort of the person out of the loop here and that this is a standard legal term and, therefore, ought to be used or whether it has some potential for confusion. But it's probably not the word that I would colloquially use in that context.

DAVID MCAULEY: Thank you, it's a good comment. It's really speaking about removal and I can't remember the exact word in the bylaw, but it's pretty clear in the bylaw this is what we're talking about and it's making the point that not only are the members independent, but too, they can't really be tampered with above. They are not going to lose their job because they put out a decision that somebody didn't like. They are only going to lose their job for things that the bylaw the level of problem that the bylaw calls out, which is basically fraud, misconduct, things of that nature. So, again, it brings me back to the importance of picking these

panelists. This is really important work that is coming the way of the SOs and ACs and we need to get them all organized and understanding and ready to do it. Thank you.

Any other questions or comments? Thank you.

>> [Off microphone].

DAVID McAULEY: Oh, I'm sorry, Kavouss, did you have a question? Sebastien?

SEBASTIEN BACHOLLET: Yes, thank you. It's more a comment than I would like first to apologize because it's something we already discussed, but you are using the term ICANN in multiple ways. And I think as legal we need to talk, you need to be clear of what you are talking about. If it's ICANN, all the community, you, me, SOs, ACs, abroad, a staff, if it is abroad, a staff, if it is abroad and a staff, but here it was meant to say different things in different places. I really would like that we start to use ICANN as "we" all together.

DAVID McAULEY: Thank you. I would want to mention, that's a good point, I would want to mention that the standard of review deals with ICANN Board and staff and any action or inaction by any member of the Board or any member of the staff could be enough to call up the

IRP process, but it's a fair comment and I will pay attention to that in the future, to be a little bit more precise.

So Steve, you're next.

STEVE DELBIANCO: Thank you, David, Steve DelBianco. You mentioned at the conclusion of your remarks that the five year specific review in transparency, known as the ATR team, whether it should be required to do a look of the IRP. And I want to mention that when we brought in those reviews, there are six things that the ATR team may look at, but the sixth is quote [indiscernible] reviewing the [indiscernible] so it's among the bylaws that the ATR team may, but must not look at. Are you making it a requirement where they must look at the IRP or are you good with the fact that we have called it out as something they should specifically consider?

DAVID MCAULEY: We had two strains of thought. One is, should we make a recommendation that the IRP must be reviewed every five years? That's one thought. And the other is, we recognize, and Aubrey has very instrumental in making that point, we recognize the ATRT is flat out busy. So rather than simply drop the new requirement on the ATRT, we are looking at this whole area. And

so, yes, we are looking at making a recommendation that the review of the IRP not be a discretionary thing. By the way, this is not decided. We're not done with that. Okay. Thank you.

THOMAS RICKERT: We're a little bit over time. Is there anything else from your side, David?

DAVID McAULEY: No thank you.

THOMAS RICKERT: Any further questions? So the cue is empty. For those who think that IRP and IOT, I think David has proven us wrong. Thank you for the presentation. It's a complex subject and I thank you for explaining this in plain language and clarifying the importance of this topic. Thanks very much. Keep up the good work and kudos to you and your team. We will now break for lunch for lunch.

>> [Laughter]

I'm ahead of time. We break for coffee now and we will reconvene at 11:00 sharp. Thanks so much.

**[COFFEE BREAK]**

BERNARD TURCOTTE: Excuse me, ladies and gentlemen, this is your three minute warning. Three minutes to starting again. Thank you.

This is your one minute warning. If people could take their seats, please, we'll be starting in one minute.

JORDAN CARTER: Okay, ladies and gentlemen, we're going to kick off the second session, if you like, of this CCWG Plenary. My name is Jordan Carter, one of the Co Chairs. Welcome back, if you are going to keep downing the coffee, I ask that you don't speak while you do that, so we can listen in peace.

The item on the agenda now is the transparency Subgroup and I'll hand over to the Rapporteur Michael. Michael the floor is yours.

MICHAEL KARANICOLAS: Thank you very much for that. Michael Karanicolas for the record. So we're going to be going through the final recommendations for the transparency Subgroup. [Captioning pod being re connected] where the contracting party satisfies ICANN that it has a legitimate commercial reason for requesting the non disclosure agreement or where the information contained there would be an exception. So it's a push toward a moral contracting policy and hopefully something that can be clarified.

The next change is to the next section regarding documenting and reporting on ICANN's interactions with Governments and that's a change so that expenditures for political activities should be reported if they are over \$20,000 and that's been the only change to this exception or to this section. And there's been no changes to the recommendations around transparency for Board recommendations and ICANNs anonymous hotline. So we'll just take those two sections as read.

And that's the changes as they've that's the changes that we've made since the last report so I guess I'll hand it back.

JORDAN CARTER: Thank you for that run through, Michael. So this is the second reading and chance for any questions, comments, discussion of these recommendations. Any perspectives that need sharing

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now. I see a hand up from Chris Disspain in the physical room. So we'll do Chris and then Fiona has her hand up in the Adobe room.

CHRIS DISSPAIN:

Thank you, I am, indeed, in the physical room. First of all, there's a huge amount of work that's gone into this and I want to acknowledge that, re acknowledge it instead of [indiscernible] the word that everyone has done.

A couple of points that have been raised by ICANN itself that don't seem to have been clarified. I would just like to raise them now and figure out how we deal with them going forwards or whether we put them in the public comments to the main report or what's best. There are about 6.6 which is one less count up there on the screen, and 6.5 on transparency.

I'll deal with 6.6 first, it says in the interest of providing the community greater clarity with regard activities, and it goes on to say ICANN should disclose all [indiscernible] both outside and internal personnel and it says all of those engaging in those activities both internal and external and it then talks about the type of engagement we are targeting and so on.

The challenge I think we have from this with the internal point of view, under the current wording, that would mean, I suspect, that if I, for one, as a Board member went and talked to the GAC of the European commission about EU in the Greek script, that would

be something that needs to be declared. And I'm at a loss to seek how that would be implemented on the basis of all of us, whether we're in the GNSO, CCNS, whatever body we're in, go and talk to Government people all the time. And if we are funded by ICANN to be at this meeting because we are a member of the council, technically we will fall under this. And I think that requires a level of clarification that would ensure it's implemental because if I understand it as it is, I don't think it's implemental in its current working form. So if the working group wants to clarify that in parallel going out or in comments, but I think it needs a bit more flesh around it so we are clear what we are really talking about.

The other thing I just wanted to say is to remind everybody that ICANN does have disclosure obligations anyway with respect to external, they have to disclose that as part of its existence as a California not-for-profit corporation. So it's the internal stuff I'm worried about.

And with respect to transparency, open contracting, again, ICANN Org has commented on this in the past, the challenge, I think here, is that if we disclose contracts as a default then how do we deal with the issue that in the next iteration of that contract, whether it's going out for tender, or whether it's being reread that public knowledge puts ICANN at an advantage because all of the previous parties understand what the previous contract was. So,



again, I'm not sure there's a simple answer to that, but I think we need to cover the fact that, I mean we could argue it's simply covered by the fact that it says you can put a non disclosure agreement in place and then it says, providing that the contracting party convinces ICANN it's okay. I would suggest there may well be occasions it's actually ICANN it's in the best interest of ICANN to have it not disclosed. So we might need to cover that off. That's the second point I needed to make. So happy to answer any questions on those two. Thank you.

JORDAN CARTER: Go ahead, Michael.

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MICHAEL KARANICOLAS: So in terms of what you mentioned about number 6.6, that seems to me like that could be fairly clearly resolved by clarifying there's an exception for this for discussions which take place within the ICANN structure. So that seems a fairly good fix, unless we hear other. Obviously there are other objections, but that seems like a fairly simple thing to do.

In terms of open contracting and its impact on prices, this has been studied extensively at the Governmental level and the findings are that usually the reverse is true. Disclosing contracts

tends to drive prices down and enhance competition. There's been extensive case studies on this in Paraguay and Honduras and if you want to go back specifically, I recommend you look up the [indiscernible] in the Ukraine which had a positive impact on costs. Slovakia is another one, my understanding that since 2011 when Slovakia interested a contracting system and began disclosing the details of contract, overall procurement costs in that country have gone down 30% so that's an incredible positive result when you consider the size of contract within the budget. 30% savings is enormous and it's mostly because it has had the opposite effect of what you mentioned. When you talk about the next round of contracting coming up and everybody can see what was paid the last time around, what that actually does, it enhances the competitive aspect of it where try to under bid for that previous price, they tend to view that as a ceiling to beat rather than a floor to exceed. So overwhelmingly there's been positive impact on that. I'm very, very happy, this is kind of, as you may have guessed by the way I'm going on about this, this is very closely related to what I do in my day job, and I would be very happy to follow up specifically on this issue.

In terms of the recommendation on the way it's crafted, its current live crafted in a way that leaves a fair amount of flexibility as to how it is implemented and that's because there was a strong

debate at the working group level about this specific recommendation. So this along with the recommendation on ICANN legal, I think, there's a lot of hope that those are both a little bit more open ended and there's open that they will be kind of revisited going forward. And so with that one specifically, I wouldn't necessarily see a need to shift the language of the recommendation because it is pretty open ended at the moment, but my hope is that going forward this can be a baseline for further conversations to enhance the transparency of contracting.

CHRIS DISSPAIN: May I respond just briefly.

JORDAN CARTER: Very briefly, yes.

CHRIS DISSPAIN: Michael, thank you. On the second point to contract transparency, I appreciate all of that information and I'll take that back and ask the Org to, you know, listen to what you said and they can move on from there.

With respect to the first one, that sounds fine, however, there's more detail that needs to be talked about that with respect to what we mean by within the ICANN context and so on, but nonetheless, that said, I think we can work from what you just said. In both cases I think we were probably I think Org will probably put the comments in the comment period because I think it's important they do and that they go on the record. But one of the purposes of me being here today were so there were no surprised when those comments were made and everybody knows they are going to be made. Thank you very much.

JORDAN CARTER: And thanks, Chris. Just to be clear for the record, so are there any other concerns floating around at the Board level?

[CHRIS DISSPAIN:](#) Not that I'm aware of.

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[THOMAS RICKERT:](#) Great, thank you.

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[CHRIS DISSPAIN:](#) And as Thomas has put out there, it doesn't mean a lot.

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JORDAN CARTER: I would say that does mean a lot. Thank you. We will move on to the cue and if the staff would start the timer, we have about 12 minutes left in the session. Thank you. Fiona, please go ahead, the floor is yours.

FIONA ASONGA: I think it's important that we are very clear of what is within ICANN's structure and what is out of it because I know ICANN does a lot with Government in my part of the world and there is an office in ICANN which is responsible for those kinds of engagement and we think those expenditures should be factored in or are there other expenditures or engagements that ICANN has with Governments that need to fall under this? Because then that helps us to be it brings more clarity into the whole discussion. So maybe you don't need to respond to this because as Chris said, there may be some work that needs to be done around it, so I'm there needs to be clarity about what this is all about.

JORDAN CARTER: Thank you for that, Fiona. It there may be, I don't want to say stress testing, but detail flushing out to getting the Subgroup to think that through.

And the next speaker is Kavouss. Your hand is up. And please as you speak, sometimes I will mention your name, but when you start, if you mention your name, that will also help the captioning. And if you have spoken, please take your hand down in the Adobe room.

KAVOUSS ARASTEH: Thank you. Kavouss Arasteh speaking. Also David McAuley [indiscernible]. I have some clarification. When you refer to participants, which participants are we dealing with? 6.1, please, yeah. The comments that you made today, number 6.1, if you go back to the other slide, please. Referring to the participants. Yeah. Who are the participants? And then I have two clarifications.

Thank you.

MICHAEL KARANICOLAS: Can we go back and forth? So the participants in this case is the participants in the decision making process. So if significant elements of a decision making process, the participants that decision making process

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KAVOUSS ARASTEH: Is it possible to mention that?

MICHAEL KARANICOLAS: Sure, the participants in that decision making process, sure.

KAVOUSS ARASTEH: And 6.4, you have a term that is used, [indiscernible] client. Sorry for my ignorance. And you talk about [indiscernible], just a clarification, not objections.

MICHAEL KARANICOLAS: So attorney/client privilege, solicitor/client privilege is a confidentiality that exists between lawyers and their clients for conversation. That's a legal principle. I don't know about the Iranians case, but I know in private and civil law. So there's confidentiality between discussions between an attorney and their client, a lawyer and their client. So that's what it refers to. And to be even more specific, the DIDP currently contains a specific exception for attorney/client privilege, so it's referring back to that.

KAVOUSS ARASTEH: Yeah [indiscernible] yeah.

MICHAEL KARANICOLAS: Yeah, I think that refers back to a specific exception that it's already written in the DIDP, so it's important to keep that consistent with the language that's in the DIDP.

The way I read that if you have a conversation with an attorney/client and someone asks you to release a document, you can say, no, I'm invoking attorney/client privileges and that can be invoked by ICANN with more of a transparency.

MICHAEL KARANICOLAS: Sorry, I just realize I'm Michael Karanicolas. I just realized I was being referred to as David McAuley. I'm not sure how that's going to impact future readings, but we can clarify that.

KAVOUSS ARASTEH: My last comment is about what you said in reply to Chris, you said disclosure of contract could or would result in competition. It could also result in [indiscernible] as well. Thank you.

MICHAEL KARANICOLAS: Right, again, there's been consider case studies and it showed the opposite. When you put more information there about the contracts, it tends to bring in more interested parties.



JORDAN CARTER: Thank you for those comments, Kavouss. And the next on the speaking list is Steve DelBianco.

STEVE DELBIANCO: Steve DelBianco. We requested [indiscernible] with Government and Chris commented at least with respect to the U.S. those expenditures are required by lobbying laws and that's not entirely accurate because that only covers the very narrow expenditures call lobbying. I can't spend significant sums of money in 2014, 15, and 16 at consultants whose activities certainly effected what happened in Washington but were not categorized as lobbying and that's why they were not disclosed. That's why we need the disclosure.

The second question is about the 20,000 itemized. 20,000 per month is a quarter of a million dollars. That's very significant. And I wonder how we are to interpret what that means to say a single item of \$20,000. Could it be a single expenditure with a single consultant in a month? Or is it an annualize number? Thank you.

MICHAEL KARANICOLAS: Yeah, I hadn't read it that way, but that's an important, a very important clarification to make. First of all, thank you so much for

your clarification about the lobby rules. I read that as being 20,000 annually because the previous sentence says, ICANN can disclose publicly the following on at least a yearly, but no more than quarterly basis. I would read that as being annually, but that's a very important clarification and I think it might be good to clarify that as being \$20,000 per year. Unless there are objections to that. I see nodding. Great. All right, we can clarify that.

JORDAN CARTER: Thanks, Steve. And the next person speaking is Malcolm Hutty.

MALCOLM HUTTY: Thank you, Malcolm Hutty for the record. I would like to speak about recommendation 15 with deals with the attorney/client privilege issue. I would like to just read out the one sentence that deals with this in the main body of the report. The working group discussed with this ICANN legal but were unable to arrive at any avenue for bringing greater transparency to their operations. This is a very important and extremely regrettable failure of this working group to achieve anything and just punt it off to the future. I would like to ask you whether the failure to achieve consensus in anything that could be done in this area lies heavily on ICANN legal's unwillingness to agree? Do you believe if you

disregard ICANN legal as a participant in the group that would be possibility for consensus to achieve something in this area? Or was the lack of consensus very broadly based?

MICHAEL KARANICOLAS: Yeah, this is definitely my biggest disappointment with this. I look at the final recommendations and there's some really positive stuff there and, you know, on a lot of the counts that we are talking about improving it, structural ways of improving DIDP, this is bringing ICANN into the top tier of access information system in the world on Governmental or Non Governmental level. So I'm very proud of a lot of this stuff. The ICANN legal thing is the area where I'm most disappointed. So essentially what happened was we had an earlier recommendation that had been drafted and that essentially would have brought ICANN's invocation of attorney/client privilege into line with the way that it's done in several American jurisdiction in the public sector. Lawyers that work in Florida have limits as to when they can evoke attorney/client privileges because there's a very different way that attorney/client privileges work in that context and there are duties of transparency.

MALCOLM HUTTY: Excuse me, for the sake of time, I wasn't asking about the merits of the question, I was asking about the consensus forming.

MICHAEL KARANICOLAS: Well, I think the context is important, but I am aware of the time. So essentially we initially got back fairly positive responses from ICANN legal saying, well, we're open to this kind of thing and in practice we try to do a lot of this anyway. And there was discomfort what happened there was discomfort in the working group from some of the members about pushing forward a recommendation that ICANN legal was opposed to. We got responses back in the consultation process and there were people in the working group itself that were uncomfortable moving forward with something ICANN legal didn't want. So that's why it's important to clarify this. It's not that everybody in the working group agreed and ICANN legal came in with veto because that would be illegitimate. What happened was there were people in the working group, I don't want to say they agreed with ICANN legal's position, but they expressed if ICANN legal was uncomfortable with it, they also would be uncomfortable with it. So that's why we were not able to achieve consensus on that, which is a very regrettable issue.

JORDAN CARTER: Thank you for that clarification. Next on the speaking list is Sebastien.

SEBASTIEN BACHOLLET: Thank you, Sebastien Bachollet speaking. Regarding this recommendation, I think one step further we can go in this, maybe in the next phase of our work, is to try to see where it can be done in the future, when the Work Stream 2 will be ending its work. If this is just how it will be taking care and where it will be taking care.

My second comment, I am a little bit disappointed that we talk about transparency and we just talk about money, money, money and we don't talk about the result of the work done by outside consultants.

And I am really disappointed with that. I don't think that when we are thinking about transparency, the only thing to do is have open contracting and what we care about is the number of [indiscernible] because we're in the U.S., but not at all about content and the quality of the work.

JORDAN CARTER: And thanks, Sebastien. And Julie Hammer is next on the list.

**JULIE HAMMER:** Thanks, Julie Hammer. With apologies, I'm going to drag you back to 6.6. My question is, is that 20,000 contract figure intended to also apply to .25 of that section? That's what I would have logically thought, but the [indiscernible] that is actually mention in .1, it doesn't necessarily apply to the other dot points. So my question is do we need to clarify with the requirement to reveal identities and types of engagements and, you know, supporting materials and topics? Does that apply to every single engagement with Government, irrespective of the dollar cost, or is that only for the 20,000?

**MICHAEL KARANICOLAS:** Yeah, my understanding was it was only those over 20,000. Your point is clarified. Just to mention the open contract and dollar figures, open contract standards is that assessments should be made as well, like deliverables and how the entity [indiscernible] the success or failure of the contract. That is sort of in line with the recommendation, but not in line with what the discussion has been at this session.

**JULIE HAMMER:** So my suggestion would be to include in the lead in paragraph, not in the dot point the reference to the 20,000. And then the example Chris gave wouldn't actually be an example because it

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was a private chat and no money involved, I wouldn't have thought.

THOMAS RICKERT: Before Jordan takes stock of what changes we have agreed on, Chris, I have a follow up on the open contracting thing. It's my understanding that ICANN legal's only concern is that if the disclosure is made prices will go up? Or are there more concerns relating to that point? Because if it's just about prices going up or down, then, you know, that would need a different response in the report than if they were more concerns.

CHRIS DISSPAIN: I appreciate that, Thomas. It's not ICANN legal, it's all general, I think, it's not coming out of legal as far as I'm aware. And secondly, my understanding is that there are a number of concerns built around the issue of default mechanism of having the contract open unless the other parties requires or convinces ICANN that a non disclosure agreement is correct. One of those relates, again, as I understand it, putting ICANN at a disadvantage in respect to contracting for the future. And I acknowledge that Michael said that is not necessarily the case. The only response I would have to use is, yes, I understand that and I wonder whether there are examples in other jurisdictions that we could that you

might be able to refer to as well, specifically perhaps in the U.S. given that is where ICANN actually is and where it is basing its contracting to come from.

Thomas, I don't know the answer to the deeper answer to your question. I will find out and I will let you know immediately, okay? Is that okay? I'll find out straightaway and I'll come back to you.

**MICHAEL KARANICOLAS:** Okay, but the main concept, I'm trying to find language that we can use for this, right? Would something along the lines of like unless this would be to the disadvantage of ICANN? That's sort of what we are talking about.

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**CHRIS DISSPAIN:** Well, that makes sense to me from a legal perspective. If you said that the NDA, if there was a process for saying the contracting parties can decide for a set of acceptable reasons that there needs to be an NDA, and there are a number of possibilities as to how that would pan out, I'm not suggesting that would be acceptable in respect to the working group, but from what you that would certainly, putting something like that in, giving ICANN the flexible of saying, for this set of reasons, NDA, that would be a

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step in the right direction. But I acknowledge that may not be what Michael is seeking to achieve.

MICHAEL KARANICOLAS: Yeah, I think that level of flexibility would affect lively render the recommendation meaningless. If you just say if it's so open that either party can basically discretionary say, well, we don't want to disclose this for any reason whatsoever. There needs to be clear rules. And if you want to build in a specific mechanism for protecting commercial interest, which I think could fall under, I want to be cognizant of the time, I think that could fall under the DIDP more generally when there's a fact that there is a DIDP exception for ICANN's commercial interests, but we have to go back to it, so that could already be protected in there, but yeah, that's something to look into.

JORDAN CARTER: And thank you for that exchange and set of comments. That's been quite helpful. And I guess I have heard two things. I haven't heard any fundamental objections to the recommendations. And what I have heard is the need to do a little bit more work in flushing out some detail, like exploring cases, in terms of the implement ability of the recommendations. And a couple of adjustments, which I'm going to have get Thomas to turn his .

>> [Off microphone].

JORDAN CARTER: The magic of Skype has worked. And the clarification about what participants means and the decision making, the point that Kavouss raised in 6.1, and the \$20,000 being an annual figure and the 6.6 that's on the screen and clearly some more dialogue to happen. But what I want to call for now is there are there any formal objections to completing the second reading? Understanding there are small adjustments that need to be made and the further flushing out of [indiscernible] that needs to happen? Are there any objections? Malcolm.

MALCOLM HUTTY: I must say sorry to come back to the attorney/client privilege thing. Given what you've said, that people would not wish to go against ICANN legal, if ICANN legal are unhappy, they are uncomfortable pushing something. Is it still impossible to even say, aspirationally, that something is required to be done here without saying what? So there is not merely, oh, well, we'll look at this in the future, but actually something must be done, but we

can't agree what that is. Would ICANN legal object to that? And would people support ICANN legal in objecting to that?

MICHAEL KARANICOLAS: So let me sorry.

JORDAN CARTER: I think that what you are asking Michael to do is kind of comment on a hypothetical.

MALCOLM HUTTY: I mean, if you are asking for consensus on this, I find it, given and this is something that impacts across other areas, including the IRP work I have been engaged in, as many others. To support a report that has not even a statement of aspiration in this area when it was one of the things that the group was chartered with.

[MICHAEL KARANICOLAS:](#) Let me say something. First of all, let me clarify what happened. It's not an entirely fair characterization to say that people are only agreeing so there were concerns within the working group about attorney/client privilege. We got a bunch of comments back that said attorney/client privilege shouldn't be touched. So there is legitimate dissent on that issue and there's people that view that

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attorney/client privileges is a [indiscernible] things that can't be tampered with. And then there's people on the other side that want to see more openness. So I'll clarify that. In terms of a statement of taking it forward, if you look at the actual substance of the document itself, which for some reason isn't coming up for me the at moment, but if you look at the substance of the document in which attorney/client privilege is discussed, it mentions basically something along those lines.

**MICHAEL KARANICOLAS:** As I read out, the working group discussed it with ICANN legal but were able to [indiscernible] transparency to the operation.

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**MICHAEL KARANICOLAS:** But immediately before that which has not been changed, since attorney/client privilege was waved at the discretion of the client [Reading] only be asserted over documents whose disclosure would harm their negotiation and litigation position. ICANN should consider building a similar position into the DIDP. The working group discussed this, but were unable to agree in this respect. And in the final recommendation it does say there needs to be ICANN should consider future processes to expand transparency of ICANN legal, including how attorney/client

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privilege is invoked. So me, that's a statement that it should be revisited in the future.

MALCOM HUTTY:

Okay, thank you. I'll withdraw my .

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JORDAN CARTER:

With the direction of [indiscernible] kind of summed up by the language, thank you for reminding us of that. And I'm going to take hopefully very brief comments from Kavouss and Christopher Wilkinson. Kavouss, go ahead.

KAVOUSS ARASTEH:

First of all, you asked if there's any objection, but from the very beginning I was not in favor of this exercise. It may help, but it may create more problems than it helps. A lot of details, a lot of things, a lot of difficulty could happen so it should be taken care with full caution or cautiously, with caution. It is very, very detailed [indiscernible] and may create problems for its implementations. It was useful, it is useful, but not necessary. Thank you.

JORDAN CARTER:

Thanks, Kavouss. Christopher.

CHRISTOPHER WILKINSON:

Thank you, Chair. Christopher Wilkinson for the record. Two small points, regarding Sebastien's question, I took it as the results of

lobbying or expenditure of inter Governmental relationships were rather on the amounts and I don't think we got an answer about that. I think it's of interest of what who they talk to, what they were told, what information they passed on to the Board or to other parts of ICANN. I'm far less interested in the amounts of money spent.

The second point regarding public procurement, of course, I don't know anything about ICANN's public procurement, but I do know something about it, at least in the past, in the World Bank and the European Union and other entities. I think the main problem I have is with this business of publishing the failed tenders. I think that's taking open procurement a step too far. It will result in potential tenders of not wishing to tender. I think it reveals to competitors a degree of detail as to the [indiscernible] and other aspects of the tender, which I would just normally just expect to be sufficiently commercially sensitive. If you run the risk of failing to get the contract by the way, I do agree with the successful contract the successful tender being published, but to publish the failed tender seems to me to be a step too far and counterproductive.

JORDAN CARTER: Thanks, Christopher.

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CHRISTOPHER WILKINSON: I mean, that's not specifically written in the recommendations. I personally disagree with that because, again, there's no evidence, but that's not in the recommendation, so I don't know that we need to.

JORDAN CARTER: It's in the record.

CHRISTOPHER WILKINSON: Thank you. I made this point several time in written submissions to the group and I thought I had been overruled.

JORDAN CARTER: Seeing no following objections, I think we have some clarifications to be added to the text. We have a little bit more implementation work and flushing out to be done and I'd like to wrap this up by confirming the second reading of this transparency recommendation is complete and thanking Michael, the Subgroup participants, all of those contributing views today in arriving this to the conclusion it has arrived at. Thank you very much.

>> [Applause].

JORDAN CARTER: And now I'll hand the chair to Thomas for the simple and quick issue of jurisdiction.

>> [Laughter].

THOMAS RICKERT: Thanks very much. Let's just check that we have Greg on the phone line.

GREG SHATAN: This is Greg, I'm here.

THOMAS RICKERT: Greg, great to have you. So I think that we can start this session with the Rapporteur being on Board in the first item and this is sort of following up to what I said at the beginning of this meeting is the presentation, discussion of minority opinions. And for that, I would like to invite the colleagues from Brazil to make the first intervention. Again, the report, as was discussed and presented to the Plenary does not go far enough for some in the sub team. We do want to make sure that these views are not being ignored, but just the opposite, that these views are properly recorded and archived because jurisdiction related debates will surely continue beyond the life of this Work Stream 2 or even the CCWG as such,



and, therefore, we want to make sure there is a repository of the various views that have been held so that future debates can be informed by those views.

And I would like to acknowledge and thank Brazil for refining their minority position. As you will have noted, the process related points have been removed, which I think is great because even though not everyone might agree with the substance of the work products of the CCWG, what we should all take care of and be responsible for is the process. Because following the process for coming up with our recommendations is actually giving legitimacy to the recommendations and the multi-stakeholder model as such. And, therefore, thanks again for refining your minority opinion. And as promised, we want to give you ample opportunity to make your views heard. And this does not only go for Brazil, but also for Parminder who has asked for a dial out and I would like to remind the operator that Parminder wanted a dial out ready for the jurisdiction session, so we will be sure to make sure to put Parminder's views on the record as well.

But before we do that, let me hand over to Benedicto, is it going to be you to make that intervention? If so, the floor is yours. Please.

BENEDICTO FONSECA: Thank you, this is Benedicto Fonseca from Brazil. Thank you, Thomas, for this. I would like to take this opportunity to thank you and the Co Chairs for offering us the opportunity to speak to our minority opinion. We have since you guys have indicated revised version focusing on the substance of our concerns, I'd like to also take this opportunity to thank all those who have been participates in these jurisdiction subgroups. We understand there have been very complex and sometimes difficult discussions. We understand we have been working under severe pressure of time, dealing with issues that are in itself complex, that relate to different areas of work within ICANN. So I'd like to take this opportunity to thank all those and to acknowledge the good work that has been done. Although not exactly addressing some of the issues I would like to have addressed, but I would like to acknowledge the impressive amount of work of time, of manpower, that has been invested in this process.

With this, I'd like to state that the I would not like to try to reformulate what we have stated in our document. We think we have been, as I have said, the process of further refining the idea to make sure we have a very clear message in regard to what are the important points for us and why we cannot accept the document, although we viewed the document and the process that lead to it, we cannot accept it because we do not consider it

to address adequately the some of the main areas of concern to us and others, I assume. So I would like, with your indulgence to talk to my colleague, Thiago to make a very short presentation of the document. As I have said, I think the documents speaks for itself. We would not like to reformulate, but just highlight those areas the document would like to take advantage of this opportunity to have it on record. And maybe on that basis, to elicit some discussion and have some feedback from other colleagues that might also illustrate us and further provide some input in our thinking. Thank you. So with this I turn to Thiago.

THOMAS RICKERT: Thanks very much, Benedicto. We do not have a two minute timer running, so Thiago, please take the time that you need in order to convey the message and bring the points across.

THIAGO JARDIM: Thank you, Thomas. This is Thiago Jardim speaking for the record. I was about to say just that I would perhaps probably go over the two to three minute time limit to present the position on this issue. I think it's perhaps appropriate for us to go through the document that we submitted as a dissenting statement for those who have not had an opportunity to have a look at it, to be

familiar with it. And as Ambassador said, perhaps this will instill some discussions.

In the [indiscernible] statement, the revised version that we submitted, we maintained the substantive points and we started the document I'm not sure whether there's a PDF version that could be displayed on the screen for the remote participants to follow it as well. In any case, I'll start by mentioning the introductory points of the dissenting statement. In the introduction, we recall what we understood was a principle endorsed by the Subgroup on how we would proceed when drafting recommendations and that principle was brought to our attention by Bernie. And I thank him for that. And the principle is that the Subgroup would be drafting policy recommendations, which is to be distinguished from implementation recommendations. I think this point is very important because it sends a clear message that the Subgroup doesn't have to get into too much detail when providing for guidance for ICANN to proceed when perhaps implementing measures and when considering the measures that were recommended by the Subgroup.

Let me then quote what was said at that point in time, referring to that principle. The Subgroup should be looking at the outcomes they are looking for and less trying to be specific about

what is implemented. Having that in mind, we would like to recall what was discussed and eventually decided at ICANN 59. The concept of immunity during that meeting featured prominently as an indispensable condition as we understood it at that time for the CCWG to, as a whole, to accept the proposal that you would not pursue recommendations to change ICANN's jurisdiction of incorporation or Headquarters location. This was fine. This was fine for the CCWG as a whole on the condition that immunities would be discussed and eventually feature in the recommendations.

Subsequently at the Subgroup level, those who follow the work of the Subgroup will recall that there was in our view some room for agreement to discuss immunities and there was a legitimate concern expressed by many Subgroup members that U.S. [indiscernible] could possibly interfere with ICANN's core function in the management of DTMS. So we thought the immunity aspect shouldn't have been discussed and we regret that in the final recommendation it was not discussed and it did not appear as one of the issues that should be should have a recommendation about.

We'll also share the concerns expressed by some members of the Subgroup on the need to design immunity in a way that did not or does not immunize ICANN from arbitrary lawful actions. And

to address these concerns, we believe ICANN could have [indiscernible] alongside a recommendation on immunities, a detailed set of exceptions to make sure ICANN is not immunized from lawfully actions. So there can be a set of ICANN activities that would still be subject to laws of tribunals and laws of configuration. And we continue to believe even for those activities that would be immunized from U.S. jurisdiction, those immunities would be subject to accountability mechanisms devised by the ICANN community itself. This is particularly the case, for example, if you think of the IRP tool that currently exists. And there could be other mechanisms to make sure that ICANN remains accountable, even for those activities that are immune.

In point two then of dissenting statement, we expressed the fundamental aspect that we think should have guided the work of the Subgroup and that is that the Subgroup should be trying to recommend measures that will make ICANN accountable towards all stakeholders. And we recalled into that effect the net [indiscernible] stakeholder statement which [indiscernible] that the process of globalization of ICANN speeds up, leading to a truly International and global organization, serving the public interest with clearly implement and verifiable accountability and transparency mechanisms to satisfy requirements from both internal and emphasize the global community.

So in this connection, let me recall you that the charge of Work Stream 2 expressly relied on the [indiscernible] statement in order to define ICANN as accountability course, to our understanding, ICANN's accountability mechanisms currently do not meet all stakeholder expectations because ICANN, again, is more accountable to the country of incorporation and its citizens because it is subject to the country of incorporations jurisdiction more than it is to the jurisdiction of other countries.

Again, we would have hoped the draft report would have recommendations aiming to increase ICANN's accountability as defined in the multi-stakeholder statement, accountability towards all stakeholder, by recommending that steps be taken to recommend that no single country individually can possibly interfere with the policy development and policy implementation activities ICANN performs in the global public interest.

Moving on to point three, and then there's a brief explanation of why, we consider ICANN is more accountable towards the country of incorporation than it is to other countries. We explain very briefly that the country of incorporation has a superior, and in many respects, exclusive claim to jurisdiction over the activities of ICANN. One example of is that it is the territory state with the necessary authority to enforce legislation, court rulings against the entity that is based in that territory. So ICANN, in that sense,

is subject to more jurisdictional authority of the United States than it is subject to the jurisdictional authority of other countries.

I think this is borne out by the fact that the draft recommendation, and I think this is a plus aspect that should be praised, recommends measures in relation to OFAC sanctions. The fact that the Subgroup on jurisdiction singled out OFAC sanctions is an indication that the measures adopted by the United States are a reason of concern other than the measures adopted by other countries. So we would have liked that the Subgroup on jurisdiction recommended wider measures, not just OFAC measures, are taken care of, but the U.S. regulatory bodies and that they continue to have the possibility to continue to interfere with ICANN's function.

Moving to point four. The measures recommended by Subgroup and jurisdiction, which to give this one example, targeted OFAC sanctions, are insufficient in our understanding because again it leaves uncovered the other measures. The current legislation that exists in the United States that can be applied and enforced against ICANN in ways that will effect ICANN's development and core functions. So there are other legislations and measures that can still be adopted and will possibly be adopted in the future is a matter of concern.



I think it's important in this respect to highlight that our understanding is that the Subgroup should have recommended not just specifically that measures start against specifically and currently known regimes that exist and that currently effect ICANN. It would have been an incremental gain, if you will, if the Subgroup had recommended measures that could be used in general and would make sure that ICANN is aware that it needs to take steps to obtain exemptions from unknown interference on the part of the country of incorporation.

This would explain, therefore, the need for ICANN to have immunity from the United States jurisdiction, which is point five.

And just one brief word in relation to immunities before I move to the conclusion. We have, from the beginning, reiterated the concern that ICANN must remain accountable for its actions. And immunity doesn't equal impunity because, one, for the actions that are covered by an immunity regime, it's possible and there will be an internal accountability mechanisms devised by the community, but also there could be exceptions to immunity regime. And it's important to understand that exceptions to organizations immunity, something that is not necessarily the rule and International practice, if you look at the U.N. for example, it's the understanding that organizations have absolute immunity and here we were willing to accept that exceptions be

crafted, that there is a regime carved out making sure that some of those ICANN activities that do not interfere with ICANN's global management of the [indiscernible], those activities would still be subject to the normal laws and tribunals of the incorporation, which is the United States. I think that shows the willingness on our part to listen to concerns of the community and make sure that those concerns are taken care of, taken on board.

Having said that, we would have hoped that the draft report would have had recommendations and I'll ask perhaps to the last page of our document to be shown on screen, we would have hoped that the recommendations would have included at least two recommendations that we included in our dissenting statement. They are, again, reflecting the spirit that the Subgroup providing for policy recommendations, not too much concern with the details, which would be left and could be left if the Subgroup so wishes to the implementation stage. We also could have recommended the setting up of a team to discuss how to implement those recommendations. But here they are, those two first recommendations. First, that ICANN should retain jurisdiction in the United States under the [indiscernible] immunity act except for such ICANN activities that do not directly interfere with the management of the Internet's global resources, which exceptions would, for example, enable U.S. adjudication of

claims related to ICANN's Governmental functions, for example, employment disputes, contracts that ICANN concludes with local service providers.

And the second recommendation typed into the first would be that ICANN shall maintain and further develop accountability mechanisms not subject to the jurisdiction of any single country for appropriate bottom up multi-stakeholder processes to ensure that ICANN can be held liability especially for [indiscernible] immune from jurisdiction.

Because these two recommendations did not appear in the draft report, not just as recommendations, but it did not appear not even in the text, so we believe that particular failure leaves out many concerns related to jurisdiction that lead to the establishment of that workforce 2 and because of that, unfortunately Brazil cannot support the draft report. Thank you.

THOMAS RICKERT:

Thank you very much, Thiago. Are there any questions for Thiago? Or Benedicto? That does not seem to be the case. I would like to Kavouss, I apologize. I'm sorry, I oversaw overlooked your raised hand. The floor is yours.

KAVOUSS ARASTEH: Thank you. Thank you, Thiago, for the very comprehensive understanding of the situation. It's not a question to you, but just a clarification. Do you mean by perusal of the matter of the recommendations of this implementation to have something similar to the implementation oversight group or team to review the matter after Work Stream 2 to understand how it should be implemented and if there is any shortcoming, this shortcoming could be inserted? Is that the case you are referring to? Thank you.

THOMAS RICKERT: Please.

[BENEDICTO FONSECA:](#) Thank you. I'll take that. I think the main point we have raised is that we think the Subgroup should not be concerned too much with the implementation phase, but the Subgroup should have looked into the issues and to the [indiscernible] importance of the issue to try to come up with the appropriate recommendations without at this point in time being concerned too much about implementation. So we thought it was not requested from the group to engage into that. We tried more to advise and to on the basis of the issues, what should be done in that regard. So we think that maybe one thing that constrained too much the group

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was the concern to make sure or even to have some kind of political assessment of what was viable or not and that I think the group itself, imposed itself too many constraints and that impeded the issues. I think this is basically what we are saying when we talk about implementation, that should not have been the focus of the work of the group. It was more trying to come up with kind of policy recommendations and the whether those and what would be required and if any, the timing or the political timing was right or not, I think this was not something that should have been addressed. It has consumed and constrained and guided the work of the Subgroup so much. I don't know if I have an answer to Kavouss's question.

[THOMAS RICKERT:](#)

Thanks very much, Benedicto. Are there any more questions for Benedicto or Thiago?

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[THOMAS RICKERT:](#)

Steve had a question in the chat which I'm going to read out for you. Is it realistic to say ICANN shall obtain jurisdictional immunities with sanction relief our report recommendations that ICANN use best efforts to obtain, but we are not able to guarantee the result?

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Thiago, would you care to respond to that?

THIAGO JARDIM: Yes, thank you. Thank you, Thomas. Thank you, Steve, for the question. This is Thiago for the record. I think the Subgroup is in the business of making recommendations toward ICANN. And I understand that there might be problems for ICANN to implement those recommendations. But then it could come down to how we craft those recommendations. Recommendations could be worded, for example, recommended that ICANN take steps to obtain. It is in itself a recommendation that would impose a soft obligation, an obligation of conduct rather than an obligation of result. And then we could also ask for ICANN to come back to the community to seek more guidance on the issue. But at the end of the day, I think the problem with the draft report as it is currently drafted, it doesn't even take into account the need to discuss those issues the way we are discussing it now and I thank you for that.

THOMAS RICKERT: Thanks very much. So can I ask those who want to make statements, I know that Parminder wanted to speak, so can you please put yourself in the cue so that we can see how many interventions we can hear before we break for lunch? But in conclusion with respect to the statement from Brazil, you might remember that when we issued the Co Chair statement on the way forward for the jurisdiction recommendations, we reserved the right to publish a statement responding to the minority

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statement. And given the version that we discussed a minute ago, the Co Chairs do not see the need for any clarifying response to your minority statement. So unless the Plenary suggests otherwise, there will be no reaction to the minority statement, but we will just attach it to the report on a [indiscernible] basis.

THOMAS RICKERT: So there are two hands raised, or three hands raised, so it's good there's a cue forming. And just as a heads up, this is not to limit your ability to speak. What we should be doing is get a quick reaction from the group where there are whether any of those hands raised are related to my statement i.e. there will be no Co Chair response to the minority statement. If there were the case, then I'd like you to just make yourself heard. So that does not seem to be the case. So we can now move to the other interventions, so Parminder is first. Then Kavouss. Then Sebastien. Then Greg. Parminder, let's do a little audio test whether you can be heard. Welcome to the meeting.

PARMINDER SINGH: Thank you, Chair. I'm Parminder. Am I audible?

THOMAS RICKERT: You are audible and the floor is yours. Please go ahead.

PARAMINDER SINGH: Thank you so much, Chair. And thank you for giving me this opportunity to [indiscernible] our views speaking on behalf on a lot of organizations and groups we work with. So thank you for that.

First of all, I would start by completely agreeing about [indiscernible] statement and would not repeat its point that were already said in the statement that we start with [indiscernible] points and the fact that we would like the recommendations which have been suggested to be the ones which should have been part of the report and [indiscernible]. And also, other statements or clarifications which [indiscernible] statement carries.

After that, I would come to the additional point that we would like to make. And the reason that we do not agree or reject the statement, the report as it stands, is both because of the content and the process. And I would speak about the two sequentially.

About the content, we do agree that [indiscernible] among the few who first read this demand, but you think it addresses a part of the problem and the problem is conjoined. It is one problem [indiscernible] very well that one country is able to exercise jurisdiction over a very important global Government function,



which leads people from other countries in an unequal position. And it is not just a political statement, but these developments are real and factual. And the kind of sanctions which effect [indiscernible] are not very different from the kind of things that many of the [indiscernible] Government [indiscernible] and so on can put on the main policies of ICANN which is something that is not acceptable. And, again, even some kind of political statement that all countries should have an equal rule and no country should be able to exercise no jurisdiction and extract more accountable from ICANN than others should have been part of this report because are the kinds of things which have been said earlier in many global texts. And we are also the mandated of this group to do, which somehow it was not considered the mandate. So at least make some operational, some political statement about equality between countries and people of the world is important within this jurisdiction. And none of that was done, which is a problem.

And also the third problem which is going to come from the process, in the discussions, they were not even acknowledged. Not acknowledged officially when the process was on and I will give instances of that, and not acknowledged in the final report even as something important, which was discussed, which was

the position of many participants and very passionate and the [indiscernible] position of many participants.

Now do please note that the immunity under the [indiscernible] act was a compromised position because after all, this immunity, which is customized immunity under U.S. law is subject to U.S. legislative and residential executive accountability and it can be [indiscernible]. And, therefore, it is not the perfect solution we would we agree to because we do not want to be subject to [indiscernible]. But this wasn't a compromise, it was a climb down [indiscernible] we are ready to do it, we are ready to take immunity as many NPOs or NGOs in the U.S. already have and we were ready to give examples of that, we were ready to consider that. And we were ready to carve out any areas other people may not want to get immunized, get ICANN immunized against. But none of this was even a consideration. And that is a major problem with this report.

And to say why these issues are important because going into the future and [indiscernible] is utilized and this dominates all factors, [indiscernible] and factors GTID and business are going to be important and this puts [indiscernible] from other countries at great disadvantage [indiscernible] subject to U.S. rules. And [indiscernible] is dealing with the [indiscernible] is one of the most hotly contested political areas. And this conversation, the

fact that there's the only [indiscernible] list, the fact of the U.S. jurisdiction is going to be a continuing problem. And we don't see the problem solved at all and these are actually practical reasons and not just political ones that we oppose the report about.

Now having said it, our main position on the action content, we would briefly speak about the process. The problem has been noted and can be noted from two day proceedings that this is the statement, this is the position which is very passionate and practical measures, too, we very strongly associate with. [Indiscernible] being the case from the [indiscernible], if you look at the kind of public comments, I mean, we have participated in many meetings among stakeholders and all of them said jurisdiction was the most important. [Indiscernible] of the world's population. And I know in developing countries every year this was a very important issue.

But the problem was that even when we came up with a compromise which was under the U.S. law and we were ready to carve out exceptions to immunity, this was not given an official space in the year and a half to be discussed at all. And that really [indiscernible] the process and because of that the legitimacy of this report.

Now many processes were kind of proposed by the groups, too. The initiative said you cannot talk about solutions, you can only talk about issues, and at that time we kept on coming out with the customized immunity discussions, but whenever we give that particular proposal, people said, no, no, jurisdiction issue is something that we know is a problem, but whatever you do with it, the problem will remain. And then we say, no, we have a solution because that's how we can show that what you are arguing is wrong and we would give the solution of customized immunities and they would say, no, you can't discuss solutions. It was a very difficult situation. Really nothing was being done over month base things were stalled, people wanted to discuss the political thing and we were not allowed to discuss.

I will fast forward and come to Johannesburg meeting where suddenly it was decided by [indiscernible] and the CCWG chair that certain solutions are out of mandate. Now this is very strange that while we are not allowed to discuss solutions and we are at the issue stage how solutions disappeared from our table or our mandate. Anyway, there were again talks around it and people said at least customized immunity should be stripped from that particular [indiscernible] and people agreed it could be in this draft and it looked like it implied [indiscernible] that this would be discussed.

Now we went along with this promise and the process again meandered in many different directions and for them there was another process position, which was the [indiscernible] which said that everyone can suggest clear issues with clear solutions in an e mail with a clear header and we can combine them. And we, of course, did give this as one of the issues and the solution being customized immunity. And excuse me to go into details because I think these details need to be recorded and [indiscernible] available here.

At that point when people gave these specific issues and specific solutions and [indiscernible] was done to [indiscernible] into a few set of issues, which we found was fine because we don't repetitions or overlaps and we came up with six other [indiscernible] that would then be discussed. And for some reason, number 1 and 2 were [indiscernible] and Choice of Law issues and the discussion started. And while the discussion was going on on [indiscernible] and Choice of Law, we were not bringing up immunity discussions because we thought that was not proper because there were two types of recommendations being drafted right now. And it is the chair's job to see that the deadline is coming and we have this problem, so what to do about it? It seems that was taken [indiscernible] and people were not the process minder have a different responsibility than the

workers as minders. And once the working group's job is done, these are the recommendations. Now this is complicated and appropriate and obviously as we have been saying and [indiscernible] has said, the most important issues were not even in a year half discussed.

We are happy to have that discussion done, for other people to come and see that these are the reasons we don't agree with customized immunities, for us to say we probably can meet the concerns in this manner, and then people say, [indiscernible] and honestly say, well, this was done and this was discussed and this was the status of consensus of our lack of consensus of this issue. This did not take place. And this is a fact and I would like that fact to be contributed by the people that are chairing this meeting. And if this is accepted, then it should be explained why, when the most important issues are brought up by an important part of the group was not recognized and taken up.

Really, unfortunately, not only was it not recognized, it was said that the talk which some people are doing is about change of place of incorporation of ICANN or change of location of ICANN. This was done in an official document including a final report which said we suggested change of [indiscernible] and then was never discussed. One thing is to show the discussion that some people are trying to do and which is being refused and the

discussion on change of location and incorporation, which was not. And this includes, it has nothing to do with the proposal which was one of the most important proposals for part of the group. This does not happen. I would like a statement and explanation of that.

Now we do [indiscernible] as we said and try to meet the concerns of other people and we had not met consensus. It is possible then through the report, in this final report, that this happened and we did not get the consensus, but advantaged and disadvantages were discussed. But this was not done. In fact, the report did not say we discussed immunity. It says we discussed change of incorporation. It does not say we discussed advantages and disadvantages.

Now let me briefly say the Board does say about some issues where they [indiscernible] as part of the report like the four or five choices of option issues which are not recommendations, but they were just a reflection of discussions.

Now if you ask me, I was there most of the time in the group, I do not recommend discussions on fixed law approach, which I'm sure it would have been discussed in some of those calls which I was not there, but these were major discussions about the possibility that fixed law should replace the Choice of Law

solution, which is fine. But this talks about the advantages and disadvantages in one part of the report, the same report which refuses to acknowledge, much less talk, about the issue about customized immunity which [indiscernible] is not putting an objection against, which I'm objecting against and many people here wanted to be brought up. We would like to know where the report can talk about certain discussions even if they are not recommendations, but not other issues.

So that finishes my intervention on the customized immunity. Very briefly, if you would allow me to talk for about four minutes? Okay, by silence, I take it that I can. These are the two particular determinations I had asked for before the first reading which the chair and the Subgroup Rapporteur were kind enough to explain in the first reading which I could not attend because it was very late hour in India. But I have a brief comment on those clarifications.

I would first go to the one on Choice of Law. The issue here, I was told that it is clear that the group is recommending a [indiscernible] based approach. That recommendation and the rest of the discussions of other options do not constitute recommendations, but are merely [indiscernible] discussions or the kinds of things the group considered.



Now if this is so, my first question is to let the report make it clear as it is present that the recommendation is only that we would like to see a [indiscernible] based approach. And the rest of it, in the report, if at all, needs to be in a manner which does not imply that it's probably also the options being offered to ICANN. I agree that there is some [indiscernible] which says this is the recommendation, but there is also not enough clarity. So please be clear with me about the recommendation being clear that we would like a [indiscernible] based approach. And the others are not our recommendations because of discussion. And I'm sorry, but I refer back to the call of the discussion which area which was very briefly discussed by the group, why can't the discussion of immunity, which were tried to be brought in by many people, many times, and there's a lot of text there, could not also be regarded as part of the report. And this is a question I would like to be clarified about.

And even now, coming back to the new [indiscernible] based approach, I think it is not enough to recommend to ICANN that the [indiscernible] approach where one of the options could be a fixed law [indiscernible] which is not actually many options because fix law [indiscernible]. One of the options could be, of course, use of [indiscernible], which I agree would be part of a menu. And others could be probably the country of history and

other could be [indiscernible] where it is not mentioned at all. I agree with that menu.

But I think unless we also make further recommendations because recommendations between ICANN and [indiscernible] is a very unequal relationship. ICANN is the principle party which holds all the cards in its hands. Now if we just tell them that you can choose one of them and that's all, there's nothing stopping ICANN from consistently choosing [indiscernible] formula, for example, almost automatically every time. And I think we need to clearly see, if we don't want to make it compulsory that we don't use California law, we can just say, okay, use any of them, there's nothing from stopping them from using California law every time. So let's make some recommendation which is to give consideration to the fact that these are the problems that other countries may face and they may be better off if they have some Choice of Law which is closer to their country not affect their own country. And we would like to see at least a certain proportion of the contracts having a [indiscernible] region which is not California law or [indiscernible] and of other countries.

Unless you kind of nudge ICANN with some recommendation towards not automatically going for California law option, the recommendation model doesn't say anything because we can't

be in compliance with this recommendation and consistently go for either California law or no Choice of Law.

So this is a change which I would request.

THOMAS RICKERT: Parminder, this is Thomas speaking. You asked for another four minutes and we are now past 4:30 local time, so the lunch break is waiting. And maybe you can speak for another one or two minutes and then you can resume after the lunch break. So it's perfectly possible for you to get back after the lunch break, okay?

PARAMINDER SINGH: Okay. I [indiscernible] more than two minutes. So I will briefly talk about the clarification which, Thomas, you gave about for the history changes to be changed or not. I will say that what I was talking about is there is not a change of contract and I understand the legal issues contract and we are to change from draft templates. And when I say [indiscernible], they mean template contract and we can always recommend template contracts so we change all [indiscernible] future contract and that's about the contract [indiscernible] can dually change. And I think we should not have language that we cannot [indiscernible] ICANN to be –

THOMAS RICKERT: We would like to see the center of the portion of the contract.

PARAMINDER SINGH: You have asked for another 4 minutes. Maybe you can speak for another one or two minutes. Then you can resume after the lunch break. So change contract and place. When I say out of here I think they know the contract and they can always recommend the template contract and change future contracts or that's about the contract and about the change in the manner in which that I can bow. I was disclosing and while I come back after lunch. So happy lunch. Thank you so much.

THOMAS RICKERT: Thank you very much Parminder. And thank for doing this mostly. It's certainly a challenge to follow these long meetings through the phone line and the remote participation room. It's 3 minutes over time. But I would really like to ask your patients. Because I think with a couple of process related points that Parminde made, we should give Greg as the remembertory of the team a opportunity to respond before we break for lunch. Then after lunch we will go back to Parminde then proceed with can calf. So Greg if you would like to make remarks in response to Parminde. This is the opportunity for you to do so?

GREG SHATAN:

Thank you Thomas, Greg for the record. I want to reflect on the long and hard work on the subgroup and of course while we have a number of subgroup participants in the audience, there are also members of the plenary who did not participate or did not follow the work of the subgroup. So, it's important to note that your hearing one side of the story. So, I would just like to point out that we discussed various points around immunity repeatedly and at great lengths. Often without regard to what was actually to agenda or the menu of the subgroup at the time. And I would say that there were a number of robust opinions expressed that were very different from those that you've heard today.

So, one shouldn't get the idea that these were unanswered points or unanswered opinions. It's not my place nor is it my place when lunch is awaiting to go over those other positions. But we have at least orally a minority position that has no majority opinion or other divergent opinions expressing other views. But though other views were amply expressed during the life of the subgroup. And I think that we just need to be cautious about identifying opinions as facts when they are opinions. As a wise man once said you are entitled to your own opinions but not your own facts. So I think that's what went on and I would have liked to have had more time. I would of also like to have had more are participation in the final weeks of the group. If you go back and look, some

people were absent. I do not speak of Brazil in this case. They were fully engaged throughout. But sometimes things could of been brought up that weren't in the course of our time. Finally, I would just like the under score what Thomas said at the very beginning that this is not the last time. That issues that do fall under the heading of jurisdictions will be discussed. In the ICANN space or around ICANN. And I do note that the report indicates that there will be a number of annexes to it, which will include and supplements. And so a good number of the working documents and documents reflecting the discussions that took place, even if they did not come to a conclusion will be reflected in the full report as it's packaged up with its annexes. So there will be ample opportunity for others to see the course of our discussion. What was summarized were the discussions that led to the recommendations that were in the report primarily. That's why they are there.

So I won't keep you from lunch any further. I may come back after lunch if there's anything further for me to respond to. But I do want to thank everyone, even though I was holding the minority opinions for all their work in the subgroup and of course this will be this is an inflexion point and not the end of these discussions. And we will see where they are taken next.

Thank you.

THOMAS RICKERT: Thanks very much Greg. Thanks everyone for this good discussion which will continue after this lunch break. We will have a full hour for lunch. We will reconvene at 1314 local time which translates to 940 UTC. We will have a full hour then continue with the discussion. I will ask the staff not to clear the list of hands in the Adobe room so we can start with the same order of speakers that you see in the Adobe room now. Thanks very much and recording can be stopped.

THOMAS RICKERT: Thanks very much. This is Thomas Rickert speaking for the record and we would now like to resume our discussion on minority views or other expressions of thoughts on the jurisdiction topic. And we will now continue with the queue. So Sebastien will go first. Then Greg then Kavouss then we go back to Parminder. Those that want to be added to the list, and speakers please raise your hand or should you be on the phone line only give a signal so we can add you to the queue.

SEBASTIEN BACHOLLET: Thank you very much. I'm very honored to be the first speaker in this session.

I wanted to make three remarks or comments. So first one, it's regarding the discussion we have to see where we come from. And of course where we are going and what is the step we are doing here and what could be the next step.

I don't think it's the end of the journey and I don't think, if ICANN is still alive, we will have a long journey. And that's to be taken into account in our thinking.

Concerning the subgroup report, I would like very much to support it like it is today for to go for public comments. And I would like to add what else from my point of view, the next step possible. I suggest that during the discussion about the document gathering the work of all subgroups, we study how and where the next step regarding up the lives is very important. One about community. Beyond there is and push a step forward after the completion of the work of our Work Stream 2. Thank you.

THOMAS RICKERT: Thank you very much Sebastien, Kavouss is next.

KAVOUSS ARASTEH: Thank you Thomas. I have one comment and I have two short questions. I hope I don't go beyond two minutes.



THOMAS RICKERT: We don't have the clock running.

KAVOUSS ARASTEH: This time you are very generous and I thank you very much.  
Danke schon [speaking in Japanese]

Chairman or co chair or Thomas, distinguished colleagues. I'm not comfortable and even surprised to refer to the minority view and majority view. On this particular issue. Jurisdiction is in the governments is not within some private people or individual on one hand and government other hand.

So let us not refer to minority view and majority views. Let's say statement by colleagues that may not be comfortable with the results, but not minority.

An individual or someone representing 250 million people cannot be seen as minority, it's two or three individuals may represent themselves or represent some other people. So we cannot say that. The issue is between the governments.

I think I support the statement made by ambassador [indiscernible] indicating after all of this issues, discuss the union

lateral governance of the jurisdiction remain within the hand of one single government.

During the final stage of the Work Stream 1 when the people wanted to justify that single government agree with the process of the transition, in particular during the testimony before the subcommittee of senate, it was several to mention that don't worry, we maintain the jurisdiction to remain within hand of us. That means the government. So the issue was designed and [indiscernible] orchestrated as such. So we did not expect that this group doing more than they have done.

Because that was the situations.

And I think that what was said is exactly correct. That the jurisdiction remains within the governance and hand of that single country. So it is not majority, just minority. It's something that the beginning part of transition was more or less technical part, apart from some accountability which is very good now community has some actions to take. So our support to this statement made by ambassador and other colleagues may make it ever. My question, this is the comment, my question chair to you, question 1, how the course of action mentioned in the two recommendations will be carried out and is there any guarantee it will be carried out successfully. Saying irk can will do that and

ICANN will take that. Apart from some words and wishful thinking whether in fact would have some reality. It may be some visions and whether in term of reactions, I don't know.

And the second question is that the statement made by ambassador and maybe by some other colleagues that joined him, what is the next step? To consider thousand follow up this course of action. I am not thinking of ART, ATRT procedure. I want a practical. How do we do that? We should not take it on statement to be noted. Is cause actions it cause attentions. The issue stays there and must be continued to be resolved in one way or other. Thank you very much.

THOMAS RICKERT:

Thank you very much Kavouss. Let me try to respond to the points you made. Firstly, the term minority report is used quite commonly in the ICANN processes. And as you well know everyone in this room as well as joining remotely is participating in this effort in the personal capacity. So as much as David is not here, Asvarson is here as David McAuley we are not here representing the people of our nations if we are government he representatives of our companies or of our associations. Nonetheless, I think it's an important point that you make that certainly governance if they speak in their capacities as governance have huge populations they represent and the term minority statement might suggest to somebody who is not

familiar with the model that we are using to create policy, that populations or governance might be marginalized. So I don't have any issues whatsoever with calling this statement for dissenting opinion or some other term that Thiago or Bendict might find the nature of this paper.

You mentioned that things might be said during hearing in Washington and that the process was designed to make it stay within Washington. I have followed those hearings and to my recollection, there has been no statement made by a CCWG representative. I do remember that Farzi testified on the hill so has Steve bee angle owe and others. But nobody has made any information on behalf of the CCWG precluding the outcome of the CCWG deliberations. And I think that our process was very open and I'm sure Greg will be in a position to speak to that as well. So the topic of changing jurisdiction or even changing place of incorporation was not out of scope. But it was just that during the course of the discussions in the sub team such ideas didn't get sufficient traction to be legible for consensus.

With respect to the question about the cause of action, as you know, our recommendations, once adopted by the plenary need to be approved by the courting organizations and by the board. And there will be enacted. To the extent that your question relates to the OFAC licenses that should be sought we certainly

have no authority to OFAC to grant those licenses but what ICANN can do if our recommendations are adopted and if we get them through the second reading first which is an important prerequisite for that, then ICANN needs to use best efforts to get these licenses. But what is done by OFAC is not within our control.

With respect to the second question, and I hope I got the question right, I think it relates to the concrete actions that will be taken based on the Brazilian statement. And I think what we should be doing is discuss this once we have the second reading. Now that the plenary has the opportunity to listen to all the arguments, there may be a change of positions in the plenary. So the plenary might raise substantial objections against the report. Right? So I think it's premature to assume that the second reading will be successful. But if it were, then our suggestion is to do two things. The first of which is to make more explicit reference to the points that have been raised in the documentation that has been developed in the course of the work of the sub team. And as Greg mentioned before we broke for lunch, he said that a lot of those points that have been mentioned by Benedict or Thiago and, also, Parminder have been subject of debate in the sub team. So we will highlight the reference to the appendices where these, can be found so it doesn't get sort of buried in the appendixes.

Second we suggest doing is actually creating a second document with the transcript of this very session and, also, make that part of our report. So that for everyone to see during further debates on jurisdiction, what points have been raised and how this interaction went on in the CCWG. So that we have a tangible take away for future jurisdiction related to debates to build on.

So I think that covers the four points in total that I have noted from your intervention. And now I think we can move to Parminder again. Parminder the floor is yours please.

PARMINDER:

This point was about when the report is that we cannot recommend changes to registry and [indiscernible] I will arguing that this agreement for me is the template contract and not the specific contract and therefore I do not want [indiscernible] statements to go in the name of CCWG in the final report this is up to you now to look at it whether this is a correct or not. I will close it at that.

Just add that [indiscernible] so much time to make these comments but I would regret that the questions and the proposals in these comments in which they respondents too. For example, I mentioned that the menu approach should be operated by saying we match ICANN to consider not automatically choose in California law or some such thing. And

that part of the report. So please I would like you to consider those things. And I have to now the mic, respond to the statement which I will Greg made who said that indeed discussions took place between these points and then the quotations without regards to what was on agenda.

And that is true. That's what I have mainframe yes. We kept on trying to push these discussions the question however is what was it never on agenda? Never during the year and a quarter was this issue on agenda. And that is the question, you're right Greg, they will discuss in on agenda. The question is why didn't it ever get to the agenda which is the problem. Even when there was six discussed it was not discussed.

One of the issues is we don't talk about it but to look forward in the positive manner. I feel a lot of mentioned including by Thomas and Greg that this is not the end of the road. There will be other forums. And an observation by George in the chat window if there's a way to reflect in the report whether we can make it clear that yes, again I go back to the report where Greg says that we could not discuss other issues because we were short of time. That's why we took two and not the other four. But these are important issues. Now I don't agree that this is okay to be done, but even if it was done it needs to be put on record that these were the issues, we could not include them, due to the

range of loose and kind of combination that the value puts it was proposed. But there are advantages and disadvantages. And I again, I refer to the fact that advantages and disadvantages of options like 6 option in the choice of law section and other possible options have been put there which were actually only discussed but never recommended.

So records of important discussions and possible recommendations do exist in the report in the same way. Why can't we put [indiscernible] discussions and one possible recommendation which is the current record recommendation by Brazil in the report saying we were rushed for time we could not either take it up fully or during taking it up we did not see there would be a consensus and it's a work in progress and fighter for them to look at it.

If this kind of thing can be considered as missing scope to agree to a few things though I keep saying the process has been initiated by the fact that this issue was never formally on the agenda for a very, very long time that the group met on the jurisdiction issue. Thank you very much Thomas.

THOMAS RICKERT: Thanks very much Parminder. I would like to briefly respond to a few points that you made. One is related to the change of



contracts. Were you said you were asks for response, why those can't be changed. ICANN has contracts with hundreds, if not thousands of contracted are parties. And our group does not have any authority whatsoever to change those contracts or to force ICANN to change unilaterally it's contracts. The contracts with registries and registrars is through changing one is which through consensus policies, EDPDPs that go through GNSO. And the other root is contract negotiations and the process for contract changes is specified in the registrar accreditation and registry agreement. And therefore our forces, our powers are limited to recommending to look to those issues and those contracts and change processes to come up with some amendments or changes to those contracts.

The second point is, the discussion of immunityies. I'm sure that Greg will be able to point to specific meetings where that has been discussed. So I think that can be clarified. And with respect to your point that the recommendations or the points that were discussed that didn't make it to recommendations should be referenced to better I think I said earlier in response to Kavouss intervention that we will make sure there's stronger links from the report to the the appendixes including the transcript from this very meeting so these few points and substantive discussions are visible.

Let's now move to farce they.

FARZANEH BADI: Jorge was before me actually.

THOMAS RICKERT: I don't mind. Jorge go ahead.

JORGE CANCIO: For the record. Thank you Farzi. That was actually expecting your intervention to respond to it afterwards. But now that we can be the other way around.

Now seriously, I think that there have been many interventions in the direction of saying, okay we had substantive discussions on some issues. However those discussions for instance on the issue of limited tailor made bespoke immunities didn't really get to the final point be it for scheduling reasons for timing issues, for whatever reasons. But I think it would be kind of unfair to leave it by that. And I understand or I think I understand that you want to make some clearer linkages to the where we discussed that. But I think that it would probably make sense to describe this explicitly in the report. And, also, kind of agreeing because in the end it's not an agreement of on a specific recommendation but

an agreement on a fact that we have these substantive discussions that we didn't get to a point of conclusion on them. And that probably it would make sense to have some sort of follow up, I don't know, in a Work Stream 3 or in a different kind of process on these issues. Because they are issues that are put on the table by different stakeholders. They are of course legitimate. We haven't discussed them to the end. And so I think it would make sense to include something in the report. Recommending or suggesting that there should be a way forward on them. Thank you.

THOMAS RICKERT: Thanks very much Jorge. Now Farzi.

FARZANEH BADI: Thank you very much. I'm astonished because it says a statement comes from a ghost it should be given more weight. We should know that the issues that were reported, the jurisdictional issues were reported by mostly non governmental people. People that faced jurisdictional problems. But when using the DNS. And I also liked to point out that I want to hear more about support for the process of this subgroup. And it's recommendations because until because it has been very criticized by some. I would frame as unfairly criticized and I don't think delegitimizing the process

of the subgroup will benefit the DNS users that are facing sanctions.

And the recommendations of the subgroup will be fast if implemented will facilitate their access to the end and it's something that we have forgotten them for the past 19 years. So it is time now to set aside the political battle of jurisdiction and think about pragmatic solutions that can help DMNS access if DNS access.

So I do want to know that even without minority statement there is support for the recommendation. Especially for OFAC recommendations. And I think that is very important thing for the for us for later to advocate for its implementation of the recommendation.

The other and another small point that I wanted to make, I do I have supported the discussion about partial immunity of ICANN. I think it's something that we should definitely discuss. We have been having problems with CCTLD delegation and I dot IR was as we know there was a case already about dot IR in the U.S. court about its attachment. I think for that reason we need to definitely look into partial immunity for ICANN. But I don't think this subgroup has demanded or can do it.

THOMAS RICKERT: Thank you very much Farzi since you also mentioned further debate and Jorge made the suggestion I think we at CCWG are not in the position to kick off a new process. We have been tasked to look into a limited number of issues for a limited period of time with a limited budget given. And with us coming up with proposals to come into existence with various reincarnations over and over again, I think can't be done procedurally. I think what we are doing is make the report very useful tool for further debates which will surely takes place but I'm not sure that we can really trigger this. Because we don't have the mandate to do so.

I think that if there shall be another course constituency effort or there should be that within ADRTs that something else would be decided but not by CCWG. I'm cautious about not creating expectations but what the group can and cannot do without over stepping over reaching or actually powers.

But more than happy to reassume the discussion on that for now with the minority statements once we get to the recommendations and the second reading.

I now have Greg then Olga they David. Greg.

GREG SHATAN: Thank you Greg Shatan for the record.

A couple of quick points, first I would like to let the members of the plenary not in the subgroup not what our working method was and what we attempted to do over the longer period of our work. Was to identify issues before remedies. And immunity was identified as a remedy.

But throughout the conversation about immunity when it was brought up in the A group seemed to start with remedies without identifying the issue that it was intended to resolve until really kind of the very end of the process. So that's one reason why immunity didn't come up as often as it might in our formal agenda. The discussion seemed to start with the idea that there was a remedy that was needed rather than with an issue that needed to be remedied.

Second, I would say that it was not only the lack of time that you would in some issues making it to consensus and some not, but there was also a lack of a clear path forward based on the views that were being expressed in the subgroup. And in the we didn't come to the end of the road on those, where that road led was at best unclear and I think for that reason rather than dwelling on what might have happened, because that's difficult to predict, the point that we need to look at is where these conversations might takes place next.

And the last thing is, the issue of immunity actually is extremely complex and multilayered. Indeed I was thinking about the very case involving dot IR that Farzi mentioned and ICANN was not a party to that case. So immunity as to suit, which is the type of immunity that is contemplated in the IOI, would not have shielded the dot IR consideration that took place in that particular case.

Would it be needed to be some other sort of immunity to have there. And of course in the end the decision of the Court was that it was beyond the reach of the Court to attach the dot IR CLD. So in that instance I think many of us would agree justice was served.

But, I think that only goes to point out how that subject is really a subject in and of itself and may not even fit quite so neatly into an accountability group, given that our predicate document for this entire CCWG accountability, when it lists existing forms of accountability, and I think its annex E or appendix E to the Work Stream 1 report, cite litigation and recourse to the courts as an existing form of accountability for ICANN. And I would note that we spent a considerable amount of time in the group, and I would not call it stalled. We spent a considerable amount of time in this group examining each litigation that ICANN was a party to. And what its ramifications were for the work of the group. It's interesting to reflect if immunity existed even the so called partial

or tailored around that was referred to I don't believe any of those cases could have been brought because they did in fact relate to the core functions of ICANN and not things like employee disputes or whether the garbage was being put out improperly. So those cases which sought the hold I would have been barred at least from the courts. That's something to contemplate I know second recommendation in the dissenting opinion of Brazil is that there be a further multi stakeholder forum for those sorts of things to be adjudicated. But that is another thing that is way down the line, certainly beyond the line of Work Stream 2.

Thank you very much.

THOMAS RICKERT: Thanks very much Greg. Now we move to Olga please.

OLGA CAALLI: We like to support and concern the concerns about colleagues from Brazil in their minority statement. Perhaps we agree with our distinguished colleague from [indiscernible] that it may not be named minority statement perhaps dissenting opinion or what they think is best for this important opinion.

We would like to also support the idea from Gore Jay in Switzerland for the convenience of a follow up process on this



important issue. We understand your concern Thomas we are not creating a new process that is not a mandate and I agree with you in that. And we would not be triggering a new process or creating a new one. We would like to have the concept in the report of having a follow up on this important issue. Thank you.

THOMAS RICKERT: Thanks very much Olga. David.

DAVID MCAULEY: I Thomas. I wanted to make a brief statement. We talk about substance and I make my views clear that before and I'm not a supporter on a immunity idea but I appreciate the government of Brazil putting it on paper.

On process I've been involved in substance I don't think I missed a meeting and my assessment of the process has been that it's been extremely fair. It was a lot of work for one basically one repertoire to handle. A lot coming at the repertoire. The process was fair. It formed our direction, our direction coming out of Work Stream one 1 is this subgroup would consider you jurisdiction by focusing on the settlement of dispute jurisdiction that makes the litigation study that Greg mentioned critical. That was our remit and that was the primary focus and immunity wasn't. So I think I

want to say I think the process has been extremely fair. Thank you.

THOMAS RICKERT: Thank you very much David. Andreea.

ANDREEA BRAMBILLA: For the record it was me speaking earlier in morning when person ear introduced me as Canada. I want to note that we support the multi stakeholder process where the multi jurisdictions were developed considering the divergence that the subgroup started with a lot of to come up with concrete and practical solutions is that warrant solutions by the broader ICANN community. We certainly recognize that jurisdiction is a complex multidimensional issue and we are not opposed to continuing the discussion. In doing so we should not lose sight of our collective goal which is really to reinforce the accountability framework that was part of the stewardship transition and we believe the additional have been proposed in that respect. Thank you.

THOMAS RICKERT: Thank you very much Andreea.  
Parminder.

PARMINDER:

Thank you chair. I would first point I wish to make is about your observations that which follows from my and some other people's requests that can be effort to some follow up versus to which you said that it's not in our mandate to talk about these kind of follow up processes. I really do not agree with this conception of our mandate. Our mandate is to advise ICANN the do whatever is in the power of ICANN to do. Including to abolish itself. That's the what is authority. If I'm recommending authority to India I can recommend anything which is in the power of person who recommended too. It's not about my policy I have zero authority. Recommending bodies don't have authorities. But when they recommend it to and they are supposed to recommending authorities I'm repeating the point this is becoming earlier [indiscernible] conversation so I agree to catch his attention. Yet Thomas initially said we started very open mindedly to Kavouss point that whether U.S. jurisdiction is required or whether we have to act within it. It's show that our mandate is whatever our mandate is within the jurisdiction question. So I don't accept that we cannot tell ICANN recommend to ICANN that we think that we need a singular process like ours to keep discussing the situation.

So the problem here is we may not agree the make that recommendation but I would request here to reclarify rather this is the situation. Because if we can ask ICANN to make PPIE as reorganization and do all those things we can ask it to do anything because after all it's up to it whether it wants to do it or not. That's the frustration that I want, again to get few the chair on that.

Second point when chair is pointed to one of my points, what I was asking for was to mention [indiscernible] recommendation inside the report and not as index. In the same manner as some choice of law options exist inside the report right now even though they are not agreed by consensus. Many of them actually were not properly discussed here. For example, 6th California law option.

They are there just as things which could be possible with their advantages and disadvantages.

So please clarify my pure specific point which I'm now saying for the timer you I'm not talking about indexes being referenced there's a record choice of law in the part of the report already. Non recommendations why can't we have immunity in the same manner inside the report assured of immediate was discussed and recommendation that was provided focused by many but not

reach consensus as we all said but review the fact that we did not have time. This is my proposal and not put it in annex.

Let me quickly also respond to what Greg said. He said immunity was shown as in remedy without showing the issues that it addressed. This is absolutely not a factual statement. And I would go on the A list to provide all of the evidence to prove that one of the first documents which was made regarding the influence of jurisdiction of ICANN, there was about 5 or 6 points put about whatever issues which create the problem to which the immunity discussion would try to solve. This happened from the start. It's public inputs also carry many examples and during my organization of all those issues and immunity was never shown as a remedy without with the issues. Absolutely I would say absolutely a false statement on record. And I'm sure there's proof are false.

And the second thing I said was there was not a clarity on the part of [indiscernible] I have no idea what that means. Because I would think what needs to be done and how another proposal has been very clear. So I would like to get clarification of what was the non clarity in part forward. And here I would also mention that repeatedly I asked chair to speak ICANN legal's opinion and whether a carve out can be made from a possible immunity to enable ICANN to function under the nonprofit law of

California. And this reference was never made. So we were ready for being very clear on all kinds of parts forwards and there was not a fact that there was lack of clarity on the part forward. Thank you very much.

THOMAS RICKERT: Thanks Parminder after Parminder we have Delila.

DALILA RAHMOUNI: Can you hear me?

THOMAS RICKERT: Yes, we can hear you. Go ahead. Welcome.

DALILA RAHMOUNI: Thank you so much. This is the French government. We would like to report the question raised by [indiscernible] it's minority statement. We need to support for your proposal to its abilities for the ICANN we think this is not a policy question but a legal question. And concerning the mandate of this specific jurisdiction. We think if it is not a mandate of the subgroup we think that in the Work Stream 2, the subgroup can work on the guidelines of the option of partial immunity. And we think this is really the are start of this option to explore within this group.

THOMAS RICKERT: Thank you very much let's move to Greg then Kavouss. Those that want to be added to the list please do so now. Other you wise I'll now close the queue and take stock so we can move to the next part of the agenda.

Greg?

GREG SHATAN: Thanks Greg Shatan for the record. First, just to be clear I stand by my statements and I believe they are factually correct.

With regard to the process and the past that took place. Second, in terms of process, would like to point out that the second recommendation because one of our members took it on themselves to take the various pieces and put them together into a first a draft of that recommendation that was Raphael Boguardlaw. So I think we need to look to members of the subgroup in part when we think about why certain recommendations were more fully delated than others.

And not merely think about time and just to kind of refine the point about there not being a clear path forward, what I'm really referring to is the fact that there were significant and I think over all more objections to the concept of immunity even tailor

immunity than there were those in support. I would not have used the word many to describe those in support. Which is not in any way to invalidate the opinions of those that did support that position. But it is being put forward as a descent or minority opinion in part because that support was not readily ascertainable. Nor did it become clear in any way there was any type of support for beyond the support that you have seen and heard today.

So I think that is what I'm saying when I refer to no clear path forward. It was clear there was strong support for the two recommendations that did ultimately gain the approval of the subgroup. And I'll leave it at that. Thank you.

THOMAS RICKERT: Thanks very much.

GREG SHATAN: One more sorry, one more point quickly.

The mandate of the subgroup [indiscernible] certainly not as broad as ICANN. And indeed there was quite disagreement about [indiscernible] our but tinge mandate as a whole I think really had a fair, very specific mandate. Thank you.



THOMAS RICKERT: Thank very much Greg. Last in the queue is Kavouss. And after that I'd like to close the queue and take stock. Kavouss, please.

KAVOUSS ARASTEH: Thank you Thomas. I think what was mentioned by Greg I have tracked. Perhaps he didn't mean that when he said there was no any support. I perhaps put it in a way that you always mention there was no sufficient traction but not any. When you say any that means no support at all. That was not the case. Just make it clear.

But I agree with some term you use no sufficient traction or no sufficient support. That is one thing.

Second point I want to make it clear that reference was made on to distinguished colleagues to political statement and to fairness. No one in this conversation, this morning and this afternoon referred by any means to any political motivation nor fairness on the activities of the group.

When you say equal footing, it's not in government it's not political. You are talking equal footing you are talking gender equality. There's legal issue but not political. So I don't think people can tailor them and put them in the framework of political. And fairness I don't think anybody at this meeting talk

about all fairness of the activities of the group. There auto for we should not refer to that. Thank you.

THOMAS RICKERT: Thank you very much Kavouss.

I think we should probably do two things. One is to again confirm that we were get the transcript which is currently in captioning format cleaned up. And tidied up so it can be made an appendix to our report the. And several of you have asked we establish stronger links between the report and the issues that did not make it to recommendation status. Including Parminder that said he wants the immunity topic to be explicitly mentioned in the report. And what I think that quite some sympathy and support was the proposal made by gore jay a little bit early your on which I'm going the paste into the Adobe room chat again for everyone's review. I'm going the read it out for you.

Discussions in the jurisdiction subgroup were inconclusion on some issues. Again was the partial immunity for ICANN. It may be that ICANN community wishes to full out discussions on these issues many which are recorded in the annexes to this report. So we suggest that we use this language add that into the report and then as suggested a add the transcript of this meeting to the report. But now, before we can actually move to making

something in the appendix to report, we need to get the report adopted.

And that leads us to the next agenda item and that is the second reading of the jurisdiction subgroup report. And at the end of or after Greg has shown us through the recommendations, you need to make a decision whether you want to raise an option to the report or not. In the absence of substantive objection we can call this a successful reading. Now you have heard all of the by those that were proposing to some or all recommendations in the report so all of the facts are at your fingertips. And I think we have done a much more thorough job on the second reading than we have done on any of the second reading. Because you got all the first handed information from those that don't like the recommendations.

Right? And I think we have never done such an can exercise before. So if you think that we can't proceed with a successful second reading, then you should object. If you think we should keep the report and that it should make its way into the final report then you should not object.

All the facts are on the table. We know the timing issues we cannot make substantive changes or any changes to the report. Otherwise we run the risk of not having anything on jurisdiction

on our final packet. So with that I'd like to hand it over to Greg to show us through the latest findings of the jurisdiction sub team. Over to you Greg please.

GREG SHATAN:

Thank you Thomas, Greg Shatan for the record.

So, we will go back again through the report for the second reading. Once again, at the request of member of the subgroup we have this comment here. It's not part of the report. But just notes that we looked at various issues regarding a registrar that had was not doing business with people with Iranian passports and we included in if that was related to OFAC there was no clear showing that it was. That the recommendations that we have deal with it in deal with it in an adequate fashion. And noting again that subgroup will consider creating stress tests based on these scenarios. And as Kavouss and Steve DelBianco both noted earlier Steve has created a three stress tests related to the group.

So if we go on to the next slide.

The this is the first of our set of recommendations regarding sanctions and specifically on OFAC sanctions.

We noted that before ICANN to enter into an RAA with a applicant from a sanction country it means to get an OFAC license. The

terms of the application to become a registrar state that ICANN is under no obligation to seek such licenses and in any given case OFAC could decide not to issue a requested license.

The subgroup recommended that this sentence be amended to require ICANN to apply for and to use best efforts to secure an OFAC license rather than merely saying they are under no obligation the seek such a license.

This of course would only apply if the parties otherwise qualified to be a registrar.

And is not individually subject to sanctions.

We also recommend that during this licensing process ICANN should be helpful and transparent with regard to the licensing process and ICANN's efforts, including ongoing communication with the potential registrar. That is the first of the OFAC recommendations. Next slide please.

Second, recommendation relates to the approval of GTLD registries to subgroup noted it was difficult for residents of sanctioned countries to file new are gTLD applications and make their way through the process.

The applicant guide book noted that ICANN sought and granted licenses as required in the past but OFAC could decide not to issue

a requested license. The subgroup recommended that ICANN should commit to applying for any and best efforts to secure an OFAC license for all new gTLD registrants that fell into this category as long as they are otherwise qualified is can not individually subject to sanctions.

Again, we recommend that ICANN should be helpful and transparent with regard to the licensing process including ongoing communication with the applicant.

That's the second OFAC recommendation.

Next slide please.

Third OFAC recommendation, subgroup noted that some non U.S. based registrars might be applying OFAC sanctions with registrants and potential registrants based on a mistaken assumption that they must do so simply because they have the RAA contract with ICANN. Non U.S. registrars may also appear to apply OFAC sanctions if they cut and paste registrants agreements from U.S. based registrars that contain OFAC positions. We saw a couple of examples in the subgroup one of which was recommend identified by that registrar during the course of the group. May have been coincidental but in any case it was recommend identified.

We note that ICANN cannot provide legal advice to registrars but it can bring awareness of these issues to the registrars the.

So the sub group recommended that ICANN clarify to the registrars that the mere existence of RAA with ICANN does not require them to be required to comply with OFAC sanction we also recommend that ICANN should explore various tools to understand registrars the applicant laws by which they operate and accurately reflect those because e laws in the customer relationships including the customer contract.

I'll pause here and see if there are any remarks other questions?

We have one more OFAC recommendation.

Let's move on to the next I see a hand from Kavouss I don't know if that's a new hand?

THOMAS RICKERT: Kavouss if you have a question go ahead.

KAVOUSS ARASTEH: Yeah just a small question. In the two recommendations refer that ICANN use best effort wishful thinking to secure OFAC license. I'm not asking him, I'm asking ourselves, what is the degree of assurance that this sort of license be secured?

Thank you.

THOMAS RICKERT: Greg floor is yours.

GREG SHATAN: Thank you. First I would not describe best efforts as wishful thinking or any of this as wishful thinking. Indeed we have seen that in Work Stream 1 our recommendations, once approved by the board, after of course being approved by the charting organization were put into effect.

So I would expect that if these recommendations are approved all the way down the line, that they will be put into effect. And of course there's no assurance because we are talking about party under over which we have no control as to whether the licenses would be granted. I will note that with regard to the individual licenses, that ICANN seems to have a perfect track record in secure these licenses when they have been applied for.

So, I think while past performance is no guarantee of future performance, one would generally expect the same degree of success in the future especially since we are asking ICANN to increase its commitment to getting these licenses. And even with their somewhaty equivocal commitment they have in fact gotten the licenses that were sought.



That's I think as much as anyone can say about that. Or at least certainly as much as I can say.

Why don't we move on to the next slide he please.

The last of the OFAC recommendations relates to a general licenses. Not the specific licenses that we have been discussing so far.

OFAC general licenses cover particular classes of person and types of transaction.

ICANN could pursue general licenses to cover transactions integral to ICANN's role and managing DNS and contracts for Internet resources. This would enable individual transactions to proceed without needing specific license as long as they fell into the type of transactions and class of person that the general license covered.

A general license would need to be developed with the U.S. department of treasury, which is where OFAC sits within the structure. Which would then need to amend the OFAC regulations to add the new license or licenses. This regulatory process maybe a significant undertaking. With that in mind, the subgroup recommended that ICANN takes steps to pursue one or more general licenses. And that ICANN should first as a priority

study the costs, benefits, timelines and details of the process. ICANN should then pursue the general licenses as soon as possible, unless it discovers significant obstacles are through the study. If they do discover significant obstacles ICANN should report this fact to the ICANN community. That's us.

All of us, even though it's not in the CCWG accountability. And seek the advice of the community on how to proceed.

If ICANN is unsuccessful in getting a general license then ICANN needs to find other ways to remove friction from transactions between ICANN and residents of sanctioned country.

Lastly, ICANN should communicate regularly about its progress, to raise awareness in the ICANN community and with effected parties.

That is the last of the OFAC recommendations.

Next slide please.

We move on to the set of recommendations regarding choice of law and choice of venue provisions in ICANN contracts.

The first of which relate to choice of law and venue provisions in the registry agreement.

We identified in the subgroups several alternative approaches for the registry agreement. And we also note these could also apply to the registrar accreditation agreement.

The menu approach, the fixed law or California approach. The carve out approach. The bestowing approach and the status quo approach. These are explained and discussed in the following slides. Next slide please.

First the menu approach. As it says here, the subgroup supports a menu approach. Where the governing law would be chosen before the contract is executed from a menu of possible governing laws. The menu needs to be defined, this could besting left to ICANN and the registries to define the menu.

The subgroup discussed the number of possible menus, which could include either one country or a small number of countries from each ICANN geographic region. In addition the menu could include the status quo which is no choice of law. And or the registries jurisdiction of incorporation and or each of the countries in which ICANN has physical location and which thus have jurisdiction over ICANN.

Subgroup has not determined what the menu items should be. But believes there should be a balance between the advantages and disadvantages of having different governing laws apply to

the same base RA. This likely suggests having a relatively limited number of choices on to the menu.

The subgroup has not determined how options will be chosen from the menu e.g., the registry could simply choose from the menu or it could be negotiated with ICANN. In spite of what Parminder said in his remarks we do not identify, nor do we contemplate that it would simply be chosen by ICANN. If it's either a negotiation point or something that should be chosen by a the registry. But we did not make a determination.

So that in essence would need to be agreed on as part of the agreement as any agreement would be. But the question of how, if the registry gets to impose it on ICANN or whether it's a negotiated point is an implementation point that's beyond our subgroup's recommendations. Next slide please.

These are the remaining options. The California or fixed law approach which would make all contracts subject to California law.

And U.S. law as the governing law of the contract.

To be clear that's not the governing law of the parties to the contract. It's the law under which the contract is interpreted.

Next is the carve out approach. Where parts of the contract that would benefit from uniform treatment would be covered by uniform predetermined law. For instance California. And other parts perhaps those that relate more to the actions of the registrar within their own country would be governed by the law of the registries jurisdiction or by a law chosen using the menu approach.

Next is the Bespoke approach or the custom approach that would fit each contract to the country of of the registry operator. That would be the governing law essentially home law for the registry operator. Last of course is the status quo approach which is to retain the status quo of having no governing law clause in the RAA.

I see question from Steve in the chat.

Negotiate implies that ICANN would need to agree with whatever menu item selected by the contracting party right?

That is correct although we also contemplate the possibility that it would be selected by the registry operator without ICANN having the opportunity to object as long as it was on the menu that had already been agreed toacy an overall concept.

Next slide please.

Next recommendation has to do with choice of law provisions and in are regular start accreditation agreements.

Here we simply note that the same approach should be taken for the RAA as for the RA.

The last choice of law approach this up with relates only to choice of venue and not to choice of law. So this is in registry agreements. Under the registry agreement disputes are resolved by binding arbitration pursuant on ICC rules. The RA base agreement contains a choice of venue choice provision stating the venue is Las Angeles California as both the physical place and the seat of the arbitration.

When entering into contracts with registries, we recommend that ICANN could offer a list of possible venues for arbitration rather than imposing Las Angeles California venue.

So there could be a venue menu. The registry that enters into the registry agreement could choose what venue it prefers at or before the time of execution of the contract.

If we take this menu approach. I see series of questions from Parminder in the chat. Little hard to wind back and see them all.

These options are listed as I said before because they were part of the discussion that led up to the recommendation that

ultimately went there. So they are kind of fold in the recommendation itself as it goes. Immunity is not in the path of any of the recreations that were chosen. That's why it's not mentioned here. And is not does not fall within the discussion of any recommendations that were adopted that's why it doesn't appear in the main report.

So that concludes the second reading. Of the jurisdiction subgroups report. And I'd like to see if there's any questions?

THOMAS RICKERT: Thanks very much Greg. Now let me ask the floor whether there are any questions?

I see Parminder's hand is up. And since this is not the part where we all express our views to the extent required to make our views heard, we should go back to the two minute rule. So please make sure your intervention is not exceeding two minutes. Parminder the floor is yours please.

PARMINDER: Yes thanks I will not take that long at all. My question remains why the report carries a record of options which were actually not discussed at length they were never discussed on the maybe discussing some of the things that are missed. They are there in

the report but why can't we do the same with immunity in the discussions which were put up in public inputs by many members repeatedly and asked for great thing that they do not connect to any particular recommendation that is not a very valid point but could effective also of a kind of immunity from one part of the whole machinery and here does connected to that part.

In any case it connects to the whole mandate. Why can't we have immunity options as part of the which we have other options which actually were discussed many times lesser than immunity issue. Thank you very much.

THOMAS RICKERT:

Thanks very much Parminder in accordance with the usually work practices this report has reached consensus in the sub team. And therefore we are considering it as a plenary and for those who are think that their disliking of the recommendations go as far as objecting to the report as you such they should use that opportunity.

Anymore questions for Greg?

The line is now or the queue is now clear.

Now, we as a group now have the opportunity to get the report ready for public consultation to get some input from the



community, whether they think we have done a good job with the recommendation and they support us in putting this into our final package or not. So I see that two hands are raised again. Can we keep this very brief since Parminder just spoke let's move to Kavouss or was that unrelated Kavouss? Kavouss go ahead.

KAVOUSS ARASTEH: Just a question when and how you treat [indiscernible] as related to the approval the recommendations and green light for the approval. Don't want we approve then the source remain and over. Please define a relation in them and take this reaction as we would not be for complete thank you.

THOMAS RICKERT: That's a good point Kavouss we can certainly go through the stress test now although they are not part of the recommendations I would suggest that we in pause this for a moment. Steve can I ask you to join us over here. Steve has not only volunteered to draft the test that has been communicated on the list but he's also volunteered to show us through the stress test what they mean and whether they were successful.

So I he will review the results of your work in a moment right?  
Thanks so much Steve and for the others that will get back in the queue once we have gone over the stress test.

STEVE DELBIANCO:

Thank you, Thomas. I assume you can take the PDF that was circulated this morning and just load pages 1, 2 and 3 and we can scroll through those. As you know you can click on the Adobe right hand corner and it will expand to the full screen if you want the read it in detail. Or you can refer to an email that Thomas sent 3 or 4 hours ago.

The stress test prepared at the request of Kavouss and I pulley supported the idea of doing a stress test instead of coming up with specific media reports and can examples. The facts of which are always open the dispute. When they are presented.

The elegance, the attractiveness of a stress test is to propose a plausible scenario that is not necessarily a probable scenario. But it's plausible and it's degree of abstraction the scenario where there doesn't need to be a debate about whether it did happen or whether it will happen. And there's to debate over the particles. It's stated in general terms which are sufficiently general that enable us to focus not on which registrar did it, when did they do it and what was the reason, but instead focus on

whether the accountability recommendations we come up with would actually improve the accident ability of ICANN and it's bylaws over what the status quo would be. There's three of them for the sanctions related recommendations and when I go through them I think you will quickly see we don't need to spend very much time on them in this group since they are very close what was used by the subgroup as they developed these three sanctions recommendations. In other words, the sanction recommendations include the stresses they sought to alleviate. If you recall the Greg led us through each of the sanctions anticipated the problem that occurred in the previous round or occurring today or could occur in the future.

First stress test number 1 is where registry or registrar would decline to the don't main registrations because they believe they are subject to sanctions that apply to the ICANN.

For example the U.S. has OFAC thanks this stress test should apply to any sanctions of any nation that could impair the ability of ICANN registrars to serve the community now the consequence of stress test is always listed as second. And it ICANN fail to provide the domain name in the bylaws. Left the existing and right hand corner is how the proposed measures change that.

Under existing we noted the fact that ICANN management can at any point the legal or GTLD team could tell contract parties they are under no obligation to worry about sanctions the sanctions relate to their entity nobody is subject to a sanction just because it applies to ICANN and they are a contract party.

If ICANN failed to do this diligently, the community has the ability to challenge ICANN's inaction via a community IRP thanks to the work we did in Work Stream 1. Every five years a accountability and transparency team can make secondations and if they are rejected IRP can be brought to board to challenge that action by board.

Flipping to proposed measures we discussed what the proposed measures were in respect to clarifications and the clarifications conduct can which if it were credible and substantiated it should allow registrars to have the you insurance they need to go ahead and except registrations from the registrars that that country. So we prove that it's an a profit and ICANN is for the registrants. I can proceed I didn't care quickly to the other two Thomas.

THOMAS RICKERT: Let's check whether there are questions related to the stress test?

Okay.

Good to go Steve.

STEVE DELBIANCO: Thank you. The second one relates to a stress test of ICANN declining to enter into a registration agreement. Registration accreditation agreement or IRAA with an aspiring registrar a country that is subject to sanctions in a corporation. For example the United States applies sanctions through the on OFAC many European nations have sanction regimes of their own. I didn't think it was appropriate to focus only on OFAC by the stress tests are an example. The consequence of doing so ICANN failed on one of the core values that is "promoting con with the domain names with the respected qualified in the countries.

Today ICANN is under no obligation the seem a license to get around that sanction however one if the proposed measures in the right hand column is for ICANN to pursue general licenses to cover transactions and the general license would work but if a general license is not achievable another proposed measure is ICANN stated policy so ICANN is apply for and use best efforts to obtain a specific OFAC license for that party. General OFAC license for all parties and specific license in respect to a single party. I note that the recommendations includes requests that ICANN can be transparent and interactive in had discussing with

the community and the potentially registrar the progress of its infliction pore the license. The conclusion for this stress test is the proposed measures are an improvement helping ICANN meet I core value and be accountable to the domain registrants.

The third and final stress test is similar to that that we have a gTLD.

THOMAS RICKERT: Sorry Steve let's pause for a second to see if there's any questions relating to the second stress test?

Doesn't seem to be the case. Let's proceed.

STEVE DELBIANCO: Thank you. So a applicant in the next round or subsequent rounds of gTLD application, the applicant in entering into an agreement with ICANN, ICANN in a stress test number 3 would suggest that it might fail to provide sevens. Services lying excepting a application, processing the application doing the evaluate that if it failed to provide services to a new gTLD applicant for a country that is subject to sanctions that apply to the corporation. ICANN would again fail at the core values same as the previous. And one is for ICANN to pursue, to be committed to pursue specific OFAC license for all specific applicants that are qualified to be a registry applicant. Under the previous stress test

the recommendation for a general license for ICANN to obtain one eliminates the need for specific ICANN it's repeated here. The conclusion is that proposed measure would be an improvement with respect to accountability and serving the core values.

So Thomas those are the three stress tests. I think it's obvious that they don't add substantial incremental value to the work of the subgroup at this point because the subgroup considered these kinds of scenarios when they put together the recommendation. Nonetheless we recycled some methodology we achieved in Work Stream one where we came up with with plausible scenarios and ran them by existing and proposed measures to see if we achieving ability.

THOMAS RICKERT:

Thank you very much Steve. Any questions on the third stress test?

There doesn't seem to be the case. So thank you again Kavouss for recommending that we do these three stress tests and Steve for drafting and explaining them. And since you know that the stress test which have been requirement for Work Stream 1 are not a requirement for Work Stream 2, you know nonetheless we did them which I think was very helpful. So we again exceeded the expectations of the plenary didn't we?

He's smiling.

Okay, so we had a queue that was and those in the queue were patiently waiting to be heard. Thanks again Steve. Parminder the floor Parminder is now lowered his hand. Parminder did you still want the speak?

Okay that seemed to be an old hand to Tijani, please.

TIJANI BEN JEMAA:

Well on behalf of the government of Brazil liked to formerly object to both recommendations as read out by Greg stat an. As we consider they do not address adequately areas of key concern to us. As clearly indicated in our minority opinion or dissenting opinion. That we have filed. So in the light of the CCWG charter, we request that our document, minority opinion or dissenting statement to be attached to the report and be when it is submitted to for public consultation. And in that regard Mr. Chair I understand you are also proposing that a transcription of this session also included, attached we do not have any objection to that of course. We would like to just make sure that it will be identified in a distinct way from what is requested per the charter which is the report itself in the minority opinions. And I'd like also to take the opportunity to invite subworking group participants



the wider CCWG participants in the wider community to consider the all the elements that would be before them. Thank you.

THOMAS RICKERT: Thanks very much Tijani. Parminder your hand is raised again would you like to make a recommendation?

PARMINDER: Yes thank you. I would like it in the [indiscernible] but let me also speak that I do also object to the board as it stands and they associate for it to the reason it's very adequately addresses the mandated given to it and does not even fully explore the issues that were to its mandate. And because of that, because it was initiated by the small concentration of important issues considered by many but they would not put one of them in there and given adequate time.

And I also would like to at that if during the reading, and the recommend will not need to the obtain those would like to make a point in making this part efficient and time has really been the problem as it was said also in the last stages of subgroup then it should of been managed better because people wanted certain all times to discuss those issues. And thank you so much. It was

really to be [indiscernible] a lot of planning. Thank you for everything [indiscernible]

THOMAS RICKERT: Thanks for your kind words Parminder and thanks for all your contributions.

Let's now proceed to the second reading. So get ready for marking objections with a red flag in the Adobe room. We are using the Adobe room for this exercise. It makes it easier to capture what the plenary wishes including the remote participants. And Olga is asking how we include the stress test in the report? We make them an appendix to the jurisdiction sub team's report as well as the paper from Brazil, I intentionally did not call it minority statement now as you may have noticed and we will include the additional language as you have suggested by Jorge. With these qualifications, those that object to submitting the report for public consultation and deeming it a successful second reading please use the red flag in the Adobe room.

If you are support the recommendations there's nothing you need to do. Because we do the consensus test by just checking the level of objection.

So I sigh Parminder's objection and Brazil's objection is also noted.

We have Deliala and KavoussKavouss objecting.

Okay.

Thanks for this. And I guess with this level of disagreement the over all support level or objection level hadn't really changed from the second from the first reading, I apologize, so therefore let me congratulate Greg and his team for a successful second reading. Let's give him a round of applause.

[applause]

Great, so we can conclude that agenda item. Which now allows us to go to AOB. So can I ask when there's any AOB from the floor?

No. Actually I do have an AOB. And I need to look into my bag for it.

We have another transition in this group. As you know, our dear friend Leon is going to leave us at the end of this meeting. And he's going to move to the dark side as [indiscernible] just said. And I think it's now time for us to express our appreciation, not only have we found a excellent co chair but a great friend and personally not only did I enjoy Leon's professionalism and

expertise but whenever I sort of started wishing to bite into the table because I was getting nervous or something, Leon would always stay calm. You know nothing could bring him out of balance. And he would say moment it will be fine and moment can take 3 or 4 or 5 hours by mechanic can standards. But he always stayed calm and applied the magic do you know his name name? We call him Leon magic Sanchez he earns that named. Do you know the Ompamention. Those in Berlin may know they have traffic lights with a green man if you go and Redman stops you or you should be a good example for roll model for kids. And it's a good opportunity to hand this over to you it shows green light ahead for Leon. All of the best for board efforts and we have a Trojan horse in the board a second Trojan horse with Becky thank you very much and let me give you a hug.

[applause]

And having said that, let us whole hardly and warmly welcome to Johnny who is going to be Leon's successor and to Johnny so modest he said I'm not going to take the seat before Leon officially but you are very welcome to the team of co chairs. Let's give him a round of applause as well.

[applause]

Okay.

Annuity raised his hand. Annuity any last minute AOB?

Thomas. Let's let Leon go first.

LEON SANCHEZ: I want to thank you for not only the T shirt but all of the work we have done together. It's been an amazing experience to work with these very diverse, very intense and very thoughtful group of people. I really have learned a lot from all of you from all and each of you. And I want to thank you all for your kind support, for having these battles together to get us across the different bridges that we had to cross and burn at the same time. And [chuckling]. And it's been quite rewarding. Now I have the opportunity to continue to serve the community in another role. I promise I don't let you down. Thank you very much again.

THOMAS RICKERT: So you wanted to grab the mic?

NEILS TEN OEVER: Thanks so much Thomas. So while we are now getting close to delivering the report, and only having spent so little money of our budget we could end as well having so much brain power and experience congregated within our work stream 12 is and 2 within

CCWG that perhaps we could take the time, the last time we have together to take it to see perhaps what possible horizons or advice could be for how to look beyond. So would it be possible to work in the subgroups a bit more on to see if there's a leeway or advice or some high level documents on how we can think about implementation. Because that way there would not be a hard cut between Work Stream 2 and implementation. Would that be a thing we could consider? Or is everything desired we want to see each other rather less than more.

THOMAS RICKERT:

I guess that's a good points Niels. I think what we should consider, but that's may be for one of the next plenaries to discuss is actually to do implementation oversight or set a process up for implementation oversight as we usually do with PDPs and other recommendations that come out of the community. So that is perfectly possible. Let's consider how we can do that. Probably there's no budget for such initiative. But we can check that.

So that's good advice. So now let's move to agenda item 9 that's the co chair statement.

JORDAN CARTER:

Before I do I want to mention a one of the point about his magic.

A lot of work we do in this environment is important. It reflects deeply held values and passionate commitments that many of us have. And temperatures can rise and things can get a bit heated and fears can be overly friendly expressed and the magic of humor is something that Leon brought to the situations in in a perfect and exemplary way more than once. As you have been the youngest of the co chairs standing in more Matthew Vay that vanished off earlier. Thanks from me also Leon.

In terms of co chairs write something to the list instead of make you wait while do this now. We might on did that.

But I think this key for this meeting is Work Stream on track and as of the two second readings today all of the parts of the project are pretty much ready to go. A sequence of public comments will be under way shortly. And the thing I urge you all to do in SO,s and ACs and the part of the community you are in is take the news of organizations out and see that your organizations have a chance to become familiar with them and understand them. As we already discussed a the the beginning of today the overall public and start?

[Music]

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**JORDAN CARTER:** Resuming that verbal summary. As I was saying the approval produces next year doesn't give us a opportunity to have a full litigation of all of the issues in in the report. The public comment is designed to identify inconsistencies that we can turn into consistencies through that process rather than have a full litigation. So the earlier SOs and ACs are familiar with all of the contents and better. So we will prepare a written statement on those lines noting the jurisdiction on the statement this morning and noting the second reading done for jurisdiction and transparency and noting the approval process to come and circulating that to the community and later on hopefully in the next day or so. So I think that's the sort of verbal report back. I'll hand it back to Thomas or Leon if any of you have anything to add and wrap up.

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**THOMAS RICKERT:** We have another intervention from Kavouss.

**KAVOUSS ARASTEH:** The intervention is quite simple this platform was very sexis platform for launching we have two person moving to the board and two to the board. Who is the next thank you?



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THOMAS RICKERT: If I move to the board it would raise the IQ both of the CCWGs as well as the board.

[Laughter].

LEON SANCHEZ: Standards of behavior Thomas, standards of behavior.

THOMAS RICKERT: Thank you so much Kavouss for that intervention. I think we can now adjourn and I would like to thank you all in the room and thank all of the tech Obugabi tech staff that helped to make this work. And thank the remote participants our excellent staff and co chairs is and all we have forgot to mention. Now this meeting is adjourned thanks much the recording can be stopped.

[ END OF TRANSCRIPT ]