ICANN Transcription – Abu Dhabi

GNSO – Non-Commercial Users Constituency (NCUC) Constituency Day Meeting Part 2

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On page: https://gnso.icann.org/en/group-activities/calendar

Farzaneh Badii: Okay. Thank you very much. Welcome back. We had some scheduling confusion with the ICANN staff and the CCT Review Team and therefore they're not going to be here. And - but this does not mean that we cannot start criticizing their horrendous report and 50 recommendations that actually will have an impact on everything that we talked about like ICANN and content regulation.

So what we need to pay attention to is that at NCSG level we have provided public comments on these horrendous recommendations. And they have reviewed the recommendations. What NCUC has to do as a follow-up is to look at whether those comments that we made have been considered and

they have fixed their reports. And some of the problems I'm going to read a little bit of our public comments on this just to refresh our memory.

So we had the problem - we argued that many data gathering recommendations are enormous and largely unwarranted. Many of the recommendations actually pushed ICANN far beyond its limit and scope exactly what we talked about and what we want to limit. We don't – we want ICANN to have its limited mission and scope and not go beyond that and become a content regulator. Also the recommendations favor one GNSO stakeholder group and one constituency. And I guess that would be (unintelligible) if – oh hello.

Jonathan Zuck: Hello.

Farzaneh Badii: Sorry I was just - I was – I seized this opportunity to just criticize your report. But now I have to be polite. Please. So we have Jonathan Zuck from the Review Team. And he will tell us what has been - they are up to.

Jonathan Zuck: Hi. My name is Jonathan Zuck. And I'm the Chair of the CCT Review. We've met before. Sorry for the confusion today. And so I think part of the one of the byproducts of that confusion is you don't have a slide deck from us or anything like that. So maybe the best option really is for it just to be an open conversation. Unless you'd like me to sort of briefly summarize what we've been saying to other people...

Farzaneh Badii: Please do.

Jonathan Zuck: ...in the other rooms. I don't know how much time you have or how much I've lost?

Farzaneh Badii: You have time.

Jonathan Zuck: Okay. So as you recall we released a paper for public comment. And you provided quite a bit of useful comment on that paper. But at the same time there were analysis - separate analyses going on in three areas. One was parking, one was DNS abuse and the other one was in rights protection mechanism. In particular there were two instruments in the field one was a DNS abuse reports that has been previously released for public comment and then a survey of the INTA membership that was meant to sort of supplement the research that we had done and talk about the impact and cost potentially to trademark owners.

So what we are doing right after this meeting as we're releasing an addendum to the draft report that just has three updated sections on parking, DNS abuse and rights protection for a truncated additional comment period of 30 days. So that there'll be an opportunity for those additional sections to have some public vetting before our final report which we expect to hand in by the end of the year in first couple of weeks of the new year depending on the holidays.

So we've been incorporating comments in parallel that you've made on the previous report. And what we've been talking about primarily in - at this meeting as sort of this addendum to the report that you've already seen. So you haven't seen it yet but you'll see it right after the meeting. To briefly summarize the findings of all three of those efforts were not dramatic in any way right which has sort of been the good news bad news of the CCT Review overall right? There's no smoking gun that says but for this action or we would have accomplished why and therefore in subsequent procedures you should do X.

A lot of what we've faced is a challenge of insufficient data and resistance to the collection of data to do a more quantitative analysis in a number of different areas of the report. We did a kind of a cursory test of one hypothesis about parking which was that it's possible that if the renewal rates for parked

domains defined broadly was lower than it was for other types of domains than we might have been over counting them in our competition statistics.

We were not able to find a correlation but it doesn't mean there wasn't - doesn't one exist. It just means that the cursory attempt we made didn't have a positive result. There's a number of hypotheses about parking both ways about whether it's helpful or not helpful from the standpoint of competition and choice.

And I think overall what we the conclusion we came to is that parking is really an issue for the community as a whole and for the DNS as a whole. And it's not really specifically related to the New gTLD program. We did find a 20% difference in parking rates between the New gTLDs and the legacy gTLDs.

But the truth of the matter is the majority of domains are parked actually if you take a fairly broad definition in both the legacy and the New gTLDs. So our recommendation on parking was really about continuing to collect more data so that if the community made a decision to do some research into the implications of parking that could be done in the future but it might not be specifically the purview of a team focused on the New gTLD program.

The DNS report I don't know how many of you have had a chance to see that report itself on which we based our addendum to the paper. But that's already been out and made available for public comment. And so what we'll be doing is just showing the changes that it brought in our paper. The findings are interesting but again in some ways not dramatic. In other words we didn't see an overall increase in DNS abuse but we saw a migration of some of it to the New gTLDs.

One interesting characteristic is that the abuse came in the form of like malicious registrations in the New gTLD program as opposed to domains that had been sort of taken over that hadn't been originally registered for malicious purposes. And then spam was the one exception and also one of

the things that's sort of the most controversial described as DNS abuse. And the reason we include it is because it's often a vector for malware and for, and phishing.

And so we saw that spam went up dramatically in the New gTLD. And so while as the overall amount of spam has not changed it moved fairly dramatically into the New gTLDs. And some of that might of had to do with low cost deals and things like that. We saw a slight correlation between registration restrictions and a decrease in DNS abuse. So I think we're circling this notion that we discussed at our last meeting when Wendy called me -- I can't even remember the word because I didn't know it existed -- a majoritist or something like that right?

So I'm happy to open that can of worms up again but we're circling around the notion that the New gTLD program kind of perpetuated a monoculture of business models. That the system is kind of rigged to just bring about open domains where you're just trying to get as many registrations as you possibly can and niche domains or restricted domains like .Kiwi on the one hand or you say .doctors decided to be specific to medical doctors and not a lot of spin doctors those kinds of domains are not encouraged by the current structure.

And so I think the review team continues to believe that kind of breaking that mold that monoculture of the same business model for every single domain is still worth exploring but we don't know exactly what the best way is to do that. So then the INTA survey has also been made public. And the biggest flaw of the INTA survey frankly is that they sent it out to 6000 members and 33 of them responded right? So it's a statistical significance that I think is the biggest challenge.

And so it's more akin to a focus group and raising issues of further exploration than it is a dramatic sort of statistical survey that should be taken as such. But at the same time what it helps to look at is there is sort of an

overall increase in these proceedings between UDRP and URS. Over time it's been picking up over time. And it's picking up faster than the rate of growth of the DNS itself. So you can draw some sort of vague correlation statistically there.

And what the survey revealed sort of anecdotally is that most of the trademark owners didn't use the New gTLD program as choice and used their registrations as largely defensive. Obviously we didn't see the level of defensive registrations that was predicted and because that just wasn't economically viable. And so we've sort of seen redistribution if you will of defensive efforts on the part of trademark owners which includes using - making use of things like blocking that have been offered by some of the new registries but also enhanced monitoring, and cease and desist notices, et cetera.

And so we do see an increasing costs to trademark owners but not maybe of the scale that certainly not of the scale that, you know, when we heard about the famous $12 million or something like that, that was the prediction. So those are really the three new sections. I'm sure I've forgotten something. But I'm happy to talk through things and that maybe will help me remember slides that I don't have in front of me. I hope that's helpful.

Farzaneh Badii: Okay thank you Jonathan. So we open comments and Stephanie is the first.

Stephanie Perrin: Thanks very much, Stephanie Perrin for the record. These are going to be very naïve questions Jonathan so, you know, brace yourself. I haven't had time to follow everything that you guys have been doing and your document list terrifies me so I couldn't get through them all. So my first question is what exactly have you explored to control anti-competitive behavior here? And my concern at the moment mostly in the context of any potential data protection regime that might come into play here is anticompetitive abuse reporting. So I'm interested in quality standards for and to control anticompetitive behavior

in the absence of any kind of regulatory framework. I'm wondering what you guys have looked at. Thanks.

Jonathan Zuck: Thanks Stephanie. I don't think it's a naïve question at all. I will say that the DNS abuse report we looked at was more high level and looking at rates of DNS abuse. We were focused on what's known as technical abuse and malware and phishing. And so we didn't include in our report any of the more controversially defined things like the trademark abuse or copyright abuse, et cetera. So those are all additional conversations and not part of the data that we're presenting. And so I – we haven't made a focus on anticompetitive DNS reporting per se. I would suspect that it's not statistically significant but I don't know the answer to that definitively.

Milton Mueller: So Jonathan I wondered if the committee read the comments that we made as a stakeholder group on your report because they were pretty outraged. I don't know if you recall but fundamentally you divided a lot of things into things that have to be resolved before there can be any new TLDs. And the things in that basket were astounding.

You're saying you need to have more data gathering recommendations. You need to partner with other entities to collect statistical data. You make collection of secondary market data a prerequisite. You call for a periodic survey of registrants which in our opinion would put ICANN in the role of doing market research for private business. You want to hold up further rounds until we study whether the cost of defensive registrations can be reduced.

And you just said in your report that, you know, they were much less than we thought they were going to be. And your overall conclusion we thought was correct which was there's a dramatic increase in consumer choice, a modest increase in competition and minimal impact on consumer trust and yet you're saying you're sort of implying unless massive changes are made to further

protect trademark owners which is always the bias the tilt in ICANN it seems we can't have any more new (rounds). I mean what's up with that?

Jonathan Zuck: Turn my mic off. Thanks Milton. It's a good question. And we are – we had a face to face with this meeting. And we're trying to do a lot to go back and look at some of our recommendations that were very numerous and also very granular and trying to figure out what to combine. And we've sort of eliminated recommendations that were for new studies but talked more about data collection so that it would be available for future analysis.

So I think a number of things that potentially stand in the way of subsequent procedures are less than they appeared in the initial report when the final report comes out. But at the same time I think that there's sufficient opacity on a number of things related to the effective safeguards for example, how compliance has handled, issues that have arisen that there are things that are worth cleaning up inside contract compliance, et cetera, before we have any subsequent procedures.

So I mean I guess at the same time I think this whole supply driven New gTLD program is not something where the whole world is out there saying oh my God we've only got 1000 we really need thousands more. So I don't feel particularly guilty about holding up that to make sure the ICANN is better prepared to handle it, that we know more about what the impacts are so that we can modify our policy for continuous improvement. And the lack of data available to us to make those kinds of recommendations I think speaks poorly to the organization that's supposed to be running this.

Milton Mueller: Just we I think we have fundamentally different philosophies about market entry. It's like ICANN is in no position to say how many are enough? And if some, you know, yes they held back the market for 15 years and then suddenly there was an explosion of a large number many of which are not going to make it and nobody really mourn their passing.

But that doesn't mean that there aren't other people who have learned from what's gone before that could enter the market now and, you know, the idea that this is all so dangerous and so on known. After, you know, how many years of adding New gTLDs and, you know, seeing what's happened in this round and you fundamentally we haven't seen any of the horror stories come true it's the idea that you just shut off entry strikes me as completely unjustified.

Jonathan Zuck: Well I think as a practical matter we're not doing that. I think it will take long enough to get subsequent procedures going that anything that we've recommended will have taken place. It's more about being prepared for it then it is shutting off new entries because of some great danger. I get what you're saying. I think it's a practical matter it's not a realistic concern. I don't think any of the things that we've recommended doing are things that are going to hold up the program.

Milton Mueller: Okay. So Recommendation 21 in particular was another concern. So we have prepared a statement about the use of the term abuse domain abuse. And we're trying to keep it narrowly focused on actual domain abuse. And sometimes you use the word abuse in a way that seems to be legitimately related to cyber security terms. But in Recommendation 21 in particular you're getting right into content speech and expression.

So yes the fact that a report of illegal conduct occurs in connection with a domain doesn't mean it's a domain abuse problem. You know, if for example I'm posting child pornography on a hosting site of course it's under a domain but that's not really a domain problem that's a content problem. And there's all kinds of laws and other procedures for responding to that. And is there any way to get your term use of the term abuse more narrowly scoped?

Jonathan Zuck: So thanks Milton. And I – this is a struggle internally. But we - our DNS abuse specific section of the report is confined to the technical definition of DNS

abuse. And if you've had a chance to look at the DNS abuse study that we've commissioned it's confined to the technical definition of sue and abuse.

We were also asked to look at consumer trust. And the challenges associated with the assessing consumer trust are many. And in one case what we did was try to field a survey to say how are you feeling about that right because the only way to truly know is to ask people right? But even that's difficult because a lot of people hadn't even heard of them yet in the timeframe that we were analyzing, et cetera. And we received some feedback on that for example that people had an expectation that this rapid expansion of the strings pace would lead to a more semantic Web which I know is also something the NCUC has sort of pushed back on.

But at the same time we tried to look at trustworthiness if you well. And so, you know, to the extent that there are contract terms in place that address issues that might be considered content issues we wanted to make sure that ICANN was prepared to handle addressing those contract concerns. So it wasn't all about us defining abuse to include that but under the context of trust there was certainly solid feedback from the public that there was an expectation that ICANN compliance would enforce the contracts that were in place. I know that's probably not a satisfactory answer to you but that's where we came from. So it's – I'm not calling it DNS abuse but I do believe it falls under the rubric of consumer trust.

Farzaneh Badii: So we have in our public comments on your report we had a concern that these recommendations push ICANN far beyond its limited scope. We add into the content regulation we actually we are - we issued a statement about ICANN should not be become a content regulator and it's in its bylaw. But we also said which recommendation should be improved or should be removed in order to (unintelligible) ICANN limited mission mandate. Did you take those recommendations into account?

Jonathan Zuck: I have. But we haven't completed that work. So that's what I was trying to say in the opening is that I don't…

Farzaneh Badii: Well I'm just saying…

((Crosstalk))

Jonathan Zuck: I didn't come prepared with a list of what we took and didn't from that because we're not done.

Farzaneh Badii: So I'm just saying if you can take them to consideration…

Jonathan Zuck: Of course.

Farzaneh Badii: …and then report back to us that would be great. Okay if there are any questions…

Jonathan Zuck: And I certainly again I'll say that we have no desire to push ICANN beyond the bounds of its mandate. And I welcome those kinds of refinements being pointed out to us. We were specifically in the areas you were talking about talking about existing contract items that exist today and making sure that there was some sort of satisfactory resolution to complaints around those contract provisions. We weren't talking about increasing any or adding any that I believe that would go into content regulation.

Farzaneh Badii: Stefania?

Stefania Milan: Stefania Milan speaking. I would like to speak to briefly get your word on some procedural issues. So in our comments we also read a concern and a quote that several bypass (around) recommendations bypass and display displays for the GNSO policy development processes and procedure putting a lot of – well demanding action of PDP Working Group and eroding

confidence in the GNSO Council. I'm just summarizing. Can you comment to the concerns that we have?

Jonathan Zuck: I guess I'd need to look at those one by one. Again I welcome feedback on that portion of the recommendation where we're directing them because we really were trying to direct recommendations to the body that it seemed to make the most sense to. And I guess I don't consider recommending that the Subsequent Procedures Working Group look at something as bypassing the GNSO. I'm not sure that I'd view that the same way but again I welcome that. We're constantly looking at whether or not we're making the recommendation to the right body and that may be subject to modification by the board if we get it wrong.

Farzaneh Badii: Okay. Stephanie, go ahead.

Stephanie Perrin: Just a totally unrelated question Jonathan. We had a little discussion in the GNSO about the letter that the GNSO received from the board of about the temporary suspension of the SSAC review.

Jonathan Zuck: I told you that yesterday.

Stephanie Perrin: Yes. Got any views?

Jonathan Zuck: As I made clear in the public forum I thought it was an inappropriate action on the part of the board. I believe that regardless of the substance of their arguments and they may be perfectly valid that there were other processes that they could have put in place advance of doing something as abrupt as suspending the work of a bylaw. Now bylaw is mandated accountability mechanism. So I was pretty open about my personal concern over the way that was handled in the public forum yesterday.

Farzaneh Badii: Okay. If there are no comments then we can let Jonathan go. And thank you and thank you very much for coming. I know this is difficult.

Jonathan Zuck: Oh it's my pleasure to be here. So…

Farzaneh Badii: Okay.

Jonathan Zuck: …please keep the comments coming. There's a as I said an interim not an interim an addendum to the interim draft that deals specifically with DNS abuse. I hope Milton you'll see that it deals specifically with technical abuse. There is a controversial recommendation in there for something that we're calling a DADRP which is an outside mechanism for aggrieved party's to go after a particular actor that's been resistant o compliance. And it's the one recommendation that doesn't have complete consensus - I mean unanimous consensus in the group. So I recommend you taking a hard look at that.

It's, you know, it's things like .science where you have something like 90% abuse rates. And is there a mechanism to deal with them more holistically as opposed to complaint by complaint. So please do scrutinize it and we welcome your feedback.

Farzaneh Badii: And Steffi has the last.

Jonathan Zuck: Of course.

Stefania Milan: I'm just wondering whether you can share the slides with us because I assume that there's a slide deck that you mentioned.

Jonathan Zuck: Yes. I'll make sure somebody sends them to someone. I don't know who the right person is, is it you? Who is the right person to send them to?

Farzaneh Badii: (Unintelligible).

Jonathan Zuck: Okay. Yes and I apologize again if I forgot to include something from the slide deck.

Farzaneh Badii: Thanks.

Jonathan Zuck: All right. Thank you. And I appreciate your time and energy on this.

Farzaneh Badii: All right. So the next agenda item we want to – are there any newcomers here? It looks like yes a couple of people are new. And so oh yes and of course so basically this segment of this session is to tell the newcomers how they can get engaged with NCUC very briefly and what we stand for and what we do. But if there are not many newcomers then I think we can just skip that and go to the main (unintelligible). Would - do you find that useful if we tell you what we stands for because I think we should also reiterate for ourselves. Go ahead.

Wendy Seltzer: Wendy Seltzer. And maybe we could also take a look at the DADRP that Jonathan mentioned from the consumer trust. It sounds as though that's a place where we might have relatively rapid feedback that could help them to recognize lack of consensus since I suspect that we would find ourselves in agreement with the minority position there. It might be good to get input to them.

Farzaneh Badii: And so maybe we can write a like a letter or…

Wendy Seltzer: Maybe we could even spend a little bit of time talking about it.

Farzaneh Badii: So the problem that we don't have - well we could talk about it. So Wendy but which I think we should take this to the mailing list and discuss it there. So if we are not – so for NCUC values I wanted to raise this with the members as well because a lot of times when people join us they are confused and they don't know what NCUC really does and what we stand up for. So I thought that we can come up with these values and document them because we have them but we should document around put them on our Web site. So I want to

- I would like to ask the veterans to tell us about the values a little bit more. Maybe Robin you can tell us.

Robin Gross: Thank you. This is Robin Gross for the record. Yes well I think it ultimately starts from who we are, what we represent here at ICANN. And of course it's noncommercial users and uses. And so that's the concern that we come from that's the interests we want to advocate for. And then there are lots of things that sort of fall under that.

Probably the biggest thing that we've worked on or the biggest and most important value that we've had is promotion of human rights and defense of human rights in Internet policy. So I would say that's probably freedom of expression, and privacy rights, and due process rights, and balance between intellectual property rights and free expression. So that's really sort of I think the most important value.

And I think also it's important to remember that here at ICANN NCSG is really the only place that's purely noncommercial either the GNSO all of the other stakeholder groups are commercial in nature. ALAC has a commercial component to it. Governments are supposed to listen to industry often advocate for what industry wants. So really we are the only ones that are purely noncommercial.

And so it's really important that we remember that. And we don't slip and slide into letting in commercial businesses and taking on commercial perspectives. And the same thing with - about governance it's important that we recognize that we're different than they are and we have a different role. And it's not to say that role isn't as important as our role but we all need to sort of stay in our own - stay within our own house and with our own mission. And that's how ICANN functions with when noncommercial users advocate for noncommercial users and commercial users advocate for commercial users.

And then we sort of work it all out in the process. But, you know, we don't really try to - we don't want to be infiltrated by commercial users or to governments and, you know, sometimes that happens. We get applications from members of GAC to join. We get applications, one time we got an application from a sitting councilor from the Intellectual Property Constituency to join. And it's just like no we have to keep this space purely noncommercial. And remember values like human rights that are so important for thinking about how to develop policy for the future and what the Internet should look like in the future. So that's my take. Thanks.

Farzaneh Badii: Thank you. I wonder if we can – when we talked about when we say we promote human rights we can say so broadly - yes because I think they're certain human rights that we stand up for but then people come and say well security is a human right. And also – and how do we respond to that? Do you want to comment?

Robin Gross: No.

Farzaneh Badii: You have an answer?

Man: Well first of all I think it's important to remember that we cannot simply cherry pick human rights because human rights are universal, unalienable and interrelated. So just saying freedom of expression might be harsh but we could say that freedom of expression is a very important enabler for any other human right. So and therefore if we go in the process of balancing human rights we need to see that some rights are strong enablers of others.

So strong security and freedom from repression is impossible without expression so some people say it's very important to have food because food there are no rights. But the way to complain about not having food is having freedom of expression. So it is very important that we have freedom of expression. But I think that by including other rights we're also allowing ourselves to plot on other parts.

And it's also broadening our set of tools with which we can approach problems and allows for a more broad perspective to address issues such as freedom of association and assembly which I think is also very relevant when it comes to TLDs. So if we would limit ourselves to one or more right privacy is dear to us as well I think we will be shooting ourselves in the foot.

Farzaneh Badii: Yes. Go ahead.

Renata Aquino Ribeiro: I think despite not having that many newcomers here I think it would be useful if we do a check of the understanding of what we have just been discussing with the newcomers that are here. So whether they have come to this session and understand that this is what we are talking about human rights and so on. So we could open the mic for them and ask them to come and speak a little about what they understood.

Farzaneh Badii: Yes sure. I mean welcome comments.

(Caleb):   Hello. Mine is not really much of a comment but okay actually it's a side comment. First thing I have been to the NCUC Web site. And a few things I have observed is that you guys don't have like a quick video that tells a newcomer that okay so this is on the list and this is where we're going to and this is what - so there are a lots of text.

And so someone who actually wants to have a full grasp of what you are doing within just the average adult span of attention a minute of - I'm sorry attention span of about let's say a minute or two they can quickly get it but you have lots of text actually on the site. So it took me a while (unintelligible) but I'm just saying that for someone who really wants to have a good understanding at first from newcomers you need to make it a little bit more attractive by doing such videos and that would help.

On the second hand for me I am basically interested in GDPR and its implication for the African digital economy specifically. And the result of that also (unintelligible) series (unintelligible) that will be discussed that the detail protection deal that we have in the Senate of what you guys will probably call the Congress or something. So we are discussing and what exactly the agility or ease in Nigeria this December. And we do hope that we – that's actually my own interest. And I'm actually coordinating on that project and I do hope to get more insight from the community as well. And so my name is (Caleb) for the record.

Stephanie Perrin: What is this item actually on the agenda because I wanted to follow-up on what Robin was saying?

Farzaneh Badii: Well Renata kind of sidetracked us a little bit but it's okay. It was a very good idea. It is a very good idea but we were talking about values and then we got sidetracked. Sorry chair should stop that. But I just thought the idea was good. So we want to – I don't think we have the time to talk about in detail about our values. But this is something that I want to put on the agenda of NCUC to talk about the values, council agreement and put these values on the Web site so that others that, you know, when someone wants to come and join NCUC they know what we stand for.

Stephanie Perrin: Stephanie Perrin for the record. I just wanted to say that A that's very important. Membership in NCUC is wide open. I speak as someone who was working for the government when I first started to come to ICANN. I believe I had retired from the government by the time I was accepted in NCUC. But set in the parameters for people who are either still work for the government who are applying or because I went through a very extensive process of recusing myself and getting authority to speak not on behalf of the government.

And it is my experience in government even in a pretty open democracy like Canada that if you don't work in that rights area of government you don't even – you're not even aware of how fettered you are by your employment

contract. So I think it's extremely important that while we have a broad tent here that we set parameters for who joins and who they're representing when they join because people who are in certain positions in government are never entirely free. Thank you.

Farzaneh Badii: Okay Tatiana then Niels.

Tatiana Tropina: Tatiana Tropina for the record. Farzaneh I have a procedural question here. So we're talking about NCUC values and your outgoing NCUC Chair and we will have the election results in a few days right? So would the task of the new EC and chair to finalize this and pull it or shall we do it before we leave the EC? I mean I just - so I mean we probably need a wider consultation with the membership anyway enlisting them. So it's a kind of ongoing task we should be finished by the new leadership and this is our kind of – the thing that we will hand to them. Am I right or - yes but it's a bit late for us because you are finishing at the end of the week?

Renata Aquino Ribeiro: Promise not to sidetrack, Renata again. Yes so - yes just this point at this point I think by exercising the debate on certain topics. We - the idea was that we do follow the path of that – or checking that understanding of NCUC values. And I think what we have just here (Caleb) bringing in his interest in privacy and the GDPR.

And Stephanie bringing in how much these discussions can be manipulated as well by the different stakeholders involved is something that is crucial to NCUC. So yes we have here we have quite an opportunity to have the leadership of our NCUC all here. And the newcomers that are here you know now who we are and you can reach out and find out more about these things so that was the point.

Farzaneh Badii: Thank you. Niels, you want to make your comment?

Niels ten Oever: I would love to. Thank you Madam Chair. I think NCUC has always been strong on freedom of speech, freedom of expression and human rights. And the fact that some of our members couldn't come or didn't want - choose not to come to this location and the fact that some people have come up to me after several discussions on human rights where they said they did not feel that they could express their opinion on the microphone is a topic that we should release a statement on because I think ICANN the organization should take a much stronger stance in the selection of meeting and developing meeting criteria.

This is not a novel thing. We could simply similar as with the harassment and diversity discussion in the IETF follow the example on the IETF who has now had a two-year discussion on meeting venue selection. And I think we should continue with that because if we want to have an honest, frank and open discussion about a free, open and secure Internet freedom of expression is crucial. And if that is limited by meeting selection we should change the meeting selection and not the Internet.

Farzaneh Badii: Thank you. So the meeting location discussion only if you want to write a statement just you volunteer to be the plan holder and write this up and then we can discuss it. The meeting location is going to be discussed as it - I have updated you on this. At the leaders meeting they came up with a very, very broad question which was should we consider democratic values when we select a meeting location and 70% said no. But the frame - the question was framed very badly. So and I knew that what NCUC wanted. So I said yes. But I was like one of the three that said yes to that. So now I have to go to the next agenda item. Okay Robin yes.

Robin Gross: Thanks Farzaneh. This is Robin Gross for the record. I just wanted to add one other point on to the discussion about our values. And this is more of operational not so much the high level. But, you know, ICANN provides a lot of opportunity for people to travel the world and see a lot of exciting and interesting places and meet exciting people from all over the world. And so it

really brings in a lot of people who then look for constituencies or stakeholder groups to join. But I want to say if somebody is one of those people who is really just here to travel we don't want you. We want people who are here to work. Thank you.

Farzaneh Badii: Okay great. Thank you for that. Yes (Gina) this is like (Gina) is the last person (unintelligible) on this right now and then we move.

(Yasmin Genushove): All right. Hi (Yasmin Genushove) for the record (unintelligible). And as for me it was quite a large concern coming here to this particular location for the meeting. And I can absolutely see your point about the inputs. And Stephanie brought up the question of the affiliations the noncommercial affiliation. And as we've seen these several failures during (unintelligible) time how do we check that who does that and if we do that there will be solid information what do we do with that? That's an open question.

Then finally as a newcomer I found a lot of information online. And I started working on this issue (unintelligible) I guess. But something that would be really needed is an individual mentor which a newcomer would be matched with and who could help them start with the first project because individual work is quite hard. It requires a lot of reading and many people are too intimidated to ask for assistance on the list for instance. And I also would like finally to propose that some activity tracking could happen so we can see if someone hasn't been active for let's say three years then they do not belong this noncommercial user constituency. Thank you.

Farzaneh Badii: Well (unintelligible) thank you very much. We have to go to the next agenda item. And it's a very interesting one. So Claudio is our support fellow no. So (support) fellow by NCUC and he has - he as the part of the travel support we ask for fellows to actually pick a subject or a topic and work on that until - and present during the meeting. So Claudio, go ahead.

Claudio Lucena: Thank you very much Farzaneh. Thank you very much. Thanks NCUC for their support and Milton also for the guidance during this period. We thought it would - it might be interesting to talk about a little bit on the development on the CCWG the Work Stream 2 jurisdiction subgroup had a lot of interesting developments. I'm not exactly sure of how many of you are actually following the discussions they have been quite intense lately to say the least. And there have been developments during the week also.

So I think the idea is pretty much to go through three points here. I have shared with Maryam a brief outline of three points I would like to touch here pretty much to set the scene. And then the idea is to understand why it matters to NCUC, the recommendations briefly. Special attention would like to give to the dissent which was something that interesting that happened for this discussion particularly and the updated state of things.

This as you might know the CCWG Accountability Work Stream 1 set for a time and other constraints a couple of issues that we're not pushing for Work Stream 2. And one of them was jurisdiction. The jurisdiction issue is in the court is embedded as a problem since the inception of any idea of transitioning the control or the steering of the DNS coordination functions to the community.

There are always be - there always going to be problems embedded in it. One jurisdiction the establishment and the incorporation of any institution in one jurisdiction evidently will always present some exclusively or privileges for that jurisdiction. And the community has been working very hard on trying to mitigate this. And this is exactly why it matters to NCUC because this privilege is at times can jeopardize this relation that is expected.

The dissents for example is built up on - built on a couple of arguments by Nigel Hickson for example that there is a legitimate concern that US (unintelligible) and possible interfere in ICANN ccTLD management. And that concern is reasonable. And another one a comment made by Milton as

insulation from the vagaries of US foreign policy or other laws and policy that would circumvent ICANN's accountability to its global multi-stakeholder community.

This – the working group has received incumbency of finding or analyzing the gap in jurisdiction to set a framework to fight the multilayer jurisdiction and to come up with possible alternatives. They formulated a questionnaire. They went through case studies. There are approximately 20 cases that were summarized for this task and finally elaborated a list of priority problems that should be tackled for this phase. And those priority can be summed up to two issues that would be tackled the OFAC licenses and the choice of law for the jurisdiction and for the venue.

The recommendations concerning OFAC have to do with the fact that the Office of Foreign Assets Control the United States which is the one that a brainchild the US administration that designs and deploys sanctions at times can discourage businesses related to ICANN. People from the sanction countries or special individuals more specifically or people from the sanctioned countries cannot not do business other - before ICANN can grant a license.

As it is now the registration - the registry agreement and both this I think I can make these two comments in together. The registry agreements and the registrar accreditation agreements they are the fact that ICANN does not necessarily have to seek this license. So one of the recommendations and I think it's an interesting move forward one of the recommendation of the subgroup is that ICANN not only seeks this license but employs the best efforts to guarantee and also about the transparency of the procedures and the communication with the registrars so the committee can over - the community overview all the procedure.

Apart from that another recommendation is - concerns the fact that some non-US registrars are in spite of not being subject to the OFAC jurisdiction or

the policies are applying them. So in this case the subgroup realized and acknowledged that they cannot advise the registrars. They cannot provide legal advice but they can raise awareness as to the fact that these registrars do not have to apply this OFAC (sessions) in their business transactions.

And one last recommendation and I think if accurately explored this last recommendation would have reduced a lot of tension during the discussions it concerns the general licenses. The group is recommending that instead of seeking a license for each case on demand ICANN employs its effort to seek license for a certain category of persons which in such a way amounts to a certain kind of the immunity of the partial immunity or of the tailored or customized immunity that has been the object of a lot of tension in the workgroup.

So the recommendation is for ICANN to seek this general licenses. And next the other issue that this subgroup focused on had to do with recommendations relating to choice of law and choice of venue. The contracts do not point to choice of law. And the subgroup came up with although they also recognized they cannot suggest the changes they can suggest that ICANN GNSO and the parties study the possibility of considering choice of law in various ways.

In fact on five categories the support - the supported choice would be a menu approach, a menu solution instead of pointing out or not pointing out at all ICANN would give an option or options maybe one - the subgroup is a little bit flexible in this case. They suggest one country in a region or a limited choice of countries in the region.

They also point out to the fact that the - this has to be analyzed as a cost of offering multiple jurisdictions and then subjecting different or similar registration agreement to different conditions but still there is the menu option as the supported one. And then they go on with fixed approaches like one single jurisdiction a carved out approach in which certain parts of the contract

should be submitted to a fixed jurisdiction and other parts of the contract can be carved out to a menu approach.

Another option would be the registry operating when it's incorporated. And also a possibility of a status quo approach leaving things as they are. And this could be done acknowledging that arbitration is a – arbitrators in the eventuality of litigation are in a better place - in a better position to deal with that. So that applies to registry agreements and registrar accreditation agreements.

Finally the last recommendation that stems from the subgroup from the report is a choice of venue provisions. Currently this choice is offered in the contract as LA, as Los Angeles. And the recommendations indicate or suggest that ICANN offer some more options in this issue.

I would like to raise finally a couple of words on the dissent. As you might know there were a few dissents. There's a report a recent one from the government of Brazil. And it refers to the issue of immunity. The government of Brazil in a dissenting opinion referred to the fact that the only thing the only issue and the only circumstance which would fulfill the necessity of the full accountability to the – for the Internet community would be carving out some kind of immunity.

And this is something interesting because it was the report has gone through a second reading. So I guess for the time being this is just not going to be exactly at the table. But if you followed yesterday's strategy you're going to see - and today's mailing list you're going to see that the issue is not at all finished. And that's what I said about the general license idea. In a sense the general license idea is some kind of immunity.

It refers specifically to a general license (unintelligible) in the OFAC domain. And that's of course tailored and customized. But the thing is that the OFAC problem is the only one that's concretely (raised) during the discussion. There

were mentions to eventual transport policy, or health policy, or trade policy that could interfere with ICANN's mandate when it concerns serving the global community but nothing concrete has been brought in this sense.

So I guess in this sense here that there is – I would like to acknowledge Milton's comment in the sense that we are not exactly talking about a dissent here if everyone agrees that this is a step forward. It might not have been the ultimate solution or the perfect solution for the case. Naturally there are going to be privileges in any – there is not - there is no such global jurisdiction model that fits this problem.

I don't think the immunity would be an unreasonable solution. The United States has policy that could accommodate that and the Brazil - the report that Brazil submits mentions for example the situation in Switzerland about the International Committee of the Red Cross and also the International Fertilizer and Development Center in the United States there are policy instruments that could be used for that.

But when we have to operate on consensus and we also have to take into consideration the political environment and make sure involved here I think it's pretty much easy to understand that this would not be a feasible situation. And then I think we're closer to the standards of operation in the IETF here. We're working with rep consensus and running code. And in the end of the day what we have on the report is running code.

The idea of what has been called along the process of partial immunity, or carved out, or customized immunity is still there. It's not in this work which is going to the next phase now. I don't think it's unreasonable. I think it would be an interesting solution. But then we would have to have different political conditions in the short term which is something that it's not feasible. No updates. No further updates about that apart from what we've – you've seen from the week. The report has gone through a second reading but it's still on the table in discussion in the (unintelligible). I mean…

Farzaneh Badii: Yes. So I…

Claudio Lucena: …not for the group.

Farzaneh Badii: …think the report had a second reading and it got adopted. I mean the beauty of ICANN is that even like government is they objected but if there is a – there government statement can be a minority statement. So I think it has passed on the second reading and hopefully we get the board to implement it.

So thank you very much. Is there any question on the jurisdiction issue? Does NCUC have any opinion on jurisdiction? Well no one is like raising their hand. So I won't…

Woman: (Unintelligible).

Farzaneh Badii: Yes.

Man: (Unintelligible).

Farzaneh Badii: Okay. Well thank you very much Claudio. Yes so if there are no comments on this we are going to – there is AOB if you want to raise any (comment)? Go ahead.

Man: If you're interested in the jurisdiction issue there will be a panel a cross community panel on that topic on Thursday afternoon at 1:30. And we miraculously succeeded in getting two NCUC people under the panel namely myself and Farzi. So we will be well represented. And it should be an interesting discussion to put it mildly.

Farzaneh Badii: There was nothing miraculous about it. We pushed for it quite hard. So okay well this was like the last meeting that I am chairing as the NCUC Chair. I just

wanted to thank you. It was a fulfilling year. And I look forward to work with you at NCSG. If there are no other comments then we can just go and do other things. Oh there's a comment.

Tatiana Tropina: Actually yes. Tatiana Tropina for the record. I rarely speak like this but I really want to thank you Farzi for chairing the NCUC for one year. I think that we had really lots of achievements. And I want them to be recognized like succeeding with additional budget request, succeeding with finally kind of almost finally confirming the final changes to the bylaws at the rating procedures, successfully operating executive committee and so n and good luck with the NCSG. And whoever would be elected I wish you guys on the EC and new NCUC chair that you just continue what has been achieved this year. Thank you.

Stephanie Perrin: Yes it is about you, Stephanie Perrin for the record. I just wanted to add A echo that and say you've done such an exceptional job and you haven't been able to come to the meetings. And this is proof we hear so much about people needing to come to the meetings. The work goes on whether you're at the meeting or not. And you have proven you've actually got all this work done. You've managed us you've run us without being able to attend so kudos to you.

Farzaneh Badii: Oh Rafik has a comment too which is about me.

Rafik Dammak: Yes it's all about you. Okay, it's Rafik speaking. I had the chance to work with Farzaneh when she was in the executive committee when I was a NCUC chair. It was a pleasure but it also can be sometimes painful because she is to - so active and she has a lot of idea. But I think we did a lot of work in the two years.

I'm really happy that finish it first with the bylaws. We've spent so much on that and I think that was a big step for us as NCUC. And to be honest I mean when I see what you did in the last year I'm really amazed because I don't

think I could do like you. You did so much. You continue to work. You tried many things. You even I mean even you get us to meet the GAC. I mean you - so I mean but I think it's quite important to highlight that because being a chair of NCUC or a chair of NCSG it's always a continuation of what was done before.

And you set the foundation for whoever would take over you in the coming days. And they need to remember that it's that you – we have the foundation to do more. And that's how we can continue to grow NCUC and make it more stronger. We are not going to take over ICANN but we really are doing our best. And you will start a new adventure as NCSG chair it will be also fun. I enjoyed the time because somehow we worked together in the last years and had a lot of discussion. And I'm looking forward in what you will do in the NCSG. I'm worried what you will do because I mean you will kind of overshadow whatever we did before.

Woman: You're going to (unintelligible) GAC or the stakeholder Farzi. Thank you very much.

Rafik Dammak: But just thanks again Farzaneh. And so we hope that we will party this week too. I mean it's not just about working. Okay thanks.

Farzaneh Badii: Oh there is another call is about me. Sorry I have - we have because I can't just cut people off. We're not the ones (unintelligible).

Renata Aquino Ribeiro: One way of shutting me up Renata. Yes actually I was ready to talk about Rafik. Yes I thank all EC and the newcomers. I have no – I haven't hidden how much I love – I loved being a NCUC newcomer. And I continue to tell people about NCUC and about what everybody does here. And so I guess yes there isn't – there aren't words for thanks for - that would encompass our experience.

And yes I was going to talk about Rafik because Rafik will do our first Twitter in May, so also giving a heads up to everyone. On 13 November he was man enough to accept a newcomer offer to talk via Twitter about NCUC. So we'll do that. And I hope you all can join us this experiment. Thanks.

Farzaneh Badii: Thank you very much. Sure if it's about me.

Arsene Tungali: Yes. I'm Arsene Tungali for the record. Yes thanks Farzi. And I can only echo what everyone said previously about the wonderful job that you did chairing the NCUC. And we look forward to, you know, towards you will be able to do within the NCSG as our new chair. Not to congratulate you team the EC as well because I believe they've been supporting you. They've been working closely with you in making sure you stand up as the true (unintelligible) that we had as NCUC chair.

So thanks for the team from all the regions. And we look forward to the incoming team the new chair of NCUC that will be elected. We hope to hear from the - about the results soon. And if there's some EC members that will be leaving we look forward to the new members that should be joining as well and please keep on doing the job. Thank you.

Farzaneh Badii: Thank you. Yes, no I did everything (unintelligible). Thank you for the support of the EC as well. It was great. It was a great year and I look forward to the NCSG Chair. Thank you guys. Bye.

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