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JURISDICTION SUBGROUP

Wednesday, January 24, 2018 – 19:00-20:00

ICANN Jurisdiction Subgroup Meeting January 24, 2018.

>> GREG SHATAN: Hi. It's Greg Shatan. We'll be getting started in just a couple minutes.

I see it's two minutes after the hour, we have a quorum as it were, and I see we have a couple of people who have to leave, if not early at least on time, and Aubrey who will have to divide her right brain and left brain at the bottom of the hour, so why don't we use this half of the hour as well as the second as well as possible.

So we have our agenda in the right hand, in the notes column. We'll begin with the welcome. And welcome, all, to this call, this second call. We are now being recorded.

Welcome again to the Jurisdiction Subgroup Meeting on the 24<sup>th</sup> of January, Meeting Number 52 and the second of the new year, and the second to review the comments received so far on the report of the Subgroup.

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Let's review the agenda. Short and to the point.

Administration as usual. Then a continued analysis of these comments, review and analysis. I sent these around a little bit before the call, Bernie also sent them around after the last call, so you should have them at least twice in your in box. Then we'll go to AOB, and adjourn until our next meeting.

Any comments on the agenda? If not, we'll go right into admin. Okay. Please let me know if my sound is good. I'm using a land line phone in an experiment rather than the cell phone I've often used in the past.

So let us go to changes in statements of interest. Does anybody have a change in statements of interest? I see none. I think I mentioned last week that I've joined the law firm of Moses and Singer in New York. I needed to find some place for my scale model statue of Michelangelo's Moses. That is my change to statements of interest, and also I'm on the Board of -- and alternate rep of the chapter to Nuralo. Need to keep busy. So anybody else? I see none. Do we have any phone only participants? Or audio

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only participants? I'm not hearing any and it looks like we don't have any people identified only by phone numbers in Adobe Connect so that brings us to the meat of our session, and why don't we pick up where we left off in this document. We went through the OFAC, apologies for lack of page numbers, but that's life. We went through everything up to OFAC rather, the choice of law, choice of venue issues and then several general comments.

So in this case we pick up on roughly, I think it's Page 6. So if we could scroll to that page, it's actually Page 7, an all dark green page. I don't see a row number. It's 4.06. Sorry. Now I see where the row numbers are. Just a note that again, I'm using a tablet with Adobe Connect which does not arrange hands in the queue by who put them up first, so help me out if there are multiple hands. I'm still seeing the first page and not Row 4.06. There we are. I see that the page numbers change a bit depending on what version of the document you are using, so row numbers are a more stable way to work.

So this is the ISPCP's comment, the last in the general

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group. The jurisdiction group has done an excellent job of dealing with some of the challenges that come from U.S. jurisdiction. ICANN must maintain its global mission above all else. U.S. law makes that difficult in some circumstances, by placing sanctions on certain foreign governments, which ICANN is required to obey. The subgroup has offered a set of recommendations are sensible ways of approaching that difficult set of circumstances and we support them. In particular, we are supportive of ICANN actively engaging in the process of assisting contracted parties in seeking waivers from the U.S. Treasury's Office of Foreign Assets Control, OFAC. This seems to be a sensible way to uphold ICANN's mission despite the requirements of the U.S. government. So this, as I said, this dark green and our dark green is a code for essentially full support for the report as it is. I don't see any changes that would be occasioned by this. Any comments on this comment before we move to the next row? Seeing none, we'll move to the next row and the true beginning of the OFAC section.

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Beginning with the ALAC, the ALAC very much appreciates the work done by the Subgroup, and the recommendations it has published for public comment in November 2017 to tackle ICANN's jurisdictional challenges. And the ALAC agrees with all consensus recommendations as put forward by the Subgroup. The ALAC especially wants to highlight the following recommendations. I guess we'll get to the highlights as we get to the next section of comments. These are kind of the overall comments on OFAC and the RAA. Any comments on this? We have a couple of ALAC folks. And I am an ALAC folk at least in part as a chapter board member, but I think it speaks for itself so far. So we can move to the business constituency.

The BC supports the recommendations to address issues relating to sanctions administered by OFAC. In order for all global internet users to participate in ICANN processes and contracts, ICANN should increase its commitment to seek and obtain appropriate sanctions relief. In particular, the BC supports the fourth recommendation, so that ICANN will commit to apply its best efforts to support participation in

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ICANN meetings by business users and registrants from countries that are subject to sanctions. That should be interpreted to commit the ICANN legal team to vigorous pursuit of relief, whether through specific or general licenses or waivers.

These recommendations should be implemented regardless of whether the current U.S. administration seems disinclined to approve OFAC license requests. What's important is for ICANN to be consistent and persistent in applying for sanctions relief no matter what government is in place at the time.

Again, seems like full support and I would underline the vigorous pursuit of relief concept in there, just another way of expressing our consent. If there are no further comments there, we can move to the NCSG.

The NCSG strongly agrees with the proposals of the subgroup to overcome the accessibility issues that U.S. sanctions create, and support measures being taken to provide relief for those who are not on the U.S. government's Specially Designated Nationals list. We

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support all recommendations related to OFAC sanctions. However, we believe that the following improvements could significantly increase the value and clarity of the OFAC-related recommendation in the report. And the specific recommendations are further down in this template which slices everything up. Any comments on this?

So we see the contracted parties with their joint submission. We welcome the subgroup's effort to investigate issues between ICANN's goal of administering the internet as a neutral global resource and the possible imposition of sanctions by the U.S. or other countries. We support the report's recommendations with regard to OFAC licenses and the suggestion to provide clear information about the limited applicability of OFAC restrictions for non-U.S. based parties under contract with ICANN.

Again, this seems like strong support. I think in the interest of time I will not ask for comments on the dark green rows, because they really are just support. I mean, not asking for changes or making suggestions or the like, but are really just kind of a thumbs up. But I will ask for

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comments on each of those green lines as well, just in case there's something in there that people want to comment on.

Next we come to a yellow row from Russia.

Recommendations that are to make ICANN to take any steps to reduce the effect of OFAC sanctions against foreign governments are noted with appreciation as well, but can be recognized only as a first attempt to handle the multi-layered objective of ICANN jurisdiction challenges.

Taking into account the high risk of OFAC sanctions against foreign governments would harm large number of ordinary internet users and businesses in sanctioned countries, we consider the recommendations proposed by the Subgroup for the corresponding ICANN actions are limited in the ability to tackle possible negative effects since the principle of best efforts provides no guarantee that ICANN would be able to adequately address the problem.

Any comments? This is line 5.06. Kavouss.

>> KAVOUSS ARASTEH: [inaudible] to support this in particular [inaudible]. The whole thing is [inaudible]. We have to see whether there will be any problem and



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[inaudible] in ICANN 60 [inaudible] the Working Group has been done, we believe that it is not sufficient and we need to further [inaudible] and we need to see whether it is [inaudible] or not. If not, we have to take any actions. We support this proposal and [inaudible]. Thank you.

>> GREG SHATAN: Thank you, Kavouss. Anyone else? Seeing no one else on this line, let's move briefly to the next line, 5.07, comment from the I2 coalition. Are there any comments on this comment?

Seeing none, we'll move on to Line 5.08 which is a comment from the ICANN Board. On the recommendation for ICANN to conform to, to confirm to non-U.S. based registrars that OFAC rules do not apply to their operations solely by virtue of a contract with ICANN, the first portion of the recommendation does not appear to be an issue based on ICANN's understanding. As noted in the recommendation, ICANN is not able to provide legal advice to registrars on which laws actually apply, and any confirmation would have to be provided alongside a note that this should not be considered as legal advice from ICANN. It is a registrar's

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obligation to understand that laws to which they are subject and what is necessary to be in the Registration Agreements, or what rules govern the registrar's actions with parties other than ICANN.

For the portion of the recommendation that states ICANN should also explore various tools to remind registrars to understand the applicable laws under which they operate and to accurately reflect those laws in their customer relationships, it is not clear what other tools the CCWG-Accountability is considering outside of ICANN's confirmation. Contracted parties already have this obligation. If further tools have already been considered by the CCWG-Accountability, it would be helpful to understand what those are.

Any comments? If there are none from the group, I have a couple of comments. I think ICANN, the board comment is particularly important because this is a, they're commenting on things essentially we are asking ICANN Organization to do. I think I would say perhaps if they protest too much because we did note that we can't give, that they can't give

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legal advice and that this shouldn't be considered legal advice if they give it. It's just, the idea is essentially kind of an education awareness concept.

As far as exploring various tools, we're really, we're not operating at the implementation level here. If we have some tools such as webinars or the like, we can certainly indicate them, but I think that's, that would only be kind of a [indiscernible] thing as well.

So the idea that they've, they seem somewhat miffed.

Perhaps they really aren't saying anything different from what we're saying, but they've phrased it in a way that they're taking issue with it. Hopefully we can iron that out because ICANN implementation of this recommendation is critical. It won't happen without ICANN org's cooperation and understanding. And we may want to explore some things with the board or staff to make it clear that we're all, we seem to be talking about the same thing, and maybe turn this from yellow to green. Any other comments? I saw Farzi's hand up, but then I see some notes in the chat, so I think we covered what she was going to say between what I said and

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what she said.

So let's move on to the next INTA which is also dark green and supports our recommendation across the board. Any comments on INTA's comment? If there are none, I will move on to Line 5.10 from John Poole. There's also a whole hearted agreement with our recommendation which he notes are only common sense and should have been addressed long ago. He also says that if the U.S. proves it cannot accommodate ICANN and its stakeholders after these recommendations are implemented then ICANN will need to be relocated to another jurisdiction other than the U.S.

I wanted to point out even though there's agreement, there's also other opinion in there. I would expect no less from John Poole.

If there are no comments here, I will move to 5.11, a comment from the Middle East Space, which is also support for our recommendation. Anything here?

ALAC again has general support. Here we've actually moved into 6.01 which is the General License discussion. ALAC, yes? Tijani, I see your hand up.

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>> TIJANI BEN JEMAA: Thank you very much. I had my hand raised. As for the Middle East comment, you didn't display here the whole comment of course, but we said something very important in this comment. We said that we should [indiscernible] but you said at the end that ICANN should take the necessary action to, I don't have the text here, to make, if those solutions don't serve the problem, ICANN should find the right solution to solve the problem. OFAC shouldn't [indiscernible] ICANN from doing its job. This is the meaning, so I prefer that you display this here because here it is only, yes we support, of course.

>> GREG SHATAN: Thank you Tijani. The Middle East comment was generally on the OFAC and RAA the Line 6.10 when we get to the greater specifics that you've just mentioned and we'll certainly note them there.

>> TIJANI BEN JEMAA: Thank you.

>> GREG SHATAN: Thank you, Tijani. Next we have the BC, which again expresses full support, basically the language that was read in full the first time I went through the BC comment. And if there are no comments on the BC comment

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we'll move to NCSG which is light green, so I will read it out.

The NCSG strongly agrees with the proposals of the Subgroup to overcome the accessibility issues that U.S. sanctions create, and support measures being taken to provide relief for those who are not on the U.S. government's Specially Designated Nationals list. We support all of the recommendations related to OFAC sanctions. However, we believe that the following improvements could significantly increase the value and clarity of the OFAC-related recommendation in the report. And here are the specific improvements that were indicated the first time we read the NCSG's comments here in Line 6.03 set out specifically.

First, ICANN should prioritize obtaining one or two General OFAC licenses. Therefore, we suggest that the recommendation to obtain General OFAC licenses be more clearly prioritized in the report, and measures for those not on the list.

And in our view, this is one of the most important recommendations that ICANN should act upon, we believe that

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the report should propose a detailed timeline for the implementation of this recommendation by ICANN.

Any comment especially on these two suggestions since these would be changes to the report, if we decide to take them? Particularly is there anybody who would object to or have questions about changing these? They seem relatively noncontroversial, although there may be those who don't want to say any more than we said. Seeing no comment, this is one I think we should, you know, keep an eye on and pay attention to as we go through, since agreeing with this comment would change the report, at least it would tweak the report in a way that would put more heat under ICANN to get this done, at least a few more degrees.

I see that David McAuley questions these, I assume that means you think we struck the right balance the first time. David says, I cannot dial in yet but we specifically agreed that the general license effort has to be preceded by an examination of how and how hard it is to do. I'm not sure that that is at odds with the recommendations here. Of course it means the timeline would need to take into account

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sufficient time for that examination.

So perhaps when we come back to the report and this comment line we can see whether there's agreement to make any change. Maybe it's a change that's not quite as strong as NCSG wants, but maybe a little more pointed than we have, but we'll see what the consensus is among the group.

[inaudible], I see your hand is up.

>> I understand where David is coming from, because it was not, we actually, [indiscernible] does not mean we do not take the steps, the preparatory steps to get the OFAC license, but the purpose is to address this issue as quickly as possible. So that's why it's a combination of prioritize and come up with a timeline. So I don't think by any means they mean that ignore one or two steps of our recommendation.

>> GREG SHATAN: Thank you for clarifying that. That makes sense. Certainly one way to kill a project is to commission a series of studies about it. It's also a way to get a project done. But it's a balance that has to be struck as well. Anything further on the NCSG comment line 6.03? If



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not, we'll move on to 6.04, which is in white because it's unclear how this should be classified.

This is from the contracted parties. We welcome the Subgroup's effort to investigate issues between ICANN's goal of administering the internet as a neutral global resource and the possible imposition of sanctions by the U.S. or other countries. We support the report's recommendations with regard to OFAC licenses and suggestion to provide clear information about the limited applicability of OFAC restrictions for non-U.S. based parties under contract with ICANN.

This speaks kind of to the educational point, so I guess I would classify this as dark green on education but not put it in the general license area at all. That would be my recommendation for classifying that. Any comments on the contracted parties' comment in 6.04? Seeing none, I will move on to Russia, 6.05, a yellow, I will read this.

Recommendations that are to make ICANN to take any steps to reduce the effect of OFAC sanctions against foreign governments are noted with appreciation as well, but can

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only be recognized, we'll note this is the same comment as before so there's no reason for me to read it out a second time. Essentially a concern that best efforts isn't good enough, and provides no guarantee that ICANN would be able to adequately address the problem. And we had, I will note that Kavouss commented on this the last time we read this so that should, his comment should be noted again for this line as well.

Kavouss' hand is up. Please go ahead.

>> KAVOUSS ARASTEH: I [indiscernible]. Thank you.

>> GREG SHATAN: Thank you, Kavouss. If no further comments then to the I2 Coalition, which is again the same comment as they had before with general support for all of our recommendations. Nothing specific on the general license. I should note the first sentence of the I2 coalition has a bit of opinion in it, which says I2 coalition understands that codifying that the State of California in the United States of America is the permanent jurisdictional home of the non-profit organization of ICANN brings with it some challenges.

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Some might say that seems to assume a level of permanence that we as a group have not assumed, but I felt it was important to point that out just as it was important to point out other opinion kind of in the opposite direction from Mr. Poole. If there are no further comments, I will move on to the board on 6.07 on the general license.

Regarding the fourth component, pursuing OFAC general licenses, the board appreciates the recommended approach of an initial step where ICANN studies costs, benefits, timeline and details of such a process. The board also requests that the opportunity costs be identified in that study. The study may also be aided by a further problem statement from the community to identify the scope of issues that the CCWG-Accountability believes will be solved through a general license.

During deliberations, details were provided by ICANN org to the Subgroup regarding some concerns regarding seeking a general license. For instance, there is no application process to seek a general license. A general license requires a change in regulation by the U.S. Department of

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the Treasury or a change in legislation. As the report notes, the regulatory process may be a significant undertaking with no guarantee of success from any such lobbying effort or expense.

The second part of the recommendation, regarding removing friction from the transactions in the event that there are significant obstacles to pursuing general licenses could be clarified. If the CCWG has further recommendations beyond what is laid out in the report, those would be beneficial to state, as there's no basis against which to measure if ICANN can successfully implement this part of the recommendation. Any comments here?

Well, we can perhaps get more from the co-chairs an idea of how the, how to prioritize that, do the problem statement, things like that to the extent we have it and we can also discuss that within the group to see if we have anything further to clarify. A lot of what issues the board points out are issues we already pointed out ourselves. I think specifically what is additional here is the opportunity cost and the problem statement suggested in the first paragraph.

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The second paragraph doesn't say anything new. The third paragraph asks for some examples or recommendations about how one might remove friction from transactions in the absence of a general license. If we have any bright ideas here or at the CCWG level we can certainly put them in. I don't know if we actually had any specifics, but we should review our point.

I see a question from Jorge in the chat, what is exactly meant by opportunity cost? I don't know if we have any MBAs. David McAuley says, I think what would be lost not spent on, by spending money on the general license. So I think that's a fair definition of opportunity cost, at least for the purposes of this discussion. If we're actually going to, they may just want us to invite an opportunity cost to be identified in the study and not as defined, the concept.

So basically the question is what would I be giving up in terms of, you know, time, money and effort that could be spent on other things if they spent their time, money and effort on getting a general license. They want to make sure

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that that shows up in the study, so they want us to invite them to do that.

So that is what it is. Any comments on this point? Farzi, I see your hand is up.

>> FARZANEH BADI: Yes, I just wanted to make a general comment. It seems like the board is expressing hesitation. I mean, I can see that they're supported but it's always very, always, it's conditional support, which makes me feel a little bit uneasy because they're the ones that should approve this to be implemented. So in our changes we should be careful and also maybe we can have a meeting [inaudible] this is something possible. But from what I see I'm a little bit concerned from their answers, and also I think a lot of these things that they are raising we've pointed them out. I don't know why like the issues statement. We have so many materials, and we have so much about the issues that people [inaudible], so I don't know where they are coming from, what they're reading that they come up with these comments.

>> GREG SHATAN: Thank you, Farzi. I have a similar

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feeling. Bernie has his hand up. I will get to him in a second. It's kind of like they're driving the car but with the parking brake still engaged not wanting to seem like they're fully behind this. So may this be a necessary caution that a board exercises over, the momentum of those elsewhere in the chain, but I agree, it's notable, and I would also say that as far as a problem statement, as Farzi notes, we've already written quite a bit here and perhaps elsewhere. Perhaps all we need to do is revise what we already have to identify a section as kind of the problem statement, if you will, to make it clear, even if it's just kind of hammering it home. What is kind of the elevator pitch version of the problem so that we can meet that criticism. Bernie, please go ahead.

>> BERNARD TURCOTTE: Thank you, Greg. Just a general comment on maybe what would address some of why the board is presenting this this way. Let's not forget that in [indiscernible] one we spent a lot of money to get those changes done, and I think the community in certain aspects of this was very critical at the amount of money we spent, a

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lot of this coming from the reserve fund.

And I think that it's a little bit of the once bitten twice shy analogy. The board wants to be very careful and wants to be also very clear that these kinds of projects, if this is what the community wants, will have to be part of a full budget package, and that needs to be approved by the community. And you know, obviously as is stated here, when you are working in a regular budget you do have to make tradeoffs. So I think it's a safety and caution here to explain that motivation here. Thank you.

>> GREG SHATAN: Thank you, Bernie. That's a very helpful reminder, and you know, something we can talk about in more detail when we're kind of through this process and maybe at the CCWG level. But I think as Kavouss noted, nothing is free, and, but I understand that when the community gives advice that results in spending a huge amount of money and then the community criticizes ICANN for spending a huge amount of money, there could be a certain amount of irony in that. Kavouss, please go ahead.

>> KAVOUSS ARASTEH: Yes, I think the question I have should



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we worry about the budget of ICANN or should we worry about the [indiscernible] difficulty that those OFAC affected countries have. Which area we should be worried about? Millions of people affected by that or [indiscernible] the budget of ICANN. I think the views of ICANN [inaudible] from the very beginning and all of them they are mentioning the, in the call by the ICANN person, ICANN staff and [inaudible] in fact some of the [inaudible] already taken and included the recommendation and put [inaudible] in that, so I don't see very positive [indiscernible] from ICANN [inaudible]. Thank you.

>> GREG SHATAN: Thank you, Kavouss. Obviously there's a balancing act between costs and goals and going bankrupt, not that ICANN is going to go bankrupt, but that's what happens when you try to achieve your goals without paying any attention to costs. But this is a bigger issue than us, and we'll see what effect if any that has on this and the bigger issue of kind of costing this and the other eight tracks is something that I think, you know, falls more, overall at the feet of the plenary and thus the chairs.

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And I see some good comments in the chat from Farzi and David which in the interest of time I won't repeat, but I note.

So moving on, next we have Line 6.08 from INTA. The Subgroup recommends that ICANN take steps to pursue one or more OFAC general licenses by first making it a priority to study the costs, benefits, timeline and details of seeking and securing such licenses. The subgroup then recommends that ICANN proceed to secure such licenses unless its study reveals significant obstacles, in which case the community should be consulted about how to proceed.

INTA supports the recommendation that the issue of general licenses should be studied. However, INTA does not support the recommendation that this study be a priority. Given ICANN's current budget and funding concerns, ICANN should have greater discretion to set priorities, taking other potential priorities into consideration. Further, in INTA's view, the reference to significant obstacles is ambiguous and the subgroup's report should be amended to provide that ICANN shall not be required to take more than commercially

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reasonable efforts to obtain general licenses. That would contrast with best efforts, by the way. In INTA's view, ICANN should have the discretion not to pursue general licenses if the process is unreasonably onerous for the organization.

Any comments on INTA's comment? Seeing none, move on, we have a load of dark green comments I will just note briefly. John Poole again wholeheartedly agreeing.

The Middle East Space here, I will just note more specifically, specifically supports the recommendation that ICANN take steps to pursue one or more general licenses in connection with the U.S. Department of Treasury in connection with DNS, related transactions, and if unsuccessful ICANN will need to find other ways to enable transactions between ICANN and residents of sanctioned countries to be consummated with a minimum of friction.

ALAC also is in support, and nothing further in this comment other than full support at this point. And so we can move on to the BC, anyway the BC also has full support.

>> Greg, line numbers please.

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>> GREG SHATAN: Line number 7.02 for the BC, ALAC was 7.01 and we're now into a new subsection as these are new comments on the new GTLD aspect of this.

Next is the Line 7.02.

NCSG again strongly agrees, nothing further in this line.

The charter, sorry, the contracted parties Line 7.04 also support recommendations. Anything further on these before we get to Russia, which I will read out.

Russia 7.05, recommendations that are to make ICANN to take any steps to reduce the effect of OFAC sanctions against foreign governments are noted with appreciation as well, but can be recognized only as first attempts to handle the multi-layer objective of ICANN jurisdiction challenges.

Taking in account the high risk that OFAC sanctions against foreign governments would harm large number of ordinary internet users and businesses in sanctioned countries, we consider the recommendations proposed by the Subgroup for the corresponding ICANN actions are limited in the ability to tackle possible negative effects since the principle of best efforts provides no guarantee that ICANN would be able

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to adequately address the problems.

This is the second time I read this. We'll have to consider what changes this might suggest and whether there's a consensus to make any changes, and also we may want to dig deeper into the idea that OFAC sanctions harm large number of internet users in sanctioned countries. I'm not agreeing or disagreeing with that point, but it's just not fleshed out here. And since that's the basis for their comment, it's something we may want to explore.

Next we have the I2 coalition line 7.06 which is again general support and then if there's nothing further on that, oh I see a hand from Kavouss. Please go ahead.

>> KAVOUSS ARASTEH: Yes, maybe you kindly qualify your [inaudible] some comments relate to some interpretation [inaudible] comments [inaudible] if it's a [inaudible] make some comments in one way or another. So I am not [inaudible] nature of the comments [inaudible] action as a participant or taking action as a [inaudible]

>> GREG SHATAN: Thank you, Kavouss. I'm not taking any positions. I'm just pointing out areas where we may want to

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have further questions, especially with those that are light green or yellow that might require further work. I think it's important to highlight what further work or consideration we might need to make, and of course I'm stopping for each one of these to see if there's any comments from any of the participants, and if anybody disagrees with anything that I'm saying, which I don't think in any case I've taken a position on anything. You know, please say so, but I think it is important as we go through this to take some note of places where we're actually going to have to come back and do some work. Anything further?

>> KAVOUSS ARASTEH: Yes. Again [inaudible] and I'm just mentioning that yes a comment [inaudible] yes, I agree with that, but our position is that [inaudible] taken then [inaudible] any positive and [inaudible] then you have to take action, if this vote is already [inaudible] then it goes to community in order to take further action so that is in line with the report. So [inaudible] Russian proposal is as I'm explaining now and as explained in the ICANN [inaudible]. And sometime after implementation if it

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doesn't develop into a positive result, then we have to take other action, so not directly [inaudible]

>> GREG SHATAN: Thank you, Kavouss, for clarifying. So if there are no other hands here, we can move on to the next line, which is the ICANN, after the I2 which we've covered as full support in 7.07, ICANN Board in 7.07 in the light green attitude.

As ICANN Organization has discussed with the group, ICANN has a regular practice of applying for specific licenses for proposed registrars as well as registry operators, except those subject to individual sanctions. These portions of the recommendations are codifications of the existing practice and can be implemented.

ICANN Organization also as a regular practice remains in contact with the applicants for which a license is sought. The Subgroup provides commentary on the experience of new gTLD applicants for which ICANN needed to apply for an OFAC license, and even suggests that ICANN had not informed an applicant that an OFAC license was being sought. While the statements surrounding ICANN Organization's interaction with

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applicants may not be correct, we concur with the CCWG-Accountability on the broader issue that ICANN organization should strive for open communication with applicants on potential OFAC issues and license status. ICANN seems to be taking exception with our narrative, the way we approach it. We may not need to make any change at all, maybe we can just state that we have been informed, rather than stating its effect.

And let's move on to INTA Line 7.08. The Subgroup takes issue with language in the applicant guidebook for the new gTLD Program to the extent that it is similar to the above discussed language from RAA in that it provides that in the past when ICANN has been requested to provide services to individuals or entities that are not SDNs, specially designated nationals, but are residents of sanctioned countries, ICANN has sought and been granted licenses as required. In any given case, however, OFAC could decide not to issue a requested license. The subgroup again recommends that ICANN commit to applying for and using best efforts to secure OFAC licenses for all such applicants if they are



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otherwise qualified and are not on the SDN list. INTA agrees that ICANN should not have unfettered discretion to refuse to apply for such licenses, but has concerns that ICANN not be hamstrung in its ability to carry out its other mandates. As above, INTA recommends that the term otherwise qualified be replaced by otherwise approved or otherwise acceptable. INTA further recommends that the best effort standard be reconsidered and that a less onerous standard of commercially reasonable efforts or reasonable best effort be recommended by the Subgroup.

Any comments on this comment? So I think there's two takeaways from this one. One is whether the wording otherwise qualified should be changed or otherwise clarified; and again, the issue of the level of best efforts or reasonable efforts, that should be given. Just to get us through Line, the last seven rows in grouping 7 we have the ISPCP, John Poole and Middle East Space all with specific support. And again, Middle East Space I will note has specific support for the recommendation to commit to applying for using best efforts to secure an OFAC license

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for all applicants for registrar accreditation or registry in countries subject to U.S. sanction if they're not on the SDN list and that the ICANN be helpful and transparent with regard to the licensing process during that process.

So that takes us almost all the way through, unfortunately not all the way through. We have about three more pages left and as I should note, there are three more meetings left prior to delivering a final report.

I would like to make two suggestions for how to move forward. One is for our last three meetings to move to a 90-minute call, and second is when we make our, essentially our second reading of the comments, and we'll need to finish up the first reading of course, but when we make the second reading, we will need to, we should do it with one eye on the comments and the other on our report, and make changes or discuss changes in the report as we read the comments. Because right now we're kind of reading the comments but only relying on our memory of the report. So the next time around I think it should be, there should be some drafting, or at least drafting notes being taken directly to the

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report for any changes we might want to make. And we'll need to see if there is a consensus to make any of the suggested changes.

So I think that with 90-minute meetings and good participation we should be able to deliver a final report with any tweaks and edits that the group agrees broadly should be made to our draft report. Kavouss, your hand is up. Please go ahead.

>> KAVOUSS ARASTEH: Yes, Greg, we see the next week [inaudible] subsequently 90 minutes, it depends on the [indiscernible] having 90 minutes, that with the next meeting [inaudible] 90 minutes but [inaudible]

>> Greg, if you are speaking we're not hearing you.

>> GREG SHATAN: Sorry, I was speaking to the mute button. I was just saying to Kavouss' point I think I understand underlying that is the idea that if we have 90 minutes in each meeting, work expands to the time allotted to it sometimes, and so we'll want to be efficient. And if we can get through our first 90-minute meeting and get far enough along that our other meetings can be 60 minutes, that would

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be great.

I think for process we should book the meetings as 90-minute meetings in the calendar and we can reduce them as necessary. That will also give us some, you know, time for discussion. I think a couple of these things may go into discussion. But if we can wrap up without having to use all three meetings at 90 minutes, that would be great.

So I encourage everyone to read the remainder of these comments that are excerpted, and if there are any comments that you made or that you read of others where the excerpt may have missed some specifics or some color, you know, please bring that. Also I think we're still waiting for the formal translation of the French comments and we don't have that yet.

>> BERNARD TURCOTTE: That is correct.

>> GREG SHATAN: So hopefully we'll get that soon in time for our next meeting, in time to prep for our next meeting. Bernie, maybe you can get an ETA on that please or an ETD?

>> BERNARD TURCOTTE: We have resubmitted it. There was some administrative snafu on our end. It has been

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resubmitted and we are working on getting an ETD for that.

>> GREG SHATAN: Okay. Very good. Okay. So there's that, and we'll see if there are any straggler comments that have come in. I don't believe there are, but it's always possible someone would try to catch the caboose on this particular train. In any case, I thank you all for this call. We are heading toward the top of the hour. We will have the call, our earlier time of 1300 UTC, and that will be going for 90 minutes on the last day of January. And so I look forward to that call and I will call this call adjourned. Thank you all, and good-bye. Have a great afternoon, evening, night or even morning depending on where you are. Good-bye.

>> CHERYL LANGDON-ORR: Good morning, Greg, Bye.

>> GREG SHATAN: Good morning, Cheryl. Bye.