ICANN – JURISDICTION SUBGROUP MEETING
Wednesday, February 7, 2018 -- 19:00-20:30

>> GREG SHATAN: And hello and welcome to the jurisdiction subgroup meeting for the 7th of February, 2018 at 1900 UTC.

That takes care of item one. Review of agenda, is next.

We have first our administrative minute. Which will be followed by a continued analysis of the comments. And review of the schedule between now and the deadlines. Review the email contributions. The list which are plugged into the, as comment balloons into the document just circulated. And a way forward. Followed by AOB, one adjustment to the agenda, we have Thomas Rickert with us today. Our -- one of our esteemed co-chairs. And he's asked for a few minutes up front to discuss some general matters of approach. So that is our agenda following which adjourn until Valentine's Day.

Any comments or questions on the agenda?

And I've attended to attach a PDF mark up as well as a doc. So if I sent two docs I apologize, one should have been a PDF, to answer Steve.

So, I'll take a look at those technical difficulties and resend, if that was -- if there was an error in the sending of that package, other than the error of sending it about 24 hours after I wish I had sent it.

I'm seeing in what I sent out a PDF and a doc. So hopefully that's what others are seeing as well.

So let us go to the administrative minute. First I'll ask if there's any SOIs? Any changes to statements of interest?

I'm not seeing any hands. Therefore I believe everyone is just as interested as they were before. And look to see if we have any audio only participants please.

>> CHERYL LANGDON-ORR: I'm here audio only. I lost my Internet.

>> GREG SHATAN: I am sorry to hear that. I see you in Adobe but that's a shadow of yourself there. So I guess you can't see the Adobe Connect.

>> CHERYL LANGDON-ORR: Frayed not Greg. That's just a dial out.

>> GREG SHATAN: I see you dialed out rather than dialing in. That makes sense.

So that takes care of that. We have no phone number only participants any more. I think David McAuley has been converted from a number to a name. Kind of the reverse of the secret agent man.

So yes, just to confirm, the documents, the PDF and Word of the edited recommendations, generally has been my practice, where I have both versions to send the PDF as oles, which is kind of the most portable document format as well as the Word document which is available for editing, given that every -- different people have differing approaches to what format of document they can look at best. Where they are.

So that's why we have what we have.

So I think that gets us to our item 4. And this is probably a good time to turn the microphone over to Thomas Rickert, as we talk about our comments.

Thomas?

>> GREG SHATAN: Thomas we are not hearing you yet.

>> THOMAS RICKERT: Sorry I was double muted. I had unmuted my phone and I had to unmute myself in addition to the Adobe room. This is Thomas Rickert speaking. Thank you Greg for handing it over to me. Good afternoon, morning, evening to all of you.

I'm very grateful to Greg for allowing me to speak for a little bit. Because I made an observation when looking at the public comments that I think you know, gave me the opportunity to speak to this group for a moment. And I would suggest that if you have a different opinion to what I'm proposing right now, we should try to sort this out up front. But I guess if we are aligned on the principles that I'm going the share with you, then I think we should apply those principles when we are looking at the public comment. This is something that doesn't only go for the jurisdiction sub-team but it would go for all public comment analysis, in the CCWGN and its sub-teams. And sub-team's reports, all of them have been prepared by the perspective sub-teams and adopted by the respective sub-teams and presented to the plenary and the plenary has adopted the report and then the public comment is there to serve as a vetting process, if you wish. With the wider community to see when there's anything in our recommendations that we forgot had that, and we would look at this comment to see yeah, this is something that was already discussed or this is a new aspect. And then this new aspect might warrant that the report is amended or it might not warrant that the report is amended.

Because what the public comment period is not really designed for is to give members and for pants of the -- of the sub-teams or CCWG that have already in part of the consensus forming during the preparation of the recommendations in the past another opportunity to chime in and increase the weight of their statement or position. So don't get me wrong, certainly it's most welcome for everyone to identify positive comment and positive or negative comments do help everyone understand better where we are with the recommendations much but for those that have chimed in already during the deliberations, you know, their views have already been amalgamated into the findings of the sub-team. Therefore these would not get additional weight or second would it of the apple as we tend to say in this environment as when I goes to recognizing the views and adopting them in the report.

So let me just check with everyone whether that's a long the lines of your thinking as well. And let me pause here. Greg is chiming in don't be excessive. That's a good point. And for those that have haven't been part 1 there's some historical fun that we seem to have and still have. So thanks for bringing that up Steve.

>> CHERYL LANGDON-ORR: I'm certainly -- [voices overlapping] yeah I'm saying I'm very comfortable with that. I think we need to make the difference however between an individual and entities. I for example would think that the ILAC and at large, if they represent is by 5 members for example on various things, members and participants often operate without the full con silence use of the ALAC and the total at large obviously. So I think we need to have that ruling, but recognize there may be a difference between a consensus voted upon statement from a support organization or advisory committee. And from a participant during the process. Thanks.

>> THOMAS RICKERT: Thanks very much Cheryl. And that's a excellent point that you make. And I think it's a perfect and true that there may be an incomers between the person that is participating in the sub-team and actually the views that are presented by the group that that person might happen to work with. But we did have cases where the views of a group have been injected into the sub-teams work already. So I'm talking about the cases where you have comradency between the input that was given during the deliberations of the recommendations and comments during the public comment period. So thanks for pointing that out. I don't see any other hand, accept for David's. David, the floor is yours please.

>> DAVID McAULEY: Thomas, thank you, it's David McAuley for the record. I'm going to weigh in even though I missed a little bit of what you said as my phone sort of broke away. I had a little bit of connection difficulty. But in any event and listening to the later part of what you said and what Cheryl said, I think one of the things we will struggle with in this working group and perhaps others where the

comments coming in or the discussion of the comments really centers not so much on the initial input but rather on the matter of clarification and let me illustrate here in jurisdiction. In jurisdiction we recommend that on governing law issues there would be a menu approach but we also couch that in terms of saying we are not recommending -- what we are doing is saying the ICANN and contracted parties, the GNSO should consider this. And then the government of Denmark came in with a comment saying in a menu approach it should be a matter of choice by the registrar or registry issue. It should note be a matter of issue to choosing the government law.

The clarification would be if you have a menu approach and done regionally could someone in North America choose governing law from Asia and were not things decided. It would be clarification, natural clarification that comes from the consequence of someone's comments. I think we can get through it but I think it's going to be difficult. Anyway that's the nature of my comment. Thanks Thomas.

>> THOMAS RICKERT: Thanks so much David that's a excellent point.

I want to make sure we are all aligned in term of expectations. And I guess that if there are comments by somebody who has represented a view in the course of the work of the sub-team already, and if that point is repeated during the public comment period, that will not give that voice additional weight. That's it in a nutshell. Greg you have your hand raised and I think it's quite convenient because I was about to hand it back over to you anyway. Thanks for your time.

>> GREG SHATAN: Thank you Thomas. I think one corollary and Thomas correct me if I'm wrong if I'm not getting this right, but a corollary to what you were saying about comments and how they are treated here and elsewhere in the subgroups and in the plenary for that matter is that comments are reviewed by the group and if there's a consensus in the group that the report needs to change, having taken on consideration of the comments. Then the report will be changed. Based on that new consensus. But the existence of comments or if you will, the raw material of any particular comment won't be reflected in the report. I think the comment list rather the mail list to which the comment was sent will continue to exist. And I think we can put a link to that mail list into the report. Acknowledging the comments are there. But other than that, unless the group as a whole or has brought agreement that we didn't get it right the first time and comments have shown us the error of our ways, that the report doesn't get changed.

Is that your understanding as well Thomas? As how it's being handled over all.

>> THOMAS RICKERT: Yes that's my understanding. That's a good point related to the one I was mentioning. So I guess that what I'm mentioning is we have a what you typically do is you make a link to the public comment and the public comment analysis -- public comment review to us as it's called at least in the GNSO where everything is collected. And this particular case our suggestion would be however to have a slightly different language not only pointing to the public comment review tool but making things a little bit more explicit and, also, with respect to the meetings and to meeting minutes of the extensive jurisdiction debate that we had in Abu Dhabi as well as the minority statement that we got. We are going the frame it slightly differently here but the substance of the report will only be amended in the circumstances that you also outlined Greg.

>> GREG SHATAN: Okay thank you for that clarification Thomas.

Or for clarifying that my clarification was correct. And, also, for the additional suggestion of how we should refer to other important materials from our deliberations.

So with that, we can go to the item 4.1 review of schedule. And for that I'll turn the microphone over to Bernie if Bernie please go ahead.

>> BERNARD TURCOTTE: Thank you Greg. Just a quick reminder folks I'm not going to take a lot of time. The as has been posted, if something is going the make it into the final Work Stream 2 report it has to be delivered by 2 March. So the plenary has it for the standard 7 day before the meeting period and our face-to-face is the 9th so let's just keep that the mind. Because as someone said, tick-tock tick-tock. We are three week weighs from that. And we do have to, if you want to have that included in there, and on the plenary last night or very early this morning, there's some folks, Natalie went over the timeline. And really there is no buffer anywhere. So 2 March is a real deadline. If we don't get anything in by then, you are running a very serious risk of not having your recommendations in the final report. Thank you.

>> GREG SHATAN: Thank you Bernie. Tick-tock indeed.

So let's move into review of the email contributions to the list. And I think that the way I'd like to treat this rather than just going to the emails themselves, in the document which I've sent around, just recently in PDF and document format, I've noted in places that seemed appropriate what those comments were. I've also noted in the document where it appears changes might be considered based on a comments rather than on the email. But the emails are really about the comments in any case.

So what I suggest we do is put the PDF of the report up in the screen. And we can walk through that. And then we got about half way through our second reading of the comment tool. So we will pick up there. But the first half is already been covered twice. So it's reflected in the draft document.

So we will look at the draft document and I would ask either we get the scroll control or turn to the -- page marked as page 3 if the cover is considered page 1.

And in the section here on ICANN terms and conditions, for registrar accreditation application, relating to OFAC licenses. There are two suggested changes in here to review based on the comments. That's two changes come up four times because of Nate of the changes and full report and overlapping issues. So the first suggestion was to include to qualify the term best efforts by reasonable best efforts based on the concern that the best efforts language can be interpreted at least under U.S. law to require efforts at all cost. Even bankruptcy and death. With no qualification for reasonableness. So the idea was to say that there needs to be some reasonableness attached to the best effort.

So I'd like to see if there's any -- if anybody would like to state any questions or concerns or comments about this before we see when we can approve the this change. You I think given the number of people on this call we would like the put this out to the list. But at least we can get a sense of the room, that I think will be helpful before we put this out on the list. So that those that are absent can weigh in as well.

I see one comment from David McAuley I like reasonable and suggest we approve it.

Farzaneh, I see your hand up go ahead.

>> FARZANEH BADII: Hi Greg I don't know if you can hear me. Okay, so Farzi speaking. Basically I do remember why we came up with the term best effort. At the time it was because we didn't want to oblige ICANN to 100% commit to implement the recommendations before it did this step. So, we did -- so we came up with this term based best effort to actually reach the objective of not obliging ICANN to do -- to implement is recommendation at all costs. So that was -- that was the -- that was the intent. And now we are even more rathering this down by saying reasonable best efforts. So I would like to know what we exactly mean by reasonable. Because when we -- it's true that we said best effort. But we also said that there will be a step before all this. And that would be to carry out this study and see what kind of cost is there, what kind of risk are there. And all this kind of things. So I don't know, I understand the legal angle of this. But considering the background of the story, I am worried that if we water this down more we don't actually implement these recommendations in the end.

>> GREG SHATAN: Farzi I see David McAuley's hand up. David next.

>> DAVID McAULEY: Thanks David McAuley for the record. I appreciate Farzi's comments and understand her concern. I support reasonable simply because it allows ICANN to take a term that will be ultimately by IRP or court. It allows ICANN on to say we are exerting best efforts but in that we are balancing among critical items. It gives room to maneuver to ICANN. It's important during a time ICANN is apparently financially challenged to come up with appropriate reserve fund and come up with operating services that are outstripping revenue now. It makes absence to give them an obligation to under take a high level of efforts on this. But they have to have some room to maneuver if something else is become a critical problem. Thank you.

>> GREG SHATAN: Thank you David. Before we proceed I want to clarify that this particular recommendation here relates to applying for a specific license for a single registrar. Who has applied to be a registrar. And rather than a the general license where there's going to be a whole -- there's going to be a study of times and costs, here there's no study going forward. And that's because this is considered to be something that ICANN should do. That best efforts is interpreted as Steve says, as no obligation to spend any and all means and resources. Reasonableness is supposed to be an objective standard under the law. The reasonable, it's supposed to be what is reasonable under the circumstances for a kind a common-sense individual or entity in that situation. There's a lot of use of the reasonableness language. One other way to express it is the standard of care that a reasonably prudent person would observe under a given set of circumstances.

So, when it comes to reasonable best efforts, which is sometimes called commercially reasonable best efforts which is basically the same thing, the idea is that you don't have to bankrupt yourself, you don't have to put yourself out of businesses to accomplish things you don't have to be like the original runner from marathon that delivered his message then died. You need to look at larger circumstances in terms of financial expenditure and time. But if best efforts within the range of being reasonable, you have to give it your all. And you can't hymn and haw about that. So I think that's where it stands. And so best efforts is basically everything you can possibly do short of things that would actually be detrimental or to yourself or even fatal or that would just make no sense under the circumstances to anybody who is being reasonable and prudent. Indeed one could look at related concept of fiduciary duty if I can truly agree to a best effort standard that could actually end up being either stopped by a fiduciary duty obligation or worse yet there might be an argument whether which one trumps the other. Does ICANN have to do everything if it's unable or detrimental to the company or would it violate the fiduciary duty of the board or organization, or the board toward the organization or the staff towards the organization.

I think reasonable best certs really a real-world versions of best efforts where people don't till kill themselves to get things done.

So, any other questions? Any other potentially objections or not on the reasonable? Hopefully Spained as it is I think it makes sense as a standard that makes sense.

>> CHERYL LANGDON-ORR: Greg Cheryl, for the record, I'm fine with that.

>> GREG SHATAN: Thank you Cheryl.

Let's see, I have Steve and Farzi I don't know whose hand is up first. I'm on tablet that doesn't short by time. Honor system who is first in the go. Go ahead Farzi GNSO ab.

>> FARZANEH BADII: So Greg, if in the implementation phase they use this reasonable against that, and delay implementation I'm going to ask you to be at the microphone and defending us for this cause.

>> GREG SHATAN: I would be the first one up there to say that reasonable is not intended as a way to reign in your efforts or stop doing things. It means that you need to do everything in your power until it's stupid to do it. Then you stop. So whereas with best efforts you keep going even if it's stupid. I'll defend that position in front of any microphone you want.

Steve?

>> STEVE DELBIANCO: Thank you we said this in the chat but not being a lawyer I want to have confirmation with you and others, if we use the word reasonable effort we still create an obligation for ICANN to assess what efforts are reasonable. And to begin the process. In other words, they cannot be allowed to certainly not even try because of their own unilateral assessment that there's not a reasonable effort that would produce success. That is so subjective and if it's -- if the opportunity is vested entirely with ICANN and there isn't a community dialogue. So there needs to be an obligation to begin and starting that is to begin assessing what efforts are reasonable to achieve   the obligated level of effort. Thank you.

>> GREG SHATAN: Thank you. Let's look at the sentence as a whole. The subgroup recommended that the above sentence should be amended to acquire ICANN to apply for. There's no shading there. It must apply. Reasonable, unreasonable or not. Then use reasonable best efforts which is different from reasonable efforts. Reasonable best efforts to secure the license. I don't want -- personally, rap torte hat mostly off I don't want to guild the lily here in terms of creating a study period. I don't think this

needs a study period. I think they just need to get on with it. And do everything that they reasonably should do to get that license. One thing to keep in mind about the reasonableness standard is it's an objective standard. Months a subjective standard which means you can tell someone else that they are being unreasonable even he if they say hey, in my view I'm being reasonable. The question is whether objectively they are being reasonable. You can't just hide behind your own decision that it's reasonable. That's not what reasonableness means or how it would be applied. This means that for what we, especially that gives the community greater strength we can say over all from various stakeholder would you views what ICANN is doing is falls short of reasonableness best efforts they have unreasonably stopped short. So that's kind of the put a little more color on it. So I think we do have the obligation to begin and an obligation the use reasonable best effort. Which I don't think ever could be you know giving up. Before even starting. I think there would have to be huge explanation why no expenditure of effort would be reasonable. That is completely, so completely dead on arrival that you can't even try and that is your best effort. So it's not a reasonable effort standard or commercial reasonably standard. It's a best effort standard really implies you give it your all. So it's hard to believe that doing nothing can ever be considered Griffith all.

>> Thank you Greg.

>> GREG SHATAN: The heads of pins things that's the flavor of someone grinding in a law office for 30 plus year would give to all of this and I argue with any other grind about that.

So I think do we have approval for this? If you do approve this change please give me a check in the list.

I see only 3 -- 4 approvals. I see a hand up from Bernie, Bernie go ahead.

>> BERNARD TURCOTTE: Thank you Greg. Just a reminder, a little bit of process reminder. We were talking about you know the board not wanting to do this. And just to clarify something for everyone, the process to get our recommendations approved is first to get them through the plenary. Next to get them through the chartering organizations. And then next to get them through the board. Now, if the board excepts a recommendation, I can assure you from the other side of the fence that there is a reality to getting these things done. So I think the language of reasonable effort is quite correct in my mind. And matches up to the reality, if something does get approved by the board. Thank you.

>> GREG SHATAN: Thank you Bernie.

If there are any objections, please put up a red X.

Not seeing any opposition. So I will suppose those that did not vote can live with the result at best or at least that's the way it will be interpreted. So, this change is good to go.

That moves us on to the next change. Where we the scission was otherwise qualified to be a registrar was not quite the right standard that it should be otherwise acceptable as a registrar. Because ICANN could have other reasons to say that a qualified potential registrar is not acceptable. So that is the change that is been suggested here. So I'll note there was another suggestion to use viable rather than acceptable. I personally find acceptable a little more clear. But I'd like to see what other people think about this.

Pro/con different ideas.

David McAuley said he's okay with either term. Steve DelBianco says acceptable is acceptable?

>> CHERYL LANGDON-ORR: Same here, Cheryl.

>> GREG SHATAN: Thank you Cheryl. Anyone opposed to this change? So far hearing it's acceptable Raphael said I would rather go with acceptable. But viable is still viable.

Okay but now viable is no longer viable and the change is going to be acceptable. Because it's accepted.

So why don't we move on to the next suggested change to the document which takes us to the top of page 4. The exact same set of changes. So I'm going to assume, unless someone objectives strenuously, that the same changes are good here as well.

Just take a moment to take a look at it. As I said this kind of repeats a bit.

We were see is that a new hand?

>> BERNARD TURCOTTE: Old hand.

>> GREG SHATAN: Everyone -- Bernie you're an old hand at ICANN anyhow Robin Gross says either is okay. David McAuley said I can accept that.

That's okay at top on page 4 as well. That takes us all of the way to page 5, in the middle.

This is a sentence added based on some of the discussion we had with the executive summary and main body with the menu approach and other things. This is kind of the simple effort way of dealing with the

fact that the main report goes into greater detail. Has some actual kind of analysis in it. And the sentence reads the body of the report discusses the advantages and disadvantages of each approach.

Is this acceptable? Any objections?

Any comments or thoughts?

I'm seeing general acceptance. I'm seeing Steve DelBianco hands.

>> STEVE DELBIANCO: General acceptable but we jumped past the sanctions section and I don't think we discussed or accepted the change which would carry the same reasonable effort obligation for other sanctions regimes other than OFAC. A simple sentence of addition it's fine to focus on OFAC. But it isn't the only sanctions gained work in the world today nor will it be tomorrow. Thank you.

>> GREG SHATAN: Comment -- so I guess we you know trying the find it in our comment list.

I guess the suggestion is that somewhere in this section we mention -- I'm trying to find a more specific ask or statement.

So if anybody can point to it in this the comment tool that would be very helpful. Steve.

In particular.

I see here it is at the top Ophidia or it's in line 9.01 that says in addition sanctions are often applied in non-U.S. governments like I security policy VC ask if the recommendations can be generalize enough so ICANN can take stems for participants effected by any and all sanctions.

And there's some discussion noted there with the end result being that all the references to OFAC would I think stay where they are. But there would be a reference that ICANN would have the same obligations with regard to sanctions other than OFAC. From any jurisdiction.

[voices overlapping]

>> It would be relevant sanctions much sanctions that have the same impact of preventing a applicant from registrar or privacy or sanctions that prevent a participant from being able to attend ICANN meetings and participate as a working group member. So the effects are exactly the same. It would be at the end of each section we would consider that these recommended obligations for ICANN to seek

sanctions relief be applicable to any relevant sanction preventing the participation, a application described above.

>> We are not hearing anyone talk but we are hearing a lot of furious typing.

>> GREG SHATAN: I'm trying to type out something like what Steve said.

So these obligations would be applicable to any relevant sanctions that prevent participation or --

>> Participation or the application described above. Because this some cases its participation, like travel sanctions and application applying to be a registry, registrar or privacy proxy provider. Whatever application process will go through. Thank you.

>> GREG SHATAN: Thanks Steve. I wonder if we should add, and where there's a procedure for relief. I don't know when all sanctions have such a procedure like ICANN does. But.

>> Agreed, agreed.

>> GREG SHATAN: So this is a sentence I have now that we would apply several times. These obligations would be applicable to any relevant sanctions app sanction that prevent participation or the application prescribed above or where there's a procedure for relief.

We can word Smith that a little bit on the list but I think that's close? To where we are at.

>> With the DC the open group that proposed that. I don't recall from the tool.

>> GREG SHATAN: I would say in the terms of comments, I believe it was only group that said that. I do recall you know discussing that point a number of times in the -- in our meetings several times that we were not ultimately not open talking about OFAC sanctions it's just that the OFAC sanctions are the ones that have actually occurred and created issues up to this point. But that we didn't want ICANN to say oh, this isn't OFAC we don't have any of those obligations.

>> Greg, if I might.

>> GREG SHATAN: Yes.

>> STEVE DELBIANCO: On page 3 where we described the recommendations we said "some group considering issues related to government sanctions particular U.S. government sanctions to OFAC" that's the last time we mentioned it and your recollection is right and the conversation occurred we

considered the broader aspects of sanctions to application on I was returning to where I thought we were the report had it but never had obligations associated with the non-U.S. sanctions thank you.

>> GREG SHATAN: Thank you Steve. I was trying to see if there was any -- if anybody objects to this change or has any comments on it or the like. It   seems reasonable and appropriate especially with the earlier on government sanctions generally.

I'm hearing no objections I'm not seeing any objections. I see hopefully reading the right context Farzi we support the change. Tatiana seems reasonable to me. Steve I can it's reasonable and acceptable. I remember we will go with this. If and this will be repeated as necessary.

So I think that I've put it in now at the end of the first bullet point related to OFAC sanctions.

Which perhaps we should consider changing to recommendations relating to sanctions or OFAC sanctions and other sanctions or something along those lines much. I don't want to downplay OFAC since that's the life problem but of course we have to be forward looking.

Anyway.

So I think that then we can move on in the list. We have discussed the body of the report. Discusses the advantages and disadvantages of each approach. That seems reasonable and acceptable to people. Then we backed up and made the change that Steve suggested. And which has been taken on.

A very minor change at the bottom of page 5 in the end of the first section menu approach. There was a question mark that really should just be a period.

So that has been changed to a period.

Next comment is noted, this is from the e-mails bottom of page 6. Quote from Kavouss' email. Kavouss respectfully requests that introductory summary reviews from ICANN and public comments even though we may make no changes to the recommendation.

I think we covered that in the introductory discussion with Thomas and myself that this is not -- just reflecting the comments per say is not the practice. Here or elsewhere.

So, unless there are any comments or objections, or support for a different approach here, which I think will have to be taken care of elsewhere. I'm seeing nobody with a hand up. So I will assume that means that everyone can live with the idea that there will be no change just to report on the content of

comments. And if of course if we did we would have to report on the content of all comments regardless of their views.

Which would be a whole different document.

Okay, so the comments will of course be available in the tool and elsewhere and be linked as such. I think that takes us past page 6 all the way to 15. The same changes in the middle of the page. Reasonable best effort and otherwise accessible to the registrar. This is identical language. So I'm assuming it's identical acceptable and reasonable to all. But if there's any comments or objections or the like, now is the time seeing none I think we can move on from here. All of the way to the top of 16 for the second recommendation statement that has the same changes of reasonable and acceptable. Which I'm hoping is acceptable and reasonable. If it's not please put up your hand or note otherwise.

Seeing no notes I assume we are good here. Taking us to the bottom of page 20 and top of 21.

Here we had a suggestion from Petersen echoing at least in part the comment of the Danish government. And making the following suggestion at the bottom of page 20 removing or at least to negotiate for and then at the end of that same paragraph that shows up on the top of the next page replace the registry could simply be able to make a choice from the menu or be part of the registry negotiations with ICANN and replacing this with the subgroup recommend it should be up to the registry to choose from the menu not part of the registry negotiations with ICANN.

So this is a significant change my view of, from the what we have before which was we offered two options, the ability to choose, or that it would be the subject of negotiation. And indeed the final, we can't impose anything so it can't be a formal recommendation of such it has to be adopted by ICANN like other recommendations, this is trumped by the procedure that is in place for revising and amending the base registries and registrar agreement.

So David I see your hand is up. David McAuley too. Please go ahead.

>> DAVID McAULEY: Hi thank you for the record David McAuley. I think, I understand the government of Denmark's comment and don't find it objectionable. And I want to make sure we are not getting confused on the concept of negotiations. The reason I say that is seems to me in this context there's two levels of potential negotiations. And the first would be that we couch our recommendation, in the these menu items, etc. we couch the menu openings portions in terms of saying look it not up to us to recommend or director whatever we said I can't remember the verbiage that ICANN and the cracked parties amend their contracts but we do ask that they discuss and consider the menu option and

presumably if they agreed to it they negotiate the menu option among themselves including questions such as the one I alluded to when I was speaking in response to Thomas earlier by saying could a registry choose a menu wherever it was, around the world. A menu option wherever it existed. So there's two levels. The other level of potential negotiation is where the government of Denmark was pointing to and staying this is not a negotiation this is a selection between the registrar and registry. I don't see anything objectionable there. But I think there's a level of negotiation preceding the whole thing as we stated in the terms couching the registration. Thank you.

>> GREG SHATAN: The thank you, David. Any other comments on this? Change in our consensus?

 I guess one concern that I see and maybe I'm taking my rapporteur's hat on off here. First off, it's irrelevant whether we state both choices or only one since the contracted parties and ICANN will deal with them among themselves and they will negotiate among themselves as to how this is handled and second I think it, the answer of how comfort anyone might be is related on what the menu approach required. So if the menu is fairly large menu like the largest one I think we suggest is a small number of countries from each region, plus perhaps the status quo in the region's jurisdiction and registry jurisdiction of ICANN physical location. That there may be good reasons why one of those would be one or more of those could be problematic.

And therefore might need negotiation because it would end up putting ICANN in a significantly different situation. And secondly, that the -- we don't what the choices are, what comments, what they will do and we end up with a greater amount of uncertainty on this. I think if there were the smaller the menu the more likely that all of the options could be deemed equally acceptable. And which in that case I think would lead much more naturally to a selection rather than negotiation. Since every has in essence been precleared.

So that is -- if not clear whether we would preclear each of the small countries from each of the regions. We give -- not a lot of guidance on implementation. So because of that, I personally am uncomfortable with the idea that there's no circumstance under which a menu approach would be in vote where a selection of approach is the only one that we should mention. And that we should actively recommend that, that the selection be made regardless of what's on the menu. And we haven't commented on what should not be on the menu. And that's really beyond our reach anyway. Any thoughts?

Raphael says I have to leave as well to provide you an answer on what you said Greg I'm more in the opinion what the menu should be small and precleared and registry select have a nice evening all.

That would actually change our recommendation as to the menu where we basically leave open as to all options and really don't recommend any particular formulation of the menu. And we leave it to the process ICANN and registries to define the option. So I don't know that we could put Raphael's comment into -- into this, unless we want to say the smaller the menu the more likely that selection would be appropriate. Because they would be precleared.

So, in terms of Thomas' invocation and my own, if any comment changes the mind's of the group so that we have a new consensus, then we can change their rapport. But what any one comment says is left to be read in the comments.

So in any case, I'd like to ask if there is support for the changes on page 20 and 21, please put a green check.

If there are objections.

>> CHERYL LANGDON-ORR: None from me.

>> GREG SHATAN: I see an abstention from David.

So it appears here with no objections this group is deciding to change our consensus and remove all references to negotiation regardless of what the menu looks like, is that correct?

Or rather is anybody disagree with that summary of what we are saying? Well, with no objections although my own uncomfortableness, that negotiation is never -- should be considered we will make the changes suggested by Finn.

Of course in any event this is only advisory in nature.

So, I see David says, in my opinion the introduction to this menu approach is most important up to ICANN and contracted parties to suggest and negotiate.

Okay, that takes us now to the further down page 25. Further discussion of jurisdiction related concerns. Kavouss stated please include further considerations in the lasted and more than one last page because these are important for the consideration of the plenary you can label them with the material below are considered for consideration to the CCWG plenary and leave it to them to decide in one way or the other. I'm a little unclear as to what could Kavouss is asking to be included. But in his email this directly followed his suggestion that the contents of several comments should be recognized and maybe restated in our all right which we stated, you know, earlier is not the approach that we are

taking. So assuming this means the same thing, we would take the same approach here and not make a change and certainly note be putting in things that were not part of the consensus of this group for the considering of the plenary.

David, I see your hand wilting in the heat please go ahead.

>> DAVID McAULEY: Greg thanks, David McAuley. I'm going the revert to the last point just real quick. On the menu option I abstained I was leaning in the way you were. But I abstained because I didn't know. I'm wondering if we make a wholesale change I'm wondering if we make a wholesale change was it prompted by comments that we received during the comment period? Or is that an issue? I wonder if you and Bernie, I may be lost. I'm wondering if we make a complete change from where we were and there was or was not -- there wasn't a comment, does that mean we have to go back out again. I hope not. But anyway I was just curious. And my abstention is I'm not able to make a decision on this. I'm leaning against it.

Thank you.

>> GREG SHATAN: Just to answer David on that point, this was -- this does reflect the comment we received from the government of Denmark. And that you know initiated renewed discussions of the report. I think that whether we have to go out for a second set of comments relates to whether this will be considered a material change or not. Such that we would need the it to receive comments on this new view. My view is that while it's not crystal clear because this is a change of position, that given that this is advisory only and given that the -- that ICANN contract the parties is completely free to decide it's going to be a negotiated item rather than selected item or make a choice between negotiated and selection based on whatever menu approach to take if they decide to take a menu approach, given this is in essence non-binding and not even limiting to the approach I would say it does not require a new round of comments.

That would be my view.

If this much is really changing how we were prescribing future actions to takes place then I think it would be a different analysis.

Any, I think that brings us now, I think we have gone -- we are at the bottom on page 25 discussing the idea of summarizing comments and putting them in front of the plenary without them being part of our consensus. That has not been taken on given the overarching discussion at the beginning of this discussion.

So we can move on again.

And that really takes us to the last page, 26. Kavouss says here, more importantly I respectfully request you to maintain the three stress tests agreed by our meeting before that was not commented otherwise these stress tests are important to address the problems that were extensively discussed I have serious difficulties not to include them.

To my recollection if I said I would put the stress test in I didn't have chance to grab them and insert them into the draft. I was running way behind the clock even before this meeting. I believe this would be the appropriate approach and indeed one could argue that the bylaw requires stress test all over the place. I'm not going the make that argument but I think where we have stress tests and they come from the master OFAC all stress tests and they seem good, we should put them in.

Which I will do before I circulate this to the list. And since I don't have them right in front of me or owe an easy PDF to mount please do take a look at them on the list to see when you are good with the stress test as they are phrased by the maestro. And if there's any discussions to be had we should have that discussion.

So, I think here we've now have come to the end of the document. What we should do briefly is turn to the comment tool. And pick up where we left off before.

In terms of getting a second round of comments in.

So I think that brings us to line 5.08.

So, this is where ICANN essentially agrees with what we are saying but maybe we didn't say it strongly enough. So I don't think we have -- it also asks if we have any tools to remind registrars what we are thinking of we should let them know. I don't think we had any other specific tools to mention. We will leave it to ICANN and this communication team. To do that.

Is there anybody that beliefs there's a change that the document requires by section 5.08? Or line 5.08, excuse me.

I've seen none. Actually go back up to 5.06, the apologies, the government of Russia.

It says and I'll excerpt briefly, any steps to reduce the effect of the appreciation is only our first attempt to handle jurisdictional challenges. We consider the recommendations proposed by the subgroup limiting the ability to possible negative effects since best efforts guarantees ICANN cannot adequately

address the problem. This goes back to the rather substantial we had on best effort. And Russia seems to be objecting even to the best left. But it can't guarantee that the government will issue a license. Best we can do is unreasonable best effort. I think over all we have landed in the right place on this one.

So I think that takes us off this page unless there's further, anybody thinks that changes should be made to the recommendation based on these.

I'll move past all of the dark green ones on the next page.

And the next light green one is from NCSG line 6.03. Much David I see your hand has popped up again. Please good ahead.

>> DAVID McAULEY: Probably not a big point but the ICANN board also asked us if we have any other tools to recommend. The second part of the comment on 5.08. Did we want to say anything about that?

>> GREG SHATAN: I don't recall that we had any other tools. But we can put the question to the list. That if we have any specific tools or recommendations, it will be nice to add them. They will only be suggestions anyway.

But if people have ideas on communications we can certainly try to respond to that. I don't believe we had any bright ideas in the past beyond the usually ways that ICANN communicates with people and entities. But certainly we would be happy the take some on board.

I'll mention that in the email when I circulate this. It's a good pick up, thank you Dave.

>> Greg if you are speaking we are not hearing you.

>> GREG SHATAN: Sorry,is speaking to myself. I'm looking at the NCSG 6.03 they suggest changing the OFAC related recommendation. At least with regard to the general license. That says ICANN should prioritize obtaining one or two general OFAC licenses so we suggest the recommendation to obtain OFAC licenses should be more clearly prioritized in this the report. And second, it says as in our view this is one of the most important recommendations ICANN should react upon and we believe the report should propose a detailed recommendation by ICANN.

So, I guess the question is, whether this comment will change our con silence statement on this point.

Which I think probably best seen on page 18. Currently say ICANN take steps to pursue one or more of the general licenses with the department of treasury with the related transactions and ICANN should make it a priority to study the cost benefits timeline, etc.

Bernie you have a hand up?

>> BERNARD TURCOTTE: Yes thank you Greg. Just a reminder from the plenary yesterday, well earlier today, sorry, 0500. We discussed the prioritization and of our recommendations. And I think we you know noted at that point that it's difficult for us to, as the Work Stream 2, to prioritize any of the recommendations and that the implementation of these in the end will depend on a discussion between ICANN and the community. So, I'm not sure if this change tracks with that comfortable blue. Thank you.

>> GREG SHATAN: Thank you Bernie. Good point   David McAuley please go ahead.

>> DAVID McAULEY: Greg hi, thank you. It's David McAuley speaking for the record. And I see robin's comment and I would take just a different tack from Robin whose opinion I value and I feel like a real con trainer today much but in my opinion I disagree with the non-commercial stakeholder group they say the license would be more important but I think the specific licenses are more important because they are actuality addressing the needs of someone who is there, present, viable or acceptable and is knocking on the door trying to get in. A general license, as I recall from Sam's presentation is more in the nature of trying the get something that almost is up at the level of legislation done with heavy lobbying costs program perhaps and other things. So or recommendation that ICANN look into that seems to be the appropriate recommendation. So I would be a voice against doing this. Although I respectfully thank them for their comment and I understand the impetus for it and I take it differently.

Thank you.

>> GREG SHATAN: Thank you David. Just to clarify, a general license is actually regulatory. But it would require, really require -- actually it's -- actually a change I believe to the -- I can't remember if it's regulatory or legislative I'm sorry but either way it needs to be put in place by the department of commerce and make -- be essentially a change to the law. So with all of that implies, it's a wholesale solution rather than a retail solution once you do get the general license it takes care of the whole class of transactions going forward. So it might be that you only need one for registries and one for registrars. Although I think that's probably, I'm not specialist in this, but you might need a different regulation or expressed for each country because the sanctions actually breakdown by country. It's note like there's one sanction again against all sanctioned countries. So I guess the question is whether and

how we would change this. I guess the session is to change what now irk can should take steps to pursue one or more OFAC licenses to ICANN should prioritize obtaining one or more or one or two general OFAC licenses.

And we still have the sentence about making it a priority to study the cost. After when we say that ICANN should then pursue one or more OFAC general licenses unless obstacles were discovered. So I'm not sure how we would we may need to make further changes in the document because the -- this basically doesn't seem like a system with prioritizing obtaining licenses, as opposed to pursuing them.

So, I guess it would be helpful to understand what -- how this would change and how this would change the overall procedure here.

We have got about 6 minutes left in this call.

Maybe what I should do, since we are reaching the very end of this call and I don't want to draft on the fly with the ticking clock is suggest to those on the call from the NCSG, to mark up this recommendation and consider how -- what the over all approach would be. Both this terms of the studying the cost and then the pursuing after. Unless there's significant obstacles. And the like. So I think that if we could get a change, a suggested change we could actually look at as quickly as possible, given where we stand on time, that would be helpful. So we can get as a discussion going between the current language and actual proposed change. And see when one or the other -- whether we change our consensus on this or whether there's perhaps another phrasing that might come out of a discussion of on those two option.

So we can make than an action item on the list does   put that in the DA IRS list that Bernie circulates.

So, Tanya notes in parentheses she speaking like the GNSO action item. Well you are in the GNSO. So any case. That does take us to 25 past. So I think we will pick up here where we left off. If but hopefully be Abe to make concrete progress on the list. I think this is a critically important time for the list to work. Because I will circulate this document where we are at including a note that this is under discussion. This whole paragraph at this point really.

Now we can try to move forward with some concrete language.

And you know reminder we do have to review a few more line items here. To make sure that they don't have any comments. So if people in the next few days could look at the remainder of the comment tool starting really with 6.05 and look at anything other than dark green lines, so there may be half dozen so of those. So we could try to form a view on those and we could try to finish this up and try to combine

our first reading on the revised document, maybe the half reading of the combined document along with ending of the second reading of the comments. And in terms of the timing, remember if we are going to do two readings of the document, the document should essentially be stable for the readings. So if we don't have -- if we don't have a stable document for our next meeting that means we have to have at least three meetings in order the complete our task. And that would be very tight indeed.

As I think we only have 3 meetings left before the second.

So that's all the time we have.

So I think that brings us to any other business? Does anybody have any other business? Hearing no other business, I'll call this meeting adjourned at -- yes Bernie please go ahead.

>> BERNARD TURCOTTE: Sorry for the late injection here. I was checking the schedule and we have a jurisdictional call next week, the 14th. At 1900. And then no more calls scheduled. So would you like us to schedule calls all of the way to the 227th or 28th?

>> GREG SHATAN: Yes please, thank you for checking that. I thought we had scheduled all of February. Thank you for keeping an eye on such things. You knee what they say about assumptions. Yes, by all means please do schedule meetings so we have 3 meetings after this one to take us through the end of February right up to the deadline. And maybe we won't need the last one if we are automobile the get a stable enough document for the meeting or we will be down to only discussing one or two changes.

>> BERNARD TURCOTTE: Okay we will schedule you'll the next meeting for 90 minutes again?

>> GREG SHATAN: Yes let's do that. Hopefully we will be able to get through a whole lot that way. Seems like we need the 90 minutes. Since we can't schedule more weeks we need to have more minutes.

>> BERNARD TURCOTTE: All right thank you, will do.

>> GREG SHATAN: Thank you Bernie. Thank you all for your participation. And comments. And have a great afternoon, evening, morning, night whatever it is. This call is now adjourned and we may stop is recording. Thank you all and bye.

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