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JURISDICTION SUBGROUP MEETING
Wednesday, January 31, 2018 – 13:00-14:00

Wednesday

January 31, 2018

Jurisdiction Subgroup Meeting Number 53

[Captioner standing by]

>> CHAIR GREG SHATAN: Good morning, all. This is Greg Shatan, we will be getting started in just a minute.

>> BRENDA BREWER: This is Brenda. Would the phone number ending in 8222 please identify their name for the attendance. Oh, I see, David. Thank you!

>> Why don't we get started, huh?

[This meeting is now being recorded]

>> CHAIR GREG SHATAN: Good morning, good afternoon, good evening, and good night, especially for those who might be here at 5:00 AM from the west coast of the U.S.

Welcome to the jurisdiction call, the 31st of January at 13:00 UTC. The agenda is in the notes pod and we'll go over it first. After review of agenda, which we're doing now, we'll go to the administrative minute, and then proceed to our continued analysis of the comments, which will be completing the initial review of the document, starting with line 8.01, and then going back for a second pass with our report in front of us as well so we

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can suggest whether any changes may be necessary and a subject of consensus agreement in the group that those changes should be made. That will be followed by AOB and then we'll adjourn to our next meeting on the 7th of February, hopefully with work being done in between.

So I'll ask first if there are any changes to statements of interest. Hearing none I will if there are any audio only participants. Also hearing none and seeing no phone number participants, we can proceed. And just recall this is a 90 minute call. Hopefully we'll make a great deal of headway both in our first and second reading. So we will pick up and as before for the dark green items, maybe we can do we have those oh, the chart is up. Sorry, I'm on a tablet once again so some things work a little bit differently and unfortunately the captioning pod does work on the tablet version.

We'll pick up with 8.01 and as before for the dark green items we will just note they are in full agreement with the consensus recommendation. That brings us to 8.02, also from the BC on the OFAC license issue for Registrars, also in support, as is the NCSG and the contracted parties.

Which takes us to 8.04 from the Government of Russia. I'll read this out. 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 as only the first attempt to handle the multi level objective of ICANN challenges. Taking in account the high risk that OFAC [reading] would harm large number of ordinary Internet businesses and users in sanctioned countries we consider the recommendations posed for 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.

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Are there any comments on that comment? Which I think we have heard before the way this is sliced up. Sometimes the comments are repeated so they can be seen in each subsection.

So no comments on that, we'll turn to line 8.05 from the Internet infrastructure coalition, which is also in agreement with this recommendation of the group. That takes us to 8.06 from the Board which is in light green, and thus in light agreement. I'll read this out again. 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, if they are on the SDN list. These portions of the recommendations are, therefore, codification of existing practice, can be implemented.

ICANN organization also as a regular practice remains in contact with 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 with an OFAC license was being sought. While the statements surrounding ICANN organizations interaction with 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.

Any comments on this comment? Seeing none, I'll move on to the INTA comment in yellow. INTA, therefore, recommends that the best efforts standard be reconsidered and that a less onerous standard of commercially reasonable efforts or reasonable best effort be recommended by the Subgroup to ensure that ICANN may exercise reasonable judgment if pursuit of a license becomes unreasonable onerous for the organization in a

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particular case. As a matter of transparency, should ICANN exercise such judgment regarding an application for an OFAC license and terminate an application process, such reasoning should be well documented and available to the community on request.

INTA also recommends that the meaning of the term quote/unquote otherwise qualified be clarified. It is unclear whether an otherwise qualified applicant is one that would otherwise become a Registrar or could still be rejected by ICANN on other grounds. INTA suggests using the term "otherwise approved" or "otherwise acceptable." This will more clearly indicate that ICANN has decided that the applicant should become an accredited Registrar, but for the need for an OFAC license.

Thus, the language would read, require ICANN to apply for and use reasonable best efforts or commercially reasonable efforts to secure an OFAC license if the other party is otherwise approved to become a Registrar and is not on the SDN list.

Any comments on that?

I see Kavouss is having some phone problems. Sorry about that. I see a hand from Steve DelBianco. Steve, go ahead.

>> STEVE DELBIANCO: Thank you, Greg. It's Steve DelBianco. I will leave it to the lawyers.

[The host has left the meeting to speak to others and will rejoin soon.]

>> STEVE DELBIANCO: Host has left the meeting is the message I got.

>> CHAIR GREG SHATAN: I think Bernie, the operator has gotten [indiscernible] so we are here.

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>> STEVE DELBIANCO: Thanks, Greg. So the best efforts versus reasonable [indiscernible] I'll leave it to the attorneys on the call to decide if we need to that. But with respect to "otherwise qualified," this comment gives concern that an aspiring Registrar may need to attend [indiscernible] and may even need to attend ICANN meetings or may even need to sign a non disclosure agreement or non suit agreement with ICANN prior to them even being approved as a Registrar/Registry. So there's a lot of interaction with ICANN that could be prevented by a sanction such as OFAC and we will not at that point in time know whether they would otherwise be approved to become a Registrar or Registry. I don't think the language "otherwise approved" will work, I think "otherwise qualified." They are at least potentially qualified at that point. Thanks, Greg.

>> CHAIR GREG SHATAN: Thanks, Steve. A question for you, the other alternative suggested by ICANN or by INTA rather was "otherwise acceptable, otherwise qualified" is where we started out. What do you think about "otherwise acceptable?"

>> STEVE DELBIANCO: I think the only criteria is qualification, so "otherwise potentially qualified" might be the right way to do it. Because the word "acceptable" not sure what that means. Qualified means something with regard to a party who has to satisfy all of the qualifications for a Registrar, Registry, or privacy proxy service provider.

>> CHAIR GREG SHATAN: Steve, do you have any thoughts on how to meet the concern of INTA that an otherwise qualified applicant could mean one rejected by ICANN on other grounds?

>> STEVE DELBIANCO: I think "otherwise potentially qualified" leaves the room to say that at the point to which we are interacting with this party, they are potentially qualified. If acceptable is deemed to be more acceptable to the group, then that's fine, too. I just don't think we want to use the word "otherwise approved" which is what INTA has in the

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very last line of the yellow line. "Otherwise approved." At the point of this interaction when the sanctions could [indiscernible], they are not approved yet.

>> CHAIR GREG SHATAN: Well, now, I guess, and I'm not a sanctions lawyers, so at what point in the process is the OFAC license applied for, in fact? And I don't know if anybody on this call actually knows the answer to that question. I guess you surmise there could be agreements during the process.

>> STEVE DELBIANCO: Right.

>> CHAIR GREG SHATAN: Of the OFAC license.

>> STEVE DELBIANCO: Yeah, Greg, just as an example if we were to open another round for new top level domains, parties that want to apply, interact with ICANN, sign agreements with ICANN to enter the application process, and at that point we have no idea if they're going to be approved and yet they may because they are interacting with ICANN, doing business with ICANN, and they may actually be subject to sanctions. Does that make sense?

>> CHAIR GREG SHATAN: I think so. If those contracts are the kind that can't be entered into without a license. So I guess, I think it would be helpful to clarify with ICANN where in the first round they actually applied for or would need to apply for sanctions. I think the point is that the language we have requires ICANN to apply for and use reasonable best efforts to secure that license for these parties and I guess people would think, or at least INTA was thinking it's referred to for the OFAC license for them to become a Registrar. If there's an OFAC license required to simply enter into negotiations or even enter into the process, then that's a different concern, but I think the concern that INTA had was that we didn't want to have ICANN essentially agreeing to use all of its efforts to enter into

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to get a license for somebody that would be rejected before that license actually became used. If the license is used earlier in the process, then I think that concern goes away, but I think we are both hypothesizing and I don't know if anybody here has the facts.

>> STEVE DELBIANCO: Thank you.

>> CHAIR GREG SHATAN: I think we'll make a request to ICANN legal to find out when they began the license process or when they needed to have a license in order to interact with Registries or Registrars that are in this position. That is potential Registries and Registrars that are in this position.

I see a hand as well from Tijani. Go ahead.

>> Thank you very much, Greg. I found that "otherwise acceptable" may address the concern of INTA regarding the meaning of this term as ICANN can reject it for other reasons. So and I think it may replace "otherwise qualified." Thank you.

>> CHAIR GREG SHATAN: Thank you, Tijani, that's helpful.

Any other comments on this comment before we move along? Thomas Rickert, I see your hand is up. Thomas, welcome. Please go ahead.

>> Thanks very much, Greg. Hello, everyone. Greg, maybe you want to take a look at the proposal sent by David McAuley and myself. He suggested viable applicant and I suggested [indiscernible] eligibility requirements, so maybe if we can find a set of word that is we're comfortable with and maybe even add an extra footnote, I think it would be preferable to going to additional feedback with ICANN legal. I think we're clear about what we want to say, we just need to find the right language for it.

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>> CHAIR GREG SHATAN: Thank you, Thomas. Your line was a little bit crackly, but I understood everything you said. I agree if we can avoid the need for additional feedback it would be good in terms of time. But we can try those out when we come back for our second reading.

The comment that you and David sent, I'm sorry, I didn't see where this was. Can you clarify where this appeared?

>> In the chat window, scroll up a little bit. David McAuley said, how about viable applicant. And a little above that I said, meeting on eligibility requirements.

>> And I agree with this one.

>> CHAIR GREG SHATAN: Thank you, Tijani. Thank you, Thomas.

So let's move on to 8.08 and note with thanks. I note some approval in the chat for Thomas' suggestion from both David and Raphael.

8.08 is from the ISPCP, full agreement, so we will note that and move to the next.

John Poole, wholeheartedly agrees is the only comment sent. Middle East Space also agrees and notes specifically the subpoint here which we may not have read before, ICANN should commit to applying for and using best efforts to secure an OFAC license for all applicants for Registrar accreditation and/or generic top level domain Registries, resident in countries subject to U.S. sanctions if the applicant is otherwise qualified and is not on the specially designated national list. During the licensing process, ICANN should be helpful and transparent with regard to the licensing process.

Any comments here? Seeing none, we'll move on to 9.01, this is a new subsection, other non U.S. subsanctions from the BC which notes in addition, sanctions are often applied

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by non U.S. Governments, such as the European Union Common Foreign and Security Policy, CFSP. The BC, therefore, asks whether the recommendations could be generalized enough so that ICANN would take steps to obtain relief from the participants affected by any or all sanctions not just OFAC sanctions from the U.S. Government.

Any thoughts on that point? I don't know, Steve, if you wanted to expand on that. I think it speaks for itself.

>> STEVE DELBIANCO: Greg, this is Steve. I would add I brought this up months ago during a discussion of relief. I thought we were going to use language. There was wide acknowledgement on a call many, many weeks ago that sanctions of many sorts are enacted by Government and that they could affect parties that want to do business with ICANN. So let's broaden it. It's fine to use OFAC as a prime example, but we should try to make sure that this best efforts or reasonable best efforts of ICANN must be exerted any time there's a sanction that affects the ability of an otherwise qualified participant to be part of the ICANN contracting process. Thank you.

>> CHAIR GREG SHATAN: Thank you, Steve. That seems like common sense.

Kavouss, I see your hand is up. Please go ahead.

>> KAVOUSS ARASTEH: Yes, good afternoon, good evening, good morning. I am not comfortable with the suggestions of Steve to say by any sanctions. I suggest that we maintain OFAC and then add as well as any other sanction. That we have to explicitly mention OFAC. This is the main sanctions. So by that we are covering the point of Steve, but also the point that the main sanction is through OFAC, so I would like to maintain the term or the word "OFAC" and adding any other sanction. If you want to give examples, give an example, but retain or maintain OFAC. Thank you.

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>> CHAIR GREG SHATAN: Thank you, Kavouss. I think that Steve did mention that OFAC would be mentioned, so we'll look at this language in the second round and see how we can change it so we are expanding so that we can avoid possible implication that ICANN should not have any particular responsibility for resolving other sanction's issues of this type. But I think we'll need to make sure this is dealt with in a way that recognizes that not all sanctions have the kind of two tier elements that OFAC has, or country sanctions, so it may require some language since we are going from a known element with OFAC to multiple elements that may or may not be known, certainly not as well known to this group as OFAC, that we don't over commit ICANN either. So in any case, we'll get to that balancing act as we on our second round.

But now we're getting close to the clubhouse, so let us move on unless there are other comments here.

GNSOBC, we are beginning another section, line 10.01. Other comments, this on the scope of work. The BC states, we, therefore, do not agree with the noted minority view that the draft report falls short of the objectives envisaged for Work Stream 2. In particular the need to ensure that ICANN is accountable towards all stakeholders, by not tangling the issue of ICANN's subject to U.S. jurisdiction. In the BC's view the draft report meets the objectives set forth for this WS2 project in the CCWG Accountability's Work Stream 1 final report.

Any comments on this comment? Kavouss, is that a new hand?

>> KAVOUSS ARASTEH: Yes, a new hand. I didn't quite understand, what is the objections? They don't want to say that there is a need to further pursue the matter if necessary? What is the objection, please? Could you kindly clarify the objections made by the proponent of the objections?

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>> CHAIR GREG SHATAN: Since we have Steve on the line, maybe I could ask him to clarify.

>> STEVE DELBIANCO: Thank you, Greg. Thank you, Greg, it's Steve DelBianco. We noted with interest the relatively detailed minority report that was attached and we in the BC anticipated there might be public comments in support of and potentially in disagreement with the minority report and that we wanted your particular Work Stream to this particular group to be able to assess whether that minority report was enjoying broad support or narrow support. So we thought it was incumbent to look at that. We read it over in detail and we disagreed with the finding of the minority report. That is to say the finding that the Work Stream 2 project failed to meet its objectives. So we disagreed with that finding by the minority report and, therefore, we would probably not agree that the minority report justified continued work in that area, but we didn't focus on the continued work suggested by Brazil, we focused instead on the basis for that conclusion, which was the finding they stated with which the BC disagrees. I hope that helps, Greg and Kavouss.

>> CHAIR GREG SHATAN: Thank you, Steve. I'll turn to Tijani next.

>> Thank you, Greg. Tijani speaking. This section should be in green, not red, because it is in full agreement with our recommendation. It is a disagreement with the minority report, so I don't know why it is red. And it is certainly in full agreement with our recommendation, no change to the report will be done according to this comment. Thank you.

>> CHAIR GREG SHATAN: Thank you, Tijani. I think that is right that it should be red, not green, although I think it's maybe red and green.

Kavouss, go ahead.

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>> KAVOUSS ARASTEH: Yes, I'm sorry, I still don't understand the reason for disagreement with the minority view. There is a majority view and there is a minority view. If you disagree with a minority view, does that mean you disagree with the one who disagrees with the minority view? We have majority view and we have descending views. It doesn't matter. After listening to all of the comments, that's what you do, if you have some reason to feel this wouldn't work at the end there might be some other solutions, we are happy. But we don't want to put anything saying that somebody disagreed with the minority view. Minority is minority. We are not the majority or those minorities are not majorities. Why there is a need to disagree? We don't think we need to disagree with each other forever. You have given your point. You agree with whatever they are. And minority disagrees. That's that. End of business. And then after you read all the reports and take action what you do, if you decide not to change anything, then we go to the last part of your report that there might be some other solutions and you put it in the report, either [indiscernible], so I don't understand the meaning or the notion of disagreement with minority. Thank you.

>> CHAIR GREG SHATAN: Thank you, Kavouss. Of course, since the minority report was in the public comment document it was fair game for comments, so we should expect some comments on the minority report. However, the BC comment does not ask for any changes to the document so I think it can just be viewed as, in essence, a reply to the minority or a comment on that which requires no action. So I think we can move on to 10.02 from Russia. Note this is a long response and the official comment would have the full text.

The excerpted section reads, we support the inclusion of Annexes with the dissenting opinion of Brazil and the proposed issue list, which was supported by stakeholders during ICANN 60 and provide rich food for further work. At the same time we would like to

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express our major concerns, which have been early presented during the broad discussion of ICANN jurisdiction issue, including public session at ICANN 60. We believe that the report falls short of the objections envisaged for Work Stream 2 and that its recommendations only partly mitigate the risks associated with ICANN's subjection to U.S. jurisdiction, which makes the adoption of the report unacceptable. This is the position of several Governments reflected in GAC Communique, ICANN 60, Abu Dhabi.

Any comments on this? Kavouss, go ahead, please.

>> KAVOUSS ARASTEH: Yes, I support the suggestions or the comments from Russia. In fact, it reflects the reality. There was some shortcoming mentioned by the minority and that is that. So that is a support for what they said. Thank you.

>> CHAIR GREG SHATAN: Thank you, Kavouss. Tijani, please go ahead. Tijani, we're not hearing you.

>> Can you hear me? Hello? Do you hear me? Hello, hello.

>> CHAIR GREG SHATAN: We can hear you now.

>> Okay, thank you. So I think that this section should be in red or yellow at least because it is not in agreement with the recommendation and I think that the [indiscernible] should be respected so that people can see from one look what are the comments that needs to be read and perhaps try to find what is the concern of people. When I read it like this in the green, I understand it is in agreement with the recommendations.

>> CHAIR GREG SHATAN: That's a good point. We'll work with staff to either flip the colors back or maybe to choose different colors for comments on the minority report to avoid confusion as the current colors are. Good point.

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So that moves us, I think, to the i2Coalition on scope of work, line 10.03. I2Coalition wishes to disrespectfully disagree with the comments of Brazil and other dissenters, especially when addressing the frustration with the Subgroup not putting the subject of ICANN's location of incorporation up for community discussion. It was clear that the IANA transition was predicated on the fact that ICANN is, and will remain, a California nonprofit. It is inappropriate and out of scope to attempt to change that at this time.

Any comments on this? Understanding it is a comment on the minority report that asks for no changes to be made.

Kavouss, please go ahead.

>> KAVOUSS ARASTEH: Yes. This comment mixing up two things.

The first thing, disagree with the minority views. That is one thing.

The second thing is making interpretation of the minority view that they have asked the change of the place of the ICANN. I don't think that is the case. In many minority ideas they have mentioned they may not have difficulty with the place of ICANN, but they have difficulty to address the situation that they are facing. So I don't think that this comment is properly mentioned. They are mixing the two situations. If they want to disagree with the minority view, that is their right, they can disagree, no one objects to that. But going back and interpreting that the minority views, the placing the changing the place of ICANN is not the subject of discussion because after some discussion people all came to the conclusion that maintaining that, but trying to address the problem of putting or maintaining ICANN place in California, so it is a mixing of points. So it is not clear. They mixed up the situations. Thank you.

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>> CHAIR GREG SHATAN: Thank you, Kavouss. Any other comments on this line? Seeing none, we'll move on to 10.04 from the ISPCP. I'll read this out, the ISPCP understands that the United States will remain the jurisdictional home to ICANN and we see this preferable to the alternatives of either moving jurisdiction, for which there is no public will, or becoming an NGO. ICANN only works if it has accountability, including legal accountability, and this runs counter to the role of an NGO. Therefore, this was the proper and just conclusion. It is with that in mind that we wish to respectfully disagree with the comments of Brazil and other dissenters when they expressed frustration that a new path was not forged on jurisdiction. We believe that it is not the time to attempt a change of jurisdiction, and that the status of ICANN's residence of the state of ICANN, on which the IANA transition was predicated and passed, should remain.

Any comments on that? Seeing one from John Poole, it says the additional comments should be read from the complete text. It says, I sympathize with Brazil and [reading] you can watch this video of the former CEO of ICANN lying to the French Senate. ICANN has lied to me and a lot of people. It is part of the ICANN corporate and culture. Recommend and acknowledge it. Don't take it personally. Any comments? Kavouss, I see your hand it up. Please go ahead.

>> KAVOUSS ARASTEH: Yes, Greg. I think the statement made by Brazil is available and was available from the very beginning. Did you find in that statement anything relating to the change of the ICANN place? That this comment is saying that they disagree with Brazil asking the change of the ICANN place in which part of the Brazil statement it was mentioned. I have not seen that. Have you seen that? Thank you.

>> CHAIR GREG SHATAN: Thank you, Kavouss. I would have to go back and review it, I don't have it in front of me right now.

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I note a comment in the chat from Raphael Beauregard Lacroix on John Poole's comment. The tone seems a bit acrimonious and not quite constructive overall. That is part of his culture, I guess, or his personal culture or his style rather, so we take it just as he suggests we take ICANN as it is in his mind, we should take John's comment as it is.

This brings us to the very last line, 11.01. Stress testing recommendations relating to sanctions, also from the BC.

BC members observed and participated in the work group that drafted these recommendations. BC member Steve DelBianco drafted three stress tests to address how sanction recommendations would improve ICANN's accountability when faced with plausible scenario that is impose stress on the ICANN organization and community. These stress tests are shown in the annex to this comment. An improvement in accountability can be seen when comparing the status quo with the structures and processes that would result from implementing the WS2 recommendations.

Any comments on this comment? I would not that at least implicit in here is a suggestion, I think, that the stress test be added to the report, just as stress tested were included in the Work Stream 1 report. So I think we should get those stress tests, maybe not on this call, but in time for the next call, into a document that we can review and review and put in at least as a suggestion into the working document. Unless people feel otherwise.

I see two hands up. I don't know who came first. Bernie, who was first? Steve DelBianco is first and then Kavouss.

>> STEVE DELBIANCO: Thank you, Greg. We are noting that the stress tests were circulated to this group in, I believe it was October, and it was done in response to a request from Kavouss. We were happy to accommodate the request at that time because

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we felt it would help to move the group forward in trying to determine whether the sanctions relief we were proposing were going to increase ICANN's ability to serve the community. I simply re-included them with the BC comment so they would be available to you for you to consider whether you wanted to add them. A lot of this, I think, would depend on the group and Kavouss on whether they want to add anything. This is not the BC asking they be included, we attached them in case the group wanted to include them. I hope that helps. Thank you.

>> CHAIR GREG SHATAN: Thank you, Steve.

Kavouss, please go ahead.

>> KAVOUSS ARASTEH: Yes, Greg, as long as the stress tests is maintained either here or elsewhere we have no difficulty, but if you want or suggest to transfer that to the Work Stream 1, there should be cross reference to the jurisdiction. If the cross reference to the jurisdiction, we have no problem where you put it. Thank you.

>> CHAIR GREG SHATAN: Thank you, Kavouss. Just to clarify, I was just noting that Work Stream 1 had stress tests, not suggesting, nor plus I think Work Stream 1 is closed for business, we can't put anything else in there, so these stress tests would be part of Work Stream 2 report, but we will, I guess, discuss that possibility on the second time around as we actually get to kind of editing our document and seeing what changes might be required or at least suggested specifically. And I think we started to do that on this call anyway.

Any further comments on this comment? Which brings us to the end of our first reading.

Kavouss is that a okay, Kavouss's hand is still up.

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>> KAVOUSS ARASTEH: It's a new hand. Yes, if you maintain the stress test as it is, we have no problem. Thank you. Perhaps I misunderstood you. Thank you.

>> CHAIR GREG SHATAN: Thank you, Kavouss. And I note clarification from Steve DelBianco in the chat that the BC offers the stress tests for consideration of the group. We are not requesting that they be added to the report. Thank you, Steve. Obviously, Steve as one of the prime drafters of the stress tests in Work Stream 1, providing that as much in that role as his role in the BC, you know, for the good of the order. And thank you, Steve, for that.

So I think we can now say that our first reading is ended. And I'll just take a brief pause here. We have we're half way through this call. Yesterday I circulated a Word and in PDF versions and a link to the Google Doc to the main part of the report of this group that was circulated for public comment. This is the part that would be revised by this group if any revisions are deemed necessary. And we've heard a couple. So I think what we should do is kind of on the one hand have the report of the comments. And on the other hand, have the [coughing] excuse me Google Doc, or, you know, Word or PDF version at your elbow so that we can see what changes we actually need to make, that would essentially finish our work for this group, at least this phase, for this Subgroup, maybe, believe it or not.

So I think we should go back to page 1 of or line 1.01 for those looking at this in different format of this. If you have access to the document, I don't know if we want to get to the point where we are displaying two documents. Maybe we'll do that when there seems like there's an active change to be discussed. Otherwise, it can be a little awkward, I think, in doing this, but we can switch back and forth. But we'll do what we need do. And if you need access to a second screen or tab, we can do it that way.

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Kavouss, is that a new hand?

>> KAVOUSS ARASTEH: Yes. I put in the chat that unless I understood it differently the stress tests will be maintained and attached to the report of the Work Stream 2 Jurisdiction Subgroup. Thank you.

>> CHAIR GREG SHATAN: Thank you, Kavouss. I think that is a suggestion that needs to be taken up by the group. Right now the only place that they are formally existing is in the BC's comment and in the archives of the Jurisdiction Subgroup, but that is the very question of which we will attempt to answer for this.

Beginning again from the top and now with special attention to the right hand column where we have been noting whether or not changes or might be suggested by any of these comments, we should be able to move relatively quickly. Line 1.01 from the BC on Choice of Law we saw no comments on the that required new changes or suggested changes to the document.

The same goes for 1.02 and 1.03 from the NCSG and the contracted party. And also 1.04 from the Government of Denmark.

I'll just pause briefly to see if anybody has any comments on that point. So seeing none, we'll move on to 1.05 where we do have some potential changes to be considered, or at least discussed, from the Government of Italy. The proposal from Italy goes to the menu issues noting that the status quo option will not be a proper solution for the future, given past experiences with regard to the new gTLD program. Implementing that the California approach could create an undesirable hierarchy among jurisdictions. And expressing some concerns regarding the other three options, too. A system with a clear legal framework is needed to implement them which has not been defined properly. Of course,

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this was only a menu of menus, if you will, and no choice was made by this group as to what that menu should be.

Italy also goes on to state that special reference needs to be made to child protection. There is a concern about any move away from the present arrangements if that would permit or prevent future jurisdiction [reading] of child protection laws or regulations, or materially weakened mechanisms to enforce compliance [reading] to widely accepted standard. Therefore, ICANN should make clear that irrespective of the choice of jurisdiction, in all relevant circumstances the terms of the UN Convention on the Rights of child must be met or exceeded.

Comments from the previous round, Jorge Cancio said, some of the [reading] I think if I read Jorge's comment correctly, and he sends his regrets because he is in a meeting in a face to face in Geneva. It would clearly indicate this is a choice while we recommend the menu approach, we are not recommending any particular menu and there needs to be a further process to decide what's on the menu. We do note generally that the menu should be one that has fewer remember than many more choices, but that otherwise does not, you know, bind or really recommend any one approach. I'm not sure if there's any actual change to the document that's required by this comment. I don't know if we want to pull up the document and look at it. If that's possible, we could switch to the document. And we can turn to the page on the menu approach. Or we could give scroll control and all go to the same place. I think this really begins on page 5 of the document. And goes through page 6. At least as to the summarized version of this. I think in the summary here we don't actually have any language here about the menu approach, which I think we have in our main body. We may want to add a sentence here in the, kind of in the introductory section that reflects what's in the main body of the document. If I'm correct on that. Apologies, I'm just looking through the document. Here it's page 20, 21, 22, 23,

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and 24. We may want to put something in the introduction that acknowledges that there are disadvantages and advantages to each and that we generally would recommend it a menu with fewer, rather than more options. But other than that, I don't know that we need to make any change. I don't think we need to make any change to the main document, to the main section here in the 20s.

I'll take comments from other. David McAuley, I think your hand is up, followed by Kavouss.

>> DAVID MCAULEY: Greg, hi, this is David McAuley speaking for the record. You just somewhat summarized what I was going to say, I believe the comment from the Government of Italy basically raises two points we should consider. One is with respect when they mention child protection laws it gets to the point of calling out certain substantive bodies of law which might be recognized, which I think would be a bad practice. I don't think we could get into that because it could lead to sort of an endless discussion, well, of course, those laws are very important and must be child protection must be on it, but there are other things that will be thrown up also as quite important. I suggest we stay on the regular menu.

And the other idea is the forum shopping, so the point you made that we would be better off with fewer menu shopping. I think forum shopping, venue shopping, that's a bad thing and putting things in place where Registrars and Registries would be treated different does merit some thought. I think the comment from Italy throws up those two points for us to give consideration to. Thank you.

>> CHAIR GREG SHATAN: Thank you, David. Kavouss?

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>> KAVOUSS ARASTEH: Yes, my question, Greg, is that I understand that the menu approach is maintained. Am I right or not? Please.

>> CHAIR GREG SHATAN: You are correct. We just don't know what the menu will consist of exactly.

>> KAVOUSS ARASTEH: Okay.

>> CHAIR GREG SHATAN: So I think to summarize, some of what is being discussed here is implementation which is what will happen afterwards, not part of our job. I think our suggestion that there be fewer options rather than more can also be either seen as a response already to Italy's concerns about forum shopping or we could recommend forum shopping as one of the reasons why it's better to have fewer options. But the question of whether any particular jurisdictions should be on the menu or not is, I think is down the road and that's where the issue of the if there are, in fact, unacceptable jurisdictions that is not part of that's not within the scope of our work and there's nothing we can do to address that now. Nor, I think, should we.

So in terms of changes to the document, I would suggest only a slight amendment to the summary section to bring a little of the commentary in a sentence or two that the commentary that exists in the main section. So I don't think in any case, this does not change our underlying recommendation or our overarching recommendation. I think our first order of business is to consider whether we actually need to change any recommendation and I think the answer on this one, I would like to see if anybody disagrees and thinks that the actual language of the recommendation section itself, the main section from page 20 to 24 or so, needs to be changed at all on this. So if you believe there should be changes, please put a red X.

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Kavouss, please go ahead.

>> KAVOUSS ARASTEH: Yes, Greg, did I understand that there is no change to the entire document? Correct?

>> CHAIR GREG SHATAN: What I'm saying is that there would be no change to the recommendation section of the document based on the Government of Italy's comments. I did suggest that we should consider changing the summary section in the front of the document to reflect some of the commentary in the document, in the main section of the document, because right now the section on the menu approach merely lists the options and doesn't even indicate that we go into pros and cons discussion. So that's just a matter of making the summary section a little bit more enlightening. Hopefully that helps.

Kavouss?

>> KAVOUSS ARASTEH: Yes, it did, however, it depends on how much changes of the comments you would like to make to put into the summary of the documents because sometimes the changes are two or three paragraphs and it is difficult to go and put those things that might contradict the summary totally, so it depends. Perhaps we should wait until the next meeting that you suggest what are the changes that is appropriate and relevant taking from all comments that have been received into the summary of the documents. But not verbatim. I hope I am I have described correctly or adequately that we do not expect to include all the comments received verbatim in the summary. What we include, I don't know at this stage. It depends on what would be a proposal or suggestion by you for the next meeting in a red line fashion to see what are the changes that you suggest to be included in the summary document while no change in the recommendation at all. Thank you.

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>> CHAIR GREG SHATAN: Thank you, Kavouss. Let me clarify what I was saying. I wasn't suggesting that any changes from the comments be put into the document unless we specifically decide to do so. In this case, my suggestion was only to take a sentence or two from the menu section of the main part of the document and reflect it in the summary so the summary is a little more enlightening of what the main section is saying, but none of that would come from this comment or any other comment. And after this meeting, I can prepare a red line with that change.

Bernie, I see your hand is up.

>> BERNARD TURCOTTE: Thank you, Greg. Can you hear me?

>> CHAIR GREG SHATAN: Yes, you are a little bit distorted. I think you're a little too loud, perhaps.

>> BERNARD TURCOTTE: All right. I'll just make this quick. Let's remember that we have to hand in a final set of recommendations by March 2nd, so and if we don't do that, they can't be in the final report. Thank you.

>> CHAIR GREG SHATAN: Thank you, Bernie. Always good to keep time and scope in mind.

So I think Kavouss, is that a new hand?

>> KAVOUSS ARASTEH: Yes, new hand. I understand from your last intervention is that you want to make the summary to correspond to the main part of the document or to be coherent with the main part of the document. Am I right?

>> BERNARD TURCOTTE: Greg, if you are speaking, we are not hearing you.

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>> CHAIR GREG SHATAN: Sorry, I was speaking to the mute button. All I was suggesting was to take a sentence or two reflect in the summary section that the menu approach, the kind of comments that we had on the menu approach, but not to take all of what's in the main body and put it into the summary, just basically noting at this point the summary was a little spare in what our views were as a group and thought there should be a little reflection. But other than that, no major changes. I think that helps.

And then we can move on to 1.06 and 1.07, also no comments required from these. So we can move on to 1.08 from the Board. Here the Board agrees with our clarification that cannot make recommendations requiring ICANN to make changes to the RA and RAA agreements. The Board understands there has not been [reading] and the recognition. I think what they ask for here in terms of a change is for us to mention, perhaps, a need for an impact assessment. Along with everything else that would be done to implement this. But, again, that's just an implementation recommendation. And that reflects also a comment by Jorge Cancio, interesting comments for the Board, as said before they seem to be relevant for the implementation for this recommendation.

And then other comments here, Kavouss, I am in favor of the seconds paragraph from ICANN Steve DelBianco. I welcome the Board's input, but remember that ICANN is not a CCWG chartering organization. Very true.

So I think the only change I would see here perhaps is a mention of impact assessment, not that we would conduct one in this group, but just mention that it could or should be part of the overall change, discussion of how to implement changes, if any.

Kavouss, your hand is up.

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>> KAVOUSS ARASTEH: Yes, no problem that you mention the impact assessment, but in a positive manner, not to negate the whole part of the document that everything should be depending on the impact assessment. So this course of action merits to have an impact assessment in order to facilitate the implementation. Taken in a positive manner, rather than a negative connotation. Thank you.

>> CHAIR GREG SHATAN: Thank you, Kavouss. I agree and the impact assessment is, I think, needs to be narrowly drawn into this document so all it is a suggest that along the way of implementing, any approach that is decided on with regard to the menu approach, that there should be an assessment of the impact of that change, which, I think, is probably only common sense, probably would happen whether or not we mentioned it in this document, especially since implementation falls heavily into ICANN organization as hand's anyway. I think that's the only potential change that would come out of this and that's not a change to our recommendations.

Anything further on this? If not, we'll move on to INTA. Again, this is a longer comment, this is an excerpt here on 1.01. It says, no comments. That it is a significant risk for INTA and its members. And we have John Poole with his total disagreement with the Choice of Law and Choice of Venue recommendations. And he says I doubt Jones Day or any lawyer worth their salt would find merit in ICANN being subjected to forum shopping by its contracted parties, many of whom are just self interested profile seeking entitles trying to exploit consumers. [Reading]. I'll note that's factually incorrect that these are generally silent on that and Choice of Venue, we do have a Los Angeles or in certain cases Geneva for choice of venue. I don't see any change required by this comment. I think there's an echo of the forum shopping comment also made by Italy, which I think, I'll note again, I think just tends to support the idea of having a relatively limited number of choices on the menu. And that, you know, in the process there should be an impact assessment which

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could include a discussion of things like forum shopping and whether any particular jurisdiction could be unacceptable. But, again, I think that's outside the scope of this report. I think the only change we need to make again is the impact assessment. We already have the comment that a relatively limited number of choice is appropriate.

Anything further from this point? Seeing none, the next changes here in section 2, lines 1, 2, 3, 4, 5, and 6 all have no comments. The Board, again, mentions the impact assessment here in line 2.06. And, again, comment from INTA, the yellow, asks for no changes. And so that we don't need to take anything further from that.

The same with 2.08, which is the same as the comment already noted from John, just repeated here. NCSG has no comment.

Now we come to line 3.02, which is where we have some noted possibilities. It says, and this may or may not really be aimed totally at the RA question, but this is actually line 3 is continued discussions of jurisdiction issues, Section 3, sorry. So chartering or contracting parties stay with respect to the suggestion of another multi stakeholder process to discuss unresolved jurisdiction issues, the RySG and RrSG do not support such a proposal. Jurisdiction has a topic of discussion with the CCWG Accountability for over three years, culminating in recommendation. Three years is more than enough time to develop proposals and have a reasonable chance of gathering community support. And that appears to be exactly what has happened. So there's a comment in the that we picked up here from Thiago Jardim, [reading] proposed by the Subgroup does not imply that we will be discussing changes of jurisdiction. Thiago goes on, there seems to be a misunderstanding of what jurisdictional immunity really are and they should not be confused with discussions with a place of change of incorporation. So I guess the question here is whether anybody here considers that a change to our document needs

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to be made. And in any case, I think whatever we say about whether jurisdiction discussions should continue or shouldn't continue it really, whatever we say, it's for the community to decide whether such discussions continue. And taking off my Rapporteur hat for a second and putting on my Nostradamus hat, I predict there will be some discussion in ICANN even after this report is done. So I will stop being Nostradamus and going back to being Rapporteur. The question is whether there are any changes to the document necessary.

Kavouss, I see your hand is up, please go ahead.

>> KAVOUSS ARASTEH: Yes, my hand is up to mention that, yes, we agree with you that at this stage we did not propose any specific cause of action, however, further discussions with various options possible could be submitted to the CCWG Plenary at the appropriate time in which there would be more participants at the meeting and there would be more time available to the people to discuss. But I don't want the subject to be totally dropped. The subject is live, it's still there, but we don't decide at this group. As you mentioned in the last part, or page 25 of your document, you just reflect the discussion has happened, you identified and described the situation very correctly, appropriately, therefore, the final decisions on the matter remain within the CCWG Plenary to discuss with the announcement that it is beyond the agenda and people get prepared on that and there might be more participants than the 18 we have here. Usually in CCWG we have something between 30 to, I don't know, 60, it depends on the situation. So that is my suggestion. Not to drop it and not to propose it at this stage, but just to report to the CCWG. Thank you.

>> CHAIR GREG SHATAN: Thank you, Kavouss. I don't know that there would be any changes made to this document at the Plenary level either, it's pretty much our report,

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unless there's disagreement at the Plenary to support it as is, but in any case, I think the basic point is there don't need to be any changes in this document.

>> KAVOUSS ARASTEH: Greg, you misunderstood me. You misunderstood me. I didn't propose changes to this document. I proposed that you continue to maintain the last paragraph or last part of your report, current report on page 25 and part of 26, further discussions of jurisdictions related concerns, and just send that one to the Plenary, but not change anything. And I don't expect that the Plenary will make any changes, but at least Plenary considers these concerns. Thank you.

>> CHAIR GREG SHATAN: Thank you, Kavouss. Okay.

Time check, we have 12 minutes left. Let's get through a few more of these and then we can talk about next steps.

Kavouss, is that a new hand or no?

>> KAVOUSS ARASTEH: No, no, it is an old hand. Sorry.

>> CHAIR GREG SHATAN: Okay.

>> KAVOUSS ARASTEH: Old hand.

>> CHAIR GREG SHATAN: So I think there's no change to be made based on this comment.

Then we have line 3.04 and 05 with no comments. We have a BC comment which just disagrees with the minority view. That also requires no change to the document. Line 4.01 and 4.02 require no change to the document.

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And then we come to France which has some comments on how might be future discussions of jurisdiction, but does not require or suggest any changes to this document. I note that the formal translation of France was received in the last couple days and circulated to the group and that's probably in the next iteration of this chart should be substituted for the rough translation. But I assume the rough translation is at least intelligible in terms of France's actual intent. I think this does not require any comments or rather any changes to our document.

Italy, again, has comments here that citing to the Tunisi agenda and [reading] as a global resource, but, again, no comments required no changes required to our document, the comments state Italy's views.

And ICANN Board provides, you know, has provided their input. Mostly they provide input on recommendations would may prove problematic to fully address, but they are not mentioned at this point in the general commentary section, so this requires no comments as well. So that was 4.05.

4.06 and 5.01 through 4, while it has not been noted in the margins of the printed document, I have notes that, of course, these are all strong agreement and no suggestion of any changes to the document.

Which takes us to 5.06, again, they express a concern that best efforts isn't strong enough. INTA, on the other hand, suggests best efforts is too strong. But the view of Russia is that ICANN [reading] adequately address the problem. ICANN can't guarantee they will obtain a license, it's out of their hands, only that they can try their best, or try hard to do so. So I don't know any change is required to our document. I need to go back and take a quick look. I think we have generally said ICANN needs to with regard to the general license, we said ICANN needs to look for other solutions if it cannot find the

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solution through general license. I think that covers Russia's concept there. I don't know that we have any desire to make a change with regard to the specific licenses as to what one could do if a specific license is rejected. And that's perhaps too hypothetical at this point to actually make any comments on.

Kavouss, your hand is up, please go ahead.

>> KAVOUSS ARASTEH: Yes, I think, Greg, you are now on a very important point and at least some of us, at least myself, it is midnight here. I request kindly to stop the meeting at this stage or go to any other business and retain or sorry, start the next meeting with the last point that you have raised. It's very crucial and I don't think that we should go and something we should have consensus by exhaustion. For me here it is midnight. I don't know what it is your time there. I request kindly that you stop at this point and go to any other point and pick up the point lastly you mentioned at this meeting. If you kindly could agree and colleagues could kindly agree.

>> CHAIR GREG SHATAN: Thank you, Kavouss, I think that's a wise suggestion. I agree with it. While it is now a comfortable 9:23 AM here in New York City, I did get into my office about an hour and a half earlier than I normally would in order to be here for the call rather than leaving my home after the call, so I have my own form of exhaustion to scope with, as long with a workload that is now piling up. I think this is a good one to start off with when we are fresh and also when we have the document in front of us and maybe a little bit more preparation for looking at this particular comment with the document alongside it in some fashion.

So in terms of next steps, what I will do is reflecting the comments made so far in the second reading, and also with regard to the comments that were made at the end of the first reading where we started to get into the document, I will make changes in the Google

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Doc in the next, you know, well in advance of the next meeting. Hopefully in the next day or two. And we'll hope that others will review that. I'll also circulate a stable copy of that as far as it goes by Word and PDF so that those that don't do Google Docs can review the potential changes. And then we can begin from there with the next meeting and also figure out I'll figure out a way to look at some of the more the comments that might require, you know, deeper analysis such as this one, a way to look at the document and the comments side by side, maybe create some other documents. If anybody has any suggested text, I have no pride of authorship or no need to be the first hand on the document. You all have the document, so if you have any specific textual changes based on these comments and reflecting these comments that you would like to suggest, and, Kavouss, if there's anything from what you said here that you would like to suggest, but, of course, that goes for everyone on this call, and not, you know, please either put it in the Google Doc or put it in the Word doc and recirculate it or just put it in the text of your e mail and, you know, just noting where the change would be made, whatever it easiest for you, we'll deal with it. So we can see and try to make as much progress between now and the next meeting so that we can both complete our second reading and hopefully at least have a working draft of any revisions that we can discuss, all at the same time.

So with that, I will turn and see if anybody has any other business.

>> KAVOUSS ARASTEH: Next meeting, please. At what time would be next meeting and what date, please?

>> CHAIR GREG SHATAN: Yes, the next meeting is Wednesday, the 7th of February at 19:00 UTC.

>> KAVOUSS ARASTEH: Okay. Thank you.

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>> CHAIR GREG SHATAN: And we'll schedule that for 90 minutes again. And hopefully that will get us close to where we need to be since timing wise we're getting very close to where we must be to move things along.

So with that, I will adjourn this meeting and we will pick up next with 5.06. And look forward to any changes that are suggested in the document by whatever means you have to make those suggestions.

So I thank you all for your participation. I will say, good morning, good evening, and good night. And this meet something now adjourned. You may stop the recording. Bye, all.

[Meeting concluded]